

TITLE VI: RECREATION, CULTURE, COMMUNITY ACTIVITIES

CHAPTER I: PARK AND RECREATION

ARTICLE I: PARK AND RECREATION BOARD

SECTION 1. PARK AND RECREATION BOARD ESTABLISHED. There is hereby established a Park and Recreation Board under IC 36-10-3-3.

SECTION 2. MEMBERSHIP. The Board shall be composed of four (4) members and an ex-officio member from the members of the Board of School Trustees of the Manchester Community Schools.

SECTION 3. APPOINTMENTS. The Town Council shall select the members on the basis of their interest in and knowledge of parks and recreation but not more than two (2) members shall be of the same political party. The ex-officio member shall be appointed by the members of the Manchester Community School Board of School Trustees and shall have all the rights of a member including the right to vote.

SECTION 4. TERMS OF MEMBERS. The original appointments to the Board by the Town Council of the Town of North Manchester, Indiana shall be for staggered terms of one (1), two (2), three (3), and four (4) years. Thereafter as a term expires, each new appointment should be for a four (4) year term. All terms shall expire on the first Monday in January but the appointee shall continue in office until his successor is appointed.

SECTION 5. OFFICERS. At its first regular meeting in each year, the Board shall elect a President and a Vice President. The Vice President shall have authority to act as a President of the Board during the absence or disability of the President.

SECTION 6. JURISDICTION. The Board shall have the general power to perform all acts necessary to acquire and develop sites and facilities and to conduct such programs as are generally understood to be park and recreation functions including the powers and duties prescribed by IC 36-10-3-1 et. seq. seq.

SECTION 7. FUNDS AND BUDGETS. The Board shall prepare and submit an annual budget as other departments of the Town. The Board may accept gifts, donations and subsidies for park and recreation purposes.

SECTION 8. LIMITATION ON POWERS. The Board shall have the power and shall exercise the functions given to it by the Laws as the same now exist or may hereafter be amended or enacted, but subject to such limitations and restrictions as the Town Council of the Town of North Manchester may, from time to time, by ordinance establish.

ARTICLE II: PARK AND RECREATION BONDS AUTHORIZED

General Ordinance No. 3, 1976, enacted December 1, 1976, authorizing general obligation bonds in the amount of \$120,000 is incorporated herein by reference, and two copies of same are on file in the office of the Clerk-Treasurer for public inspection.

TITLE VI: RECREATION, CULTURE, COMMUNITY ACTIVITIES

CHAPTER II: CABLE TELEVISION

ARTICLE I: MEDIACOM INDIANA LLC, FRANCHISE

This Franchise Agreement ("Franchise") is between the Town of North Manchester, Indiana, hereinafter referred to as "the Franchising Authority" and Mediacom Indiana LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware, hereinafter referred to as "the Grantee."

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

SECTION 1. DEFINITION OF TERMS.

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

- A. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- B. "Cable Act" means Title VI of the Communications Act of 1934, as amended.
- C. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- D. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.
- E. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- F. "Franchising Authority" means the Town of North Manchester, Indiana.
- G. "Grantee" means Mediacom Indiana LLC, or the lawful successor, transferee, or assignee thereof.
- H. "Gross Revenue" means any revenues from the operation of the Cable System to provide Basic Cable Services in the Service Area received by Grantee from Subscribers, provided, however, that Gross Revenues shall not include franchise fees, the FCC User Fee or any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency.

- I. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- J. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.
- K. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.
- L. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.
- M. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

SECTION 2. GRANT OF FRANCHISE.

- 2.1 GRANT. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services, data services, information and other communications services or for any other lawful purposes.
- 2.2 OTHER ORDINANCES. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control.
- 2.3 OTHER AUTHORIZATIONS. The Franchising Authority shall not permit any person to provide services similar to those provided by the Grantee in the Service Area without first having secured a non-exclusive franchise from the Franchising Authority. The Franchising Authority agrees that any grant of additional franchises or other authorizations by the Franchising Authority to provide services similar to those provide by the Grantee pursuant to this Agreement to any other entity shall cover the entire Service Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein. In any renewal of this Franchise, the Franchising Authority, should it seek to impose increased obligations upon the Grantee, must take into account any additional franchise(s) or authorizations previously granted and find that the proposed increased obligations in the renewal, are not more burdensome and/or less favorable than those contained in any such additional franchise(s) or authorizations.

- 2.4 TERM. This Franchise will take effect and be in full force for 7 years from and after the effective date specified on the signature page. The Franchising Authority's approval is subject to grantee's acceptance by countersigning the franchise agreeing to be bound by and to comply with the provisions contained herein (hereafter the "Term").

If Grantee is in material compliance with the terms of this Franchise as of the date, which is three years prior to the expiration of the initial term, this Franchise will be automatically extended five (5) years from the date of expiration of such initial franchise term. Such extension will become effective on such date, which is three (3) years prior to the expiration date unless Grantee has received written notice of material non-compliance from the Franchising Authority pursuant to Section 7.1 which notice has not resulted in resolution pursuant to Section 7.2.

Grantee shall keep the North Manchester Town Council up to date with an annual compliance review to be held once each year at a public Town Council meeting during the first quarter of the year.

SECTION 3. STANDARDS OF SERVICE.

- 3.1 CONDITIONS OF OCCUPANCY. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.
- 3.2 RESTORATION OF PUBLIC WAYS. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonable comparable to the condition of the Public Way existing immediately prior to such disturbance.
- 3.3 RELOCATION FOR THE FRANCHISING AUTHORITY. Upon its receipt of reasonable advance written notice, to be not less than ten (1) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.
- 3.4 RELOCATION FOR A THIRD PARTY. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the actual expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposed of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.
- 3.5 TRIMMING OF TREES AND SHRUBBERY. The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System.

- 3.6 SAFETY REQUIREMENTS. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with general applicable federal, state, and local regulations and the National Electric Safety Code.
- 3.7 UNDERGROUND CONSTRUCTION. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this subsection shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.
- 3.8 ACCESS TO OPEN TRENCHES. The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.
- 3.9 REQUIRED EXTENSIONS OF THE CABLE SYSTEM. Grantee agrees to provide Cable Service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in an unserved area contiguous to Grantee's existing distribution facilities where there are at least 10 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard-non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.
- 3.10 SUBSCRIBER CHARGES FOR EXTENSIONS OF THE CABLE SYSTEM. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. The Grantee may require that payment of the capital contribution in aid of construction (CIAC) borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

At 2 years following completion date of construction that required CIAC borne by subscribers, formula specified above shall be recalculated based upon the current number of residences. The difference between the newly calculated required CIAC and the actual CIAC paid shall be refunded in equal amounts to the original subscribers who paid the actual

CIAC, not to exceed the amount originally paid. In the event the original subscribers cannot be found the Grantee is not obligated to pay refunds to that subscriber.

- 3.11 CABLE SERVICE TO PUBLIC BUILDINGS. The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public.

The Franchising Authority shall take reasonable precautions to prevent any inappropriate use of the Grantee's Cable System or any loss or damage to Grantee's Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

- 3.12 PUBLIC ACCESS CHANNEL. Grantee will continue to provide the Franchising Authority throughout the term of this franchise one (1) Educational Governmental (EG) Access channel. This channel will be operated and maintained by the Franchising Authority.

An access channel is a channel made available to the Franchising Authority by the Grantee for the purpose of cablecasting non-commercial programming by the Franchising Authority administration and education institutions. Grantee agrees that it will comply with federal law regarding the exercise of editorial control over the EG Access programming undertaken in the Franchising Authority pursuant to the franchise agreement. The Franchise Authority agrees not to use the access channel to provide commercial or revenue-generating services or services that may compete, directly or indirectly with the services provided by the Grantee provided, however, that the Franchising Authority may cablecast acknowledgements of funding sources and the underwriting of programming cost.

- 3.13 EMERGENCY USE. If the Grantee provides an Emergency Alert System ("EAS") such EAS shall be operated in accordance with FCC regulations. The Franchising Authority shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.
- 3.14 REIMBURSEMENT OF COSTS. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed.

SECTION 4. REGULATION BY THE FRANCHISING AUTHORITY.

- 4.1 FRANCHISE FEE.

- A. The Grantee shall pay to the Franchising Authority a franchise fee of three percent (3%) of annual Gross Revenues (as defined in subsection 1.1 of this Franchise). In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due annually and payable within 90 days after the close of the preceding calendar year. Each payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation.
- B. Limitation on Franchise Fee Actions. The period of limitation for recovery by the Franchising Authority of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due to the Franchising Authority.

4.2 RATES AND CHARGES. The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.

4.3 RENEWAL OF FRANCHISE.

- A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the renewal provisions of federal law.
- B. In addition to the procedures set forth in the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the Franchise prior to expiration of its term.
- C. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of federal law the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations, subject to applicable laws regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.
- D. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.3 to be consistent with the express renewal provisions of the Cable Act.

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

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonable acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further

agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.5 TRANSFER OF FRANCHISE. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without prior written consent from the Franchising Authority, which consent will not be unreasonably withheld. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness.

SECTION 5. BOOKS AND RECORDS.

The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee and no more than once annually may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonable necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise, which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee shall provide the requested documents to the Franchising Authority at no cost to the Franchising Authority's representative to review the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

SECTION 6. INSURANCE AND INDEMNIFICATION.

6.1 INSURANCE REQUIREMENTS. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.

6.2 INDEMNIFICATION. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System in the Service Area provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

SECTION 7. ENFORCEMENT AND TERMINATION OF FRANCHISE.

- 7.1 NOTICE OF VIOLATION. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall discuss the matter with Grantee in accordance with "Open Door" requirements of Indiana law. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.
- 7.2 THE GRANTEE'S RIGHT TO CURE OR RESPOND. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (#) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.
- 7.3 PUBLIC HEARING. In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2 (C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.
- 7.4 ENFORCEMENT. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:
- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
 - B. Commence an action at law for monetary damages or seek other equitable relief; or
 - C. In the case of a substantial default of a materiel provision of the Franchise, seek to revoke the Franchise in accordance with subsection 7.5.
- 7.5 REVOCATION. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing.

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

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

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

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

SECTION 8. MISCELLANEOUS PROVISIONS.

- 8.1 **ACTIONS OF PARTIES.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.
- 8.2 **ENTIRE AGREEMENT.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise shall be mutually agreed to in writing by the parties.
- 8.3 **NOTICE.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, c) within five (5) business days after having been posted in the regular mail, or d) the next business day if sent by express mail or overnight air courier.

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

Town of North Manchester, Indiana
103 E. Main Street
North Manchester, IN 46962-1899

Attn: Dan Hannaford, Town Manager

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

Mediacom Indiana LLC
Attn: Bruce Gluckman, Vice President
Legal and Regulatory Affairs
100 Crystal Run Road
Middletown, NY 10941

With a copy to:

Mediacom Indiana LLC
P. O. Box 607
Jacksonville, IL 62650
Attn: Esther C. Viles
Government Relations Manager

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

- 8.4 **DESCRIPTIVE HEADINGS.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.
- 8.5 **SEVERABILITY.** If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.
- 8.6 **EFFECTIVE DATE.** The effective date of this Franchise is October 1, 2003, pursuant to the provisions of applicable law. This Franchise shall expire on October 1, 2010, or pursuant to Section 2.4 of the Franchise, on October 1, 2015, unless extended by the mutual agreement of the parties.

TITLE VI: RECREATION, CULTURE, COMMUNITY ACTIVITIES

CHAPTER III: ECONOMIC DEVELOPMENT BOND

ARTICLE I: OMEGA CABLE PROJECT

General Ordinance No. 6, 1975, enacted December 19, 1975, authorizing economic development bonds in the amount of \$180,000 for Omega of Indiana Cable Company project, is incorporated herein by reference, and two copies of same are on file in the office of the Clerk-Treasurer for public inspection.

ARTICLE II: OMEGA CABLE COMPANY PROJECT

General Ordinance #6, 1978, enacted November 1, 1978, authorizing economic development bonds in the amount of \$200,000 for Omega of Indiana Cable Company project is incorporated

herein by reference, and two copies of same are on file in the office of the Clerk-Treasurer for public inspection.

ARTICLE III: HI-GRADE EGG PRODUCERS PROJECT

General Ordinance No. 1, 1981, enacted July 15, 1981, authorizing economic development bonds in the amount of \$5,500,000 for Hi-Grade Egg Producers and Processors Project is incorporated herein by reference, and two copies of same are on file in the office of the Clerk-Treasurer for public inspection.

ARTICLE IV: SHELLER HOTEL, INC. PROJECT

Declaratory Resolution #4, 1985, enacted August 7, 1985, authorizing economic development bonds in the amount of \$750,000 for Sheller Hotel, Inc. Project is incorporated herein by reference, and two copies of same are on file in the office of the Clerk-Treasurer for public inspection.

ARTICLE V: NORTH MANCHESTER FOUNDRY, INC. PROJECT

Declaratory Resolution #2, 1986, enacted March 5, 1986, authorizing economic development bonds in the amount of \$1,500,000 for North Manchester Foundry, Inc. Project is incorporated herein by reference, and two copies of same are on file in the office of the Clerk-Treasurer for public inspection.

ARTICLE VI: CHURCH OF THE BRETHERN HOME, INC. PROJECT

Declaratory Resolution #11, 1988, enacted August 24, 1988, authorizing economic development bonds in the amount of \$4,000,000 for Church of the Brethren Home, Inc. Project is incorporated herein by reference, and two copies of same are on file in the office of the Clerk-Treasurer for public inspection.

ARTICLE VII: ESTELLE PEABODY MEMORIAL HOME PROJECT

Special Ordinance #5, 1990, enacted June 6, 1990, authorizing economic development bonds in the amount of \$800,000 for the Estelle Peabody Memorial Home Project is incorporated herein by reference, and two copies of same are on file in the office of the Clerk-Treasurer for public inspection.

ARTICLE VIII: ESTELLE PEABODY MEMORIAL HOME PROJECT

Special Ordinance #1, 1991, enacted June 5, 1991, authorizing economic development bonds in the amount of \$2,000,000 for the Estelle Peabody Memorial Home Project is incorporated herein by reference, and two copies of same are on file in the office of the Clerk-Treasurer for public inspection.

ARTICLE IX: EFTEN, INC. PROJECT

Special Ordinance #7, 1997, enacted August 18, 1997, authorizing economic development bonds not to exceed \$5,950,000 for Eften, Inc. Project is incorporated herein by reference, and two copies of same are on file in the office of the Clerk-Treasurer for public inspection.