

## LICENSING AGREEMENT

between

\_\_\_\_\_ and \_\_\_\_\_

The parties ("Parties") to this agreement ("Agreement"), dated the \_\_\_\_\_ day of \_\_\_\_\_, ("Execution Date"). \_\_\_\_\_ ("Licensor"), a \_\_\_\_\_, duly authorized to do business in the State of Texas, and \_\_\_\_\_ ("Licensee").

### RECITALS

Licensor is a municipality owned utility engaged in the business of distribution of electric energy. In connection with the distribution of electric energy, Licensor utilizes utility poles to support its distribution lines ("Licensor Poles").

Licensee owns and operates one or more community antenna television systems. Licensee desires to attach to certain Licensor Poles cable and other equipment owned by Licensee and utilized for the distribution of cable signals to its customers.

ACCORDINGLY, in consideration of the benefits to be realized by the Parties as a result of this Agreement, the specific consideration set forth in this Agreement, and the mutual promises of the Parties contained in this Agreement, the Parties agree that the following terms and conditions shall govern Licensee's use of Licensor Poles located within the area shown on the Exhibit A, in or near \_\_\_\_\_, County of \_\_\_\_\_, State of Texas and in any other areas indicated on Exhibit A.

### ARTICLE I. GENERAL USE AGREEMENT

#### Section 1.1 Prior Use and Future Use

Licensee's use of Licensor Poles to which Licensee has equipment attached, if any, on Execution Date shall, subsequent to Execution Date, be governed by this Agreement, although a new application for use of these Licensor Poles need not be filed with Licensor by Licensee. For all further pole attachments or alteration of any existing or future pole attachments to Licensor Poles, Licensee must file an application with Licensor in the form of Exhibit B ("Application") and receive written permission from Licensor prior to alteration of existing attachments or making new attachments.

#### Section 1.2 Equipment

Licensee's use of Licensor Poles shall be confined to supporting cables and other equipment ("Equipment")

- (i) attached to Licensor Poles pursuant to prior agreements between the Parties or
- (ii) concerning which Licensee has received prior written permission from Licensor to attach, pursuant to this Agreement.

Licensee's Equipment on Licensor Poles shall be used only for the purpose of distribution and dissemination of broadband telecommunications services.

#### Section 1.3 Other Use

Licensee acknowledges that this Agreement is subject to the rights of any parties (other than Licensee) to prior agreements relating to use of Licensor Poles. Licensee shall construct, maintain, and operate Equipment on Licensor Poles so as not to interfere or conflict with the use of Licensor Poles by Licensor and others using Licensor Poles.

#### Section 1.4 Damage

Licensee shall notify Licensor of any damage to Licensor Poles or any Licensor equipment, as soon as possible after discovery of the damage. If the damage was caused by Licensee, Licensee shall reimburse Licensor for expenses incurred by Licensor in making repairs.

### Section 1.5 Safety Regulations

Licensee shall, at Licensee's sole expense, construct, maintain, and operate its Equipment in conformity with all laws, regulations, orders, and decrees of all lawfully constituted public authorities pertaining to pole line construction, the National Electrical Safety Code as it may be revised and supplemented from time to time, and all applicable Licensor rules, regulations, policies, and construction specifications.

### Section 1.6 Removal

Licensee may at any time remove Licensee's Equipment from Licensor Poles after ten (10) days written notice to Licensor in the form of Exhibit C. Such removal shall terminate Licensee's right to use any Licensor Poles from which Licensee's Equipment is removed. No refund of any rentals already paid will be due on account of such removal.

### Section 1.7 Permits, Easements, and Licenses

Licensee shall submit to Licensor evidence, satisfactory to Licensor, of Licensee's authority to erect and maintain Licensee's facilities within public streets, highways and other thoroughfares and shall secure any necessary consent from state or municipal authorities and from the owners of the property where Licensor's Poles and lines are located to construct and maintain facilities at the locations of Licensor's Poles and lines which Licensee desires to use. It shall be Licensee's sole responsibility to obtain all such permits, easements, and licenses necessary for the lawful exercise of the rights granted Licensee by this Agreement.

### Section 1.8 Taxes and Fees

Licensee shall report, pay, and discharge when due, all license and permit fees, assessments, sales, use, property, and gross receipts taxes arising out of the use by Licensee of Licensor Poles or the exercise by Licensee of its rights granted by this Agreement, and all other taxes, fees, and governmental charges similar or dissimilar to the foregoing, together with any penalties or interest thereon, imposed by any state, federal, or local government or any agency or department thereof: upon the Equipment, the use of the Equipment, or the payment to Licensor of rental for the right to place the Equipment on Licensor Poles.

## ARTICLE II. INSURANCE, INDEMNITY, AND LIABILITY

### Section 2.1 Insurance

During the Term, Licensee shall:

- (a) indemnify, protect and save harmless and insure Licensor from and against any and all claims and demands for damages to property and injury or death to persons, including payments made under any Worker's Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused by the erection, maintenance, presence, use or removal of said attachments or by the proximity of the respective cables, wires, apparatuses, and appliances of the parties hereto, or by any act of Licensee or in the vicinity of Licensor's Poles. Licensee shall carry insurance, in such form and in such companies as are satisfactory to Licensor, to protect the parties hereto from and against any and all claims, demands, actions, judgments, costs, expenses, and liabilities of every name and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury, or damage. General liability insurance shall be in the amounts of at least \$2,000,000.00 bodily injury for each person for each occurrence and property damage of at least \$250,000.00 for each occurrence. Motor vehicle liability insurance shall be in the amount of \$250,000.00 for each person for bodily injury and \$500,000.00 each occurrence for bodily injury and \$250,000.00 for property damage. Licensee shall also carry such insurance as will protect it from all claims under any Worker's Compensation Laws in effect that may be applicable to it. A combination of primary and umbrella policies may be used to satisfy the limits.
- (b) provide Contractual Liability insurance coverage under all of the insurance coverage described above in Section 2.1 for all liability assumed by Licensee under this Agreement subject to industry standard ISO policy form CG 00 01 or equivalent for work performed for the benefit of Licensee under this agreement and the

removal of Licensee's attachments upon termination of this agreement, with Licensors named as an additional insured in the coverage described above in Section 2.1 (a) above; and:

- (c) provide to Licensors, at the time this Agreement is signed, and during the term of this agreement, certificates of insurance from an insurance carrier reasonably acceptable to Licensors, certifying that:
  - (i) Licensee has the insurance coverage described in this Section 2.1; and
  - (ii) the insurance coverage so described may not be cancelled without prior written notice to Licensors as per policy terms and conditions.

#### Section 2.2 Indemnity

Licensee shall indemnify and hold harmless Licensors against and from all claims, demands, causes of action, damages, costs, or liability at law or in equity, of every kind and nature whatsoever, directly or indirectly caused by:

- (a) the construction, erection, placement, operation, maintenance, replacement, removal, or use of Licensee's Equipment on Licensors Poles, or
- (b) any occurrence occasioned, or claimed to have been occasioned, by any action of Licensors causing any interruption, discontinuance, or interference with Licensee's service to any of its subscribers or interference with Licensee's Equipment. Licensee shall pay any judgment or decree which may be rendered against Licensors, its successors or assigns, in any such suit, action, or other legal proceeding and shall reimburse Licensors for all legal expenses incurred in connection with these legal proceedings.

#### Section 2.3 Liability Continues

Termination of this Agreement, in whole or in part, shall not release Licensee from liability under this Agreement, which arises out of any claim that may be accruing or may have accrued at the time of termination or partial termination of this Agreement.

### ARTICLE III. RIGHTS OF LICENSORS

#### Section 3.1 Removal or Rearrangement

Licensors may require Licensee, upon thirty (30) days' notice to Licensee, if, in Licensors' judgment, Licensee's equipment interferes with Licensors' operations or Licensors' use of Licensors poles or Licensors equipment, to remove, rearrange, relocate, replace or renew Licensee's facilities placed on Licensors Poles and transfer them to substituted, relocated or additional poles, and perform any other work in connection with said facilities that may be required by Licensors at Licensee's expense; provided, however, that in cases of emergency, Licensors may arrange to relocate, replace or renew the facilities placed on said poles by Licensee, transfer them to substituted poles or perform any other work in connection with said facilities that may be required in the maintenance, replacement, removal or relocation of said poles, the facilities thereon or which may be placed thereon, as well as for the service needs of Licensors, and Licensee shall, on demand, reimburse Licensors for the reasonable expense thereby incurred.

#### Section 3.2 Reservation of Right

Licensors reserves the right to maintain Licensors Poles and operate its facilities in a manner that will best enable it to fulfill its own service requirements. If Licensors determines that a particular pole or poles are no longer necessary for service to Licensors customers, upon thirty (30) days' notice to Licensee, Licensors may remove that pole or poles without any liability to Licensee for this removal.

### ARTICLE IV. PAYMENT

#### Section 4.1 Rate

Licensee shall pay to Licensors, for attachments made to Licensors Poles under this agreement, annual rental at the rate of \_\_\_\_\_ per pole, per year, through \_\_\_\_\_. The rental rate shall be \$12.00 per pole, per year and shall be

reviewed and may be revised by Licensor at each subsequent 12-month period thereafter.

#### Section 4.2 Payment

Rent payable under this Agreement shall be payable annually in advance on or before the first legal business day in first legal business day in August each year during the term. Rental payments shall be based upon the number of attachments by Licensee to Licensor Poles as determined by Licensor on the last day of June respectively, preceding payment date. Notice of amounts due Licensor on each payment date shall be supplied to Licensee at least ten (10) days prior to the due date of each such payment.

#### Section 4.3 Late Charge

In the event the rental is not paid on the due dates specified in Section 4.2, a late charge of one percent (1%) of the total due will be added to the rental payment and, if not paid within thirty (30) days of the due date, this Agreement will be deemed terminated pursuant to the provisions of Article VI hereof.

#### Section 4.4 Interest

After termination, any sums due shall bear interest from accrual at the highest rate permitted by applicable law.

### ARTICLE V. TERM

#### Section 5.1 Term

This Agreement shall begin on Execution Date and continue in effect until terminated pursuant to the terms and conditions of this Agreement. At the expiration of four (4) years and six (6) months after Execution Date, either Party may terminate this Agreement for any reason by giving six (6) months notice to the other Party. When terminated, Licensee shall remove its Equipment from Licensor Poles within sixty (60) days from the date of such termination. During the period of removal, Licensee shall continue to make rental payments according to Article IV until all Equipment has been removed.

### ARTICLE VI. DEFAULT

#### Section 6.1 Default

If Licensee should fail to comply with any of the terms and conditions of this Agreement, and such failure shall continue for thirty (30) days after receipt of written notice of such failure, Licensor may by written notice to Licensee, terminate this Agreement and Licensee shall remove its Equipment from the Licensor Poles to which terminations applies within sixty (60) days of notification.

#### Section 6.2 Licensor May Do Work

Licensor may elect to remove Licensee's Equipment or do any other work required because of Licensee's default under this Agreement, at Licensee's sole risk and expense, and Licensee, on demand, will reimburse Licensor for the entire expense incurred. Except for gross negligence, Licensor shall not be responsible for damage to Licensee's Equipment.

### ARTICLE VII. MISCELLANEOUS

#### Section 7.1 Previous Agreements

This Agreement supersedes any previous agreements between Licensor and Licensee relating to the use of Licensor Poles in the area covered by this Agreement except that Licensee shall not be relieved of any responsibility for payments due Licensor under previous agreements for use of Licensor Poles prior to Execution Date nor any liability for acts or omissions of Licensee, part or all of which took place prior to Execution Date.

#### Section 7.2 License Only

The right of Licensee to use Licensor Poles, granted by this Agreement, shall not create any ownership or property right in Licensee. Licensee's rights are in the nature of a license only.

### Section 7.3 Assignment

This Agreement may not be assigned by Licensee without prior written consent of Licensor. Any attempted assignment without such written consent shall be void and constitute a termination of the term hereof the same as if this agreement were terminated under Article VI hereof.

### Section 7.4 Attorney Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret any of the provisions of this Agreement, the prevailing Party shall be entitled to recover its costs of suit and reasonable attorney's fees, which (a) shall be payable only in the event such action is prosecuted to final judgment, (b) may be set by the Court in the trial of such action or may be enforced in a separate action for that purpose, and (c) shall be in addition to any other relief which may be awarded.

### Section 7.5 Failure to Enforce Not Waiver

Failure on the part of Licensor to enforce any provision of this Agreement shall not be construed as a general waiver or relinquishment on its part of any provision of this Agreement.

### Section 7.6 Notice

Except as otherwise specifically provided in this Agreement, any notice to be given by either Party shall be in writing and shall be sufficient if personally delivered or sent certified mail or via Fedex or UPS, return receipt requested, postage prepaid, to the following addresses:

For Licensor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any notice shall be deemed delivered on the date mailed in the manner set out above. The designation or address of the Party to be notified may be changed at any time by delivery of notice of that change to the other Party.

### Section 7.7 Severability

If any of the terms or provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, in any respect, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

### Section 7.8 References

All references in this Agreement to a given Article, Section, or Exhibit refer to an Article, Section, or Exhibit of or to this Agreement.

### Section 7.9 Captions

The captions preceding the text of each Article and Section of this Agreement are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

### Section 7.10 Entire Agreement

This Agreement contains the entire Agreement of the parties with respect to the matters covered by this Agreement. No other agreement, statement, or promise made by any Party, or to any employee, officer, or agent of any Party, which is not contained in this Agreement shall be binding or valid.

### Section 7.11 Successors and Assigns

Subject to the provisions of Section 7.3, this Agreement shall be binding upon, and shall inure to the benefit of, the heirs, successors, assigns, and legal representatives of the Parties.

Section 7.12 Venue

This agreement and all the terms, conditions and provisions hereof, and all of the obligations imposed upon each of the parties hereto, is hereby specifically made performable in \_\_\_\_\_ County, Texas.

LICENSOR

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LICENSEE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Exhibit "A"  
to Licensing Agreement  
between  
Licensor  
and  
Licensee

ATTACH MAP AND/OR PLATS SHOWING AREA TO WHICH THE LICENSING  
AGREEMENT APPLIES AND GPS LIST OF ALL POLES USED.

Exhibit "B"  
to Licensing Agreement  
between  
Licensor  
and  
Licensee

APPLICATION FOR POLE ATTACHMENTS

According to the terms and conditions of the Licensing Agreement ("License") dated \_\_\_\_\_, 20\_\_ between Licensor ("Licensor"), and \_\_\_\_\_ ("Licensee"), Licensee submits this Application to Licensor requesting permission to attach the equipment and/or cable described in Exhibit 1 to this Application to the Licensor Poles described in Exhibit 1.

(Exhibit 1 should include the location and number of Licensor Poles Licensee desires to use, a complete description of all items Licensee desires to attach to Licensor Poles, the proposed location of all items to be attached, and proposes dates of attachment.)

By signing and returning a copy of this Application to Licensee, Licensor grants Licensee permission to make the attachments described in Exhibit 1 to this Application (as they may be modified by Licensor and Licensee)

- (i) subject to the terms of the License,
- (ii) subject to Licensee's approval of any changes described in the following paragraph

Licensee and Licensor acknowledge that certain changes may have to be made to Licensor Poles by Licensor to accommodate Licensee's cables and/or equipment. The approval granted by Licensor in the above Paragraph is subject to Licensee approving any changes on Licensor Poles required by Licensor, which are to be made at Licensee's sole risk and cost.

LICENSOR

By: \_\_\_\_\_  
Title: \_\_\_\_\_

LICENSEE

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Changes Approved  
Licensee

By: \_\_\_\_\_

EXHIBIT "C"  
to Licensing Agreement  
between  
Licensor  
And  
Licensee

NOTICE OF REMOVAL OF EQUIPMENT

According to the terms and conditions of the Licensing Agreement ("License") dated \_\_\_\_\_, 20\_\_ between Licensor ("Licensor"), and \_\_\_\_\_ ("Licensee"), Licensee submits this Notice of Removal of Equipment to Licensor notifying Licensor that it intends to remove certain attachments described in Exhibit 1 to this notice from certain of the Licensor Poles described in Exhibit 1.

(Exhibit 1 should include the location and number of Licensor Poles from which Licensee intends to remove equipment, a complete description of all items Licensee desires to remove from Licensor Poles, and proposed dates of removal.)

Licensee

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Removal verified \_\_\_\_\_, 20\_\_

LICENSOR

By: \_\_\_\_\_