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ORDINANCE NO.: 05-02

**AN ORDINANCE OF LIBERTY COUNTY, FLORIDA, GRANTING A TEN YEAR FRANCHISE TO BRIGHT HOUSE NETWORKS, LLC FOR THE CONSTRUCTION AND OPERATION OF A CABLE TELEVISION SYSTEM; PROVIDING DEFINITIONS; DESIGNATING THE SERVICE AREA; SETTING THE TERM OF THE FRANCHISE; PROVIDING FOR SYSTEM REGULATION AND STANDARDS OF SERVICE; PROVIDING FOR A FRANCHISE FEE; PROVIDING FOR COMPLIANCE TESTING AND MONITORING; SETTING FORTH INSURANCE AND INDEMNIFICATION REQUIREMENTS; PROVIDING FOR ENFORCEMENT AND TERMINATION; CONTAINING OTHER MISCELLANEOUS PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Board of County Commissioners of Liberty County, Florida, has determined that the financial, legal and technical ability of Bright House Networks, LLC is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LIBERTY COUNTY, as follows:

SECTION I. Definition of Terms

1.1 Terms. For the purpose of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- a. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with the Grantee.
- b. "Basic Cable" shall have the meaning provided in applicable federal law. Additional signals may be added to the basic tier by the Grantee.
- c. "Cable Act" means the Cable Communications Policy Act of 1984; as amended.
- d. "Cable Service" means (a) the one-way transmission to subscribers of video programming or other programming service, and (b) subscriber interaction, if any, which is required for the selection of such, video programming or any other lawful communications programming service.

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- e. "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 to subscribers.
- f. "FCC" means the Federal Communications Commission or successor governmental entity thereto.
- g. "Franchise" shall mean the initial authorization or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to Subscribers,
- h. "Franchise Authority" means the Board of County Commissioners of Liberty County, Florida, or the lawful successor, transferee, or assignee thereof.
- i. "Grantee" means Bright House Networks, LLC or the lawful successor, transferee, or assignee thereof.
- j. "Gross Revenues" mean the monthly Cable Service revenues received by the Grantee from Subscribers of the Cable System; provided, however, that such phrase shall not include (a) revenues received from any national advertising carried on the Cable System nor (b) any taxes or fees on Cable Service which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.
- k. "Person" means an individual, partnership, association, joint stock company, trust corporation, or governmental entity.
- l. "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, parkway, 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 Franchise Authority in the Service Area which shall entitle the Franchise Authority and the Grantee 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 Franchise Authority within the Service 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 Franchise Authority and the Grantee to the use thereof for the purposes of installing or transmitting the Grantee's Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers,

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appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

m. "Service Area" means the geographical boundaries of the Franchising Authority.

n. "Service Tier" means a category of Cable Service or other services provided by the Grantee and for which a separate charge is made by the Grantee.

o. "Subscriber" means a person or user of the Cable System who lawfully receives Cable Services or other services with the Grantee's express permission.

p. "Video Programming" means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

## SECTION II. Grant of Franchise

2.1 Grant. The Franchise Authority hereby grants to the Grantee a non-exclusive Franchise which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other lawful communications services in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.

2.2 To the extent that there is any inconsistency between a provision of this franchise agreement and a provision of a County Ordinance it is agreed that the provision of this franchise agreement shall control and that this franchise agreement expressly modifies any such inconsistent specific obligation or requirement of the Ordinance, except to the extent that right of way ordinances are adopted or amended from time to time by the County.

2.3 Term. The Franchise granted pursuant to this Ordinance shall be for a term of ten (10) years from the effective date of this Ordinance unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

2.4 Acceptance; Effective Date. The Grantee shall evidence its acceptance of the terms and conditions of this Franchise grant by having duly authorized officers of said corporation sign a certified copy of this Ordinance as adopted and file same with the Clerk of the Board of County Commissioners within thirty (30) days of the effective date hereof.

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2.5 Level Playing Field. In the event the County enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than Grantee to enter into the County's streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. If the County grants an additional franchise on terms more favorable or less burdensome than those contained herein, then this franchise shall be deemed amended as of the effective date of the additional franchise to incorporate the more favorable or less burdensome terms herein.

### SECTION III. Standards of Service

3.1 Conditions of Street Occupancy. All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be so located as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

3.2 Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 Relocation at Request of Franchising Authority. Upon its receipt of reasonable advance notice, not to be less than ten (10) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures; but the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

3.4 Relocation at Request of Third Party. The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the grantee, making such payment in advance; and (b) the Grantee is given not less than (1.0) business days advance written notice to arrange for

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such temporary wire changes.

3.5 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. The Grantee shall be permitted to charge persons who own, or are responsible for, such trees or natural growth for the cost of such trimming, provided that similar charges are assessed by and paid to the utilities or the Franchising Authority for tree trimming. The Grantee shall reasonably compensate the Franchising Authority or property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expenses, reasonably replace all trees or shrubs damaged as a result of any construction of the System undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the Franchise Authority or property owner pursuant to the terms of this Section.

3.6 Safety Requirements. Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with applicable FCC or other federal, state and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

3.7 Aerial and Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof aerially or underground. Nothing contained in this Section 3.7 shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Section 3.7, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone, data communications and electric services are placed underground after the effective date of this Ordinance, the Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities facilities at the time that such are placed underground. To the extent that other public utilities providing telephone communications and electric services are compensated for

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placing their facilities underground. Grantee shall also be compensated.

3.8 Required Extension of Service. Whenever the Grantee shall receive a request for service from at least fifteen (15) Subscribers within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not have a substantial adverse affect on the operation, financial condition, or market development of the Cable System, or as provided for under Section 3.9 of this Ordinance.

3.9 Subscriber Charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than fifteen (15) Subscribers per 1320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and Subscribers in the area in which Cable Service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals fifteen (15) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis.

3.10 Service to Public Building. The Grantee shall provide, without charge, one (1) outlet of Basic Service to the Franchising Authority's office building(s), fire stations, police stations, and public school buildings, that are passed by its Cable System. The outlets of Basic Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Notwithstanding anything to the contrary set forth in this Section 3.10, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and if it will not substantially adversely affect the operation, financial condition, or market development of the Cable System to do so, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excessive of 150 cable feet. In the event that additional outlets of Basic Service are provided to such, buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of the Grantee, the building owner may also be required to pay the service fees associated with the provision of Basic Service to the additional outlets.

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3.11 Emergency Override. In the case of any emergency or disaster, the Grantee shall, upon request of the Franchising Authority, make available its facilities for the Franchising Authority to provide emergency information and instructions during any emergency or disaster period. The Franchising Authority shall to the extent allowed by law hold the Grantee, its agents, employees, officers, and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorneys' fees and costs.

#### SECTION IV. Regulation by Franchise Authority

4.1 Franchise Fee. The Grantee shall pay to the Franchising Authority a franchise fee equal to five (5) percent of Gross Revenues received by the Grantee from the provision of Cable Services in the Service Area on an annual basis; provided, however, that the Grantee may credit against any such payments (a) any tax, fee, or assessment of any kind imposed by the Franchising Authority or other governmental entity on a cable operator, or subscriber, or both, solely because of their status as such; (b) any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or subscribers (including any such tax, fee, or assessment imposed, both on utilities and cable operator and their service), and (c) any other special tax, assessment or fee such as a business, occupation, and entertainment tax. For the purpose of this section, the 12-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year, unless otherwise agreed to in writing by the Franchising Authority and the Grantee. The franchise fee payment shall be due and payable ninety (90) days after the close of the preceding calendar year. Each payment shall be accompanied by a thorough report from a representative of the Grantee showing the basis for the computation. In no event, shall the franchise fee payments required to be paid by the Grantee exceed five (5) percent of Gross Revenues received by the Grantee in the applicable 12-month period. The provisions of this section 4.1 shall not be in effect so long as franchise fees are paid to the State through the Communications Service Tax or a substitute tax or fee.

4.2 Rates and Charges. The Franchising Authority may not regulate the rates for the provision of Cable Service and other services, including, but not limited to, ancillary charges relating thereto, except as expressly provided herein and except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC rules and regulations relating thereto.

4.3 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an Affiliate, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or

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interest of the Grantee in the Franchise or Cable System in order to secure indebtedness.

#### SECTION V. Compliance and Monitoring

5.1 Testing for Compliance. The Franchising Authority may observe technical tests of the Cable System by Grantee during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be scheduled only after giving the Grantee reasonable notice thereof, not to be less than five (5) business days. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that the Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority. Except in emergency circumstances, the Franchising Authority agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate.

5.2 Books and Records. The Grantor agrees that the Franchising Authority may review such of its books and records, during normal business hours as reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC, the State of Florida or this Franchise.

#### SECTION VI. Insurance Indemnification, and Bonds or Other Surety

6.1 Insurance Requirements. The Grantee shall maintain in full force and effect at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury, and property damage. Said insurance shall designate the Franchising Authority as an additional insured. Such insurance shall be non-cancelable except upon thirty (30) days prior written notice to the Franchising Authority.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury, (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, including, but not limited to, reasonable attorneys' fees and costs.

6.3 Bonds and Other Surety. Except as expressly provided therein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchising Authority



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acknowledges that the legal, financial, and technical qualifications of the Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. The Grantee and the Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the subscribers in the form of increased rates for Cable Services. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need. Initially, no bond or other surety will be required. In the event that the Franchising Authority, in its sole discretion, determines that it is necessary for the Grantee to post a surety bond to guarantee its performance, the Franchising Authority agrees to give the Grantee at least thirty (30) days prior written notice thereof.

## SECTION VII. Enforcement and Termination of Franchise

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

7.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1 to (a) respond to the Franchising Authority contesting the assertion of noncompliance, or (b) to cure such default or, in the event that, by the nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and, notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing. In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within sixty (60) days after the Grantee is notified of the alleged default pursuant to Section 7.1, the Franchising Authority shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the Franchising Authority which is scheduled at a time which is not less than five (5) business days therefrom. The Franchising Authority shall notify the Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

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

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

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- 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.

The 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 the Franchising Authority to enforce prompt compliance.

7.5 Force Majeure. The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strike, unavailability of materials, or equipment, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, civil disturbance, sabotage or vandalism, customer tampering or interference, act of public enemy, accident, fire, flood, storm or other events, to the extent that such causes or other events are beyond the control of the Grantee.

#### SECTION VIII. Miscellaneous Provisions

8.1 Preemption. If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supercede or preclude the exercise of jurisdiction by the Franchising Authority, the Jurisdiction of the Franchising Authority shall cease and no longer exist.

8.2 Actions of Franchising Authority. In any action by the Franchising Authority or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.3 Notice. Unless expressly otherwise-agreed between the parties, every notice or response to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given, to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the Franchising Authority shall be addressed as follows:



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Chairman  
Board of County Commissioners  
Liberty County, Florida  
Post Office Box 399  
Bristol, Florida 32321

The notices or responses to the Grantee shall be addressed as follows:

Bright House Networks  
Attn: General Manager  
94 Walton Road  
DeFuniak Springs, Florida 32433

with a copy to:

Bright House Networks  
Attention: President, Birmingham Division  
151 London Parkway  
Birmingham, AL 35211

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

8.4 Descriptive Headings. The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5 Severability. If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of proper Jurisdiction or by any state or federal regulatory authority having Jurisdiction thereof such determination shall have no effect on the validity of any other Section, sentence, paragraph, terra a or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof

8.6 Modification/Amendment of Franchise. No amendment or modification to this Agreement shall be effective unless in writing and signed by the Franchisee and the County.

8.7 No Third Party Beneficiaries. This franchise agreement is made between Grantee and the County and is not intended to and does not create any rights or interests for any other party including without limitation any rights as a third party beneficiary of this agreement.

8.8 Effective Date. This Ordinance shall become effective according to law.

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Passed and adopted this 4<sup>th</sup> day of August 2005.

ATTEST:

Robert Hill  
ROBERT HILL  
Clerk of Court

BOARD OF COUNTY COMMISSIONERS  
LIBERTY COUNTY, FLORIDA

John T. Sanders  
JOHN T. SANDERS, CHAIRMAN

ATTEST:

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BRIGHT HOUSE NETWORKS, LLC.

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APPROVED AS TO FORM:

Shelene Brown  
County Attorney

