

ORDINANCE 804-2016

AN ORDINANCE OF THE CITY OF DRY RIDGE, KENTUCKY, GRANTING CINCINNATI BELL EXTENDED TERRITORIES LLC, A NON-EXCLUSIVE FRANCHISE FOR A CABLE TELEVISION SYSTEM WITHIN THE CONFINES OF THE CITY OF DRY RIDGE, FOR A TERM OF TEN (10) YEARS, SUBJECT TO THE PROVISIONS WITHIN.

WHEREAS, on January 18, 2016, Dry Ridge offered at bid a non-exclusive cable television franchise pursuant to ; and

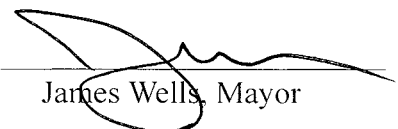
NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY OF DRY RIDGE, KENTUCKY, AS FOLLOWS:

1. The Bid Proposal, which is attached hereto as Exhibit "A", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.
2. Dry Ridge has granted unto CBET a non-exclusive franchise for a cable television system within the confines of the City Dry Ridge, for a term of ten (10) years, subject to the provisions of the Bid Proposal.
3. The franchise memorialized in this Franchise Agreement shall commence February 15, 2016, and shall expire as provided in the terms and provisions of the Bid Proposal.
4. CBET does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as memorialized in this Franchise Agreement, and further to faithfully perform all acts required of it pursuant to said franchise.
5. This Franchise Agreement memorializes the agreement between the parties contained and embodied in the Bid Proposal and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

First Reading: January 18th, 2016

Second Reading: February 1, 2016

Passed, adopted, ordained, approved and ordered published this the 1st day of February, 2016.


James Wells, Mayor

Attest:

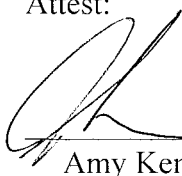

Amy Kenner, City Clerk

Exhibit “A”

BID PROPOSAL:

OPERATION OF CABLE TELEVISION SYSTEMS IN THE

CITY OF DRY RIDGE, KENTUCKY

BY

CINCINNATI BELL EXTENDED TERRITORIES, LLC

WHEREAS, the **CITY OF DRY RIDGE, KENTUCKY** (the "City") has requested bid proposals from parties interested in obtaining a non-exclusive franchise to operate cable television systems within the confines of the City;

NOW, THEREFORE, **CINCINNATI BELL EXTENDED TERRITORIES, LLC ("CBET")**, hereby submits its bid for obtaining a non-exclusive franchise to operate cable television systems within the City as follows:

SECTION 1. CONSTRUCTION.

This bid shall be construed in light of applicable Federal and State laws and regulations governing cable television.

SECTION 2. SCOPE.

This bid shall be effective within the geographical limits of the City of Dry Ridge, including any areas subsequently annexed by the City.

SECTION 3. SEVERABILITY.

If any word, phrase, sentence, part, section, subsection, or other portion of this bid, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this bid, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect. The City declares that no invalid or proscribed provision or application was an inducement to this bid, and that it would have enacted this bid regardless of the invalid or proscribed provision or application.

SECTION 4. DEFINITIONS.

- A. "Access channel" means a government, education, or public channel which is carried on the cable system, but which is not part of any institutional network.
- B. "Basic cable television service" means any service tier which includes the retransmission of local television broadcast signals.
- C. "City" means the City of Dry Ridge.
- D. "County" means the Grant County Fiscal Court, Kentucky or its lawful successor.

- E. "FCC" or "Federal Communications Commission" means the Federal administrative agency, or lawful successor, authorized to oversee cable television and other multi-channel video provider regulation on a national level.
- F. "Franchise" means the initial non-exclusive authorization or subsequent renewal granted by the City which authorizes a person to construct, operate and maintain a cable system in all or part of the City.
- G. "Franchisee" means the legal entity granted the cable television franchise by the City and any entity having any rights, liabilities or interest to the franchise whether by assignment, transfer or other means.
- H. "Franchise Fee" means for the purposes of this Agreement any fee that may be imposed by the City on Franchisee as compensation for Franchisee's use of public rights-of-way and roads or that is defined by Federal law as a franchise fee under Section 622(g) of the Communications Act (47 U.S.C. § 542(g)) or by Kentucky law under KRS 136.660. Use of this definition in this Agreement is without prejudice to any rights Franchisee or City may have under Federal and Kentucky law as they may be amended.
- I. "Gross Revenues" means any and all revenues or receipts, including cash, credits, property or other consideration of any kind or nature, which is derived directly or indirectly and collected by Franchisee for Cable Service from its Subscribers having service addresses within the Franchise Area. Gross Revenues includes, recurring monthly charges for Cable Service; event-based charges for video service including, but not limited to, Pay-Per-View Event(s), Pay-Per-View Movie(s), Premium Channels and video-on-demand charges; charges for the rental or sale of set top boxes and other Cable Service or video service related equipment; service charges related to the provision of Cable Services, including, but not limited to, service order, installation, connection and service termination charges. Gross Revenue shall include any such revenue or receipts received by any Affiliate of the Franchisee where such revenue or receipts in the ordinary course of business should have, according to existing practices, been paid to Franchisee in connection with the operation of its Cable System. Gross Revenue shall not include the following: (a) Any taxes, fees, or assessments that are collected by the video service provider from video service subscribers for pass-through to any federal, state, or local government agency, including the franchise fee authorized under this Section 40 and the PEG Capital Support authorized under Section 46(I); (b) Uncollectible charges, except that uncollectible charges, all or part of which are written off as bad debt but subsequently collected, less the expenses of their collection shall be included in gross revenue in the quarter collected; (c) Late payment charges; (d) Maintenance charges; (e) Charges for services other than Cable Service, reasonably identifiable on books or records the Franchisee keeps in the regular course of business or by other reasonable means, that are aggregated or bundled with amounts billed to Cable Service Subscribers, including, but not limited to, any revenue received by Franchisee or its Affiliates for telecommunications service, information service, or the provision of directory or

internet advertising, including yellow pages, white pages, banner advertising, and electronic publishing; and (f) Reimbursement by programmers of marketing costs actually incurred by the video service provider. Gross revenue shall be computed in accordance with generally accepted accounting principles.

- J. "Franchisee" means CBET, its assignee or transferee.
- K. "Pay-Per-View Event(s) or Pay-Per-View Movie(s)" means the delivery over the cable system of audio and video signals in an unintelligible form for a set fee or charge over and above the charge for standard or basic service and in addition to any premium channel on a per event or per movie basis where said unintelligible or unusable form is made intelligible for viewing only to subscribers paying a separate fee or charge for the viewing of the event or events.
- L. "Premium channel" means the delivery over the cable system of audio and video signals in an unintelligible form to subscribers for a monthly fee or charge. (over and above the charge for standard or basic service) on a per channel basis where said unintelligible or unusable form for viewing is made intelligible only to subscribers paying a separate fee or charge for the viewing or use of the signals.
- M. "Public, Educational or Governmental access facilities" means:
 - 1. Channel capacity designated for public, educational or governmental use; and
 - 2. Facilities and equipment for the use of such channel capacity.
- N. "Rate" means the monthly price paid by a subscriber in order to receive cable service.
- O. "Service day" means those days the United States Postal Service delivers regular mail (typically, Monday through Saturday, excluding federal holidays).
- P. "Service outage" means the loss of picture or sound on all basic subscriber channels, or one (1) or more auxiliary programming channels (including tiers and pay programming), and which is not caused by the failure or malfunction of a subscriber's television receiver or by the error of the subscriber.
- Q. "Subscriber" means a person lawfully receiving service delivered over a cable system by a cable operator.

SECTION 5. FAILURE OF THE CITY TO ENFORCE THIS BID.

- A. Should the bid be accepted and subsequently adopted by ordinance, Franchisee shall not be excused from complying with any of the requirements of thereof, or any subsequently adopted amendments thereto, by any failure of the City on any one (1) or more occasions to seek, or insist upon, compliance with such requirements or provisions.

- B. This Bid and the rights and responsibilities it imposes on Franchisee may not be unilaterally amended without the prior written consent of Franchisee.

SECTION 6. REPEAL OF INCONSISTENT RESOLUTIONS AND ORDINANCES.

To the extent that there is any resolution or ordinance which in part, or in whole, is directly inconsistent with this bid, such part, or such whole, of the prior resolution or ordinance shall be repealed to the extent of the inconsistency.

SECTION 7. RESOLUTION OF INCONSISTENCIES WITH FEDERAL OR STATE RULES, REGULATIONS OR LAWS.

In any case of an actual inconsistency between any provision or section of this bid, and any provision or section of a Federal or Kentucky rule, regulation, or law, then the Federal or Kentucky rule, regulation, or law shall not only supersede the effect of the bid, but also control in any local application.

SECTION 8. NOTICES.

Both the City and Franchisee shall provide the other party with the name and address of the contact person designated to receive notices, filings, reports, records, documents, and other correspondence. All notices shall be delivered to each party's contact person by certified mail, return receipt requested, personal service with a signed receipt of delivery, or overnight with receipt verification. All other filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to: facsimile transmission ("faxing"); electronic mail ("email"); personal service; overnight mail or package delivery; or delivery via cable. The delivery of all notices, reports, records, and other correspondence shall be deemed to have occurred at the time of receipt (unless otherwise designated by State law).

SECTION 9. INDEMNITY.

- A. To the extent permitted by law, Franchisee shall at all times defend, indemnify, protect, save harmless, and exempt the City, Mayor and City Council members of Dry Ridge, their officers, and employees from any, and all, penalty, damage, or charges arising out of claims, suits, demands, causes of action, or award of damages whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might be claimed now or in the future, which may arise out of, or be caused by, the construction, erection, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of the system within the City by a negligent act or omission of Franchisee, its agents or employees, contractors, subcontractors, independent contractors, or implied or authorized representatives. With respect to the penalties, damages or charges referenced herein, attorneys' fees are included as those costs which may be recovered by the City.

- B. The City, Mayor, and City Council, specifically reserve the right to retain counsel of their own choice, at their own expense.
- C. If Franchisee obtains counsel for the City, the Mayor, or the City Council persons, then any one of them shall have the right to approve counsel, provided, however, that the City shall not unreasonably withhold their approval of counsel.
- D. With respect to Franchisee's own defense of such actions noted in this Section, it is understood that such Franchisee reserves the right to select and retain, without the City's approval, counsel of the operator's choice, at Franchisee's own expense.

SECTION 10. LIABILITY INSURANCE.

The Franchisee shall maintain insurance from companies approved by the City, such approval not to be unreasonably withheld, to protect the City and the franchisee and their officers, agents and employees from and against claims caused by the construction, erection, operation or maintenance of any aspect of the system. The amount of such insurance shall be no less than the following:

Commercial General Liability Insurance	
Per occurrence	\$5,000,000.00
Products & Completed Operations Aggregate	\$5,000,000.00
Property damage general aggregate	\$5,000,000.00
Commercial Automobile Insurance	
Per occurrence	\$3,000,000.00

These limits may include self-insured retentions. Workers' compensation shall also be provided as required by the laws of the Commonwealth of Kentucky. Commercial General and Automobile Insurance shall include the City, as additional insured for their vicarious liability and shall provide thirty (30) day notice to the City in the event of cancellation of any coverage afforded in said policies prior to the date said cancellation shall become effective. Certificates of Insurance certifying the policies required hereunder shall be furnished to and filed with the City Clerk prior to the commencement of operations or the expiration of prior certificates, as the case may be.

SECTION 11. FURNISHING OF REPORTS.

- A. Franchisee shall timely submit those reports, statements, and logs required by this franchise.
- B. Certificates of Insurance for renewal or replacement insurance policies shall be delivered to the City at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.

- C. Franchisee shall submit a report to the City, within 90 days after the close of each quarter of its fiscal year, which contain for the previous quarter:
- i. A customer complaint log which identifies service related complaints by customers and the resolution of those complaints;
 - ii. The number of additional subscribers to the system;
 - iii. Changes that have occurred in the programming offered by the system;
 - iv. Additional line extensions and construction activity;
 - v. A compliance report on the system's compliance with the franchise's customer service standards; and
 - vi. A list of all reports and petitions filed by the system with the Federal Communications Commission.

SECTION 12. BOOKS AND RECORDS.

- A. Franchisee shall keep complete and accurate books of accounts, and records of the business and operations under, and in connection with the system.
- B. The City shall have the right to review at operator's primary administrative office, all records, pertaining to the City's regulation of Franchisee's cable operations in the City, on seven (7) days written notice. Such review, unless mutually agreed upon, or judicially ordered, should occur within Franchisee's regular office hours.
- C. The City shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the books and records of operator. If, after a financial audit, it is determined that Franchisee has underpaid amounts owed to the City (in excess of five percent (5%)), then the City may require Franchisee to reimburse the City for the actual cost of the audit. Provided, however, absent fraud, all audits shall be binding on the City.
- D. Franchisee, at the local office shall keep complete and accurate books and records of the key aspects of the system's operation in the City for at least the preceding three (3) years in such a manner that all matters pertaining to the City, can be easily produced and/or verified at the City's request. Also, Franchisee shall make available, on seven (7) days advance written notice, those records that pertain to its operation of the system that may be required by any other Federal or State agency having jurisdiction over cable operators. Provided, however, that with respect to the obligation to maintain financial records, operator shall only be required to maintain the financial records required by federal law.

- E. Communications with Regulatory Agencies. A listing of all petitions, applications, communications, reports and all other documents submitted by the franchisee to the FCC or any other federal or state regulatory commission or agency shall be filed with the City annually and all such documents shall be available for inspection at franchisee's office.
- F. All filings and reports required of the franchisee or any applicants by this bid or any franchise agreement shall be made to the City.

SECTION 13. NOTIFICATION OF CUSTOMERS' AND FRANCHISEE'S RIGHTS AND RESPONSIBILITIES; GENERAL POLICY.

- A. In order to provide customers with the variety of information needed to make an informed decision, and to ensure that customers are notified of the rights and responsibilities of the customer and the Franchisee with respect to the cable system, Franchisee shall provide customers with a written "Notice of a Customer's and Franchisee's Rights and Responsibilities."
- B. Unless expressly prohibited by the State, Franchisee may comply with any notice requirements by providing said "Notice" by mail to the subscriber, through newspaper publication or over the cable system, on a channel clearly designated for the dissemination of such information -- (such a channel need not be solely designated for dissemination of such information, and may, in fact, be used at other times for any lawful purpose).

SECTION 14. NOTIFICATION OF CUSTOMERS' AND FRANCHISEE'S RIGHTS, AND RESPONSIBILITIES; MINIMUM CONTENTS.

- A. When the Franchisee provides a Notice to customers concerning their rights such "Notice" should contain the following:
 - 1. an up-to-date listing of services provided;
 - 2. notification of a subscriber's ability to purchase or lease, from the Franchisee, parental control mechanisms, or other device which will prohibit the viewing of a particular program service during a period selected by the subscriber;
 - 3. a listing and explanation of rates and charges, credit refund policy, connection and involuntary disconnection policies;
 - 4. the complaint resolution procedures;
 - 5. a listing and explanation of billing options available (such as monthly or yearly, and/or discounts for pre-payments);
 - 6. the customer service office hours and telephone number(s);
 - 7. the method of securing a voluntary disconnection; and
 - 8. the equipment use and return policy together with any required security deposits.

- B. The "Notice" shall be in plain, simple understandable English.
- C. The "Notice" may be delivered to a subscriber via an insert in the subscriber's periodic invoice, through a special mailing, by newspaper or publication over a channel clearly designated for the dissemination of such information.

SECTION 15. BILLING PRACTICES.

- A. Whenever there is a change in Franchisee's billing practices or payment requirements, Franchisee shall notify subscribers within thirty (30) days of the effective date of such billing practices or payment requirements.
- B. In any case where a subscriber requests a cancellation or reduction of service within thirty (30) days after the notification of a scheduled rate or charge adjustment, then the subscriber's liability for the newly implemented rate or charge shall cease from the moment that the rate or charge adjustment becomes effective.

SECTION 16. BILLING CREDIT OR REFUNDS FOR SERVICE OUTAGES, INTERRUPTIONS; SUBSTANDARD SIGNAL OR PICTURE QUALITY OR UNSOLICITED SERVICE.

Franchisee shall, upon request by a subscriber, provide that subscriber with a pro-rata credit for a service outage or interruption exceeding one service day in duration, provided that the outage is not caused or is not a result of matters beyond the immediate control of Franchisee.

SECTION 17. CUSTOMER SERVICE PERFORMANCE.

A. Definitions:

1. Normal Business Hours

This means those hours during which most similar businesses in the community are open to serve customers. This will include some evening hours (at least one night per week) and/or some weekend hours.

2. Normal Operating Conditions

This means conditions that are within the control of the operator. Those conditions which are not within the control of the operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather. Those conditions which are ordinarily within the control of the operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

3. Service Interruption

This means a service outage which is not caused by the failure or malfunction of a subscriber's television receiver or by the error of the subscriber. This term affects the timing of when the operator must respond to a service problem.

B. Customer Service Standards

Office hours and telephone availability:

1. The operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.
 - (a) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.
 - (b) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by trained company representatives on the next business day.
2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis. The operator shall not be required to acquire equipment or perform surveys to measure compliance with telephone answering standards unless an historical record of complaint indicates a clear failure to comply.
3. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.
4. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

C. Installations, Outages, and Service Calls

Under normal operating conditions, each of the following four (4) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.

1. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 150 feet from the existing distribution system.

2. Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 4 hours after the interruption becomes known.
3. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
4. The Franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
5. If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

D. Communications Between Cable Franchisee and Cable Subscribers

1. Notifications to subscribers
 - (a) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:
 - (i) products and services offered;
 - (ii) prices and options for programming services and the conditions of subscription to programming and other services;
 - (iii) installation and service maintenance policies;
 - (iv) instructions on how to use the cable service;
 - (v) channel positions of programming carried on the system; and
 - (vi) billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.
 - (b) Customers will be notified of any changes in rates, programming service or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days

in advance of any significant changes in the other information required by the preceding paragraph.

2. Billing:

- (a) Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.
- (b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

3. Refunds:

Refund checks will be issued promptly, but no later than either -

- (a) in the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
- (b) within thirty (30) days after return of equipment supplied by the cable operator.

4. Credits:

Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

SECTION 18. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

- A. Franchisee shall not, as to rules, regulations, rates, charges, provision of service, or use of facilities and equipment, make, allow, or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage on the basis of age, race, creed, color, sex, national origin, handicap, religious affiliation, or location of residence.
- B. Franchisees shall not deny cable service, or the extension of cable service, to any group of potential residential cable subscribers because of the income of the residents or the local area in which such group resides.
- C. This Section, however, does not prohibit Franchisee from offering a promotional or incentive discount rate or charge.
- D. This Section does not prohibit Franchisee from denying service based on location of residence, if that residence is outside the parameters for line extension as detailed herein.

- E. This Section does not prohibit Franchisee from denying service to a subscriber who is more than thirty (30) days delinquent in the payment of any service bill.
- F. This Section does not prohibit Franchisee from implementing a no-frills service tier for "lower income", and/or fixed income individuals.
- G. This Section does not prohibit Franchisee from making agreements or entering into service agreements with multiple dwelling unit owners or commercial establishments (including hotel, motel, apartments, fraternities, sororities, and mobile home park owners) to provide service under a bulk billing or other type of arrangement.
- H. The franchisee will comply with all Federal and State laws regarding special service requirements on handicapped customers.

SECTION 19. USE OF EQUIPMENT, RETURN OF EQUIPMENT, SECURITY DEPOSITS, AND THEIR RETURN.

- A. Franchisee may charge an appropriate security deposit provided that it shall comply with any and all applicable State rules concerning the imposition, retention, and return of security deposits and does not exceed the cost of replacement plus recovery.
- B. Franchisee may charge an appropriate security deposit in those instances where a customer is re-connected after an involuntary disconnection for non-payment or prior history of unsatisfactory payment.
- C. Franchisee shall return a security deposit after the equipment is satisfactorily returned or the subscriber maintains a satisfactory payment history (which is determined as no payment delinquencies within the preceding twelve (12) month period).
- D. A customer shall totally and fully reimburse Franchisee for any damage or loss to any of Franchisee's equipment that is due to the customer's failure to properly maintain and operate such equipment.
- E. A customer shall be relieved from any responsibility for reimbursing Franchisee for the repair of equipment which malfunctions or does not operate due to a hidden or latent defect in the equipment, or for equipment which fails to operate, or improperly operates due to natural occurrences conditioned by the normal wear and tear of such equipment, however, customer shall still be obligated to return said equipment to Franchisee otherwise undamaged.

SECTION 20. SERVICE LOGS.

- A. Franchisee shall be required to keep and maintain service logs, subject to any limitations imposed by State or Federal law, including any subscriber privacy limitations.
- B. The purpose of the service logs is to assist the City in assessing (in the aggregate) the type, degree, and resolution of customer trouble calls and written complaints.
- C. In addition to any other right of inspection that the City may possess, it shall have the right to review and inspect a compilation of such logs. Provided that Franchisee shall have no obligation to retain any log for more than three (3) years. However, the City shall not have the right of access, review, or inspection of any service logs or any information contained within service logs that are otherwise protected from access, review, or inspection by State or Federal law.
- D. This Section does not require Franchisees to maintain service logs on scheduled installations, upgrades and changes of service.

SECTION 21. RESTORATION OF A SUBSCRIBER'S PROPERTY.

- A. At any time Franchisee disturbs the yard, residence, or other real or personal property of a subscriber, Franchisee shall ensure that the subscriber's yard, residence, or other personal property is returned, replaced, and/or restored to a condition that is sufficiently comparable to the condition that existed prior to the commencement of the work.
- B. The costs associated with both the disturbance and the return, replacement, and/or restoration shall be borne by Franchisee.
- C. The requirements imposed upon Franchisee shall extend to any subcontractor or independent contractor that Franchisee might employ to perform the tasks outlined in this Section.
- D. Provided, however, operator has the authority to diligently trim trees of a private property owner (including a subscriber) which overhang or intrude into rights-of-way or easements, but only to the extent necessary to prevent the branches of the trees from coming in contact with operator's cable television facilities.

SECTION 22. SERVICE REQUESTS, COMPLAINTS, AND RESPONSE TIMES.

- A. Except in times of a natural or man-made emergency, or an appointment scheduled with the mutual consent of a subscriber, Franchisee shall respond to the service requests and complaints of subscribers within thirty-six (36) hours after the need for service becomes known. Moreover, except in emergency situations, Franchisee shall inform the customer whether the service call is scheduled for the morning, afternoon, or evening hours. If the service call has to be canceled or rearranged, unless the subscriber decides otherwise, Franchisee shall make every

effort to notify the customer as soon as possible, and to re-schedule the service call.

- B. Franchisee may rank-order service calls in order of severity. Total outages will take precedence over area outages, area outages take precedence over a single home; and a multichannel problem takes precedence over a single channel problem.

SECTION 23. FRANCHISEE REQUIRED TO MAINTAIN SUFFICIENT REPAIR PARTS AND SUFFICIENT REPAIR PERSONNEL.

- A. Except in times of a natural or man-made emergency, Franchisee shall at all times, have access to, and be able to secure sufficient maintenance and repair parts and equipment for the system, so that operator can respond to, and correct, all subscriber service interruptions within the time periods specified in this bid.
- B. Except in times of natural or man-made emergency, including severe weather conditions, or strike, operator shall have sufficient maintenance and repair personnel, so that Franchisee can respond to, and correct, subscriber service interruptions within the time periods specified in this bid.
- C. Notwithstanding the other requirements and provisions contained in this Section, Franchisee shall maintain at least one (1) service technician on call twenty-four (24) hours per day.

SECTION 24. NEW INSTALLATIONS; CONNECTIONS – REGULAR, PROMOTIONAL, SEASONAL, SHORT-TERM, AND PAY-PER-VIEW; RE-CONNECTIONS.

- A. During non-rush periods, new standard installations, promotional, short-term, or seasonal connections, re-connections, and upgrades of service by Franchisee shall be performed and completed within seven (7) days of a customer requesting such. A standard installation is one that is located within one hundred fifty (150) feet from the existing distribution system. During rush periods new installations, promotional, short-term, or seasonal connections, re-connections, and upgrades of service by Franchisee shall be performed and completed within fourteen (14) days of a customer requesting such, if cable is built to the home.
- B. While Franchisee may charge a customer for installing, connecting, or re-connecting service, such charge must be explained to customers.
- C. In the case of a promotional or seasonal connection, any limitations, or restrictions should be explained prior to the promotional or seasonal connection.
- D. Franchisee may charge an appropriate re-connection charge or require a security deposit, in-those instances where a customer is re-connected after an involuntary disconnection for non-payment or a prior history of unsatisfactory payment.

SECTION 25. DISCONNECTION FOR NON-PAYMENT.

- A. A subscriber shall be considered delinquent in payment if payment is not made within ten (10) days after receipt of the bill. Franchisee shall not disconnect service prior to 30 days after a subscriber's receipt of the unpaid bill however, Franchisee may charge a late fee for any payment which has not been made after the 10th day from receipt.
- B. Receipt of a dishonored check from a subscriber, in response to a written notice of disconnection, does not constitute payment, and the operator need not give the subscriber further notice prior to disconnecting service.
- C. Franchisee may add a reasonable collection charge, subject to applicable state regulations to the subscriber's bill.

SECTION 26. VOLUNTARY DISCONNECTIONS AND DOWNGRADES.

- A. At any time, a subscriber, who does not have a separate contract with the Franchisee, may request that a particular service tier, pay channel, premium channel, informational service, or the entire service be disconnected.
- B. A subscriber may request a downgrade from a particular level of service to a less comprehensive level of service or a less expensive level of service.
- C. From the date that such a subscriber makes such a request for either a disconnection or downgrade, the Franchisee shall have ten (10) days to disconnect or downgrade the service tier, pay channel, premium channel, informational service, or entire service. In the event that Franchisee does not disconnect or downgrade service within this period, a subscriber's obligation to pay for such service shall cease, or in the case of a downgrade, a subscriber's obligation to pay for the more comprehensive and/or higher priced service shall cease ten (10) days from the date of the customer request.
- D. For a service tier, premium channel or informational service which is voluntarily disconnected, a subscriber shall pay a pro rata share of the monthly rate for such service tier, premium channel or informational service.
- E. Once a valid connection to a pay-per-view event occurs, the Franchisee may collect the full advertised or quoted rate should the customer then attempt to disconnect the pay-per-view event.
- F. Provided that Franchisee does not have to make a trip or add additional equipment to the subscriber's location to perform a change in service, no separate disconnect or downgrade charge may be passed onto a subscriber if it chooses to take advantage of a lower-priced or less comprehensive service tier.

However, to prevent subscriber abuse of this voluntary disconnection or downgrade policy, a subscriber shall be charged a minimum one (1) month's full rate for any one (1) service tier which is connected and then subsequently disconnected.

- G. If Franchisee's equipment is, or has been damaged by a subscriber, prior to disconnection, then Franchisee may charge the subscriber with the entire cost for such damage, provided that Franchisee notifies the subscriber within thirty (30) days after the disconnection. A subscriber shall not be required to pay for equipment failure if the circumstances fall within the normal wear and tear guidelines.
- H. Any refund due a subscriber after disconnection (both for non-payment and voluntary) shall be made within forty-five (45) days after such disconnection.

SECTION 27. RESOLUTION OF COMPLAINTS.

In the event of a subscriber billing or repair complaint, the complaint will be handled as follows:

- 1. Franchisee shall have the initial response to a complaint occur no later than one (1) service day after receipt of the complaint;
- 2. Every attempt will be made- to resolve the complaint within seventy-two (72) hours or three (3) service days, whichever is longer, after receipt of the complaint.

SECTION 28. CONTINUED USE OF INDIVIDUAL ANTENNAS PROTECTED.

No person shall be required to receive cable service or to physically connect to the cable system.

SECTION 29. CONSTRUCTION OF GOOD QUALITY.

During any phase of construction, installation, maintenance, and repair of the system, Franchisee shall use materials of good and durable quality and all such work shall be performed in a safe, thorough, and reliable manner. Such work shall comply with FCC and industry standards.

SECTION 30. CONDITIONS ON USE OF STREETS AND PUBLIC WAYS.

- A. All wires, conduits, cable (coaxial, fiber, or functional equivalent), and other property and facilities of operator shall be so located, constructed, installed, and maintained so as not to endanger or unnecessarily interfere with usual and customary use, traffic and travel upon the streets, rights-of-way, easements, and public ways of the City.

- B. In the event Franchisee's system creates a hazardous or unsafe condition or an unreasonable interference with property, then at its own expense, Franchisee shall voluntarily, or upon the request of the City, remove that part of the system that creates the hazardous condition from the subject property.
- C. Franchisee shall protect rights-of-way, easements, and support or temporarily disconnect or relocate in the same street or other public way, any property of Franchisee when necessitated by reason of:
 - 1. traffic conditions;
 - 2. public safety;
 - 3. a street closing;
 - 4. street construction or re-surfacing;
 - 5. change or establishment of street grade; or
 - 6. installation of sewers, drains, water pipes, storm drains, lift stations, force mains, power or signal lines.
- D. It shall be the responsibility of Franchisee, within 72 hours of the request (acting alone or in conjunction with another person) to locate and mark or otherwise visibly indicate and alert others to the location of its underground cable (coaxial, fiber or functional equivalent) before employees, agents, or independent contractors of any entity with a valid permit installs cable or digs in the marked-off area.

Any restoration expense or any damage caused to Franchisee's facilities resulting from the failure of an entity to have Franchisee's facilities located and marked or as a result of an entity constructing or digging in a location where Franchisee's facilities have been marked, will be the sole responsibility and liability of such entity who damaged Franchisee's facilities.

- E. Franchisee shall, on the request of any person holding a building moving permit, temporarily remove, raise or lower the cable wires to allow the moving of the building. The expense of temporary removal shall be paid by the person requesting it, and Franchisee may require payment in advance. Franchisee shall be given not less than twenty-one (21) day notice of a contemplated move to arrange for temporary wire changes.

SECTION 31. CONSTRUCTION STANDARDS.

- A. The methods of construction, installation, maintenance, and repair of the system shall comply and be consistent with good engineering practices for cable television systems of similar size and design, and consistent with FCC technical standards.
- B. Franchisee shall advise the City when a proof of performance test is scheduled so that the City may have an observer present if so desired.

SECTION 32. PERMITS AND LICENSES.

Franchisee shall obtain, at its own expense, all permits and licenses required by law, rule, regulation, or bid, and maintain the same, in full force and effect, for as long as required.

SECTION 33. STANDBY POWER.

Franchisee shall install automatic, activated standby power on its trunk-cable and at its headends, hubs and receive-sites associated with the distribution of cable service to and throughout the City to provide at least two (2) hours of standby power.

SECTION 34. EMERGENCY ALERT/EMERGENCY OVERRIDE.

Franchisee shall comply with all Federal Emergency Alert requirements. Franchisee will also design its system to allow local authorities to send out an emergency broadcast.

SECTION 35. PREVENTIVE MAINTENANCE PROGRAM .

The following shall be included as part of Franchisee's preventive maintenance program:

- a) periodic inspection, and repair if needed, of the headend;
- b) periodic inspection, and repair if needed, of the antenna tower;
- c) periodic weather-proofing and protection of the antenna lead connectors, and on any other exposed fittings if needed;
- d) periodic conducting of signal leakage tests that are in accord with FCC requirements;
- e) periodic servicing, testing, and calibration of equipment including service vehicles, and field test equipment;
- f) periodic testing of the Franchisee's emergency alert system if any; and
- g) periodic testing and recording of said test data for all signals (audio and video) at the headend and system extremity points;
- h) periodic testing as required by Federal law and or regulations; and
- i) compliance with all operating parameters required by FCC rules and regulations, as such may be changed or amended from time to time.

SECTION 36. EXTENT OF GRANT OF FRANCHISE.

- A. Franchisee may construct, erect, install, maintain, operate, repair, replace, remove, or restore a cable system within the geographical limits of the City.
- B. The cable system may be located in, upon, along, across, over, and under the streets, rights-of-way, easements, and public ways of the City and County.
- C. The cable system may be located on City and County owned poles at no charge.

- D. Franchisee, through a separate pole or utility easement agreement with an affected utility, may locate the cable system on, or within, the property of such utility company.

SECTION 37. TERM OF FRANCHISE.

- A. The term of this franchise shall be ten (10) years from the effective date of this Bid. The rights and privileges granted by this Bid to Franchisee are not exclusive and nothing herein is intended to or shall be construed so as to prevent the City from granting other and similar rights, privileges and franchises to any other person, firm, association or corporation, provided, however, that such rights, privileges and franchises are no more favorable than those granted to Franchisee herein.
- B. The City and Franchisee acknowledge and agree that the field of cable television is a rapidly changing one which may see many regulatory, technical, financial, marketing and legal changes during the term of this franchise. Therefore, in order to provide for the maximum degree of flexibility in the franchise, and to achieve a continued, advanced and modern cable television system, the following evaluation provisions will apply:
- (i) The City and Franchisee mutually agree to participate in evaluation sessions at any time and from time to time during the term of this franchise; provided, however, there shall not be more than one (1) evaluation session every five (5) years;
 - (ii) Topics which may be discussed at any evaluation session include, but are not limited to, channel capacity, system performance, programming, PEG access, municipal or educational uses of the system, subscriber complaints, judicial rulings and any other topics the City or Franchisee may deem relevant;
 - (iii) During an evaluation session, Franchisee and the City shall fully cooperate with one another and shall provide without cost such information and documents as are reasonably necessary to perform the evaluation;
 - (iv) The City and Franchisee, as the result of an evaluation session, may determine that an amendment of the terms or conditions of the franchise may be appropriate, that the requirements of the system or of the franchise should be updated, changed or revised (collectively the "Proposed Modification"). If the Proposed Modification is consistent with the terms of this franchise, the needs of the City, the then existing state-of-the-art technology and financially reasonable, Franchisee and the City will, in good faith, review the terms of the Proposed Modification and consider amending the franchise.

SECTION 38. PAYMENT TO THE GOVERNMENT.

- A. Payments shall be made at the times and in conformance with the requirements of applicable law, currently Kentucky Revised Statutes, Chapter 136, as revised by House Bill 272 (Tax Modernization) in the 2005 Regular Session of the Kentucky General Assembly (the "Kentucky Franchise Law"). Additionally, the City may at any time impose any fees or taxes consistent with state or federal law, including, but not limited to property taxes, and occupational license fees but excluding and never including Franchise Fees except to the extent allowed by subsection (C), below.
- B. The excise tax distribution from the state is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Agreement, or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable as provided by law to the extent they are not Franchise Fees. Such payments shall be made at the times and in conformance with the requirements of this Agreement.
- C. The City may not collect Franchise Fees from Franchisee except to the extent allowed by this subsection (c). If at any time Kentucky law is changed to allow the collection of Franchise Fees by Franchisee, (i) Franchisee shall pay Franchise Fees for the reason that the Roads to be used by Franchisee in the operation of its system within the boundaries of the City of Dry Ridge are valuable public properties, acquired and maintained by the City at great expense to its taxpayers, and that the grant to Franchisee to use said Roads is a valuable property right without which Franchisee would be required to invest substantial capital in right-of-way costs and acquisitions, (ii) the Franchise Fee shall be in an amount equal five percent (5%) of Franchisee's Gross Revenue and (iii) notwithstanding the foregoing, in no event shall Franchisee pay more than any competing cable provider.
- D. . Nothing herein shall be deemed a waiver of any right of Franchisee to challenge the imposition of any fee as inconsistent with applicable law.
- E. Subject to Section 622 of the Communications Act and the Kentucky Franchise Law, the payment of the Franchise Fee shall be in addition to any other tax or payment owed to the City by Franchisee.
- F. If any Franchise Fee is owed to the City under subsection (c), above, it shall be payable quarterly to the City and Franchisee shall file a complete and accurate report, signed by and certified as accurate by an officer of Franchisee, of all Gross Revenues received within the territorial limits of the City of Dry Ridge during the previous three month period, and said payment shall be made to the City no later than forty-five (45) days after the expiration of the quarter when due. The Gross Revenue report from operations of Franchisee within the franchise area shall include: a schedule of Gross Revenue by category by month; a schedule of the number of Subscribers by category of service by month; and a schedule of Gross Revenue upon which the Franchise Fee is based.

- G. If any Franchise Fee is owed to the City under subsection (c), above, upon reasonable notice, the City shall have the right during normal business hours to inspect Franchisee's relevant revenue records at Franchisee's office, the right to audit and to re-compute any amounts determined to be payable under this Agreement; provided, however, that such audit shall take place within twelve (12) months following the close of each of Franchisee's fiscal years. If, as a result of such audit or review, the City determines that Franchisee has underpaid its fees to the City in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, Franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including costs for attorneys, accountants and other consultants. Any additional amount due to the City as a result of an audit or review shall be paid within the thirty (30) days following written notice to Franchisee by the City, which notice shall include a copy of the audit report and copies of all invoices for which the City seeks reimbursement.
- H. In the event that any franchise payment or recomputed amount is not made to the City on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 2% over prime interest rate.
- I. The City reserves the right to require Franchisee, to collect any consumer or other tax or other fee that may be lawfully imposed by the City, the Commonwealth of Kentucky, or the federal government on Cable Services.
- J. No acceptance of any payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the release of any claim that the City may have for further or additional sums payable under this Agreement.

SECTION 39. RELIEF FROM THIS BID.

- A. CBET may file a written petition, at any time, with the Authority seeking relief from one (1) or more provisions of this bid. The relief requested may specifically include the delay in implementation of one (1) or more provisions of this bid.
- B. So that no provider of multi-channel service (such as a wireless cable operator, competing cable operator, phone company, video dial tone provider, or direct broadcast satellite service) shall receive an unfair competitive advantage, Franchisee shall be entitled to relief from competition as follows. If a competing multi-channel service ("Competitor") is available to 50% or greater of the City then:
 - 1. Franchisee shall have no greater channel capacity requirement than Competitor.
 - 2. Franchisee shall have no greater requirement to provide public, educational, or government access than Competitor.

3. Franchisee shall have no greater responsibility to furnish reports than Competitor.
4. Franchisee shall have no greater customer notification requirements than an Competitor.
5. The restrictions on Franchisee's billing practices shall be no greater than the restrictions placed on Competitor.
6. Franchisee's customer service requirements shall be no greater than Competitor's.
7. Franchisee shall have no greater responsibility to provide institutional networks or data transmission facilities or interconnection than Competitor.
8. Franchisee shall have no greater responsibility to pay a franchise fee than Competitor.

SECTION 40. ASSIGNMENT OR TRANSFER OF FRANCHISE.

- A. Franchisee's franchise may not be assigned or transferred in whole, or in part, without the prior express written approval by the City.
- B. Any attempted assignment or transfer without such prior written consent shall constitute a default of such franchise.
- C. In the event of such a default, the City shall proceed according to the procedure set forth in this bid, and any applicable State or Federal law.
- D. Franchisee shall petition in writing for the City's written consent for a proposed assignment or transfer.
- E. The City will not unreasonably withhold its consent to such an assignment or transfer. However, in making such a determination, the City may consider the following provided, however, that City will respond within the time frame mandated by federal law:
 1. experience of proposed assignee or transferee (including conducting an investigation of proposed assignee or transferee's service record in other communities);
 2. qualifications of proposed assignee or transferee;
 3. financial ability and stability of the proposed assignee or transferee;
 4. the character of proposed assignee or transferee; and
 5. the corporate connection, if any, between the Franchisee, and proposed assignee or transferee.

- F. Notwithstanding the foregoing, no consent shall be required for the Franchisee to hypothecate or mortgage Franchisee's assets or in the case of corporate reorganization where control of the corporation does not change.

SECTION 41. DEFAULT OF FRANCHISE; REVOCATION, TERMINATION OR CANCELLATION OF FRANCHISE.

- A. When any event, act or omission (on the part of the Franchisee) occurs which represents a substantial violation of an integral provision of this bid, or materially compromises the corporate character, or legal, financial or technical integrity and/or stability of the system or the Franchisee to such a degree that the interests of the subscribers are negatively affected, then such event, act or omission may be considered a major breach of this bid. Under such circumstances, the City shall notify the Franchisee in writing, of the specific breach, and direct Franchisee to comply with all such provisions of this bid.
- B. Provided, however, where Franchisee satisfactorily corrects any of the enumerated conditions, within ninety (90) days from receipt of written notice, then in no event shall the enumerated condition be weighed against Franchisee in any subsequent review of franchise performance.
- C. Provided, however, that if the enumerated conditions cannot be corrected within ninety (90) days from written notice because of circumstances beyond operator's control, then Franchisee shall not be deemed in violation of the franchise.
- D. Within seventy-five (75) days, after such written notice is delivered to Franchisee, the City shall conduct a public hearing on the matter.
- E. The City shall provide written notice to an Franchisee, and any surety, of the time and place of said public hearing.
- F. At the time of the hearing, the Franchisee may present information on the current status of the alleged breach of the franchise agreement. If the situation has been resolved, or steps are being taken to resolve the situation, then the Franchisee may present the information at the hearing.
- G. If the affected Franchisee fails to attend the hearing, and has not requested a continuance of the hearing, then Franchisee shall be deemed to have waived its right to a further continuation of the matter, and may be declared in default of the franchise agreement.
- H. After the public hearing, the City may determine the Franchisee to be in compliance and dismiss the matter, or may determine that operator has cured any non-compliance and thereby dismiss the matter. However, the City may determine that an bid violation exists and remains uncured. Consequently, upon a finding that Franchisee substantially violated an integral bid provision, or failed to cure a

material outstanding bid violation, the City shall direct the operator to take corrective action within a specified period of time, and thereafter, if Franchisee has not taken such corrective action, may revoke, terminate, or cancel the franchise, unless the Franchisee presents sufficient mitigating circumstances.

- I. When the City directs corrective action to take place within a specified time or declares Franchisee in default of the franchise agreement, that declaration shall be reduced to writing, and the notice of corrective action or default shall be delivered to such franchised Franchisee, and any surety, within fifteen (15) days of the City's action.
- J. Notwithstanding the above, should City notify Franchisee of its intention to revoke, Franchisee shall have the right to sell its assets to an independent third party. The City will not unreasonably withhold its consent to such assignment and shall grant its consent pursuant to the "Assignment or Transfer" section of this franchise bid. Upon assignment of this franchise, pursuant to this revocation section, assignee shall receive a franchise in full force and effect, free of default, for the term remaining on assignor's franchise. Provided, however, that such sale shall not relieve Franchisee of any liability for its default.
- K. Notwithstanding any other provision of this franchise, it is the intent of the City not to subject the Franchisee to penalties; fines, forfeitures, or revocation of the franchise in any of the following instances:
 - 1. In instances or for matters where a violation of the franchise by the Franchisee was unintentional and of *de minimus* effect on subscribers, the public or the City; or
 - 2. Where there existed circumstances reasonably beyond the control of the operator that precipitated a violation of the franchise, or were deemed to have prevented the Franchisee from complying with any term or condition of the franchise; or
 - 3. Where there is no pattern of violation or occurrence of repeated violations of the same matter over time after notification by the City.

SECTION 42. CAPACITY OF SYSTEM.

- A. Franchisee and City recognize that the need for channel capacity is in part related to the community's demand for video and non-video programming. Both the City and Franchisee also recognize that accurate prediction of this demand is very difficult and that micro-management as regards to system capacity of the franchise operations is not in the best interest of the City. Accordingly, a requirement for excess unused capacity will unnecessarily increase the cost of cable service while insufficient capacity will hinder the long-term growth of the system. Within these

parameters, however, Franchisee's system shall have sufficient capacity to meet community needs efficiently.

- B. Provided, however, that cost to the Franchisee shall be taken into account should circumstances at that time cause Franchisee to not be able to justify expanding its system or programming services levels to the levels herein.
- C. Thereafter, Franchisee shall expand the channel capacity of the system, within a reasonable period of time, so that it can meet all future cable related needs of the community for which the cable subscribers are willing to pay. The desirability of additional channels shall be determined by a joint survey conducted by the Franchisee and the City of a representative sample of the then existing cable subscribers. However, in no event shall Franchisee be required to expand the channel capacity of the system in an amount greater than the number of-channels for which it can reasonably recover the cost of adding the channel capacity over the remaining life of the franchise.

SECTION 43. DESCRIPTION OF CABLE TELEVISION DISTRIBUTION SYSTEM

Franchisee will provide service using using a 1 GHz analog and digital RF system over a fiber optic infrastructure. Such service will include over two hundred (200) channels of digital content, as well as high-definition (HD) programming, digital video recorder (DVR) and video-on-demand (VOD) services.

SECTION 44. PUBLIC, EDUCATIONAL, GOVERNMENTAL, AND LEASED ACCESS.

- A. Franchisee will do as follows:
 - a. make Dry Ridge community content available to Fioptics cable subscribers through the Video On-Demand (VOD) platform,
 - b. create a dedicated VOD folder for Dry Ridge content to be published,
 - c. provide documentation on supported file formats and the content upload process to Dry Ridge,
 - d. train Dry Ridge administrators on the process once up to twice per year at no charge, and
 - e. provide a documented technical support and escalation process.
- B. Franchisee reserves the right to amend the specifications on file formats and the content upload process at any time in order to preserve the integrity of the VOD services for all customers.

- C. The name of the VOD folder will follow a standard naming convention established by Franchisee but will be clearly recognizable as a Dry Ridge community folder.
- D. Use of a set-top box is required to access the VOD content.
- E. Dry Ridge is responsible for the quality of the video production as well as reviewing the content according to acceptable use guidelines that may be established and amended by Franchisee from time to time.
- F. The VOD content will be accessible to all Fiopics cable subscribers and will not be limited to subscribers that reside in the Dry Ridge franchise area.
- G. Dry Ridge will be responsible for providing the published start date for each VOD asset, as well as the date at which the content expires and should be automatically removed from the system, not to exceed a publish period of 6 months for each asset.
- H. Dry Ridge may use up to 500 Gb in content storage on the VOD platform at any time.

SECTION 45. MOST FAVORED NATION.

The parties agree and acknowledge that Franchisee is a new entrant into the cable television market in the City and, further, that the incumbent cable television provider is offering cable television services under an expired franchise that is being recognized by the City on a month-to-month basis. The City agrees that it shall begin to negotiate a new franchise with the incumbent provider no later than three (3) months from the date hereof. Within fifteen (15) days of the execution of a new franchise with the incumbent, the City shall transmit a copy of same to the Franchisee. In the event such new franchise or any other future cable television franchise during the term hereof contains terms more favorable than those contained in this franchise, the City agrees that it shall offer such more favorable terms to Franchisee and amend this franchise accordingly. Before initiating any litigation with respect to this Section, Franchisee agrees to meet with the City to seek to resolve the matter by mutual agreement.

SECTION 46. MISCELLANEOUS PROVISIONS – TAMPERING AND UNAUTHORIZED RECEPTION OF CERTAIN SERVICES.

- A. No person shall intercept or receive, or assist in intercepting or receiving, any communications service offered over a cable system, unless specifically authorized to do so by Franchisee, or as may otherwise be specifically authorized by law.
- B. For the purpose of this Section, the term "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor, as the case may be, for the unauthorized reception of service.

- C. Without securing permission from Franchisee, or making payment to Franchisee, no person shall be authorized to make any connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the cable system for the purpose of receiving or intercepting, or assisting others to receive or intercept any cable service provided lawfully by operator.
- D. No person shall be authorized to willfully tamper with, remove, or damage any cable, wires, equipment, or facilities used for the distribution of cable services.
- E. Violation of Sub Section (A) above may be prosecuted under Federal, State and/or Local Law.

SECTION 47. EQUAL EMPLOYMENT OPPORTUNITY.

Franchisee shall comply in all respects with the Federal Communications Commission regulations governing equal employment opportunity. Furthermore, the company shall comply with all other applicable government regulations whether federal, state, or local.

Equal opportunity in employment shall be afforded to all qualified persons, and no person shall be discriminated against because of race, color, religion, national origin, handicap, sex, or age.

SECTION 48. NATURE OF BID.

This "Bid", if awarded, will provide CBET with a non-exclusive franchise and it may not be unilaterally amended.

SECTION 49. EFFECTIVE DATE.

This Bid is hereby submitted on January 15, 2016. If the Bid is accepted and an Ordinance memorializing the terms of this Bid is passed, it shall become effective on the date so ordered by the City.

SUBMITTED BY:

CINCINNATI BELL EXTENDED TERRITORIES, LLC

BY:



TED HECKMANN

**MANAGING DIRECTOR, REGULATORY AND GOVERNMENT AFFAIRS
CINCINNATI BELL EXTENDED TERRITORIES, LLC**

**221 E. FOURTH STREET
CINCINNATI, OH 45202**