RESOLUTION
2020-003

RESOLUTION AUTHORIZING EXECUTION OF A CABLE FRANCHISE AGREEMENT WITH ATLANTIC BROADBAND (DELMAR), LLC

WHEREAS, pursuant to Title VI of the Telecommunications Act of 1934, *as amended*, the regulations of the Federal Communications Commission (hereinafter referred to as the "FCC") and Delaware law, the Town of Townsend (the "Town") is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing Public Rights-of-Way and properties within the Town's jurisdiction; and

WHEREAS, Atlantic Broadband (Delmar), LLC ("Atlantic Broadband") currently holds a franchise to operate a Cable System within the Town previously granted to Atlantic Broadband or a predecessor entity; and

WHEREAS, the aforesaid Public Rights-of-Way used by Atlantic Broadband are public properties acquired and maintained by the Town on behalf of the citizens of the Town, and the right to use said rights-of-way is a valuable property right; and

WHEREAS, the Town desires to protect and manage the aforesaid rights-of-way, establish standards of Subscriber service, maintain a technologically advanced Cable System, receive Franchise Fees for Atlantic Broadband's use of the Town's rights-of-ways as provided by federal law, reserve the right to request use of a public, educational and governmental channel, establish certain reporting requirements, obtain certain complimentary services, provide legal protections for the Town, and meet the current and future cable-related needs of its residents; and

WHEREAS, the Town has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations; and

WHEREAS, the Town, has determined that the public interest would be served by granting Atlantic Broadband's franchise according to the terms and conditions contained herein;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF TOWNSEND COUNCIL, TOWNSEND, DELAWARE: that the Town Council does hereby approve the cable franchise agreement negotiated with Atlantic Broadband including all of the terms and conditions contained therein, and does hereby authorize the execution of such agreement.

This Resolution shall take effect immediately upon execution by all parties and will replace the agreement which is due to expire on August 10, 2020. The Mayor of the Town of Townsend is hereby authorized to enter into, execute the Cable Franchise Agreement evidencing the Resolution without further action.

PASSED and APPROVED this 1 day of APRIL, 2020.

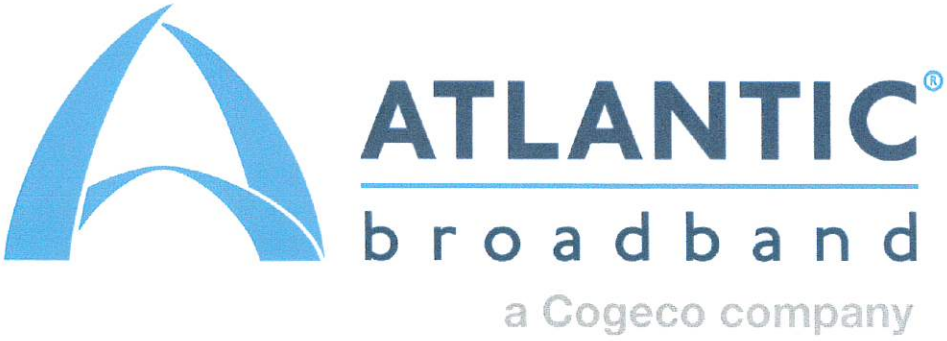
TOWN OF TOWNSEND

Thomas McDonald, Mayor

ATTEST:

Anthony S. Mangeri, Town Manager

Vote of Council	Yea	Na	Abs
Mayor McDonald			
CW E. Dugan	✓		
CM P. Miller	✓		
CM S. Lobdell	✓		
CM A. Franco	✓		



Atlantic Broadband (Delmar) LLC

Cable Franchise Agreement

with the

Town of Townsend

(DE0048)

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Cable Franchise Agreement

THIS CABLE FRANCHISE AGREEMENT ("Agreement") is entered into on this _____ day of _____2020, by the Town of Townsend ("Issuing Authority") and Atlantic Broadband (Delmar) LLC, a Delaware limited liability company with its principal place of business at 2 Batterymarch Park, Suite 205, Quincy, MA 02169 ("Franchisee").

Recitals

A. Authority to Grant Franchise. The Issuing Authority, pursuant to Section 621 of the Cable Communications Policy Act of 1984 as now in effect ("Federal Cable Act"), is authorized to grant one or more nonexclusive franchises to construct, operate and maintain a cable television system within the municipal boundaries of the Issuing Authority ("Service Area").

B. Investigation of Franchisee. The Issuing Authority has analyzed and considered the technical ability, financial condition and legal qualifications of Franchisee.

C. Determination of Franchisee's Qualifications. The Issuing Authority, after such consideration, analysis and deliberation as are required by applicable law, has approved and found sufficient the technical, financial and legal qualifications of Franchisee to provide cable television service within the municipality.

THEREFORE, the parties agree as follows:

1. Grant of Franchise

a. Grant and Term. The Issuing Authority grants to Franchisee for the term ("Term") of ten (10) years commencing on the Effective Date (as defined below) the nonexclusive right and franchise ("Franchise") to construct, use, operate, own and maintain a cable system (as defined in the Federal Cable Act) ("Cable System") subject to all applicable local, state and federal laws and regulations. For purposes of this Agreement, the term "Effective Date" is sixty (60) working days following the approval of this Agreement by the Issuing Authority and Franchisee. The Term shall automatically extend for three (3) additional terms of five (5) years each provided Franchisee references this section in writing to the Issuing Authority at most thirty-six (36) months and no later than three (3) months before the expiration date, unless the Issuing Authority notifies Franchisee in writing during the same time period of its desire to enter into renewal negotiations as provided under the Cable Act, in which case there shall be no such automatic extension.

b. Easements and Rights-of-Way. Without reducing its police powers to adopt and enforce ordinances of general applicability necessary to the health, safety and welfare of the public, the Issuing Authority grants to Franchisee the authority to use the Issuing Authority's streets, sidewalks, easements and rights-of-way for the

purposes of this Agreement, and the Franchise shall be construed to authorize the construction of a Cable System over such rights-of-way and through compatible-use easements in accordance with Section 621(a)(2) of the Federal Cable Act, and to grant access to such easements whether or not such easements specifically contemplate or designate "Cable TV" and to include this grant in future easements and rights-of-way as they are created. The parties acknowledge and agree that the purpose of the Franchise is to authorize Franchisee to construct, maintain and operate a Cable System and offer cable service and any other services Franchisee may provide over the facilities of the Cable System in, along, among, upon, across, above, over or under the public rights-of-way within the Issuing Authority's boundaries as they may now exist, or as they may be extended through annexation, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any public right-of-way or bridges such poles, wires, cables, conductors, ducts, conduits, manholes, amplifiers, attachments and equipment as may be necessary or pertinent to the Cable System.

c. Authority Not Exclusive. The Franchise and the grant of authority for use of streets, sidewalks, easements and rights-of-way as conferred in this Section 1 are nonexclusive. Franchisee shall respect the rights and property of the Issuing Authority and other authorized users of streets, sidewalks, easements and rights-of-way, and property owners. Except as otherwise required by applicable law, disputes between Franchisee and parties other than the Issuing Authority over the use, pursuant to this Agreement, of the street, sidewalks, easements and other rights-of-way shall be submitted to the Issuing Authority for resolution.

2. Franchise Fees

From and after the Effective Date of this Agreement and throughout the full Term of the Franchise, Franchisee shall pay to the Issuing Authority, in accordance with generally acceptable accounting principles and the FCC Rules and Regulations as amended from time to time, a franchise fee equal to five percent (5%) of annual Gross Revenues from the provision of cable service ("Franchise Fee"). Annual "Gross Revenues" shall be defined, unless preempted by applicable Federal and state law, as compensation received by Franchisee from subscribers for the provision of cable service to subscribers over the Cable System. This term shall also include one-time charges and equipment charges. This term does not include any revenue from the provision of any telephone or internet service, sales, excise, or other taxes or fees collected by Franchisee on behalf of any state, city or governmental unit and, further, shall not include actual bad debt, refunds and credits to subscribers, wire maintenance, late fees, other subscriber revenues, advertising and home shopping revenues and leased access revenues and Franchise Fees. Franchisee shall pay the Franchise Fee to the Issuing Authority on an annual basis, with such Franchise Fee payable forty five (45) days following the preceding year end.

3. Construction and Maintenance of Cable System

a. Maintenance. Franchisee shall maintain all wires, conduits, cables and other real and personal property and facilities owned by Franchisee and used in the operation of the Cable System in good condition, order and repair.

b. Compliance with Law. Franchisee shall comply with all applicable federal, state and local laws and regulations governing the construction, installation, operation and maintenance of a Cable System. Such laws and regulations shall include, without limitation, the requirements of Section 621(a)(2)(A) of the Federal Cable Act.

c. Standard Installation

(1) Drops Exceeding 125 Feet. Where the drop to the customer's premise is more than 125 feet in length, in addition to the prevailing standard installation or activation charge, Franchisee may charge the customer the actual difference between Franchisee's cost of installing a 125-foot- drop and the cost of installing the longer drop required by the customer.

d. Ownership of Installed Cable. Franchisee shall own all cable installed by Franchisee within the Service Area.

e. Municipal Facilities. During the Term, Franchisee shall provide, at no cost to the Issuing Authority, one above-ground cable drop of up to 125 feet, expanded basic service (excluding premium and pay-per-view services) to each Municipal Facility (as set forth in the attached Exhibit 2) within the Service Area. If the Issuing Authority requests that a particular Municipal Facility receive either a cable drop which exceeds 125 feet in length and/or an underground installation, Franchisee may charge the Issuing Authority the actual difference between Franchisee's cost of installing a 125-foot above-ground drop and Franchisee's actual cost of installing the drop as requested by the Issuing Authority. For purposes of this Agreement, the term "Municipal Facilities" means: (1) the public school buildings within the municipal limits, (2) one public library within the municipal limits, (3) the Issuing Authority's city hall (or comparable building), (4) one police facility within the municipal limits, and (5) one fire facility within the municipal limits

4. Indemnification; Insurance; Performance and Completion Security

a. Indemnification

(1) **General Duty.** Except with respect to the negligent or intentional act or omission of the Issuing Authority, its agents, employees or representatives, Franchisee agrees to defend, indemnify and save harmless the Issuing Authority and its employees, agents, servants, officers, directors, shareholders, elected

officials, contractors, subcontractors and representatives (collectively, "Indemnified Party") against all damages, losses and expenses (including, without limitation, reasonable attorneys' fees and costs of suit or defense) arising from any claims, demands and suits for personal injury (fatal or nonfatal), property damage or claims of any other nature, to the extent such damages, losses or expenses arise out of or are caused by the negligent or other wrongful acts or failures to act of Franchisee or its employees, agents, servants, officers, directors, shareholders, officials, contractors, subcontractors or representatives in the construction, operation and maintenance of the Cable System. Notwithstanding the foregoing, this Subsection shall not apply to any liability which may accrue to the Issuing Authority with regard to the Issuing Authority's use of any channel provided for the Issuing Authority's use, arising out of the use of the emergency override capability required pursuant to this agreement or other local ordinance or regulation, or arising out of any act of commission or omission, or any negligence of the Issuing Authority, or its officers, elected or appointed officials, servants, agents, employees or contractors.

(2)**Notice and Defense**. The Indemnified Party shall give Franchisee reasonably prompt written notice of any claim, demand, action or proceeding for which indemnification will be sought under this provision of the Agreement. If such claim, demand, action or proceeding is a third-party claim, demand, action or proceeding, Franchisee will have the right at its expense to assume the defense of such claim, demand, action or proceeding. Franchisee and the Indemnified Party shall cooperate with each other and provide each other with access to relevant books and records in their possession. No such third-party claim, demand, action or proceeding shall be settled without the prior written consent of the Indemnified Party, which consent the Indemnified Party shall not unreasonably withhold or delay.

b. Liability Insurance. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Term of this Agreement:

(1) Comprehensive General Liability insurance in the amount of $1,000,000 per occurrence; and

(2) Comprehensive Automobile Liability insurance to the extent of $500,000 per occurrence.

Franchisee may, as its option, self-insure.

c. Workers' Compensation Insurance. Franchisee shall maintain in force, during the Term of this agreement and any renewal or extension thereof, Workers' Compensation Insurance, covering its obligations under the Worker's Compensation statute, and shall show to the reasonable satisfaction of the Issuing Authority that such insurance is in effect at all times.

5. Privacy

a. Invasion of Privacy Prohibited. In the conduct of providing its services or pursuit of any collateral commercial enterprise resulting from its services, Franchisee shall take all action necessary to prevent an invasion of a customer's right to privacy as such right is defined by applicable law.

b. Sale of Personalized Data Restricted. Franchisee shall not sell or otherwise make available to unaffiliated third parties (including the Issuing Authority) lists of names and addresses of customers, or any list which identifies, by name, customer viewing habits, or personalized data pertaining to a customer's use of any of Franchisee's services without the express written consent of the customer to which the personalized data pertains unless permitted by applicable law. For purposes of this Section, "personalized data" shall mean the name and/or address of an individual customer directly associated with data obtained on his or her use of specific services provided by or through Franchisee. Nothing in this Agreement shall be construed to prevent, as a normal incident of commercial enterprise, the sale or availability of "non-personalized" or "aggregate data" which is not personalized data as defined in this Agreement.

c. Landlord/Tenant. Franchisee shall be required, in accordance with this Agreement and applicable law, to provide service to individual units of a multiple housing facility with all services offered to other dwelling units within the Service Area, so long as the owner of the facility consents in writing, if requested by Franchise, to the following:

(1) To Franchisee's providing of the service to units of the facility;

(2) To reasonable conditions and times for installation, maintenance and inspection of the system of the facility premises;

(3) To reasonable conditions promulgated by Franchisee to protect Franchisee's equipment and to encourage widespread use of the system; and

(4) To not demand or accept payment from Franchisee for permitting Franchisee to provide service to the facility and to not discriminate in rental charges, or otherwise, between tenants which receive cable services and those who do not.

6. Taxes, Rates and Charges

Franchisee shall pay any taxes required by applicable law to be paid by Franchisee, and Franchisee shall have the right to pass through to customers any

applicable taxes and fees, including Franchise Fees. With respect to rates and charges, the parties agree that they will abide by federal law and Federal Communications Commission ("FCC") Regulations.

7. Assignment, Transfer or Sale of Franchise

a. General. There shall be no assignment of Franchisee's Franchise, in whole or in part, by Franchisee without the written notification to the Issuing Authority.

b. Exception. This Section shall not apply to any sale, assignment or transfer to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with, Franchisee, and Franchisee shall be permitted to effect any such sale, assignment or transfer without prior notification to the Issuing Authority.

8. Renewal of Franchise

The Issuing Authority and Franchisee agree that any proceedings undertaken by the Issuing Authority that relate to the renewal of Franchisee's Franchise shall be governed by and comply with applicable federal law, including the renewal provisions in Section 626 of the Federal Cable act as then in effect. The Issuing Authority acknowledges that Franchisee will make a substantial investment in providing facilities and services pursuant to this Franchise Agreement and that renewal of the Franchise, provided it meets the criteria specified in applicable law, is a significant factor in Franchisee's willingness to assume its obligations hereunder.

9. Franchise Requirements for Other Franchise Holders

In the event that the Issuing Authority grants one (1) or more franchise(s) or similar authorization(s), for the construction, operation and maintenance of any communication facility which shall offer services substantially equivalent to services offered by the Franchisee, it shall not make the grant on more favorable or less burdensome terms. If Franchisee finds that the Agreement(s) granting said other franchise(s) contain provisions imposing increased rights and/or lesser obligations on the company(s) thereof than are imposed by the provisions of this Franchise, the parties agree that this Franchise shall be automatically amended to reflect such increased rights and/or lesser obligations.

10. Force Majeure

Any delay, preemption, or other failure to perform, including but not limited to system construction, caused by factors beyond the parties' reasonable control, such as an act of God, war, riot, or government, administrative or judicial order or regulation ("each an event of "Force Majeure"), shall not result in a default of this Agreement. Each party shall exercise its reasonable efforts to cure any such delays and the cause thereof, and performance under the terms of this Agreement shall be excused for the period of time

necessary to recover from such Force Majeure event. Force Majeure also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which Franchisee's cable and/or equipment is attached.

11. Revocation of Franchise

a. Major Breach of Franchise. When any event, act or omission on the part of Franchisee occurs which represents a substantial or repeated violation of a material provision of this Agreement, then such event, act or omission may be considered a major breach of this Agreement. Under such circumstances, the Issuing Authority shall notify Franchisee in writing by certified mail, of the specific breach, and direct Franchisee to comply with all provisions of this Agreement for which the Franchisee is in violation.

b. Events of Defaults. The events, acts and omissions referred to in this Section are the following: (1) bankruptcy; (2) insolvency; or (3) a major breach of this Franchise (as noted in Subsection 11.a above) that remains uncured for the 60-day cure period described in Subsection 11.c below. They do not include events in the nature of force majeure.

c. Opportunity to Cure. Issuing Authority shall provide Franchisee with written notice of the violation alleged to have occurred and the Franchisee shall have sixty (60) days in which to: (1) cure such violation; (2) in the case of any alleged violation which cannot reasonably be cured within such 60-day period, commence and diligently pursue a cure; or (3) notify the Issuing Authority in writing that it disputes the Issuing Authority's claim of an alleged violation. In the event that Franchisee disputes the Issuing Authority's claim, the Issuing Authority shall, upon reasonable prior written notice, set a hearing before the Council at which the Issuing Authority, Franchisee and any interested party may present evidence relating to the alleged violation. Following the hearing, the Issuing Authority shall make a determination as to whether a violation has occurred. In the event that the Authority reasonably determines that a violation has occurred, the Issuing Authority shall notify Franchisee in writing of its finding, and shall provide Franchisee thirty (30) days in which to cure such violation, or in the case of a violation which cannot reasonably be cured with such 30-day period, such reasonable amount of time to allow Franchisee commence and diligently pursue a cure.

d. Public Hearing

(1) **Scheduling and Procedures.** No sooner than 45 days after such written notice is sent by certified mail to Franchisee, the Issuing Authority may set a date for a public hearing on the matter. The hearing shall afford full due process to Franchisee and shall be held on the record. Both Franchisee and the Issuing Authority shall be permitted to compel the attendance of witnesses and the production or documents, to present evidence and to cross-examine witnesses. The public hearing may be cancelled at any time, if the Issuing Authority is satisfied that Franchisee has corrected and/or cured the violation.

(2) **Notice.** The Issuing Authority shall provide written notice, by certified mail, to Franchisee of the time and place of said hearing in a manner consistent with state law.

(3) **Evidence Regarding Status of Alleged Violation.** At the time of the hearing, Franchisee may present information on the current status of the alleged breach of the Franchise. If the situation has been resolved, or steps are being taken to resolve the situation, then Franchisee should present such information at the hearing.

(4) **Alternatives if Violation is Found**. The Issuing Authority may (once it has held the public hearing) direct the Franchisee to take corrective action within a specified period of time, or may declare the Franchisee in default of this Agreement, and afterwards, revoke, terminate or cancel the Franchise.

(5) **Notice to Franchisee.** If the Issuing Authority directs corrective action to take place within a specified time or declares Franchisee in default of this Agreement, then that declaration shall be reduced to writing, and the notice of corrective action or default shall be mailed, by certified mail, or in the alternative may be hand-delivered, to Franchisee within 15 days of the Issuing Authority's action.

12. Continuity of Service

As to continuity of service, subject to Franchisee's federal and state constitutional and statutory rights which the parties are deemed not to have waived under this Agreement, the parties agree as follows:

a. Service After Revocation, Termination, Nonrenewal, Abandonment or Withdrawal. Subject to applicable federal and state law, Franchisee shall provide service for an interim period of up to six (6) months beyond:

(1) Any then-existing Term of this Franchise Agreement or any renewal of the Term;

(2) 45 days' notice from Franchisee to the Issuing Authority of Franchisee's proposed abandonment, withdrawal or cessation of service; and

(3) The effective date of any revocation, termination or nonrenewal/expiration (absent renewal) of this Agreement.

b. Issuing Authority Assistance. During such interim period, the Issuing Authority will assist and otherwise use its best efforts to assist Franchisee in providing a satisfactory basis for Franchisee to continue providing service under this Agreement.

c. **Revenues**. During any such interim period in which Franchisee continues to provide service, Franchisee is entitled to all revenues collected, less any Franchise Fees or other moneys owed to the Issuing Authority; *provided, however*, that Franchisee is not required during any such interim period to provide service if the revenues collected are less than the operating costs incurred.

13. Severability

If any provision of this Agreement or any related agreement is held by any court or by ay federal, state or county agency of competent jurisdiction to be invalid as conflicting with any federal, state or county law, rule or regulation now or later on in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, that provision shall be considered as a separate, distinct and independent part of this Agreement or such other agreement, and such holding shall not affect the validity and enforceability of all other provisions of this Agreement or such other agreement. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the affected provision of this Agreement (or such other agreement) which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, that provision shall immediately return to full force and effect and shall afterwards be binding on the parties to this Agreement, *provided* that the Issuing Authority shall give Franchisee 60 days' written notice of such change before requiring compliance with that provision.

14. Compliance with Laws

a. Notwithstanding any other provisions of this Agreement to the contrary the Franchisee shall at all times comply with all applicable laws and regulations of the Federal, state, county and city governments and all administrative agencies thereof, including but not limited to judicial orders; provided, however, that if any such Federal, state, city, or county law or other applicable regulation shall require the Franchisee to perform any service, or shall permit the Franchisee to perform any service, or shall prohibit the Franchisee from performing any service, in conflict with the terms of this Agreement or of any law or regulation of the Issuing Authority, then as soon as possible following knowledge thereof the Franchisee shall notify the Issuing Authority of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Issuing Authority of this Agreement, and the Franchisee shall be excused from performance hereunder, provided that it acts in good faith reliance thereon, pending resolution of such conflict; provided, further, that, from the date of this Agreement through and until the expiration of the Term of the Franchisee granted under this Agreement, no change made by the Issuing Authority in its ordinances or regulations shall amend the Franchise or this Agreement without the Franchisee's written consent. In the event of a conflict between this Agreement and any local law, rule or regulation (including, without limitation, any ordinance authorizing the grant of a cable television franchise), the terms of this Agreement shall prevail.

b. If the Issuing Authority determines that a material provision of this Agreement or any related agreement is effected by such action of a court or of the Federal, state or county government, the Issuing Authority and Franchisee shall have the right to modify any of the provisions hereof or in such related agreements to such reasonable extent as may be necessary to carry out the full intent and purpose of this Agreement and all related agreements.

15. Miscellaneous

a. **Entire Agreement; Amendment.** This Agreement, the documents that are referred to in this Agreement and the documents that are to be delivered pursuant to this Agreement constitute the entire agreement among the parties pertaining to the subject matter of this Agreement, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are not representations or other agreements among the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound by such amendment, supplement, modification, waiver or termination. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing by the waiving party.

b. **Notice**

1. **To Issuing Authority**. All notices require or permitted to be given to the Issuing Authority under any provisions of this Agreement shall be in writing and shall be deemed served:

(a) When delivered by hand or by U.S. Mail, Federal Express, UPS or similar service to the Issuing Authority's offices during normal business hours; or

(b) When mailed to any other person designated in writing in this Agreement to receive such notice, via certified mail, return receipt requested.

2. **To Franchisee.** All notices required to be given to Franchisee under any provision of this Agreement shall be in writing and shall be deemed served when delivered by one of the methods described above.

3. Addresses. Notice shall be given to the following addresses:

If to Issuing Authority: **Town of Townsend**
141 Main Street
Townsend, DE 19734

If to Franchisee:	**Atlantic Broadband** **Two Batterymarch Park, Suite 205** **Quincy, MA 02169** **Attn: General Counsel**
With Copy to:	**Atlantic Broadband** **330 Drummer Drive** **Grasonville, MD 21638** **Attn: VP and General Manager**

Either party may change its address for notice purposes at any time by giving notice of such address change on accordance with the foregoing.

c. **Successors.** Subject to Section 7b of this Agreement, this Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and assigns.

d. **Interpretation.** Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the singular, and all words in any gender shall extend to and include all genders.

IN WITNESS OF THIS AGREEMENT, the parties have signed below by their duly authorized representatives.

WITNESSED:

Town of Townsend

By _____

Printed THOMAS A. McDONALD

Its MAYOR

Date MAY 6, 2020

WITNESSED:

_____

Atlantic Broadband (Delmar) LLC

By _____

Printed **Leslie J. Brown**

Its **SVP & General Counsel**

Date _____

If to Franchisee:	**Atlantic Broadband** **Two Batterymarch Park, Suite 205** **Quincy, MA 02169** **Attn: General Counsel**
With Copy to:	**Atlantic Broadband** **330 Drummer Drive** **Grasonville, MD 21638** **Attn: VP and General Manager**

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IN WITNESS OF THIS AGREEMENT, the parties have signed below by their duly authorized representatives.

WITNESSED:

_____

Town of Townsend

By_____

Printed _____

Its_____

Date _____

WITNESSED:

_____

Atlantic Broadband (Delmar) LLC

By_____

Printed **Leslie J. Brown**

Its **SVP & General Counsel**

Date _____

EXHIBIT 1
CUSTOMER SERVICE OBLIGATIONS

1. OFFICE HOURS AND TELEPHONE AVAILABILITY

a. Franchisee will maintain a local, toll-free, or collect call telephone access line, which will be available to its customers 24 hours a day, seven days a week.

   i. Trained representatives will be available to respond to customer telephone inquiries during normal business hours.

   ii. After normal business hours, the access line may be answered by a service or any automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained representative on the next business day.

b. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met not less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

c. Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates clear failure to comply.

d. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

e. Bill payment locations will be open at least during normal business hours and will be conveniently located.

2. **INSTALLATIONS, OUTAGES AND SERVICE CALLS:** Under normal operating conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

a. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system

b. Excluding conditions beyond its control, Franchisee will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. Franchisee must begin actions to correct other service problems the next business day after notification of the service problem.

c. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at a maximum, a four-hour time block during normal business hours. (Franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

d. Franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

e. If a representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

3. **COMMUNICATIONS BETWEEN FRANCHISEE AND CABLE SUBSCRIBERS**

a. Notifications to subscribers

i. Franchisee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

1. Products and services offered;

2. Prices and options for programming services and conditions of subscription to programming and other services;

3. Installation and service maintenance policies;

4. Instructions on how to use the cable service;

5. Channel positions of programming carried on the system;

6. Billing and complaint procedures, including the address and telephone number of Franchisee's cable office.

b. Customers will be notified of any material changes in rates, programming services or channel positions as soon as possible. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of Franchisee. In addition, Franchisee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by paragraph (c)(3)(i)(A) of this Section. Notwithstanding any other provision of Part 76, Franchisee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax assessment, or charge of any kind imposed by any Federal agency, State, or Issuing Authority on the transaction between the operator and the subscriber.

c. Billing

   i. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including option charges, rebates and credits.

   ii. In case of a billing dispute, Franchisee must respond to a written complaint from a customer within thirty (30) days.

d. Refunds. Refund checks will be issued promptly, but no later than either:

   i. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

   ii. The return of the equipment supplied by Franchisee if service is terminated.

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

4. DEFINITIONS

a. **Normal Business Hours.** The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

b. **Normal Operating Conditions.** The term "normal operating conditions" means those service conditions, which are within the control of Franchisee. Those conditions which are not within the control of Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions, which are ordinarily within the control of Franchisee, include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade o the cable system.

c. **Service Interruption**. The term "service interruption" means the loss of picture or sound on one or more cable channels.

Exhibit 2
Municipal Facilities

Townsend Early Child Center
10 Brook Ramble Lane