

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 460

(Duly Adopted June 27, 2007)

AN ORDINANCE AUTHORIZING THE BOROUGH OF ALBURTIS TO ENTER INTO A CABLE TELEVISION AND CABLE COMMUNICATIONS FRANCHISE AGREEMENT WITH RCN TELECOM SERVICES, INC., INCLUDING PROVISIONS RELATING TO DEFINITIONS; GRANT OF AUTHORITY FOR THE NON-EXCLUSIVE RIGHT, PRIVILEGE, AND FRANCHISE TO HAVE, ACQUIRE, CONSTRUCT, RECONSTRUCT, USE, OPERATE, OWN, AND MAINTAIN A CABLE TELEVISION AND CABLE COMMUNICATIONS SYSTEM IN THE BOROUGH FOR A TEN-YEAR TERM; GRANT OF AUTHORITY AND REGULATIONS WITH RESPECT TO USE OF PUBLIC STREETS, STREET TREES, AND POLES, AND CONSTRUCTION/INSTALLATION OF SYSTEM FACILITIES AND EQUIPMENT; PERFORMANCE STANDARDS; COMPLIANCE WITH ALL LAWS, RULES, AND REGULATIONS; LIQUIDATED DAMAGES; INDEMNIFICATION AND INSURANCE; TRANSFER OF RIGHTS; SUBSCRIBER SERVICES; SERVICES TO THE BOROUGH; NOTICES; ARBITRATION; FRANCHISE FEES IN THE AMOUNT OF FIVE PERCENT (5%) OF GROSS REVENUES; INSPECTION OF RECORDS; AND ENFORCEMENT.

BE IT ORDAINED and **ENACTED** by the Borough Council of the Borough of Al-
burtis, Lehigh County, Pennsylvania, as follows:

SECTION 1. Codified Ordinances § 69-101 (relating to Cable Television—Title and Definitions—Short Title) is amended as follows (with deletions indicated by ~~strike-
outs~~ and insertions indicated by double underlining):

§ 69-101 Short Title.

This Chapter shall be known, and may be cited, as the “Alburtis ~~Community Antenna Television Systems (CATV)~~ Cable Television Ordinance.”

SECTION 2. Codified Ordinances § 69-104 (relating to Cable Television—Title and Definitions—Community Antenna Television Systems (CATV)) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 69-104 ~~Community Antenna Television Systems (CATV)~~ Cable System.

~~The term “Community Antenna Television Systems” or “CATV” shall mean an arrangement or combination of apparatus whereby television signals broadcast over the air are received at one (1) or more towers, antennas, or other devices from television stations licensed by the Federal Communications Commission and which for a consideration are transmitted by means of coaxial cable or other suitable device to television receiving sets of subscribers to such service.~~

The term “Cable System” means a system of equipment, apparatus, fixtures, and/or facilities to provide for the transmission to subscribers of video programming or other programming services, but does not include a system which provides such services to a subscriber located in the Borough without utilizing any equipment, apparatus, fixtures, and/or facilities within the Borough other than on the subscriber’s property (such as via a home satellite antenna).

SECTION 3. Codified Ordinances § 69-201 (relating to Cable Television—Registration and Grant of Privilege—Registration and Requirements) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 69-201 Registration and Requirements. In General.

~~On and from the 11th day of May, 1983, it shall be unlawful for any person within the Borough to engage in the business of community antenna television systems (CATV) without first registering with the Borough for such privilege and fully complying with the terms, conditions, fees, and penalties accompanying the grant of privileges to engage in such activities as set forth in this Chapter.~~

It shall be unlawful for any person to operate a Cable System which provides services to any subscribers located within the Borough unless—

(a) the person properly registered with the Borough prior to June 27, 2007 for the privilege of engaging in the business of community antenna television systems and received a certificate of privilege from the Borough; and has lawfully provided its services to subscribers within the Borough at all times thereafter in full compliance with the terms, conditions, fees, and penalties accompanying the grant of privilege as provided in Articles II, III, and IV of this Chapter, and as otherwise provided in the grant of privilege, and the agreements and assurances provided in the person's application for the privilege; or

(b) the person operates the Cable System in full compliance with all the terms and conditions of a franchise granted by the Borough as set forth in a Franchise Agreement authorized under Article V of this Chapter. A person described in this subsection (b) shall comply with the terms and conditions of the Franchise Agreement and shall be relieved from any obligation to comply with any inconsistent provisions in the remaining sections of this Article II, or in Article III of this Chapter.

SECTION 4. Codified Ordinances § 69-202 (relating to Cable Television—Registration and Grant of Privilege—Application) and § 69-203 (relating to Cable Television—Registration and Grant of Privilege—Issuance of Certificate of Privilege) are hereby deleted and replaced with the following:

§ 69-202 [RESERVED]

§ 69-203 [RESERVED]

SECTION 5. Codified Ordinances § 69-301 (relating to Cable Television—Facilities—Installation) and § 69-302 (relating to Cable Television—Facilities—Erection of Poles) are amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 69-301 Installation of Facilities.

On and after May 11, 1983, Except as otherwise provided in a Franchise Agreement authorized under Article V of this Chapter, no poles, cables, equipment, apparatus, or wires for the construction, maintenance, and operation of ~~community antenna television systems (CATV)~~ a Cable System shall be installed on, in, or upon any streets within the confines of the Borough unless it is upon poles and rights-of-way of a public utility presently operating within the Borough, and there is filed in the office of the Borough Executive Secretary proper written permission therefor from the public utility.

§ 69-302 Erection of Poles.

Except as otherwise provided in a Franchise Agreement authorized under Article V of this Chapter, only ~~Only~~ public utilities shall be permitted to erect poles upon any of the streets and rights of way of the Borough, and any poles as well as any and all wires, cables, apparatus, or equipment thereon shall be deemed to be under the license, operation, and control of the public utility owning said poles.

SECTION 6. Chapter 69 of the Alburdis Codified Ordinances (relating to Cable Television) is amended by adding the following new Article V after existing Section 69-402:

Article V — Franchise Agreements

§ 69-501 RCN Telecom Services, Inc. — 2007

The Borough of Alburdis shall enter into a Franchise Agreement with RCN Telecom Services, Inc. in the form attached to Ordinance 460 as **Exhibit A**, which is incorporated into this Article by reference, *provided that* RCN Telecom Services, Inc. shall first approve and execute the Franchise Agreement. The President (or Vice President) of Borough Council is hereby authorized and directed to execute the Franchise Agreement on behalf of the Borough upon receipt of the document executed by RCN Telecom Services, Inc.

SECTION 7. The attached **Exhibit A** is incorporated into this Ordinance by reference.

{Remainder of page intentionally left blank.}

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Al-
burtis, this 27th day of June, 2007, in lawful session duly assembled.

**BOROUGH COUNCIL
BOROUGH OF ALBURTIS**

Steven R. Hill, President

Attest:

Melanie Hansen, Executive Secretary

AND NOW, this 27th day of June, 2007, the above Ordinance is hereby **APPROVED**.

Russell J. Afflerbach, Mayor

EXHIBIT A

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (“Agreement”) is made the ____ day of _____, 2007 by and between:

Borough of Alburdis, a Pennsylvania borough and municipal corporation maintaining offices at 260 Franklin Street, Alburdis, Pennsylvania 18011 (“**Borough**”); and

RCN Telecom Services, Inc., a Pennsylvania business corporation maintaining offices at 1525 Valley Center Parkway, Bethlehem, Pennsylvania 18017 (“**Grantee**”).

WHEREAS, the Borough is authorized by law to grant one or more non-exclusive franchises to construct, maintain, own, extend and operate cable television and cable communications systems within the Borough; and

WHEREAS, pursuant to the provisions of the Communications Acts (as defined in this Agreement), Grantee has submitted a proposal to the Borough to provide cable television and cable communications services to the residents of the Borough; and

WHEREAS, the Borough has, upon reasonable notice, conducted a public hearing on the proposal, affording all persons reasonable opportunity to be heard, and has engaged in an analysis and consideration of the technical ability, financial condition, legal qualifications, and general character of the Grantee; and

WHEREAS, the Borough, after such hearing, consideration, analysis, and deliberation, has approved and found sufficient the technical ability, financial condition, legal qualifications, and character of said Grantee; and

WHEREAS, the Borough has also reviewed and considered the plans of the Grantee for the construction and operation of a cable television and cable communications system and found the same to be adequate and feasible in view of the needs and requirements of the Borough; and

WHEREAS, the Borough has determined that it is in the best interests of the residents of the Borough, and consistent with the public health, safety, and welfare, to grant a franchise to the Grantee to operate a cable television and cable communications system within the boundaries of the Borough on the terms and conditions set forth in this Agreement; and

WHEREAS, the Grantee accepts the grant of the franchise and agrees to be bound by the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the grant of a franchise by the Borough to the Grantee in accordance with the terms and conditions of this Agreement, the Grantee’s acceptance of the franchise and agreement to comply with the terms and conditions of this Agreement, and their mutual in consideration of the mutual covenants contained in this Agreement, the parties agree as follows, intending to be legally bound:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings, whether used with or without initial capital letters, unless the context clearly indicates otherwise:

(a) “Affiliate”, when used in relation to any Person, means another Person who owns or control, is owned or controlled by, or is under common ownership or control with, such person. Ownership for this purpose means a direct or indirect ownership interest (voting and/or nonvoting) of five percent (5.0%) or more, and control for this purpose includes, without being limited to, the situation where an officer, director, or similar individual with management rights of one Person is a shareholder or other direct or indirect owner of the other Person or his/her nominee.

(b) “Basic Service” means a separately available level of Cable Service which includes, at a minimum:

(i) the retransmission of local broadcast television signals required to be carried under applicable federal law and for which the Grantee has secured any necessary consents for carriage;

(ii) any public, educational, and governmental access programming required under this Agreement or otherwise provided by the Grantee; and

(iii) any signal of any television broadcast station that is provided by the Grantee to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

(c) “Cable Service” means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(d) “Cable System” or “Cable Television and Cable Communications System” means a system of antennas, cables, wires, lines, fiber optic cable, towers, waveguides or other conductors, converters, fixtures, equipment, facilities, attachments, and all appurtenances thereto, used for producing, receiving, amplifying, storing, processing, modifying, and/or distributing audio, video, data, or any other kind of information or forms of signals whatsoever, to and from Subscribers.

(e) “Communications Acts” means the Communications Act of 1934, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended through the date of this Agreement and as they may be amended or supplemented from time to time hereafter.

(f) “FCC” means the Federal Communications Commission.

(g) “Franchise” means the rights granted under this Agreement to the Grantee to construct, operate, own, and maintain a cable television and cable communications system in the Borough.

(h) “Grantee” includes the Grantee’s successors and assigns.

(i) “Gross Revenue” means all revenue received (whether by the Grantee or any of its Affiliates) from all sources attributable to the operation of the Cable System by the Grantee and its Affiliates to provide Cable Service within the boundaries of the Borough, including, but not limited to, subscription fees, additional set fees, converter fees, remote fees, late fees, installation fees, sales commissions, pay-per-view fees, cable-related publications, sales or other commissions, channel leasing payments, revenue from the production of video programming transmitted over the Cable System, revenue received for the transmission of video programming transmitted over the Cable System, revenue received from the sale of time or programming on leased channels, the sale of commercial time or programs, the revenue received from provision of any lawful Cable Service, and any other revenue which may be subject to the payment of franchise fees to a franchising authority under the Communications Acts or the regulations thereunder. If any gross revenues received by the Grantee or any of its Affiliates are received partly in connection with the provision of Cable Service within the Borough and partly in connection with the provision of Cable Service outside the Borough, such gross revenues shall be allocated pro rata based on the number of subscribers. However, “Gross Revenue” does not include:

(i) the revenue of any Affiliate including, without limitation, a supplier of programming to the Grantee, but such exclusion shall apply only to the extent that said revenue is also included in the Gross Revenue of the Grantee;

(ii) the revenue of any Affiliate from the sale of products, advertising time, or services that is offered on a national basis and which products, time, or services could not reasonably be offered on other than a national basis (*e.g.*, magazines such as *Sports Illustrated*, program suppliers such as HBO);

(iii) amounts collected by the Grantee or its Affiliates from Subscribers on behalf of leased access channel programmers, but such exclusion shall apply only to the extent said amounts are passed on by the Grantee or its Affiliates to said programmers in total;

(iv) the revenue of the Grantee or any Affiliate from the operation of a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934;

(v) revenue from the sale of Internet Access Service transmitted via the Cable System, but this exclusion shall not apply if the FCC or other government agency or any court of competent jurisdiction determines that such Internet Access Service is a “cable service” subject to the payment of franchise fees.

(j) “Person” means an individual, partnership, association, corporation, syndicate, joint venture, joint stock company, trust, limited liability company, other business entity, or governmental entity.

(k) “Street” shall mean all public rights-of-way of the Borough for the purpose of public travel or public utilities, including, but not limited to, streets, alleys, avenues, roads, paths, boulevards, highways, concourses, driveways, bridges, waterways, sidewalk, curbs, unimproved areas of public rights-of-way, and the air space above the surface and the area below the surface (to the extent included within Borough’s rights).

(l) “Subscriber” means a person who lawfully receives or has received Cable Services or other services within the Borough through a Cable System operated by the Grantee and/or its any of its Affiliates with the express permission of the operator.

2. Term. The term of this Agreement shall commence on the later of July 2, 2007 or the date this Agreement is executed, and shall continue until July 1, 2017.

3. Grant of Authority.

(a) Insofar as the Borough has the right, power, and authority to do so, the Borough hereby grants to the Grantee the non-exclusive right, privilege, and franchise to have, acquire, construct, reconstruct, use, operate, own and maintain a cable television and cable communications system in the Borough during the term of this Agreement, in accordance with the terms and conditions of this Agreement.

(b) The Borough hereby grants to Grantee the non-exclusive right to use the Borough's Streets in accordance with the terms and conditions of this Agreement.

4. Construction of Cable System. On or before January 1, 2008, Grantee shall complete the construction of a Cable System in the Borough which meets or exceeds the requirements of this Agreement and which is capable of providing Cable Service to all homes and non-residential establishments in the Borough (other than sparsely populated areas of the Borough having fewer than thirty (30) homes and/or non-residential establishments per cable mile and those homes and establishments to which Grantee cannot gain physical access directly or indirectly from a public Street), and shall fully activate the Cable System.

5. Customer Service and Performance Standards.

(a) After the construction and activation of the Cable System, and for the remaining term of this Agreement, Grantee shall make Cable Service available to all individual dwellings, residences, institutions, organizations, and all other entities within the limits of the Borough (except those in sparsely populated areas of the Borough having fewer than thirty (30) homes and/or non-residential establishments per cable mile to which the Grantee has not extended its Cable System, and those homes and establishments to which Grantee cannot gain physical access directly or indirectly from a public Street), in accordance with the provisions of this Agreement and all laws governing the rights of privacy and passage.

(b) Upon the reasonable request for service to a location described in subparagraph (a) after activation of the Cable System (or such portion of the Cable System necessary to provide service to that location) Grantee shall furnish the requested service within thirty (30) calendar days. Residential installation shall occur upon request of the resident between the hours of 9:00 AM and 5:00 PM Monday through Friday,

(c) Grantee shall respond to requests for repair service from Subscribers within twenty-four (24) hours, and shall offer service appointment windows of not more than four (4) hours between 8:00 A.M. and 5:00 P.M., Monday through Friday.

(d) Subscribers shall have the right to cancel their subscriptions to Grantee's service at any time, without payment of fee for cancellation of service (unless a service is cancelled during a limited period of time after activation of the service when promotional considerations were granted to the Subscriber in connection with the activation of the

service and the Subscriber was informed of the cancellation fee when ordering the service). Upon request by a Subscriber for termination of service and such termination is not due to non-payment for service, the Grantee shall promptly—

(i) remove all Grantee's personal property and/or equipment including but not limited to converters and remote controls;

(ii) disconnect cable or wiring into Subscriber's premises either at the point of entry or at a feed point from cable tap;

(iii) refund payment made in advance for service, no later than forty-five (45) calendar days after the Subscriber's request to terminate service. The refund of advance payment shall be based upon the actual date of termination of service into the premises, or, if earlier, seven (7) calendar days after the Subscriber's request to discontinue service;

(iv) return security deposits, if any, upon Subscriber returning equipment for which the deposit is applicable,

(v) submit a final statement of account to the Subscriber within forty-five (45) days after termination of service.

(e) In the event of substandard delivery or loss of video or audio programming or other lawful communication service to a Subscriber for any reason (other than Force Majeure, or due to a problem solely caused by a Subscriber, or with the prior consent of the Borough), and such substandard delivery or loss shall continue for a period greater than six (6) hours during any one (1) calendar day, then Grantee shall reduce the invoice of that Subscriber for the month in which such substandard delivery or loss shall have occurred by the fraction one-thirtieth ($1/30$) multiplied by the number of calendar days during which such substandard delivery or loss greater in duration than six (6) hours shall have occurred.

(f) Grantee shall have a publicly listed e-mail address by which Persons can communicate with Grantee, and shall maintain toll-free telephone coverage twenty-four (24) hours a day for each and every day of the year, to enable residents to report service problems, requests for repairs and adjustments, complaints, and requests for the use of facilities. A record shall be kept by the Grantee listing each and every subscriber complaint received by Grantee. Such record, together with other information pertaining to the function or operation of the Cable System as the Borough may specify, shall be kept in a format as shall be mutually determined by the Grantee and the Borough from time to time.

(g) If the Borough is contacted about a complaint concerning the Grantee, the Borough shall notify the Grantee or direct the complainant to contact the Grantee directly. If the Borough notifies the Grantee about the complaint, Grantee shall promptly investigate the complaint and, within seven (7) calendar days after the notification, issue to the Borough a report detailing the investigation thoroughly, describing the findings, explaining any corrective steps which are being taken, and indicating that the person who registered the complaint has been notified of the resolution.

(h) Whenever it is necessary to interrupt service for the purpose of making repairs, adjustments, or installation, Grantee shall do so at such time as will cause the least amount of inconvenience to Subscribers. Unless such interruption is unforeseen and immediately necessary, Grantee shall give reasonable notice to affected Subscribers. To

aid the Borough in handling potential calls from residents, Grantee shall notify the Borough of any planned and/or major outages affecting multiple Subscribers. The requirements for maintenance of equipment contained in this subparagraph shall not apply to the Subscriber's television receiver.

(i) If, at any time after the completion and activation of the Cable System under paragraph 4, Grantee fails to operate over twenty-five (25%) percent of the Cable System within the Borough (as determined by lineal miles or portions thereof) for ninety-six (96) consecutive hours or more without prior approval of the Borough for reasons other than Force Majeure, the Borough may, at its election following a public hearing to determine the facts of the failure to operate, extent of the failure, and reasons for the failure, require payment to the Borough, as liquidated damages, in the sum of One Thousand Dollars (\$1,000.00) per day for each calendar day, or portion thereof, for which said non-operation shall continue past such ninety-six (96) hour period. The remedy under this subsection (i) shall be in addition to the remedy of Subscribers under subparagraph (e).

(j) Grantee shall not deny or delay service, deny or delay access, or otherwise discriminate against Subscribers, potential Subscribers, or general citizens solely based on income.

(k) Grantee shall at all times provide customer service at a level which satisfies or exceeds the minimum customer service standards adopted or recommended by the FCC.

6. Compliance with Laws, Standards, etc. The construction, operation, and maintenance of the Cable System, and the provision of cable television and cable communications services through the Cable System, shall comply in all material respects with the National Electrical Code, National Electrical Safety Code (NESC), National Cable Television Standard Code, AT&T Manual of Construction Procedures (Blue Book), and Bell Telephone Systems Code of Pole Line Construction; all applicable federal, state, and local laws, rules, regulations, orders, directives, decrees, determinations, permits, tariffs, and ordinances, including, without being limited to, the Communications Acts, Occupational Safety and Health Administration (OSHA) regulations, construction codes and requirements, traffic and traffic safety requirements, building and zoning codes and ordinances, street occupancy and use ordinances, judicial, quasi-judicial, and administrative orders, decrees, directives, or determinations; and all land use restrictions, as all of the above are in effect from time to time during the term of this Agreement.

7. Use of Streets—In General.

(a) Subject to the terms, conditions, and limitations of this Agreement, Grantee shall have the right and privilege to construct, erect, operate, and maintain in, upon, along, above, across, over, and under the Streets of the Borough such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to its Cable System. All structures, lines and equipment erected by Grantee within the Borough shall be located so as to cause minimum interference with the use of Streets and with the rights or reasonable convenience of property owners.

(b) Grantee's rights and privileges with respect to Streets shall be subordinated to any prior lawful use or occupancy of the Streets and shall not be so used as to

interfere with existing improvements or with new improvements the Borough may deem proper to make from time to time, or as to hinder or obstruct the free use of the Streets. In the event any equipment or facilities of Grantee shall interfere with any such improvement existing or intended to be made by the Borough, Grantee shall, upon notice from the Borough, forthwith relocate said equipment and facilities at Grantee's expense so as to eliminate said interference.

(c) Grantee shall obtain the approval of the Borough prior to commencing construction in the Streets, public grounds, or public places of the Borough, and shall apply for such approval in writing at least ten (10) calendar days prior to proposed commencement of such construction.

(d) Grantee shall not open or disturb the surface of any Street for any purpose without first having obtained a permit to do so, except in case of emergency repairs (in which case Grantee will give the Borough notice of its activities as quickly as possible, and immediately restore the Street in accordance with the requirements of this Agreement).

(e) In case Grantee opens or disturbs any Streets, Grantee shall, at its own cost and expense and in a manner approved by the Borough Engineer, replace and restore such Streets to the same or similar condition as existed prior to the opening or disturbance as soon as practical after completion of the work which required the Street opening or disturbance.

(f) If at any time during the term of this Agreement the Borough shall lawfully elect to alter or change the grade or alignment or routing of any Street, Grantee shall, upon reasonable notice by the Borough, remove, relay, and relocate its poles, wires, cable, underground, conduits, manholes, and other fixtures affected by the alteration or change at its own expense.

(g) The Borough reserves the right to vacate any Street or other Borough right-of-way notwithstanding the existence of Cable System equipment, fixtures, or service lines within any such Street or other right-of-way. In the event of such a vacation, Grantee shall obtain and provide alternate means of providing its services to Subscribers at Grantee's own cost and expense.

8. Poles, Cables, Wires, Fixtures, Equipment, and Underground Installations.

(a) Nothing in this Agreement shall authorize Grantee to erect and maintain any new poles where existing poles can be utilized. Grantee shall obtain written permission from the Borough before erecting any new poles or installing underground conduit where none exists at the time, which permission shall specify the location of such poles and/or conduit. No installation of any underground conduit or other structures shall give rise to a vested interest in the location of such conduit or other structures, and such conduit or other structures shall be removed, modified, or relocated whenever the Borough determines that such removal, modification, or relocation would enhance the public convenience.

(b) All poles, cables, wires, fixtures, and equipment placed in any Street by Grantee shall be placed in such a manner as not to interfere with the usual vehicular or pedestrian travel on such Street.

(c) Prior to performing any underground construction, Grantee shall receive Borough approval to construct and Grantee shall comply with all one-call requirements and use its best efforts to locate, in advance, all underground water, sewage, drainage, gas, electric, and other lines. Where any damages or alterations occur to any underground utility lines or structures, or any other structures in the Streets due to the construction, presence, operation, or maintenance of the Cable System, Grantee shall be solely responsible for the cost of necessary repairs, including all services and materials. Where the costs are incurred by the Borough or any authority organized by the Borough, the Borough may bill such costs to Grantee, and Grantee shall pay such costs immediately; in default of immediate payment, the Borough may seek to recover payment under performance bonds provided under this Agreement, or invoke other appropriate sanctions and remedies provided for in this Agreement or otherwise by law.

(d) All installations of poles, cables, wires, fixtures, and equipment shall be durable, of a permanent nature, and installed in accordance with the then-current best cable system engineering practices and the requirements of paragraph 6, using materials of good and durable quality, and with due regard to the preservation and protection of existing structures. Prior to the commencement of work, Grantee shall provide the Borough with Cable System construction standards to be used in the construction and installation of the Cable System, which shall be satisfied in addition to the requirements set forth in paragraph 6 and other provisions of this Agreement.

(e) All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, in accordance with all applicable engineering and safety requirements (see paragraph 6) and, as to pole attachments, utility joint attachment practices.

(f) All installations shall be underground in those areas of the Borough where public utilities providing both telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Grantee may install its service above ground, *provided* that Grantee shall place its service underground at such time as both telephone and electric service facilities are placed underground.

(g) Grantee shall not begin any construction, excavation, modification, addition, replacement, removal, or any change whatsoever of its facilities in any public place (except ordinary repairs and emergency repairs) without filing with the Borough a plan of such work and receiving written approval therefor. Grantee shall pay all reasonable costs associated with the Borough's review of such plans for compliance with the terms of this Agreement (including, without being limited to, review by the Borough Engineer or other consultant). Grantee shall notify Borough residents in the area affected by any such work no less than seven (7) calendar days before commencing the work.

(h) Barricades, other barriers, signs, traffic cones, red flags, warning lights, and/or other devices and procedures prescribed under the requirements described in paragraph 6 shall be utilized at all work sites frequented by the public until an area is cleared for normal public use. The Borough Police Department shall be contacted at least three (3) calendar days before work commences.

(i) Before leaving a job site each day, Grantee's employees and contractors shall pick up all scrap materials and ensure that all construction materials and tools are properly stored and covered, and that derricks, planks, and ladders are removed from or piled at the roadside.

(j) The Borough or its designee shall have the right to inspect at any time all construction or installation work performed under this Agreement and to make such tests as it shall deem necessary to ensure compliance with the terms of this Agreement and all other applicable law. Grantee shall cooperate fully with the Borough during all inspections and tests and shall provide access to all equipment, records, and other materials and information necessary for the performance of such inspections and tests. Except as otherwise provided in this Agreement or any requirement described in paragraph 6, all inspections and tests performed by the Borough shall be initially at the Borough's sole cost and expense. If Grantee is found not to be in compliance with the requirements of this Agreement or any requirement described in paragraph 6, Grantee must reimburse the Borough for the costs of such inspections and tests. This reimbursement is not to be considered a part of the franchise fee.

(k) Grantee shall, at its own cost and expense, obtain from utilities and other persons all rights, privileges, permissions, and easements which are necessary (in addition to those rights granted by the Borough under this Agreement) to construct, operate, and maintain Grantee's Cable System and serve Subscribers. All work to be performed on the property of a Subscriber or potential Subscriber shall be performed with the consent and under the reasonable direction of the Subscriber or potential Subscriber.

(l) Grantee shall permit other cable television and cable communications companies and other utilities to co-utilize poles and underground conduit installed by Grantee to the extent feasible, upon payment of a reasonable fee.

9. Tree Trimming. Grantee shall have the authority, under the supervision of the Borough and only after prior approval from the Borough and notice to the owners and occupants of abutting properties, to trim trees upon and overhanging Streets and public places within the Borough so as to prevent the branches of such trees from coming in contact with Grantee's wires and cable.

10. As-Built Plans. Upon completion of the initial construction of the Cable System, and upon the completion of any modifications or extensions of the Cable System, Grantee shall file with the Borough true and accurate as-built maps, plans, and surveys of the Cable System showing the Cable System as then constructed.

11. Movement of Buildings. Grantee shall, at the request of any person who has been issued a building moving permit by the Borough, temporarily raise or lower its wires to permit the moving of the building, provided Grantee is given ten (10) calendar days advance notice and the person so making the request reimburses Grantee for its reasonable costs in so raising or lowering its wires.

12. Service to Public Facilities. Grantee shall provide full cable television service (other than pay-per-view and premium channels) and internet access service (if transmitted via the Cable System) free of charge to up to ten (10) public locations (including government and school buildings, and buildings of non-profit organizations which provide public services such as fire protection or recreation) as may be designated from time to time by the Borough in writing.

13. Franchise Fees.

(a) Grantee shall pay a franchise fee of five percent (5.0%) of Gross Revenue received during each twelve (12) month period of operation of its Cable System within the Borough.

(b) The franchise fee established under paragraph (a) is at or close to the maximum franchise fee permitted under current federal law. However, the parties recognize that the law with respect to franchise fees may change during the term of this Agreement, and they agree that the Borough shall have the discretion to receive the maximum franchise fee permitted by law at any time or some lesser amount. Accordingly, the amount, rate, and method of calculating the franchise fee may be changed by the Borough from time to time at its sole and exclusive election, upon one hundred eighty (180) calendar days prior written notice to the Grantee, so long as such amount, rate, and method is permitted by law.

(c) The franchise fee shall be assessed on an annual basis and shall be payable to the Borough within sixty (60) days after the end of each calendar year or, at Grantee's option, after the end of each fiscal year of Grantee or each anniversary of the date of this Agreement. Grantee shall file with each such payment a complete and accurate notarized statement, certified as true and correct by a representative of Grantee authorized to make such certification, explaining how the payment was calculated. The statement shall include information as of the last day of the period for which payment is being made regarding the number of Subscribers for each service tier or other communication service, the rate charged for each, the amount of revenue collected for each, and a breakdown by category of Gross Revenue from all other sources. Upon request by the Borough, Grantee shall provide such additional information as may be reasonably requested. All such information shall be treated as proprietary information of the Grantee and kept confidential by the Borough consistent with Pennsylvania law.

(d) Upon ten (10) calendar days prior written notice, the Borough shall have the right to inspect and make extracts at Grantee's office within fifty (50) miles of the Borough's office the financial records of Grantee for the purpose of verifying or identifying revenue owed to the Borough. Where, in the opinion of the Borough, they are reasonably necessary to verify or supplement Grantee's records, the Borough may request and the Grantee shall use its best efforts so to comply and obtain financial records of the Grantee's Affiliates and make the same available for inspection by the Borough at the office of the Borough. The Borough shall have the right to recompute any amounts determined to be payable under this Agreement for any period of time, *provided*, however, that such recomputation shall take place within thirty-six (36) months following the end of the period. Any additional amount due to Borough as a result of the recomputation shall be paid within thirty (30) calendar days following written notice to Grantee by the Borough, which notice shall include an explanation of the recomputation. In the event that more than \$1,000 is due and owing to the Borough as a result of the recomputation, Grantee shall be responsible to reimburse the Borough for the cost of the inspection and recomputation. Borough and Grantee shall comply at all times with all applicable laws concerning Subscribers' privacy, including, without limitation, section 631 of the Communications Act of 1934, 47 U.S.C. § 551.

(e) In the event that any franchise fee or other payment due under this Agreement is not made when due, interest on the overdue amount shall be added at the one-year United States Treasury Bill rate existent on the date payment was due, plus three (3) percentage points, and shall be compounded daily. Any amount recomputed to

reflect correct payment due shall bear interest from the date such amount should have been paid.

14. Indemnification and Insurance.

(a) Grantee shall, at its sole cost and expense, fully and completely indemnify and hold harmless the Borough, its officers, engineers, solicitors, boards, commissions, elected officials, appointees, employees, agents, and independent contractors from and against all claims, suits, actions, liabilities, awards, judgments, losses, penalties, damages, costs, and expenses (including, without being limited to, any filing costs, litigation expenses, witness fees, expert fees, and legal fees), which the Borough may incur or suffer in connection with the Grantee's installation, operation, and maintenance of a Cable System or as a result of the breach by Grantee of any terms and conditions of this Agreement. Further, if requested by the Borough, Grantee shall assume, without expense to the Borough, the defense of any such claims, suits, or actions. Grantee's obligations under this subparagraph (a) does not extend to any losses, penalties, and damages caused by the gross negligence or willful misconduct of the Borough or its officers, engineers, solicitors, boards, commissions, appointees, employees, agents, or independent contractors.

(b) At all times during the term of this Agreement, Grantee shall obtain, maintain in force, and pay all premiums for the following:

(i) A commercial liability insurance policy covering Grantee for claims arising from bodily injury (including death) and property damage liability with a combined \$5,000,000 limit per occurrence and \$5,000,000 annual aggregate;

(ii) A vehicle liability insurance policy covering Grantee for claims arising from bodily injury (including death) and property damage liability with a combined \$5,000,000 limit per occurrence and \$5,000,000 annual aggregate;

(iii) Workers' compensation insurance as required by the laws of the Commonwealth of Pennsylvania.

(c) All of the foregoing insurance contracts shall be issued and maintained by companies authorized and in good standing to do business in the Commonwealth of Pennsylvania.

(d) Grantee shall file certificates of insurance evidencing the coverage required above within ten (10) calendar days after the execution of this Agreement, and at least annually thereafter.

(e) Grantee agrees that with respect to the above-required insurance, all insurance certificates will contain the following required provisions:

(i) name the Borough and its officers, engineers, solicitors, boards, commissions, elected officials, appointees, employees, agents, and independent contractors as additional insured parties (as the interests of each insured may appear) as to all applicable coverage (except worker's compensation);

(ii) provide for thirty (30) calendar days advance notice to the Borough for cancellation, non-renewal, or material change;

(iii) provide that all provisions of this Agreement concerning liability, duty, and standard of care, including the indemnity provisions, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies, subject to policy terms and conditions.

(f) The Borough may make reasonable requests for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either the Borough or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision, or modification by the Borough, Grantee shall exercise its best reasonable efforts to accomplish the changes and shall pay the cost thereof.

(g) Companies issuing the insurance policies shall have no recourse against the Borough for payment of any premiums or assessments which all are set at the sole risk of the Grantee. Insurance policies obtained by Grantee shall provide that the issuing company waives all right of recovery by way of subrogation against the Borough in connection with any damage covered by these policies.

(h) Grantee shall obtain and maintain, at its sole cost and expense, and file with the Borough, a corporate surety bond in form acceptable to the Borough, with a surety company authorized to do business in the Commonwealth of Pennsylvania and acceptable to the Borough, in the amount of One Hundred Thousand Dollars (\$100,000.00) (to be reduced to Fifty Thousand Dollars (\$50,000.00) after Grantee shall have completed construction and shall have fully activated the Cable System), to secure Grantee's performance of its obligations and faithful adherence to all requirements of this Agreement. Grantee shall provide this corporate surety bond within ten (10) calendar days after execution of this Agreement.

(i) Neither the provisions of this Agreement, nor any insurance or bond accepted by the Borough pursuant to this Agreement, nor any damages recovered by the Borough under any such insurance or bond, shall be construed to excuse faithful performance by Grantee or limit the liability of Grantee under this Agreement or for damages.

(j) Grantee shall have contractors bonded and insured for liability, in amounts not less than provided under subparagraph (b) above, prior to and at all times while conducting work within the Borough. All employees of the Grantee who enter Subscribers' homes in the course of their employment shall be bonded and insured for liability in an amount not less than \$1,000,000.00.

15. Enforcement.

(a) Grantee agrees that the Borough may, upon ten (10) calendar days written notice, review such of its books and records, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Agreement. All information specifically marked by Grantee as proprietary or confidential in nature and furnished to the Borough or its designated representatives shall be treated as confidential in conformity with Pennsylvania law. Notwithstanding anything to the contrary, Grantee shall not be required to provide subscriber information in violation of section 631 of the Communications Act of 1934 (47 U.S.C. § 551).

(b) In addition to all other rights, remedies, and powers reserved or retained by the Borough under this Agreement or otherwise, the Borough reserves the right to for-

feit and terminate this Agreement, the franchise of the Grantee to operate a Cable System with the Borough, and all rights and privileges of Grantee under this Agreement, upon the occurrence of any of the following events:

(i) Failure to remit franchise fees or other payments, together with any requisite documentation, statement, or certification, within ten (10) calendar days after its due date.

(ii) Violation of any material provision of this Agreement.

(iii) Failure to operate over twenty-five percent (25%) of the Cable System within the Borough (as determined by lineal miles or portions thereof) for a period in excess of thirty (30) consecutive calendar days, unless the Borough has approved the interruption of service.

(iv) The filing by or against Grantee or any of its Affiliates of a petition of bankruptcy or for reorganization or for the adoption of arrangements under the Bankruptcy Code or any similar federal or state law as in effect at that time.

(v) The making by Grantee or any of its Affiliates of an assignment for the benefit of creditors.

(vi) The consenting by Grantee or any of its Affiliates to the appointment of a receiver for all or a substantial part of Grantee's or any of its Affiliates' assets.

(vii) The assumption or custody or sequestration by a court of competent jurisdiction of all or a significant part of the Cable System.

(viii) Grantee's failure to maintain the required insurance and bonding.

(ix) Grantee's failure to comply with law.

(c) In the event the Borough believes that Grantee has not complied with the terms of this Agreement, it shall notify Grantee in writing of the exact nature of the alleged noncompliance. Upon the failure of the Grantee to timely cure any breach after such notice, the Borough may terminate this Agreement whereupon, except for all fees, costs and expenses due to the Borough hereunder, this Agreement shall be null, void and of no effect.

(d) Except as to failure to timely remit payment, statement or certification, Grantee shall have thirty (30) calendar days from receipt of the notice described in subparagraph (c) to respond to the Borough contesting the assertion of noncompliance, or to cure such default or, in the event that by the nature of default, such default cannot be cured within the thirty (30) day period, request permission from the Borough for additional time in which to take reasonable steps to remedy such default (which permission shall not be unreasonably withheld).

(e) Except as to payment and except for a violation which presents an immediate danger to health or safety, in the event the Grantee contests the assertion of non-compliance in a timely manner, then the time specified to cure the alleged default shall be stayed or tolled pending a hearing before the Borough Council of the Borough. In the event the Borough Council affirms the assertion of noncompliance following a hearing affording the Grantee the opportunity to be heard, then the Grantee shall have thirty (30) calendar days within which to cure such default. Notwithstanding such timely

response or effort to cure by Grantee, non-compliance or default by Grantee continuing after such thirty (30) calendar day period shall not be excused or waived, unless such excuse or waiver is affirmatively granted in writing by the Borough.

(f) If for any reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability. Unless further limited elsewhere in this Agreement, the term "force majeure" shall mean strikes, acts of God, acts of public enemies, orders of any court of competent jurisdiction, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, explosions, partial or entire failure of utilities, or any other cause or event not reasonably and foreseeably within the control of the party affected.

(g) No cost to Grantee arising from a breach or violation of this Agreement shall be recovered from Subscribers, shall form the basis for any adjustment to Subscriber rates or other Subscriber charges, or shall be offset against any sums due the Borough as a tax, franchise fee, or otherwise, regardless of whether the combination of franchise fees and said costs exceed five percent (5%) of Grantee's Gross Revenue in any twelve-month period.

16. Expiration or Termination of Agreement.

(a) Upon the expiration of the term of this Agreement and for which a renewal has been denied, or upon its termination or revocation, the Borough may require Grantee to remove at its own expense all portions of the Cable System from all Streets. Within six (6) months after receipt of written notice from the Borough, Grantee shall remove from the Streets all such property of the Cable System other than any which the Borough may permit to be abandoned in place. The Borough shall not unreasonably withhold permission to abandon underground facilities. In the event of such removal, Grantee shall promptly restore the Streets or other area from which such property has been removed to a condition as good as that existing immediately prior to such work, as approved by the Borough Engineer.

(b) In addition, Grantee shall restore the Streets to a condition the same as existed prior to construction of the Cable System, excluding any improvements made to said streets subsequent to completion of construction. The Borough Engineer shall cause such streets to be examined prior to any construction by the Grantee and shall provide a report on the condition of such street to the Borough and the Grantee. With regard to non-public property, the Grantee shall restore such property to a condition the same as existed prior to construction excluding any improvement made to such property subsequent to completion of construction. Restoration of public streets shall be approved by the Borough Engineer. Costs for restoration of private property and public property shall be borne by the Grantee.

17. Notices. All notices required or permitted to be given to either of the parties under any provision of this Agreement shall be in writing and shall be deemed served when delivered personally, when sent by certified mail, return receipt requested, postage prepaid, or when delivered by a nationally-recognized private courier service, to the respective party at the address set forth at the beginning of this Agreement or such other location designed by the party by written notice to the other party.

18. Waiver. The waiver by any party of a breach or violation of any provision of this Agreement by the other party shall not constitute a waiver of any subsequent breach of the same or any other provision of this Agreement.

19. Assignment and Succession.

(a) Except as otherwise provided in subparagraph (b), this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties.

(b) The rights and privileges granted to Grantee under this Agreement may not be transferred by Grantee to any other person without the express written approval of the Borough, which approval shall not be unreasonably withheld, conditioned, or delayed. The Borough, however, shall not assert any right of approval over any transfer of rights by Grantee to an Affiliate of Grantee (*provided* that Grantee remains liable for full performance of each and every term, condition or provision hereof) or over the mortgage or pledge of this Agreement by Grantee for financing purposes.

20. Amendment. This Agreement may be amended only by a written instrument executed by both parties and approved by the Borough in accordance with law. It is the intent of the parties that this Agreement (or any renewal hereof) shall be subject to amendment from time to time to allow the Grantee to innovate and implement new services or to agree to any terms allowed by law. Each party agrees to bargain in good faith with the other party upon the initiation of any proposed amendment

21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

22. Headings. The paragraph headings contained in this Agreement are for convenience only and shall not be considered a part of this Agreement, nor utilized to construe any of the provisions of this Agreement.

23. Severability. If any paragraph, subparagraph, sentence, clause, phrase, or provision of this Agreement is for any reason held invalid or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Agreement.

24. Entire Agreement. This Agreement constitutes the entire agreement by and between the parties with respect to the subject matter of this Agreement, and supersedes all prior or contemporaneous negotiations, commitments, agreements, and representations, written or oral.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below, intending to be legally bound.

Attest:

BOROUGH OF ALBURTIS

Melanie Hansen, Executive Secretary

By: _____
Steven R. Hill, President of Borough
Council

Date: _____

Attest:

RCN TELECOM SERVICES, INC.

Name: _____

By: _____

Title: _____

Name: _____

Title: _____

Date: _____