

ORDINANCE NO. 2010-4

AN ORDINANCE OF THE TOWN OF SIGNAL MOUNTAIN, TENNESSEE, GRANTING TO THE ELECTRIC POWER BOARD OF CHATTANOOGA, AN INDEPENDENT BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE, ITS SUCCESSORS, LESSEES AND ASSIGNS, A FRANCHISE FOR THE TERM OF (10) YEARS, THE RIGHT, AUTHORITY, POWER, PRIVILEGE AND PERMISSION TO OPERATE A CABLE TELEVISION SYSTEM WITHIN THE TOWN OF SIGNAL MOUNTAIN.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SIGNAL MOUNTAIN, TENNESSEE, after having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, and because it desires to enter into this Franchise Ordinance with the Grantee for the construction, operation, and maintenance of a Cable System on the terms and conditions set forth herein., this ordinance is adopted as follows:

SECTION 1. Short Title. This Ordinance shall be known and may be cited as the "ELECTRIC POWER BOARD - Cable Television Company Franchise Ordinance."

SECTION 2. Definitions. For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, 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.

- (a) "Town" is the Town of Signal Mountain, Tennessee.
- (b) "Governing body" is the Council or other governing body of the Town of Signal Mountain, Tennessee.
- (c) "Cable television system" or "system" means a cable television system as defined in the Federal Communications Commission rules and regulations.
- (d) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (e) "Grantee" is the Electric Power Board of Chattanooga, an Independent Board of the City of Chattanooga, Tennessee, or anyone who succeeds it in accordance with the provisions of this Franchise.

(f) "Television" shall mean a system for transmission of audio signals and visual images by means of electrical impulses.

(g) "Gross Revenue" means the Cable Service revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium, and pay-per-view video fees, advertising and home shopping revenue, installation fees, and equipment rental fees. Gross Revenue shall not include: refundable deposits; investment income; advertising sales commissions; any tax, surcharge, governmental fee or assessment, including franchise fees, imposed or assessed by any governmental authority; revenue billed for but not actually received; revenue received by an affiliate or any other Person in exchange for supplying goods and services to Grantee; amounts attributable to refunds, rebates or discounts; amounts received from non-cable services such as digital voice services, information services, Internet access services or Internet advertising services; returned check fees; late fees or interest; revenue from the sale or rental of property; revenue from maintaining an inside wiring plan; and reimbursement of costs including, but not limited to, the reimbursements by programmers of marketing costs incurred for the promotion or introduction of video programming.

SECTION 3. Grant of Authority.

(a) There is hereby granted by the Town to the Grantee the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys and public ways now laid out or dedicated, and all extensions thereof, and additions thereto, in the Town, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the Town of a cable television system for the interception, sale and/or distribution of television and radio signals, except that the Town reserves the right to exclude those streets which should not be used for this purpose.

(b) The right to use and occupy said streets, alleys, and public ways for the purposes herein set forth shall not be exclusive.

SECTION 4. Compliance with Applicable Laws and Ordinances. The Grantee shall, like all other commercial entities doing business within the Town at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the Town.

SECTION 5. Territorial Area Involved. This Franchise relates to the present territorial limits of the Town and to any area henceforth added thereto during the term of this Franchise or any renewal or extension thereof.

SECTION 6. Liability and Indemnification.

(a) The Grantee shall pay and by its acceptance of this Franchise the Grantee specifically agrees that it will pay all damages and penalties which the Town may legally be required to pay as a result of granting this Franchise. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements and all other damages

arising out of the installation, operation, or maintenance of the cable television system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

(b) Subject to the substantive and procedural requirements of the Tennessee Governmental Tort Liability Act, T.C.A § 29-20-101, *et seq.*, the Grantee shall indemnify and hold harmless the Town at all times during the term of this Franchise from and against all claims for injury or damages to persons or property, both real and personal, caused by the construction, erection, operation, and maintenance of the system.

(c) The Grantee shall maintain, and by its acceptance of this Franchise specifically agrees that it will maintain throughout the term of this Franchise liability insurance insuring the Town and the Grantee with regard to all damages mentioned in sub-paragraph (a) above in the minimum amounts of:

One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000) for bodily injury or death to any two (2) or more persons resulting from one (1) occurrence; and

One Million Dollars (\$1,000,000.00) for property damages resulting from any one accident; and

\$500,000 for the infringement of copyrights; and \$250,000 for all other types of liability.

(d) The insurance policy obtained by the Grantee in compliance with this section shall name the Town as an additional insured and must be approved by the Town Manager and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the Town Manager during the term of this Franchise. Such approval shall not be delayed unduly.

(e) The Grantee shall pay and by its acceptance of this Franchise specifically agrees that it will pay all reasonable expenses incurred by the Town in defending itself with regard to third party claims for damages and penalties mentioned in subsection (a) above or shall provide the Town with such defense at Grantee's expense. Town shall cooperate fully with the Grantee in its defense. These expenses shall include all reasonable out-of-pocket expenses, such as attorneys' fees, and shall also include the reasonable value of any necessary services rendered by the Town Attorney or his assistants or any employees of the Town. Grantee shall not be obligated to pay any expenses incurred by the Town in any legal dispute or litigation with Grantee or with any applicant for a cable television franchise in the Town.

SECTION 7. Signal Quality Requirements. The Grantee will undertake to:

(a) Produce a picture, whether black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production television sets in good repair, and as good as required by the Federal Communication Commission;

(b) Transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems;

(c) Limit failures to a minimum by locating and correcting malfunctions promptly;

(d) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

In no event, however, shall the signal quality requirements imposed upon the Grantee hereunder exceed or vary in any material respect from the signal quality requirements imposed by applicable rules and regulations of the Federal Communications Commission.

SECTION 8. Operation and Maintenance of System.

(a) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions insofar as possible shall be preceded by notice and shall occur during periods of minimum use of the system.

(b) The Grantee shall maintain an office or agent in the Metropolitan Chattanooga area for purposes of resolving all complaints regarding cable television operations and handling requests for repairs or adjustments.

(c) The Town and the Grantee shall adopt reasonable procedures for the investigation and resolution of all complaints regarding cable television operations and for the handling of requests for repairs or adjustments.

(d) Notice of the procedures for reporting and resolving complaints and handling requests for repairs or adjustments shall be given to each subscriber at the time of initial subscription to the cable television system.

SECTION 9. Channel Capacity and Carriage of Signals. The Grantee shall provide its subscribers with a cable television system of seventy-eight (78) channels of capacity for video or other services.

SECTION 10. Basic Twelve Channel Service. Grantee shall offer to its subscribers within the Town a basic twelve channel service, and such service shall continue to be available within the Town so long as such service is provided to subscribers in the City of Chattanooga, Tennessee.

SECTION 11. Program Alteration. All programs of broadcasting stations carried by the Grantee shall be carried in their entirety as received, with announcements and advertisements and without additions.

SECTION 12. Service to Schools and Municipal Buildings. The Grantee shall provide installation and basic service to all public schools and municipal buildings upon request by the Town and at no cost to it or to the public school system; provided, however, that the cable shall

pass such schools or buildings and provided further that the Grantee's obligation to provide free service shall be limited to one (1) outlet at each such location. The Grantee is authorized to charge for additional receivers in accordance with its regular schedule of charges and for any unusual or extraordinary costs or expenses incurred by Grantee in providing installation or services under this Section 12.

SECTION 13. Emergency Use of Facilities. In the case of any emergency or disaster, the Grantee shall, upon request of the governing body of the Town, make available its facilities to the Town for emergency use during the emergency or disaster period.

SECTION 14. Safety Requirements.

(a) The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(b) The Grantee shall install and maintain its wires, cable, fixtures and other equipment in accordance with the requirements of the National Electrical Safety Code and the National Electrical Code in such manner that they will not interfere with any installations of the Town or of a public utility serving the Town.

(c) All structures and all lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the Town, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

(d) The Grantee shall have sufficient employees to provide safe, adequate, and prompt service for its facilities.

SECTION 15. New Developments. It shall be the policy of the Town liberally to amend this Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently or economically to serve its customers.

SECTION 16. Conditions on Street Occupancy.

(a) All transmission and distribution structures, lines, and equipment erected by the Grantee within the Town shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places.

(b) In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in a manner approved by the Town Manager, replace and restore such street, sidewalk, alley, public way, or paved area to as good a condition as before the work involving such disturbance was done.

(c) If at any time during the term of this Franchise the Town shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Grantee, upon notice by the Town, shall within fifteen (15) working days remove, adjust or relocate its poles, wires, cables, underground conduits, manholes, and other fixtures, as may be necessary, at its own expense.

(d) Any poles or other fixtures placed in any public way by the licensee shall be placed in such manner as not to interfere with the usual travel on such public way or with other utilities.

(e) The Grantee shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expense of temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(f) The Grantee shall have the authority to trim trees upon and overhanging streets, alleys and sidewalks of the Town in such manner so as not to impair the natural beauty of said Town and so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

(g) In all sections of the Town where the cables, wires or other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so without undue or prohibitive cost.

SECTION 17. Preferential or Discriminatory Practices Prohibited. The Grantee shall not, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage, except that Grantee may conduct sales promotion campaigns, may grant reduced installation charges during such campaigns and may act as necessary to address competition and to promote good will and promote sales the Grantee may grant concessions on service charges to persons engaged in television sales or repair business.

SECTION 18. Removal of Facilities Upon Request. Upon termination of service to any subscriber, the Grantee shall promptly remove its dropline from the premises of such subscriber upon the subscriber's request and at the subscriber's expense.

SECTION 19. Transfer of Franchise. The Grantee shall not transfer this Franchise to another person without prior approval of the Town by ordinance.

A mortgage, lien, deed to secure debt, deed of trust, security interest, or other encumbrances of said Franchise as a part of acquiring, constructing, equipping or maintaining the cable television system shall not be considered a violation of this Section; and any such creditor shall be entitled to all the rights and remedies granted to the Grantee under this Franchise, including without limitation, upon a bona fide default of the Grantee, a foreclosure or voluntary conveyance of such secured creditor or secured creditor's assignees and any

subsequent sale or other disposition of the security referred to in any such document without the consent or approval of the Town.

SECTION 20. Transactions Affecting Ownership of Facilities.

(a) In order that the Town may be aware of financial transactions affecting the ownership of the system, the Grantee shall notify the Town of the execution by Grantee of any security agreement concerning any of the facilities and property, real or personal, of the Grantee located in the Town.

(b) Except as provided for in Section 19 and in subsection (a) of this Section 20, the Grantee shall at all times be the full and complete owner of all facilities and property, real and personal, of the cable television system.

SECTION 21. Change of Control of Grantee. Prior approval of the governing body of the Town shall be required where ownership or control of more than 50% of the right to control of Grantee is proposed to be acquired by a person or group of persons acting in concert, none of whom already owns or controls 50% or more of such right of control, singularly or collectively, directly or indirectly. By its acceptance of this Franchise the Grantee specifically grants and agrees that any such acquisition occurring without prior approval of the governing body of the Town shall constitute a violation of this Franchise by the Grantee.

SECTION 22. Filings and Communications with Regulatory Agencies. Upon the specific written request of the Town, copies of any petition, application and communication submitted by the Grantee to the Federal Communications Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the operations of the cable television system authorized pursuant to this Franchise shall be furnished to the official designated by the Town.

SECTION 23. Town Rights in Franchise.

(a) The Town shall have the right to inspect such documents and records of the Grantee which specifically relate to measuring compliance with this Franchise as federal law permits; and provided, further, that under no circumstances shall the Town have the right to remove any of the Grantee's documents and records from the Grantee's premises without the prior consent of the Grantee, but shall have the right to copy such documents and records.

(b) Upon the cancellation of the Franchise under Section 26 hereof, the Town shall have the right to require the Grantee to sell or to remove at its own expense all portions of the cable television system from all public ways within the Town.

SECTION 24. Maps and Plats. Upon the specific written request of the Town Manager, the Grantee shall make available for review true and accurate maps or plats of the cable television system within the Town.

SECTION 25. Payment to Town. In accordance with the rules and regulations of the Federal Communications Commission, the Grantee shall pay to the Town as a franchise fee during the existence of the Franchise or any renewal or extension thereof the following:

During each calendar year of this Franchise the Grantee shall pay a franchise fee to the Town of five percent (5%) of the Gross Revenue, as defined in Section 2.(g).

The aforesaid payments shall be made on a quarterly basis within forty-five (45) days after the close of each calendar quarter and shall be accompanied at the end of each calendar year by a certified statement of gross annual revenue derived by the Grantee from sources attributable to the operations of the Grantee within the Town. Said statement shall be certified by the Controller of the Grantee. The Town shall have the right to review the records of the Grantee reflecting the income received on which payment to the Town is based.

SECTION 26. Revocation of Franchise.

(a) In addition to all other rights and powers pertaining to the Town by virtue of this Franchise or otherwise, the Town reserves the right to terminate and cancel this Franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:

(1) Violates any material provisions of this Franchise and fails to correct such violation within a period of ninety (90) days after written notice from the Town to correct such default or noncompliance;

(2) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;

(3) Attempts to dispose of any of the facilities or properties of its cable television business in violation of this Franchise; or

(4) Attempts to evade any of the material provisions of this Franchise or practices any material fraud or deceit upon the Town.

(b) Such termination and cancellation shall be by ordinance duly adopted after thirty (30) days notice to the Grantee and shall in no way affect any of the Town's rights under this Franchise or any provision of the law. Before this Franchise may be terminated and cancelled under this Section, the Grantee must be provided with an opportunity to be heard before the governing body of the Town and to cure or correct any default, violation, noncompliance or other event causing revocation hereunder.

SECTION 27. Town's Right to Intervention. The Grantee agrees not to oppose intervention by the Town at the Town's expense in any suit or proceeding to which the Grantee is a party.

SECTION 28. Further Agreement by Grantee. The Grantee agrees to abide by all provisions of this Franchise.

SECTION 29. Duration and Acceptance of Franchise.

(a) This Franchise and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue

in force and effect for a period of ten (10) years from the effective date of this Franchise Ordinance, and may be renewed thereafter by the Town upon application of the Grantee in accordance with the then-applicable law, provided that within thirty (30) days after the date of the passage of this ordinance the Grantee shall file with the Town Manager its unconditional acceptance of this Franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the Grantee before a notary public or other officer authorized by law to administer oaths.

(b) Should the Grantee fail to comply with subsection (a) above, it shall acquire no rights, privileges, or authority under this Franchise whatever.

(c) Notwithstanding any other provision in this Franchise, in the event any change to local, state or federal law occurring during the term of this Franchise eliminates the requirement for any persons desiring to construct, operate or maintain a cable system in the Town to obtain a Franchise from the Town for the construction, operation or maintenance of a cable system, then, at Franchisee's sole option, Franchisee shall have the right immediately to terminate this Franchise. If Franchisee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing Franchise agreements to continue until the date of expiration provided in any existing Franchise. Furthermore, in the event any change to local, state or federal law occurring during the term of this Franchise materially alters the regime of cable franchising applicable to any persons desiring to construct, operate or maintain a cable system in the Town in a way that reduces the regulatory or economic burdens for such person, or if the Town grants a franchise to another cable system operator on more favorable regulatory or economic terms, then, at Franchisee's request, the Town shall agree with Franchisee to amend this Franchise to similarly reduce the regulatory or economic burdens on Franchisee. It is the intent of this section that, at Franchisee's election, Franchisee shall be subject to no more burdensome regulation or provided lesser benefits under this Franchise than any other persons that might construct, operate, or maintain a cable system in the Town.

SECTION 30. Erection, Removal and Common User of Poles. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the Town Manager with regard to location, height, type and any other pertinent aspect, which approval shall not be unreasonably withheld. However, no location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the governing body reasonably determines that the public convenience would be enhanced thereby.

SECTION 31. Rates. If permitted by federal statute at any time during the term of this Franchise, the Town shall have the option of electing affirmatively to exercise any rate-making authority granted. In the event of such election, Grantee shall be entitled to receive just and reasonable rates, and Grantee shall be entitled to an evidentiary hearing before the governing body of the Town and the opportunity to present witnesses and evidence in support of any rates proposed by Grantee. In the event Grantee disagrees with any rates established by the governing body of the Town after such hearing, an appeal may be made to any court of competent jurisdiction.

SECTION 32. Subscriber Refunds on Termination of Service. If any subscriber of the Grantee terminates service because of the Grantee's failure to render service to such subscriber of a type and quality provided for herein within thirty (30) days from tap-in, the Grantee shall refund to such subscriber the tap-in charge paid by him.

SECTION 33- Educational and Governmental Access

34.1. Use of Channel Position. Use of one (1) Channel Position for the purpose of showing educational and governmental access programming ("EG Access") shall be provided by Grantee to the Franchising Authority in accordance with the Cable Act, Section 611, and as further set forth below. "Channel Position" means a number designation on the Grantee's channel lineup regardless of the transmission format (analog or digital) which shall be at the sole discretion of Grantee.

34.1.1. Grantee does not relinquish its ownership of, or ultimate right of control over, a Channel Position by designating it for EG Access use. The Franchising Authority, education access user or governmental access user acquires no property or other interest by virtue of the use of a Channel Position so designated.

34.1.2. Grantee shall not exercise editorial control over any EG Access use of the Channel Position, except Grantee may refuse to transmit any EG Access program or portion of an EG Access program that contains obscenity, indecency or nudity as provided by applicable law. The Franchising Authority shall be responsible for developing, implementing, interpreting, and enforcing rules for EG Access use.

34.2. EG Access. The Channel Position designated for EG Access programming shall be for a) noncommercial use by the Franchising Authority for the purpose of showing local government at work, and b) noncommercial use by educational institutions such as public or private schools (but not "home schools"), community colleges, and universities. Unused time on the Channel Position may be utilized by Grantee subject to the provisions for "fallow time" below.

34.3. Grantee Use of Fallow Time. Because a blank or under-utilized EG Access Channel Position is not in the public interest, in the event the Franchising Authority or other EG Access user elects not to fully program the Channel Position with EG Access programming, Grantee may program unused time on such Channel Position subject to reclamation by the Franchising Authority upon no less than sixty (60) days notice.

34.4. Indemnification. The Franchising Authority shall indemnify Grantee for any liability, loss or damage it may suffer due to violation of the intellectual property rights of third parties or arising out of the content of programming shown on the Channel Position designated for EG Access programming and from claims arising out of the Franchising Authority's rules for the administration of the EG Access Channel Position and programming.

SECTION 35. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of

competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 36. Force Majeure. Any and all obligations of Grantee hereunder shall be waived or delayed to the extent that Grantee is unable to carry out the same due to labor strikes, picketing, lockouts, fires, ice, floods, explosion or other casualties or accidents, or to inability to obtain necessary supplies or materials or satisfactory substitutes by principal manufacturer of quality equipment used in installation and/or construction of the system, or to Acts of God or National Defense of this Country, or to the delay by the utility companies of clearance of space for the Grantee's cable, or to any other cause, happening, event or occurrence (whether or not of the same general character as those specifically enumerated) provided Grantee has not acted negligently and such cause, happening, event or occurrence is beyond Grantee's reasonable control.

SECTION 37. Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 38. Federal Communications Commission – Cable Television Customer Service Obligations. Grantee shall be subject to and shall meet the customer service standards contained in Title 47 of the Code of Federal Regulations, Part 76, Subpart H, Section 76.309 which are hereby incorporated by reference as part of this Agreement.

SECTION 39. Amendment. This Agreement can be amended by mutual agreement of the parties.

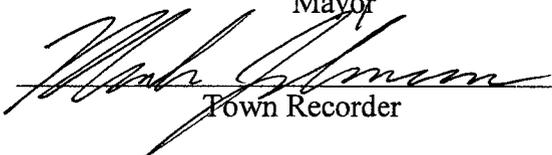
SECTION 40. Effective Date. This ordinance shall take effect from and after its date of passage, the public welfare of the Town requiring it.

Passed First Reading 12/14, 2009.

Passed Second Reading 1/29, 2010.



Mayor



Town Recorder