ORDINANCE NO. 2010-08

AN ORDINANCE GRANTING TO COXCOM, INC., A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO USE AND OCCUPY FOR ITS CABLE SYSTEM THE STREETS, AVENUES, ALLEYS, ROADS, HIGHWAYS, AND OTHER PUBLIC PLACES OF THE CITY FOR THE PURPOSE OF ERECTING, CONSTRUCTING, OWNING, LEASING, OR OTHERWISE ACQUIRING, MAINTAINING, OR OPERATING TELEVISION CABLE LINES WITHIN THE CORPORATE LIMITS OF THE CITY OF MULBERRY, TOGETHER WITH ALL BUSINESS INCIDENTAL TO OR CONNECTED WITH SAID SYSTEM, PROVIDING THAT COX COMMUNICATIONS, SHALL PAY TO THE CITY OF MULBERRY A MUNICIPAL FRANCHISE FEE, AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MULBERRY, ARKANSAS:

**Section 1. GRANT OF AUTHORITY.**

(a) The City of Mulberry, Arkansas, hereby grants to CoxCom, Inc. ("Cox") and to its successors, lessees and assigns, the right, privilege and authority within the present and all future expansions of the corporate limits of the City of Mulberry to construct, operate and maintain a Cable System to provide Cable Service and other lawful services.

(b) Grantee shall have the right, privilege and authority under the terms of this Franchise, to the regulatory authority of the city council and the FCC and other regulatory authorities:

(i) To sell, furnish, transmit and distribute Cable Service and other lawful services to all inhabitants and consumers within the corporate limits; and

(ii) Subject to the terms, conditions and stipulations set forth in this ordinance, to construct, equip, operate, repair and maintain a Cable System; and

(iii) To construct, equip, operate, repair and maintain a Cable System for the purpose of conveying, distributing and conducting Cable Service and other lawful services to any point beyond the city limits in order to enable Grantee to distribute and sell Cable Service and other lawful services to subscribers in the City

(c) Nothing herein contained shall be construed as granting to Grantee any exclusive right or privilege, nor shall it affect any prior or existing rights of Grantee to maintain a Cable System within the City of Mulberry, Arkansas.

**Section 2. DEFINITIONS AND CONSTRUCTION.**

For the purposes of this division:

*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.

*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 Cables Act of 1996, and as the same may be further amended from time to time.

*Grantee* shall be construed to mean the CoxCom, Inc. or its successors, lessees, and assigns, the Franchisee under this ordinance.

*Federal Communications Commission or FCC* shall mean the present federal agency of that name as constituted by the Communication Act of 1934, or any successor agency created by the United States Congress.

*Municipal Franchise Fee* shall be defined as that charge levied by the city for the privilege of occupying municipal right-of-way, easement or property.

*Public way* shall be defined as including streets, avenues, alleys, roads, highways, rights-of-way, easements and other public places and ways within the jurisdiction of the city.

*Public Ground* shall be defined as City parks and other public places within the jurisdiction of the City.

*Gross Revenues* mean any subscriber revenues received by the Grantee for charges for Cable Services provided to Subscribes 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 municipal franchise fee required by Section 4.1 hereof; (ii) any tax, fee, or assessment of any kind imposed by the City 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; (v) net unrecovered bad debt (vi) revenues from commercial advertising; (vii) sales to the Grantee's subscribes by programmers of home shopping services and (viii) reimbursements paid by programmers for launch fees or marketing expense.

**Section 3. LOCATION, OTHER REGULATIONS.**

(a) Location of Facilities. Grantee's Cable System shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. The Cable System shall be located on Public Grounds as determined by the City. Grantee's construction, reconstruction, operation, repair, maintenance and location of its facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this Franchise. Grantee may abandon underground facilities in place; provided, at the City's request, Grantee will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

(b) Field Locations. Grantee shall provide horizontal field locations for its underground facilities within the City within 48 hours of a formal request by the City. If vertical field locations are requested, Grantee shall provide the information within 14 days.

(c) Street Openings. Grantee shall not open or disturb any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may require a surety bond at the beginning of each year. Permit conditions imposed on Grantee shall not be more burdensome than those imposed on other entities for similar facilities or work. Grantee may, however, open and disturb any Public Way or Public Ground without permission from the city where an emergency exists requiring the immediate repair of its Cable System. In such event Grantee shall notify the City by telephone to the office designated by the city as soon as practicable. Not later than the second working day thereafter, Grantee shall obtain any required permits.

(d) Restoration. After completing any work requiring the opening of any Public Way or Public Ground, Grantee shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. Work outside the paved area must be fine graded and seeded, hydro-mulched, or sod placed so that adjacent property owners or the City can mow without damage to machinery or people. The work shall be completed as promptly as weather permits, but in no case greater than 60 days, and if Grantee shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, the City shall have, after demand to Grantee to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Grantee. Grantee shall pay to the City the cost of such work done for or performed by the City. The remedy shall be in addition to any other remedy available to the City for noncompliance.

(e) Notice of Improvements. The City must give Grantee reasonable notice of plans for improvements to Public Ways or Public Ground where the City has reason to believe that Grantee's Cable System may affect or be affected by the improvement. The notice must contain; (i) the nature and character of the improvements, (ii) the Public Ways and Public Ground upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Ground is involved, the order in which the work is to proceed. The notice must give Grantee a sufficient length of time in advance of the actual commencement of the work to permit Grantee to make any necessary additions, alterations or repairs to its facilities.

Grantee will be required to submit to the City a copy of any long range plan for Cable System construction on the 1st of each calendar year along with a work schedule inside the City within that calendar year.

**Section 4. RELOCATIONS**

(a) Relocation of Cable System Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Grantee to relocate its Cable System facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Grantee shall relocate its facilities at its own expense unless the facilities are located in a private easement or right of way obtained by the Grantee or by agreement between the parties. If they are in an easement obtained by the City or as part of a City project the Grantee must relocate at its own expense. The City shall give Grantee reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If relocation is ordered within five years of a prior relocation of the same facilities, which relocation was made at Grantee's expense, the City shall reimburse

Grantee for any non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Grantee may be required to make the subsequent relocation at its own expense. Nothing in this ordinance requires Grantee to relocate, remove, replace or reconstruct at its own expense its Cable System where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement. Where public funds are made available to reimburse utilities or other occupants of the Public Ways for relocation costs, Grantee shall have equal right to apply for and access such funds.

(b) Relocation of Cable System in Public Ground. City may require Grantee at Grantee's expense to relocate or remove its Cable System from Public Ground upon finding by City that the facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

(c) Moving of Buildings Grantee shall remove, raise or lower its wires temporarily to permit the moving of houses or other structures, provided that the person requesting such temporary removal, raising or lowering of the wires shall pay the expense of such temporary removal, raising, or lowering of the wires, and provided that Grantee shall not be required to remove, raise or lower its wires with less than 48 hours advance notice or mutually agreed upon time.

**Section 5. VEGETATION MANAGEMENT.**

Grantee shall have the authority to trim trees or other natural growth overhanging any of its television system or facilities so as to reasonably prevent branches from coming in contact with the Grantee's wires, cables, or other equipment; however the Grantee shall not engage in excessive trimming. Except during an emergency or the recovery after an emergency. Grantee shall attempt to notify the City and its residents at least three days prior to entering onto property to perform any tree trimming activities.

**Section 6. FRANCHISE FEE.**

Grantee shall pay to the City a municipal franchise fee in an amount equal to four (4) percent of Grantee's annual Gross Revenues. Payments shall be made to the City in monthly installments, payable within 45 days following conclusion of the month for which payment is made.

In addition:

(i) The City shall have the right to examine and verify from the records of Grantee any data relating to the Gross Revenues subject the municipal franchise fee; and

(ii) Assignment, Grantee shall have the right to assign this Franchise and its respective rights, terms and conditions, so long as the operations to be conducted by said assignee are in accordance with the applicable standards contained therein. Any such assignment to an "unrelated entity," as that term is hereinafter defined in this paragraph, or any subsequent assignment of this Franchise to an unrelated entity, shall be subject to the prior approval of the City, which approval shall not be unreasonably denied or delayed. For purposes of this agreement, an "unrelated entity" shall be defined as a corporation or other entity which is neither partially or totally owned by nor a subsidiary of Grantee nor the partial or total owner of Grantee.

**Section 7. TERM**

The Franchise granted hereunder shall be for a 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 8. POLICE POWER OF CITY.**

No provision of this Franchise shall be construed to limit or abridge the authority of the City to implement and exercise police powers and regulations necessary for the safety and welfare of the inhabitants of the City of Mulberry, Arkansas.

**Section 9. INDEMNITY.**

Grantee shall save and hold harmless the City from any and all claims for damage for which the City may become liable, as well as any costs incurred by defense of such claims by reason of the granting of this Franchise, or any act or omission of Grantee in the conduct of its operations.

**Section 10. EQUAL PROTECTION**

The right to use and occupy the City's Public Ways for the purpose herein provided shall not be exclusive; provided, however, that no Person shall enter into the City'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 City. In the event the City authorizes or permits any Person other than the Grantee to enter into the City'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.

**Section 11. CONFLICTING ORDINANCES REPEALED.**

All ordinances or parts of ordinances conflicting with any of the provisions of this ordinance are hereby repealed. If any clause, sentence, or section of this ordinance should be determined to be invalid, the invalidity of any clause, sentence, or section hereof shall not affect the validity of the remainder of this ordinance.

**Section 12. EMERGENCY CLAUSE.**

The City Council for the City of Mulberry, Arkansas, has determined that an emergency exists and this ordinance being necessary for the preservation of the health, safety and welfare of the citizens of Mulberry, Arkansas, shall become law immediately upon its passage, approval and publication.

**Section 13. 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, Arkansas
207 North Main Street
Mulberry, Arkansas 72947
Attention: Mayor

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

Cox Communications
901 So. George Washington Blvd.
Wichita, Kansas 67211
Attn: V.P Government Affairs

Cox Communications
4901 S. 48th Street
Springdale, AR 72762
Attention: Dir. Government Affairs

with a copy to:

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

The City 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.

**Section 14. EFFECTIVE DATE**

The effective date of this Franchise is the 20th day of December, 2010, pursuant to the provisions of applicable law.

Passed, adopted and effective this 21st day of December, 2010, subject to applicable federal, state and local law.

IN WITNESS WHEREOF, the parties hereto have entered into this Franchise Agreement on December 21, 2010.

FRANCHISING AUTHORITY:

City of Mulberry, Arkansas

By: Betty Feller
Name: Betty Feller
Title: Mayor

Attest:

Recorder/Treasurer~~, Clerk~~

GRANTEE:

CoxCom, Inc.

By: _____
Name: _____
Title: _____