

SVC

AGREEMENT

This Agreement is entered into by and between **Brattleboro Community Television ("BCTV")**, a Vermont non-profit corporation with headquarters in Brattleboro, Vermont, and **Southern Vermont Cable Company ("SVC")**, a Vermont Corporation with headquarters in Bondville, Vermont on this ____ day of _____, 2011.

WHEREAS, SVC is engaged in the business of providing cable television services pursuant to a Certificate of Public Good ("CPG") issued to it by the Vermont Public Service Board on July 13, 1999; and

WHEREAS, BCTV has been engaged since 1988 in providing Public, Educational and/or Governmental ("PEG") programming content and related services in a manner consistent with the development of cable technology and federal law;

THEREFORE, BCTV and SVC, pursuant to Vermont Public Service Board Rule 8.408, agree to enter into an Agreement for purposes of designating BCTV as the Access Management Organization ("AMO") for the serviceable portions of the Towns of Dummerston, Jamaica, Newfane, Putney, and Townshend and any other towns that may be cabled by SVC during the term of this Agreement.

1. Definitions

- 1.1 "Access Management Organization, or AMO": Pursuant to Rule 8.100(B), a nonprofit entity apart from the cable television operator designated to receive PEG access support through the cable operator and contracted to manage public, educational, and government access channels and facilities for non-commercial purposes.
- 1.2 "Gross Revenue" shall mean the gross revenues generated by SVC's cable services for the Service Territory. Revenues shall be from all cable subscription services, including basic, other tier and premium channels.
- 1.3 "PEG Access Plan" shall mean a document that satisfies the requirements for a plan, planning considerations, and the AMO's assessment of community needs pursuant to PSB Rules 8.420(A)(9), and 8.422(K).
- 1.4 "PEG Access User" shall mean a Person utilizing the AMO, including all related facilities, for purposes of production, distribution and/or viewing of PEG Access Programming.
- 1.5 "Person" shall mean any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the AMO.

- 1.6 “Point of Demarcation” shall be located at the input of, but not to include the device itself, the signal transport device or other device that serves a similar function, which is where BCTV’s responsibility for its PEG access video signal ends and SVC’s conversion and distribution of that signal begins.
- 1.7 “Service Territory” shall mean the geographic area to which the AMO has been herein designated by SVC to provide PEG access programming and services that meet cable-related community needs; i.e., the serviceable portions of the Towns of Dummerston, Jamaica, Newfane, Putney, Townshend and any other towns that may be cabled by SVC during the term of this Agreement.
- 1.8 “Subscriber” shall mean a Person or user of the Cable System who lawfully receives Cable Service with SVC’s express permission.
- 1.9 “Year” shall refer to any year of this agreement, commencing June 1 and ending the following May 31.

2. **Agreement Term**

The term of the Agreement between BCTV and SVC is for a period of eight (8) years, from June 1, 2011 until May 31, 2019.

3. **Representations and Warranties**

- 3.1 BCTV represents and warrants that pursuant to PSB Rules 8.420-8.422, it is capable of serving as the designated access management organization for the Service Territory with respect to community-related public, educational and/or governmental cable programming and that it is a nonprofit organization duly organized, validly existing and in good standing under the laws of the State of Vermont and has full power and authority to enter into this Agreement.
- 3.2 BCTV represents and warrants that the person executing this Agreement on BCTV’s behalf is acting pursuant to proper authorization and that this Agreement is the valid and binding obligation of BCTV, enforceable in accordance with its terms.
- 3.3 SVC represents and warrants that it is a Vermont Company authorized to do business in the State of Vermont and has full power and authority to enter into this Agreement.
- 3.4 SVC represents and warrants that the person executing this Agreement on SVC’s behalf is acting pursuant to proper authorization and this Agreement is a valid and binding obligation of SVC, enforceable in accordance with its terms.

4. **SVC Obligations**

4.1 **Annual Funding**

- a. For the first five years of the Agreement, SVC shall pay on a quarterly basis to BCTV an amount equal to ONE AND ONE-HALF PERCENT (1.5%) of SVC's Gross Revenue for the Service Territory for the preceding quarter. Eligible revenues are all cable subscription revenues, including basic, other tier and premium channels. This payment shall be due and payable no later than forty-five (45) days after the close of the preceding quarter.
- b. Starting June 1, 2016, and for the remainder of the Agreement, SVC shall pay on a quarterly basis to BCTV an amount equal to TWO PERCENT (2%) of SVC's Gross Revenue for the Service Territory for the preceding quarter. Eligible revenues include all cable subscription revenues such as basic, other tier and premium channels. This payment shall be due and payable no later than forty-five (45) days after the close of the preceding quarter.
- c. The payments set forth in this section may be allocated by BCTV as operating or capital funding payments at its discretion.

4.2 **PEG Access Channel Designation(s), Activations and Re-assignments**

- a. Pursuant to PSB Rule 8.403, SVC has designated Channels 8 and 10 as the two (2) full-time channels available to BCTV for public, educational and governmental use. SVC will make best efforts to maintain these channel designations for the duration of the Agreement.
- b. Starting with this Agreement, SVC will deliver BCTV's Channel 10 to all SVC subscribers. SVC will arrange with Comcast Cable for the carriage of this signal.
- c. Starting with this Agreement, SVC will arrange with Comcast Cable for the carriage of BCTV's Channel 8 signal. Thereafter, SVC will no longer utilize its Channel 8 sub-modulator at BCTV's headend to transmit the signal.
- d. SVC shall work with BCTV prior to any channel reassignment and shall pay BCTV reasonable costs of such reassignment, including but not limited to reasonable costs of printing, signage, advertising and notification to the Subscribers regarding reassignment. SVC shall not reassign BCTV's channel without advance warning of three (3) months and consultation with BCTV. SVC does not have present intent or plan to reassign BCTV's channels.

4.3 Equipment

SVC is responsible for maintaining, repairing or replacing the fiber or coaxial feed from the point of demarcation (per interconnect agreement, see paragraph 5.a., below). In addition, SVC is responsible for maintaining, repairing or replacing headend equipment, including but not limited to Demodulator, Receiver or Demultiplexer for purposes of providing a quality signal for headend switching or processing.

4.4 Promotional Support

SVC will announce BCTV's designation as AMO for all towns in the Service Territory via bill insert. SVC will include a link to BCTV's website on the SVC channel lineup for Channels 8 and 10.

5. Procedures for Maintaining Signal Quality

5.1 Interconnect agreement

- a. SVC and BCTV agree to negotiate a 3-way interconnect agreement with Comcast clarifying the point of demarcation for each party, technical responsibilities of each party, and policies and procedures for responding to complaints and technical issues.
- b. SVC and BCTV shall use good faith efforts to complete the interconnect agreement within six months of the date of this Agreement.

5.2 Channel Monitoring

SVC will provide access to SVC's Slingbox, or will install an additional Slingbox for BCTV to be able to monitor signal quality on Channels 8 and 10 at the SVC headend on an as-needed basis.

6. BCTV Obligations

- 6.1 BCTV shall be responsible for fulfilling the Obligations of an AMO contained in PSB Rule 8.420(A)(1) through 8.420(A)(10), as amended, to the extent practicable under the funding level provided in this Agreement.
- 6.2 BCTV shall use the annual funding consistent with federal and state law and dedicated to the purpose of providing a reasonably broad range of public, educational and governmental programming and services to the Subscribers and

PEG Access Users and to otherwise meet the cable-related needs of the Service Territory.

- 6.3 Within 120 days of the end of BCTV's fiscal year, BCTV shall file its Annual Access Report with supporting documentation, as set out more fully in PSB Rule 8.422. BCTV shall provide its Access Plan to SVC annually with its Annual Access Report. The Access Plan shall be deemed to satisfy the requirements for a plan, planning considerations, or assessment of community needs pursuant to PSB Rules 8.420(A)(9), and 8.422(K).
- 6.4 SVC shall exercise no editorial control over programming cablecast by BCTV subject to provisions of applicable Federal law.
- 6.5 BCTV hereby indemnifies SVC, its officers, employees and agents for any liability, claims, loss, or damage it may suffer due to violation of the intellectual property rights of third parties or arising out of the content of programming carried on any BCTV channel and from claims arising out of BCTV's rules and procedures for and/or the administration of the public, educational and governmental cable-related programming.

7. Dispute Resolution Procedures

- 7.1 SVC and BCTV agree to negotiate any issues, which may arise under this Agreement, in good faith.
- 7.2 In order to satisfy their respective obligations to negotiate in good faith, each party: (1) may not refuse to negotiate; (2) must appoint a negotiation representative with authority to bargain; and (3) must agree to meet at reasonable times and locations and must not unduly delay the course of negotiations.
- 7.3 SVC and BCTV agree that if they are unable, with reasonable effort, to resolve any dispute arising out of the construction, application or enforceability of this Agreement, either or both of them may petition the Public Service Board for a declaratory ruling as to the construction, application or enforceability of this Agreement.

8. Legal Notices

- 8.1 Except as otherwise provided, any legal notice to SVC required under this Agreement or any applicable Rule, shall be in writing and sent by certified mail, return receipt requested, to SVC at the following address:

Southern Vermont Cable Company
PO Box 166

Bondville, VT 05340-0166

- 8.2 Any notice to BCTV required under this Agreement or any applicable Rule, shall be in writing and sent by certified mail, return receipt requested, at the following address:

Brattleboro Community Television
230 Main Street, Suite 201
Brattleboro, Vermont 05301
Attn: Executive Director

- 8.3 Either party may designate a new notice address by notifying the other party in writing, as provided herein.

9. Agreement Renewal

BCTV and SVC shall commence renewal negotiations at least six (6) months in advance of the expiration of this Agreement. In the event a new agreement is not reached prior to the expiration of this Agreement, the terms of this Agreement shall continue to apply until the date the new agreement is reached so long as the parties are engaged in good faith negotiation.

10. Miscellaneous Provisions

- 10.1 The section headings used in this Agreement are for convenience only and shall not affect the construction of the Agreement.
- 10.2 This Agreement has been negotiated by and between the parties, and represents their entire Agreement. It supersedes all prior agreements, understandings or covenants, whether oral or written except that all balances due from any prior agreement shall carry over. The parties hereby agree to submit this Agreement to the Vermont Public Service Board.
- 10.3 This Agreement is subject to applicable conditions and requirements of federal, state and local laws, including but not limited to Public Service Board Rules 8.400 *et. seq.*, as they may be amended from time to time and are incorporated herein by reference, to the extent not enumerated herein. All such laws, rules, and regulations, as amended, shall control the interpretation and performance of this Agreement to the extent that any provision of this Agreement conflicts with or is inconsistent with such laws, rules or regulations.
- 10.4 With the exception of any amendment(s) pursuant to Section 10.3, this Agreement may only be modified in writing, signed by both parties and submitted to the Vermont Public Service Board.

- 10.5 The parties represent and warrant that this Agreement has been voluntarily entered into and that the terms of the Agreement are final and binding. Further, both parties represent that each party has read and fully understands the terms of this Agreement.
- 10.6 This Agreement and all of the provisions herein will be binding upon and inure to the benefit of the parties and their successors. BCTV may not assign this Agreement. SVC may assign this Agreement subject to any necessary approvals by the Public Service Board.
- 10.7 This Agreement shall be governed by and construed in accordance with Vermont law.
- 10.8 To the extent possible, each provision of the Agreement will be interpreted in such a manner as to be effective and valid. If any provision of this Agreement shall for any reason become or be held to be prohibited, invalid or unenforceable, the provision will be ineffective only to the extent of the prohibition, invalidity or unenforceability, without invalidating the remainder of the provision or the remaining provisions of the Agreement, which shall continue to be in full force and effect.
- 10.9 Language used in this Agreement was chosen by the parties to express their mutual intent. No rule of strict construction will be applied against either party.
- 10.10 It is acknowledged and agreed that this Agreement is the product of negotiation by the parties, acting on advice of counsel, and that it is to be considered as jointly drafted by both parties.

Southern Vermont Cable Company

Brattleboro Community Television, Inc.

By: _____

By: _____

Its: _____

Its: _____

Witness: _____

Witness: _____