

THE MAYOR AND COUNCIL OF BOONSBORO

ORDINANCE NO. 2020-03

AN ORDINANCE GRANTING TO ANTIETAM CABLE TELEVISION, LLC, ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT TO ERECT, MAINTAIN, AND OPERATE IN, UNDER, OVER, ALONG, ACROSS, AND UPON THE STREETS, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES, HIGHWAYS, AND OTHER PUBLIC PLACES IN BOONSBORO, MARYLAND AND SUBSEQUENT ADDITIONS THERETO, FOR THE PURPOSE AND DISTRIBUTION VIA CABLE OF TELEVISION SIGNALS AND OTHER SERVICES TO THE INHABITANTS OF BOONSBORO, MARYLAND

BE IT ORDAINED AND AGREED by The Mayor and Council of Boonsboro as follows:

**SECTION I**

**DEFINITIONS**

For the purpose of this Ordinance, the following terms, phrases, and words shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in plural include the singular, and vice versa. The word “shall” is always mandatory:

A. “Town” is The Mayor and Council of Boonsboro, a municipal corporation established and existing under and by virtue of the laws of the State of Maryland. As used herein, the term, "Town" may sometimes refer, as the context may indicate, to the area enclosed by the corporate boundary of the Town, as modified from time to time by annexation or other modification of the Town boundary.

B. “Company” is Antietam Cable Television, LLC. d/b/a Antietam Broadband (“Antietam”) organized and existing under the laws of the State of Indiana, its successors or permitted assigns, and it is the grantee of rights under this franchise.

C. “Council” is the Mayor and Council of the Town.

D. “Federal Communications Commission” or “FCC” is the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

E. “Person” is any person, firm, partnership, association, corporation, company or organization of any kind.

F. “Gross Subscriber Revenues” shall include any and all payments to the Company from Boonsboro subscribers for the Company’s delivery of television programming.

G. “Regular Subscriber Services” shall include the carriage of any tier of television programming, which include, but are not limited to, advertising, leased channels and pay-cable.

H. “System” consists of poles, wires, cables, fiber optic cables, antennas and other appliances for the reception, transmission, and distribution of television impulses and energy existing or to be constructed, installed, maintained, repaired, replaced, operated and possibly removed by the Company for the television/radio reception, transmission and distribution, including but not limited to cable television, closed circuit television and two-way communications, by what is commonly referred to as a cable television system.

I. “Town Manager” is the Town’s duly appointed Town Manager, or such other representative of the Town designated by the Town Manager or the Mayor and Council from time to time to discharge duties and obligations imposed under the provisions of this Ordinance.

## **SECTION II**

Grant of Authority – In consideration of and subject to the faithful performance and observance of the conditions and reservations hereinafter specified, there is hereby granted to the

Company, its successors and assigns, the right to erect, maintain, and operate a cable television transmission and distribution System in, under, over, along, across, and upon the streets, lanes, avenues, sidewalks, alleys, bridges, and other public places in the Town and subsequent additions thereto, provided that the Company has obtained permission from the legal owner of the premises prior thereto, so long as all such services are provided in accordance with the laws, regulations, ordinances and regulations of the Federal Communications Commission, the State of Maryland and the Town, including this Ordinance, upon the stipulations and conditions hereinafter contained. The Company shall make service available in all geographical areas in the Town, including areas which may be annexed in the future during the term of this Ordinance, or any extension or renewal.

### **SECTION III**

A. Use of Existing Pole Line Facilities - There is hereby granted the further right, privilege, and authority to the Company to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises within the Town, including the telephone and power company, and to use such towers, poles, lines, cables and other equipment and facilities, subject to all existing and future ordinances and regulations of the Town. The poles used for the Company's distribution system shall be those erected and maintained by the telephone and power company, when and where practicable, providing mutually satisfactory rental or other agreements for that purpose can be entered into with said companies.

B. Non-exclusive Grant - The right and privilege herein granted by the Town for the purposes herein set forth is not exclusive and Town reserves the right to grant a similar

right and privilege to any Person at any time during the term of this franchise or any renewal thereof.

C. Company shall at all times during the continuance of the right and privilege herein granted or any renewal thereof, be subject to all lawful exercises of the police power by Town, and to such ordinances and regulations of the Town which are now in effect, or which the Town may hereinafter enact, which are not inconsistent with the rights and privileges herein granted.

D. The Town has enacted an Ordinance entitled, "Small Wireless Communications Facilities Ordinance, Ordinance No. 2019-02, providing, *inter alia*, for the siting of certain communications equipment and facilities in municipal rights-of-way, pursuant to the Declaratory Ruling and Third Party Report and Order of the Commission, WC Docket No. 17-79/WC Docket No. 17-84, effective January 14, 2019 (Order), of the Federal Communications Commission. Company agrees to cooperate with the Town in providing compliant locations for facilities in accordance with the requirements of the aforesaid Order.

#### **SECTION IV**

##### **CONDITIONS ON STREET OCCUPANCY AND SYSTEM CONSTRUCTION**

A. All attachments, installation, construction, maintenance, repair, replacement, operation or removal of the System or parts thereof shall be made subject to the approval of the Town Manager. In cases where existing poles or other structures, conduits or other facilities owned or leased by public utilities having the right to permit attachment thereto or location therein or thereon of the System by Company are not available or are impractical for the purpose, then the proposed means of attachment, construction or conduit shall be submitted to the Town Manager by drawings, plans and explanatory documents including agreements, leases

or other papers granting the right of attachment, construction or conduit at least forty-five (45) days before such proposed attachment, installation or construction and shall be subject to approval in writing by the Town Manager before commencement of such attachment, installation or construction, except where such attachment, installation or construction is of a *de minimis* nature or necessary to promptly restore disrupted service.

B. The System shall be located, erected, and maintained so as not to endanger or interfere with the lives of persons or to interfere with new improvements the Town may deem proper to make, or to unnecessarily hinder or obstruct the free and safe use of the streets, alleys, bridges, or other public property. Removal of poles to avoid such interference shall be at the Company's expense. The height of all cables and other components of the System shall not interfere with vehicular traffic or parking. Any excavation, boring or drilling which may interfere with the water, sewer and other underground utilities shall require advance written approval of the Town.

C. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and all applicable ordinances, regulations and standards of Washington County and the Town.

D. All installations of equipment shall be permanent of nature, durable, and installed in accordance with sound engineering practices and of sufficient height to comply with all existing Town regulations, ordinances, and County and State laws and so as not to cause or create any nuisance or hazard, or to interfere in any manner with the right of the public or individual property owner, and such installations shall not interfere with the travel and use of

public places by the public when installed, during construction, repair or removal thereof, nor shall they obstruct or impede traffic.

E. In the maintenance and operation of its cable television transmission and distribution system in the streets, alleys, and other public places in the course of any new construction or addition to its facilities, the Company shall proceed so as to cause the least possible inconvenience to the general public and small wireless communications providers. Any opening or obstruction in the streets or other public places made by the Company in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences, or boardings, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights. Except for *de minimis* activity or activity necessary to promptly restore disrupted service, any excavation or taking up of pavement, curbing, or sidewalk and any drilling or boring shall be done only with the prior written approval of the Town Manager and shall be repaired by the Company.

F. In the event the Town shall relocate a street, raise or lower a bridge, or make any other changes requiring the removal of utility installations, the Company at its sole expense shall remove or relocate its installations at said locations as permitted or instructed by the Town, no later than thirty (30) days from receiving the Town's permission or instructions.

G. In case of any disturbance by the grantee of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the Town, replace and restore all paving, sidewalk, driveway and other surface so disturbed in as good condition as before said work was commenced. Repairs, replacements or restoration shall be completed within ten (10) days. Company shall be responsible for all damages to Town

property proximately caused in whole or in part by the acts or omissions of the Company, its agents, servants, employees, agents, contractors or subcontractors.

H. Company shall on the request of any person, firm or corporation holding a moving permit issued by the Town or other governmental regulatory agency having jurisdiction over the matter by which permit building or buildings, large pieces of equipment or structural materials or the like are to be moved from place to place, temporarily raise or lower its System necessary for so doing to permit the moving of such buildings, equipment, structural materials and the like. The expense of such temporary raising or lowering of System or any part thereof shall be paid by the person, firm or corporation requesting the same. Company shall be given 72 hours advance notice to arrange for such temporary changes.

I. Town shall have the right to inspect all work of attachment, installation, construction, maintenance, repair, replacement, operation or removal of System or any part thereof to ensure Company's compliance with this Ordinance or any other Town Ordinance or governmental regulations applicable thereto, and the Company shall promptly correct all deficiencies identified in the course of any such inspection.

## **SECTION V**

### **INDEMNIFICATION AND LIABILITY**

Indemnification and Liability - The Company shall indemnify, protect and save harmless the Town, its elected and appointed officials, agents, servants, employees and contractors from and against losses and physical damage to property, and bodily injury or death to persons, including but not limited to, payments made under any Workers' Compensation law and further including attorney's fees incurred by the Town in defending against any such claims which may arise out of or be caused by the erection, maintenance, presence, use or removal of the System

within the Town or by any act of the Company, its agents, servants, contractors, subcontractors, officers, directors, members or employees. The Company shall carry insurance to protect the parties hereto from and against all claims, demands, actions, judgments, cost, expenses, and liabilities which may arise or result, directly or indirectly from or by reason of such loss, injury or damage. The amounts of such insurance against liability due to physical damages to property shall not be less than \$1,000,000.00 as to any one accident and not less than \$1,000,000.00 aggregate in any single policy year, and against liability due to bodily injury or to death of person not less than \$1,000,000.00 as to any one person and no less than \$1,000,000.00 as to any one accident. The Company shall also carry such insurance required by Maryland State law to protect it from all claims under the Workers' Compensation laws in effect that may be applicable to the Company. All insurance required by this Ordinance shall be and remain in full force and effect for the entire life of this Ordinance, and for a period of three (3) years thereafter and shall name the Town as co-insured. Said policy or policies of insurance or a certified copy or copies thereof shall be deposited with the Town Manager. Each policy shall contain a provision that no change or cancellation of the said policy may be made without first giving thirty (30) days written notice in advance to the Town. In addition, the Company shall indemnify the Town and its officials and shall hold them and each of them harmless of and from any and all liability with respect to alleged copyright infringements, and with respect to the subject matter of any program transmitted by the Company.

## **SECTION VI**

### **PROVISION OF SERVICE**

A. The Company shall install a 750 MHz CATV system carrying, so long as it is technically and economically practical to do so, the number of television broadcast signals

required by the current regulations of the Federal Communications Commission and any other regulatory agency.

## **SECTION VII**

### **COMPLAINT PROCEDURES**

A. Company shall maintain a regional business office in the area or shall maintain a toll-free telephone line to receive, respond to, and address inquiries and complaints from subscribers, the public and the Town.

B. Company shall investigate and resolve all subscriber complaints regarding the quality of service, equipment malfunctions and similar matters expeditiously and in accordance with the following procedure:

1. Company shall have qualified personnel available during normal working hours to investigate and resolve subscriber complaints.

2. Upon notification of service complaint, Company shall dispatch a qualified employee to investigate the complaint and adjust, repair or replace Company equipment as necessary to resolve the complaints. Company shall not be responsible for malfunctions of any television receivers owned or operated by subscriber.

3. All complaints shall be investigated and resolved normally within twenty-four (24) hours after initial notification to Company, extenuating circumstances excepted.

4. Company shall maintain a service log in which an entry shall be made of each complaint, the date of notification thereof, the nature of the complaint and the means by which it was resolved. This log shall made available to the Town for inspection and copying, at no charge to the Town, upon request.

5. Notice shall be given to subscribers of the Company's complaint procedure when they initially subscribe.

### **SECTION VIII**

The Company agrees to comply with all rules and regulations promulgated by the Federal Communications Commission with respect to the operation of cable television systems.

### **SECTION IX**

Franchise Fee - The Company shall pay to the Town as a franchise fee, a sum equal to five percent (5%) of the Company's Gross Subscriber Revenues per year in accordance with the definition of "gross subscriber revenues" contained herein at Section I, Paragraph F. Said payments shall be made quarterly within thirty (30) days after the end of each quarter of the Company fiscal year, time being of the essence. Delinquent payments shall be subject to and accompanied by interest at the rate of Ten (10%) per annum accruing from the due date through the date of payment. Default under the terms of this Section IX shall be grounds for termination of the rights granted to the Company herein.

### **SECTION X**

The franchise shall take effect and be in full force from and after the final passage hereof, subject to acceptance by the Company as herein provided, and the same shall continue in full force and effect for the term of fifteen (15) years beginning with the date of such acceptance. Company shall have the option to request renewal of this franchise for an additional period not to exceed 15 years. Should Company desire to exercise this option, it shall so request in writing, not less than six (6) months prior to expiration of this franchise. The Town may consider the performance of Company under this franchise and any other factors deemed relevant in

determining whether to renew this franchise. If this franchise is renewed by the Town, all of the terms and provisions contained herein shall be controlling during the renewal period except to the extent that said terms and provisions are modified by agreement between the Town and the Company, or unless this franchise is superseded by a new franchise. This renewal provision does not preclude any franchise renewal rights the Company has under federal law.

## **SECTION XI**

**Surrender Right** - Company may surrender this franchise at any time upon written notice to the Mayor and Council of the Town, actually received by the Mayor and Council, of its intention to do so at least twelve (12) months before the proposed surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of the Company, other than those obligations and liabilities then pending or obligations and liabilities that may arise before or after the surrender date as a result of the operation of the System prior to surrender date, in connection with this franchise, shall terminate.

**Town's Right to Terminate Franchise** - Should Company violate or fail to observe any of the material terms, conditions and provisions of this Ordinance for a period of ninety (90) days after written notice thereof by Town to Company, then, in that event, Company shall be deemed to have forfeited the franchise herein granted.

**Removal of Equipment at Termination** - Company shall within ninety (90) days after written notice from Town to Company remove all of its equipment, structures, facilities, apparatus and appurtenances and restore any disturbed areas to their original condition. In the alternative, if the franchise is revoked for cause, and the Town so elects, the System components installed in the Town shall not be removed, whereupon ownership of the System shall be transferred to the Town at an equitable price. If the franchise renewal is denied, ownership of

the System shall be transferred, if elected by the Town, as directed by the Town, at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself.

## **SECTION XII**

Transfers - All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the Town and the permitted successors and assigns of the Company, and the same shall not be assigned or transferred by the Company without prior written consent of the Mayor and Council, which consent shall be based on a reasonable determination regarding the adequacy of the assignee's or transferee's legal, technical, and financial qualifications, with the Town provided by the Company with all information reasonably requested by the Town, and verified by the proposed transferee or assignee.

## **SECTION XIII**

Severability - If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by the final, unappealable judgment of any court of competent jurisdiction, or of any final, unappealable ruling of the Federal Communications Commission, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

## **SECTION XIV**

Acceptance by Grantee - The Company shall execute this Ordinance, in final adoptable form, for the purpose of consenting and agreeing to the terms and conditions hereof, and for the purpose of contractually binding the Company, under seal, to the provisions hereof from and

after the date of approval of this Ordinance by the Mayor and Council, which execution shall occur before the presentation of the Ordinance to the Mayor and Council for adoption, and shall be considered an irrevocable offer for a period of ninety (90) days. Upon passage by the Mayor and Council, subject to the provisions of Article II of the Charter of the Town, this Ordinance shall become effective and binding upon the Town and the Company as of the Effective date set forth below.

WITNESS/ATTEST:

THE MAYOR AND COUNCIL OF BOONSBORO

\_\_\_\_\_  
Heather Slough, Town Clerk

By: \_\_\_\_\_  
Howard W. Long, Mayor

(SEAL)

\_\_\_\_\_  
Rickard Byrd, Council Member

\_\_\_\_\_  
Marilee Kerns, Council Member

\_\_\_\_\_  
Terri Hollingshead, Council Member

\_\_\_\_\_  
Anthony Nally, Council Member

\_\_\_\_\_  
Rick Weaver, Council Member

\_\_\_\_\_  
Ray Hanson, Council Member

INTRODUCED: \_\_\_\_\_

ENACTED: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_

EXECUTED AND AGREED under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

WITNESS: ANTIETAM CABLE TELEVISION, LLC

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Brian Lynch, President