

## PUBLIC HEARING NOTICE

A public hearing will be held on Tuesday, September 12, 2023, at 6:30 p.m. at Town Hall (104 North King Street, Shepherdstown, WV) for the purpose of considering a franchise agreement between the Corporation of Shepherdstown and Shenandoah Cable Television, LLC. The franchise agreement pertains to the Town granting a nonexclusive right and privilege to Shenandoah Cable Television, LLC, for the operation of a community antenna television system (CATV) within all areas of the Corporation of Shepherdstown. The term of this agreement is 20 years. The franchise fee to be paid to the Corporation of Shepherdstown is \$250,000 and .05% of the gross revenue derived from the operation of the CATV system during the preceding quarter. The draft franchise agreement can be viewed at Town Hall, 104 North King Street, Shepherdstown, WV or on our website [www.shepherdstown.us](http://www.shepherdstown.us) on the homepage.

Amy L. Boyd, Town Clerk

For the Corporation of Shepherdstown

## AGREEMENT

### CABLE TELEVISION FRANCHISE IN THE CORPORATION OF SHEPHERDSTOWN, WEST VIRGINIA

Agreement made this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the **THE CORPORATION OF SHEPHERDSTOWN, WEST VIRGINIA**, hereinafter referred to as the Town, party of the first part, and **SHENANDOAH CABLE TELEVISION, LLC**, a Virginia limited liability company, hereinafter referred to as the Company, party of the second part.

WHEREAS, the Company wishes to renew and continue to conduct a community antenna television system (CATV) to furnish all types of services usually furnished or which can be furnished by such a system in all areas of the Corporation of Shepherdstown, West Virginia, through distribution and transmission equipment, cables, and/or wires, other transmission equipment or other means, commonly called a CATV system; and

WHEREAS, the CATV system will be attached to poles or constructed underground and its cables, wires or other equipment would cross over or exist under the streets, sidewalks, public lands, highways and right-of-way in the Town; and

WHEREAS, the Company has requested of the Town that it be granted a nonexclusive franchise to operate a CATV system within the Corporation of Shepherdstown, West Virginia, and the Town, after giving public notices and holding public hearings as required by West Virginia Code 24D-1-7 and the rules thereunder, has agreed to grant to the Company, a nonexclusive franchise to operate a CATV system within the Corporation of Shepherdstown, West Virginia, pursuant to the following terms and conditions.

WITNESSETH: That for and in consideration of the mutual covenants herein contained the parties do hereby agree as follows:

(1) **GRANT OF AUTHORITY**: The Town grants to the Company the nonexclusive right and privilege, within all areas of the Corporation of Shepherdstown, West Virginia, as described in Attachment A hereto, to construct, maintain, and operate in, or, over and under the present and future public streets, alleys, rights-of-way and public places within the Town, such as towers, poles, lines, cables, wiring and all related equipment for the purpose of receiving, amplifying and distributing television, radio, audio, video or any other telecommunications signal or service within said Town and to inhabitants hereof. The Company shall have further right to enter into arrangements for the attachment onto or use of facilities owned or operated by public utilities operating within the Town. The Company shall provide to the Town, upon request, copies of all such agreements between the Company and any public utility operating within the Town for the use by the Company of any facilities owned or operated by said public utilities.

(2) **TERMS OF AGREEMENT**: The nonexclusive franchise granted herein shall be for a term of twenty (20) years, commencing on the 1st day of July, 2023, and terminating at midnight on the 30th day of June, 2043 .

(3) CONDITIONS OF STREET AND ROAD OCCUPANCY AND SYSTEM CONSTRUCTION:

(a) Use: All transmission and distribution structures, lines and equipment erected by the Company within the Town shall be located as to cause minimum interference with other proper use of the public streets, alleys, ways and places located within the Town, and as to cause a minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said public streets, alleys, ways, or places. The use of public highways and other public places shall be subject to:

1. All applicable state statutes, municipal ordinances and all applicable rules and orders of the West Virginia Public Service Commission governing the construction, maintenance and removal of overhead and underground facilities of public utilities;

2. For Town streets, all applicable rules adopted by the governing body of the Town in which the streets are situated; and

3. For state or federal-aid highways, all public welfare rules adopted by the West Virginia Department of Transportation, Highways Division.

(b) Restoration: In cases of any disturbance of pavements, sidewalks, lawns, roadways, or other surfacing, the Company shall, at its own expense and in a manner approved by the Town, replace and restore such places or disturbed to as good a condition as before said work was commenced. The Company shall also be required to consult with the Highways Division regarding any disturbance of pavement, roadway or other rights-of-way as may be under the jurisdiction and control of the Highways Division.

(c) Relocation: In the event that at any time during the period of this agreement, the Town or the Highways Division shall lawfully elect to change the grade or location of any public street, alley, way, or place, the Company, upon reasonable notice by the Town or the Highways Division, as the case may be, shall remove, re-lay and re-locate its equipment at its own expense. All such alterations shall be subject to the approval of the Town and the Highways Division.

(d) Placement of Fixtures: The Company shall not place any fixtures or equipment where the same shall interfere with any gas, electric, communications, fire alarms, sewer or water lines, fixtures or equipment, and the location by the Company of its lines and equipment shall be in such manner as to not interfere with the usual travel on said public streets, alleys, ways, and places, and the use of the same for gas, electric, communications, fire alarms, sewer and water lines, fixtures and equipment.

(e) Easements: In the use of easements dedicated to compatible uses, the Company shall ensure:

1. That the safety, functioning and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or construction of facilities necessary for the cable system;

2. That the cost of the installation, construction, or operation of facilities is

borne by the Company or subscribers, or a combination of both; and

3. That the owner of the property is justly compensated by the Company for any damages caused by the installation, construction, operation or removal of facilities by the Company, its employees or contractors.

(4) SERVICES TO BE PROVIDED BY THE COMPANY:

(a) Services shall be made available to all inhabitants of the Town who reside in the area described in Attachment A who desire such service within one (1) month of the date of their request, provided that the following conditions have been met:

1. The location is serviceable. A location is serviceable when:

A. The inhabitant is located in an area where it is economically feasible to provide such service, and such area is unserved by another cable system. Such condition of economic feasibility is met where an average of at least thirty (30) residences are passed within one plant mile of cable line laid; calculated from the existing cable system owned by the Company to the end of the proposed service extension; or

B. The distance from existing distribution lines to the home or building is not more than two hundred feet (“maximum drop length”);

2. Inhabitant complies with the Company’s regulations governing the conduct of its business; and

3. The Company is able to obtain any private rights-of-way required to extend its facilities at a reasonable cost.

(b) The company shall provide and maintain basic service for one single standard outlet upon request to any school or institution of higher education, fire station, and public library located within the service area, and within a reasonable distance of an existing distribution line of the Company. The recipients of service under this paragraph shall not be charged for basic cable service; provided however, that the service is not to be delivered to a residence.

(c) The company shall provide the Town, upon appropriate authorization (and payment), facilities and equipment for transmission of information relating to law enforcement, fire protection, rescue services or all other public emergencies as may be necessary or desirable for the safety and welfare of the citizens of the Town to the Office of the County Emergency Services or as directed by the Town. The facilities to be provided include access to one PEG channel without charge for the transmission of information relating to law enforcement, fire protection, rescue services, or other public safety messages. The Company shall comply with the regulations of the Federal Communications Commission (FCC) for the operation of the Emergency Alert System as set forth under 47 C.F.R. Section 11.

(d) The Company shall offer to all customers within the Town service of signal and viewing quality that is in compliance with all FCC technical standards.

(e) The Company shall conduct its business with its subscribers in accordance with all FCC Customer Service Standards.

(f) The Company shall designate at least ten percent of all its channels for public,

educational or governmental (PEG) use, provided, however, that the company shall not be required to designate more than 3 such channels for such public, educational or governmental use. At least one such designated channel is to be carried as part of the basic service tier. The Company shall abide by all rules and procedures adopted by the Town as franchise authority for activation of designated PEG channels currently in use for non-PEG purposes.

(g) The maximum number of channels the system(s) will initially be capable of providing is at least 319. The number of channels to be initially activated to provide programming to subscribers is 329.

(h) The number of channels to be initially offered as part of the basic tier of service is 34.

(i) The Company agrees that it will not abandon areas presently served by this cable system(s) without the agreement of the Town, unless such areas and residents therein are being served by another cable system, or unless unreasonable costs are imposed for the continued use of a private right-of-way necessary for providing service to such areas.

(5) CONDITION OF EQUIPMENT: The Company shall maintain all of its lines, rights-of-way and equipment in good and safe condition and shall at all times construct and maintain its fixtures of equipment in compliance with the requirements of the National Electrical Safety Code and the National Electrical Code.

(6) PROCEDURES FOR RESTORING INTERRUPTED SERVICE AND IMPROVING SUBSTANDARD SERVICE:

(a) The Company, for the purpose of restoring interrupted service and improving substandard service, shall be able to receive calls twenty-four hours a day, seven days a week, and shall have one or more qualified persons as may be necessary to repair the cable system.

(b) The Company shall restore interrupted service not later than twenty-four hours after being notified by a subscriber that service has been interrupted, unless (1) service cannot be restored until another company repairs facilities owned by such company and leased to, or required for the operation of, the cable service, (2) the interruption was caused by an act of nature or (3) the Company is unable to restore service within twenty-four hours due to extenuating circumstances. In the event of such extenuating circumstances, the company shall restore service as soon as feasible and then submit a written notice to the Public Service Commission of West Virginia indicating that service has been restored and explaining the nature of the extenuating circumstances.

(7) CREDIT OR REFUND FOR INTERRUPTED SERVICE:

(a) If cable service to a subscriber is interrupted for more than twenty-four continuous hours for any reason such subscriber shall, upon request, receive a credit or refund within 60 days from the Company in an amount that represents the proportionate share of such service not received in a billing period, provided that such interruption was not caused by the subscriber.

(b) The Company shall comply with any viewing time reliability standards for cable operators established by the Public Service Commission of West Virginia.

(8) OFFICE OPERATING REQUIREMENTS; OFFICE HOURS: The Company shall operate a business office in or near the service area, or as otherwise approved by the franchising authority or by the Public Service Commission of West Virginia. The office shall be open during normal business hours. The Company shall operate sufficient telephone lines, including a publicly and locally listed toll-free number or any other free calling option, staffed by a company customer service representative during normal business hours.

(9) NOTICE TO SUBSCRIBERS REGARDING QUALITY OF SERVICE AND BILLING:

(a) Annually, the Company shall mail to each of its subscribers a notice which:

1. Informs subscribers how to communicate their views and complaints to the cable operator and to the Public Service Commission of West Virginia
2. States the responsibility of the Public Service Commission to receive and act on consumer complaints other than channel selection, programming and rates, concerning the operation of a cable system; and
3. States the policy regarding the method by which subscribers may request pro rata credit as described in section seven of this agreement.
4. States the policy regarding billing practices, late fees, and other service charges.

(b) The notice shall be in nontechnical language, understandable by the general public, and in a convenient format. On or before the thirtieth day of January of each year, the operator shall certify to the franchising authority and the Public Service Commission that it has distributed the notice as provided in this section during the previous calendar year as required by this section.

(10) RECORDING OF SUBSCRIBER COMPLAINTS:

(a) The Company shall keep a record or log of all complaints received regarding quality of service, rates, programming, equipment malfunctions, billing procedure, employee relations with customers and similar matters as may be prescribed by the Public Service Commission of West Virginia. The records shall be maintained for a period of two years.

(b) The record or log shall contain the following information on each complaint received:

1. Date, time, nature of complaint;
2. Name, address, telephone number of complainant;
3. Investigation of complaint; and
4. Manner and time of resolution of complaint.

(c) Consistent with the subscriber privacy provisions contained in 47 U.S.C. section 551 or as otherwise provided by federal law, every cable operator shall make the logs or records, or both, of such complaints available to any authorized agent of the Public Service Commission of West Virginia and the franchising authority, upon request during normal business hours for

on-site review.

(11) INDEMNIFICATION BY THE COMPANY OF THE TOWN:

(a) The Company, its successors and assigns, shall indemnify and hold harmless the Town from any liability whatsoever for any damage or injury caused to any person or property by the actions or omissions of the Company on account of the franchise granted by this agreement. The Company shall take out and maintain during the term of this agreement general liability insurance with the following minimum coverage limits:

1. One Million Dollars (\$1,000,000) per occurrence.
2. Two Million Dollars (\$2,000,000) aggregate.
3. One Million Dollars (\$1,000,000) automobile liability per occurrence.

Where the insurance provides separately for personal injury and property damage, the combined limits of the two coverages shall be no less than the per occurrence and aggregate limits set forth above. The Company shall protect the Town from claims for said damages arising out of the exercise of rights and privileges and operations under this agreement. Prior to the exercise of any rights under this agreement, Certificates of Insurance shall be filed and deposited with the Clerk of the Town.

(b) Upon receipt of notice in writing from the state, county and/or municipality, the Company shall, at its own expense, defend any action or proceeding against the state, county and/or municipality in which it is claimed that personal injury or property damage was caused by activities or omissions of the Company in the installation, operation or maintenance of its cable system.

(12) FRANCHISE FEE: In consideration the granting of this franchise by the Town to the Company, said grantee shall be liable to pay to the Town/City a franchise fee as follows:

(a) The sum of \$250.00 shall be paid by the Company to the Town upon the execution of this agreement by the Company. (Such sum to be treated as a franchise fee or portion thereof.)

(b) The Company shall pay to the Town five percent (5%) of the gross revenue derived from the operation of the cable system during the preceding quarter. If the above agreed to sum certain exceeds the limit permissible under law, the maximum amount so allowed will be paid.

(c) The amount of the franchise fee to be paid to the Town shall be reviewable upon the third, sixth, ninth and twelfth anniversary dates of the date of the granting of the franchise, and upon such date the Town shall have the right to change the amount and method of calculating the franchise fee; provided however, that such changes are in conformity with federal and state law.

(d) The imposition and collection of any franchise fee under this agreement shall not affect the collection of the annual fee or document fees by the West Virginia Public Service Commission as set forth in West Virginia Code 24D-1-20 and 24D-1-25 and rules thereunder. Further, the franchise fee set forth in this agreement together with any state annual fee, document fee, or other fee considered under federal law to be a franchise fee shall never exceed the maximum

amount prescribed by federal or state law.

(e) Nothing contained herein shall prevent the Company from collecting any or all such franchise fee as an addition to its regular charges, by listing them as a separate line on its invoiced to the customer.

(13) NON-LIABILITY OF TOWN: The Town shall not be liable for interrupting the Company's service caused by employees of the Town in the proper performance of their duties.

(14) RATES:

(a) The Company shall file with the Town and keep current a schedule of its rates charged, or where no such rates are yet charged then its initially proposed rates, for each tier or cable service. The rates charged to all subscribers for the same service shall be equal and uniform throughout each cable system; excepting that this does not prohibit promotional or group rates when such rates are offered throughout the franchise area.

(b) The Company shall inform the Town of the charge for any connection fee, any reconnection fee, and any fee for an unwarranted service technician visit. In addition, the Company agrees that it will bill monthly and calculate any late payment charge in conformity with 150 CSR 26.17 regardless of whether credit has been extended. Such fees will be levied as follows:

(1) A connection fee will be charged when service is connected at a subscriber's location.

(2) A reconnection fee will be charged when service was disconnected due to a failure to pay for service

(3) An unwarranted service visit charge will be made if the customer's equipment or inside wiring is the cause of the customer's trouble.

(4) A late payment fee will may be charged when any outstanding undisputed balance due that remains after the due date appearing on the bill.

(c) To the extent permitted by federal law, the Public Service Commission of West Virginia shall regulate basic cable service rates to ensure that they are just and reasonable both to the public and to the cable operator and are not unduly discriminatory.

(d) The Company shall not raise rates or add new channels and increase charges to subscribers without first providing 30 days written notice to subscribers and providing its subscribers the option to cancel service without penalty within that 30 day period.

(15) REMOVAL OF PROPERTY AT TERMINATION OF AGREEMENT: In the event this franchise agreement is terminated for any reason, or if the Company, or its successors, cease to exercise its rights and privileges pursuant to the terms of this agreement , then, in such event, all poles, lines, cables, wiring and other apparatus erected, installed or deposited by the Company or



its successors within the Town shall be properly removed at the Company's own expense unless otherwise agreed to by the parties. Further, unless otherwise agreed to, property not removed within six months of termination will be considered abandoned and the Company shall be liable for the cost of removal.

(16) REVOCATION, ALTERATION, OR SUSPENSION OF CABLE FRANCHISE; PENALTIES:

(a) This cable franchise may be revoked, altered or suspended by the Town following reasonable notice and public hearing for the following reasons:

1. For making material false or misleading statements in, or for material omissions from, any application or proposal or other filing made with the franchising authority;
2. For repeated failure to maintain signal quality under the standards prescribed by the Public Service Commission of West Virginia;
3. For any sale, lease, assignment or other transfer of its cable franchise without the consent of the franchising authority;
4. Except when commercially impracticable, for unreasonable delay in construction or operation, as well as for unreasonable withholding of the extension of cable service to any person in the franchise service area;
5. For material violation of the terms of its cable franchise;
6. For failure to substantially comply with WVA. Code 24D-1-1 et seq. or any rules, regulations or orders prescribed by the Public Service Commission of West Virginia;
7. For substantial violation of its filed schedule of terms and conditions of service; and
8. For engaging in any unfair or deceptive act or practice.

(b) In lieu of, or in addition to, the relief provided by subsections (a) or (b) hereof, the Town may fine a cable operator, for each violation under the provisions of this section, in an amount not less than fifty dollars nor more than five thousand dollars for each violation. Each day's continuance of a violation may be treated as a separate violation.

(17) RENEWAL OF CABLE FRANCHISE: This cable franchise may be renewed by the Town upon approval of the Company's application or proposal therefor and in accordance with the provisions of state and federal law. The form of the application or proposal shall be prescribed by the Public Service Commission of West Virginia. The application or proposal shall be the same fee prescribed for franchise applications, and the periods of renewal shall be not less than five nor more than twenty years each, unless otherwise prescribed by state or federal law. The Town shall require of the applicant full disclosure, including the proposed plans and schedule of expenditures for or in support of the use of public, educational or governmental access facilities.

(18) ASSIGNMENT OR TRANSFER OF CABLE FRANCHISE: This franchise including the rights, privileges and obligations thereof may not be assigned, sold, leased, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including a transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval of the Town. The form of application for transfer shall be prescribed by the Public Service Commission of West Virginia.

(19) NON-DISCRIMINATION: As a condition to receiving a franchise from the Town, the Company covenants and agrees that it shall not discriminate in any employment matter or any other matter against any person on account of age, race, religion, sex, physical handicap or country of natural origin.

(20) REVIEW OF EQUIPMENT AND RECORDS:

(a) Throughout the term of this agreement the Town shall have the right, during normal business hours, to inspect all lines, equipment, fixtures and facilities owned or operated by the Company pursuant to the terms of this agreement. The Town shall also have the right, during normal business hours, to inspect all records and reports maintained by the Company and either under the control or direction of the Company or any of its agents, employees or affiliates, wherever said agreements, contracts, records and reports may be located; subject to the subscriber privacy provisions of the Cable Communications Act of 1984, applicable federal law, and excepting proprietary and confidential information contained in programming contracts when rates are not regulated. With the exception of salaries and wages of employees of the Company, which shall be paid by the Company, all expenses incurred in conducting such inspections and reviews of the equipment and records of the Company shall be at the expense of the Town.

(b) The Company shall file with the Town, upon request, copies of all reports of its financial technical and operational condition and its ownership required by state or federal law. The reports, as required to be filed with federal and state agencies and authorities shall be kept on file open to the public.

(c) The Town or its designated agent(s) shall have access to all books of account and records of the company, its affiliates, parent(s) or subsidiary(ies) through which expenses or revenues may flow. Such access shall be for the purpose of ascertaining the accuracy of any and all reports, accounts or payments due or made to the Town, or for purposes deemed necessary by the Public Service Commission of West Virginia.

(21) CANCELLATION

(a) The Company shall have the right to annul and rescind this agreement only in the event that the operation of the system herein provided for is prohibited by law.

(b) This franchise is granted upon the express condition that if the Company shall neglect, refuse or fail to do, perform or observe any of the material conditions, agreements, provisions, in terms, as set forth herein, including, but not limited to the timely payment of the franchise fee as fixed and assessed in accordance with this agreement, and such neglect, failure or default shall continue for a period of thirty (30) days after written notice thereof shall have been given to the Company, then, and in such event, the Town shall have the right, and does hereby reserve the right, at its option, after reasonable notice and public hearing, to terminate all of the rights and privileges granted herein, and any additions to or amendments hereof, unless such performance of the provisions is being contested before a Court of competent jurisdiction by the Company, and declare the same at an end, without prejudice to any remedies the Town may have.

(22) MISCELLANEOUS:

(a) If any provision of this agreement or the application thereof to any person, firm or corporation is held invalid by any Court of competent jurisdiction, such invalidity shall not affect other provisions or applications or this agreement and to this end the provision of this agreement are declared to be severable.

(b) This agreement shall be interpreted according to the laws of the State of West Virginia.

(c) The franchise grantee agrees to abide by all applicable state and federal laws, rules, and regulations.

(d) The terms of the Addendum attached hereto as Attachment B have been negotiated and agreed upon between the Town and the Company, are applicable and incorporated herein by this reference, and are not meant to contradict any term in the body of this franchise.

(23) NOTICE: All notices and other communications hereunder shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, registered or certified mail, return receipt requested, postage prepaid to the following respective addresses:

To the Town:  
P.O. Box 248  
Shepherdstown, WV 25443

Attn: Mayor

To the Company:  
Shenandoah Cable Television, LLC  
Shentel Way  
Edinburg, VA 22824  
Attn: VP Industry Affairs & Regulatory

**[SIGNATURES APPEAR ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties hereto have caused their respective Officials to set their hands, their secretaries to attest, and their seals to be affixed hereto.

Passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2023, subject to applicable federal, state and local law.

CORPORATION OF SHEPHERDSTOWN,  
WEST VIRGINIA

By: \_\_\_\_\_

Name: Arthur J. Auxer III, Mayor

\_\_\_\_\_  
ATTEST

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2023, subject to applicable federal, state and local law.

SHENANDOAH CABLE TELEVISION, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
ATTEST