

ORDINANCE NO. 464

**An Ordinance of the City of Buckhannon, West Virginia, Renewing a Franchise
Granted to Cequel III Communications II, LLC
For the Construction and Operation of a Cable System**

The City of Buckhannon, West Virginia, having determined that the financial, legal, and technical ability of Cequel III Communications II, LLC, is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, does hereby ordain as follows:

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF BUCKHANNON, AS FOLLOWS:

1. DEFINITIONS.

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

- a. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership or control with the Company.
- b. "Basic Cable" means the tier of Cable Service regularly provided to all Subscribers that includes the retransmission of local broadcast television signals.
- c. "Cable Service" means (i) the one-way transmission to Subscribers of Video Programming or other programming service, and (ii) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.
- d. "Cable System" shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. §522(7), as amended.
- e. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- f. "Franchise" means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System.
- g. "City" means the City of Buckhannon, or the lawful successor, transferee, or assignee thereof.
- h. "Company" means Cequel III Communications II, LLC, or the lawful successor, transferee, or assignee thereof.
- i. "Gross Revenues" means the monthly revenues for the provision of Cable Service received by the Company directly from Subscribers located within the Service Area. "Gross Revenues" does not include: (a) any tax, fee, or assessment of any kind imposed directly or indirectly by City or other governmental entity on a cable operator, or Subscriber, or both, solely because of their status as such; and (b) unrecovered bad debt.
- j. "Person" means an individual, partnership, association, joint stock company, trust corporation, or governmental entity.
- k. "Public Way" means 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 City in the Service Area which shall entitle the City and the Company to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. "Public Way" also means any easement now or hereafter held by City 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 City and the Company to the use thereof for the purposes of installing or transmitting the Company's Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.

- l. "Service Area" means the present incorporated areas within the boundaries of the City, and any other areas later annexed thereto.
- m. "Subscriber" means a user of the Cable System who lawfully receives Cable Service with the Company's express permission.
- n. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

2. GRANT OF AUTHORITY.

The City grants to the Company the nonexclusive right and privilege, within all areas of the City of Buckhannon, West Virginia, as described in Attachment A hereto, to construct, maintain, and operate in, or, over and under the present and future public streets, alleys, rights-of-way and public places within the City, such as towers, poles, lines, cables, wiring and all related equipment for the purpose of receiving, amplifying and distributing television, radio, audio, video or any other telecommunications signal or service within said City and to inhabitants hereof. The Company shall have further right to enter into arrangements for the attachment onto or use of facilities owned or operated by public utilities operating within the City.

3. TERMS OF AGREEMENT.

a. Term. The nonexclusive franchise granted herein shall be for a term of ten (10) years, commencing and **effective upon on the 1st day of July 2023 and terminating at midnight on the 30th day of June 2033**, unless otherwise lawfully terminated in accordance with the terms of this Agreement.

b. Competitive Neutrality. If another provider of Cable Services, video services or other television services utilizing any system or technology requiring use of the rights-of-way in the Service Area, is lawfully authorized by any governmental entity or otherwise exempt from obtaining a franchise to provide such services, the City hereby agrees that it will notify Company prior to the effective date of the existence of such exemption or authorization, and, upon a request from Company, as a matter of law, Company's Franchise will be modified within thirty (30) days of the granting of such authorization or exemption for the purpose of establishing equivalent terms and conditions as such other Person(s) on a competitively neutral basis.

c. Renewal of Franchise. By mutual consent, the Company shall have the option to renew this Franchise for an additional period not to exceed ten (10) years. Should the Company desire to exercise this option, it shall so notify the City in writing, not less than three (3) months prior to expiration of this Franchise.

4. CONDITIONS OF STREET AND ROAD OCCUPANCY AND SYSTEM CONSTRUCTION.

a. Use: All transmission and distribution structures, lines and equipment erected by the Company within the City shall be located as to cause minimum interference with other proper use of the public streets, alleys, ways and places located within the City, and as to cause a minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said public streets, alleys, ways, or places. The use of public highways and other public places shall be subject to:

i. All applicable state statutes, municipal ordinances and all applicable rules and orders of the West Virginia Public Service Commission governing the construction, maintenance and removal of overhead and underground facilities of public utilities;

ii. For (county highways/City streets), all applicable rules adopted by the governing body of the City in which the (highways/streets) are situated; and

iii. For state or federal-aid highways, all public welfare rules adopted by the West Virginia Department of Transportation, Highways Division.

b. Restoration: In cases of any disturbance of pavements, sidewalks, lawns, roadways, or other surfacing, the Company shall, at its own expense and in a manner approved by the City, replace and restore such places or disturbed to as good a condition as before said work was commenced. The Company shall also be required to consult with the Highways Division regarding any disturbance of pavement, roadway or other rights-of-way as may be under the jurisdiction and control of the Highways Division.

c. Relocation: In the event that at any time during the period of this agreement, the City or the Highways Division shall lawfully elect to change the grade or location of any public street, alley, way, or place, the Company, upon reasonable notice by the City or the Highways Division, as the case may be, shall remove, re-lay and re-locate its equipment at its own expense. All such alterations shall be subject to the approval of the City and the Highways Division.

d. Placement of Fixtures: The Company shall not place any fixtures or equipment where the same shall interfere with any gas, electric, communications, fire alarms, sewer or water lines, fixtures or equipment, and the location by the Company of its lines and equipment shall be in such manner as to not interfere with the usual travel on said public streets, alleys, ways, and places, and the use of the same for gas, electric, communications, fire alarms, sewer and water lines, fixtures and equipment.

e. Easements: In the use of easements dedicated to compatible uses, the Company shall ensure:

i. That the safety, functioning and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or construction of facilities necessary for the cable system;

ii. That the cost of the installation, construction, or operation of facilities is borne by the Company or subscribers, or a combination of both; and

iii. That the owner of the property is justly compensated by the Company for any damages caused by the installation, construction, operation or removal of facilities by the Company, its employees or contractors.

f. Permitting. To the extent that the installation, repair and/or maintenance by the Company of any component of the Cable System is lawfully subject to permitting and/or review by the City pursuant to generally applicable law, such permitting and/or review shall not be unreasonably denied or delayed, nor shall any fees be required (other than those necessary to offset the reasonable administrative costs of issuing such permit(s)), for the right and/or privilege to install, repair or maintain such component. In approving the placement of any such component, the City shall limit the basis of its decision to pedestrian and traffic safety. For purposes of this Agreement, “unreasonably delay” shall mean the City’s failure to act on a permit application within thirty (30) days of its submission by the Company, in which case such permit shall be deemed granted under applicable law.

5. SERVICES TO BE PROVIDED BY THE COMPANY.

a. Required Extensions of Service. The Cable System, as constructed as of the date of the passage and final adoption of this Agreement, substantially complies with the material provisions hereof. The Company is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever the Company shall receive a request for service from at least thirty (30) residences per linear mile of trunk or distribution cable, it shall extend its Cable System to such residents at no cost to such Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided for under subsection 5(b) of this Agreement.

b. Subscriber Charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of fewer than thirty (30) residences per linear mile of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. Potential subscribers shall bear the costs of the construction and other costs on a pro rata basis. The Company may require payment in advance of the capital contribution in aid of construction borne by such potential subscribers.

c. Pole Attachments. Utility poles owned by the City or an affiliated entity shall be available for use by the Company. The Company shall pay no more than the cable services pole rental rate as determined by the rules of the FCC for the use of poles owned by City or its affiliate.

d. Free Cable Service. Subject to Section 5(a) of this Agreement, and federal law and FCC rules and orders, Grantee shall install at no cost to the City, and shall provide a minimum of one (1) free connection of Basic Cable Service and Expanded Cable Service (collectively the “Free Service”) to each public school located within the City, to the Stockert Youth Center located at 79 East Main Street, the Dessie Graves Senior Center on Senior Drive, each station of the City Fire and Police Departments, City Hall, the Charles W. Gibson Memorial Library, and when requested by the City Council, to such other buildings which are municipally owned, operated or otherwise substantially utilized by the City. The total number of physical locations designated for Free Service owned, operated, or substantially utilized by the City shall not exceed twelve (12) locations.

e. The Company shall provide the City, upon appropriate authorization (and payment), and upon at least one hundred twenty (120) days advanced written notice, facilities and equipment for transmission of information relating to law enforcement, fire protection, rescue services or all other public emergencies as may be necessary or desirable for the safety and welfare of the citizens of the City to the Office of the County Emergency Services or as directed by the City. The facilities to be provided include access to one PEG channel without charge for the transmission of information relating to law enforcement,

fire protection, rescue services, or other public safety messages. The Company shall comply with the regulations of the Federal Communications Commission (FCC) for the operation of the Emergency Alert System as set forth under 47 C.F.R. Section 11.

f. The Company shall offer to all Subscribers within the City service of signal and viewing quality that is in compliance with all FCC technical standards.

g. The Company shall conduct its business with its subscribers in accordance with all FCC Customer Service Standards.

h. The Company shall designate at least ten percent of all its channels for public, educational or governmental (PEG) use, provided, however, that the Company shall not be required to designate more than three (3) such channels for such public, educational or governmental use. Upon request by the City, at least one such designated channel is to be carried as part of the basic service tier.

i. The Company agrees that it will not abandon areas presently served by this Cable System(s) without the agreement of the City, unless such areas and residents therein are being served by another cable system, or unless unreasonable costs are imposed for the continued use of a private right-of-way necessary for providing service to such areas.

6. CONDITION OF EQUIPMENT.

The Company shall maintain all of its lines, rights-of-way and equipment in good and safe condition and shall at all times construct and maintain its fixtures of equipment in compliance with the requirements of the National Electrical Safety Code and the National Electrical Code.

7. PROCEDURES FOR RESTORING INTERRUPTED SERVICE AND IMPROVING SUBSTANDARD SERVICE

a. The Company, for the purpose of restoring interrupted service and improving substandard service, shall be able to receive calls twenty-four hours a day, seven days a week, and shall have one or more qualified persons as may be necessary to repair the Cable System.

b. The Company shall restore interrupted service not later than twenty-four hours after being notified by a subscriber that service has been interrupted, unless: (1) service cannot be restored until another Person repairs facilities owned by such Person and leased to, or required for the operation of, the Cable Service; (2) the interruption was caused by an act of nature; or (3) the Company is unable to restore service within twenty-four hours due to extenuating circumstances. In the event of such extenuating circumstances, the Company shall restore service as soon as feasible and then submit a written notice to the Public Service Commission of West Virginia or the City, indicating that service has been restored and explaining the nature of the extenuating circumstances.

8. CREDIT OR REFUND FOR INTERRUPTED SERVICE.

a. If cable service to a Subscriber is interrupted for more than twenty-four continuous hours for any reason within Company's control, such Subscriber shall, upon request, receive a credit or refund within sixty (60) days from the Company in an amount that represents the proportionate share of such service not received in a billing period, provided that such interruption was not caused by the Subscriber.

b. The Company shall comply with any viewing time reliability standards for cable operators established by the Public Service Commission of West Virginia.

9. OFFICE OPERATING REQUIREMENTS, OFFICE HOURS.

The Company shall operate a business office in or near the Service Area, or as otherwise approved by the City or by the Public Service Commission of West Virginia. The office shall be open during normal business hours. The Company shall operate sufficient telephone lines, including a publicly and locally listed toll-free number or any other free calling option, staffed by a Company customer service representative during normal business hours.

10. NOTICE TO SUBSCRIBERS REGARDING QUALITY OF SERVICE AND BILLING

- a. Annually the Company shall mail to each of its Subscribers a notice which:
 - i. Informs Subscribers how to communicate their views and complaints to the cable operator and to the Public Service Commission of West Virginia;
 - ii. States the responsibility of the Public Service Commission to receive and act on consumer complaints other than channel selection, programming and rates. concerning the operation of a Cable System;
 - iii. States the policy regarding the method by which Subscribers may request pro rata credit as described in section seven of this Agreement; and
 - iv. States the policy regarding billing practices, late fees, and other service charges.

- b. The notice shall be in nontechnical language, understandable by the general public, and in a convenient format. On or before the thirtieth day of January of each year, the operator shall certify to the City and the Public Service Commission that it has distributed the notice as provided in this section during the previous calendar year as required by this section.

11. RECORDING OF SUBSCRIBER COMPLAINTS.

- a. The Company shall keep a record or log of all complaints received regarding quality of service, rates, programming, equipment malfunctions, billing procedure, employee relations with Subscribers and similar matters as may be prescribed by the Public Service Commission of West Virginia. The records shall be maintained for a period of two years.

- b. The record or log shall contain the following information on each complaint received:

- i. Date, time, nature of complaint;
- ii. Name, address, telephone number of complainant;
- iii. Investigation of complaint; and
- iv. Manner and time of resolution of complaint.

- c. Consistent with the subscriber privacy provisions contained in 47 U.S.C. Section 551 or as otherwise provided by federal law, every cable operator shall make the logs or records, or both, of such complaints available to any authorized agent of the Public Service Commission of West Virginia and the City, upon request during normal business hours for on-site review.

12. INDEMNIFICATION BY THE COMPANY OF THE CITY.

a. The Company, its successors and assigns, shall indemnify and hold harmless the City from any liability whatsoever for any damage or injury caused to any person or property by the actions or omissions of the Company on account of the franchise granted by this agreement. The Company shall take out and maintain during the term of this agreement general liability insurance with the following minimum coverage limits:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000.00 per occurrence, Combined Single Liability (C.S.L) \$2,000,000.00 General Aggregate
Auto Liability, including coverage on all owned, non-owned hired autos	\$1,000,000.00 per occurrence C.S.L.
Umbrella Liability	\$1,000,000.00 per occurrence C.S.L.

Where the insurance provides separately for personal injury and property damage, the combined limits of the two coverages shall be no less than the per occurrence and aggregate limits set forth above. The Company shall protect the City from claims for said damages arising out of the exercise of rights and privileges and operations under this agreement. Prior to the exercise of any rights under this agreement, Certificates of Insurance shall be filed and deposited with the Clerk of the City.

b. Upon receipt of notice in writing from the state, county and/or municipality, the Company shall, at its own expense, defend any action or proceeding against the state, county and/or municipality in which it is claimed that personal injury or property damage was caused by activities or omissions of the Company in the installation, operation or maintenance of its Cable System.

13. FRANCHISE FEE.

a. Beginning sixty (60) days after the effective date of this Agreement, Company shall pay to City a franchise fee equal to Five percent (5%) of Gross Revenues from the provision of Cable Services within the Franchise Area received by Company on a quarterly basis; provided, however, that Company may credit against any such payments: (i) any tax, fee, or assessment of any kind imposed by City or other governmental entity on a cable operator, or Subscriber, or both, solely because of their status as such; (ii) any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or Subscribers (including any such tax, fee, or assessment imposed, both on utilities and cable operators and their services), and (iii) any other special tax, assessment, or fee such as a business, occupation, and entertainment tax. For the purpose of this Section, the 3 month period applicable under the Franchise for the computation of the franchise fee shall be a calendar quarter, unless otherwise agreed to in writing by City and Company. The franchise fee payment shall be due and payable thirty (30) days after the close of the preceding calendar quarter. Company may use electronic funds transfer to make any payments to the City required under this Agreement. A brief report prepared by a representative of the Company showing the basis for the Franchise Fee computation shall be provided to the City.

b. In the event of any annexation by the City, the City shall notify the Grantee accordingly, and the Grantee shall then immediately thereafter include such Subscribers in its calculation of the City's Franchise Fees. Any franchise agreement subsequently negotiated by the Grantee with the City during this franchise term shall not be inconsistent with the annexation provisions hereof and further as are set forth pursuant to Sections 1(l) and 5(a) hereof.

c. The amount of the Franchise Fee to be paid to the City shall be reviewable upon the third, sixth, and ninth anniversary dates of the date of the granting of the Franchise, and upon such date the City shall have the right to change the amount and method of calculating the Franchise Fee; provided however, that: (1) such changes are in conformity with the limits set in federal and state law; (2) such changes are imposed on all Persons providing Cable Service within the territorial limits of the City; and (3) the Company shall have sixty (60) days to implement said changes so that the correct Franchise Fee may be calculated and the collection thereof imposed on Subscribers.

d. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by Company is due. Unless within three (3) years from and after such payment due date City initiates a lawsuit for recovery of franchise fees in a court of competent jurisdiction, recovery shall be barred and City shall be stopped from asserting any claims whatsoever against Company relating to alleged franchise fee deficiencies.

e. The imposition and collection of any Franchise Fee under this Agreement shall not affect the collection of the annual fee or document fees by the West Virginia Public Service Commission as set forth in West Virginia Code §§ 24D-1-20 and 24D-1-25 and rules thereunder. Further, the Franchise Fee set forth in this agreement together with any state annual fee, document fee, or other fee considered under federal law to be a franchise fee shall never exceed the maximum amount prescribed by federal or state law.

f. Nothing contained herein shall prevent the Company from collecting any or all such Franchise Fee as an addition to its regular charges, by listing them as a separate line on its invoiced to the Subscriber.

14. NON-LIABILITY OF CITY.

The City shall not be liable for interrupting the Company's service caused by employees of the City in the proper performance of their duties.

15. RATES.

a. The Company shall file with the City and keep current a schedule of its rates charged, or where no such rates are yet charged then its initially proposed rates, for each tier or Cable Service. The posting of such rates on Company's website shall be sufficient to meet the requirements of this section.

b. The Company shall inform the City of the charge for any connection fee, any reconnection fee, and any fee for an unwarranted service technician visit. The posting of such fees on Company's website shall be sufficient to meet the requirements of this section. In addition, the Company agrees that it will bill monthly and calculate any late payment charge in conformity with 150 CSR 26.17 regardless of whether credit has been extended.

c. To the extent permitted by federal law, the Public Service Commission of West Virginia shall regulate basic cable service rates to ensure that they are just and reasonable both to the public and to the cable operator and are not unduly discriminatory.

d. The Company shall provide 30 days written notice to Subscribers prior to any change in Cable Service rates or programming offered on the Cable System.

16. REMOVAL OF PROPERTY AT TERMINATION OF AGREEMENT.

In the event this franchise agreement is terminated for any reason, or if the Company, or its successors, cease to exercise its rights and privileges pursuant to the terms of this

agreement , then, in such event, all poles, lines, cables, wiring and other apparatus erected, installed or deposited by the Company or its successors within the City shall be properly removed at the Company's own expense unless otherwise agreed to by the parties. Further, unless otherwise agreed to, property not removed within six months of termination will be considered abandoned and the Company shall be liable for the cost of removal.

17. REVOCATION ALTERATION OR SUSPENSION OF CABLE FRANCHISE PENALTIES.

a. Subject to federal law, This cable franchise may be revoked by the City following procedures described in this Section 17 for the following reasons:

- i. For making material false or misleading statements in, or for material omissions from, any application or proposal or other filing made with the City;
- ii. For repeated failure to maintain signal quality under the standards prescribed by the Public Service Commission of West Virginia;
- iii. For any sale, lease, assignment or other transfer of its cable franchise without the consent of the City as proscribed in Section 19 of this Agreement;
- iv. Except when commercially impracticable, for unreasonable delay in construction or operation, as well as for unreasonably and intentionally withholding of the extension of Cable Service to any person in the franchise Service Area in contravention of the provisions of Section 5 of this Agreement;
- v. For material violation of the terms of its Cable Franchise;
- vi. For failure to substantially comply with WVA Code § 24D-1-1 et seq. or any rules, regulations or orders prescribed by the Public Service Commission of West Virginia;
- vii. For substantial violation of its filed schedule of terms and conditions of service: and
- viii. For engaging in any unfair or deceptive act or practice.

b. In lieu of, or in addition to, the relief provided by subsections (a) hereof, the City may fine a cable operator, for each violation under the provisions of this section, pursuant to the notice and hearing procedures set forth in subsections (c) through (f) of this Section 17, in an amount not less than fifty dollars nor more than five thousand dollars for each violation. Each day's continuance of a violation may be treated as a separate violation.

c. Notice of Violation. In the event that the City believes that the Company has not complied with the terms of the Franchise, it shall notify the Company in writing of the exact nature of the alleged default.

d. Company's Right to Cure or Respond. The Company shall have sixty (60) days from receipt of the notice described in Section 17(c): (a) to respond to City contesting the assertion of default; (b) to cure such default; or (c) in the event that, by the nature of the default, such default cannot be cured within the sixty (60) day period, to initiate reasonable steps to remedy such default and to notify City of the steps being taken and the projected date that they will be completed.

e. Public Hearing. In the event that the Company fails to respond to the notice described in Section 17(c) pursuant to the procedures set forth in Section 17(d), or in the event that the alleged default is not remedied within one hundred twenty (120) days after the Company is notified of the alleged default pursuant to Section 17(c), the City shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the City which is scheduled at a time which is no fewer than five (5) business days therefrom. The City shall notify the Company of the time and place of such meeting and provide the Company with an opportunity to be heard.

f. Enforcement. Subject to applicable federal and state law, in the event the City determines, after such meeting, that the Company is in default of any provision of the Franchise, the City may:

- i. Foreclose on all or any part of any security provided under the Franchise, if any, including, without limitation, any bonds or other surety; provided, however, that the foreclosure shall only be in such a manner and in such amount as the City reasonably determines is necessary to remedy the default;
- ii. Commence an action at law for monetary damages or seek other equitable relief;
- iii. In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked pursuant to Section 16(b) of this Agreement; or
- iv. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages.

g. Acts of God. Company shall not be held in default of the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such alleged default is caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

18. RENEWAL OF CABLE FRANCHISE.

This cable franchise may be renewed by the City upon approval of the Company's application or proposal therefor and in accordance with the provisions of state and federal law. The form of the application or proposal shall be prescribed by the Public Service Commission of West Virginia. The application or proposal shall be the same fee prescribed for franchise applications, and the periods of renewal shall be not less than five nor more than twenty years each, unless otherwise prescribed by state or federal law. The City shall require of the applicant full disclosure, including the proposed plans and schedule of expenditures for or in support of the use of public, educational or governmental access facilities.

19. ASSIGNMENT OR TRANSFER OF CABLE FRANCHISE.

This franchise including the rights, privileges and obligations thereof may not be assigned, sold, leased, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including a transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval of the City. The form of application for transfer shall be prescribed by the Public Service Commission of West Virginia. Such consent shall not be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by

assignment of any rights, title, or interest of the Company in the Franchise or Cable System in order to secure indebtedness.

20. NON-DISCRIMINATION.

As a condition to receiving a franchise from the City, the Company covenants and agrees that it shall not discriminate in any employment matter or any other matter against any person on account of age, race, religion, sex, physical handicap or country of natural origin.

21. REVIEW OF EQUIPMENT AND RECORDS.

a. Throughout the term of this agreement the City shall have the right, during normal business hours, to inspect all lines, equipment, fixtures and facilities owned or operated by the Company pursuant to the terms of this agreement. The City shall also have the right, during normal business hours, to inspect all records and reports maintained by the Company and either under the control or direction of the Company or any of its agents, employees or affiliates, wherever said agreements, contracts, records and reports may be located; subject to the subscriber privacy provisions of the Cable Communications Act of 1984, applicable federal law, and excepting proprietary and confidential information. Notwithstanding anything to the contrary set forth herein, the Company shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed to it by the Company as confidential, and to disclose it only to employees, representatives, and agents of the City that have a need to know, or in order to enforce the provisions hereof. With the exception of salaries and wages of employees of the Company, which shall be paid by the Company, all expenses incurred in conducting such inspections and reviews of the equipment and records of the Company shall be at the expense of the City.

b. The Company shall file with the City, upon request, copies of all reports of its financial technical and operational condition and its ownership required by state or federal law. The reports, as required to be filed with federal and state agencies and authorities shall be kept on file open to the public.

c. The City or its designated agent(s) shall have access to all books of account and records of the Company, its affiliates, parent(s) or subsidiary(ies) through which expenses or revenues may flow. Such access shall be for the purpose of ascertaining the accuracy of any and all reports, accounts or payments due or made to the City, or for purposes deemed necessary by the Public Service Commission of West Virginia.

22. CANCELLATION.

a. The Company shall have the right to annul and rescind this agreement only in the event that the operation of the system herein provided for is prohibited by law.

b. This franchise is granted upon the express condition that if the Company shall neglect, refuse or fail to do, perform or observe any of the material conditions, agreements, provisions, or terms, as set forth herein, including, but not limited to the timely payment of the Franchise Fee as fixed and assessed in accordance with this agreement, and such neglect, failure or default shall continue for a period of thirty (30) days after written notice thereof shall have been given to the Company, then, and in such event, the City shall have the right, and does hereby reserve the right, at its option, after reasonable notice and public hearing, to terminate all of the rights and privileges granted herein. and any additions to or amendments hereof, unless such performance of the provisions is the subject of a pending good faith dispute, or being contested before a Court of competent jurisdiction by the Company, and declare the same at an end, without prejudice to any remedies the City may have.

23. MISCELLANEOUS.

a. If any provision of this agreement or the application thereof to any person, firm or corporation is held invalid by any Court of competent jurisdiction, such invalidity shall not affect other provisions or applications or this agreement and to this end the provision of this agreement are declared to be severable.

b. This agreement shall be interpreted according to the laws of the State of West Virginia.

c. The Company agrees to abide by all applicable state and federal laws, rules, and regulations.

24. NOTICE.

All notices and other communications hereunder shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, registered or certified mail, return receipt requested, postage prepaid to the following respective addresses:

To the City:

City of Buckhannon
70 E Main Street
Buckhannon, WV 26201
Attn: Mayor

To the Company:

Altice USA, Inc.
1 Court Square West
Long Island City, NY 11101
Attention: Vice President, Government Affairs

With a copy to:

Cequel III Communications II, LLC
c/o Altice USA, Inc.
1 Court Square West
Long Island City, NY 11101
Attention: Legal Department

Notwithstanding anything herein to the contrary, all regulatory notices from the Company to the City may be served electronically upon the City, instead of by first class mail as described above, to an email address provided by the City.

25. Pursuant to the Charter of the City of Buckhannon, this Ordinance shall be deemed effective by the Council of the City of Buckhannon thirty (30) days following the third (3rd) reading, passage and adoption by the Council of the City of Buckhannon, i.e., September 2, 2023; however, once effective this Ordinance shall be deemed to have granted a renewal of the franchise rights described herein on and from July 1, 2023.

FIRST READING: June 15, 2023

SECOND READING: July 6, 2023

THIRD READING,
PASSAGE AND ADOPTION: August 3, 2023



Robert N. Skinner, III, Mayor

CERTIFICATE OF ENACTMENT

I, Randall H. Sanders, City Recorder, do hereby certify that the foregoing Ordinance No. 464 was lawfully ordained and enacted by the Council of the City of Buckhannon at a regular session of the said Council assembled on August 3, 2023.



Randall H. Sanders, City Recorder

Accepted this _____ day of _____, 2023, subject to applicable federal, state and local law.

CEQUEL III COMMUNICATIONS II, LLC

By: _____
Jim Campbell
Vice President, Government Affairs