



**CABLE TV • INTERNET • TELEPHONE**

February 1, 2018

Via: secretary@dps.ny.gov

Hon. Kathleen H. Burgess  
Secretary to the Commission  
New York State Public Service Commission  
Agency Building 3  
3 Empire State Plaza  
Albany, NY 12223-1350

Re: Town of Lexington Cable Franchise Case

Dear Sir / Madam:

Attached for your approval and pursuant to Section 591 of the rules and regulations of the New York State Public Service Commission, is an original of an application for approval by the Commission of a Franchise Agreement between the Town of Lexington and MTC Cable. This application includes the following documents:

- 1). The Municipality was informed of MTC Cable's intent to apply for a Cable Television Franchise by letter dated September 20, 2016 (Exhibit 1).
- 2). MTC Cable Monthly Service Rates and Channel Line Up (Exhibit 2).
- 3). The Municipality exercised due diligence in reviewing and negotiating this Franchise Agreement. A Public Hearing was held on November 8, 2017 with Public Notice is (Exhibit 3).
- 4). A signed and sealed executed Franchise Agreement (Exhibit 4).
- 5). Municipal Resolutions approving the signing of the Franchise Agreement. (Exhibit 5).
- 6). A complete copy of this application has been served on the Municipality. A Certificate of Service is included (Exhibit 6).
- 7). FCC Technical Standards Test for MTC Cable is attached.
- 8). The required Legal Notice has been ordered published stating that the Application is on file to inspect. Proof of Publication will be forwarded when received.

Should you require additional information, please feel free to contact me at (845) 586-2288.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Glen Faulkner'.

Glen Faulkner  
General Manager

*The Margaretville Telephone Company "Connecting Our Communities Since 1916"*  
*P.O. Box 260, 50 Swart Street, Margaretville, New York 12455*  
*(845) 586-2288 Fax (845) 586-4050*  
*www.mtctelcom.com mtc@catskill.net*

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# Exhibit 1

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September 20, 2016

John Berger  
Supervisor, Town of Lexington  
PO Box 30  
Lexington, NY 12452

Dear Mr. Berger:

Thank you for the opportunity to meet with you concerning MTC Cable's proposal to extend telecommunications services into the Town of Lexington.

MTC Cable (a subsidiary of the Margaretville Telephone Company) is interested in the opportunity to extend cable television services into the Town of Lexington. MTC Cable (MTC) offers a suite of telecommunications services including cable television, broadband internet, and digital telephony services. The proposed extension of service into the Town is dependent upon securing NYS matching grant funding as part of the New NY Broadband Program to offset the initial construction costs of the project due to the municipalities rural demographic. A final determination of the serviceable routes and coverage areas will be based upon the amount of funding awarded combined with input from community residents.

Since this Franchise Application is considered the "Initial Franchise Application" in the municipality, it is suggested that the Town choose the "Alternate Franchising Procedure" (Section 894.9 of the NYS Public Service Rules and Regulations) in order to expedite the franchising process. Copies of these requirements are included with this letter.

A second step in the process is for MTC to negotiate a non-exclusive Franchise Agreement with the Town which is required before a telecommunications company can begin providing cable television services. A Franchise Agreement must be approved between the Town and MTC Cable before submission to the Public Service Commission which in turn must also certify and approve the Agreement. In addition, the Town must pass a separate resolution determining the cable project is classified as a "TYPE II" project under the State Environmental Review Act (SEQRA) and does not require any further environmental study.

Also included with the correspondence is the required "Application for Franchise" document which outlines the types of services to be provided, a description of the facilities to be constructed, and some basic information concerning MTC Cable as an entity. In addition, I have included a copy of a proposed Franchise Agreement for your review and would be happy to discuss the next steps in the franchising process.

The management and staff at MTC are excited about the possibility of providing services to the residents and businesses within the Town of Lexington. If there are any questions or concerns as this process moves forward, please feel free to contact me at (877) 727-2288.

Sincerely,

Glen Faulkner  
General Manager

*The Margaretville Telephone Company "Connecting Local Communities To The World Since 1916"*  
P.O. Box 260, 50 Swart Street, Margaretville, New York 12455  
(845) 586-3311 Fax (845) 586-4050  
[www.mtctelcom.com](http://www.mtctelcom.com) [mtc@catskill.net](mailto:mtc@catskill.net)

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# Exhibit 2

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**MTC Cable Monthly Service Rates**  
(Effective 4/1/17)

**MTC Elite Package with Turbo 50:** **\$194.75**  
 Elite package with Turbo 50 Mbps/ 5 Mbps High Speed Internet  
 For streaming video, downloading movies and online gaming.

**MTC Elite Package:** **\$ 180.75**  
 A monthly savings of \$29.90 – save over \$358 a year!  
 Take Three Package Plus  
 HD/DVR Programming with Video-On-Demand in HD  
 Velocity High Speed Internet Service

**MTC Take Three Package:** **\$ 163.80**  
 A monthly savings of \$26.90 - save over \$322 a year!  
 Digital Choice (Includes Basic Channels, 50 Digital Music Stations, Video-On-Demand,  
 Interactive TV Guide, plus Digital Converter + Remote)  
 Cable Modem High-Speed Internet  
 Cable Phone with Unlimited US long distance + Free Voicemail

**MTC Take Two Packages:** Great savings when you take two of the following services. Digital Cable, Cable Phone, or High Speed Internet Service. Call our business office for more information.

**MTC Cable Packages:**

**Digital Choice:** (Includes Basic Channels, 50 Digital Music Stations, Video-On-Demand,  
 Interactive TV Guide, plus Digital Converter + Remote)  
 (\$94.90 programming + \$3.95 standard digital converter): \$ 98.85  
 MTC Family Package: \$ 85.95  
 MTC Family Package (with standard digital converter): \$ 89.90  
 MTC Local Package (20 channels): \$ 28.95

**Watch TV Everywhere is included with our Cable Programming**

**Digital Choice Equipment Options:**

Standard Digital Converter Lease: \$ 3.95  
 HD/DVR – (3 X DVR Storage Space) \$ 16.90  
 HD/mDVR (Mulit Screen HD/DVR – 1 Host & 1 Client - 2 Room Solution) \$ 23.95  
 Expandable Client HD/mDVR \$ 3.95

**High Speed Cable Modem:** (with cable subscription)

Turbo 100 Residence Service (100 Mbps downstream /10 Mbps upstream): \$ 97.95  
 Turbo 75 Residence Service (75 Mbps downstream/8 Mbps upstream): \$ 83.95  
 Turbo 50 Residence Service (50 Mbps downstream/5 Mbps upstream): \$ 69.95  
 Turbo 25 Residence Service (25 Mbps downstream/4 Mbps upstream): \$ 59.95  
 Velocity Residence Service (20 Mbps downstream/2 Mbps upstream): \$ 55.95  
 Basic Residential (10 Mbps downstream /1 Mbps upstream): \$ 48.95  
 Wireless Modem: \$ 6.95

**Cable Phone:** Residential Use (with cable subscription)  
 Unlimited US Long Distance  
 Includes most calling features \$ 39.95  
 MTC Cable Phone without Video Service: \$ 56.70  
 Cable Phone Voice Mail: \$ 2.95  
 Cable Phone Vacation Plan: \$ 17.00

**Available Premium Packages are HBO, Cinemax, Showtime & Starz/Encore:**  
**1<sup>st</sup> Prem Pack: \$17.95 2<sup>nd</sup> Prem Pack: \$26.95 3<sup>rd</sup> Prem Pack: 35.95 4<sup>th</sup> Prem pack: \$43.95**

Rates subject to change. Rates do not reflect applicable fees and taxes. Contact Customer Service for Commercial Rates

## DIGITAL AND PREMIUM PAKS

## CHANNEL LINE UP GUIDE

### STARZ! / ENCORE Pak

- |                               |                         |
|-------------------------------|-------------------------|
| 250 STARZ ENCORE              | 257 STARZ Edge          |
| 251 STARZ ENCORE-Westerns     | 258 STARZ-Cinema        |
| 252 STARZ ENCORE-Love Stories | 259 STARZ-Kids & Family |
| 253 STARZ ENCORE-Suspense     | 260 STARZ ENCORE-Family |
| 254 STARZ ENCORE-Drama        | 261 STARZ-Comedy        |
| 255 STARZ ENCORE-Action       | 262 STARZ-In Black      |
| 256 STARZ                     | 263 STARZ HD            |

### Sports & Movies Pak

- |                      |                        |
|----------------------|------------------------|
| 570 Epix HD          | 574 MGM HD             |
| 571 Epix 2 HD        | 575 Sundance East HD   |
| 572 Epix Hits HD     | 577 MLB Strike Zone HD |
| 573 Epix Drive-In SD | 578 NFL REDZONE HD     |

### High-Definition Programming

- |                              |                                      |
|------------------------------|--------------------------------------|
| 404 NBC HD                   | 456 Bravo HD                         |
| 405 WNYW HD (Fox New York)** | 457 truTV HD                         |
| 406 CBS HD                   | 458 Fox News HD                      |
| 407 ABC HD                   | 459 Travel Channel HD                |
| 408 The Weather Channel HD   | 460 Cartoon Network HD               |
| 409 My 9 HD                  | 461 Disney HD                        |
| 411 CW HD                    | 463 American Movie Classics HD       |
| 412 WBNG HD**                | 464 FXM HD                           |
| 413 PBS HD                   | 465 Turner Classic Movies HD         |
| 414 FOX HD                   | 466 MSG HD                           |
| 416 WSKG HD                  | 467 MSG Plus                         |
| 418 WNYT HD                  | 468 YES HD                           |
| 419 POP HD                   | 469 FXX HD                           |
| 423 CNN HD                   | 470 Golf HD                          |
| 424 HLN HD                   | 471 Fox Sports 1 HD                  |
| 425 TNT HD                   | 472 NBC Sports HD                    |
| 426 ESPN 2 HD                | 473 Sports Net NY HD                 |
| 427 ESPN HD                  | 474 Major League Baseball Network HD |
| 429 CNBC HD                  | 476 WE Woman's Entertainment HD      |
| 430 Nick HD                  | 477 National Geographic HD           |
| 431 Hallmark Channel HD      | 478 Discovery HD                     |
| 432 A&E HD                   | 479 Velocity HD                      |
| 433 History Channel HD       | 480 Smithsonian HD                   |
| 435 Spike HD                 | 481 Science Channel HD               |
| 436 CMT HD                   | 482 National Geographic Wild HD      |
| 437 MTV HD                   | 484 LMN HD                           |
| 438 USA HD                   | 490 Hallmark Movies & Mysteries HD   |
| 439 Freeform HD              | 493 Big Ten Network HD               |
| 440 Lifetime HD              | 495 Destination America HD           |
| 441 FX HD                    | 496 Fox Business HD                  |
| 442 TLC HD                   | 510 Tennis Channel HD                |
| 443 Animal Planet HD         | 514 NFL Network HD                   |
| 444 HGTV HD                  | 519 CBS Sports Network HD            |
| 445 Food Network HD          | 552 MAVTV HD                         |
| 447 Syfy HD                  | 554 AXS-TV HD                        |
| 448 Comedy HD                | 555 HD Net Movies HD                 |
| 450 E! HD                    |                                      |
| 451 MSNBC HD                 |                                      |
| 452 WGN America HD           |                                      |
| 453 TBS HD                   |                                      |
| 455 Outdoor Channel HD       |                                      |



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Anytime and everywhere.**

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On your laptop, tablet and phone.

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**GO DIGITAL TODAY!  
CALL MTC CABLE 845.586.2288**

**845.586.2288**

579 Main Street Margaretville, NY 12455  
mtctelcom.com

**EFFECTIVE 7.31.17**

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# Exhibit 3

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**TOWN OF LEXINGTON  
GREENE COUNTY NEW  
YORK**

**NOTICE OF PUBLIC  
HEARING**

**MTC Cable proposed Franchise Agreement for Cable TV**

**PLEASE TAKE NOTICE** that the Town Board of the Town of Lexington shall hold a public hearing on November 8, 2017 at 6:15 pm at the Town Hall 3542 Route 42, Lexington, NY 12425, regarding the MTC Cable proposed franchise agreement for Cable TV.

By order of the Town Clerk,  
Alice Marie Cross  
October 25, 2017

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 **The Mountain Eagle**  
and SCHOHARIE NEWS

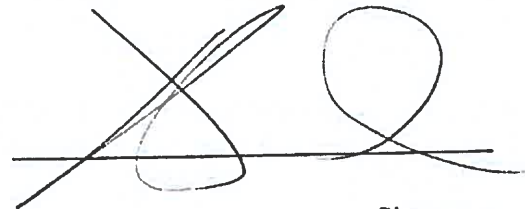
I, Matthew Avitabile, being duly sworn, depose and say that I am the owner, manager, assistant manager or program director of the Mountain Eagle Newspaper publishing in Schoharie, New York, and state that the notice (or summary or description of the notice) described as below was printed on the following days:

TOWN OF LEXINGTON

MTC Ads:

OCT 20<sup>th</sup>

OCT 27<sup>th</sup>



Signature

Subscribed and sworn before me 12/28 2017.



Notary Public/Justice of the Peace

Melanie Laraway  
Notary Public State of New York  
No. 01LA6156786  
Qualified in Schoharie County  
Commission Expires Dec. 4, 2018

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# Exhibit 4

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## FRANCHISE RENEWAL AGREEMENT

**THIS AGREEMENT**, executed in triplicate this 9<sup>th</sup> day of NOVEMBER, 2017, by and between the *Town of Lexington*, (hereinafter referred to as the Municipality), by the *Town Supervisor* acting in accordance with the authority of the duly empowered local governing body (hereinafter referred to as the Board), party of the first part, whose offices are located at 3542 State Highway 42 – Lexington, New York 12452, and *Heart of the Catskills Communications, Inc dba MTC Cable*, a corporation organized and existing under the laws of the State of New York, the principal place of business of which is located at 50 Swart St, Margaretville, New York 12455 (hereinafter referred to as the Company), party to the second part:

### WITNESSETH

**WHEREAS**, Pursuant to the *Town Law* the Board has the exclusive power on behalf of the Municipality to grant franchises providing for or involving the use of the Streets (as defined in Section 1 hereof) and to give the consent of the Municipality to any franchisee for or relating to the occupation or use of the Streets; and

**WHEREAS**, Pursuant to the Communications Act of 1934, as amended (the "Communications Act"), the Board has the authority to grant cable television franchises and renewals thereof on behalf of the Municipality and whereas the Board and the Company pursuant to said federal law and pursuant to applicable state laws and the regulations promulgated thereunder, have complied with the franchise procedures required of Municipalities and cable operators in the grant of cable television franchises or their renewal; and

**WHEREAS**, the Municipality has conducted negotiations with the Company and has conducted one or more public hearings on the Company's franchise proposal affording all interested parties due process including notice and the opportunity to be heard; said deliberations included consideration and approval of the Company's technical ability, financial condition, and character; said public hearing also included consideration and approval of the Company's plans for constructing and operating the cable television system; and

**WHEREAS**, Following such public hearings and such further opportunities for review, negotiations and other actions as the Board deemed necessary and as required by law, the Board determined that the Company's plans for constructing and operating a franchise are adequate and feasible and granted Company's franchise provided hereinafter; and

**WHEREAS**, The Board, in granting this franchise, as embodied in this franchise agreement, has determined that this franchise agreement and the Company respectively, fulfills and will fulfill the needs of the Municipality with respect to cable television service

and complies with the standards and requirements of the New York Public Service Commission; and

**NOW, THEREFORE,** In consideration of the foregoing clauses, which clauses are hereby made a part of this franchise agreement, and the mutual covenants and agreements herein contained, the parties hereby covenant and agree:

### **SECTION 1 -- DEFINED TERMS**

Unless the context clearly indicates that a different meaning is intended:

- (a) "Basic Service" means such cable television service as is provided in the lowest priced Service Tier.
- (b) "Board" means Town Board of the Municipality.
- (c) "Cable Television Service" means
  - (1) The transmission to Subscribers of Video Programming, or other cable and communications services; and/or
  - (2) Subscriber interaction, if any, which is required for the selection of such Video Programming, or other communications services; and/or
  - (3) Interactive Service.
- (d) "Cable Television System " means a facility, consisting of a set of closed transmission paths, including (without limitation) fiber optic wires or lines, and associated signal generation, reception and control equipment that is designed to provide Cable Television Service to multiple Subscribers within a community.
- (e) "Communications Service" means the one-way or two-way transmission and distribution of analog or digital audio, video, telephony and/or data signals.
- (f) "Company" means MTC Cable, its successors, assigns and transferees.
- (g) "Effective Date" of this agreement shall be the date upon which both parties to this Agreement shall have affixed their signatures hereto.
- (h) "Franchise" means the grant or authority given hereunder with the due consent of the Municipality, which consent or authority is evidenced by regulation, ordinance, permit, this agreement or any other authorization, to conduct and operate a Cable Television System in the Municipality in

accordance with the terms hereof.

- (i) "FCC" means the Federal Communications Commission, its designee and any successor thereto.
- (j) "Gross Revenues" means all revenues received by and paid to Company by cable television subscribers residing within the Municipality and pursuant to the rights granted by this Franchise.
- (k) "Interactive Service" means the two-way transmission of information over the Cable Television System including but not limited to, data transmission.
- (l) "May" is permissive.
- (m) "Municipality" means the *Town of Lexington*. Wherever the context shall permit, Board, and Municipality shall be used interchangeably and shall have the same meaning under this Franchise.
- (n) "NYSPSC" means New York State Public Service Commission.
- (o) "Person" means an individual, partnership, association, corporation, joint stock company, trust, corporation or organization of any kind, the successors or assigns of the same.
- (p) "Service Tier" means a category of Cable Television Service provided by the Company over the Cable Television System for which a separate rate is charged for such category by the Company.
- (q) "Shall" or "will" are mandatory.
- (r) "Streets" means the surface of, as well as the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkway, waterways, docks and public grounds and water with in or belonging to the Municipality.
- (s) "Subscriber" means any person lawfully receiving any Cable Television Service in the Municipality provided over the Cable Television System.
- (t) "Video Programming" means any or all programming services provided by, or generally considered comparable to programming provided by a television broadcast station.

## **SECTION 2 -- CONSENT TO FRANCHISE AND CONDITION PRECEDENT**

- (a) The Municipality hereby grants to the Company the non-exclusive permission to construct, erect, operate and maintain a Cable Television System and to provide Cable Television Service and Communications Service within the Municipality as it now exists and may hereafter be expanded or enhanced, and in so doing to use the Streets of the Municipality by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, over, under, upon, and across any and all said Streets such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as is deemed necessary or useful by the Company, subject to the Company's obligation to provide efficient Cable Television Service. Additionally, the Municipality, insofar as it may have the authority to so grant, hereby authorizes the Company to use any and all easements dedicated to compatible uses, such as electric, gas, telephone, or other utility transmissions, for the purposes of erecting, installing construction, repairing, replacing, reconstructing, maintaining, and retaining in, on over, under, upon and across such easements such items of the Cable Television System as is deemed necessary or useful by the Company in order to provide Cable Television Services. Upon request by Company and to at Company's sole expense, the Municipality hereby agrees to assist the Company in gaining access to and using any such easement.
- (b) Without waiver or restriction of the rights available to the parties hereto under applicable law, this Franchise and the attachments hereto constitute the entire agreement between the parties and supersede any and all prior cable television agreements and other agreements or instruments by or between the parties hereto or their predecessors in interest as well as all rights, obligations and liabilities arising thereunder concerning or in any way relating to the cable television service.
- (c) In the event the Municipality grants to any other Person a franchise, consent, or other right to occupy or use the Streets, or any part thereof, for the construction, operation, or maintenance of all or part of a cable television system or any similar system or technology, are on terms more favorable than those contained herein, the provisions of this Franchise shall be deemed modified without any further action so as to match any such less onerous provisions.
- (d) In the event the Company and any other municipality within Greene County renew, enter into, change or modify a franchise, consent, permit, authorization, or any other agreement ("Other Agreement") that confers benefits upon such municipality that are not conferred herein, the Company shall immediately offer to the Municipality the same benefits upon the same terms and conditions contained in the Other Agreement. The terms of this paragraph shall not apply when the "additional benefits" are subject to the terms of a franchise agreement within a municipality which maintains franchise agreements with multiple service providers.

As used in this Part, the phrase "occupancy or use of the Streets", or any similar phrase, shall not be limited to the physical occupancy or use there of but shall include any use above or below the Streets by any technology including but not limited to infrared transmissions.

### **SECTION 3 -- APPROVAL OF COMPANY BY MUNICIPALITY**

The Municipality hereby acknowledges and agrees that this Franchise has been approved and entered into by it in accordance with and pursuant to the Communications Act of 1934, as amended, 47 U.S.C. Section 521 et seq. (hereinafter the "Communications Act") and all other applicable laws, rules and regulations of FCC and the NYSPSC, and hereby represents and warrants that this Franchise has been duly approved and entered into in accordance with all applicable local laws. The Municipality hereby acknowledges that it, by duly authorized members thereof, has met with the Company for the purposes of evaluating the Company and negotiating and consummating this Franchise.

The Municipality has determined, after affording the public all adequate and due notice and opportunity for comment in public proceedings affording due process, that the Company is likely to satisfy cable related community needs and has considered and found the Company's technical ability, financial condition, and character to be satisfactory and has also found to be adequate and feasible the Company's plans for constructing and operating the Cable Television System and complies with the Public Service Commission's franchise standards. In making said determination, the Municipality considered the past performance of the Company and its affiliated entities and the Company's likelihood of satisfactory performance of its obligations hereunder and other factors the Municipality deemed necessary for approval of the Company as the cable television franchisee.

### **SECTION 4 -- TERM AND THE RIGHTS ARISING HEREUNDER**

The Franchise herein granted and the rights arising here under are for a term commencing on the "Effective Date" and expiring fifteen (15) years therefrom.

Company and Municipality hereby agree that from the Effective Date until the date of NYSPSC confirmation hereof, Municipality and Company shall be bound by and comply with terms of this Agreement and shall take no action contrary thereto ; from and after NYSPSC confirmation, Municipality and Company shall continue to be bound by and comply with the terms of this Agreement.

### **SECTION 5 -- REVOCATION**

- (a) The Municipality may revoke this Franchise and all rights of the Company hereunder in any of the following events or for any of the following reasons:
  - (i) Company fails after sixty (60) days' written notice from the Municipality to

substantially comply or to take reasonable steps to comply with a material provisions or material provisions of this Franchise.

- (ii) Company is adjudged a bankrupt; or
- (iii) Company attempts or does practice a material fraud or deceit in its securing of this Franchise.

- (b) Nothing contained in this Franchise is intended to or shall confer any rights or remedies on any third parties to enforce the terms of this Franchise.

#### **SECTION 6 -- INDEMNIFICATION & INSURANCE**

(a) The Company hereby agrees to indemnify the Municipality for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any negligent conduct undertaken by the company, its employees or agents in the construction, installation and maintenance of the Cable Television System, or otherwise conducting this franchise.

(b) The Company shall as of the Effective Date of this Franchise furnish to the Municipality evidence of a liability insurance policy or policies, in the form of a certificate of insurance naming the Municipality as an additional insured, which policy or policies or replacements thereof shall remain in effect throughout the term of this Franchise at the cost and expense of the Company; said policy and replacements shall be in the amount of One Million Dollars (\$1,000,000.00) for bodily injury or death; Five Hundred Thousand Dollars (\$500,000.00) for property damage and not less than Two Million Dollars (\$2,000,000.00) in aggregate due to any occurrence issued by a company authorized to do business in New York State. In addition, the Company shall carry Worker's Compensation insurance for its employees in such amounts as is required by the laws of the State of New York. The insurance coverage hereinabove referred to may be included in one or more policies covering other risks of the Company or any of its affiliates, subsidiaries or assigns. Certificates of Insurance shall be provided to the municipality within thirty (30) days of the execution of this Agreement.

(c) Notwithstanding any provision contained within this Franchise, the Municipality and Company hereby expressly agree that the company shall not be liable for and shall not indemnify the Municipality in any manner and in any degree whatsoever from and against any action, demand, claims, losses, liabilities, suits or proceedings arising out of or related to the negligent or intentional wrongdoing of the Municipality or any of its employees, agents or officers.



## **SECTION 7 -- USE OF EXISTING POLES AND LOCATION OF UNDERGROUND FACILITIES**

(a) The Company hereby agrees that whenever possible, it shall enter into agreements with telephone or electric or other utilities (collectively "utilities") for the use of said utilities' poles or conduit space whereby said utilities shall provide use of and access to said poles or conduit space by the Company of the Company's lines and other equipment. It is the intent of this agreement that it will erect its system primarily on poles now in use in the Municipality. Notwithstanding the above, where necessary to service Subscribers and where attachment to the pole (s) or conduit space of utilities is not economically reasonable or otherwise feasible, the Company may erect or authorize or permit others to erect any poles or conduit space or any other facilities within the Streets of the Municipality pursuant to the issuance by the Municipality through its Code Enforcement Officer or Engineer of any necessary authorization which shall not be unreasonably withheld or delayed. Municipality shall have the right to designate the location of poles and conduits.

(b) Subject to the provisions of sub-paragraph (c), below, in such areas of the Municipality where it or any sub-division thereof shall hereafter duly require that all utility lines and related facilities be installed underground, the Company shall install its lines and related facilities underground in accordance with such requirement.

(c) Notwithstanding the foregoing, if the Company shall in any instance be unable to install or locate any part of its property underground, then the Municipality, on being apprised of the facts thereof, shall permit such property to be installed above the ground even though other facilities in the area may be placed, or required to be placed, underground. However, any such permission shall be on such conditions as the Municipality may require.

## **SECTION 8 -- RELOCATION OF PROPERTY**

Whenever the Municipality or a public utility franchised or operating within the Municipality shall require the relocation or reinstallation of any property of the Company in or on any of the Streets of Municipality as a result of the relocation or other improvements of any such Streets, it shall be the obligation of the Company on written notice of such requirement to remove and relocate or reinstall such property to meet the requirements of the Municipality or the public utility. Relocation shall be made without cost or expense to the Municipality.

The Company shall, on request of a person holding a building or moving permit issued by the Municipality, temporarily raise or lower its wires or other property or relocate the same temporarily so as to permit the moving or erection of buildings. The Company may charge the person requesting removal the reasonable expense of doing so. The Company shall be given in such cases not less than five (5) working days prior written notice in order to arrange for the changes required.

## **SECTION 9 -- USE & INSTALLATION**

The Company or any person authorized by the company to erect, construct or maintain any of the property of the company used in the transmission or reception of Cable Television Service shall at all times employ due care under the facts and circumstances and shall maintain and install said property of the Company in accordance with commonly accepted methods and principles in the cable television industry so as to prevent failures and accidents likely to cause damage or injury to members of the public. All Cable Television system equipment shall conform to those standards of the National Electrical Code and the National Board of Fire Underwriters which exists at the time said equipment is installed or replaced. All facilities will be capable of providing (1 Ghz) of bandwidth with 2-way capability.

The Company agrees to use its best efforts to install all Cable Television System equipment in a manner to reasonably minimize interference to be expected with the usual use of the Streets and in no event shall any such Cable Television System equipment be located so as to interfere with the usual public travel on any Street of the Municipality. All work involved in the construction, installation, maintenance, operation and repair of the Cable Television System shall be performed in a safe, thorough and reliable manner and all material and equipment shall be of good and durable quality. In the event that any municipal property is damaged or destroyed in the course of operations by the company, such property shall be repaired promptly by Company and restored to serviceable condition. However, if such damage constitutes a threat to the health and safety of any resident or the traveling public, such damage shall be repaired by Company immediately upon notice by Municipality through its Engineer Code Enforcement Officer or Highway Superintendent.

## **SECTION 10 -- REMOVAL AND ABANDONMENT OF PROPERTY**

If the use of any part of the Company's Cable Television System or the poles, wires and/or distribution equipment occupying the Streets of the Municipality is discontinued for any reason for a continuous and uninterrupted period of six months (other than for reasons beyond the Company's control), the Company shall, on being given sixty (60) days prior written notice thereafter by the Municipality, remove that portion of its Cable Television System or the poles, wires or distribution equipment from the Streets of the Municipality which has both remained unused and for which the Municipality deems necessary to remove to protect the public health and safety. It is understood that the cost of any such removal shall be borne by the Company.

## **SECTION 11 -- OPERATION AND MAINTENANCE; CONSTRUCTION AND LINE EXTENSION**

(a) The Company shall maintain and operate its Cable Television System at all times in compliance with the duly promulgated and lawful provisions of Sections 890 and 896 of the Rules and Regulations of the NYSPSC and the technical requirements of the FCC and offering a minimum 78 channel capacity. The Company shall maintain staffing levels and

support equipment to assure that telephone inquiries are handled promptly in order to minimize busy signals and hold time. The Company shall have, at all times, a person on call able to perform minor repairs or corrections to malfunctioning equipment of the cable system. The Company shall respond to individual requests for repair service no later than the next business day. System outages, and problems associated with channel scrambling, and switching equipment, shall be acted upon promptly after notification. The Company shall maintain a means to receive repair service requests and notice of system outages at times when its business office is closed. The Municipality shall have the right and authority to request an inspection or test of the cable system by the NYSPSC, the FCC, or to have such inspection or test performed, all at the Municipality's expense. The Company shall fully cooperate in the performance of such testing.

(b) To the extent consistent with and subject to the Communications Act, and notwithstanding any other provision of this Agreement, any requests for cable television service in areas outside the area presently served by the Company, with additional areas, if any, the Company is required to serve either in accordance with this Agreement or the Rules and Regulations of the NYSPSC, shall be served as required by this Agreement or as required by such rules and regulations, provided the Company is economically and otherwise reasonably capable of compliance with such requests.

(c) The Company is prohibited from abandoning any service to any area of the Franchise area or any portion thereof without the written consent of the Municipality, and shall comply with §895.5(b) of the regulations with respect to line extensions and system deployment. Nor shall the company deny access to cable services to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

(1) Line Extensions.

(a) A "line extension area" shall be any area within the franchise area which is not part of the existing service area (also referred as Primary Service Area within this Agreement). Cable television service will not be denied to potential subscribers located in line extension areas who satisfy either of the following criteria;

(1) Make a contribution to the cost of construction in accordance with the following formula:

$$C - CA = \frac{SC}{P}$$

C equals the cost of construction of new plant; CA equals the average cost of

construction per mile in the primary service area. P equals the lower of [no.] or the average number of dwelling units per linear mile of (a) and (b) of this section. LE equals the number of dwelling units requesting service in the line extension area. SC equals subscriber contribution in the line extension area.

(i) Whenever, subsequent to the date when Company is obligated to provide service throughout the primary service area, a potential subscriber located in a line extension area requests service, Company will, within thirty (30) days of the request, conduct a survey to determine the number of potential subscribers located in the line extension area and shall inform each of the potential subscribers of the contribution in aid of construction that may be imposed. Company may require prepayments of the contribution in aid of construction. Company shall apply for pole attachment agreements within thirty (30) days of its receipt of contribution in aid of construction. Cable television service shall be made available to those who made a contribution in aid within ninety (90) days from the receipt of pole attachment agreements.

(ii) The contribution in aid of construction shall be in addition to the installation rate set forth in this franchise.

(iii) During a five (5) year period commencing at the completion of a particular line extension, a pro-rata refund shall be paid to previous subscribers as new subscribers are added to the particular line extension; the amount of the refund, if any, shall be determined by application of the formula annually. The refunds shall be paid annually to subscribers, or former subscribers, entitled to receive them. The Company shall not be required to provide refunds to any previous subscriber otherwise entitled to a refund, who is no longer at the same address and who has not informed the Company of the subscriber's new address; or

(b) Where the line extension area is contiguous to the primary service area or an already built line extension area and contains at least twelve (15) dwelling units per linear mile of aerial cable, and provided that Company is requested in writing to extend service into such areas by at least 80 percent of the homeowners residing in such areas, who shall execute and deliver to Company their written agreements to subscribe to the service for a period of eighteen (18) months. Those subscribers who move from the extension area will be released from their subscription obligation. Company will extend cable television service into such areas only if service, construction, and installation will meet the technical standards of all regulatory bodies and subject to the following:

(i) The rates and charges for service in such areas shall be those from time to time established by Company.

(ii) Company will review each area in May of each year. If any change in the actual density of homes per mile in such areas allows such area to be re-classified as part of the primary service area, the monthly service charges shall not exceed the rates established for the primary service area.

(2) Cable television service will be provided to any subscriber who requests service and who is located within 300 feet of aerial feeder cable, and the charge for installation to any subscriber so situated will not be in excess of the installation charges specified in this franchise.

**SECTION 12 --  
PUBLIC, EDUCATIONAL, GOVERNMENTAL ACCESS (PEG)**

The Company shall provide access channel(s) designated for noncommercial, educational and governmental use by the public on a first-come, first-served, nondiscriminatory basis in accordance with the minimum requirements of Part 895.4 of the NYSPSC Rules. Requirements and guidelines for utilization of access channel(s) set forth pursuant to Part 895.4 of the NYSPSC rules as may be approved are available in the local office and subscribers are notified on an annual basis of availability.

**SECTION 13 -- RATES**

(a) Rates and charges imposed by the Company for cable television service shall be or subject to approval by the municipality and the Commission to the extent required by state and federal law. Initial rates and charges are attached as Schedule "A".

The Municipality acknowledges that it may not regulate the content of Cable Television Service except that under current federal law it may exercise whatever rights it may have thereunder to object to or prohibit programming that is obscene or otherwise unprotected by the Constitution of the United States. To the extent not inconsistent with applicable laws, and notwithstanding any contrary provision of this Franchise, the company may delete, add or rearrange Video Programming and other communication services, as well as Service Tiers, or portions thereof, as it deems necessary or desirable provided it has first notified the Municipality and its subscribers in accordance with the terms of this Franchise and applicable regulatory requirements, and provided it does not substantially reduce the basic service or the amount of service contemplated by this Agreement.

(b) The Company shall not unfairly discriminate against individuals in the establishment and application of rates and charges for Video Programming or other communication services available to generally all subscribers. This Provision is not intended to and shall not prohibit (i) sales, promotions or other discounts which the Company deems necessary or desirable to market its Video Programming and other services; (ii) the Company from providing any of its services (and at such rates) as it shall deem necessary or desirable to any or all Subscribers where cable television service or any similar service is offered or provided in competition with the Company's services; or (iii) the Company from discounting rates to persons who subscribe to any services on a seasonal basis or discounting rate to persons who subscribe to any services that are provided on a bulk billed basis.

(c) Access to cable service will not be denied to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

**SECTION 14 -- SERVICE TO PUBLIC FACILITIES,  
FRANCHISE FEE AND ACCOUNTABILITY PROVISIONS**

(a) At the request of the Municipality, the Company shall provide and maintain a single standard service outlet to each school, firehouse and municipally owned building which is occupied for governmental purposes, and police station as agreed to herein or as may be reasonably requested by the Municipality within sixty (60) days after the Effective Date of this Franchise provided the point chosen by the Company for connecting of such wire to the institution is no further than three hundred feet (300') from the closest feeder line of the Cable Television System. In addition, the Company agrees to provide standard business class broadband service to the Town Hall during the term of this Agreement. All such connections shall be above ground except where all utility lines and cables in the area are underground. The Municipality shall not extend such service to additional outlets, at its expense, without the express written consent of the Company.

(b) The Municipality understands its right to negotiate a Franchise Fee and does not wish to impose such fee at this time.

(c) Accountability.

(1) Complaints/Billing Practices. During the term of this franchise, and any renewal thereof, Company shall maintain a local business office and a toll-free telephone number for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions and similar matters. This provision shall be complied with if Company maintains a local business office outside Municipality in a place easily accessible to its residents including the company's existing office in Margaretville, NY. The local office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event less than 9:00 a.m.—4:00 p.m., Monday through Friday, and shall be accessible by a toll-free telephone number.

(2) Complaints. Any complaints from subscribers received at the local office regarding quality of service, equipment malfunction, billing disputes, or other matters shall receive investigative action on the same day such complaint or call is received at the local office, if possible, but in no case later than the following scheduled business day after receipt. Company shall give credit for any service outage in excess of four (4) continuous hours. Subscriber complaints and trouble calls shall be processed in compliance with the standards set forth in Section 890.70 of the Rules and Regulations of the New York Public Service Commission.

- (3) Company shall provide notice to its subscribers of its billing practices, availability of parental control devices and A-B switches, and the procedure for reporting and resolving subscriber complaints. (Such notice may be written or by such other means as the New York State Commission of Cable Television may from time to time approve.) Notice is to be given in writing to each subscriber at the time of initial subscription, reconnection, and at least annually thereafter. Company shall also provide subscriber Privacy Notices in accordance with Cable Communications Policy Act of 1984.

### **SECTION 15 – BOOKS AND RECORDS ADMINISTRATION**

- (a) To the extent not inconsistent with privacy laws, Municipality reserves the right to inspect all pertinent books, records, maps, plans and financial reports of the Company upon reasonable notice during normal business hours. Company will cooperate in making such information available.
- (b) The Administrator, as the case may be, for the Municipality for this Franchise Agreement shall be the Supervisor of the Municipality. All correspondence and communications between the Company and the Municipality pursuant to this Franchise shall be addressed by the Company to the Administrator.
- (c) It is agreed that all Cable Television Service offered to any Subscribers under this Franchise shall be conditioned upon the Company having legal access to any such Subscribers' dwelling units or other units wherein such service is to be provided.
- (d) Any valid reporting requirements contained in this franchise may be satisfied with system wide statistics except for reporting requirements related to franchise fees and customer complaints.

### **SECTION 16 -- SEVERABILITY, POLICE POWERS, GOVERNING LAW, REQUESTS FOR AUTHORIZATIONS AND NON-DISCRIMINATION**

If any section, sub-section, sentence, clause, paragraph or portion of this Franchise (as well as any law or regulation applicable or purported to be applicable to this Franchise) is for any reason held to be invalid, void, unenforceable, illegal or unconstitutional by any court of competent jurisdiction, such law, regulation or provision of this Franchise shall be deemed separate and distinct and shall have no affect on the validity of the remaining portions hereof.

To the extent not inconsistent with or contrary to applicable federal law, the terms of this Franchise shall be governed and construed in accordance with the laws of the State of New York. The parties hereby acknowledge and agree that any provisions of this Franchise that are inconsistent with or contrary to any applicable federal law, including the Cable Act, as the same may be amended, are and shall be prohibited, preempted and/or

superseded to the extent of any inconsistency or conflict with any applicable federal laws.

Subject to the foregoing, the municipality reserves the right in the exercise of its police powers to adopt such regulations not inconsistent with applicable State and Federal Law or regulation as are reasonably necessary and lawful to protect the public health and safety concerning the installation, construction and maintenance of the Cable Television System; provided, however, that such regulations are reasonable, not materially in conflict with the provisions of this Franchise.

The Company shall file requests for all necessary operating authorizations with the NYSPSC and the FCC within sixty (60) days of the Effective Date of this Franchise. This Agreement shall be subject to approval by the NYSPSC and FCC.

The Company shall not refuse to hire or employ and shall neither bar nor discharge from employment, and shall not discriminate against any person in compensation, terms or conditions of employment because of age, race, creed, color, national origin or sex.

#### **SECTION 17 -- CONTRACTS IN FULL FORCE**

All agreements with third parties necessary for the Company to fulfill the terms of this Agreement are valid agreements and are in full force and effect at the time of this Agreement and will remain in full force and effect during the term of this Agreement.

#### **SECTION 18 -- NOTICE**

All notices required herein shall be in writing and shall be deemed delivered when received by United States certified mail, return receipt requested, or on the date of delivery to addressee when sent by express mail or by facsimile transmission or by any other means to the parties and locations:

When to the Company:	<i>MTC Cable P.O. Box 260 Margaretville, New York 12455</i>
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When to the Municipality:	<i>Town of Lexington P.O. Box 30 Lexington, NY 12452</i>
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#### **SECTION 19 -- FURTHER ASSURANCES**

The Municipality shall, without further consideration, execute and deliver such further instruments and documents and do such other acts and things as the Company may



reasonably request in order to effect or confirm this Franchise and the rights and obligations contemplated herein.

## **SECTION 20 -- INTEGRATION**

This Franchise supersedes all prior negotiations between the parties hereto and shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and permitted assigns. This Franchise may be amended (except as otherwise expressly provided for herein) only behalf of both parties. To the extent required by state law, amendments hereto shall be confirmed or approved by the Public Service Commission in accordance with §892-1.4 and 897.3 of the Regulations. Changes in rates charged or Cable Television Services rendered by the Company shall not be deemed an amendment to this Franchise.

This Franchise may be executed in one or more counterparts, all of which taken together shall be deemed one original.

The headings of the various sections of this Franchise are for convenience only, and shall not control or affect the meaning or construction of any of the provisions of this Franchise.

The rights and remedies of the parties pursuant to this Franchise are cumulative and shall be in addition to and not in derogation of any other right or remedies which the parties may have with respect to the subject matter of this Franchise.

## **SECTION 21 - NO JOINT VENTURE**

Nothing herein shall be deemed to create a joint venture or any agency or employment relationship between the parties, and neither party is authorized to nor shall either party act toward any third parties or the public in any manner which would indicate any such relationship with the other.

## **SECTION 22-- ASSIGNMENT**

The Company shall not sell, lease, convey, assign or otherwise transfer this Franchise without the prior written consent of the Municipality, which consent shall not be unreasonably withheld or delayed. The foregoing shall not apply to the assignment by the Company to any entity which is a subsidiary of or is affiliated with it.

## **SECTION 23 – COMPLIANCE WITH STATE AND FEDERAL LAW**

(A) The Company shall conform to all laws, rules and regulations of the United States and State of New York in the construction and operation of its cable television system. All rules and regulations of the FCC and the NYSPSC relating to cable television franchises,

as now enacted or subsequently amended, are incorporated herein by reference. The Company shall take such additional action as is necessary to formally incorporate in the terms of this franchise any modifications required by amendment of applicable federal and state laws, rules and regulations governing the contents of cable television franchises within one year of their adoption or at the time of franchise renewal, whichever occurs first.

(B) This franchise is in full compliance with the rules and regulations of the FCC and the NYS PSC relating to cable television franchises as now enacted, to the best of the Company's knowledge.

(C) Nothing herein shall be construed to prohibit the Company from requesting a waiver of any state or federal rule or regulation provided that a company of any such request shall be served upon the Municipality.

**IN WITNESS WHEREOF**, the parties hereto have caused this Franchise to be duly executed by their duly authorized representatives the day and year first written above.

Heart of the Catskills Communications, Inc  
d/b/a MTC Cable

WITNESS:

Kendra Goodell

By Glen Faulkner

Name: Glen Faulkner

Title: General Manager

Date: December 1, 2017

Municipality: Town of Lexington

WITNESS:

Nancy Wyncoop Bower

By John Barber

Name: JOHN BARBER

Title: SUPERVISOR

Date: 11/9/2017

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# Exhibit 5

**RESOLUTION # 124-17**

**Resolution to sign Franchise Agreement with MTC**

TOWN OF Lexington

RESOLUTION # 124 of 2017

**MTC Cable Franchise**

**BE IT RESOLVED** by the Town Board of the Town of Lexington that the Town of Lexington grants a nonexclusive franchise to Heart of the Catskills Communications, In. d/b/a MTC Cable to operate a cable system within the Town.

**BE IT FURTHER RESOLVED**, that the grant of the cable franchise is determined to be an unlisted action and a negative declaration is hereby made determining that the proposed action will not have a significant effect on the environment; and

**IT IS FURTHER RESOLVED**, that the Town Supervisor of the Town of Lexington and/ or Deputy Supervisor of the town of Lexington is authorized to execute the Franchise Agreement with Heart of the Catskills Communications, Inc. d/b/a MTC Cable in the form submitted by the Attorney for the Town.

The foregoing resolution was adopted by the following call vote:

A motion to adopt this resolution was made by Councilman William Pushman and seconded by Councilman Bradley Jenkins.

The resolution was declared to be duly adopted by the members of the Town Board of Lexington

Supervisor: Berger

Councilmen: Jo Ellen Schermerhorn

William Pushman

**Absent:**Michael Barcone

Bradley Jenkins

**RESOLUTION # 125-17**

**Payment of Stipends and Appointed Officials**

Supervisor John Berger requested that the stipend and appointed officials be paid at the beginning of December instead at the end of December per the bookkeepers request.

On a motion by Council Member Bradley Jenkins, seconded by Council Member JoEllen Schermerhorn, the following resolution was,

ADOPTED : Ayes - 4 - Berger, Pushman, Jenkins, and Schermerhorn.  
Nays - 0

Therefore, Town of Lexington Town Board moves to approve the payments for the stipend and appointed officials.

**RESOLUTION # 126-17**

**Roof Estimate for Fireman's Room**

Supervisor John Berger was given three recommendations of companies that do this kind of roofing. The only company that came out to look at the job was Superior Roofing. We have a proposal for \$14,100.00 with a warranty for twenty years. Superior Roofing says the roof will be done by April 30, 2018.

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# Exhibit 6

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a complete copy of the application to the New York State Commission on Cable Television for the approval of franchise for the *Town of Lexington* was delivered to the *Town Supervisor* in person on February 1, 2018.

Sworn to before me this

1<sup>st</sup> day of February, 2018.



Glen Faulkner