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ORDINANCE NO. 10-249

AN ORDINANCE GRANTING THE TRANSFER OF A FRANCHISE TO CENTRAL TELCOM SERVICES, LLC., TO ASSUME THE RIGHT TO OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF DELTA, UTAH PREVIOUSLY OWNED BY SATVIEW BROADBAND, LTD, AND SETTING FORTH TERMS AND CONDITIONS FOR GRANTING THE FRANCHISE.

The City Council of the City of Delta, Utah, referred to herein as the "City Council," recites the following as the basis for adopting the ordinance set out hereunder.

RECITALS

A. By Franchise Ordinance No. 09-239 dated February 5, 2009, the City of Delta, Utah, granted a Franchise to construct, operate, and maintain a cable television system to Satview Broadband Ltd. ("Satview").

B. On or about December 1, 2010, Central Telcom Services, LLC ("Central") and Satview entered into an Assignment and Assumption Agreement whereby Satview agreed to transfer all or substantially all of the assets of the Satview system, including the Delta City Franchise, to Central pursuant to a Transfer Agreement dated October, 2010 and a Bill of Sale and Assignment dated December 1, 2010.

C. By letter dated December 1, 2010, Central requested that the City commence proceedings pursuant to 47 U.S.C. § 546 for the transfer of the Franchise previously owned by Satview Broadband, Ltd. to Central. By said letter, Central also requested that the City accept the assignment of the Facilities Site Lease from Satview to Central as of December 1, 2010, and Central further agreed to pay, discharge and perform all of the obligations of the Facilities Site Lease.

D. The City Council has determined that Central has substantially complied with the material terms of the current Franchise under applicable law.

E. The City Council has determined that the financial, legal, and technical ability of Central is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community.

F. The City Council now desires to enter into a Franchise with Central for the operation of a cable system on the terms set forth herein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Delta, Utah:

Section 1. Definition of Terms. For the purpose of this Franchise, 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:

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- A. "Affiliate" (and its variants) shall mean any entity controlling, controlled by or under common control with the entity in question.
- B. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local television signals.
- C. "Cable Act" means Title VI of the Communications Act of 1934, as amended.
- D. "Cable Service" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- E. "Cable System" shall mean Central's facility, consisting of, without limitation, 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 Subscribers within the Service Area. Cable System shall also include Franchise Property when the context warrants or so requires.
- F. "City" shall mean the City of Delta, a political subdivision and municipal corporation of the State of Utah.
- G. "City Council" shall mean the governing body of the City of Delta.
- H. "FCC" means Federal Communications Commission or successor governmental entity thereto.
- I. "Franchise" shall mean the nonexclusive right, license and authority to construct, maintain, and operate a cable television system using the Public Way(s), together with the right to operate a cable television system business within the City of Delta.
- J. "Franchise Property" shall mean any television cable, wires, structures, equipment, conduit, pedestals, or any other equipment or materials used in the Cable System installed or erected within a Public Way.
- K. "Central" shall mean Central Telcom Services, LLC, or the lawful successor, transferee, or assignee thereof.
- L. "Gross Revenues" shall mean all the amounts earned or accrued by Central or an entity in any way affiliated with Central, in whatever form and from all sources which are in connection with or attributable to the operation of the Cable System within the Service Area or Central's provision of Cable Services within the Service Area. Such phrase does not include: (1) any tax, fee or assessment of general applicability collected by Central from Subscribers for pass-through to a government agency; (2) unrecovered bad debt.

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- M. "Person" shall include, but not be limited to, an individual, partnership, association, joint stock company, trust, corporation, limited liability company or governmental entity.
- N. "Public Way(s)" shall mean the surface of, and the space above and below any area not vacated by the City which is dedicated for or designated as a public street, highway, freeway, bridge, 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 any other public rights-of-way dedicated to and set aside for compatible uses which shall entitle the City and Central 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 City within the Service Area for the purpose of public travel, or for utility or public service use dedicated to and set aside for compatible uses, which shall entitle the City and Central to the use thereof for the purposes of installing, operating, repairing and maintaining Central's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other public property as may be ordinarily necessary and pertinent to the Cable System.
- O. "Service Area" shall mean the present boundaries of the City, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Section 5.K.
- P. "Standard Installation" is defined as 125 feet from the nearest cable tap to the Subscriber's terminal.
- Q. "Subscriber" shall mean a person who lawfully receives Cable Service of a Cable System within the Service Area.

Section 2. Grant of Franchise.

A. Grant.

(1) The City Council hereby grants to Central a nonexclusive Franchise which authorizes Central to construct and operate a Cable System 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, or maintain, in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System. The City expressly reserves the right to grant similar nonexclusive franchises to such other person(s), firms and entities to conduct cable television systems and to use the Public Ways within the same or other areas of the City at any time for any period of time. Such additional franchises as may be granted by the City shall in no way affect the obligations of Central hereunder, except as expressly provided hereafter by the City Council.

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(2) This franchise does not establish any priority for the use of the Public Ways by Central or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the Public Ways, the first priority shall be to the public generally, the second priority to the City in the performance of its various functions, and thereafter, as between franchisees and other permit holders, as determined by the City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Utah.

B. Term. The Franchise and associated rights herein granted shall immediately commence upon the final passage and subsequent publication of this ordinance or a summary thereof, and shall continue in full force and effect for ten (10) years from that date. Furthermore, the Franchise hereby granted may be extended for an additional five (5) year period by the City Council, provided that full compliance has been made by Central with the terms and conditions of this ordinance, including such amendments as may be added from time to time and further provided, that there is no dispute between the City and Central regarding the terms and conditions of this ordinance or the enforcement thereof.

### Section 3. Limitation Upon Grant.

A. Exceptions. No privilege or exception is granted or conferred by the issuance of a franchise or license pursuant to this Ordinance except those specifically prescribed herein.

#### B. Restrictions of Transfer.

(1) The Franchise granted pursuant to this ordinance is a privilege personal to Central. It shall not, in any event, be sold, transferred, leased, assigned, mortgaged, hypothecated, pledged, or disposed of, including, but not limited to, by involuntary or voluntary sale or transfer, merger, consolidation, receivership or other means without the express prior consent of the City Council as adopted by ordinance or resolution, and then only under such conditions as may be prescribed in the consenting ordinance or resolution; provided, however, that such consent shall not be unreasonably withheld.

(2) Nothing in this Franchise shall be deemed to prohibit the mortgage, pledge, or other hypothecation of the "Cable System" as that term is defined in Section 1.D. above or the "Franchise Property" as that term is defined in Section 1.I. above, or any part thereof for financing purposes. However, any such mortgage, pledge, or hypothecation shall be subject to the rights of the City under this Franchise or other applicable law.

C. Binding Effect. To the extent that assignment is made as permitted by this ordinance, the rights and responsibilities granted to Central shall be binding upon and inure to the benefit of the assigns and successors in interest of Central.

Section 4. Permits and Licenses. Central shall obtain or maintain all necessary permits and authorizations required to conduct its business and to construct, install and maintain the Cable System, including, without limitation, any utility joint use attachment agreements, microwave carrier licenses and such other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the Cable System, or associated

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facilities.

Section 5. Standards of Service.

A. Conditions of Occupancy. The Cable System installed by Central pursuant to the terms hereof shall be located so as to cause minimum 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 such Public Ways.

B. Third Party Agreements. Central is granted the right to use such poles or underground lines as may be owned by the City, if any, to the extent permitted by the City's easement rights, or by Utah Power, Citizens Communications, or their successors, or such other public utilities as may operate in the City of Delta, where separate rental agreements can be obtained for the use of the same.

C. Construction Standards. Prior to any excavation or disturbance of any Public Way, Central shall obtain from the City Public Works Director or other designated official, a statement of the current conditions, composition and construction of such Public Way or public improvements, which statement shall be the standard of repair or reconstruction to which Central shall conform. Whenever practicable, the statement shall include photographs of the condition of such Public Way prior to damage or excavation.

D. Restoration of Public Ways.

(1) If during the course of Central's construction, reconstruction, operation, or maintenance of the Cable System there occurs a disturbance of any private property or portion of the Public Way(s) by Central, at its expense Central shall replace and restore such private property or Public Way(s) to a condition reasonably comparable to the condition of such property existing immediately prior to such disturbance in a manner approved by the Delta City Public Works Director consistent with the applicable ordinances of Delta City. Such restoration shall start promptly but no more than fifteen (15) days from Central becoming aware of the problem in question.

(2) Central shall obtain and pay for all permits required by ordinance or resolution and shall comply with all terms and conditions of ordinances or regulations relating to excavations or obstructions made by Central in any Public Way. Central's restoration shall be guaranteed for a period of one (1) year from the date such replacement or restoration is accepted by the City.

E. Failure to Replace or Restore Property. In the event Central fails to restore, replace or repair any improvements, structures or property as required by this ordinance within the time specified, or if no time is specified, within a reasonable time, the City shall send written notice to Central at Central's last known address requiring that the work be completed within ten (10) days from the date of the notice, unless a longer period of time is warranted under the circumstances. If Central fails to complete such work within the time required, the City may complete or cause to be completed such repair as may be deemed necessary to satisfy the City standards, or to satisfy a

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statement of the standard of repair or reconstruction, if any, according to the provisions of this ordinance. The City shall then submit to Central a statement of the cost of conducting such repairs, and Central shall, within thirty (30) days after receipt of the statement, pay the City the entire amount thereof, together with interest thereon at the rate of eighteen percent (18%) per annum on the cost of such improvements.

F. Relocation at Request of the City/Emergencies. Upon its receipt of reasonable advance written notice, to be not less than five (5) business days, Central, at its own expense, shall protect, support, temporarily disconnect, relocate in or remove from the Public Way, any property of Central when lawfully required by City 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 or improvements which are not used to compete with Central's services. Provided, the City may remove or damage the Cable System in the case of fire, disaster, or other emergencies threatening life or property. In such event, neither the City nor any agent, contractor, or employee thereof shall be liable to Central or its customers or third parties for any damages caused them or the Cable System, such as for, or in connection with, protecting, breaking through, moving, removal, altering, tearing down, or relocating any part of the Cable System.

G. Relocation at Request of Third Party. Central shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its Cable to permit the moving of such building or structure, provided: (1) the expense of such temporary raising or lowering of the Cable is paid by said person, including, if required by Central, making such payment in advance; and (2) Central is given, when possible, not less than ten (10) business days advance written notice to arrange for such temporary Cable changes.

H. Trimming of Trees and Shrubbery. Central shall have the authority to trim trees overhanging any streets in the Service Area so as to prevent branches from coming in contact with Central's wires and cables; provided, however, that the City may require, at its option, that such trimming may be done under its reasonable supervision or direction at Central's expense. Trees shall not be trimmed beyond the extent necessary for protection of the wires or cables of Central and shall, to the extent practicable, be trimmed or reshaped to provide an attractive appearance. Any branches, trimmings or other materials cut from trees shall be promptly disposed of by Central in an acceptable and lawful manner.

I. Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with generally applicable federal, state, and local regulations and the latest edition of the National Electric Safety Code. Any wires or other apparatus above a street or other Public Way may not be placed lower than fourteen (14) feet from the surface of the ground. The Cable System shall not endanger or interfere with the safety of persons or property in the Service Area.

J. Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities are underground, Central likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this section shall require Central to construct, operate, and maintain underground any ground-

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mounted appurtenances.

K. Required Extensions of Cable System. When Central receives a request for Cable Service from a Subscriber in a contiguous unserved area where there are at least 15 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of Central's trunk or distribution cable which is to be extended, Central shall then extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, Central shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service or into any future annexed area which is not contiguous to the present Service Area of Central.

L. Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily; however, if an area does not meet the density requirements of Section K. above, Central shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, Central shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing stand feet from Central's trunk or distribution cable, and whose denominator equals 15. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. Central may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence. Central shall provide such Subscribers with notice of their obligations under this provision, prior to extending the Cable System.

M. Cable Service to Public Buildings. Central, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the City, fire station(s), police station(s), public library(s), K-12 public school(s), and colleges that may be located within the City that are passed by its cable system. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The City shall take reasonable precautions to prevent any use of Central's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. Central shall provide facilities and services to such public buildings owned or controlled by the City at no cost to the City.

N. Emergency Use. The Cable System shall include an emergency alert system ("EAS") as prescribed by the FCC and the Cable Television Consumer Protection and Competition Act of 1992, as amended. Central shall transmit on such EAS Federal, State and local EAS messages. The City and Central will agree on the procedures for the City to follow to expeditiously use such EAS in the event of an emergency. Central shall at all times comply with the EAS standards pursuant to Title 47, Section 11, Subparts A-E of the Code of Federal Regulations, as may be amended or modified from time to time.

O. Operation Standards. Central shall operate and maintain its system in good condition throughout the entire period of the Franchise granted hereunder. Central shall render efficient

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service to Subscribers and make repairs promptly, with interruption of service only for good cause and for the shortest practical time period. Interruptions, when necessary, shall occur, to the extent possible, during periods of minimum use of the system. Central shall, at all times during the term of this Franchise, be subject to all lawful exercise of the police power by the City and to such reasonable regulations as the City shall hereafter adopt by ordinance or resolution and shall comply with all applicable rules and regulations now in effect or hereafter adopted by ordinance or resolution and shall comply with all applicable rules and regulations now in effect or hereafter adopted by the FCC or other agency of the United States Government or the State of Utah. Failure to comply with such provision(s) shall be grounds for revocation of the Franchise hereby granted. The provisions of this ordinance shall be amended by the City Council, when necessary, to be consistent with any rules or regulations issued by the State of Utah, the FCC or any other agency of the United States Government.

Section 6. Service Office.

A. Service Office and Service Number. Central shall provide Subscribers with a toll free service number and shall also maintain a service office in Cedar City, Utah or in the alternative, at a location in closer proximity to Delta, Utah. Subscribers may telephone during regular business hours without incurring any message or toll charges so that maintenance service to any part of the System shall be promptly available. Any complaints involving service shall be investigated and any problems resolved in a prompt and expeditious manner; provided, however, that Central shall not be responsible to guarantee in any way the functioning of the television receiver sets owned by the Subscribers.

B. Employees. Central shall have sufficient employees to provide safe, adequate and prompt service to its system, equipment and facilities.

C. Customer Service Standards. Central will comply with the more stringent of the customer service and consumer protection provisions of this Franchise; those from time to time adopted by Central; those from time to time adopted by the FCC or the service and consumer protection standards from time to time adopted by the National Cable Television Association.

D. Complaints. In the event a Subscriber should have an unresolved complaint regarding the quality of cable television service, equipment malfunctions or similar matters, the Subscriber shall be entitled to file a complaint with City, and the Subscriber shall be entitled to meet jointly with a representative of the City and a representative of Central within thirty (30) days of the filing of such complaint to fully discuss and resolve the matter set forth in the complaint. Central shall be required to notify each Subscriber, at the time of initial subscription for service to Central, of the procedures for reporting and resolving such complaints.

Section 7. Regulation by the City.

A. Franchise Fee.

(1) In accordance with Ordinance No. 81-25, Central shall pay to the City a Franchise fee equal to four percent (4.0%) of annual Gross Revenues (as defined in Section 1



of this Franchise.) In accordance with the Cable Act, the 12-month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. The Franchise fee payment shall continue to be due quarterly and paid within forty-five (45) days after the end of each quarter. Each Franchise Fee payment shall be accompanied by a written report to the City, verified by an officer of Central containing an accurate statement in summarized form of Central's gross revenues and the computation of the payment amount.

(2) The period of limitation for recovery of any Franchise fee payable hereunder shall be six (6) years from the date on which payment by Central is due.

B. Rates and Charges. The City may regulate rates for the provision of Basis Cable and equipment as provided by applicable law. Furthermore, the City reserves the right to regulate Central, the Cable System, and the provision of Cable Services as expressly permitted by Federal, State or local law.

C. Renewal of Franchise.

(1) The City and Central agree that any proceedings undertaken by the City that relate to the renewal of Central's Franchise should comply with the provisions of Section 626 of the Cable Act unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

(2) Notwithstanding anything to the contrary set forth in this section, Central and the City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and Central may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof.

Section 8. Books and Records. Central agrees that the City, upon thirty (30) days written notice to Central, may review such of its books and records at Central's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section of the Franchise that is under review, so that Central may organize the necessary books and records for easy access by the City. Alternatively, if the books and records are not easily accessible at the local office of Central, Central may, at its sole option, choose to pay the reasonable travel costs of the City's representative to view the books and records at the appropriate location or shall otherwise make available such books and records for the City's inspection. Central shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years. Notwithstanding anything to the contrary set forth herein, Central shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by Central as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. Central shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

Section 9. System Layout and Protection of Lines

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A. Central shall have and maintain, at all times, route maps current to date showing all trunk and distribution lines. Central shall make such maps available upon request, for review by the appropriate City personnel and to appropriate personnel of utility companies not in competition with Central.

B. In the event that Central's cable and/or other equipment is disturbed, damaged or severed by any person other than Central or the City, the costs of repair shall be paid by the person responsible for such damage provided Central has properly responded to Blue Stakes request. Central may charge the responsible party for the time and materials expended for repair of said damage, together with any loss of revenue resulting from damage to the system.

Section 10. Indemnification and Insurance.

A. Disclaimer of Liability. The City shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of the Cable System, including Franchise Property or Central's provision of Cable Service.

B. Indemnification. In order to protect the public, Central shall at its sole cost and expense indemnify and hold harmless City and all associated, Affiliated and subsidiary entities of City, now existing or hereafter created, and their respective officers, members boards, commissions, attorneys, agents and employees (hereinafter referred to as "Indemnities"), from and against:

(1) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses, (including, without limitation, reasonable fees and expenses of attorneys) whether legal or equitable, which may be imposed upon, incurred by or be asserted against the Indemnities by reason of any act or omission of Central, its personnel, employees, agents, contractors, subcontractors or Affiliates which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of its Cable System, Franchise Property, or other Central property, (including those arising from any matter contained in or resulting from the transmission of signals of the Cable System and including any claim or lien arising out of work, labor, materials or supplies provided or supplied to Central, its contractors or subcontractors) the provision of Cable Services, other services or Central's failure to comply with any Federal or State statute or regulation or any local ordinance or regulation.

(2) Any claims asserted or liability imposed upon the Indemnities for personal injury or property damage to any person arising out of the installation, operation, or maintenance or condition of the Cable System, Franchise Property or other Central property or Central's failure to comply with any Federal or State statute or regulation or local ordinance or regulation.

C. Assumption of Risk. Central undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any City owned or controlled property, including Public Ways.

D. Defense of Indemnities. In the event any action or proceeding shall be brought against the Indemnities by reason of any matter for which the Indemnities are or may be indemnified hereunder, Central shall upon notice from any of the Indemnities, at Central's sole cost and expense, resist and defend the same with legal counsel reasonably acceptable to City; provided, however, that Central shall not admit liability in any matter on behalf of the Indemnities without the written consent of City.

E. Notice, Cooperation, Expenses. City shall give Central written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section, within ninety (90) days of receipt of such claim, action or proceeding pursuant to this section. Nothing herein shall be deemed to prevent City from cooperating with Central and participating in the defense of any litigation by City's own counsel.

F. Insurance Requirements. At all times during the term of this Franchise, plus any time after the term is over during which removal of facilities or restoration is occurring, Central shall obtain, maintain, and pay all premiums for all insurance policies described in this section, so as to protect the public. Within thirty (30) days from the Effective Date of this Franchise, Central shall file with the City certificates of insurance evidencing coverage. Failure to obtain and maintain any insurance policy required by this section shall be deemed a material breach of this Franchise and may be grounds for termination of this Franchise. The following coverages shall be applicable hereto:

(1) Commercial General Liability. Commercial general liability insurance, including completed operations liability, independent contractors' liability, contractual liability coverage, and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as "XCU" coverage, in an amount not less than Three Million Dollars (\$3,000,000).

(2) Comprehensive Automobile Liability. Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).

(3) Worker's Compensation. Worker's compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.

(4) Umbrella Policies. The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the term of this Franchise, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.

(5) Additional Insurance/Claims Made Basis. The City shall be named as an

additional insured on all policies (other than workers compensation and employer's liability).

All insurance policies shall provide that they shall not be cancelled, modified or not renewed unless the insurance carrier provides at least thirty (30) days prior written notice to the City. Central shall annually provide City with a certificate or certificates of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims-made basis.

(6) No Limitation of Liability. No recovery by City of any sum by reason of any insurance policy required by this Franchise shall be any limitation upon the liability of Central to City or to other persons.

(7) Qualified Carriers. All insurance shall be effected under valid and enforceable policies insured by insurance carriers licensed to do business in the State of Utah or by surplus line carriers on the State Insurance Commissioner's approved list of companies qualified to do business in the State of Utah. All insurance carriers and surplus line carriers shall be rated A+ or better by A.M. Best Company.

(8) Contracts. Central's contractors and subcontractors working in the Public Ways shall carry in full force and effect commercial general liability, automobile liability and workers compensation and employer's liability insurance which complies with all terms of this section. In the alternative, Central, at its expense, may provide such coverages for any or all of its contractors or subcontractors such as by adding them to Central's policies.

(9) Insurance Primary. Central's insurance coverage shall be primary insurance with respect to City, its officers, members, attorneys, agents, employees, elected and appointed officials, departments, and boards (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Central's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

#### Section 11. Bond Requirement.

(1) Central shall furnish to and file with the City Recorder a bond, with corporate surety, or an irrevocable letter of credit from a duly chartered state or national bank in the amount of at least \$10,000 as security for the faithful performance by Central of the provisions of this Franchise, to assure the maintenance and operation of the Cable System as specified in this ordinance and to further assure the replacement or repair of any public improvements damaged during maintenance and operation of the Cable System. Such bond or letter of credit shall further assure that any replacement or repair of public improvements damaged during maintenance of the Cable System shall be free from defects in materials or workmanship for a period of twelve (12) months from the date that such repairs or replacement are completed.

(2) In the event Central extends the Cable System requiring further installation and construction of said Cable System, Central shall further furnish to and file with the Delta City Recorder a bond, with corporate surety, or an irrevocable letter of credit from a duly chartered state or national bank in the amount of at least \$150,000, or the cost of construction, whichever is greater, to insure the installation and construction of said Cable System for such extension as specified in this ordinance and to further assure the replacement or repair of any public improvements damaged during installation of the Cable System. Such bond or letter of credit shall further assure that the replacement or repair of Public Ways or improvements damaged during installation of the Cable System shall be free from defects in materials or workmanship for a period of twelve (12) months from the date that such repairs or replacement are completed.

(3) The rights provided City by this section and its bond and guarantee are in addition to all other rights of City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such bond or guarantee shall affect any other rights City may have, except that City shall not be entitled to multiple remedies for the same violation.

Section 12. Enforcement and Termination of Franchise.

A. Violation. In the event that the City believes that Central has not complied with the terms of the Franchise, the City shall informally discuss the matter with Central. If these discussions do not lead to resolution of the problem, the City shall notify Central in writing of the exact nature of the alleged noncompliance.

B. Notice and Demand. The City shall make written demand that Central do or comply with any reasonable requirement, limitation, term, condition, rule or regulation. If the wilful failure, neglect or refusal of Central continues for a period of thirty (30) days following such written demand, or such shorter time period as may be provided for in this ordinance, a request for termination of the Franchise may then be placed upon the City Council meeting agenda. The City Council shall consider the request and hear any persons interested therein and shall determine whether or not any wilful failure, refusal or neglect by Central was with just cause.

C. Determination. If such failure, refusal or neglect by Central was due to just cause, the City Council shall direct Central to comply within such time and manner and upon such terms as are reasonable under the circumstances. If the City Council shall determine that such wilful failure, refusal or neglect by Central was without just cause, then City Council may pass an ordinance declaring that the Franchise granted to such Central shall be forfeited and terminated or revoked, unless there may be compliance by Central within such reasonable time period as the City Council may, at its sole option, establish.

D. Termination. In the event of any wilful failure, refusal or neglect by Central to do or comply with any requirement or limitation contained in this ordinance, City shall have the right to forfeit and terminate the Franchise and upon the forfeiture and termination thereof, the Franchise shall be automatically deemed null and void and have no force or effect. Central shall remove the Cable System from the City as and when requested by City, and City shall retain any portion of the Franchise fee and other fees or payments paid to it, or which are due and payable to it, to the date of

forfeiture and termination. City's right to forfeit and terminate the grant of the Franchise pursuant to this section is not a limitation on City's right of revocation. Furthermore, City shall have all remedies available to it at law or in equity.

E. Effect. The forfeiture and termination or revocation of this Franchise shall in no way affect any of the rights of the City under this ordinance or under any other provision of law.

F. Appeal. Central may appeal the City Council's decision to an appropriate court within thirty (30) days of the City's determination to terminate or revoke this Franchise.

G. Alternative Remedies. The City may, at its sole discretion, take any action in law or equity that it deems appropriate to enforce the City's rights under the Franchise in lieu of forfeiture and termination or revocation of this Franchise. The City and Central understand and intend that the remedies afforded the City shall be cumulative to the maximum extent provided by law.

H. Force Majeure. Central shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances beyond the ability of Central to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Central's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary. Furthermore, the parties hereby agree that it is not the City's intention to subject Central to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to Central which outweigh the benefit to be derived by the City and/or Subscribers.

### Section 13. Removal and Abandonment.

A. Removal of Franchise Property. In the event that the use of any Franchise Property is discontinued for any reason for a continuous period of twelve (12) months, and the Franchise Property has been installed in a Public Way without complying with the requirements of this ordinance, or the Franchise has been terminated, revoked or has expired, Central, at its expense, shall, upon demand of the City, promptly remove from any Public Way(s) all Franchise Property other than that which the City may permit, in writing, to be abandoned in place. In the event of any such removal, Central shall promptly restore, in the manner required by this ordinance, any property, public or private, and improvements as may be damaged or displaced by removal of the Franchise Property, to the condition in which it existed prior to the installation, erection or construction of its Cable System, including any improvements made to such property subsequent to the construction of its Cable System.

B. Permanent Abandonment of Franchise Property. Any Franchise Property Delta City agrees to be abandoned in place shall be abandoned in the manner prescribed by the City. Upon permanent abandonment of any Franchise Property in place, Central shall deliver to the City an instrument transferring to the City the absolute ownership of such property abandoned.

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Section 14. Trespassing, Vandalism and Illegal Use of Franchise.

A. Unauthorized Connection. It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise with any part of a licensed cable system within this City for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound or other transmission, without consent from and any necessary payment to Central.

B. Interfering with Central's Property. It shall be unlawful for any person, without the consent of the owner thereof, to wilfully tamper with, remove, or injure the Cable System or Franchise Property used for transmission of television signals, radio signals, pictures, sound or other transmission.

C. Penalties. Any person violating or failing to comply with any of the provisions of this section or of the foregoing Section 14.B shall be guilty of a class "B" misdemeanor for each day of violation and shall be subject to a fine or imprisonment as established by Utah law for violation of a class "B" misdemeanor or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit the same to continue.

Section 15. New Technological Development. It shall be the policy of the City to liberally amend this ordinance, upon application of Central, when necessary so as to enable Central to take advantage of technological developments in the field of distribution of communications which will allow Central to more effectively or economically serve its Subscribers.

Section 16. Miscellaneous Provisions.

A. Actions of Parties. In any action by the City or Central that is 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.

B. Costs. Central shall assume the cost of publication of this Franchise Ordinance or a summary thereof. A bill for publication costs shall be presented to Central by the City Recorder.

C. Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the City or Central shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: (a) upon receipt when hand delivered with receipt/acknowledgment, (b) upon receipt when sent certified mail, return receipt requested, (c) within five (5) business days after having been mailed priority mail, or (d) when sent by facsimile, receipt acknowledged.

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

City of Delta  
ATTN: Delta City Mayor  
76 North 200 West

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Delta, UT 84624

The notices or responses to Central shall be addressed as follows:

Central Telcom Services, LLC  
ATTN: Eddie Cox, Manager

\_\_\_\_\_  
\_\_\_\_\_

The City and Central may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this section.

Section 17. Entire Franchise. This Franchise including any exhibits attached hereto, contains the entire Franchise between the parties, except that any obligation of Central to indemnify City under a prior franchise or agreement shall be continuing as to those matters (if any) occurring during the term of said prior franchise or agreement on which Central was obligated to indemnify City.

Section 18. Conferences. The parties hereby agree to meet at reasonable times on reasonable notice to discuss any aspect of this Franchise, the provisions of Cable Services or the Cable System during the term of this Franchise.

Section 19. Governing Law. This Franchise shall be construed pursuant to the laws of the State of Utah and the United States of America.

Section 20. Waiver of Compliance. No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Franchise, or to exercise any right, term or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Franchise, but each and every covenant, agreement, term or condition of this Franchise shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 21. Independent Contractor Relationship. The relationship of Central to City is and shall continue to be an independent contractual relationship, and no liability or benefits, such as worker's compensation, pension rights or liabilities, insurance rights or liabilities or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to either party or either party's agents or employees as a result of their performance of this Franchise, unless expressly stated in this Franchise.

Section 22. Descriptive Headings. The captions to sections or subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

Section 23. Use of Number. In this agreement, whenever the context requires, the use of the singular word shall include the plural and the use of the plural word shall include the singular.

Section 24. Severability. In the event that any provision of this ordinance less than the entire



ordinance is held invalid by a Court of competent jurisdiction, this ordinance shall be deemed severable and such finding of invalidity shall not effect the remaining portions of this ordinance.

Section 25. Subsequent Action. If the City determines the material provision of this Franchise is affected by any subsequent action of the State or Federal Government, City shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this Franchise. Central shall be given notice of and an opportunity to comment on any such proposed modification.

Section 26. Nonwaiver, Preemption. Nothing in this Franchise shall be deemed an agreement by City as to any claimed preemptive effect, nor shall it be deemed a waiver of City's right to challenge any claimed preemptive effect, of any subsequent Federal law, regulation or court ruling alleged to conflict with, alter, limit, or replace terms, requirements or conditions of this Franchise in effect as of the Effective Date.

Section 27. Franchise Accepted. Central further acknowledges by acceptance of this Franchise that it has carefully read the terms and conditions of this Franchise and any applicable cable ordinance of City and accepts the obligations imposed thereby regardless of whether such obligations are contained in the Franchise or such cable ordinance, or both. As of the Effective Date, and without waiving any rights Central may have to challenge the lawfulness or enforceability of this Franchise or municipal ordinances in the future, Central does not contend that any provision of this Franchise is unlawful or unenforceable, nor is it aware of any municipal ordinance which it contends is unlawful or unenforceable.

Section 28. Reserved Rights. The City reserves all rights and powers under its police powers and powers conferred by Federal, State or local law. In particular, City reserves the right to alter, amend, or repeal its municipal code and cable ordinance as it determines shall be conducive to the health, safety and welfare of the public, or otherwise in the public interest. City agrees that by accepting this Franchise, Central has not waived its right to object to the application to it of actions by City pursuant to its reserved rights or police powers.

Section 29. Effective Date. This ordinance shall become effective upon publication.


Section 30. Publication. A summary of this ordinance is ordered published in the Millard County Chronicle-Progress, a newspaper having general circulation within the City of Delta, Utah.

Section 31. Repeal of Conflicting Ordinances. To the extent that any ordinances, resolutions or policies of the City of Delta conflict with the provisions of this ordinance, they are hereby amended to be in accordance with the provisions hereof.

PASSED AND ADOPTED this 2<sup>nd</sup> day of December, 2010.

  
GAYLE BUNKER, Mayor

Attest:

  
GREGORY JAY SCHAPER, MMC  
Delta City Recorder

ACCEPTED this \_\_\_\_\_ day of December, 2010, subject to applicable federal, state and local law.


CENTRAL TELCOM SERVICES, LLC.

BY: \_\_\_\_\_  
Title: \_\_\_\_\_

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Attest:

  
GREGORY JAY SCHAEFER, MMC  
Delta City Recorder

ACCEPTED this \_\_\_\_\_ day of December, 2010, subject to applicable federal, state and local law.

CENTRAL TELCOM SERVICES, LLC.

BY:   
Title: PRESIDENT

12/8/10.90.5/dc.central telcom tv ord