

# TOWN OF PITTSFIELD

Incorporated March 27, 1782

*See renewal filed  
9-25-00*

OFFICE OF SELECTMEN  
O. Box 98  
Pittsfield, New Hampshire 03263  
603-435-6773  
FAX 603-435-7922

July 22, 1998

Harmon S. White, CEO  
Community TV Corporation  
408 Union Avenue  
Laconia, New Hampshire 03246

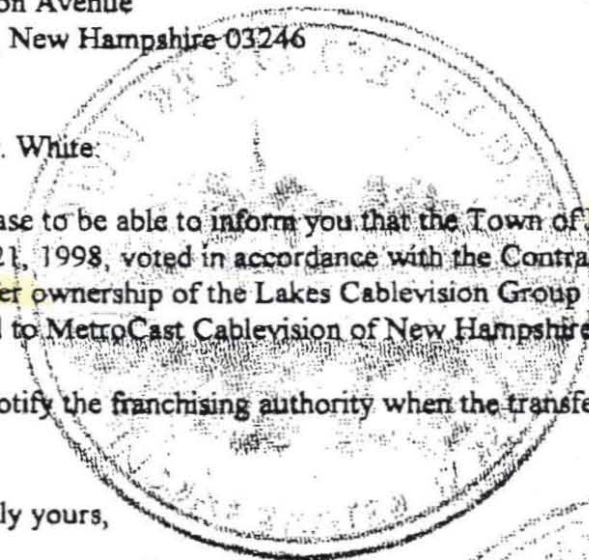
Dear Mr. White:

I am please to be able to inform you that the Town of Pittsfield Board of Selectmen have on July 21, 1998, voted in accordance with the Contract Provisions, to grant your request to transfer ownership of the Lakes Cablevision Group facilities located within the Town of Pittsfield to MetroCast Cablevision of New Hampshire, LLC.

Please notify the franchising authority when the transfer of ownership has been completed.

Very truly yours,

*Frederick Welch*  
Frederick Welch  
Town Administrator



Expires 4-17-2012  
(on 8/30/2000 list)

CABLE FRANCHISE RENEWAL AGREEMENT

BETWEEN

Pittsfield, New Hampshire

AND

→ MetroCast Cablevision of New Hampshire, L.L.C.

This Cable Television Franchise Renewal entered into this the 18<sup>th</sup> day of April 2000, by and between the Town of Pittsfield, New Hampshire, (also referred to as "Franchising Authority" or "the Town") as Franchising Authority for the renewal of the cable television franchise and MetroCast Cablevision of New Hampshire, L.L.C. ("MetroCast"), a limited liability company.

WITNESSETH:

WHEREAS, the Franchising Authority of Pittsfield, New Hampshire is authorized to grant one or more nonexclusive, revocable cable television franchise renewals to construct, operate and maintain a Cable Television System within Pittsfield, New Hampshire;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound, the parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1-DEFINITIONS:

For the purpose of this Franchise Renewal, the following words, terms, phrases and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, 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. The word "shall" is always mandatory and not merely directory.

1. Abandonment:

(i) the cessation by act or failure to act of the Franchisee or any affiliated person, of the provisions of all, or substantially all, of the services being

provided over the cable system to subscribers or the Town for twenty-four (24) or more consecutive hours, except if due to a FORCE MAJEURE.

(ii) the completion of any action described in Section 2.8 hereof without the prior written consent of Franchising Authority, provided that a change of control, which is not initiated or participated in by the Franchisee or any affiliated person or, if applicable, is opposed actively and publicly by the Franchisee and all applicable affiliated persons shall not be considered abandonment.

2. Access: The right or ability of any Pittsfield resident and/or any Persons affiliated with the Town or a Town-designated institution to use FOR NON-COMMERCIAL PURPOSES designated facilities, equipment and/or channels of the Cable Television System, subject to the conditions and procedures established by the Town OR pursuant to applicable laws for such use.

3. Access Channel: A video channel which the Franchisee shall make available FOR NON-COMMERCIAL PURPOSES to the Town of Pittsfield, AND/OR Pittsfield educational institutions, without charge TO THE USER, for the purpose of transmitting programming by members of the public, Town departments and divisions, schools, educational, institutional and similar organizations.

4. Affiliate or Affiliated Person: Each person who falls into one or more of the following categories (i) each person having, directly, or indirectly, CONTROLLING INTEREST in the Franchisee; (ii) each person in which the Franchisee has, directly or indirectly, a Controlling Interest; (iii) each person, directly or indirectly, controlling, controlled by, or under common control with, the Franchisee; provided that "affiliated person" shall in no event mean the Town, or any party to a contract with the Franchisee, any limited partner or any creditor of the Franchisee solely by virtue of its status as a creditor and which is not otherwise an affiliated person by reason of owning a controlling interest in, being owned by or being under common ownership, management, or common control with the Franchisee.

5. Basic Service: Unless otherwise defined by the Cable Act or other laws, any service tier which includes the retransmission of local television broadcast signals, all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system), any public, educational, and governmental access programming required to be carried on the Basic Service Tier, and any additional video programming signals and services added to the basic tier by Franchisee.

6. Cable Act: Public Law No.98-549, 98 Stat. 2779 (1984) the Cable Communications Policy Act of 1984), as amended by Public Law No. 102-385,106 Stat. 1460 (1992) (the Cable Television Consumer Protection and Competition Act of 1992, as further amended by Public Law No. 104A58,110 Stat. 56 (1996) (the Telecommunications Act of 1996) and any future amendments.

7. Cable Service: The one-way transmission to Subscribers of Video Programming or Other Programming Service, together with Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other Programming Service.

8. Cable Television System or Cable System: A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple subscribers within the Town, but such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves subscribers without using any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title 2 of the Communications Act of 1934, as it may be amended, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) of said Communications Act of 1934, as it may be amended) to the extent such facility is used in the transmission of cable service directly to subscribers; or (d) any facilities of any electric utility used solely for operating its electric utility systems.

9. Channel: A band of frequencies in the electromagnetic spectrum or any other means of transmission (including, without limitation, optical fibers or any other means now available or that may become available), which is capable of carrying a video signal, or an audio signal.

10. Commercial Subscriber: A commercial, non-residential Subscriber to Cable Service.

11. Complaint: Any verbal or written inquiry, allegation or assertion made by a Person which requires subsequent corrective action to the Cable System or any portion thereof, or any subsequent investigation, research and, or a service call to be undertaken by the Franchisee.

12. Control: The legal or practical ability to exert actual working control in whatever manner exercised, over the affairs and/or the day-to-day operations of a Franchisee, either directly or indirectly, whether by contractual agreement, majority ownership interest, or any lesser ownership interest, equity or non-equity, or in any other manner, whether by a Parent at any level or by any other entity.

13. Controlling Interest: Actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments, or negative control, as the case may be, of the system, the franchise or the Franchisee. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or group of persons acting in concert (other than underwriters during the period in which they are offering securities to the public) of fifty percent (50%) or more of any person (which person or group of persons is hereinafter referred to as "controlling person"). "Control" or "controlling interest" as used herein may be held simultaneously by more than one person or group of persons.

14. Converter: Any device changing the frequency of a Signal. A Subscriber Converter may expand reception capacity and/or unscramble coded Signals distributed over the Cable System.

15. Cost: A price designed to recover actual costs (i.e. labor, material, etc.), including a reasonable rate of return as defined by the FCC Cost of Service Order, MM. Docket No.93-275, Para. 207 (released March 30,1994) or as such term is amended by the FCC from time to time.

16. Days: Calendar days unless otherwise specified.

17. Drop or Cable Drop: The coaxial or fiber cable that connects each home or building to the feeder line of the Cable System.

18. Effective Date of the Franchise Renewal (the "Effective Date"): The date that this Renewed Franchise has been executed by both parties hereto.

19. FCC: The Federal Communications Commission, or any successor agency.

20. Force Majeure: The term "force majeure" as used herein shall mean the following: any cause beyond the reasonable control of the Franchisee including, but not limited to, acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of the State of New Hampshire or any of their departments, agencies, political subdivision, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightening; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; strikes; and unavailability of essential equipment and/or materials beyond the control of the Franchisee.

21. Franchise Fee: The payments to be made by the Franchisee to the Town of Pittsfield, which shall have the meaning as set forth in Section 622(9) of the Cable Act.

22. Franchisee: MetroCast Cablevision of New Hampshire, L.L.C. or any successor or transferee in accordance with the terms and conditions in this Franchise Renewal.

23. Franchising Authority: The Town of Pittsfield, New Hampshire.

24. Gross Annual Revenues: Revenue collected by the Franchisee deriving from the operation of the Cable System for the provision of Cable Service, including the carriage of Signals over the Cable Television System including, without limitation: the distribution of any Service or Service Related Activity over the System; Basic Service monthly fees and all other Service fees; all Commercial Subscriber revenues; fees paid for channels designated for commercial use; Converter, remote control and other equipment rentals and/or leases or sales; studio and other facility and/or equipment rentals, and/or leases and/or sales; revenues from the operation of studio or other Cable Service facilities, equipment or billing; and advertising revenues. Excluded are the following:

(a) any tax, levy, assessment or other fee imposed on the Franchisee which is imposed directly or indirectly on any Subscriber by any governmental unit or governmental agency, and which is collected by Franchisee on behalf of such governmental unit or governmental agency;

(b) the revenue of any Affiliate;

(c) the revenue derived by the Franchisee from activities or businesses for which a Franchise is not required;

(d) the revenue of the Franchisee or any affiliate from the operation of a facility of a common carrier which is subject, in whole or in part, to the provisions of Title 11 of the Communications Act of 1934.

25. Headend: The electronic control center of the Cable System containing equipment that receives, amplifies, filters and converts incoming Signals for distribution over the Cable System.

26. Installation: The connection of the Cable System from feeder cable to the point of interconnection with Subscriber-owned facilities.

27. Liability or Liabilities: Any and all encumbrances, defects of title, easements, mortgages, security interest or agreements, pledges, liens, charges, damages, expenses, penalties, fines, costs, conditional sales agreements, title retention agreements, claims, assessments, restrictions, liabilities, obligations, debts, commitments, undertakings, taxes, covenants and responsibilities of every kind and character, known and unknown, contingent or otherwise, or arising existing by operation of law, by judicial decrees of judgment, by contract or otherwise, including, without limitation, those evidenced by contracts, agreements, memoranda, indentures, mortgages and security agreements, and conditional sales and other title retention agreements. "Liability or liabilities" shall also mean any damage or loss to any real or personal property of, or any injury or death of, any person or the Town.

28. NTSC: The acronym for National Television Systems Committee.

29. Normal Business Hours: Those hours during which most similar businesses in the community are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

30. Other Programming Service: Information that the Franchisee makes available over the Cable System to all Subscribers generally.

31. Outlet: An interior receptacle, generally mounted in a wall, that connects a Subscriber's or User's equipment to the Cable System.

32. Parent: Any entity that directly or indirectly, whether immediately or through any number of intermediaries, owns or controls the Franchisee, or any successor in interest to any such entity.

33. Pay Cable or Premium Services: Programming delivered for a fee or charge to Subscribers on a per-channel basis.

34. PEG: The acronym for public, educational, and governmental," used in conjunction with Access Channels, support and facilities.

35. PEG Access Channels: Any channel(s) made available for the presentation of PEG Access Programming.

36. Person: Any corporation, partnership, limited partnership, association, trust, organization, other business entity, individual or group of individuals acting in concert.

37. Prime Rate: The prime rate of interest at the Bank of Boston or any successor bank.

38. Public Way or Street: The surface of, as well as the spaces above and below, any and all public streets, avenues, highways, boulevards, concourses driveways, bridges, tunnels, parks, parkways, waterways, bulkheads, piers, dedicated public utility easements, and public grounds or waters and all other publicly owned real property within or belonging to the Town, now or hereafter existing. Reference herein to "Public Way" or "Street" shall not be construed to be a representation or guarantee by the Town that its property rights are sufficient to permit its use for any purpose, or that the Franchisee shall gain or be permitted to exercise any rights to use property in the Town greater than those already possessed by the Town.

39. Reasonable Notice: Shall be a written notice received by the Franchisee, at its principal office within the Town or such other office as the Franchisee has designated to the Town as the address to which notice shall be transmitted to it, which notice shall be certified and post marked not less than ten (10) days prior to that date in which the party giving such notice shall commence any action which requires the giving of notice, except as otherwise provided herein. In computing said ten days, holidays recognized by the Town shall be excluded.

40. Franchise Renewal: The non-exclusive Cable Television Franchise granted to the Franchisee by this instrument.

41. Residential Subscriber: A resident who lawfully receives any service on the Subscriber Network, except to the extent that said services are used by said Subscriber in connection with a trade, business, or profession, either directly or indirectly.

42. Scrambling: The electronic rearrangement of a Signal(s) in order to render it unintelligible or unreceivable without the use of a Converter or other decoding device.

43. Service: Any Basic Service, any Pay Cable Service, or any other service, whether or not originated by the Franchisee, which is offered to any Subscriber in conjunction with, or which is distributed over, the Cable System.

44. Service Interruption: The full or partial loss of picture or sound on one or more cable channels.

45. Service Related Activity: Any activity or function associated with the production or distribution of any service over the cable system, including, without limitation, use of studio or other facilities or equipment, billing, audience promotion, or installation or lease of equipment.

46. Signal: Any transmission of radio frequency energy or of optical information.
47. State: The State of New Hampshire.
48. Subscriber: Any Person, which elects to subscribe to, for any purpose, a Service provided by the Franchisee by means of, or in connection with, the Cable Television System.
49. Subscriber Network: The network to be owned and operated by the Franchisee, over which Signals can be transmitted to Subscribers.
50. Transfer: any transaction in which there is any change, acquisition, or transfer of Control of: the Franchise, the Franchisee's Cable Television System or the rights and/or obligations held by the Franchisee
51. Trunk and Distribution System: That portion of the Cable System for the delivery of Signals, but not including Drop Cable(s) to Subscriber's residences.
52. Two-Way: A system design feature whereby the Headend, trunk cables, distribution plant, amplifiers, and other technical components of the Cable System have the requisite equipment to pass video, audio, voice and/or data signals in both directions simultaneously.
53. Upstream Channel: A channel over which Signals travel from an authorized location to the Cable System Headend.
54. User: A Person utilizing the Cable Television System, including all related facilities for purposes of production and/or transmission of Signals, as opposed to utilization solely as a Subscriber.
55. VCR: The acronym for video cassette recorder.
56. Video Programming: Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## ARTICLE 2

### GRANT OF FRANCHISE RENEWAL

#### Section 2.1-GRANT OF FRANCHISE RENEWAL

Subject to the terms and conditions set forth herein, the Board of Selectmen of the Town of Pittsfield, New Hampshire, as the Franchising Authority of the Town, hereby grants a non-exclusive, revocable cable television Franchise Renewal to the Franchisee authorizing the



Franchisee to operate and maintain a Cable Television System within the corporate limits of the Town of Pittsfield.

This Franchise Renewal is subject to the regulations of the FCC; the Cable Act; and State and federal statutes.

Subject to the terms and conditions herein, the Franchising Authority hereby grants to the Franchisee the right to operate and maintain the Cable Television System in, under, over, along, across, or upon the Public Ways for the purpose of reception, transmission, collection, amplification, origination, distribution, and/or redistribution of Signals in accordance with the laws of the United States of America, the State of New Hampshire and the Town of Pittsfield. In exercising rights pursuant to this Franchise Renewal, the Franchisee shall not endanger the lives of Persons, or unreasonably interfere with any installations of the Town, any public utility serving the Town or any other Persons permitted to use the Public Ways.

Grant of this Franchise Renewal does not establish priority for use over other present or future permit holders or the Town's own use of Public Ways. Disputes between the Franchisee and other parties regarding use of Public Ways shall be resolved in accordance with any applicable regulations, or procedures and ordinances of the Town of Pittsfield.

#### **Section 2.2-TERM OF FRANCHISE RENEWAL**

The term of this Franchise Renewal shall commence on the Effective Date and shall end on the earlier of: (i) twelve (12) years after the Effective Date; or (ii) ten (10) years after the completion of the rebuild, as set forth in Section 6.3 hereof. The Franchisee shall give notice to the Board of Selectmen no more than thirty-six (36) months prior to the expiration of the Renewal term and no less than thirty (30) months prior to the expiration of the Renewal term. The Town may conduct a renewal proceeding, pursuant to the procedures set forth in 47 U.S.C. § 546. This paragraph does not vest in Franchisee a right of renewal. On the contrary, the Board of Selectmen may invite proposals from other applicants and the decision regarding renewal shall be solely at the discretion of the Board of Selectmen. During the term of this renewal, the terms of this Franchise Renewal shall continue in force unless modified in writing by mutual agreement of the parties.

#### **Section 2.3-RIGHT OF TOWN TO ISSUE FRANCHISE**

Franchisee acknowledges and accepts the legal right of the Franchising Authority to issue this franchise.

#### **Section 2.4-NON-EXCLUSIVITY OF FRANCHISE RENEWAL**

Subject to Section 2.3 above, this Franchise Renewal shall not affect the right of the Franchising Authority to grant to any other Person a license or right to occupy or use Public Ways and Streets, or portions thereof, for the construction, installation, operation, or maintenance of a Cable Television System within the Town of Pittsfield; or the right of the Franchising Authority to permit the use of the Public Ways of the Town for any purpose whatsoever. The Franchisee hereby acknowledges the Franchising Authority's right to make such grants and permit such uses. If the Franchising Authority grants another franchise to operate a Cable Television System in the

Town, such franchise shall be on terms no more favorable or less burdensome than the terms hereof.

#### **Section 2.5-POLICE AND REGULATORY POWERS**

By executing this Franchise Renewal, the Franchisee acknowledges that its rights are subject to the powers of the Town to adopt and enforce general ordinances necessary to the safety and welfare of the public. The Franchisee shall comply with all generally applicable Department of Public Works regulations and any ordinances of general applicability enacted by the Town. Any conflict between the terms of this Franchise Renewal and any present or future lawful exercise of the Town's police and regulatory powers shall be resolved in favor of the latter.

#### **Section 2.6-CABLE ADVISORY COMMITTEE**

The Board of Selectmen shall designate or appoint a person or group of persons (which may consist of or include themselves or a subcommittee thereof) to serve as the Cable Advisory Board of Pittsfield; and may delegate to such Cable Advisory Board as much or as little as the Selectmen see fit of the responsibility of exercising the Board of Selectmen's rights under this Franchise Renewal, exclusive of renewal and revocation hearings, which must be heard and decided by the Board of Selectmen. The Selectmen may from time to time at their discretion alter the number or charge of the Cable Advisory Board. Unresolved disputes regarding the cable system may be brought to the Cable Advisory Board by local people, defined as those who reside, work, own property, or do business within the Town, whether they are users of the system, prospective users, or non-users, and the Cable Advisory Board shall mediate. The Cable Advisory Board may conduct a total system review on a periodic basis, not less frequently than every three to five years from the Effective Date.

#### **Section 2.7-REMOVAL OR ABANDONMENT**

Upon termination of this Franchise Renewal by passage of time or otherwise, and unless (i) the Franchisee renews its franchise for another renewal term or (ii) the Franchisee Transfers the Cable Television System to a transferee approved by the Franchising Authority, the Franchisee shall remove all of its supporting structures, poles, transmission and distribution systems, and all of its appurtenances from the Public Ways and shall restore all areas to as good a condition as before entry.

#### **Section 2.8-TRANSFER OF THE FRANCHISE RENEWAL**

This Franchise may not be sold or otherwise assigned or transferred without the written consent of the Board of Selectmen, which may not unreasonably withhold its consent. Advance notice of intent to transfer must be given to the Board of Selectmen at least one-hundred and twenty (120) days before the proposed consummation date of the transfer, and Franchisee shall provide acceptable evidence that the proposed new operator is qualified together with such other information as is properly requested by the Board of Selectmen regarding the transferee's legal, financial and technical qualifications. Upon transfer, the new operator shall be bound fully by all provisions of this Franchise Renewal, excepting only that which may be mutually agreed upon in writing between the Board of Selectmen and the new operator; and the Board of Selectmen having not exercised any provision thereof prior to the transfer shall be no bar to its exercise

thereafter. The limitations and restrictions in this Section 2.8 shall not prohibit the provision of security interests in MetroCast or the Cable System for the purpose of securing financing.

### **Section 2.9-CONDITIONS ON FRANCHISE-PUBLIC WAYS IMPROVEMENTS**

Nothing in this Agreement shall abrogate the right of the Town to perform any public works or other public improvements of any description, including, without limitation, all work authorized by the Public Works Department, the Cable Advisory Board, and applicable state and local law. In the event that the Cable System interferes with the construction, operation, maintenance, or repair of such public works or public improvements, the Franchisee shall, at its own cost and expense, protect or properly alter or relocate the Cable System, or any part thereof, as directed by the Town. In the event that the Franchisee refuses or neglects, after Reasonable Notice, to so protect, alter, or relocate all or part of the Cable System, the Town shall have the right to break through, remove, alter, or relocate all or any part of the Cable System without any liability to the Franchisee and the Franchisee shall pay to the Town the costs incurred in connection with such breaking through, removal, alteration, or relocation.

## **ARTICLE 3**

### **CABLE SYSTEM DESIGN**

#### **Section 3.1-SUBSCRIBER NETWORK**

- (a) The Franchisee shall continue to operate and maintain the Subscriber Network, at all times, in accordance with the FCC's Technical Standards codified at 47 C.F.R. Section 76.605 or amendments thereto.
- (b) Any Cable System construction in the Town shall be subject to the Town's public inspection and oversight in accordance with the Town's policies and ordinances generally applicable to works in the Public Ways. Upon request of the Town and subject to confidential treatment, the Franchisee shall submit to the Department of Public Works i) a construction plan including construction progress schedules; ii) area construction maps; and iii) projected dates for offering Cable Service(s).

#### **Section 3.2-EQUIPMENT**

Franchisee shall use equipment for the Cable System which shall be of good and durable quality, and Franchisee shall service and repair such equipment on a regular basis.

#### **Section 3.3-EMERGENCY ALERT**

The System will comply with FCC EAS standards as set forth in Part 11 of the FCC rules.

### **Section 3.4-TECHNICAL STANDARDS**

The Cable System shall be installed and operated in conformance with, this Franchise, and FCC rules and regulations.

### **Section 3.5-TESTS AND PERFORMANCE MONITORING**

Franchisee shall perform all Cable System tests and maintenance procedures as required by the FCC. Copies of any test results shall be provided to the Town upon request.

### **Section 3.6-MAINTENANCE LOG**

Franchisee shall maintain an annual log showing the date, approximate time and duration, type and probable cause of all Cable System outages, whole or partial, due to causes other than routine testing or maintenance. The entries in such log shall be retained by Franchisee for a three-year period and shall be subject to inspection shall be provided to the Town upon request.

### **Section 3.7-NOTICE OF SHUTDOWN**

Except in an emergency, Franchisee shall give notice on a cable channel at least twelve (12) hours before any planned shutdown for maintenance or major equipment change-outs which will result in loss of service for two (2) hours or more to a neighborhood fiber node or larger area.

### **Section 3.8-EMPLOYEE IDENTIFICATION**

Franchisee shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. Such documents shall include a telephone number that can be used to verify identification. In addition, Franchisee shall clearly identify all field personnel, vehicles, and other major equipment operating under the authority of Franchisee.

## **ARTICLE 4**

### **INSTALLATION AND MAINTENANCE STANDARDS**

#### **Section 4.1-LINE EXTENSIONS**

- (a) Present Service Area: The areas of Pittsfield highlighted on the map attached herein as Exhibit 1 shall be connected within one year of the date of the Franchise Renewal Agreement execution. If MetroCast is unable to complete the extension due to force majeure, performance of make ready or availability of construction crews and equipment, MetroCast shall provide written notice and explanation to the Town on a monthly basis until such extension is completed. To the extent that MetroCast has not previously done so, MetroCast shall submit a pole permit application within thirty (30) days of the execution of this Franchise Renewal. Subject to Exhibit 1, every public highway shall be serviced by feeder cable unless such service can be supplied using alternative cable technology. Cable Service shall be provided to every existing dwelling unit requesting Cable Service and located on public streets

and private roads, as marked on Exhibit 1, provided Franchisee is able to obtain from property owners any necessary easements at no cost and/or any applicable permits.

- (b) Within one year of the execution of this Renewal, Franchisee shall complete construction of its Cable System to the areas indicated on the attached map (Exhibit 1 hereto).
- (c) The Franchisee shall provide for construction of all necessary line extensions for Cable Service to new dwelling units when the number of new Subscribers reaches the density requirement of ten (10) full-time Subscribers per mile of cable facilities, with a one-year service commitment which shall not be payable in advance, but which shall become due and payable, on a pro-rata basis, if the Subscriber terminates service in the Subscriber's first year of service. Any payments required for the connection of cable service may, at the Subscriber's option, be paid over a ninety-day period in three equal installments with the Subscriber's regular bill for Cable Services. In the areas with less than ten (10) Subscribers per mile of plant, the Franchisee shall require payment (which may be paid in six (6) equal installments over a six month period from the date of connection), as follows:

Where there are fewer than ten (10) Subscribers per mile, the Franchisee shall construct line extensions as follows:

(i) where there are nine (9) Subscribers per mile, each of whom commits to subscribe for one year of cable service, the Franchisee shall pay ninety (90) percent of the cost of such line extension and the Subscribers shall pay ten (10) percent;

(ii) where there are eight (8) Subscribers per mile, each of whom commits to subscribe for one year of cable service, the Franchisee shall pay eighty (80) percent of the cost of such line extension and the Subscribers shall pay twenty (20) percent;

(iii) where there are seven (7) Subscribers per mile, each of whom commits to subscribe for one year of cable service, the Franchisee shall pay seventy (70) percent of the cost of such line extension and the Subscribers shall pay thirty (30) percent;

(iv) where there are six (6) Subscribers per mile, each of whom commits to subscribe for one year of cable service, the Franchisee shall pay sixty (60) percent of the cost of such line extension and the Subscribers shall pay forty (40) percent;

(v) where there are five (5) Subscribers per mile, each of whom commits to subscribe for one year of cable service, the Franchisee shall pay fifty (50) percent of the cost of such line extension and the Subscribers shall pay fifty (50) percent;

(vi) where there are four (4) Subscribers per mile, each of whom commits to subscribe for one year of cable service, the Franchisee shall pay forty (40) percent of the cost of such line extension and the Subscribers shall pay sixty (60) percent;

(vii) where there are three (3) Subscribers per mile, each of whom commits to subscribe for one year of cable service, the Franchisee shall pay thirty (30) percent of the cost of such line extension and the Subscribers shall pay seventy (70) percent;

(viii) where there are two (2) Subscribers per mile, each of whom commits to subscribe for one year of cable service, the Franchisee shall pay twenty (20) percent of the cost of such line extension and the Subscribers shall pay eighty (80) percent; and

(ix) where there is one (1) Subscriber per mile, who commits to subscribe for one year of cable service, the Franchisee shall pay ten (10) percent of the cost of such line extension and the Subscriber shall pay ninety (90) percent.

- (d) Installation charges shall be non-discriminatory. A standard Installation charge shall be established by the Franchisee which shall apply to any drop of not more than two hundred feet (200'). If a drop of more than 200 feet is required, there shall be an additional charge based on the actual Cost for the extra footage above 200'. Any underground installation shall be provided at the Franchisee's actual Cost, and the work thereon shall be performed only after the Franchisee has provided the affected party with a cost estimate in writing of any such costs and has obtained the party's acceptance thereof.

#### **Section 4.2-COMMERCIAL SERVICES**

The Franchisee shall extend Cable Service to commercial areas that are within 125 feet of the existing Cable System. The commercial property/customer is required to pay the Cost of connecting the Cable System to locations more than 125 feet from the existing Cable System in addition to the Cost of internally wiring a facility to receive Cable Service.

#### **Section 4.3-LOCATION OF CABLE TELEVISION SYSTEM**

The Franchisee shall construct, install, operate and maintain the Cable Television System within the Town of Pittsfield. Poles, towers and other obstructions shall be erected so as not to interfere with vehicular or pedestrian traffic over Public Ways. The erection and location of all poles, towers and other obstructions shall be in accordance with all applicable state and local laws and regulations, and this Franchise Renewal.

### **ARTICLE 5**

#### **CONSTRUCTION AND MAINTENANCE**

##### **Section 5.1-RIGHT TO INSPECTION OF CONSTRUCTION**

The Town or its designee shall have the right to inspect at any time all construction or installation work performed subject to the provisions of this Franchise and to make such tests as it shall deem necessary to ensure compliance with the terms of this Franchise, and all other applicable law. Franchisee shall cooperate fully with the Town during all inspections and tests and shall provide access to all equipment, records, and other materials and information necessary for such inspections and tests. Except as otherwise provided by this Franchise, the cost of copying any documents provided in connection with an inspection shall be borne by the Franchisee.

##### **Section 5.2-COMPLIANCE WITH CONSTRUCTION AND TECHNICAL STANDARDS**

Franchisee and its subcontractors shall construct, rebuild, install, operate and maintain its Cable System in a manner consistent with all laws, construction standards and codes, safety regulations, governmental requirements, and FCC technical standards.

### **Section 5.2.1-CONTRACTOR QUALIFICATIONS**

Any contractor proposed for work on construction, installation, operation, maintenance, and repair of Cable System equipment must be properly licensed under laws of the State and all local Ordinances.

### **Section 5.2.2-INSTALLATION**

Franchisee shall also insure that all equipment is installed in accordance with good engineering practices, and of sufficient height to comply with all existing Town regulations, Ordinances, and State laws so as not to interfere in any manner with the rights of the public or individual property owner, and so as not to interfere with the travel and use of the Public Ways. During the construction, repair, or removal thereof, Franchisee shall not, except as permitted below, obstruct or impede traffic.

### **Section 5.2.3-MINIMUM INTERFERENCE AND SAFETY PRECAUTIONS**

Franchisee shall, at all times, install, maintain and locate all transmission lines, equipment, and structures within its control so as to cause minimum interference with the rights and reasonable convenience of property owners, and shall at all times keep and maintain such transmission lines, equipment and structures in a safe and adequate condition, and in good order and repair. Franchisee shall, at all times, employ necessary and reasonable care, and shall install, maintain, and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisances to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public.

### **Section 5.2.4-MAPS**

Neither the Franchisee or the Town guarantees the accuracy of any maps showing the horizontal or vertical location of existing structures or substructures.

### **Section 5.2.5-QUALITY OF CONSTRUCTION**

Construction, installation, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where reasonably possible, parallel and bundled with due respect for aesthetic and engineering considerations.

### **Section 5.2.6-ANTENNAS**

Any antenna structure used in the Cable System shall comply with construction, marking, and lighting of antenna structure standards as required by Federal, State, and local laws or regulations.

### **Section 5.2.7-TOWN LAWS**

All work in any way necessitated by the business of the Franchisee which may involve the opening, breaking up or tearing up of a portion of a street, sidewalk, or other part of any Town-owned or Town-controlled property, shall be done and repaired in accordance with Town permit and other procedures generally applicable to work in the Public Ways. Nothing herein shall be construed as a requirement that the Town conduct an excavation or repair on behalf of or agent for the Franchisee.

### **Section 5.2.8-RESTORATION OF PROPERTY**

The Franchisee, at its sole expense, shall restore all damage to property, both public and private, caused by the construction, operation, maintenance and repair of the Cable System. Such restoration shall be made as soon as practicable after completion of work necessitating the restoration. In no event shall such restoration be made later than fifteen (15) days, weather and/or ground conditions permitting, after the Franchisee's receipt of written notification from the owner of the property so damaged, unless otherwise mutually agreed by the Franchisee and the property owner in writing. Any repairs of public or private property shall be to a condition as good as that prevailing before said damage.

### **Section 5.2.9-UNDERGROUND INSTALLATION**

All installations shall be underground in those areas of the Town where public utilities providing both telephone and electric service are underground whether required by law or not, unless otherwise specified and approved by the Town, at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, Franchisee may install its Cable System above ground, provided that at such time as those facilities are required to be placed underground by the Town, the Franchisee shall likewise place its Cable System underground without additional cost to the Town.

Underground cable lines shall be placed beneath the pavement subgrade in compliance with applicable Town ordinances, rules, regulations and/or standards. It is the policy of the Town that existing poles for electric and communication purposes be utilized wherever possible and that underground installation is preferable to the placement of additional poles.

Where not otherwise required to be placed underground by this Franchise, and where compatible with the design of the Cable System, the Franchisee's Drops shall be located underground at the request of the property owner, provided that the excess cost over aerial cost for such Drops shall be borne by the property owner making the request.

Franchisee shall locate, mark and map any of its installed cable or Cable System for Franchising Authority at no expense to Franchising Authority.

Drops which are intended to be underground shall be buried within ten (10) days of placement, weather and ground conditions permitting.



On notice from Franchising Authority that any work is being performed contrary to the provisions of this Franchise Agreement, or in an unsafe or dangerous manner as determined by Franchising Authority, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the Franchising Authority may exercise any and all remedies available to it under applicable law.

#### **Section 5.2.10-COOPERATION WITH BUILDING MOVERS**

The Franchisee shall, on the request of any Person holding a building moving permit issued by the Town, temporarily raise or lower its Cable System to permit the moving of such building. The expense of such temporary removal, raising or lowering of the Cable System shall be paid by the Person requesting the same, and the Franchisee shall have the authority to require such payment in advance. The Franchisee shall be given not less than fifteen (15) working days' advance notice to arrange for such temporary changes.

#### **Section 5.2.11-TREE TRIMMING**

The Franchisee may trim trees or other vegetation owned by the Town to prevent branches, leaves or roots from touching or otherwise interfering with its wires, cable, or other structure, provided that such trimming or pruning shall be at the expense of the Franchisee and shall be in accordance with applicable Ordinances, rules, regulations, and procedures of the Town.

The Franchisee shall obtain the prior permission of the owner of any privately owned trees or other vegetation before it prunes or trims same.

#### **Section 5.2.12-PUBLIC PROPERTY**

Franchisee shall, prior to performing any excavation of any public right-of-way for underground construction, notify the Department of Public Works and obtain a permit as required by Town Ordinances. If approval is required, it shall be given within ten (10) calendar days if the proposed excavation is in compliance with the requirements of Town ordinances. Failure to act upon the permit within sixty (60) days of issuance shall cause the permit to become invalid, and will require the Franchisee to obtain another permit.

The Franchisee shall replace and properly relay and repair the surface, base, and landscape treatment of any public sidewalk or right-of-way that may be excavated or damaged by reason of the erection, construction, maintenance, or repair of Franchisee's Cable System within a reasonable time after completion of the work to a condition as good as that prevailing before said work. Should the Town reasonably determine, within six (6) months from the date of any restoration performed by the Franchisee, that such surface, base, or landscape treatment requires additional restoration work to meet the foregoing standard, the Franchisee shall perform such additional restoration work to the reasonable satisfaction of the Town.

Upon the request of the Franchisee, the Town shall use reasonable efforts to locate, in advance, any Town-owned water, sewage and drainage lines. Any damages or alterations that occur to the Town's water, sewage or drainage lines or to any other municipal

structures in the streets during the construction which are due to the presence, operation or maintenance of the Cable System, or to the Franchisee's negligence shall be the Franchisee's responsibility. The cost of such repairs made by the Town including all services and materials shall be charged to the Franchisee by the Town, and these charges shall be paid promptly. All necessary easements over and under private property shall be secured by the Franchisee.

#### **Section 5.2.13-APPROVAL FOR POLES**

No poles shall be erected by the Franchisee without prior approval of the Town with regard to location, height, types and any other pertinent aspects. However, no erection of any pole or wire-holding structure of the Franchisee shall give rise to a vested interest in same, and such poles or structures shall be removed or modified by the Franchisee at its own expense whenever the Town determines that the public convenience would be enhanced thereby.

#### **Section 5.2.14-REQUIREMENTS TO USE EXISTING POLES**

Where poles already existing for use in serving the Town are available for use by the Franchisee, but it does not make arrangements for such use, the Town may require the Franchisee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Franchisee are satisfactory to the Franchisee.

#### **Section 5.2.15-JOINT USE OF FACILITIES**

Nothing in this Franchise shall authorize the Town to use any Franchisee owned conduits or facilities until the Town has entered into a separate agreement with the Franchisee, supported by independent consideration, for such rights of attachment or use.

#### **Section 5.3-DISCONNECTION AND RELOCATION**

The Franchisee shall, at its sole cost and expense, protect, support, temporarily disconnect, relocate in the same street or other Public Way, or remove from any street or any other Public Ways, any of its property as required by the Franchising Authority or its designee(s) by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure by any Town department acting in a governmental capacity.

#### **Section 5.4-SAFETY STANDARDS**

The Franchisee shall construct, install, operate, maintain and remove the Cable Television System in conformance with Occupational Safety and Health Administration regulations, the National Electrical Code, the NCTA Safety Manual, the National Electrical Safety Code, the National Television Standards Code, the Bell Telephone Systems Code of Pole Line Construction (when applicable), the rules and regulations of the Commission and the FCC, all State and local laws, and all land use restrictions as the same exist or may be amended hereafter.

### **Section 5.5-PEDESTALS**

In any cases in which pedestals housing active and passive devices are to be utilized in Public Ways, such equipment must be installed in accordance with Section 621 (a)(2) of the Cable Act and Town Ordinance and regulations.

### **Section 5.6-QUALIFICATIONS OF CONSTRUCTION PERSONNEL**

For reference purposes, and upon request, the Franchisee shall provide the Franchising Authority with the names and addresses of any construction companies, or if operating as individuals, the names and addresses of such individuals, who will be subcontracted by the Franchisee to fulfill construction obligations of the Franchisee under this Franchise Renewal.

## **ARTICLE 6**

### **SERVICES AND PROGRAMMING**

#### **Section 6.1-BASIC SERVICE**

Franchisee shall provide a Basic Service which shall include all Signals which are required to be carried on Basic Service by a Cable Television System serving the Town.

#### **Section 6.2-PROGRAMMING**

Pursuant to Section 624 of the Cable Act, the Franchisee shall maintain broad categories of Programming. Pursuant to federal law, all programming decisions are at the sole discretion of the Franchisee.

#### **Section 6.3-REBUILD**

The Franchisee commits to constructing, within twenty four months of the execution date of this Renewal Franchise, a 2-way residential cable system utilizing addressable technology, and cable and electronics capable of transmitting a bandwidth of 860 MHz, providing a minimum of 75 channels in the downstream direction and 4 channels in the upstream direction. The Cable System shall have 2-way interactivity within two years of the execution date of this Renewal Agreement.

#### **Section 6.4-VCR/CABLE COMPATIBILITY**

In order that Subscribers to the Cable Television System have the capability to simultaneously view and tape any channel and set their "time shifter" to record multiple channels remotely, the Franchisee shall provide to any Subscriber, upon request, an A/B switch, which will allow VCR owners to tape and view any channel capable of being tuned by such owner's television set and/or VCR, except two scrambled Signals. The Franchisee shall, upon request of any Subscriber, apprise Subscriber of the options available to all Subscribers in writing with the applicable charges, if any.

### **Section 6.5-CONTINUITY OF SERVICE**

It shall be the right of all Subscribers to receive Service insofar as their financial and other obligations to the Franchisee are honored. The Franchisee shall ensure that all Subscribers receive continuous, uninterrupted Service, except for necessary Service interruptions.

### **Section 6.6-DROPS, OUTLETS AND MONTHLY SERVICE TO PUBLIC BUILDINGS**

Provide at no charge at each of the public schools, public library, fire department, police department, Community Center and other Town Buildings passed by the System and designated by the Board of Selectmen; (a) one cable installation at a location selected by the officials having jurisdiction over the building; (b) expanded basic programming; and (c) one cable modem to permit access to the Internet (when available).

### **Section 6.7-CHANGES IN CABLE TELEVISION TECHNOLOGY**

- (a) Upon request of the Town, the Franchisee shall hold a performance evaluation every year to review with the Franchising Authority changes in relevant cable technology (as defined below) that might benefit Pittsfield Subscribers. The Franchisee shall implement any such changes in relevant cable technology three (3) years after the Effective Date of the Renewal Franchise, provided (i) the Franchising Authority requests in writing that the Franchisee perform the upgrade as in the best interests of Subscribers, (ii) the change is technically feasible and economically advantageous to the Franchisee and its Subscribers, and (iii) the term of this Renewal Franchise is extended to ensure a minimum of eight (8) years remain on the contract. If these conditions are met, the Franchisee shall complete any such changes in a timely and reasonable manner. For purposes of determining whether a change in cable television technology is economically advantageous to the Franchisee and its Subscribers, the Franchisee shall consider all relevant factors, including (i) the probable demand for the enhanced service that the change in technology would permit and (ii) the remaining life of the renewal term over which the cost of any such improvements would be amortized and passed through to subscribers.
- (b) For purposes of this section, "relevant cable technology" shall be defined as those technologies that the Franchisee and the Franchising Authority shall in good faith agree to be included in the performance review mentioned above, including but not limited to subscriber Converters optimally compatible with VCRs and cable-ready television sets, remote control devices and new Scrambling/descrambling processes.

### **SECTION 6.8-SURVEYS**

Franchisee shall conduct telephone surveys (or commission such surveys) of the Cable System's Subscribers every two years, beginning within 60 days of the two-year anniversary of this Agreement, to solicit input from Subscribers regarding subscriber preferences for existing and new programming services. The Franchisee shall report customer-service related results to the Franchising Authority, subject to the confidentiality provisions of RSA 91-A.

## SECTION 6.9-CONVERTERS

Subscribers shall have the option of either renting or buying any converter box which is (or may be) used to receive Signals on the Cable System. In the event a federal or state statute provides for private ownership of converters, subscribers shall have the option of purchasing a converter from the Franchisee or any other retail source. Subscribers owning converters that are technically compatible with the Cable System and that are not used for the purpose of avoiding payment for one or more programming services, shall be accommodated in the Franchisee's system at no additional cost to the Subscriber.

## ARTICLE 7

### PUBLIC EDUCATIONAL AND GOVERNMENTAL ACCESS FACILITIES AND SUPPORT

#### Section 7.1-PEG ACCESS CHANNELS

(a) Franchisee shall provide one six-megahertz channel for PEG access programming in the Town within twelve (12) months of the Effective Date of this Agreement and a second access channel at such time, if any, as the Town is programming the first access channel for at least eighteen (18) hours per day with seventy-five percent (75%) non-duplicated programming over an eight week period. The Franchisee shall provide and maintain all necessary processing equipment at the Headend in order to switch Upstream Signals from a single location designated by the Town to the designated Downstream Access Channel.

(b) Within ninety (90) days of the Effective Date of this Renewal Franchise, the Franchisee shall provide a character generator for the use of programming a community bulletin-board on the PEG Access Channels, up to a cost of Four Thousand Dollars (\$4000.00). The Franchisee shall consult with the Town on the technical specifications of such character generator prior to its purchase.

#### Section 7.2-ACCESS EQUIPMENT/FACILITIES FUNDING

- (a) Production Equipment for Community Local Access. Franchisee shall provide \$5,000 within sixty (60) days of a request by the Town to be used by the Town for construction of a PEG access studio and/or the purchase of PEG access equipment.
- (b) Within two (2) years of said payment, the Town shall inform the Franchisee of the uses of these funds.

#### Section 7.3- INSTITUTIONAL NETWORK

Concurrently with the construction of the rebuild and upon the request of the Franchising Authority, the Franchisee shall construct, install, activate, operate and maintain, at its sole cost and expense, a fiber-optic Institutional Network ("I-Net") backbone to be utilized by the Town. The I-Net shall connect the Town buildings and other institutions specified in Exhibit 2, attached hereto

("I-Net Buildings"). The Franchisee's obligations in this Section 7.3 shall not exceed the sum of Ten Thousand Dollars (\$10,000.00).

## ARTICLE 8

### FRANCHISE FEES

#### Section 8.1-FRANCHISE FEE PAYMENT

(a) The Franchisee shall pay to the Town, throughout the term of this Renewal Franchise, a Franchise Fee equal to five percent (5%) of the Franchisee's Gross Annual Revenues derived during each year of this Renewal Franchise; provided, however, that the Franchise Fee shall be equal to zero percent (0%) of the Franchisee's Gross Annual Revenues until the Franchising Authority notifies the Franchisee, in writing, to increase the Franchise Fee up to any amount not to exceed five percent (5%) of the Franchisee's Gross Annual Revenues. The Franchisee shall not be liable for a total financial commitment in excess of five percent (5%) of its Gross Annual Revenues; provided, however, that said five percent (5%) cap shall not include (i) the equipment/facilities grant, (ii) any damages stemming from a breach of this Agreement, and/or (iii) any interest from late payments pursuant to Section 8.3(b) hereof.

(b) Pursuant to Section 622(f) of the Cable Act, the Franchisee may designate that portion of a Subscriber's bill attributable to the Franchise Fee as a separate item on the bill.

(c) Franchisee shall submit an annual statement of the rates assigned to Subscribers in other Franchising Authorities in the Subscriber Network.

#### Section 8.2-EXTERNALIZATION OF FRANCHISE RENEWAL COSTS

In the event that applicable state and/or federal laws and/or regulations allow and the Franchisee so elects to externalize or otherwise pass-through other Franchise Renewal costs to Subscribers, the Franchisee may do so strictly in compliance with said laws and/or regulations.

- (i) Both parties hereto have agreed that the Franchisee may, at its sole discretion, externalize and otherwise pass through to Subscribers any payments set out herein.
- (ii) If requested to do so by the Franchising Authority, the Franchisee shall provide a written explanation of any such externalized, line-itemed or passed-through costs, in sufficient detail to enable the Franchising Authority to understand how such costs have been externalized, line-itemed or passed-through as allowed or required by applicable law(s). Unless agreed to otherwise, the Franchisee shall provide said detailed costs to the Franchising Authority, in writing, within thirty (30) days of a request to do so by the Franchising Authority.

### **Section 8.3-AFFILIATES USE OF SYSTEM**

The Franchisee shall not permit the use or operation of the Cable System by Affiliates on terms which result in a diversion of revenues from operation of the Cable System to the detriment of the Town under this Franchise Renewal. The Franchisee shall enter into good faith negotiations to resolve any dispute(s) regarding gross revenue discrepancies on account of such a relationship.

## **ARTICLE 9**

### **RATES AND CHARGES**

#### **Section 9.1-RATE REGULATION**

The Town reserves the right to regulate the Franchisee's rates and charges to the extent allowable under State and federal laws.

#### **Section 9.2-NOTIFICATION OF RATES AND CHARGES**

- (a) The Franchisee shall file with the Franchising Authority schedules which shall describe all Cable Services offered by the Franchisee, all rates and charges of any kind, and all terms or conditions relating thereto. Thereafter, the Franchisee shall file with the Franchising Authority all changes in Cable Services, all rates and charges of any kind, and all terms and conditions relating thereto at least thirty (30) days prior to all such changes. The Franchisee shall notify all Subscribers of any impending rate increases no later than thirty (30) days prior to such increase and provide each Subscriber with a schedule describing existing and proposed rates for each Cable Service offered.
- (b) At the time of Installation of Service, the Franchisee shall also provide each Subscriber with a detailed explanation of downgrade and upgrade policies and the manner in which Subscribers may terminate Cable Service. Subscribers shall have at least thirty (30) days prior to the effective date of any rate increase to either downgrade service or terminate service altogether without any charge.

#### **Section 9.3-PUBLICATION**

All rates for Subscriber services shall be published. A written schedule of all rates shall be available upon request during Normal Business Hours at the Franchisee's business office. Nothing in this Franchise Renewal shall be construed to prohibit the reduction or waiver of charges in conjunction with promotional campaigns for the purpose of attracting or maintaining subscribers.

**Section 9.4-CREDIT FOR SERVICE INTERRUPTION**

- (a) The Franchisee shall grant a pro-rata credit or rebate to any Subscriber, upon request, whose Cable Service is interrupted for twenty-four (24) or more consecutive hours, if the interruption was not caused by the Subscriber.
- (b) If an entire tier or Premium Service of a Subscriber's Cable Service is interrupted for twenty-four (24) or more consecutive hours, the Franchisee shall, upon the Subscribers' request, provide a pro-rata credit or rebate for each tier or Premium Service interruption.

**ARTICLE 10**

**INSURANCE AND BONDS**

**Section 10.1-INSURANCE; PERFORMANCE BOND AND INDEMNIFICATION**

(a) At all times during the term of the Franchise Renewal, including the time for removal of facilities provided for herein, the Franchisee shall maintain the following insurance policies:

PERSONAL DAMAGES PER PERSON:	\$1,000,000.00
PERSONAL DAMAGES PER OCCURRENCE:	1,000,000.00
PROPERTY DAMAGE PER OCCURRENCE:	1,000,000.00
PROPERTY DAMAGE AGGREGATE:	1,000,000.00
AUTOMOBILE COVERAGE:	1,000,000.00
UMBRELLA POLICY:	2,000,000.00

(b) Franchisee shall maintain sufficient insurance to protect the parties from any claim under the Workmen's Compensation Laws. All insurance required by this section shall be and remain in force throughout the duration of this Franchise Renewal. Policies of this insurance, or certified copies thereof, shall be delivered to the Town Clerk, and kept on file and up-to-date in the offices of the Board of Selectmen.

(c) Franchisee shall post a performance bond, in the amount of fifty thousand dollars (\$50,000) for the duration of the Franchise Renewal. Such performance bond shall be in form acceptable to the Board of Selectmen, bonding compliance with this Franchise Renewal for its duration.

(d) Franchisee shall indemnify and hold harmless the Board of Selectmen, its agents, employees, residents and property owners for any claim of damages to person(s) or property resulting from the installation, maintenance, operation use or removal of the system, for the duration of this Franchise Renewal.



### **Section 10.2-REPORTING**

The Franchisee shall submit to the Franchising Authority, or its designee(s), on an annual basis, copies of all current certificates regarding (i) all insurance policies as required herein; and (ii) the performance bond as required herein.

### **Section 10.3-NOTICE OF CANCELLATION OR REDUCTION OF COVERAGE**

The insurance policies and performance bond required herein shall each contain an explicit endorsement stating that such insurance policies and performance bond are intended to cover the liability assumed by the Franchisee under the terms of the Franchise Renewal and shall contain the following endorsement:

It is hereby understood and agreed that this policy and performance bond shall not be canceled, materially changed or the amount of coverage thereof reduced until thirty (30) days after receipt by the Franchising Authority by certified mail of one (1) copy of a written notice of such intent to cancel, materially change or reduce the coverage required herein.

## **ARTICLE 11**

### **ADMINISTRATION AND REGULATION**

#### **Section 11.1-REGULATORY AUTHORITY**

The Franchising Authority and/or its designee(s) shall be responsible for the day-to-day regulation of the Cable Television System. The Franchising Authority and/or its designee(s) shall monitor and enforce the Franchisee's compliance with the terms and conditions of this Franchise Renewal. The Franchising Authority shall notify the Franchisee in writing of any instance of non-compliance pursuant to Section 12.1 infra.

#### **Section 11.2-GOOD FAITH COMMUNICATION**

The parties agree to act in good faith to maintain good communication between them. Barring emergency, the Board of Selectmen will give to Franchisee reasonable advance advice of the cable system being on the agenda of the Board of Selectmen. Franchisee will have the right of advice of meetings of the Town and the right of representation thereat, and Franchisee will inform and consult with the Board of Selectmen when any questions of compliance with this Agreement may be raised by change(s) in its operation.

#### **Section 11.3-NONDISCRIMINATION**

The Franchisee shall not discriminate against any Person in its solicitation or Service on the basis of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status, or status with regard to public assistance. The Franchisee shall be subject to all other requirements of federal and State laws or regulations, relating to nondiscrimination through the term of the Franchise Renewal.

**Section 11.4-EMERGENCY REMOVAL OF PLANT**

If, at any time, in case of fire or disaster in the Town, it shall become necessary in the reasonable judgment of the Franchising Authority and/or its designee(s), to cut or move any of the wires, cables, amplifiers, appliances or appurtenances of the Cable Television System, the Town shall have the right to do so at the sole cost and expense of the Franchisee. In such event, the Franchisee shall reimburse the Franchising Authority the cost and expense of such removal within thirty (30) days of submission of a bill therefore.

**Section 11.5-REMOVAL AND RELOCATION**

The Franchising Authority shall have the power at any time to order and require the Franchisee to remove or relocate any pole, wire, cable or other structure owned by the Franchisee that is dangerous to life or property. In the event that the Franchisee, after notice, fails or refuses to act within a reasonable time, the Franchising Authority shall have the power to remove or relocate the same at the sole cost and expense of the Franchisee. In such event, the Franchisee shall reimburse the Franchising Authority the cost and expense of such removal within thirty (30) days of submission of a bill thereof.

**Section 11.6-INSPECTION**

The Franchising Authority or its designee(s) shall have the right to inspect the plant, equipment or other property of the Franchisee in the Town at reasonable times and under reasonable circumstances where necessary to ascertain the Franchisee's compliance with this Franchise. The Franchisee shall fully cooperate in the performance of such testing; provided, however, that such tests are reasonable and do not interfere with the operation or the performance of the Cable System, and that such tests are conducted after reasonable notice to the Franchisee. The Franchisee shall be entitled to have a representative present during such tests.

**Section 11 .7-JURISDICTION**

Jurisdiction and venue over any dispute, action or suit shall be in any court of appropriate venue and subject matter jurisdiction located in the State of New Hampshire and the parties by this instrument subject themselves to the personal jurisdiction of said court for the entry of any such judgment and for the resolution of any dispute, action, or suit.

**ARTICLE 12**

**DETERMINATION OF BREACH-FRANCHISE REVOCATION**

**Section 12.1-NON-COMPLIANCE NOTICE**

Notice of non-compliance may be issued to Franchisee by the Board of Selectmen when it appears to the Board of Selectmen that Franchisee has failed to comply with any provision of

this Franchise Renewal. Notice may also state that, after a specified date, the Board of Selectmen will take corrective action at Franchisee's expense, in which case the Board of Selectmen may take the necessary sum from Franchisee's bond and Franchisee shall immediately replenish the bond to the stipulated level.

#### **Section 12.2-FORMAL WARNING NOTICE**

If it appears to the Board of Selectmen that any ground(s) for revocation of this Franchise Renewal may exist, the Board of Selectmen may issue a formal warning Notice to Franchisee. This warning shall specify the apparent ground(s) for revocation, shall state a place and time for a revocation hearing, which shall be at least fifteen weekdays (excluding holidays) subsequent to the mailing, and shall ask Franchisee to show cause why this Franchise Renewal should not be revoked.

#### **Section 12.3-REVOCATION**

The Board of Selectmen may revoke this Franchise Renewal on one or more of the following grounds:

- (a) False or misleading material statements or material omissions in Franchisee's proposal or reports to the Board of Selectmen;
- (b) Transfer of this Franchise Renewal outside the procedure in Section below;
- (c) Failure after ninety (90) days have elapsed from date of Notice of Non-compliance to correct the cited non-compliance;
- (d) Failure to maintain bond or insurance as required by this Franchise Renewal;
- (e) Default or material breach of any term of this Franchise Renewal. The Board of Selectmen may revoke only after holding a revocation hearing, prior to which Franchisee shall have been properly warned in accordance with Sections 12.1 and 12.2 above.

#### **Section 12.4-TERMINATION**

The termination of this Franchise Renewal and the Franchisees rights herein shall become effective upon the earliest to occur of: (i) the revocation of the Franchise Renewal by action of the Franchising Authority, pursuant to Section 12.3 above; (ii) the abandonment of the Cable System, in whole or material part, by the Franchisee without the express, prior approval of the Franchising Authority; or (iii) the expiration of the term of this Franchise Renewal and the denial of any Renewal. In the event of any termination, the Town shall have all of the rights provided in this Franchise Renewal.

#### **Section 12.5-NOTICE OF LEGAL ACTION**

Except in an emergency situation or where equitable relief is sought, in the event that either party intends to take legal action against the other for any reason, that party shall first (i)

give the other reasonable notice that an action will be filed, (ii) meet with that party promptly before it files any such action, and (iii) negotiate the issue, which is the subject of any proposed legal action, in good faith.

#### **Section 12.6-NON-EXCLUSIVITY OF REMEDY**

No decision by the Town to invoke any remedy under this Franchise Renewal or under any statute, law or ordinance shall preclude the availability of any other such remedy.

#### **Section 12.7-NO WAIVER-CUMULATIVE REMEDIES**

- (a) No failure on the part of the Town to exercise, and no delay in exercising, any right in this Franchise Renewal shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, all subject to the conditions and limitations contained in this Franchise Renewal and applicable law relating to estoppel.
- (b) The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Franchise Renewal shall impair any of the rights of the Town under applicable law, subject in each case to the terms and conditions in this Franchise Renewal.
- (c) No waiver of, nor failure to exercise, any right or remedy by the Town at any one time shall affect the exercise of such right or remedy or any other right or remedy by the Town at any other time. In order for any waiver of the Town to be effective, it shall be in writing. The failure of the Town to take any action in the event of any breach by the Franchisee shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the Town to take any action permitted by this Franchise Renewal at any other time in the event that such breach has not been cured, or with respect to any other breach by the Franchisee.
- (d) Upon request by the Board of Selectmen at the time of termination of this Agreement or any extension thereof, whether by expiration, revocation or otherwise, Franchisee shall remove all poles, cable and apparatus from the roads and public places in, over, under or along which they were installed by Franchisee, or caused to be installed by Franchisee, and shall restore the areas to a condition as good as before. At the request of the Board of Selectmen, Franchisee shall maintain the cable system in full operation until a successor commences operation, and shall cooperate with successor so as to provide uninterrupted service to users and limit disruption to an absolute minimum. During the period of removal or transition, Franchisee shall maintain in force the bond, indemnification, and liability insurance defined herein.

### **ARTICLE 13**

#### **Section 13.1-SUBSCRIBER RIGHTS AND CONSUMER PROTECTION**

The Franchisee shall have at least one published Pittsfield telephone number, toll free from phones in the Town, to be answered 24 hours a day, seven days a week, for the purpose of

receiving service complaints. Franchisee shall also maintain technical personnel on call 24 hours a day, seven days a week, and shall dispatch same immediately in case of safety hazards or of service affecting three (3) or more users, and within one (1) business day of other service complaints.

Franchisee shall make necessary repairs promptly so as to keep service outages as brief as possible, shall time discretionary outages to be least inconvenient to users, and shall make pro-rated rebates to users for loss of service in excess of twenty-four (24) hours consecutively, excluding delay caused by user and exempting Acts of God.

Franchisee shall respond quickly and constructively to all complaints, from users or non-users, shall keep logs of same together with resolutions thereof, and shall make logs available for inspection by the Board of Selectmen for up to a year following the latest complaint in the log. Franchisee shall give to each new user a copy of complaint and dispute resolution practices. Franchisee shall provide the Board of Selectmen with a quarterly summary of service complaints and corrective actions.

#### **Section 13.2-DISCONNECTION AND TERMINATION OF CABLE SERVICES**

In no event shall the Franchisee disconnect a Subscriber's Cable Service for nonpayment unless (i) the Subscriber is delinquent, (ii) the Franchisee has given said Subscriber written notice of such past due amount in a clear and conspicuous manner, (iii) the Subscriber has been given a second notice of delinquency and (iv) the Subscriber is given a disconnection notice at thirty (30) days. In no event shall such disconnection or termination for nonpayment occur in less than thirty (30) days after a bill is due. Any Subscriber, including seasonal subscribers, may request to be reconnected to the system at any time upon payment of the standard connection charge and any past amounts due to be paid by that Subscriber.

#### **Section 13.3-DAMAGE OR LOSS OF EQUIPMENT**

In the event that a Subscriber is unable to provide documentation to substantiate that a Converter was stolen or destroyed by fire or other acts of God, the Franchisee shall be entitled to assess a charge for a missing Converter. In the event that a Subscriber supplies the Franchisee with a police or fire report which evidences that the loss of a Converter resulted from theft, fire, or other acts of God the Franchisee may assess the Subscriber the replacement cost of such Converter, or, at its election, waive any charges.

#### **Section 13.4-REMOTE CONTROL DEVICES**

The Franchisee shall allow its Subscribers to purchase, from legal and authorized parties other than the Franchisee, own, utilize and program remote control devices which are compatible with the Converter(s) provided by the Franchisee. The Franchisee takes no responsibility for changes in its equipment which might make inoperable the remote control devices acquired by Subscribers.

### **Section 13.5-CHANGE OF SERVICE**

Upon notification by a Subscriber to disconnect or downgrade Service, the Franchisee shall cease and/or adjust said Subscriber's monthly Service charges immediately or as of the Subscriber's specified disconnect or downgrade date. In no case shall said Subscriber be charged for Service(s) requested to be changed after the Franchisee is notified of said change(s). In the event that Subscribers request disconnection or downgrade of Service(s) as a result of a rate increase, the Franchisee shall in no case impose a fee or charge for such disconnection or downgrade; provided, however, that Subscribers notify the Franchisee of such disconnection or downgrade within thirty (30) days of receipt of notice of such rate increase(s).

### **Section 13.6-PROTECTION OF SUBSCRIBER PRIVACY**

- (a) The Franchisee shall respect the rights of privacy of every Subscriber and/or User of the Cable Television System and shall not violate such rights through the use of any device or Signal associated with the Cable Television System, and as hereafter provided.
- (b) The Franchisee shall comply with all privacy provisions contained in all applicable federal and State laws including, but not limited to, the provisions of Section 631 of the Cable Act.

## **ARTICLE 14**

### **REPORTS, AUDITS AND PERFORMANCE TESTS**

#### **Section 14.1-GENERAL**

- (a) Upon request of the Franchising Authority, the Franchisee shall promptly submit to the Franchising Authority any information regarding the Franchisee, its business and operations, and/or any Affiliated Person, with respect to the Cable System, including, but not limited to, all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Franchisee's Cable System which is reasonably required to establish the Franchisee's compliance with its obligations pursuant to this Franchise Renewal.
- (b) If the Franchisee believes that the documentation requested by the Franchising Authority involves proprietary information, then the Franchisee shall submit the information to its counsel, who shall confer with the Town Attorney for a determination of the validity of the Franchisee's claim of a proprietary interest.
- (c) If the Town Attorney agrees that the material is of a proprietary nature, the information furnished shall not become a public record and shall be accepted by the Franchising Authority on the condition of confidentiality. If no agreement is reached, either party may have recourse to a court of competent jurisdiction in the State.

#### **Section 14.2-COMPLAINT LOG**

- (a) The Franchisee shall keep a record or log of all Complaints. Such records shall be maintained by the Franchisee for a period of three (3) years.
- (b) Such record(s) shall contain the following information for each Complaint received:
  - (i) Date, time, and nature of the Complaint;
  - (ii) Investigation of the Complaint; and
  - (iii) Manner and time of resolution of the Complaint.
- (c) If the Complaint regards equipment malfunction or the quality of reception, the Franchisee shall maintain a log indicating the corrective steps it has taken, with the nature of the problem stated. This log shall be available for inspection by the Town at the Cable System office during regular business hours.
- (d) If the Franchising Authority is concerned about unresolved Complaints, the Franchisee shall make available to the Franchising Authority for its inspection such records, as allowed by applicable law.

#### **Section 14.3-OUTAGE LOG**

The Franchisee shall maintain an outage log showing the date, approximate time, duration, type and probable cause of all Headend, Trunk and Distribution System service failures due to causes other than routine testing or maintenance at reasonable times. These logs shall be made available, upon request, to the Franchising Authority or its designee(s), for inspection, at the System office or Headend and maintained by the Franchisee for a period of not less than three (3) years.

#### **Section 14.4-ANNUAL PERFORMANCE TESTS**

Franchisee agrees to maintain its cables, cable drops, and all connectors used therewith in good condition and good repair at all times. Franchisee shall insure that its system is in full compliance with all applicable technical rules contained in part 76 of the Rules and Regulations of the Federal Communications Commission (See Exhibit 3).

Franchisee shall make measurements of leakage, as defined in 76.609 of the FCC Rules. A report of these tests shall be provided by the Licensee to the Selectmen or their designates, upon request. Franchisee agrees to respond within 24 hours to any and all complaints of radio frequency interference alleged to be caused by the operation of its Cable System, and shall resolve such complaints at the Franchisee's own expense and initiative. The Franchisee shall maintain a log of each complaint of alleged radio frequency interference to other radio or television users or services, along with a plan of action to resolve the complaint.

Franchisee further agrees to respond within 24 hours to any and all complaints of radio frequency interference caused to its cable Subscribers from other radio users upon reasonable notice of such interference, and to the extent that such interference is under the control of the Franchisee, shall resolve any interference which may be occurring at Franchisee's own expense and initiative.

#### **Section 14.5-FILINGS**

(a) The Franchisee shall make available upon request to the Town, copies of any petitions or communications with any State or federal agency or commission pertaining to any material aspect of the Cable System operation hereunder.

(b) In the event that either the Franchising Authority or the Franchisee requests from any State or federal agency or commission a waiver or advisory opinion that would affect the operations of the Cable Television System hereunder, it shall immediately notify the other party in writing of said request, petition or waiver.

(c) Any materials, reports, survey results or other documents required to be provided to the Town pursuant to this Agreement shall be provided on a confidential basis, pursuant to R.S.A. Section 91A.

#### **Section 14.6-INVESTIGATION**

The Franchisee shall cooperate fully and faithfully with any lawful investigation, audit, or inquiry conducted by a Town governmental department, division or agency.

### **ARTICLE 15**

#### **MISCELLANEOUS PROVISIONS**

##### **Section 15.1-ENTIRE AGREEMENT**

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed or amended orally in any manner, but only by an instrument in writing executed by the parties.

##### **Section 15.2-CAPTIONS**

The captions to sections throughout this Franchise Renewal are intended solely to facilitate reading and reference to the sections and provisions of the Franchise Renewal. Such captions shall not affect the meaning or interpretation of the Franchise Renewal.

##### **Section 15.3-SEVERABILITY**

If any section, sentence, paragraph, term or provision of this Franchise Renewal is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by



any State or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of this Franchise Renewal.

#### **Section 15.4-ACTS OR OMISSIONS OF AFFILIATES**

During the term of this Franchise Renewal, the Franchisee shall be liable for the acts or omission of its Affiliates while such Affiliates are involved directly or indirectly in the construction, installation, extension, maintenance or operation of the Cable System as if the acts or omissions of such Affiliates were the acts or omissions of the Franchisee.

#### **Section 15.5-FRANCHISE RENEWAL EXHIBITS**

The Exhibits to this Franchise Renewal attached hereto, and all portions thereof, are incorporated herein by this reference and expressly made a part of this Franchise Renewal.

#### **Section 15.6-WARRANTIES**

The Franchisee warrants, represents and acknowledges, and agrees that at or before the execution of this Franchise Renewal, the Franchisee shall submit to the Franchising Authority, in a form reasonably acceptable to the Town Attorney, an appropriate document evidencing its warranties, that, as of the Effective Date of this Franchise Renewal:

- (a) The Franchisee is duly organized, validly existing and in good standing under the laws of the State of New Hampshire.
- (b) The Franchisee has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Effective Date of this Franchise Renewal, to enter into and legally bind the Franchisee to this Franchise Renewal and to take all actions necessary to perform all of its obligations pursuant to this Franchise Renewal;
- (c) To the best of the Franchisee's knowledge, there is no action or proceedings pending or threatened against the Franchisee which would interfere with performance of this Franchise Renewal.

#### **Section 15.7-FORCE MAJEURE**

If by reason of Force Majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability.

#### **Section 15.8-APPLICABILITY OF FRANCHISE RENEWAL**

All of the provisions in this Franchise Renewal shall apply to, and are enforceable against, the Town, the Franchisee, and their respective successors and assignees.

**Section 15.9-NOTICES**

All Notices to be sent pursuant to this section shall be in writing, and shall be mailed by Certified Mail with Return Receipt Requested to verify delivery. Notice to the Board of Selectmen shall be given to: Office of Selectmen, P.O. Box 98, Pittsfield, NH 03263-0098. Notice to Franchisee shall be given to Vice-President, MetroCast Cablevision, 9 Apple Road, Belmont, NH 03220-3251. Either party may advise the other in writing of any change in address or designated agency for receipt of Notice.

**Section 15.10-TERM**

All obligations of the Franchisee and the Franchising Authority set forth in the Franchise Renewal, except as set forth herein differently, shall commence upon the Effective Date of this Franchise Renewal and shall continue for the term of the Franchise Renewal except as expressly provided for herein.

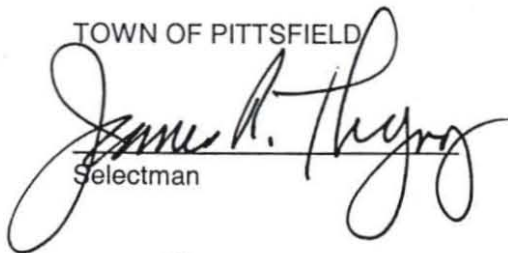
**Section 15.11-AGREEMENT TO TERMS AND CONDITIONS**

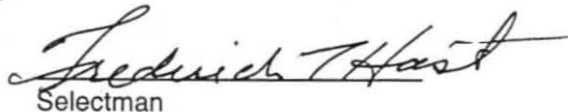
Each of the parties hereto has had full opportunity to review, revise, and clarify the provisions and terms of this agreement with the assistance of an attorney and, no party hereto shall be deemed to be drafter of this document for the purpose of having ambiguities construed against the drafter.


**Section 15.12-OTHER TAXES**

The Town of Pittsfield reserves the right to apply any federal, state or Town laws currently in effect or effective in the future concerning the taxation of property or services to which the Franchisee is or may be subject.

TOWN OF PITTSFIELD

  
Selectman

  
Selectman

  
Selectman

METROCAST CABLEVISION

By: 

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**EXHIBIT 2**

**INSTITUTIONAL NETWORK**

Pittsfield Police Station  
Pittsfield Fire Station  
Pittsfield Library  
Pittsfield Elementary School  
Pittsfield Middle High School  
Pittsfield Town Hall  
Pittsfield Public Works

# Exhibit 3

§76.601

47 CFR Ch. I (10-1-94 Edition)

(f) *Minority-controlled* means more than 50 percent owned by one or more members of a minority group.

(g) *Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

(h) *Attributable interest* shall be defined by reference to the criteria set forth in the Notes to §76.501.

[58 FR 60141, Nov. 15, 1993]

## Subpart K—Technical Standards

### §76.601 Performance tests.

(a) The operator of each cable television system shall be responsible for insuring that each such system is designed, installed, and operated in a manner that fully complies with the provisions of this subpart. Each system operator shall be prepared to show, on request by an authorized representative of the Commission or the local franchiser, that the system does, in fact, comply with the rules.

(b) The operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers.

(c) The operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below, and shall maintain the resulting test data on file at the operator's local business office for at least five (5) years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in §76.605(a) and shall be as follows:

(1) For cable television systems with 1000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (e.g., 7 test points if 12,501 to 25,000 subscribers; 8

test points if 25,001 to 37,500 subscribers, etc.). In addition, for technically integrated portions of cable systems that are not mechanically continuous (i.e., employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in §76.605(a) (3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in §76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (e.g., 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217-300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit to 300 to 400 MHz, etc.). The channels selected for testing must be representative of all the channels within the cable television system.

(3) The operator of each cable television system shall conduct semi-an-

nual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(11).

(d) Successful completion of the performance tests required by paragraph (c) of this section does not relieve the system of the obligation to comply with all pertinent technical standards at all subscriber terminals. Additional tests, repeat tests, or tests involving specified subscriber terminals may be required by the Commission of the local franchiser to secure compliance with the technical standards.

(e) The provisions of paragraphs (c) and (d) of this section shall not apply to any cable television system having fewer than 1,000 subscribers: Provided, however, that any cable television system using any frequency spectrum other than that allocated to over-the-air television and FM broadcasting (as described in § 73.603 and § 73.210 of this chapter) is required to conduct all tests, measurements and monitoring of signal leakage that are required by this subpart. A cable television system operator complying with the monitoring, logging and the leakage repair requirements of § 76.614, shall be considered to have met the requirements of this paragraph. However, the leakage log, shall be retained for five years rather than the two years prescribed in § 76.614.

**Note:** Prior to requiring any additional testing pursuant to § 76.601(d), the local franchising authority shall notify the cable operator who will be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected.

The Commission may request cable operators to test their systems at any time.

[57 FR 11001, Apr. 1, 1992, as amended at 57 FR 61010, Dec. 23, 1992]

#### § 76.605 Technical standards.

(a) As of December 30, 1992, unless otherwise noted, the following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched impedance at the termination point or at the output of the modulating or processing equipment (generally the headend) of the cable television system or otherwise as noted. The requirements are applicable to each NTSC or similar video downstream cable television channel in the system:

(1) The cable television channels delivered to the subscriber's terminal shall be capable of being received and displayed by TV broadcast receivers used for the off-the-air reception of TV broadcast signals, as authorized under part 73 of this chapter.

(2) Cable systems shall transmit channels to subscriber premises equipment on frequencies in accordance with the channel allocation plan set forth in the Electronic Industries Association's Cable Television Channel Identification Plan, EIA IS-132, May 1994" (EIA IS-132). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Cable systems are required to sue this channel allocation plan for signals transmitted in the frequency range 54 MHz to 1002 MHz. Copies of EIA IS-132 may be obtained from: Global Engineering Documents, 2305 McGraw Ave., Irvine CA 92714. Copies of EIA IS-132 may be inspected during normal business hours at the following locations: Federal Communications Commission, 1919 M Street NW., Dockets Branch (Room 239), Washington, DC, or the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. This requirement is applicable as of June 30, 1995, for new and re-built cable systems, and on June 30, 1997, for all cable systems.

(3) The aural center frequency of the aural carrier must be 4.5 MHz  $\pm$  5 kHz above the frequency of the visual carrier at the output of the modulating or

processing equipment of a cable television system, and at the subscriber terminal.

(4) The visual signal level, across a terminating impedance which correctly matches the internal impedance of the cable system as viewed from the subscriber terminal, shall not be less than 1 millivolt across an internal impedance of 75 ohms (0 dBmV). Additionally, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, it shall not be less than 1.41 millivolts across an internal impedance of 75 ohms (+3 dBmV). (At other impedance values, the minimum visual signal level, as viewed from the subscriber terminal, shall be the square root of  $0.0133(Z)$  millivolts and, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, shall be 2 times the square root of  $0.00662(Z)$  millivolts, where  $Z$  is the appropriate impedance value.)

(5) The visual signal level on each channel, as measured at the end of a 30 meter cable drop that is connected to the subscriber tap, shall not vary more than 8 decibels within any six-month interval, which must include four tests performed in six-hour increments during a 24-hour period in July or August and during a 24-hour period in January or February, and shall be maintained within:

(i) 3 decibels (dB) of the visual signal level of any visual carrier within a 6 MHz nominal frequency separation;

(ii) 10 dB of the visual signal level on any other channel on a cable television system of up to 300 MHz of cable distribution system upper frequency limit, with a 1 dB increase for each additional 100 MHz of cable distribution system upper frequency limit (e.g., 11 dB for a system at 301-400 MHz; 12 dB for a system at 401-500 MHz, etc.); and

(iii) A maximum level such that signal degradation due to overload in the subscriber's receiver or terminal does not occur.

(6) The rms voltage of the aural signal shall be maintained between 10 and 17 decibels below the associated visual signal level. This requirement must be met both at the subscriber terminal and at the output of the modulating and processing equipment (generally

the headend). For subscriber terminals that use equipment which modulate and remodulate the signal (e.g., baseband converters), the rms voltage of the aural signal shall be maintained between 6.5 and 17 decibels below the associated visual signal level at the subscriber terminal.

(7) The amplitude characteristic shall be within a range of  $\pm 2$  decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries.

(i) Prior to December 30, 1999, the amplitude characteristic may be measured after a subscriber tap and before a converter that is provided and maintained by the cable operator.

(ii) As of December 30, 1999, the amplitude characteristic shall be measured at the subscriber terminal.

(8) The ratio of RF visual signal level to system noise shall be as follows:

(i) From June 30, 1992, to June 30, 1993, shall not be less than 36 decibels.

(ii) From June 30, 1993 to June 30, 1995, shall not be less than 40 decibels.

(iii) As of June 30, 1995, shall not be less than 43 decibels.

(iv) For class I cable television channels, the requirements of paragraphs (a)(7)(i), (a)(7)(ii) and (a)(7)(iii) of this section are applicable only to:

(A) Each signal which is delivered by a cable television system to subscribers within the predicted Grade B contour for that signal;

(B) Each signal which is first picked up within its predicted Grade B contour;

(C) Each signal that is first received by the cable television system by direct video feed from a TV broadcast station, a low power TV station, or a TV translator station.

(9) The ratio of visual signal level to the rms amplitude of any coherent disturbances such as intermodulation products, second and third order distortions or discrete-frequency interfering signals not operating on proper offset assignments shall be as follows:

(i) The ratio of visual signal level to coherent disturbances shall not be less than 51 decibels for noncoherent channel cable television systems, when

measured with modulated carriers and time averaged; and

(1) The ratio of visual signal level to coherent disturbances which are frequency-coincident with the visual carrier shall not be less than 47 decibels for coherent channel cable systems, when measured with modulated carriers and time averaged.

(10) The terminal isolation provided to each subscriber terminal:

(i) Shall not be less than 18 decibels. In lieu of periodic testing, the cable operator may use specifications provided by the manufacturer for the terminal isolation equipment to meet this standard; and

(ii) Shall be sufficient to prevent reflections caused by open-circuited or short-circuited subscriber terminals from producing visible picture impairments at any other subscriber terminal.

(11) The peak-to-peak variation in visual signal level caused by undesired low frequency disturbances (hum or repetitive transients) generated within the system, or by inadequate low frequency response, shall not exceed 3 percent of the visual signal level. Measurements made on a single channel using a single unmodulated carrier may be used to demonstrate compliance with this parameter at each test location.

(12) As of June 30, 1995, the following requirements apply to the performance of the cable television system as measured at the output of the modulating or processing equipment (generally the headend) of the system:

(i) The chrominance-luminance delay inequality (or chroma delay), which is the change in delay time of the chrominance component of the signal relative to the luminance component, shall be within 170 nanoseconds.

(ii) The differential gain for the color subcarrier of the television signal, which is measured as the difference in amplitude between the largest and smallest segments of the chrominance signal (divided by the largest and expressed in percent), shall not exceed  $\pm 20\%$ .

(iii) The differential phase for the color subcarrier of the television signal which is measured as the largest phase difference in degrees between each seg-

ment of the chrominance signal and reference segment (the segment at the blanking level of 0 IRE), shall not exceed  $\pm 10$  degrees.

(13) As an exception to the general provision requiring measurements to be made at subscriber terminals, and without regard to the type of signals carried by the cable television system, signal leakage from a cable television system shall be measured in accordance with the procedures outlined in § 76.609(h) and shall be limited as follows:

Frequencies	Signal leakage limit (micro-vol/meter)	Distance in meters (m)
Less than and including 54 MHz, and over 216 MHz	15	30
Over 54 up to and including 216 MHz	20	3

(b) Cable television systems distributing signals by using methods such as nonconventional coaxial cable techniques, noncoaxial copper cable techniques, specialized coaxial cable and fiber optical cable hybridization techniques or specialized compression techniques or specialized receiving devices, and which, because of their basic design, cannot comply with one or more of the technical standards set forth in paragraph (a) of this section, may be permitted to operate: Provided, That an adequate showing is made pursuant to § 76.7 which establishes that the public interest is benefited. In such instances, the Commission may prescribe special technical requirements to ensure that subscribers to such systems are provided with an equivalent level of good quality service.

NOTE 1: Local franchising authorities of systems serving fewer than 1000 subscribers may adopt standards less stringent than those in § 76.605(a). Any such agreement shall be reduced to writing and be associated with the system's proof-of-performance records.

NOTE 2: For systems serving rural areas as defined in § 76.5, the system may negotiate with its local franchising authority for standards less stringent than those in §§ 76.605(a)(3), 76.605(a)(7), 76.605(a)(8), 76.605(a)(10) and 76.605(a)(11). Any such agreement shall be reduced to writing and be associated with the system's proof-of-performance records.

NOTE 3: The requirements of this section shall not apply to devices subject to the provisions of §§ 15.601 through 15.626.

NOTE 4: Should subscriber complaints arise from a system failing to meet § 76.605(a)(6) prior to December 30, 1999, the cable operator will be required to provide a converter that will allow the system to meet the standard immediately at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order all converters on the system be changed to meet the standard.

NOTE 5: Should subscriber complaints arise from a system failing to meet § 76.605(a)(10), the cable operator will be required to remedy the complaint and perform test measurements on § 76.605(a)(10) containing the full number of channels as indicated in § 76.601(c)(2) at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order that the full number of channels as indicated in § 76.601(c)(2) be tested at all required locations for future proof-of-performance tests.

NOTE 6: A franchising authority may apply to the Commission for a waiver to impose cable technical standards that are more stringent than the standards prescribed by the Commission.

[37 FR 3278, Feb. 12, 1972, as amended at 37 FR 13867, July 14, 1972; 40 FR 2690, Jan. 15, 1975; 40 FR 3296, Jan. 21, 1975; 41 FR 53028, Dec. 3, 1976; 42 FR 21782, Apr. 29, 1977; 47 FR 21503, May 18, 1982; 50 FR 52466, Dec. 24, 1985; 51 FR 1255, Jan. 10, 1986; 52 FR 22461, June 12, 1987; 57 FR 11002, Apr. 1, 1992; 57 FR 61010, Dec. 23, 1992; 58 FR 44952, Aug. 25, 1993; 59 FR 25342, May 16, 1994]

#### § 76.606 Closed captioning.

(a) As of June 30, 1992, the operator of each cable television system shall not take any action to remove or alter closed captioning data contained on line 21 of the vertical blanking interval.

(b) As of July 1, 1993, the operator of each cable television system shall deliver intact closed captioning data contained on line 21 of the vertical blanking interval, as it arrives at the headend or from another origination source, to subscriber terminals and (when so delivered to the cable system) in a format that can be recovered and displayed by decoders meeting § 15.119 of this chapter.

..[57 FR 11003, Apr. 1, 1992]

#### § 76.607 Resolution of complaints.

Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. These records shall be maintained for at least a one-year period. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request. Subscribers shall be advised, at least once each calendar year, of the procedures for resolution of complaints by the cable system operator, including the address of the responsible officer of the local franchising authority.

NOTE: Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

[57 FR 61011, Dec. 23, 1992]

#### § 76.609 Measurements.

(a) Measurements made to demonstrate conformity with the performance requirements set forth in §§ 76.601 and 76.605 shall be made under conditions which reflect system performance during normal operations, including the effect of any microwave relay operated in the Cable Television Relay (CARS) Service intervening between pickup antenna and the cable distribution network. Amplifiers shall be operated at normal gains, either by the insertion of appropriate signals or by manual adjustment. Special signals inserted in a cable television channel for measurement purposes should be operated at levels approximating those used for normal operation. Pilot tones, auxiliary or substitute signals, and nontelevision signals normally carried on the cable television system should be operated at normal levels to the extent possible. Some exemplary, but not mandatory, measurement procedures are set forth in this section.

(b) When it may be necessary to remove the television signal normally carried on a cable television channel in order to facilitate a performance measurement, it will be permissible to disconnect the antenna which serves the channel under measurement and to substitute therefor a matching resist-



ance termination. Other antennas and inputs should remain connected and normal signal levels should be maintained on other channels.

(c) As may be necessary to ensure satisfactory service to a subscriber, the Commission may require additional tests to demonstrate system performance or may specify the use of different test procedures.

(d) The frequency response of a cable television channel may be determined by one of the following methods, as appropriate:

(1) By using a swept frequency or a manually variable signal generator at the sending end and a calibrated attenuator and frequency-selective voltmeter at the subscriber terminal; or

(2) By using either a multiburst generator or vertical interval test signals and either a modulator or processor at the sending end, and by using either a demodulator and either an oscilloscope display or a waveform monitor display at the subscriber terminal.

(e) System noise may be measured using a frequency-selective voltmeter (field strength meter) which has been suitably calibrated to indicate rms noise or average power level and which has a known bandwidth. With the system operating at normal level and with a properly matched resistive termination substituted for the antenna, noise power indications at the subscriber terminal are taken in successive increments of frequency equal to the bandwidth of the frequency-selective voltmeter, summing the power indications to obtain the total noise power present over a 4 MHz band centered within the cable television channel. If it is established that the noise level is constant within this bandwidth, a single measurement may be taken which is corrected by an appropriate factor representing the ratio of 4 MHz to the noise bandwidth of the frequency-selective voltmeter. If an amplifier is inserted between the frequency-selective voltmeter and the subscriber terminal in order to facilitate this measurement, it should have a bandwidth of at least 4 MHz and appropriate corrections must be made to account for its gain and noise figure. Alternatively, measurements made in

accordance with the NCTA Recommended Practices for Measurements on Cable Television Systems, 2nd edition, November 1989, on noise measurement may be employed.

(f) The amplitude of discrete frequency interfering signals within a cable television channel may be determined with either a spectrum analyzer or with a frequency-selective voltmeter (field strength meter), which instruments have been calibrated for adequate accuracy. If calibration accuracy is in doubt, measurements may be referenced to a calibrated signal generator, or a calibrated variable attenuator, substituted at the point of measurement. If an amplifier is used between the subscriber terminal and the measuring instrument, appropriate corrections must be made to account for its gain.

(g) The terminal isolation between any two terminals in the cable television system may be measured by applying a signal of known amplitude to one terminal and measuring the amplitude of that signal at the other terminal. The frequency of the signal should be close to the midfrequency of the channel being tested. Measurements of terminal isolation are not required when either:

(1) The manufacturer's specifications for subscriber tap isolation based on a representative sample of no less than 500 subscribers taps or

(2) Laboratory tests performed by or for the operator of a cable television system on a representative sample of no less than 50 subscriber taps, indicates that the terminal isolation standard of §76.605(a)(9) is met.

To demonstrate compliance with §76.605(a)(9), the operator of a cable television system shall attach either such manufacturer's specifications or laboratory measurements as an exhibit to each proof-of-performance record.

(h) Measurements to determine the field strength of the signal leakage emanated by the cable television system shall be made in accordance with standard engineering procedures. Measurements made on frequencies above 25 MHz shall include the following:

(1) A field strength meter of adequate accuracy using a horizontal dipole antenna shall be employed.

(2) Field strength shall be expressed in terms of the rms value of synchronizing peak for each cable television channel for which signal leakage can be measured.

(3) The resonant half wave dipole antenna shall be placed 3 meters from and positioned directly below the system components and at 3 meters above ground. Where such placement results in a separation of less than 3 meters between the center of the dipole antenna and the system components, or less than 3 meters between the dipole and ground level, the dipole shall be repositioned to provide a separation of 3 meters from the system components at a height of 3 meters or more above ground.

(4) The horizontal dipole antenna shall be rotated about a vertical axis and the maximum meter reading shall be used.

(5) Measurements shall be made where other conductors are 3 or more meters (10 or more feet) away from the measuring antenna.

(1) For systems using cable traps and filters to control the delivery of specific channels to the subscriber terminal, measurements made to determine compliance with §76.605(a) (5) and (6) may be performed at the location immediately prior to the trap or filter for the specific channel. The effects of these traps or filters, as certified by the system engineer or the equipment manufacturer, must be attached to each proof-of-performance record.

(1) Measurements made to determine the differential gain, differential phase and the chrominance-luminance delay inequality (chroma delay) shall be made in accordance with the NCTA Recommended Practices for Measurements on Cable Television Systems, 2nd edition, November 1989, on these parameters.

[37 FR 3278, Feb. 12, 1972, as amended at 37 FR 13867, July 14, 1972; 41 FR 10067, Mar. 9, 1976; 42 FR 21782, Apr. 29, 1977; 49 FR 45441, Nov. 16, 1984; 57 FR 11004, Apr. 1, 1992; 57 FR 61011, Dec. 23, 1992; 58 FR 44952, Aug. 25, 1993]

§76.610 Operation in the frequency bands 108-137 and 225-400 MHz—  
Scope of application.

The provisions of §§76.611 (effective July 1, 1990), 76.612, 76.613, 76.614 and 76.615 are applicable to all cable television systems transmitting carriers or other signal components carried at an average power level equal to or greater than  $10^{-4}$  watts across a 25 kHz bandwidth in any 160 microsecond period, at any point in the cable distribution system in the frequency bands 108-137 and 225-400 MHz for any purpose. For grandfathered systems, refer to §§76.618 and 76.619.

NOTE 1: See the provisions of §76.616 for cable operation near certain aeronautical and marine emergency radio frequencies.

NOTE 2: Until January 1, 1990, the band 136-137 MHz is allocated as an alternative allocation to the space operation, meteorological-satellite service and the space research service on a primary basis. After January 1, 1990, the space service will become secondary to aeronautical mobile service radio. Until January 1, 1990, the band 136 to 137 MHz is excluded from the rule sections regarding protection of aeronautical frequencies.

[50 FR 29099, July 19, 1985]

§76.611 Cable television basic signal leakage performance criteria.

(a) No cable television system shall commence or provide service in the frequency bands 108-137 and 225-400 MHz unless such systems is in compliance with one of the following cable television basic signal leakage performance criteria:

(1) prior to carriage of signals in the aeronautical radio bands and at least once each calendar year, with no more than 12 months between successive tests thereafter, based on a sampling of at least 75% of the cable strand, and including any portion of the cable system which are known to have or can reasonably be expected to have less leakage integrity than the average of the system, the cable operator demonstrates compliance with a cumulative signal leakage index by showing either that (i)  $10 \log I_{\infty}$  is equal to or less than  $-7$  or (ii)  $10 \log I_{\infty}$  is equal to or less than 64, using one of the following formula:

$$I_{3000} = \frac{1}{\theta} \sum_{i=1}^n \frac{E_i^2}{R_i^2}$$

$$I_{\infty} = \frac{1}{\theta} \sum_{i=1}^n E_i^2$$

where:

$$R_i^2 = r_i^2 + (3000)^2$$

$r_i$  is the distance (in meters) between the leakage source and the center of the cable television system;

$\theta$  is the fraction of the system cable length actually examined for leakage sources and is equal to the strand kilometers (strand miles) of plant tested divided by the total strand kilometers (strand miles) in the plant;

$R_i$  is the slant height distance (in meters) from leakage source  $i$  to a point 3000 meters above the center of the cable television system;

$E_i$  is the electric field strength in microvolts per meter ( $\mu\text{V}/\text{m}$ ) measured pursuant to §76.609(h) 3 meters from the leak  $i$ ; and

$n$  is the number of leaks found of field strength equal to or greater than  $50 \mu\text{V}/\text{m}$  pursuant to Section 76.609(h).

The sum is carried over all leaks  $i$  detected in the cable examined; or

(2) prior to carriage of signals in the aeronautical radio bands and at least once each calendar year, with no more than 12 months between successive tests thereafter, the cable operator demonstrates by measurement in the airspace that at no point does the field strength generated by the cable system exceed 10 microvolts per meter ( $\mu\text{V}/\text{m}$ ) RMS at an altitude of 450 meters above the average terrain of the cable system. The measurement system (including the receiving antenna) shall be calibrated against a known field of  $10 \mu\text{V}/\text{m}$  RMS produced by a well characterized antenna consisting of orthogonal resonant dipoles, both parallel to and one quarter wavelength above the ground plane of a diameter of two meters or more at ground level. The dipoles shall have centers collocated and be excited 90 degrees apart. The

half-power bandwidth of the detector shall be 25 kHz. If an aeronautical receiver is used for this purpose it shall meet the standards of the Radio Technical Commission for Aeronautics (RTCA) for aeronautical communications receivers. The aircraft antenna shall be horizontally polarized. Calibration shall be made in the community unit or, if more than one, in any of the community units of the physical system within a reasonable time period to performing the measurements. If data is recorded digitally the 90th percentile level of points recorded over the cable system shall not exceed  $10 \mu\text{V}/\text{m}$  RMS; if analog recordings is used the peak values of the curves, when smoothed according to good engineering practices, shall not exceed  $10 \mu\text{V}/\text{m}$  RMS.

(b) In paragraphs (a)(1) and (a)(2) of this section the unmodulated test signal used on the cable plant shall: (1) Be within the VHF aeronautical band 108-137 MHz or any other frequency in which the results can be correlated to the VHF aeronautical band and (2) have an average power level equal to the average power level of the strongest cable television carrier on the system.

(c) In paragraph (a)(1) and (2) of this section, if a modulated test signal is used, the test signal and detector technique must, when considered together, yield the same result as though an unmodulated test signal were used in conjunction with a detection technique which would yield the RMS value of said unmodulated carrier.

(d) If a sampling of at least 75% of the cable strand (and including any portions of the cable system which are known to have or can reasonably be expected to have less leakage integrity than the average of the system) as described in paragraph (a)(1) cannot be obtained by the cable operator or is otherwise not reasonably feasible, the cable operator shall perform the airspace measurements described in paragraph (a)(2).

(e) Prior to providing service to any subscriber on a new section of cable plant, the operator shall show compliance with either: (1) The basic signal leakage criteria in accordance with paragraph (a)(1) or (a)(2) of this section

for the entire plant in operation or (2) a showing shall be made indicating that no individual leak in the new section of the plant exceeds 20  $\mu\text{V/m}$  at 3 meters in accordance with §76.609 of the Rules.

(f) Notwithstanding paragraph (a) of this section, a cable operator shall be permitted to operate on any frequency which is offset pursuant to §76.612 in the frequency band 108-137 MHz for the purpose of demonstrating compliance with the cable television basic signal leakage performance criteria.

[50 FR 29399, July 19, 1985, as amended at 53 FR 2499, Jan. 23, 1988; 53 FR 5634, Feb. 25, 1988; 58 FR 44952, Aug. 25, 1993]

**§76.612 Cable television frequency separation standards.**

All cable television systems which operate in the frequency bands 108-137 and 225-400 MHz shall comply with the following frequency separation standards:

(a) In the aeronautical radiocommunication bands 118-137, 225-328.6 and 335.4-400 MHz, the frequency of all carrier signals or signal components carried at an average power level equal to or greater than  $10^{-4}$  watts in a 25 kHz bandwidth in any 160 microsecond period must operate at frequencies offset from certain frequencies which may be used by aeronautical radio services operated by Commission licensees or by the United States Government or its Agencies. The aeronautical frequencies from which offsets must be maintained are those frequencies which are within one of the aeronautical bands defined in this subparagraph, and when expressed in MHz and divided by 0.025 yield an integer. The offset must meet one of the following two criteria:

(1) All such cable carriers or signal components shall be offset by 12.5 kHz with a frequency tolerance of  $\pm 5$  kHz; or

(2) The fundamental frequency from which the visual carrier frequencies are derived by multiplication by an integer number which shall be 6.0003 MHz with a tolerance of  $\pm 1$  Hz (Harmonically Related Carrier (HRC) comb generators only).

(b) In the aeronautical radionavigation bands 108-118 and 328.6-335.4

MHz, the frequency of all carrier signals or signal components carrier at an average power level equal to or greater than  $10^{-4}$  watts in a 25 kHz bandwidth in any 160 microsecond period shall be offset by 25 kHz with a tolerance of  $\pm 5$  kHz. The aeronautical radionavigation frequencies from which offsets must be maintained are defined as follows:

(1) Within the aeronautical band 108-118 MHz when expressed in MHz and divided by 0.025 yield an even integer.

(2) Within the band 328.6-335.4 MHz, the radionavigation glide path channels are listed in Section 87.501 of the Rules.

NOTE: The HRC system, as described above, will meet this requirement in the 328.6-335.4 MHz navigation glide path band. Those Incrementally Related Carriers (IRC) systems, with comb generator reference frequencies set at certain odd multiples equal to or greater than 3 times the 0.0125 MHz aeronautical communications band offset, e.g.  $(6n + 1.250 \pm 0.0375)$  MHz, may also meet the 25 kHz offset requirement in the navigation glide path band.

[50 FR 29400, July 19, 1985]

**§76.613 Interference from a cable television system.**

(a) Harmful interference is any emission, radiation or induction which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with this chapter.

(b) The operator of a cable television system that causes harmful interference shall promptly take appropriate measures to eliminate the harmful interference.

(c) If harmful interference to radio communications involving the safety of life and protection of property cannot be promptly eliminated by the application of suitable techniques, operation of the offending cable television system or appropriate elements thereof shall immediately be suspended upon notification by the Engineer in Charge (EIC) of the Commission's local field office, and shall not be resumed until the interference has been eliminated to the satisfaction of the EIC. When authorized by the EIC, short test operations may be made during the pe-

riod of suspended operation to check the efficacy of remedial measures.

(d) The cable television system operator may be required by the EIC to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

(Secs. 1, (302); (82 Stat. 290); 47 U.S.C. 151, 302)  
[42 FR 41296, Aug. 16, 1977]

**§ 76.614 Cable television system regular monitoring.**

Cable television operators transmitting carriers in the frequency bands 108-137 and 225-400 MHz shall provide for a program of regular monitoring for signal leakage by substantially covering the plant every three months. The incorporation of this monitoring program into the daily activities of existing service personnel in the discharge of their normal duties will generally cover all portions of the system and will therefore meet this requirement. Monitoring equipment and procedures utilized by a cable operator shall be adequate to detect a leakage source which produces a field strength in these bands of 20  $\mu$ V/m or greater at a distance of 3 meters. During regular monitoring, any leakage source which produces a field strength of 20  $\mu$ V/m or greater at a distance of 3 meters in the aeronautical radio frequency bands shall be noted and such leakage sources shall be repaired within a reasonable period of time. The operator shall maintain a log showing the date and location of each leakage source identified, the date on which the leakage was repaired, and the probable cause of the leakage. The log shall be kept on file for a period of two (2) years and shall be made available to authorized representatives of the Commission upon request.

[50 FR 29400, July 19, 1985]

**§ 76.615 Notification requirements.**

All cable television operators shall comply with each of the following notification requirements:

(a) The operator of the cable system shall notify the Commission annually of all signals carried in the aeronautical radio frequency bands, noting the type of information carried by the sig-

nal (television picture, aural, pilot carrier, or system control, etc.) The timely filing of FCC Form 325, Schedule 2, will meet this requirement.

(b) The operator of a cable system shall notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than  $10^{-4}$  watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands. Such notification shall include:

(1) Legal name and local address of the cable television operator;

(2) The names and FCC identifiers (e.g. CA0001) of the system communities affected;

(3) The names and telephone numbers of local system officials who are responsible for compliance with §§ 76.610, 76.611 (effective July 1, 1990), and 76.612 through 76.616 of the Rules;

(4) Carrier and subcarrier frequencies and tolerance, types of modulation and the maximum average power levels of all carriers and subcarriers occurring at any location in the cable distribution system.

(5) The geographical coordinates of a point near the center of the cable system, together with the distance (in kilometers) from the designated point to the most remote point of the cable plant, existing or planned, which defines a circle enclosing the entire cable plant;

(6) A description of the routine monitoring procedure to be used; and

(7) For cable operators subject to § 76.611 (effective July 1, 1990), the cumulative signal leakage index derived under § 76.611(a)(1) (effective July 1, 1990) or the results of airspace measurements derived under § 76.611(a)(2) (effective July 1, 1990), including a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This information shall be provided to the Commission prior to July 1, 1990 and each calendar year thereafter.

[50 FR 29400, July 19, 1985]

**§76.616 Operation near certain aeronautical and marine emergency radio frequencies.**

The transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than  $10^{-3}$  watts at any point in a cable television system is prohibited within 100 kHz of the frequency 121.5 MHz, and is prohibited within 50 kHz of the two frequencies 156.8 MHz and 243.0 MHz.

[50 FR 29401, July 19, 1985]

**§76.617 Responsibility for interference.**

Interference resulting from the use of cable system terminal equipment (including subscriber terminal, input selector switch and any other accessories) shall be the responsibility of the cable system terminal equipment operator in accordance with the provisions of part 15 of this chapter; provided, however, that the operator of a cable system to which the cable system terminal equipment is connected shall be responsible for detecting and eliminating any signal leakage where that leakage would cause interference outside the subscriber's premises and/or would cause the cable system to exceed the Part 76 signal leakage requirements. In cases where excessive signal leakage occurs, the cable operator shall be required only to discontinue service to the subscriber until the problem is corrected.

[53 FR 46619, Nov. 18, 1988]

**§76.618 Grandfathering.**

Cable television systems are permitted to use aeronautical frequencies which were requested or granted for use by November 30, 1984, under Section 76.619 of the Rules until July 1, 1990.

[50 FR 29401, July 19, 1985]

**§76.619 Grandfathered Operation in the frequency bands 108-136 and 225-400 MHz.**

All cable television systems operating in a grandfathered status under §76.618 of the Rules and transmitting carriers or other signal components capable of delivering peak power equal to or greater than  $10^{-3}$  watts at any point

in the cable system in the frequency bands 108-136 and 225-400 MHz for any purpose are subject to the following requirements:

(a) The operator of the cable system shall notify the Commission annually of all signals carried in these bands, noting the type of information carried by the signal (television, aural, or pilot carrier and system control, etc.). The timely filing of FCC Form 325, Schedule 2, will meet this requirement.

(b) The operator of the cable system shall notify the Commission of the proposed extension of the system radius in these bands. Notification shall include carrier and subcarrier frequencies, types of modulation, the previously notified geographical coordinates, the new system radius and the maximum peak power occurring at any location in the cable distribution system. No system shall extend its radius in these bands without prior Commission authorization.

(c) The operator of the cable system shall maintain at its local office a current listing of all signals carried in these bands, noting carrier and subcarrier frequencies, types of modulation, and maximum peak power which occurs at any location within the cable distribution system.

(d) The operator of the system shall provide for regular monitoring of the cable system for signal leakage covering all portions of the cable system at least once each calendar year. Monitoring equipment and procedures shall be adequate to detect leakage sources which produce field strengths in these bands of 20 microvolts per meter at a distance of 3 meters. The operator shall maintain a log showing the date and location of each leakage source identified, the date on which the leakage was eliminated, and the probable cause of the leakage. The log shall be kept on file for a period of two (2) years, and shall be made to authorized representatives of the Commission on request.

(e) All carrier signals or signal components capable of delivering peak power equal to or greater than  $10^{-3}$  watts must be operated at frequencies offset from aeronautical radio services operated by Commission licensees or by the United States Government or its agencies within 111 km (60 nautical

miles) of any portion of the cable system as given in paragraph (f) of this section. (The limit of 111 km may be increased by the Commission in cases of "extended service volumes" as defined by the Federal Aviation Administration or other federal government agency for low altitude radio navigation or communication services). If an operator of a cable system is notified by the Commission that a change in operation of an aeronautical radio service will place the cable system in conflict with any of the offset criteria, the cable system operator is responsible for eliminating such conflict within 30 days of notification.

(f) A minimum frequency offset between the nominal carrier frequency of an aeronautical radio service qualifying under paragraph (d) of this Section and the nominal frequency of any cable system carrier or signal component capable of delivering peak power equal to or greater than  $10^{-3}$  watts shall be maintained or exceeded at all times. The minimum frequency offsets are as follows:

Frequencies	Minimum frequency offsets
108-118 MHz	(50+T) kHz
328.6-335.4 MHz	
108-136 MHz	(100+T) kHz
225-328.5 MHz	
335.4-400 MHz	

In this table, T is the absolute value of the frequency tolerance of the cable television signal. The actual frequency tolerance will depend on the equipment and operating procedures of the cable system, but in no case shall the frequency tolerance T exceed  $\pm 25$  kHz in the bands 108-136 and 225-400 MHz.

(50 FR 29401, July 19, 1985)

#### § 76.630 Compatibility with consumer electronics equipment.

(a) Cable system operators shall not scramble or otherwise encrypt signals carried on the basic service tier. Requests for waivers of this prohibition must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers

must be mailed no later than thirty calendar days from the date the request waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state:

On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service, 47 CFR § 76.630(a). The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver is on file for public inspection at (the address of the cable operator's local place of business).

Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Cable Services Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a copy of their comments to (the cable operator at its local place of business).

Cable operators may file comments in reply no later than 7 days from the date subscriber comments must be filed.

(b) Cable system operators that provide their subscribers with cable system terminal devices and other customer premises equipment that incorporates remote control capability shall permit the remote operation of such devices with commercially available remote control units or otherwise take no action that would prevent the devices from being operated by a commercially available remote control unit. Cable system operators are advised that this requirement obliges them to actively enable the remote control functions of customer premises equipment where those functions do not operate without a special activation procedure. Cable system operators may, however, disable the remote control functions of a subscriber's customer premises equipment where requested by the subscriber.

(c) Cable operators may not alter the infrared codes used to operate the remote control capabilities of the cus-

customer premises equipment they employ in providing service to subscribers. Cable operators may, however, use new equipment that includes additional infrared codes for new remote control functions that were not included in existing models of customer premises equipment.

(d) Cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in §15.1(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. This equipment could include, for example, set-top cable system terminal devices with multiple descramblers/decoders and/or timers, and signal bypass switches.

(1) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year.

(2) Such special equipment shall, at a minimum, have the capability:

(i) To allow simultaneous reception of any two or more scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and,

(ii) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(3) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(4) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set

forth in §76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

(e) Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(1) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(2) The consumer information program shall include the following information:

(i) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(ii) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow



the subscriber to: view a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as "Picture-in-Picture," channel review and other functions that necessitate channel selection by the consumer device.

(iii) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

NOTE: The provisions of paragraphs (a) and (b) of this section are applicable as of July 31, 1994, and June 30, 1994, respectively. The provisions of paragraphs (c) through (e) of this section are applicable as of October 31, 1994, except for the requirement under section (d)(1)(i) of this section for cable system operators to supply cable system terminal devices with multiple tuners, which is applicable as of October 31, 1995. The initial offer of special equipment to all subscribers, as required under paragraph (d) of this section shall be made by October 31, 1994.

(59 FR 25342, May 16, 1994)

### Subpart L—Cable Television Access

#### § 76.701 Leased access channels.

(a) Notwithstanding 47 U.S.C. 532(b)(2) (Communications Act of 1934, as amended, section 612), a cable operator, in accordance with 47 U.S.C. 532(h) (Cable Consumer Protection and Competition Act of 1992, section 10(a)), may adopt and enforce prospectively a written and published policy of prohibiting programming which, it reasonably believes, describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

(b) A cable operator that does not prohibit the distribution of programming in accordance with paragraph (a) of this section shall place any leased access programming identified by program providers as indecent on one or more channels that are available to subscribers only with their prior written consent as provided in paragraph (c) of this section.

(c) A cable operator shall make such programming available to a subscriber within 30 days of receipt of a written request for access to the programming that includes a statement that the requesting subscriber is at least eighteen years old; a cable operator shall terminate a subscriber's access to such programming within 30 days from receipt of a subscriber's request.

(d) A program provider requesting access on a leased access channel shall identify for a cable operator any programming that is indecent as defined in paragraph (g) of this section. Such identification shall be in writing and include the full name, address, and telephone number of the program provider and a statement that the program provider is responsible for the content of the programming. A cable operator may require that such identification be provided up to 30 days to the requested date for carriage. A program provider requesting carriage of "live programming" on a leased access channel that is not identified as inde-