

AN ORDINANCE GRANTING A RENEWAL FRANCHISE TO
CEQUEL III COMMUNICATIONS II, LLC, A DELAWARE LIMITED LIABILITY
COMPANY DOING BUSINESS AS SUDDENLINK COMMUNICATIONS, TO
OPERATE AND MAINTAIN A CABLE SYSTEM IN THE COUNTY OF UPSHUR,
WEST VIRGINIA; AND SETTING FORTH CONDITIONS ACCOMPANYING THE
GRANT OF FRANCHISE; SUPERSEDING ALL PREVIOUS FRANCHISE
ORDINANCES FOR THE COUNTY COMMISSION OF UPSHUR COUNTY

WHEREAS, the County of Upshur, after giving public notice and holding public hearings as required by West Virginia Code, Chapter 24D, Article 1, Section 1, et. seq., and the rules thereunder, has agreed to renew the existing cable franchise pursuant to the terms and provisions hereof.

NOW, THEREFORE, BE IT ORDAINED THAT:

SECTION 1. SHORT TITLE.

This Ordinance shall be known and may be cited as the "Upshur County Cable Television Franchise Ordinance."

SECTION 2. DEFINITIONS.

2.01. "Basic Cable Service" shall mean the tier of service which includes the retransmission of local television broadcast signals, such other signals as are required to be carried on a basic service tier under federal or state law, and such other signals as selected by the Grantee.

2.02. "Expanded Cable Service" shall mean the analog tier of service which generally includes satellite-received cable programming that is sold as an optional addition to Basic Cable Service.

2.03 "Digital Services" shall mean any tier of programming and those other services which require a digital set-top receiver and includes programming and other services that are sold as an option to and in addition to Basic Cable Service and Expanded Cable Service.

2.04. "Premium Cable Services" shall mean services available for an additional charge over and above the charge for Basic Cable Service or Expanded Cable Service, e.g., Home Box Office (HBO), Cinemax, Showtime and any other non-Basic Cable Service or non-Expanded Cable Service programming services.

2.05. "Cable Service" means (i) the one-way transmission to Subscribers of Video Programming or other programming service, and (ii) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

2.06. "County" is the County of Upshur, West Virginia.

2.07. "Commission" is all of the duly seated members comprising the County Commission of Upshur County, West Virginia

2.08. "Grantee" is Cequel III Communications II, LLC, a Delaware limited liability company doing business as Suddenlink Communications, and its successors, transferees or assigns, as the same are permitted by the provisions hereof.

2.09. "Gross Revenue" shall mean the revenues for the provision of Cable Service received by Grantee from Subscribers located within the Service Area. "Gross Revenues" does not include any tax, fee, or assessment of any kind imposed by Franchising Authority or other governmental entity on a cable operator, or Subscriber, or both, solely because of their status as such.

2.10. "Public Property" shall mean any real property owned by the County other than a street.

2.11. "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right of way now or hereafter held by the County, or dedicated for use by the County, use by the general public, or use compatible with cable system operations.

2.12. "Subscriber" means a user of the Cable System who lawfully receives Cable Service or other service therefrom with Grantee's express permission.

2.13. "System" shall mean a system of antennas, cables, wires, lines, towers, wave guides or other conductors, converters, equipment or facilities, used for distributing video programming to subscribers, and/or producing, receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electrical signals to subscribers that utilize the public right of way. Notwithstanding the definition hereof, this Franchise Agreement shall not permit the Grantee or its assigns to erect any additional towers within the current or expanded by annexation, corporate limits of the County of Upshur without the express written approval of the County of Upshur, and then only as not prohibited pursuant to county ordinance, or state or federal law, however, such approval shall not be unreasonably withheld by the County.

SECTION 3. GRANT OF AUTHORITY.

3.01. Grant of Franchise. For the purposes of constructing, operating and maintaining a System in the County, the Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across, and along the Streets and Public Property such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are

necessary and appropriate to the operation of the System, as long as the Grantee has complied with all permit, license and/or bond requirements established by West Virginia state law, county and/or municipal ordinances not inconsistent with this Franchise Agreement.

3.02. Franchise Term. The renewal term of this Franchise shall be deemed to be effective on November 1, 2015 (the "Effective Date"), and shall expire five (5) years from the Effective Date on October 31, 2020, unless said franchise is sooner renewed, revoked or otherwise terminated as herein provided.

3.03. Conditions of Franchise. The rights afforded to the Grantee by Sections 3.01 and 3.02 hereof are granted subject to the conditions which are herein contained and set forth. The Grantee shall not install any cables, wires or lines comprising its system in an overhead or aboveground manner in any area where other existing utility cables, wires or lines, e.g., electrical power and/or telephone lines, have been installed in an underground manner. The Grantee's obligation to comply with the underground installation requirements of this Section is conditioned upon these same requirements applying to all utilities and any other entities using cables, wires or lines in the area. The Grantee shall consult with the County prior to any new installation or any reinstallation or upgrading of existing cables, wires or lines, respecting the specific location and manner of such installation or reinstallation in, on, over, under, upon, across and along the Public Streets and Public Property of the County. Emergency repairs undertaken by the Grantee to the existing system may constitute an exception to the advance consultation with County officials' requirement set forth above.

SECTION 4. CONSTRUCTION PROVISIONS.

4.01. Service Area. The System, as constructed as of the date of the passage and final adoption of this Ordinance, substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least twenty five (25) residential dwellings within one (1) aerial mile of its trunk or distribution point, it shall extend its System to such dwellings at no cost to for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the System. Whenever Grantee shall receive a request for service from at least forty (40) residential dwellings within one (1) underground mile of its trunk or distribution point, it shall extend its System to such dwellings at no cost to for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the System.

4.02. Joint Use. The Grantee shall make use of existing poles and other facilities available to the Grantee. The Grantee may erect its own poles and install its own conduit, with the approval of the County, which approval shall not be reasonably withheld. All poles and conduit installed within the County limits shall be made available for attachment or use by the Grantee, at just and reasonable rates applied to public utilities under the formula presently established in 47 U.S.C. §224.

In the case of new construction or property development where utilities are to be placed underground, the developer or property owner shall furnish the Grantee with reasonable notice of not less than thirty (30) days prior to any such construction or development, and of the particular dates upon which open trenching will be available for the Grantee's installation of its conduit, pedestals and/or vaults, and laterals, all to be provided at the Grantee's expense. The Grantee shall also provide specifications as needed for any such trenching. Any costs of trenching and easements as may be required to bring service to the development shall be borne by the developer or property owner, unless otherwise agreed to by the Grantee.

4.03. Construction Codes and Permits. The Grantee shall obtain any and all required permits from the County before commencing any construction involving the opening or disturbance of any Street or Public Property. The County shall cooperate with the Grantee and use its best efforts in granting and facilitating the issuance of any permits as are required. The Grantee shall arrange and place its lines, cables and other appurtenances, on any Street or Public Property, in such a manner so as to cause no reasonable interference with the usual and customary use of said Street or Public Property by any person.

4.04. Repair of Streets and Public Property. Any and all Streets or Public Property which are disturbed or damaged during the construction, operation or maintenance of the System shall be promptly repaired by the Grantee, at the Grantee's expense and to at least as good condition as existed prior to the disturbance or damage. The Grantee shall coordinate any and all construction and repairs with personnel and/or agents designated by the County.

4.05. Trimming of Trees. The Grantee may cut or trim trees and vegetation interfering with the National Electrical Safety Code and other clearance requirements.

4.06. Movement of Facilities. In the event that it becomes necessary temporarily to move or remove any of the Grantee's wires, cables, poles, or other facilities placed pursuant to this Franchise, in order lawfully to move a large object, vehicle, building or other structure over the Streets of the County, upon thirty (30) days prior notice by the County to the Grantee, the Grantee shall move at the prepaid expense of the person requesting the temporary removal, such of the facilities as may be required to facilitate such movements.

SECTION 5.

TECHNICAL PROVISIONS.

5.01 Technical Requirements. The Grantee shall maintain a System that meets at least the minimum technical standard applied or required, or as may hereafter be applied or required by the Federal Communications Commission (the "FCC") and/or the West Virginia Public Service Commission (the "WVPSC"). Procedures for testing the technical capacity of the System shall conform with the technical and testing standards applied to cable systems by the FCC. The results of any tests as are now required or as may hereafter be required by either the FCC or the WVPSC shall be filed promptly with the County by the Grantee upon the County's written request.

5.02 Maintenance. All lines, equipment, facilities, and other property of the Grantee located within the County shall at all times be kept and maintained by the Grantee in a safe and suitable condition and in good order and repair. The Grantee shall render efficient service, respond to all complaints promptly, make repairs promptly and interrupt service only for good cause.

5.03 Emergency Alert System. Franchisee must install and maintain an emergency alert system that can override audio and video on all Channels to provide an emergency alert to the County, including the incorporated area for the City of Buckhannon. The system must be designed and maintained so that local officials designated by the County can activate the system remotely without the assistance of Franchisee, using a telephone and secure password or by such other technical means as the County and Franchisee may approve. The system must be designed and maintained so that the designated officials, from a touch-tone telephone, can activate a pre-recorded text message, and at such officials' option, an accompanying live audio voice message.

SECTION 6.

SERVICE PROVISIONS.

6.01. Services Following Technical Upgrade and Additions to the Existing System to be Provided by Grantee. Upon completion of any technical upgrade and programming additions to the existing system, the Grantee shall offer at all times during the franchise term, a mix of cable programming services within broad categories of video programming, subject to availability. The Grantee shall not add, eliminate or replace services or otherwise modify its channel lineup, without first notifying the County, except where such consultation is not reasonable or practical due to either (a) the application of the then applicable state and/or federal law, or (b) the nature of any contracts which the Grantee may now have or may have in the future with any providers of cable service programming.

6.02. Free Services to Certain Public Facilities. Subject to Section 4.01, the Grantee shall install at no cost to the County, and shall provide a minimum of one (1) free connection of Basic Cable Service and Expanded Cable Service (collectively the "Free Service") to each public school located within the County.

6.03. Public, Educational and Governmental Use. Grantee shall designate ten percent (10%) of its channels for non-commercial Public, Educational or Governmental

("PEG") use. The Grantee shall not be required to designate more than three (3) such channels for PEG use. At least one (1) such designated channel shall be carried as part of the Basic Cable Service. The Grantee shall abide by all reasonable rules and procedures adopted by the County as local franchise authority for activation of the designated PEG channels. Notwithstanding the immediately foregoing provision respecting PEG channels, and assuming that the County's waiver of the same is not clearly prohibited by law, the County may waive entitlement to receive PEG channels.

SECTION 7. RATE REGULATION.

7.01. Rate Regulation by the State of West Virginia. The West Virginia Public Service Commission ("WVPSC") presently requires such cable operator to file a schedule of its rates of service on a form and with the notice that the WVPSC may prescribe. To the extent permitted by federal law, the WVPSC shall regulate rates to insure that said rates are just and reasonable both to the public and to the cable operator, and that said rates are not unduly discriminatory. To the extent permitted by federal law, the WVPSC shall regulate charges other than those related to rates for the provision of basic cable service to insure that they are just and reasonable and not unduly discriminatory.

7.02. Rate Regulation by the County.

(a) Under current federal and state law and regulation, the County does not have the right to regulate rates. To the extent that federal or state law or regulation may hereafter be amended to authorize the County to regulate rates, the County shall then have the right to regulate such rates to the full extent authorized by law, or to refrain from regulating such rates for any period of time. Such regulation shall be consistent with federal and state law and regulation, including the rules and regulations of the Federal Communications Commission.

(b) If and when the County exercises rate regulation pursuant to Section 7.02(a), the following provisions shall apply:

(1) If the County does not act upon a rate increase request from the Grantee within sixty (60) days after the receipt of such request, the rate increase shall be deemed as granted.

(2) The Grantee shall not have the right to increase rates otherwise regulated under Section 7.02(a), without County approval, except in the case of any increase in taxes or fees (including copyright fees) imposed by local, state or federal governments such costs may be added to existing rates, in the discretion of the Grantee.

SECTION 8. FRANCHISE FEE.

8.01. Franchise Fee. The Grantee shall pay to the County an annual franchise fee in the amount of five percent (5%) of its Gross Revenue within the franchise area. Franchise fees may be passed through to subscribers as a line item on subscriber

invoices, or otherwise. Any franchise agreement subsequently negotiated by the Grantee with the County Commission of Upshur County, West Virginia during this franchise term shall not be inconsistent with the annexation provision hereof.

8.02. Payment Period. Payments due to the County under this provision shall be payable quarterly within forty five (45) days of the end of each calendar quarter.

8.03. Franchise Fee Report. The Grantee shall submit to the County, along with each franchise fee payment, a report showing the method by which such franchise fees were calculated.

8.04. Inspection. The County reserves the right to have an accountant or other representative of its selection examine the books and records of the Grantee, upon reasonable notice, to verify the correctness of the payment of the quarterly installments and the inclusion of revenues received from all County subscribers. Any and all accounting costs and expenses associated with this Section shall be borne by the County, unless it is determined from the County's inspection that the Grantee has underpaid the County in an amount of two percent (2%) or more of the County's franchise fees for any quarterly period as calculated upon the Grantee's Gross Revenues, in which case the Grantee shall be responsible to immediately reimburse the County for all of such reasonable accounting costs and expenses, together with payment of the adjusted franchise fee amount.

SECTION 9. LOCAL OFFICE.

The Grantee at all times during the renewal term hereof shall put forth reasonable efforts to maintain an office with qualified technical and administrative staffing as exists at the outset of this franchise term, within the County, which shall be open during all usual business hours, and shall have a publicly listed, toll free telephone number, so as to receive subscriber payments, complaints and requests for repairs or adjustments.

SECTION 10. REVIEW SESSION .

On or about November 1, 2016, and on each succeeding anniversary date of the renewal term thereafter, the Grantee will, upon the County's written request, report upon (1) the technical reliability of the System; (2) the generally-accepted state of the art for systems of comparable size; (3) the need for, or economic feasibility of modifications and programming additions to the System; and (4) current and anticipated rates for the System. The County may schedule a review session to discuss such report and any proposed modifications to the System.

SECTION 11. INSURANCE AND INDEMNITY.

11.01. Indemnity. The Grantee shall save, indemnify, hold harmless and defend the County at all times during the term of this Franchise from and against all claims arising for injury or damages to persons or property, both real and personal, caused by the

construction, erection, operation, and maintenance of the System.

11.02. Insurance. The Grantee shall maintain throughout the term of the Franchise, a policy of liability insurance covering the Grantee, which shall name the County in all respects as an additional or co-insured, in amounts not less than the following, and with such deductibles as are ordinary and reasonable in keeping with industry standards:

(1) Five Hundred Thousand Dollars (\$500,000) for bodily injury or death to any one person, within the limit of One Million Dollars (\$1,000,000) for bodily injury or death resulting from any one accident.

(2) Two Hundred Fifty Thousand Dollars (\$250,000) for property damage resulting from any one accident.

11.03. Hold Harmless. The insurance requirement contained in section 11.02 shall not limit, or in any way modify, the Grantees duty to hold the Upshur County Commission harmless as provided in Section 11.01.

SECTION 12. ENFORCEMENT AND TERMINATION OF FRANCHISE

12.01 Notice of Violation. In the event that Franchising Authority believes that Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged default.

12.02 Grantee's Right to Cure or Respond. Grantee shall have sixty (60) days from receipt of the notice described in Section 12.01: (a) to respond to Franchising Authority contesting the assertion of default; (b) to cure such default; or (c) in the event that, by the nature of the default, such default cannot be cured within the sixty (60) day period, to initiate reasonable steps to remedy such default and to notify Franchising Authority of the steps being taken and the projected date that they will be completed.

12.03 Public Hearing. In the event that Grantee fails to respond to the notice described in Section 12.01 pursuant to the procedures set forth in Section 12.02, or in the event that the alleged default is not remedied within one hundred twenty (120) days after Grantee is notified of the alleged default pursuant to Section 12.01, Franchising Authority shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of Franchising Authority which is scheduled at a time which is no fewer than five (5) business days therefrom. Franchising Authority shall notify Grantee of the time and place of such meeting and provide Grantee with an opportunity to be heard.

12.04 Enforcement. Subject to applicable federal and state law, in the event Franchising Authority determines, after such meeting, that Grantee is in default of any provision of the Franchise, Franchising Authority may:

- (a) Foreclose on all or any part of any security provided under the Franchise, if any, including, without limitation, any bonds or other surety; provided, however, that the foreclosure shall only be in such a manner and in such amount as Franchising Authority reasonably determines is necessary to

remedy the default;

- (b) Commence an action at law for monetary damages or seek other equitable relief;
- (c) In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or
- (d) Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages.

Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of Franchising Authority to enforce prompt compliance.

SECTION 13. RENEWAL.

This Franchise Agreement may be renewed pursuant to the procedures prescribed by federal law and further by the West Virginia Public Service Commission (Ch. 24D, Article 1, Sect. 1 et seq., of the West Virginia Code), provided that the Grantee and the County shall in any event afford the public adequate notice and opportunity for comment.

SECTION 14. ASSIGNMENT.

The Grantee shall have the right to assign this Franchise providing that the assignee is clearly established as being a reputable company, capable financially, technically and legally, in the judgment of the County Commission of Upshur County, West Virginia, of complying with the provisions of this Franchise. Any application for consent to assign this Franchise shall be made in the form as may be prescribed by the West Virginia Public Service Commission. No assignment of this Franchise shall be made until such time as the County receives a minimum of one hundred twenty (120) days notice in writing from the Grantee, served upon the County setting forth in detail information concerning the proposed assignee and until such time as the consent of the County to the assignment is obtained. The County may invoke rights of inspection, similar to those set forth pursuant to Section 8.04 hereof, in conjunction with any proposed assignment. The County shall not unreasonably withhold its consent to any assignment. For purposes of determining whether an assignment is resulting, "assignment" shall be construed liberally, and shall include but shall not be limited to the purchase of the physical assets comprising the System by a third party who as a consequence of said proposed transaction, would come to own a fifty-one percent (51%) or greater share in the physical assets comprising the System.

SECTION 15. MISCELLANEOUS.

15.01. Severability. In the event that any law, ordinance, regulation or court

decision shall render any provision of this Franchise invalid, the remaining provisions of the Franchise shall nevertheless remain in full force and effect, unless the enforcement of such remaining provisions would be unconscionable or substantially oppressive to one or the other of the parties.

15.02. Force Majeure. The prevention or delay in performance of any provision of this Franchise due to circumstances beyond the control of the Grantee or the County, or Acts of God, shall not be deemed as noncompliance with, or as a violation of this Franchise. The parties expressly agree that the failure of equipment suppliers to timely deliver equipment needed for any technical additions to the existing system is a circumstance beyond the control of the Grantee.

15.03. Nonexclusive. This Franchise is nonexclusive. The County reserves the right to award additional franchises; provided, however, that the County shall not authorize or permit a cable television system to operate within the County on terms or conditions more favorable or less burdensome to such operator than those applied to the Grantee pursuant to this Franchise; and provided, that if the County authorizes or permits another cable television system to operate within the County, it shall do so on the condition that such cable television system indemnify and hold harmless the Grantee

from and against all costs and expenses incurred in strengthening poles, replacing poles, rearranging attachments, placing underground facilities, and all other costs including those of the Grantee, the County, and utilities, incidental to inspections, make ready, and construction of an additional cable television system in the franchise area; and provided further that the Grantee shall be designated as a third party beneficiary of such conditions as are incorporated into the authorization(s) granted to any other cable television systems.

15.04. Entire Agreement. This Ordinance and all attachments hereto, represent the entire understanding and agreement by and between the parties hereto with respect to the subject matter hereof, supersedes all prior oral negotiations between the parties and can be amended, supplemented, modified or changed only by a written agreement executed by both parties, which makes specific reference to this Franchise Agreement and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.

15.05. Laws Governing. This Franchise shall be governed by and construed in accordance with the laws of the State of West Virginia, and particularly the provisions of the West Virginia Public Service Commission (Ch. 24D, Art. 1, Sect. 1, et seq., of the West Virginia Code), and which provisions are expressly incorporated and embodied herein, and this Franchise shall be governed by and construed in accordance with applicable federal law.

15.06. Effective Date. This Ordinance and Franchise Agreement shall be effective upon November 1, 2015, and acceptance shall be evidenced by the Grantee's and County's execution of this document.

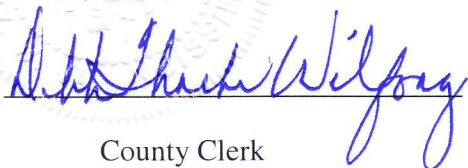
Passed and adopted this 15th day of October, 2015, subject to applicable federal, state and local law.

UPSHUR COUNTY COMMISSION, WEST VIRGINIA

By: _____

J. C. Raffety, Commission President




County Clerk

Accepted this 15th day of October, 2015, subject to applicable federal, state and local law.

CEQUEL III COMMUNICATIONS II, LLC
DBA SUDDENLINK COMMUNICATIONS

By: _____

John Fuhler, Senior Vice President of Fiscal
Operations