

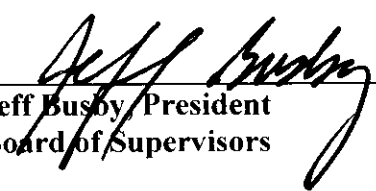
**ORDER: ACCEPT MAXXSOUTH FRANCHISE AGREEMENT**

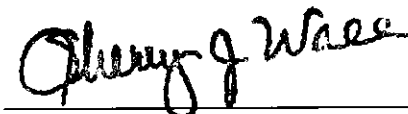
Motion was made by Kevin Frye, duly seconded by Chad McLarty, to accept MaxxSouth franchise agreement.

The vote on the motion was as follows:

Supervisor Kevin Frye, voted yes  
Supervisor Jeff Busby, voted yes  
Supervisor David Rikard, voted yes  
Supervisor Chad McLarty, voted yes  
Supervisor Mike Roberts, voted yes

After the vote, President Busby, declared the motion carried, this the 4<sup>th</sup> day of September, 2018.

  
\_\_\_\_\_  
Jeff Busby, President  
Board of Supervisors

  
\_\_\_\_\_  
Sherry Wall, Chancery Clerk

**CABLE TELEVISION AGREEMENT**

**FOR**

**COUNTY OF LAFAYETTE**

**MISSISSIPPI**

**AND**

**BCI MISSISSIPPI BROADBAND, LLC**

**D/B/A**

**MAXXSOUTH BROADBAND**

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## **MAXXSOUTH BROADBAND FRANCHISE AGREEMENT STATEMENT OF INTENT AND PURPOSE**

County intends, by the adoption of this Franchise Agreement, to bring about the continued operation and further development of a Cable System. Such development can contribute significantly to the communication needs and desires of the residents and citizens of County and the public generally. Further, County may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

Adoption of this Franchise Agreement is, in the judgment of the County Supervisors, in the best interests of County and its residents.

### **FINDINGS**

In the review of the franchise request by Grantee and negotiations related thereto, and as a result of a public hearing, the County makes the following findings:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. This Franchise Agreement complies with the existing applicable state statutes, federal laws and regulations; and
4. This Franchise Agreement is nonexclusive.

### **SECTION 1. DEFINITIONS**

For purposes of this Franchise Agreement the following terms, phrases, words, abbreviations and their derivations shall have the same meaning given herein.

"Basic Cable Service" means the minimum service tier which includes the retransmission of local television broadcast signals.

"Board of Supervisors" shall mean the present governing body of the County, or any successor to the legislative powers of the present government body.

"Cable Act" means Title VI of the Communications Act of 1934, as amended, 47 U.S.C. Sections 521 et seq.

"Cable Programming Service" means any video programming provided over a cable system, regardless of service tier, including installation or rental or equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis.

"Cable Service" means: (A) the one-way transmission to Customers of (i) video programming, or (ii) other programming service, and (B) Customer interaction, if any, which is required for the selection or use of such video programming or Other Programming Service.

"Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Customers within a community, but such term does not include (A) a facility that serves only to transmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in the transmission of video programming directly to Customers, unless the extent of such use is solely to provide interactive on-demand service; (D) an open video system that complies with section 653 of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

"County" shall mean the County of Lafayette, Mississippi, and all territory within its governmental authority.

"Company" shall mean BCI Mississippi Broadband, LLC d/b/a MaxxSouth Broadband organized under the laws of the State of Ohio.

"Customer" means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Company's expressed permission.

"Effective Date" means \_\_\_\_\_, 2018.

"Expanded Basic Service," means the service tier which includes additional channels offered by the Company for its service tier next above Basic Cable Service.

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

"Franchise" means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes construction and operation of the Cable System.

"Franchise Agreement" refers to this Agreement between the County of Lafayette, Mississippi, and MaxxSouth Broadband

"Franchise Area" means the legal boundaries of the County of Lafayette, Mississippi, or the unincorporated areas of the County as in effect from time to time over the

term of the Franchise Agreement.

"Franchising Authority," means the County of Lafayette, Mississippi, or the lawful successor, transferee, designee, or assignee thereof.

"Gross Revenue" means any and all revenue collected by the Company derived from the operation of the Cable System to provide Cable Services in the Franchise Area, less uncollected bad debt.

"Normal Business Hours," means the hours during which most similar businesses in the community are open to serve customers. These hours must include some evening hours at least one night per week and/or some weekend hours.

"Normal Operating Conditions" means those Service conditions which are within the control of Company. Those conditions which are not within the control of Company 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 Company include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

"Other Programming Service" means information that the Company makes available to all subscribers generally.

"PEG Access" means public, education, and government access.

"Person" shall mean any individual, firm, partnership, association, corporation, company, or organization of any kind.

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

use.

"Sale, transfer or assignment" of this Franchise Agreement as used herein shall mean either in context: a change of the controlling interest of the entity holding this Franchise Agreement; or a change of the right to operate the Cable System in the County of Lafayette; Mississippi granted under this Franchise Agreement and to receive the revenues produced by the operation of the Cable System.

"Service Tier" means a category of Cable Service or other services provided by the "Company" and for which a separate rate is charged by the Company.

"Subscriber" shall mean the same as Customer

## **SECTION 2. GRANT OF AUTHORITY**

(a) Grant. The Franchise Authority hereby grants to MaxxSouth pursuant to the Cable Act, a nonexclusive Franchise which includes the right and privilege to provide Cable Service and to construct, operate, and maintain a Cable System for the provision of Cable Service in, upon, across, above, over, and under streets, alleys, easements, and all Public Ways laid out or dedicated in the Franchise Area. This grant does not include any right for the Company to attach or otherwise use poles, conduits, or other facilities of any utility department of the County of Lafayette; any such right will be governed by separate agreements between the Company and the County. Nothing in this Franchise shall be construed to prohibit MaxxSouth from: (1) providing services other than Cable Services to the extent not prohibited by applicable law; or (2) challenging any exercise of the Franchise Authority's legislative or regulatory authority in an appropriate forum. The Franchise Authority hereby reserves all of its rights to regulate such other services non-Cable Services) to the extent not prohibited by applicable law and no provision herein shall be construed to limit or give up any right to regulate.

(b) Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right or requirement of the Franchising Authority to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of the Franchising Authority or of the Franchising Authority's right to require the Company or any Person utilizing the Cable System to secure the appropriate permits or authorizations for such use, (C) be construed as granting anything other than a Franchise for the operation of a Cable System in the Franchise Area to provide Cable Services, or (D) be construed as a waiver or release of the rights of the Franchising Authority to exercise any governmental right or power with regard to the public health, safety and welfare of its citizens, or the proper exercise of the police powers or authority of the Franchising Authority in managing or using the Public ways.

## **SECTION 3. DURATION OF FRANCHISE AGREEMENT**

(a) Term. The Franchise Agreement shall take effect on the Effective Date and shall continue in force for a period of ten (10) years subject to the conditions and

restrictions herein provided.

(b) Surrender. The Company may surrender this Franchise Agreement at any time upon filing with the County a written notice of its intention to do so, at least six (6) months before the surrender date. All the rights and privileges and all of the obligations, duties and liability of the Company under this Agreement, except as to the extent previously accrued hereunder, shall terminate on the surrender date specified in such notice.

#### **SECTION 4. RENEWAL PROCEDURES**

(a) Procedure. Any renewal of this Franchise Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

#### **SECTION 5. TRANSFER OF OWNERSHIP OR CONTROL**

(a) Neither the Company nor any other Person may transfer the Cable System or the Franchise Agreement or any of the Company's rights or obligations in or regarding the Franchise Agreement without the prior written consent of the Franchising Authority. No such consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Company in the Franchise Agreement or in the Cable System in order to secure indebtedness, or (ii) a transfer to any entity that on the effective date of this Franchise Agreement is controlled by, is under common control with, or controls MaxxSouth Broadband.

(b) No change of Ownership or Control of the Company, the Cable System or the Franchise Agreement shall occur after the Effective Date, by act of the Company, its Owners, or any affiliated Person, by act of any Person holding Control of the Company, the System or the Franchise Agreement, by operation of law or otherwise, without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld; provided, however, that no such consent shall be necessary for a change of Ownership or Control to an entity that on the effective date of this Franchise Agreement is controlled by, is under common control with, or controls MaxxSouth Broadband.

(c) Company shall notify the Franchising Authority of its intent to transfer Ownership or Control of the Company or Franchise Agreement and provide all information submitted to the FCC concerning the transfer, as well as sufficient additional information the Company reasonably believes will allow the Franchise Authority to determine the legal, financial and technical qualifications of the transferee. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall, in accordance with FCC rules and regulations, notify the Company in writing of any additional information it requires to determine the legal, financial and technical qualification of the transferee.

(d) Transferee shall submit reasonable financial and other information, as requested by the Franchise Authority and relevant to the Transferee's rights and duties under this agreement. All information will be submitted in compliance with the Cable Act; will be



used solely by the Franchise Authority and for the purpose of reviewing Transferee's performance of its obligations under this Franchise Agreement; and will be deemed a confidential trade secret which will not be subject to any applicable public records disclosures or otherwise publicly disclosed. The purpose of such data is to allow the Franchise Authority to determine if the proposed transferee has the financial, legal and technical ability to deliver Cable Services that will meet the future cable related needs of the Franchise Area. If the Franchising Authority has not taken any action on the Company's request for transfer within 120 days after receiving such request, consent to the transfer shall be deemed given.

(e) For purposes of this Section "Control" means ownership of a majority interest or the actual working control and day to day management of the Company.

## **SECTION 6. FRANCHISE PAYMENT**

(a) **Franchise Fee.** The Company shall pay to the Franchising Authority franchise fees in an amount equal to five percent (5%) of annual Gross Revenue derived from the operation of the Cable System in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due and payable no later than forty-five (45) days after the last day of each March, June, September and December throughout the term of this Franchise Agreement. Each franchise fee payment shall be accompanied by a certified report from a representative of the Company, which shows the basis for the computation of all Gross Revenue derived from the operation of the Cable System in the Franchise Area during the period for which such franchise fee payment is made. If the franchise fee payment is not actually received by the Franchising Authority on or before the applicable due date set forth in this Section, interest shall accrue on the outstanding amount at rates published by the Internal Revenue Service for additional tax payments for the period of delinquency.

(b) **Inspection.** During the term of this Franchise Agreement, upon reasonable prior written notice, during normal business hours, the Franchising Authority shall have the right to inspect the Company's financial records used to calculate the Franchising Authority's franchise fees, and the right to audit and to re-compute any amounts determined to be payable under this Section; provided, however, that any such audit shall take place within three (3) years from the date Franchising Authority received such payment, after which period any such payment shall be considered final. Any additional amounts due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Company within thirty (30) days following written notice to the Company by the Franchising Authority of such final audit. Notice to the Company shall include a copy of the audit report. The Franchising Authority shall bear the expense of any inspection or audit of the Company's books and records. Any additional amount due Franchise Authority shall be paid within thirty (30) days of the Franchise Authority submitting a final invoice for such sum, and if such sum shall exceed six percent (6%) of the total Franchise Fee, which the audit determines should have been paid during any quarter, then Company shall pay the Franchising Authority's reasonable costs and expenses for such audit.

## **SECTION 7. BOOKS AND RECORDS**

(a) **Books and Records.** Throughout the term of this Franchise Agreement, the Company agrees that the Franchising Authority, upon thirty (30) days prior written notice to the Company, may review such of the Company's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area of the Company's business office, during normal business hours as is reasonably necessary to ensure the Company's compliance with the terms and conditions of this Franchise Agreement. Such books and records shall include, without limitation, any records required to be kept in a public inspection file by the Company pursuant to the rules and regulations of the FCC, to the extent and in such format as are required by law. All such documents pertaining to financial matters which may be the subject of an audit by the Franchising Authority shall be retained by the Company for a minimum period of three (3) years.

(b) **File for Public Inspection.** Throughout the term of this Franchise Agreement, the Company shall comply with all FCC's rules and regulations with respect to the maintenance of its public files.

(c) **Installation Map.** The Company shall at all times maintain a complete working map in an electronic format showing the exact location of all the equipment of the Cable System installed or in use in streets and other public places in the County, and such map shall be accessible at normal business hours to the County for all proper purposes.

(d) **Communications with FCC.** To the extent required the Company is required to provide the County with a copy of the communications submitted by the Company to the FCC concerning the service, rates or operations of the Company in the Franchise Area, such requirement shall be met by mailing or filing the copy to or with the County Clerk.

## **SECTION 8. LIABILITY INSURANCE AND INDEMNIFICATION**

### **(a) Public Liability Insurance.**

- (1) At all times during the existence of the Franchise Agreement granted hereunder, the Company shall, at its own cost and expense, maintain in full force and effect a general comprehensive liability insurance policy with a company approved by the County, which approval shall not be unreasonably withheld, to protect the County against liability for loss or damage for personal injury, death, and property damage, occasioned by the operation of the Company under the Franchise Agreement with minimum liability limits of Two Million Dollars (\$2,000,000.00) for personal injury or death of any one person, Two Million Dollars (\$2,000,000.00) for personal injury or death of two or more persons in any one occurrence, Five Hundred Thousand Dollars (\$500,000.00) for

damage to property resulting from any one occurrence.

- (2) The policy or policies of insurance mentioned in the foregoing paragraph shall name the County, its officers and agents, as an additional insured and shall contain a provision that the policies are not cancelable except upon service of a written notice of cancellation or reduction in coverage of said policy to the County- thirty (30) days in advance of the effective date thereof; if such insurance is provided by a policy which also covers the Franchise Agreement or any person other than the Company, then such policy shall contain an endorsement concerning gross liability, which endorsement shall be subject to approval by the County Attorney.

(b) Indemnification. Company shall, at its sole cost and expense, indemnify, defend and hold harmless the County, its officers, boards, commissions and employees against any and all claims, suits, actions, liability and judgments for damages:

- (1) To persons or property allegedly arising out of or through the negligent or malicious acts or omissions of the Company, its servants, agents or employees.
- (2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm, or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to County programming, or statements made by County servants, agents, or employees); and
- (3) Arising out of Company's failure to comply with the provisions of any federal, state, or local statute, ordinance or regulation applicable to Company in its businesses hereunder.

(c) Condition. The foregoing indemnity is conditioned upon the following: the County shall give Company notice of the making of any claim or the commencement of any actions, suit or other proceeding covered by the provision of this section. Nothing herein shall be deemed to prevent the County from cooperating with Company and participating in the defense of any litigation by its own counsel at its sole cost and expense.

(d) Review of Coverage. The Board of Supervisors may review the insurance coverage provisions set forth in Paragraph (a)(1) from time to time, and the Company agrees to provide a reasonable amount of additional insurance if required by the Board of Supervisors for good cause shown.

## **SECTION 9. CONDITIONS OF STREET OCCUPANCY**

(a) Location of Poles and Fixture. The Company shall not place poles or other fixtures where the same will interfere with any gas, electric, or telephone fixtures, water hydrant, mains or public sewer lines, and all such poles or other fixtures placed in any street shall be placed in the right-of-way between the roadway and the property as directed by the County.

(b) Notice of Proposed Construction. The Company shall give the County reasonable written notice of proposed construction by the company so as to coordinate all work between the County and the Company.

(c) Application. Application for approval shall contain the following material:

- (1) A written statement requesting approval.
- (2) Plans and specifications of work to be done, including cleanup and landscaping of the project.

(d) Permits. The Company shall not open or disturb the surface of any street, sidewalk, driveway, or Public Way for any purpose without first obtaining a permit to do so from the County. The wires, conduits, cables, and other property placed in the streets and public places pursuant to such permit shall be located in the streets and public places designated by the County. Upon completion of any work requiring the opening of any street or public place, the Company shall restore the same, including the paving and its foundations, to as good condition as formerly and in a manner and quality approved by the County, and shall exercise reasonable care to maintain the same thereafter in good condition. Said work shall be performed with due diligence, and if the Company shall fail to perform and complete the work within a reasonable time, the County shall have the right to put the Public Way in good condition at the expense of the Company; and the Company shall upon demand pay to the County the cost of such work done for or performed by the County.

(e) Relocation of Facilities. The County may order the Company to relocate or protect its wires, conduits, cables, and other property located in a street or Public Way in order to allow the County to grade, regrade, or change the line of any street or Public Way or construct or reconstruct any sewer or water system therein; and the Company shall at its own expense and with due regard to reasonable working conditions relocate or protect its facilities, provided, however, that if such relocation results in the County being reimbursed all or a share of its costs incurred for the Public Works, the Company shall be entitled to request and receive reimbursement for its overall share of such costs. The County shall give the Company reasonable notice of plans to grade or change the line of any street or public place or to construct or reconstruct any sewer or water system therein.

(f) Protection of Facilities. Nothing contained in this section shall relieve any person, or corporations, from liability arising out of the failure to exercise reasonable care

to avoid injuring the Company's facilities while performing any work connected with grading or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

(g) Notice of Improvements. The County shall give the Company reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that would affect the Company's facilities.

(h) Facilities Not Hazardous to Public. All wires, conduits, cables, and other property and facilities shall be so located, constructed, installed, and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, and travel upon the streets and Public Ways of the County. The Company shall keep and maintain all of its property in good condition, order, and repair, so that the same shall not menace or endanger the life or property of any person. The Company shall keep accurate maps and records of all its facilities in an electronic format and furnish copies of such maps and records as requested by the County. Adherence to the County requirements for placement of Company wires, conduits, cables and other property and facilities shall be deemed proof of compliance with this section.

(i) Compliance with Codes. All construction, installation, maintenance, and operation of any Cable System or of any facilities employed in connection therewith shall be in compliance with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, the General Telephone System's Code of Pole Line Construction, any standards issued by the FCC or other federal or state regulatory agencies in relation thereto, and local zoning regulations.

(j) Safety. The Cable shall be so designed, constructed, installed, maintained, and operated as not to endanger or interfere with the safety and well being of persons or property in the County.

(k) Moving of Buildings. The Company shall, on the request of any person holding a building moving franchise or permit, temporarily raise or lower its wires to facilitate the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance.

(l) Underground Installations. All installations shall be underground in those areas of the County where public utilities providing telephone and electric service are underground or required to be underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Company may install its service aboveground with the understanding that at such time as those facilities are required to be placed underground by the County, the Company shall likewise place its service underground without additional cost to the County of Lafayette, Mississippi. Cable drops installed by Grantee to residences shall be buried within fourteen (14) days of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber.

When freezing surface conditions or other weather related events prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

(m) Changes Required by Public Improvements. The Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Company when required by the County by reason of traffic conditions, public safety, street vacation, freeway, and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by public agencies; provided, however, that the Company shall in all such cases have the privilege and be subject to the obligation to abandon any property of the Company in place, and that if the County is reimbursed for all or a share of its costs incurred for the Public Improvements, the Company shall be entitled to request and receive reimbursement for its overall share of such costs.

(n) Removal of Unused Cable. At all times Company shall promptly remove all distribution cable on separate strand that is not in use and not intended to be used within the next 180 days; otherwise, at all times Company shall remove all distribution cable that is not in use and not intended to be used. Furthermore, any disconnected, dangling or segments of unused cable shall be removed promptly and in any event within thirty (30) days of notice to the Company from the County.

#### **SECTION 10. FEES AND CHARGES TO CUSTOMERS**

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Company or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with the FCC's rate regulations. Before any new or modified rate, fee, charge, deposit or associated term or condition may be imposed, the Company shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law. Except to the extent otherwise expressly permitted by the applicable law, the Company shall provide Cable Service to each resident in the Franchise Area in accordance with a uniform rate structure throughout the Franchise Area. The preceding requirement shall not prevent the Company from using bulk, commercial, promotional and other rates as acceptable by federal law.

#### **SECTION 11. MAINTENANCE, REPAIRS AND CUSTOMER SERVICE.**

(a) Maintenance of System. The Company shall erect and maintain all parts of the Cable System in good condition throughout the entire franchise period.

(b) Interference with Reception. Company shall not allow its cable or other operations unreasonably to interfere with television reception of persons not served by Company.

(c) Interruption of Service. Whenever it is necessary to shut-off or interrupt service for the purpose of making repairs, adjustments, or installations, the Company shall use its best efforts to do so during periods of minimum use of the system by subscribers. Unless such interruption is unforeseen and immediately necessary, the Company shall give subscribers reasonable notice of any planned interruption of service. All costs incurred in repairing and correcting an interruption of service shall be borne by the Company; provided, however, that nothing herein shall prevent the Company from recovering the costs incurred from persons responsible for occurrences or acts which result in damage to the Cable System.

(d) Subscriber Service Office. The Company shall maintain bill payment locations in the County for receiving Subscriber payments, handling billing questions, equipment replacement and customer service information.

(e) Complaints. Investigation of any service complaints from Subscribers shall be initiated not more than twenty-four (24) hours after receipt of such complaint. Ninety percent of all service complaints shall be resolved within Forty Eight (48) hours under Normal Operating conditions. In addition, on-call technicians shall respond to all Subscribers who are verified as having "No Pictures, No High Speed Data or No Phone service" until 9:00 PM, provided that the customer requests an evening service call. The Company will respond to a system outage that affects a material number of Subscribers 24 hours per day. The Company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. The log shall be maintained for two (2) years and shall be made available for periodic inspection by County subject to applicable subscriber requirements.

(f) Inquiries and Complaint Recordation. As subscribers are connected or reconnected to the system, the Company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the County office responsible for administration of the Franchise Agreement with the address and telephone number of the office.

In the event that a complaint or dispute about Cable Service is not resolved by the Company, it may be submitted to the County in writing. Any written complaint must contain:

- (1) the name and address of the complainant;
- (2) a complete statement of facts upon which the complaint is based; and
- (3) a description of the complainant's efforts to resolve the complaint with the Company.

Upon receipt of any such complaint, the County will forward a copy to the Company, and within such time as may be prescribed by the County, the Company shall file a written statement in response to the complaint. The County shall then have the power to make any further investigation of the complaint it deems desirable and, with the agreement of the Company, may resolve the issue raised by the complaint.

(g) Customer Service Standards. In addition to those standards set forth in this Franchise Agreement the Franchising Authority hereby adopts the customer service standards and rules set forth in Part 76, § 76.309 of the FCC's Rules and Regulations. This Franchise Agreement shall constitute notice to the Company of the intent of the Franchise Authority to enforce those standards. The Franchise Authority reserves the right to impose additional customer service requirements necessary to meet the cable related needs of the community.

(h) The Franchise Authority reserves its right to enforce the standards or other obligations imposed under this Section 11 and to impose a reasonable fine on the Company for its failure to comply with the standards or obligations set forth in this Section 11, provided the Company is given written notice of such noncompliance and an adequate opportunity to cure such noncompliance.

(i) Upon 30 days written request, Company shall provide County with a quarterly compliance report which report shall describe in detail Company's compliance with this Section. Company shall comply with the cable industry's on-time guaranty as endorsed by the National Cable Television Association. This on-time guaranty generally provides that if installation is not commenced within the "appointment window" specified by the operator, installation shall be free for the Subscriber. Moreover, Company shall provide Subscribers with a Twenty and No/100 Dollars (\$20.00) credit for any service appointments missed by the Company in response to a request by the customer who provides reasonable evidence of such missed appointment.

## SECTION 12. SERVICE.

(a) Construction. Company has fully constructed an operational Cable System currently serving areas within the County.

(b) Availability. The Company shall provide Cable Service to all areas within the Franchise Area which have a minimum of thirty five (35) dwelling units per street mile calculated from the closest location of existing plant according to system design.

(c) Extensions. The Company shall offer Cable Service to all new homes or previously unserved homes located within 300 feet of the Company's distribution cable. The Company may elect, at its sole and unlimited discretion, to provide Cable Service to areas not meeting the above standards; provided, however, the Company may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in excess of 300 feet. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation, which exceeds the



300 foot standard set forth herein.

**SECTION 13. MANDATORY EQUIPMENT AND SERVICE.**

(a) County's Use of Facilities. During the life of this Franchise Agreement, the County shall have the right, free of charge, to use the facilities of the Company for the transmission of signals in any emergency situation or for the purposes of civil defense, pursuant to FCC regulations and guidelines for such use.

(b) Service to School Buildings.

(1) The Company shall provide free Basic Cable Service and Expanded Basic Service and free installation of two outlets to each public and private school located in the Franchise Area within 500 feet of the Company's distribution cable on the effective date of this Franchise Agreement.

(2) In the case of the construction of a new public or private school (K-12) within the Franchise Area and within 500 feet of the distribution cable, or in the case of the extension of the distribution cable such that it is within 500 feet of an existing school, Company agrees upon reasonable prior written notice to provide at no cost two service connections and free Basic Cable Service and Expanded Basic Service as set forth in Section 13(b)(1) above, and, in addition, Company shall at no cost to the school reasonably assist in the design of any additional outlets requested by the school.

(3) Company agrees not to seek directly to recover the cost for these school connections from cable customers as external or other costs.

(c) Service to Governmental and Institutional Facilities. Upon request from the County, the Company shall provide free installation of two outlets and free Basic Cable Service and Expanded Basic Service to each county building located in the Franchise Area and within 200 feet of the Company's distribution cable.

(d) Company may provide additional connections or services requested by a school of by the County, in addition to those described in Sections 13(b)(1), 13(b)(2), and 13(c), at the price otherwise applicable to such connections or services.

(e) PEG Access Support. The Company shall provide the following support for PEG Access within the Franchise Area:

(1) PEG Access Channel (s). The Company shall dedicate to the County one video channel exclusively for noncommercial use by the County.

(2) Regulation of PEG Access Channel(s). The County and Lafayette County schools shall establish reasonable regulations governing use by the public of the PEG Access channel. The Company shall exercise no editorial control over

noncommercial PEG Access programming, except in accordance with federal law.

(3) The PEG Channels shall be dedicated for PEG use for the term of the Franchise, provided that the Company may upon written request to County, utilize any PEG Channels for commercial or non-commercial programming when they are not scheduled for PEG use. County and Company shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).

(4) The Company shall at no cost to County provide a return connection to facilitate the exchange of programming, including live cablecasting of programming from the County Courthouse to the Company's headend.

#### **SECTION 14. COMPLIANCE WITH CONSTRUCTION AND TECHNICAL STANDARDS.**

(a) Annual Reports. Company shall provide the County, upon request, a written report of the results of Company's annual proof of performance tests conducted pursuant to FCC standards and requirements.

(b) Special Performance Testing. When there exists evidence which in the judgment of the County casts reasonable doubt on the reliability or quality of cable service, the County shall have the right and authority to require Company to test, analyze, and report on the performance of the system. Company shall fully cooperate with the County in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:

- (1) The basis on which the County requested the special test.
- (2) What system component(s) was tested.
- (3) The equipment used and procedures employed in testing.
- (4) Any issue or problem discovered in the testing.
- (5) The method if any in which any such issue or problem was resolved.
- (6) Any other information necessary to understand and review the tests and analysis.

The Franchise Authority may require that tests be supervised at its expense by a professional engineer designated by the Franchise Authority; in which case the engineer shall sign all records of special tests and forward to the Franchise Authority such records with a report interpreting the results of the tests and recommending actions to be taken.

Notwithstanding any other provision herein, the Franchise Authority's right under this section shall be limited to when the County has a reasonable basis to believe the tests must be performed to protect the public against substandard cable service, and (a) to verify that the Company is meeting FCC technical standards and quality of service, if County has a reasonable basis for belief that the Company is not meeting FCC requirements; or (b) to investigate specific subjects of Company customer complaints or other specific evidence available to the County.

(c) Requirement to Maintain Technical Standards and Quality of Service. The Company shall continue, through the terms of the Franchise Agreement, to maintain the technical standards and quality of service set forth in this Agreement and applicable Federal law or FCC regulations.

#### **SECTION 15. RIGHT OF PRIVACY.**

Monitoring of Subscribers. Except for the purpose of providing service through a subscriber terminal to a Subscriber, or as otherwise specifically permitted by law, no signals of the cable system shall be transmitted from such a terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The Company shall comply with the laws governing the right of privacy of its subscribers, as promulgated by the U.S. Congress and the FCC.

#### **SECTION 16. PREFERENTIAL OR DISCRIMINATORY PRACTICES.**

The Company shall not as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any undue preference or advantage to any person, except for bulk-rate discounts to multi-dwelling units such as apartment complexes, mobile home parks and comparable facilities or as allowed by federal law. The Company may, however, establish a graduated scale of charges and classified rate schedules; and it may offer customers additional services or products, or waive or reduce charges made by the Company, during targeted promotional campaigns of specific duration. It is understood and agreed that any waiver or reduction of charges made by the Company during promotional campaigns will reduce the Gross Revenues of the Company, and to that extent, may reduce the franchise fee due to the County of Lafayette, Mississippi.

#### **SECTION 17. UNAUTHORIZED PRACTICES AND PENALTIES**

(a) Franchise Required for Cable System. During the term of this Agreement, it shall be unlawful for any person to establish, operate, or to carry on the business of distributing to any person in the County any television signals or radio signals by means of a Cable System unless a franchise or franchise therefore has first been obtained pursuant to the provisions of the County's ordinances, and unless such franchise or franchise is in full force and effect.

(b) Franchise Required for Use of Right-of-Way. During the term of this Agreement, it shall be unlawful for any person to construct, install, or maintain within any

public street in the County, or within any other public property of the County, or within any privately owned area within the County, or within any other public property of the County, any equipment or facilities for distributing any television signals or radio signals through a Cable System; unless a franchise or ordinance authorizing use of such street, property, or areas has first been obtained pursuant to provisions of the County's Ordinances, and unless such franchise or ordinance is in full force and effect.

(c) Unauthorized Connections Prohibited. It shall be unlawful for any person, firm, or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised Cable System within the County for the purpose of taking or receiving television signals, radio signals, pictures, programs, or sound.

(d) Unauthorized Connections Without Payment Prohibited. It shall be unlawful for any person, firm, or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised Cable System within this County for the purpose of enabling himself/herself or others to receive any television signal, radio signal, picture, program, or sound, without payment to the owner of said system.

(e) Tampering with Cable System Equipment Prohibited. It shall be unlawful for any person, without the consent of the Company, to willfully tamper with, remove, or injure any cables, wires, or equipment used for distribution of television signals, radio signals, pictures, programs, or sound.

(f) Penalties for Violation. The violation of any provision of Section 17 of this Agreement is hereby made a misdemeanor, and the same shall be punishable by a fine of not more than Two Hundred Dollars (\$200.00). Each day any violation shall continue shall constitute a separate offense

(g) Nothing within this Section 17 shall be read to prohibit the Company from serving as an internet service provider (ISP) within the County, or from taking any actions necessary to install, maintain, or repair the facilities or other equipment necessary to serve as an ISP.

## **SECTION 18. COMPLIANCE WITH APPLICABLE LAW.**

The Company shall at all times comply with all laws, ordinances and regulations of the federal, state and County governments or any administrative agencies thereof. If any federal or state law or regulation shall be in conflict with the terms of this Franchise Agreement, or any ordinance of the County, then as soon as possible following knowledge thereof, the Company shall notify the County of the point of conflict.

## **SECTION 19. PENALTIES.**

For the violation of any of the following provisions of this Franchise

Agreement penalties shall be chargeable as follows:

(a) Failure to Test, Analyze or Report. For failure to test, analyze, and report on the performance of the system as required by the technical standards of the FCC, within 30 days following a request pursuant to this Franchise Agreement, Company shall pay to County Fifty Dollars (\$50.00) per working day for each day, or part thereof, that such noncompliance continues.

(b) Failure to Comply with FCC Technical Standards. Ninety (90) days following adoption of a resolution of the Board of Supervisors determining a failure of Company to comply with FCC technical standards, Company shall pay to County Two Hundred Dollars (\$200.00) per day for each day, or part thereof, following the 90 day period, that such noncompliance continues.

## **SECTION 20. BREACH AND TERMINATION.**

(a) Breach. In addition to all other rights and powers retained by the County under this Franchise Agreement or otherwise, the County reserves the right to terminate the Franchise Agreement and all rights and privileges of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by Company shall include the following:

- (1) Violation of any material provision of the Franchise Agreement or any material rule, order, regulation or determination which the County is authorized to make under the terms of this Franchise Agreement; if the violation is not cured by Company within a commercially reasonable time.
- (2) Unreasonable attempts to evade any material provision of the Franchise Agreement, or any attempts to practice any fraud or deceit upon the County or its subscribers or customers;
- (3) Failure to begin or complete any system construction or system extension as provided under the Franchise Agreement;
- (4) Failure to restore service of fifty percent (50%) of the channel offerings to fifty percent (50%) of the basic channel subscribers for 96 consecutive hours.
- (5) Material misrepresentation of fact in the application for or negotiation of the Franchise Agreement.

(b) Excuse for Breach. The foregoing may not constitute a substantial breach if the violation occurs, but the Board of Supervisors finds it is without fault of the Company or occurs as a result of circumstances beyond its control. Company shall not be

excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers or employees.

(c) Written Demand by County. Before the County may terminate this Franchise Agreement, the County shall make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this Franchise Agreement. If the violation by the Company continues for a period of twenty-five (25) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the County may place the issue of termination of the Franchise Agreement before the Board of Supervisors. The County shall cause to be served upon Company, at least twenty (20) days prior to the date of such a Board of Supervisors meeting, a written notice of intent to request such termination, the provisions of the ordinances under which termination is sought, the time and place of the meeting. Public notice shall be given of the meeting and issue that the Board of Supervisors is to consider pursuant to the requirements of Mississippi law.

(d) Consideration of Breach. The Board of Supervisors shall hear and consider the issue and shall hear any person interested therein, and shall determine whether or not any substantial breach by the Company has occurred.

(e) Declaration of Forfeiture. If the Board of Supervisors shall determine the violation by the Company was the fault of Company and within its control, the Board of Supervisors may, by resolution, declare that the Franchise Agreement of the Company shall be terminated unless there is compliance within such period as the Board of Supervisors may fix, such period not to be less than sixty (60) days; provided, however, no opportunity for compliance need be granted for fraud or misrepresentation.

## SECTION 21. FORECLOSURE.

The Company shall notify the County of any pending foreclosure action not more than ten (10) days following actual notice by the Company that foreclosure has been commenced. Upon the foreclosure or other judicial sale of all or a substantial part of the Cable System, or upon the termination of any lease covering all or a substantial part of the Cable System, the Company shall notify the County a change in control of the Company has taken place, and the provisions of this Franchise Agreement governing the consent of the Board of Supervisors to such change in control of the Company shall apply.

## SECTION 22. RECEIVERSHIP.

The Board of Supervisors shall have the right to cancel this Franchise Agreement one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action of proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(a) Time for Compliance. Within one hundred twenty (120) days after his

election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Agreement and remedied all defaults thereunder; and

(b) Execution of Agreement. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Agreement and the Franchise granted to the Company.

### **SECTION 23. RULES AND REGULATIONS.**

(a) In addition to the inherent powers of the County to regulate and control the Franchise Agreement, and those powers expressly reserved by the County herein, the right and power is hereby reserved by the County to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this Franchise Agreement.

(b) The County may also adopt such regulations at the request of the Company upon application.

### **SECTION 24. RIGHTS OF AMENDMENT RESERVED TO COUNTY.**

Right to Amend. The County and Company expressly reserve the right to renegotiate the terms of this Agreement and, upon agreement by both parties, to amend or supplement its provisions.

### **SECTION 25. FAILURE OF COUNTY TO ENFORCE THIS FRANCHISE AGREEMENT, NO WAIVER OF THE TERMS THEREOF.**

The Company shall not be excused from complying with any of the terms and conditions of this Franchise Agreement by any failure of the County upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

### **SECTION 26. SEVERABILITY.**

If any section, subsection, sentence, clause, or phrase of this Agreement is for any reason held illegal, invalid, or unconstitutional by any court of competent jurisdiction or the FCC, such decision shall not affect the validity of the remaining portions. The invalidity of any such portion of this Agreement shall not abate, reduce, or otherwise affect any consideration or other obligation required by the County of the Company under the Franchise granted.

### **SECTION 27. ACCEPTANCE BY THE COMPANY.**

The Franchise granted pursuant to this Agreement and its terms and provisions shall be unconditionally adopted by written instrument executed and acknowledged by the

appropriate officials of the County and delivered to the Company which shall accept same not later than twenty (20) days after receiving it by acknowledging the Company's acceptance in writing.

#### **SECTION 28. NOTICE.**

All notices called for in this Franchise Agreement shall be written notice and will be considered as being completed notice when mailed by registered mail or certified mail, return receipt requested and addressed to the party to be notified as shown below:

To County:

County of Lafayette, Mississippi  
300 N. Lamar Boulevard  
Oxford, MS 38655

To Company:

MaxxSouth Broadband  
105 Allison Cove  
Oxford, MS 38655

With copy to:

MaxxSouth Broadband  
2700 Oregon Road  
Toledo, OH 43654  
Attn: Vice President, Business & Legal  
Affairs

#### **SECTION 29. ACCEPTANCE.**

This Franchise Agreement has been accepted by the parties on this \_\_\_\_ day of September, 2018.

COUNTY OF LAFAYETTE MISSISSIPPI

\_\_\_\_\_  
Jeff Busby, President

MaxxSouth Broadband

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

Its: \_\_\_\_\_



## EXECUTIVE SUMMARY

### PROPOSED CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN COUNTY OF LAFAYETTE, MISSISSIPPI AND BCI MISSISSIPPI BROADBAND LLC D/B/A MAXXSOUTH BROADBAND

The purpose of this summary is to highlight some of the key provisions that are proposed for a new Cable Television Franchise with MaxxSouth. The following provisions are proposed for the County's new Franchise:

- The proposed Agreement incorporates the minimum Federal Customer Service Standards, increases insurance requirements and includes extensive construction standards.
- The proposed term of the agreement is 10 years.
- The proposed Agreement includes the definition of "Gross Revenues" and the requirement to pay the County 5% of Gross Revenues on a quarterly basis with extensive documentation requirements. In the event that a Franchise Fee payment is not received by the County on or before the date due, or is underpaid, interest shall accrue on the outstanding amount at rates published by the Internal Revenue Service for additional tax payments for the period of delinquency.
- If any audit reveals an underpayment by MaxxSouth of more than 6% or more during any audit period, MaxxSouth shall be responsible for County's reasonable costs associated with the audit.
- The proposed Agreement incorporates all rights and regulatory authority allowed under the Cable Act and applicable FCC regulations.
- Provisions are included to require compliance with FCC's technical performance standards to insure picture quality and sound delivered over the system.
- The agreement provides for free cable television to all County owned buildings and to any public or private elementary or secondary schools within 200 feet of cable system.
- The Company shall provide Cable Service to all areas within the Franchise Area which have a minimum of thirty five (35) dwelling units per street mile.
- The Company shall at all time maintain a complete working map in an electronic format showing the exact location of all the equipment of the Cable System installed or in use in streets and other public places in the County, and such map shall be accessible at normal business hours to the County for all proper purposes.

DATE

Mr. Rick Ferrall  
Regional General Manager  
105 Allison Cove  
Oxford, MS 38655

Re: Cable Television Franchise

Dear Mr. Ferrall:

Enclosed are two signed Franchise Agreements granting a nonexclusive franchise to BCI Mississippi Broadband, LLC D/B/A MaxxSouth Broadband. Please have the appropriate representative with MaxxSouth sign the documents and return one to my attention for the County's files. As you know the Franchise requires MaxxSouth to begin remitting a franchise fee of 5% to the County on a quarterly basis and we would appreciate you taking whatever steps are necessary to implement that provision of the Agreement.

Your cooperation and assistance with the franchise negotiations was greatly appreciated. Should you have any questions, please do not hesitate to contact Mr. Fender at 706-482-9933 or me.

Sincerely,

Lisa Carwyle  
County Administrator

Cc: Mr. Greg Fender

Enc.