

TOWN OF FOYIL, OKLAHOMA

ORDINANCE NO. 2024-1

AN ORDINANCE GRANTING A NONEXCLUSIVE PERMIT TO COXCOM, LLC., ITS SUCCESSORS AND ASSIGNS TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM WITHIN THE TOWN OF FOYIL, OKLAHOMA FOR A PERIOD NOT TO EXCEED TEN YEARS; DEFINING THE NATURE OF THE AGREEMENT; STATING THE OBLIGATIONS OF COXCOM, LLC.; STATING THE OBLIGATIONS OF THE TOWN; PROVIDING FOR CODIFICATION.

NOW THEREFORE, be it ordained by the Board of Trustees of the Town of Foyil, Oklahoma:

WHEREAS, This Non- Exclusive Permit and Agreement (“Agreement”) is made and entered into this 17 day of January, 2024, by and between the Town of Foyil, a municipal corporation, hereinafter referred to as the “Town,” and CoxCom, LLC., a Delaware limited liability company hereinafter referred to as “Cox”, “Company,” or “Grantee” with Cox and Town sometimes separately referred to hereinafter as a “party,” and sometimes collectively as “parties.”

WHEREAS, the Town’s role as manager of its rights-of-way and regulator of cable service providers requires it to ensure a fair and level playing field for all similarly situated service providers; and

WHEREAS, The Town, having determined that the financial, legal, and technical ability of Cox is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Agreement with Cox for the construction and operation of a Cable System on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements hereinafter set forth, the parties agree as follows:

1. Term of Non-exclusive Permit and Agreement: This non-exclusive Permit and Agreement shall take effect upon approval hereof by Cox and by the Board of Trustees of the Town and shall be effective for a term of ten (10) years thereafter. Prior to the end of this term, the parties agree to enter into good faith negotiations regarding a possible renewal and/or modification and/or extension of this Agreement.

2. Nature of Agreement:

(A) No privilege or exemption shall be granted or conferred by this Agreement except those specifically prescribed herein.

(B) Any right or power in, or duty impressed upon, any officer, employee, department, or board of the Town by this Agreement shall be subject to transfer by the Town to any other officer, employee, department, or board of the Town.

(C) This Agreement shall not relieve Cox of any existing obligations involved in obtaining permits, pole or conduit space from any department of the Town, utility company, or from others maintaining utilities in streets and public right of way.

(D) This Agreement shall be a privilege to be held in personal trust by Cox for the benefit of the public. Said privilege cannot in any event be sold, transferred, leased, assigned or disposed of (except to an affiliate of Cox), including but not limited to, by forced or voluntary sale, merger, consolidation, receivership or other means without the prior written consent of the Town, and then only under such conditions as the Town may establish. Such consent as required by the Town shall not, however, be unreasonably withheld.

(E) In consideration of the faithful performance and observance of the conditions, reservations and regulations herein specified, a non-exclusive Permit is hereby granted to Cox, its permitted successors and assigns to erect, maintain, and operate transmission and distribution facilities and additions thereto in, under, over, along, across and upon the streets, lanes, avenues, sidewalks, alleys, bridges and other public places within the Town and subsequent additions thereto for the purpose of producing, receiving, amplifying, and transmitting by coaxial cable, fiber optics, microwave or other means, audio and/or audio/visual electrical impulses of television, radio and other intelligences, either analog or digital, including, but not limited to, Cable Television Service pursuant to the Cable Act for sale to the inhabitants and businesses of the Town in accordance with the laws and regulations of the United States of America and State of Oklahoma and the ordinances and regulations of the Town, for a period of ten (10) years from and after the effective date of this non-exclusive Permit and Agreement.

3. Obligations of Cox:

(A) During the term of this Agreement, Cox shall pay to Town a fee equal to 4% of the gross revenues of Cox and its affiliates collected from each subscriber to Cox's Cable Services product, and 4% of the portion of gross revenues from advertising which are defined in subsection 3(A)(3), below; the fee ("Permit Fee") may be identified and passed through on any subscriber bill by Cox, and all such fees collected will be forwarded to Town quarterly and shall be due forty-five (45) days after the end of each quarter.

(1) For purposes of this Agreement, gross revenues are limited to the following:

- (i) recurring charges for Cable Services;
- (ii) event-based charges for Cable Services, including but not limited to pay-per-view and video-on-demand charges;

(iii) rental of set top boxes and other Cable Services equipment;
(iv) service charges related to the provision of Cable Services, including, but not limited to, activation, installation, and repair; and
(v) administrative charges related to the provision of Cable Services, including, but not limited to, service order and service termination charges;
(vi) amounts billed to Cable Services subscribers to recover the Permit Fee authorized by this section.

(2) For purposes of this Agreement, gross revenues do not include:
(i) Uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected, less expenses of collection, shall be included in gross revenues in the period collected;
(ii) late payment fees;
(iii) revenues from contracts for in-home maintenance service unless they relate solely to maintenance on equipment used only for the provisioning of Cable Services and not for the provisioning of any other service provided by Cox or its affiliates;
(iv) amounts billed to Cable Services subscribers to recover taxes, fees or surcharges imposed upon Cable Services subscribers in connection with the provision of Cable Services, other than the Permit Fee authorized by this section;
(v) revenue from the sale of capital assets or surplus equipment; or
(vi) charges, other than those described in subsection (1), that are aggregated or bundled with amounts billed to Cable Services subscribers.

(3) "Gross Revenues" which are subject to the Permit Fee paid by Cox additionally include a pro rata portion of all revenue collected by Cox pursuant to compensation arrangements for advertising (less any commissions Cox receives from any third parties for advertising) and home-shopping sales derived from the operation of Cox's Cable System within the Town. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts the Company may make to advertisers) shall not be deducted from advertising revenue included in gross revenue. The allocation of advertising and home-shopping revenue referred to above shall be based on the number of subscribers in the Town divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

(4) Bundling discounts shall be apportioned fairly among video and other services. Cox shall not apportion revenue in such a manner as to avoid the Permit Fee.

(5) In the event that any other video or Broadband Service provider, including but not limited to a cable operator, Broadband or open video service provider, enters into any agreement or makes any arrangement with Town during the term of this Agreement whereby it is required or allowed to pay a fee to the Town that is similar to the Permit Fee described herein, Town shall allow Cox to substitute the percentage amount and the definition of "gross revenue" set forth in that agreement or arrangement for the percentage and definition of "gross revenue" set forth in this Agreement immediately upon request of Cox.

(6) In the event that any other municipality enters into any agreement or makes any arrangement with Cox during the term of this Agreement whereby Cox is required or allowed to pay a fee to the Town that is similar to the Permit Fee described herein, Cox shall allow Town to substitute the definition of "gross revenue" set forth in that agreement or arrangement for the definition of "gross revenue" set forth in this Agreement upon the written request of the Board of Trustees, and that Cox shall be afforded at least ninety (90) days to implement the change.

(7) Cox will grant the Town the right to conduct reasonable audits to assure that the Permit Fee has been properly calculated.

(B) Cox and Town agree that the Permit Fee shall be in lieu of all other concessions, charges, excises, permit, license, privilege, permit fees, taxes, or assessments *except* sales taxes, personal or real property taxes, and ad valorem taxes.

(C) Cox shall comply with the federal Emergency Alert System regulations (47 C.F.R. Part 11).

(D) The parties agree to consult in the event that, after execution of this Agreement, any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either Town or Company, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either party, within thirty (30) days of receipt of the ruling, provides written notice to the other party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the parties mutually may agree. Where the effect of a finding is a modification, the parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either party to terminate the Agreement on the provision of thirty (30) days' written notice.

In addition to the termination rights set forth above, Cox shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days' notice to the Town, if (i) state or federal law changes in a manner that would allow Cox to opt into Permit requirements that are, in Cox's sole judgment, more beneficial than those contained herein; or (ii) another provider of video services is permitted, through a Town authorization or otherwise, to use the public rights-of-way to provide video services on terms that are, in Cox's sole judgment, more beneficial than those contained herein.

(E) Cox shall determine, pursuant to generally applicable, non-discriminatory right of access and permitting rules and regulations of Town, where in the Town its facilities shall be constructed, operated, maintained, repaired and upgraded to provide, and where in the Town to provide its Cable Services.

(F) Cox shall maintain in full force and effect, at no cost and expense to the Town, during the term of this Agreement, commercial general liability insurance in the amount of \$1,000,000 combined single limit for bodily injury, and property damage. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Town. Upon written request, Cox shall provide a certificate of insurance showing evidence of coverage required by this Section.

(G) The Grantee agrees to indemnify, save and hold harmless, and defend the Town, its officers agents and employees, from and against any and all liability for damage and for any liability or claim resulting from property damage or bodily injury (including accidental death) which arise out of the Grantee's construction, operation maintenance of its Cable System, or damages arising out of any provisions or requirement of this ordinance or its enforcement, including but not limited to, reasonable attorney's fees and costs.

4. Obligations of Town. Town will not attempt to nor subject the provision of Cox's Cable Service to regulation under any provision of the Town's Cable television or Broadband telecommunications Permit ordinance or similar ordinance(s) that are inconsistent with or more burdensome than those contained herein. In addition:

(A) Town agrees not to unreasonably block, restrict, or limit the construction and installation of facilities that will be used in whole or in part to provide Cox's Cable Service;

(B) Town agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with placement of communications or transmission facilities of any kind in a timely and prompt manner;

(C) Cox represents and claims that its Cable Service is a "cable service" under federal law and will comply with all obligations imposed by federal law on cable operators. This Agreement shall not apply to any service Cox provides that is not a "cable service" as such service is defined under federal law.

5. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.

6. Entire Agreement. This Agreement constitutes the entire agreement between Town and Cox with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between Town and Cox regarding the subject matter hereof.

7. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

8. Miscellaneous.

(A) Cox and Town each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

(B) The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

(C) Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

(D) This Agreement shall not be exclusive and the Town expressly reserves the right to enter into similar agreements with any other company offering the same or similar video services at any time.

(E) The geographic area covered by this Agreement shall be the incorporated limits of the Town of Foyil, Oklahoma, as such area now exists or may be modified in the future by annexation or deannexation.

(F) The parties agree that either Rogers County District Court (12th Judicial District) or the United States District Court for the Northern District of Oklahoma shall be the sole and exclusive forum for any judiciable disputes concerning this Agreement.

(G) The right to use and occupy the Franchising Authority's Public Ways for the purpose herein provided shall not be exclusive; provided, however, that no Person shall enter into the Franchising Authority's Public Ways for the purpose of constructing or operating a Cable System or a Broadband Network, or for the purpose of providing Cable Service, video programming service or Broadband Service to any part of the Service Area, without first obtaining a Franchise, permit, license, authorization or other agreement from the Franchising Authority. In the event the Franchising Authority authorizes or permits any Person other than the Grantee to enter into the Franchising Authority's Public Ways for the purpose of constructing or operating a Cable System, or a Broadband Network for the purpose of providing Cable Service, video programming service or Broadband Service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, and the obligations imposed on the grantee thereunder shall be no less burdensome nor more favorable than the obligations imposed upon the Grantee hereunder, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

9. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective principals, managers, governing body members,

offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

10. Definitions. The following words, terms and phrases, when used in this Agreement, shall have the meanings ascribed to them in this section:

- (A) "Cable Act" shall have the same meaning as contained in federal statutes, 47 U.S.C. §522 of the effective date of this Agreement.
- (B) "Cable Service" shall have the same meaning as contained in federal statutes, 47 U.S.C. §522(6) on the effective date of this Agreement.
- (C) "Cable System" shall have the same meaning as contained in federal statutes, 47 U.S.C. §522(7) on the effective date of this Agreement.
- (D) "Broadband Network" means a network that has the ability to provide information service as defined in 47 U.S.C. 153(24).
- (E) "Broadband Service" means information service as defined in 47 U.S.C. 153(24).

11. Codification. This ordinance shall be codified as in the ordinances of the Town of Foyil.

12. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, or any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision of this ordinance shall not be severable from the operative provisions of this ordinance.

PASSED AND APPROVED by the Board of Trustees of The Town of Foyil, Oklahoma, on the 17 day of January, 2024, with the emergency clause having been voted upon separately.

Town of Foyil, Oklahoma

By: William H. Sylvestre

ATTEST:

Allena C. Miers



REVIEWED as to form and legality this 17th day of JANUARY, 2024.

[Signature]
Town Attorney ORA 10448

AFFIDAVIT OF PUBLICATION
County of Rogers, State of Oklahoma

The Claremore Daily Progress
315 W. Will Rogers Blvd.
P.O. Box 248
Claremore, OK. 74018
918-341-1101

Ordinance No. 2024-1

I, SARAH SCHUDT, of lawful age, being duly sworn, upon oath deposes and says that I am the classified clerk of The Claremore Progress, a daily publication that is a "legal newspaper" as that phrase is defined in 25 O.S. § 106, as amended to date, for the city of Claremore, for the County of Rogers, in the State of Oklahoma. The attachment hereto contains a true and correct copy of what was published in the regular edition of said newspaper, and not in a supplement, in consecutive issues on the following dates:

PUBLICATION DATES:
January 21, 2024

Sarah Schudt, classified clerk.

Signed and sworn to before me
on this 23rd of January, 2024

Kelly J. Church, Notary Public

My Commission expires: 05-02-2026
Commission # 22006130

Publisher's Fee \$451.35



Public Notice

Published In THE CLAREMORE
DAILY PROGRESS, Claremore,
Rogers County, Oklahoma, January
21, 2024.

**TOWN OF FOYIL,
OKLAHOMA**

**ORDINANCE NO. 2024 - 1
AN ORDINANCE GRANTING A
NONEXCLUSIVE PERMIT TO
COXCOM, LLC., ITS SUCCE-
SORS AND ASSIGNS TO CON-
STRUCT, OPERATE AND
MAINTAIN A CABLE SYSTEM
WITHIN THE TOWN OF
FOYIL, OKLAHOMA FOR A
PERIOD NOT TO EXCEED TEN
YEARS; DEFINING THE NA-
TURE OF THE AGREEMENT;
STATING THE OBLIGATIONS
OF COXCOM, LLC.; STATING
THE OBLIGATIONS OF THE
TOWN; PROVIDING FOR
CODIFICATION.**

NOW THEREFORE, be it or-
dained by the Board of Trustees of
the Town of Foyil, Oklahoma:

WHEREAS, This Non- Exclusive
Permit and Agreement ("Agree-
ment") is made and entered into this
17 day of January, 2023, by and be-
tween the Town of Foyil, a munici-
pal corporation, hereinafter referred
to as the "Town," and CoxCom,
LLC., a Delaware limited liability
company hereinafter referred to as
"Cox", "Company," or "Grantee"
with Cox and Town sometimes sepa-
rately referred to hereinafter as a
"party," and sometimes collectively
as "parties."

WHEREAS, the Town's role as
manager of its rights-of-way and
regulator of cable service providers
requires it to ensure a fair and level
playing field for all similarly situ-
ated service providers; and

WHEREAS, The Town, having de-
termined that the financial, legal,
and technical ability of Cox is rea-
sonably sufficient to provide serv-
ices, facilities, and equipment neces-
sary to meet the future cable-re-
lated needs of the community, and
having afforded the public adequate
notice and opportunity for comment,
desires to enter into this Agreement
with Cox for the construction and
operation of a Cable System on the
terms set forth herein.

NOW, THEREFORE, in consid-
eration of the mutual covenants,
promises and agreements hereinafter
set forth, the parties agree as fol-
lows:

the Town by this Agreement shall be subject to transfer by the Town to any other officer, employee, department, or board of the Town.

(C) This Agreement shall not relieve Cox of any existing obligations involved in obtaining permits, pole or conduit space from any department of the Town, utility company, or from others maintaining utilities in streets and public right of way.

(D) This Agreement shall be a privilege to be held in personal trust by Cox for the benefit of the public. Said privilege cannot in any event be sold, transferred, leased, assigned or disposed of (except to an affiliate of Cox), including but not limited to, by forced or voluntary sale, merger, consolidation, receivership or other means without the prior written consent of the Town, and then only under such conditions as the Town may establish. Such consent as required by the Town shall not, however, be unreasonably withheld.

(E) In consideration of the faithful performance and observance of the conditions, reservations and regulations herein specified, a non-exclusive Permit is hereby granted to Cox, its permitted successors and assigns to erect, maintain, and operate transmission and distribution facilities and additions thereto in, under, over, along, across and upon the streets, lanes, avenues, sidewalks, alleys, bridges and other public places within the Town and subsequent additions thereto for the purpose of producing, receiving, amplifying, and transmitting by coaxial cable, fiber optics, microwave or other means, audio and/or audio/visual electrical impulses of television, radio and other intelligences, either analog or digital, including, but not limited to, Cable Television Service pursuant to the Cable Act for sale to the inhabitants and businesses of the Town in accordance with the laws and regulations of the United States of America and State of Oklahoma and the ordinances and regulations of the Town, for a period of ten (10) years from and after the effective date of this non-exclusive Permit and Agreement.

3. Obligations of Cox:

(A) During the term of this Agreement, Cox shall pay to Town a fee equal to 4% of the gross revenues of Cox and its affiliates collected from each subscriber to Cox's Cable Services product, and 4% of the portion of gross revenues from advertising which are defined in subsection 3(A)(3), below; the fee ("Permit Fee") may be identified and passed through on any subscriber bill by Cox, and all such fees collected will be forwarded to Town quarterly and shall be due forty-five (45) days after the end of each quar-

ter referred to above shall be based on the number of subscribers in the Town divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

(4) Bundling discounts shall be apportioned fairly among video and other services. Cox shall not apportion revenue in such a manner as to avoid the Permit Fee.

(5) In the event that any other video or Broadband Service provider, including but not limited to a cable operator, Broadband or open video service provider, enters into any agreement or makes any arrangement with Town during the term of this Agreement whereby it is required or allowed to pay a fee to the Town that is similar to the Permit Fee described herein, Town shall allow Cox to substitute the percentage amount and the definition of "gross revenue" set forth in that agreement or arrangement for the percentage and definition of "gross revenue" set forth in this Agreement immediately upon request of Cox.

(6) In the event that any other municipality enters into any agreement or makes any arrangement with Cox during the term of this Agreement whereby Cox is required or allowed to pay a fee to the Town that is similar to the Permit Fee described herein, Cox shall allow Town to substitute the definition of "gross revenue" set forth in that agreement or arrangement for the definition of "gross revenue" set forth in this Agreement upon the written request of the Board of Trustees, and that Cox shall be afforded at least ninety (90) days to implement the change.

(7) Cox will grant the Town the right to conduct reasonable audits to assure that the Permit Fee has been properly calculated.

(B) Cox and Town agree that the Permit Fee shall be in lieu of all other concessions, charges, excises, permit, license, privilege, permit fees, taxes, or assessments except sales taxes, personal or real property taxes, and ad valorem taxes.

(C) Cox shall comply with the federal Emergency Alert System regulations (47 C.F.R. Part 11).

(D) The parties agree to consult in the event that, after execution of this Agreement, any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either Town or Company, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either party, within thirty (30) days of receipt of the ruling, pro-

vide the provision of Cox's Cable Service to regulation under any provision of the Town's Cable television or Broadband telecommunications Permit ordinance or similar ordinance(s) that are inconsistent with or more burdensome than those contained herein. In addition:

(A) Town agrees not to unreasonably block, restrict, or limit the construction and installation of facilities that will be used in whole or in part to provide Cox's Cable Service;

(B) Town agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with placement of communications or transmission facilities of any kind in a timely and prompt manner;

(C) Cox represents and claims that its Cable Service is a "cable service" under federal law and will comply with all obligations imposed by federal law on cable operators. This Agreement shall not apply to any service Cox provides that is not a "cable service" as such service is defined under federal law.

5. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.

6. Entire Agreement. This Agreement constitutes the entire agreement between Town and Cox with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between Town and Cox regarding the subject matter hereof;

7. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

8. Miscellaneous.

(A) Cox and Town each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

(B) The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

(C) Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

(D) This Agreement shall not be exclusive and the Town expressly reserves the right to enter into similar

1. Term of Non-exclusive Permit and Agreement:

This non-exclusive Permit and Agreement shall take effect upon approval hereof by Cox and by the Board of Trustees of the Town and shall be effective for a term of ten (10) years thereafter. Prior to the end of this term, the parties agree to enter into good faith negotiations regarding a possible renewal and/or modification and/or extension of this Agreement.

2. Nature of Agreement:

(A) No privilege or exemption shall be granted or conferred by this Agreement except those specifically prescribed herein.

(B) Any right or power in, or duty impressed upon, any officer, employee, department, or board of

Agreement.

(C) "Cable System" shall have the same meaning as contained in federal statutes, 47 U.S.C. §522(7) on the effective date of this Agreement.

(D) "Broadband Network" means a network that has the ability to provide information service as defined in 47 U.S.C. 153(24).

(E) "Broadband Service" means information service as defined in 47 U.S.C. 153(24).

11. Codification. This ordinance shall be codified as in the ordinances of the Town of Foyil.

12. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, or any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision of this ordinance shall not be severable from the operative provisions of this ordinance.

PASSED AND APPROVED by the Board of Trustees of The Town of Foyil, Oklahoma, on the 17 day of January, 2023, with the emergency clause having been voted upon separately.

Town of Foyil, Oklahoma
By: s/ William H. Sylvester
ATTEST:
s/ Allena C. Miers
(SEAL)
REVIEWED as to form and legality
this 17th day of January, 2023.
s/ Larry Rahmeier
Town Attorney

ter.

(1) For purposes of this Agreement, gross revenues are limited to the following:

- (i) recurring charges for Cable Services;
- (ii) event-based charges for Cable Services, including but not limited to pay-per-view and video-on-demand charges;
- (iii) rental of set top boxes and other Cable Services equipment;
- (iv) service charges related to the provision of Cable Services, including, but not limited to, activation, installation, and repair; and
- (v) administrative charges related to the provision of Cable Services, including, but not limited to, service order and service termination charges;
- (vi) amounts billed to Cable Services subscribers to recover the Permit Fee authorized by this section.

(2) For purposes of this Agreement, gross revenues do not include:

- (i) Uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected, less expenses of collection, shall be included in gross revenues in the period collected;
- (ii) late payment fees;
- (iii) revenues from contracts for in-home maintenance service unless they relate solely to maintenance on equipment used only for the provisioning of Cable Services and not for the provisioning of any other service provided by Cox or its affiliates;
- (iv) amounts billed to Cable Services subscribers to recover taxes, fees or surcharges imposed upon Cable Services subscribers in connection with the provision of Cable Services, other than the Permit Fee authorized by this section;
- (v) revenue from the sale of capital assets or surplus equipment; or
- (vi) charges, other than those described in subsection (1), that are aggregated or bundled with amounts billed to Cable Services subscribers.

(3) "Gross Revenues" which are subject to the Permit Fee paid by Cox additionally include a pro rata portion of all revenue collected by Cox pursuant to compensation arrangements for advertising (less any commissions Cox receives from any third parties for advertising) and home-shopping sales derived from the operation of Cox's Cable System within the Town. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts the Company may make to advertisers) shall not be deducted from advertising revenue included in gross revenue. The allocation of advertising and home-shopping reve-

vides written notice to the other party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the parties mutually may agree. Where the effect of a finding is a modification, the parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either party to terminate the Agreement on the provision of thirty (30) days' written notice.

In addition to the termination rights set forth above, Cox shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days' notice to the Town, if (i) state or federal law changes in a manner that would allow Cox to opt into Permit requirements that are, in Cox's sole judgment, more beneficial than those contained herein; or (ii) another provider of video services is permitted, through a Town authorization or otherwise, to use the public rights-of-way to provide video services on terms that are, in Cox's sole judgment, more beneficial than those contained herein.

(E) Cox shall determine, pursuant to generally applicable, non-discriminatory right of access and permitting rules and regulations of Town, where in the Town its facilities shall be constructed, operated, maintained, repaired and upgraded to provide, and where in the Town to provide its Cable Services.

(F) Cox shall maintain in full force and effect, at no cost and expense to the Town, during the term of this Agreement, commercial general liability insurance in the amount of \$1,000,000 combined single limit for bodily injury, and property damage. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Town. Upon written request, Cox shall provide a certificate of insurance showing evidence of coverage required by this Section.

(G) The Grantee agrees to indemnify, save and hold harmless, and defend the Town, its officers agents and employees, from and against any and all liability for damage and for any liability or claim resulting from property damage or bodily injury (including accidental death) which arise out of the Grantee's construction, operation maintenance of its Cable System, or damages arising out of any provisions or requirement of this ordinance or its enforcement, including but not limited to, reasonable attorney's fees and costs.

4. Obligations of Town. Town will not attempt to nor subject

agreements with any other company offering the same or similar video services at any time.

(E) The geographic area covered by this Agreement shall be the incorporated limits of the Town of Foyil, Oklahoma, as such area now exists or may be modified in the future by annexation or deannexation.

(F) The parties agree that either Rogers County District Court (12th Judicial District) or the United States District Court for the Northern District of Oklahoma shall be the sole and exclusive forum for any judicable disputes concerning this Agreement.

(G) The right to use and occupy the Franchising Authority's Public Ways for the purpose herein provided shall not be exclusive; provided, however, that no Person shall enter into the Franchising Authority's Public Ways for the purpose of constructing or operating a Cable System or a Broadband Network, or for the purpose of providing Cable Service, video programming service or Broadband Service to any part of the Service Area, without first obtaining a Franchise, permit, license, authorization or other agreement from the Franchising Authority. In the event the Franchising Authority authorizes or permits any Person other than the Grantee to enter into the Franchising Authority's Public Ways for the purpose of constructing or operating a Cable System, or a Broadband Network for the purpose of providing Cable Service, video programming service or Broadband Service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, and the obligations imposed on the grantee thereunder shall be no less burdensome nor more favorable than the obligations imposed upon the Grantee hereunder, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

9. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective principals, managers, governing body members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

10. Definitions. The following words, terms and phrases, when used in this Agreement, shall have the meanings ascribed to them in this section:

- (A) "Cable Act" shall have the same meaning as contained in federal statutes, 47 U.S.C. §522 of the effective date of this Agreement.
- (B) "Cable Service" shall have the same meaning as contained in federal statutes, 47 U.S.C. §522(6) on the effective date of this