ORDINANCE NO. 2005-12

BE IT ENACTED IN THE CITY COUNCIL OF THE CITY OF MULBERRY, COUNTY OF CRAWFORD, STATE OF ARKANSAS, AN ORDINANCE TO BE ENTITLED:

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO PEAK CABLEVISION, LLC, DOING BUSINESS AS COX COMMUNICATIONS (COX), ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM FOR THE PURPOSE OF TRANSMISSION OF CABLE SERVICES WITHIN CERTAIN AREAS OF THE CITY OF MULBERRY, ARKANSAS; TO USE AND OCCUPY THE STREETS, ALLEYS, PUBLIC RIGHTS OF WAY, EASEMENTS DEDICATED FOR COMPATIBLE PURPOSES, AND OTHER PUBLIC PLACES OF SAID CITY FOR SUCH PURPOSES; AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE, PROVIDING THE CITY REGULATION AND USE OF THE CABLE SYSTEM, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF MULBERRY, CRAWFORD COUNTY, ARKANSAS:

SECTION 1. The Mayor is hereby authorized to enter the attached Franchise Agreement with Peak Cablevision, LLC, doing business as Cox Communications (Cox), (the "Agreement").

SECTION 2. The Agreement is incorporated by reference herein as if set out word for word.

SECTION 3. There is hereby found and declared to be an immediate need for the continuance and maintenance of a cable system which will have a favorable impact on the residents of the City of Mulberry ("City") living within the Franchise Area described in the Agreement and will otherwise benefit the public health, safety and welfare of the City and the residents thereof, and the taking of the action authorized and hereby is immediately necessary for the accomplishing of these public benefits and purposes. It is, therefore, declared that an emergency exists and this ordinance being necessary for the immediate preservation of the public peace, health, and safety shall be in force and effect immediately upon and after its passage and publication.

SECTION 4. This ordinance shall take effect and be in force from and after its passage, approval, and publication.

PASSED AND APPROVED THIS 20th DAY OF DECEMBER, 2005.

APPROVED: Sally Faller
Mayor

ATTEST: Jenny Dial

FRANCHISE AGREEMENT

This Franchise Agreement (this "Franchise") is between City of Mulberry, hereinafter referred to as "Franchising Authority," and Peak Cablevision, LLC d/b/a/ Cox Communications (Cox), hereinafter referred to as "Grantee."

The Franchising Authority, having determined 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 Agreement 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. The words "shall" and "will" are mandatory, and the word "may" is permissive.

A. "Basic Cable" means 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 by the Cable Communications Policy Act of 1984, by the Cable Television Consumer Protection and Competition Act of 1992, and by the Telecommunications Act of 1996, and as the same may be further amended from time to time.

C. "Cable Services" means (A) the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

D. "Cable System" means 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 a community, 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 Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in transmission of video programming directly to Subscribers unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of title VI of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility system.

E. "FCC" means the Federal Communications Commission, or successor governmental entity thereto.

F. "Franchise" means the initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 626 of the Cable Act), issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction and operation of the Cable System.

G. "Franchising Authority" means the City of Mulberry or the lawful successor, transferee, or assignee thereof.

H. "Grantee" means Peak Cablevision, LLC d/b/a Cox Communications (Cox), or the lawful successor, transferee, or assignee thereof.

I. "Gross Revenues" mean any subscriber revenues received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area. Gross Revenues shall be calculated and reported based on generally accepted accounting principles (GAAP). Gross Revenues shall not include: (i) any fees or taxes which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency and which are collected by the Grantee on behalf of such governmental unit or agency, including without limitation the franchise fee required by Section 4.1 hereof; (ii) any tax, fee, or assessment of any kind imposed by the Franchising Authority or other governmental entity on a cable operator, or Subscriber, or both, solely because of their status as such, including a tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or Subscribers); (iii) any other special tax, assessment, or fee such as a business, occupation, and entertainment tax; (iv) any fee for the recovery of costs incurred to collect late payments for Cable Services; and (v) net unrecovered bad debt.

J. "Person" means an individual, partnership, association, joint stock company, trust, corporation, limited liability company or governmental entity.

K. "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 and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing, operating, repairing and maintaining the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, power supplies, network reliability units and other property as may be necessary or pertinent to the Cable System.

L. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Section 3.8.

M. "Subscriber" means a Person who lawfully receives Cable Services 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 and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, power supplies, network reliability units and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.

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, this Franchise shall control.

2.3 Equal Protection. The right to use and occupy the Franchising Authority's Public Ways for the purpose herein provided shall not be exclusive; provided, however, that no Person shall enter into the Franchising Authority's Public Ways for the purpose of constructing or operating a Cable System, or for the purpose of providing Cable Service or video programming service to any part of the Service Area, including by means of an "open video system" (as such term is defined in the Cable Act), without first obtaining a Franchise, permit, license, authorization or other agreement from the Franchising Authority. In the event the Franchising Authority authorizes or permits any Person other than the Grantee to enter into the Franchising Authority's Public Ways for the purpose of constructing or operating a Cable System, or for the purpose of providing Cable Service or video programming service to any part of the Service Area, including by means of an "open video system" (as such term is defined in the Cable Act), the material provisions thereof shall be reasonably comparable to those contained herein, and the obligations imposed on the grantee thereunder shall be no less burdensome nor more favorable than the obligations imposed upon the Grantee hereunder, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

2.4 Term. The Franchise granted hereunder shall be for an initial term of five (5) years commencing on the effective date of the Franchise as set forth below, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

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, the Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 Relocation at Request of the Franchising Authority. Upon its receipt of reasonable advance written notice, not to be less than five (5) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, as necessary, 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.

If public funds are available to any Person using such Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall make application for such funds on behalf of the Grantee.

3.4 Relocation at Request of Third Party. The Grantee shall, on the request of any Person holding a lawful building moving permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from any Public Way, as necessary, any property of the Grantee, provided: (a) the 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 purposes of this Section, "reasonable advance written notice" shall be no less than ten (10) 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 applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Service Area.

3.7 Aerial and Underground Construction.

A. 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 all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, network reliability units, pedestals, or other related equipment.

B. Notwithstanding anything to the contrary contained in this Section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Franchise, the Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

C. The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned commercial/residential developments within the Service Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require as a condition of issuing any permit for open trenching to any utility or developer, that the utility or developer give the Grantee reasonable access to open trenches for deployment of cable facilities and written notice of the date of availability of trenches. Such notice must be received by the Grantee at least ten (10) business days prior to availability.

3.8 Required Extensions of Service. The Grantee agrees to provide Cable Service to all residences in the Service Area, subject to the density requirements specified in this Section. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in a contiguous unserved area where there are at least forty (40) residences within one (1) mile from the portion of the Grantee's trunk or distribution cable which is to be extended, the Grantee shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the applicable installation charge; provided that such extension is technically feasible, and will not adversely affect the operation, financial condition, or market development of the Cable System. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any newly-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. Grantee shall not be required to offer Cable Service to individual units of a multiple dwelling unit (MDU) facility within the Service Area unless the owner of the facility consents in writing to the following: (i) to Grantee's providing of Cable Service to individual units of the facility; (ii) to reasonable conditions and times for installation, maintenance, and inspection of the portion of the Cable System on the facility premises; (iii) to reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the Cable System; and (iv) to not demand or accept payment from Grantee for permitting Grantee to provide Cable Service to the facility and to not discriminate in rental charges, or otherwise, between tenants who receive Cable Service from the Grantee and those who do not.

3.9 Subscriber Charges for Extensions of Service. If a potential Subscriber resides in an area that does not meet the density requirements of Section 3.8 above, the Grantee shall only be required to extend the Cable System if the Subscribers in that area are willing to share the capital costs of extending the Cable System by making a capital contribution in aid of construction, including cost of material, labor, and easements. 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 mile of its trunk or distribution cable, and whose denominator equals 40. Subscribers who request service hereunder shall bear the remaining construction costs on a *pro rata* basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any applicable installation charges to extend the Cable System from the tap to the residence.

3.10 Service to Public Buildings. The Grantee shall, upon request, provide without charge to the Franchising Authority, one 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 to distribute or sell services in or throughout such buildings or for other 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 use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the 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 Section, including but not limited to, those arising from copyright liability. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds 125 cable feet, unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 125 cable feet. If additional outlets of Basic Cable are provided to such buildings, the building owner shall pay the usual installation and service fees associated therewith, including, but not limited to, labor and materials.

3.11 Emergency Use. The Grantee shall comply with the applicable rules and regulations of the FCC regarding emergency alert systems (47 C.F.R. Part 11). If the Grantee provides an Emergency Alert System ("EAS"), then 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 the Franchising Authority's use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

3.12 Discrimination Prohibited. Grantee shall not, because of age, race, creed, color, national origin, or sex, unlawfully (i) refuse to hire or employ, (ii) bar or discharge from employment, or (iii) discriminate against any person in terms, conditions or privileges of employment.

SECTION 4
Regulation by the Franchising Authority

4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to four percent (4%) of Gross Revenues (as defined in Section 1.1 of this Franchise) received by the Grantee from the operation of the Cable System to provide Cable Services on an annual basis. The franchise fee payment shall be due quarterly and payable within thirty (30) days after the close of the preceding calendar quarter. The franchise fee payable hereunder shall be paid and received in lieu of any tax, license, charge, fee or any other character of charge for use and

occupancy of the Public Ways. Each payment shall be accompanied by a brief report from a representative of the Grantee showing the basis for the computation.

B. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

4.2 Rates and Charges.

A. The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by applicable law.

B. The Grantee may charge a fee for the recovery of costs incurred to collect late payments for Cable Services if the following conditions have been met:

(1) The Subscriber's bill sets forth when the fee will be assessed;

(2) The fee is not assessed any earlier than the tenth (10^{th}) day after the due date as reflected on the Subscriber's bill; and

(3) The bill sets forth the amount of the fee.

Any fee imposed by the Grantee that does not exceed $5.00 in 2005 dollars (as adjusted annually for inflation based on the Consumer Price Index) shall be presumed reasonable to cover the costs associated with the delinquent payment. The assessment of a fee pursuant to this Section shall not be construed as a limitation on the Grantee's right to charge any other lawful fees or charges.

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 provisions of Section 626 of the Cable Act.

B. In addition to the procedures set forth in said Section 626(a), 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 under Section 626(b) of 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 Section, 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, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations 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 Section to be consistent with the express provisions of Section 626 of the Cable Act.

4.4 Conditions of Sale.

A. 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 of 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.

B. 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 a reasonable opportunity, which shall be at least 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 such period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System that is reasonably 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 such 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 the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent 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. Within thirty (30) days after receiving the request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

SECTION 5
Compliance and Monitoring

5.1 Books and Records. The Grantee agrees that the Franchising Authority, upon thirty (30) days prior written notice to the Grantee, 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 necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section 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 may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view 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 that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate. 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 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 or any comparable state law or regulation regarding the protection of Subscriber privacy.

SECTION 6
Insurance and Indemnification

6.1 Insurance Requirements. The Grantee shall maintain in full force and effect, at no cost and expense to the Franchising Authority, 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 Section.

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 (i) any liability for damages that arise out of the Grantee's construction, operation, or maintenance of its Cable System and (ii) any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, or maintenance of its Cable System, including, but not limited to, reasonable attorneys' fees and costs, 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 Section. 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. The Grantee shall have the right to participate in or assume control of the defense of any such claim or action, including without limitation the right to select counsel. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility 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 informally discuss the matter with the Grantee. If these discussions do not lead to resolution of the issue, 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 Section 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 (30) 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 Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to Section 7.2(c) above, if it intends to continue its assertion of, and investigation into, the alleged default, then the Franchising Authority shall schedule a public hearing to investigate the default. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which notice shall specify the time, place and purpose of such hearing. At such hearing, the Grantee shall be provided a full and fair 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 Section 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 that 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 material provision of the Franchise, seek to revoke the Franchise in accordance with Section 7.5.

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". Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

7.5 Revocation.

A. Should the Franchising Authority seek to revoke the Franchise after complying with the procedures set forth in Sections 7.1 through 7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. 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.

B. At the designated hearing, the Franchising Authority shall give the Grantee a full and fair opportunity to state its position on the matter, including without limitation the right to introduce evidence, to require the production of evidence, to question witnesses, and to obtain a transcript of the proceeding, after which the Franchising Authority shall determine whether or not the Franchise shall be revoked.

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

D. The Grantee may appeal any determination of the Franchising Authority to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo". Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

7.6 Force Majeure.

A. 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 (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other circumstances reasonably beyond the Grantee's ability to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their own 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.

B. 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 so-called "technical" breach(es) or violation(s) of the Franchise, which shall include but are not

limited to the following: (i) in instances or for matters where a violation or a breach by the Grantee of the Franchise was good faith error that resulted in no or minimal negative impact on the customers within the Service Area; or (ii) where strict performance with the terms of the Franchise would result in practical difficulties and hardship to the Grantee that 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. 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 by certified, registered mail, postage prepaid, or (c) within five (5) business days after having been posted in first-class mail, postage prepaid.

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

City of Mulberry
P.O. Box 448
Mulberry, AR 72947
Attention: Mayor

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

Peak Cablevision, LLC
d/b/a Cox Communications
4901 South 48th Street
Springdale, AR 72762
Attention: Director of Government Affairs

with a copy to:

Cox Communications, Inc.
1400 Lake Hearn Drive
Atlanta, Georgia 30319
Attention: Legal Department

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in accordance with the provisions hereof.

8.4 Descriptive Headings. The captions to Sections 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, 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, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof.

8.6 Governing Law. The provisions of this Franchise shall be subject to applicable federal law, including but not limited to the Cable Act and the rules, regulations and orders of the FCC, and shall also be subject to state law not in conflict with such federal law. In the event of any conflict between the provisions of this Franchise and such state or federal law, the provisions of such state or federal law shall prevail.

8.7 Effective Date. The effective date of this Franchise is December 20, 2005, pursuant to the provisions of applicable law. This Franchise shall expire on December 20, 2010, unless extended by the mutual agreement of the parties.

Passed, adopted and effective this 20th day of December, 2005, subject to applicable federal, state and local law.

[Signatures appears on following page.]

IN WITNESS WHEREOF, the parties hereto have entered into this Franchise Agreement on December 20, 2005.

FRANCHISING AUTHORITY:

City of Mulberry

By: _____
Name: Betty Feller
Title: Mayor

Attest:

_____
Recorder/Treasurer

GRANTEE:

_____

By: _____
Name: Janet Barnard
Title: VP | Region Mgr.