



SUMMARY OF ORDINANCE NO. 1057

PUBLIC NOTICE IS HEREBY GIVEN that the City Council for the City of Rexburg, Idaho, has before it Ordinance 1057 entitled:

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF THE FRANCHISE AGREEMENT BETWEEN THE CITY AND CABLE ONE, INC.; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; APPROVING A SUMMARY OF THE ORDINANCE; AND PROVIDING WHEN THIS ORDINANCE SHALL BECOME EFFECTIVE.

The Ordinance grants to Cable One, Inc., a non-exclusive franchise agreement which allows them to make use of public rights-of-way, and to collect a franchise tax on behalf of the City of Rexburg. It further provides for the details of how the agreement between the City and the cable company will be implemented. The effective date of the Ordinance is the date of its passage, approval and final publication. A copy of the full text of the Ordinance is available at City Hall, 35 North 1st East, in Rexburg, Idaho. Examination or copies may be requested in writing or in person during regular business hours of the City Clerk, from 8:00 a.m. to 5:00 p.m. pursuant to the Open Records Act, Idaho Code, Title 9, Chapter 3.

DATED this 6th day of December, 2010.

Richard S. Woodland, Mayor
(SEAL)

ATTEST:

Blair D. Kay, City Clerk

**STATEMENT OF
REXBURG CITY ATTORNEY
AS TO ADEQUACY OF SUMMARY
OF ORDINANCE 1057**

Stephen Zollinger, City Attorney for the City of Rexburg, declares that in his capacity as City Attorney of the City of Rexburg, pursuant to Idaho Code Section 50-901A (3) of the Idaho Code as amended, hereby certifies that he has reviewed a copy of the above cited Summary of Ordinance and has found the same to be true and complete and provides adequate notice to the public of the contents, including the exhibits, of Ordinance No. 1057.

DATED this 6th day of December, 2010.

Stephen P. Zollinger
Rexburg City Attorney

ORDINANCE 1057
CABLE TELEVISION
FOR
CITY OF REXBURG, IDAHO

AN ORDINANCE GRANTING TO CABLE ONE, INC., FOR A PERIOD OF TEN (10) YEARS FROM AND AFTER THE PASSAGE, ACCEPTANCE AND EFFECTIVE DATE OF THIS ORDINANCE, THE NONEXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN, UPON, ALONG, ACROSS, ABOVE, OVER, AND UNDER STREETS, ALLEYS, EASEMENTS, OPEN AREAS, PUBLIC WAYS AND PUBLIC PLACES, NOW LAID OUT OR DEDICATED, AND ALL EXTENSIONS THEREOF AND ADDITIONS THERETO, IN THE CITY OF REXBURG: PROVIDING TERMS AND CONDITIONS FOR THE OPERATION OF SUCH CABLE TELEVISION SYSTEM AND THE PAYMENT OF FEES THEREFORE.

WHEREAS, prior to adoption of this Ordinance a full public proceeding affording due process was held and the legal, character, financial and technical qualification of Cable One, Inc., as well as the adequacy of the services it proposes and the adequacy and feasibility of its plans to provide service were considered; now therefore,

THE CITY OF REXBURG DOES ORDAIN:

FRANCHISE AGREEMENT

This Franchise Agreement ("Franchise") is between the City of Rexburg, Idaho, hereinafter referred to as "Franchising Authority" and Cable One, Inc., hereinafter referred to as "Grantee."

The Franchising Authority, having determined that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein..

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SECTION I Definition of Terms

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

A. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.

B. "Cable Act" means Title VI of the Communications Act of 1934, as amended.

C. "Cable Service" shall mean (1) the one-way transmission to Customers of (a) video programming, or (b) other programming service, and (2) Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.

D. "Cable System" shall mean the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Customers within the Service Area.

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

F. "Franchising Authority" means the City of Rexburg, Idaho or the lawful successor, transferee, or assignee thereof.

G. "Grantee" means Cable One, Inc. Cable Company, Inc. or the lawful successor, transferee, or assignee thereof

H: "Gross Revenues" mean any revenue received by the Grantee from the operation of the Cable System to provide Cable Service in the Service Area. Such phrase does not include: (1) any tax, fee or assessment of general applicability collected by the Grantee from Customers for pass through to a government agency; and (2) unrecovered bad debt,

I. "Public, Education and Government Access" means non-commercial video programming services produced or acquired by members of the public, educational institutions or government institutions in the Service Area for cable casting on the Cable System. The Franchising Authority or its designee may determine non-discriminatory rules and regulations regarding the production, administration and cable casting of Public Access programming.

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

K. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

L. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Section 3.9.

M. "Standard Installation" is defined as 125 feet from the nearest cable tap to the Customer's terminal.

N. "Customer" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

SECTION II Grant of Franchise

II.I: GRANT. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

II.II: OTHER ORDINANCES. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Grantee reserves the right to challenge the provisions of any ordinance which conflict with its contractual rights, either now or in the future. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority

II.III: EQUAL PROTECTION. The Franchising Authority shall not authorize or permit any Person to enter into the Franchising Authority's Public Ways for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Service Area on terms or conditions more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

II.IV: TERM. The Franchise granted hereunder shall be for an initial term of ten (10) years commencing on the effective date of the Franchise as set forth in Section 8.10, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION III Standards of Service

III.I: CONDITIONS OF OCCUPANCY. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

III.II: RESTORATION OF PUBLIC WAYS. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, at its expense the Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. Grantee's restoration shall be guaranteed for one (1) year. Franchisee agrees to comply with all generally applicable laws and permitting requirements of the Franchise Authority related to right-of-way construction and maintenance.

III.III: RELOCATION AT REQUEST OF THE FRANCHISING AUTHORITY. Upon its receipt of reasonable advance written notice, to be not less than five (5) business days, the Grantee, at its own expense, shall protect, support, temporarily disconnect, relocate in or remove from the

Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any Person using such Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall make application for such funds on behalf of the Grantee.

III.IV: RELOCATION AT REQUEST OF THIRD PARTY. The Grantee shall, on the request of any Person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its Cable System to permit the moving of such building, provided: (A) the expense of such temporary raising or lowering of the Cable System is paid by said Person, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes

III.V: TRIMMING OF TREES AND SHRUBBERY. The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System. Notice shall be given to adjacent property owners prior to trimming. All trimming shall be in accordance with generally accepted pruning standards.

III.VI: SAFETY REQUIREMENTS. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

III.VII: UNDERGROUND CONSTRUCTION. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

III.VIII: ACCESS TO OPEN TRENCHES. The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench.

III.IX: REQUIRED EXTENSIONS OF THE CABLE SYSTEM. Whenever the Grantee receives a request for Cable Service from a Customer in a contiguous un-served area where there are at least 15 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of Grantee's trunk or distribution cable which is to be extended, the Grantee shall then extend its Cable System to such Customers at no cost to said Customers for the Cable System extension, other than the published Standard non-Standard Installation fees charged to all Customers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service; into any annexed area which is not contiguous to the present Service Area of the Grantee; or, into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or highway crossing.

III.X: CUSTOMER CHARGES FOR EXTENSIONS OF THE CABLE SYSTEM. No Customer shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 3.9 above, the Grantee shall only be required to extend the Cable System to Customer(s) in that area if the Customer (s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from Grantee's trunk or distribution cable, and whose denominator equals 15. Customers who request service hereunder shall bear the remaining cost to extend the

Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance. Customers shall also be responsible for any Standard non-Standard Installation charges to extend the Cable System from the tap to the residence.

III.XI: CABLE SERVICE TO PUBLIC BUILDINGS. The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and/or occupied by the Franchising Authority located within the City limits, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

III.XII: EMERGENCY USE. If the Grantee provides an Emergency Alert System ("EAS"), then the Franchising Authority shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

III.XIII: FUTURE TECHNOLOGY. At any time during the term of this Franchise, The Franchising Authority may at its discretion and cost conduct a study of various new technologies that can be integrated into the cable system and new interactive services that can be delivered over the system. The Franchisee shall provide reasonable assistance to the Franchise Authority during its study of new technologies and interactive services, including conducting a marketing survey of its subscribers to ascertain their interest in subscribing to new interactive services provided over the cable system using new technologies. Franchisee shall not be obligated to introduce any new technology or service as a result of the Franchise Authorities study.

SECTION IV

Regulation by the Franchising Authority

IV.I: FRANCHISE FEE.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5%) of Gross Revenues (as defined in Section 1.1 of this Franchise). In accordance with the Cable Act, the 12-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due quarterly, payable within 30 days after the close of March, June, September, and December of each year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be four (4) years from the date on which payment by the Grantee is due.

IV.II: RATES AND CHARGES. The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.

IV.III: RENEWAL OF FRANCHISE.

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

B. In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this Section, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof

D. The Grantee and the Franchising Authority consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act.

IV.IV: CONDITIONS OF SALE. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

IV.V: TRANSFER OF FRANCHISE. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within 120 days after receiving such request, consent by the Franchising Authority shall be deemed given.

IV.VI: PUBLIC EDUCATION AND GOVERNMENT ACCESS. Upon written request from the Franchising Authority, Grantee shall provide one (1) downstream channel for Public, Education and Government Access (PEG) programs. The Franchising Authority or its designee shall administer the programming offered on this channel

The Franchising Authority agrees to indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the use of the Grantee's channel for PEG by the City or its designee.

SECTION V

Books and Records

V.I: The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section of the Franchise, which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act.

SECTION VI

Insurance and Indemnification

VI.I: INSURANCE REQUIREMENTS. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be non-cancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this Section.

VI.II: INDEMNIFICATION. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

SECTION VII

Enforcement and Termination of Franchise

VII.I: NOTICE OF VIOLATION. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

VII.II: THE GRANTEE'S RIGHT TO CURE OR RESPOND. THE Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

VII.III: PUBLIC HEARING. In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2 above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide Grantee the opportunity to be heard.

VII.IV: ENFORCEMENT. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in Section 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

B. Commence an action at law for monetary damages or seek other equitable relief; or

C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 7.5.

VII.V: REVOCATION. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in Section 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo*. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

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

VII.VI: FORCE MAJEURE. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Customers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Customers.

SECTION VIII
Miscellaneous Provisions

VIII.I: ACTIONS OF PARTIES. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

VIII.II: ENTIRE AGREEMENT. This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

VIII.III: NOTICE. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

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

City of Rexburg, Idaho
ATT: Mayor
P.O. Box 280
Rexburg, Idaho 83440

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

Cable One, Inc.
1314 North 3rd Street
Phoenix, Arizona 85004

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section.

VIII.IV: DESCRIPTIVE HEADINGS. The captions to Sections contained herein are intended solely to facilitate the reading thereof such captions shall not affect the meaning or interpretation of the text herein.

VIII.V: SEVERABILITY. If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof

VIII.VI: ACCEPTANCE BY THE COMPANY. The Franchise granted pursuant to this Ordinance and its terms and provisions shall be unconditionally adopted by written instrument executed and acknowledged by the appropriate officials of the City and delivered to the Company which shall accept same not later than twenty (20) days after receiving it by acknowledging the Company's acceptance in writing.

VIII.VII: FAILURE OF CITY TO ENFORCE THIS FRANCHISE; NO WAIVER OF THE TERMS THEREOF. The Company shall not be excused from complying with any of the terms and conditions of this Franchise by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

VIII.VIII: BREACH AND TERMINATION. In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right to terminate the Franchise and

all rights and privileges of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by Company shall include the following:

A. Violation of any material provision of the Franchise or any material rule, order, regulation or determination which the City is authorized to make under the terms of this Franchise.

B. Attempt to evade any material provision of the Franchise or attempts to practice any fraud or deceit upon the City or its subscribers or customers;

C. Material misrepresentation of fact in the application for or negotiation of the Franchise.

VIII.IX: EXCUSE FOR BREACH. The foregoing shall not constitute a substantial breach if the violation occurs, but it is without fault of the Company or occurs as a result of circumstances beyond its control.

VIII.X: EFFECTIVE DATE. The effective date of this Franchise is December 6th, 2010; pursuant to the provisions of applicable law. This Franchise shall expire on December 7th, 2020, unless extended by the mutual agreement of the parties.

Considered and approved this, 6th day of December, 2010.

Richard Woodland, Mayor

Accepted this _____ day of December, 2010; subject to applicable federal, state and local law.

Cable One, Inc.
