

FIRST AMENDMENT TO LICENSE AGREEMENT

This first amendment to license agreement is entered into as of July 17, 2002 by and between Media One of New York, Inc. providing service as AT&T Broadband (“Licensee”) with offices in Massachusetts at 139 Lewis Wharf, Boston, Massachusetts 02110 and Thomas M. Menino, Mayor of the City of Boston and issuing authority for the award of cable television licenses under Chapter 166A of the Massachusetts General Laws (the “Issuing Authority”).

WITNESSETH THAT:

WHEREAS, Cablevision of Boston, Inc. (“Cablevision”) entered into a license agreement with the Issuing Authority on May 11, 1998 (the “License”);

WHEREAS, Cablevision transferred all of its right, title and interest in the License to the Licensee on or about January 5, 2001;

WHEREAS, after assuming control of the cable system and subsequently completing a comprehensive assessment of Cablevision’s construction of the HFC System as described in Section 5.1 of the License, the Licensee determined that it would be unable to complete construction of the HFC System by September 30, 2001 as required by the License;

WHEREAS, the Licensee believes it will complete construction of the upgrade of the HFC System on or before June 30, 2003;

WHEREAS, Licensee wants to amend the License to alter, among other things, the construction schedule described in Sections 3.2 and 3.4 of the License;

WHEREAS, by letter dated January 8, 2002, the Licensee has requested that the Issuing Authority begin a process to amend the License;

WHEREAS, the Issuing Authority, after duly published notice, held a public hearing on April 10, 2002 to consider this Amendment to the License;

WHEREAS, the Issuing Authority after consideration, analysis and deliberation, has determined that it is in the best interest of the City of Boston to grant this Amendment to the License;

NOW THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound, the parties agree to changes in the terms of the License as follows:

I. Construction Schedule

- A. Section 3.2 Construction Schedule shall be stricken in its entirety and replaced with the following:

(a) Licensee shall construct the HFC System described in Section 5.1 hereof in accordance with the following schedule:

Neighborhood	Planned date by which Licensee shall secure all permits needed for construction in a neighborhood.	Planned date in which Licensee shall complete a final sweep/balance and proof of performance in each neighborhood.
West Roxbury	<u>Complete</u>	<u>Complete</u>
Hyde Park	<u>Complete</u>	<u>Complete</u>
Roslindale	<u>Complete</u>	<u>Complete</u>
Jamaica Plain	<u>Complete</u>	<u>Complete</u>
Allston/Brighton	<u>Complete</u>	<u>Complete</u>
Roxbury	<u>Complete</u>	<u>Complete</u>
South Dorchester	<u>Complete</u>	<u>Complete</u>
Mattapan	<u>Complete</u>	<u>Complete</u>
North Dorchester	<u>Complete</u>	<u>Complete</u>
South Boston	<u>Complete</u>	<u>Complete</u>
South End	<u>9/02/02</u>	<u>11/15/02</u>
Charlestown	<u>Complete</u>	<u>Complete</u>
East Boston	<u>7/01/02</u>	<u>11/29/02</u>
Back Bay/Beacon Hill	<u>9/2/02</u>	<u>12/31/02</u>
Fenway/Kenmore	<u>9/02/02</u>	<u>10/25/02</u>
North End	<u>9/02/02</u>	<u>11/29/02</u>
Financial District	<u>10/07/02</u>	<u>12/31/02</u>

(b) For purposes of Section 3.2 (a), the term “Planned Date” shall mean within 14 days of the date listed therein.

(c) Notwithstanding the terms of Section 3.2(a) to the contrary, the parties agree that as of June 15, 2002, the upgrade of existing plant has not been completed in certain residential areas of the City, including without limitation:

- (i) Boston Housing Authority developments
- (ii) the Atlantic Avenue-Commercial Street area of the North End

and that Licensee has not constructed plant in certain residential areas of the City where cable plant has never been constructed, including without limitation certain sections of:

- (iii) Chinatown
- (iv) the Leather District
- (v) the Navy Yard
- (vi) the Seaport District

(d) On or before December 31, 2002, Licensee shall complete and submit to the City a written report containing the results of an audit of all households in the City, including without limitation, the areas listed in Section 3.2(c) to determine the extent and location of households which are not connected to a node. In said report Licensee shall describe:

- (i) which households are not connected to a node because of lawful preclusion from providing service or the inability to receive necessary approvals from third parties after a good faith effort to obtain such approvals; and
- (ii) which households are not connected to a node for reasons other than those listed in Section 3(d)(i) (hereinafter, the "Connection Households") and the cost of connecting the Connection Households to a node.

(e) The deadline for completing the connection of Connection Households to a node, to the extent required by Section 3.3, shall be December 31, 2003 (the "Deadline"). The Licensee shall not alter the Deadline unless the City has given written approval upon 30 days notice and consultation, such approval not to be unreasonably denied.

B. The number \$500 in Subsection a) of Section 3.3 Line Extension shall be stricken and replaced with \$1,000.

C. Section 3.4 Completion of Construction shall be stricken in its entirety and replaced with the following:

Section 3.4 Completion of Construction

On or before June 30, 2003, the Licensee shall provide the Issuing Authority a written statement signed by the Regional Vice President for Construction and Engineering certifying that for the entire City, with the exceptions due to lawful preclusion from providing service or the inability to receive necessary approvals from third parties, 100% of the Licensee's homes passed are connected to a node that meets the system design and configuration required by section 5.1.

At the same time it provides the written statement, the Licensee shall provide the final report described in Section 15.1. The Licensee shall contract with an independent field auditor that has been mutually agreed upon between the City and the Licensee in writing. The cost for an independent audit shall be paid by the Licensee and shall not exceed \$5,000. The scope of any field inspection(s) shall be agreed upon and coordinated with Licensee and Licensee shall be afforded the option to accompany the field auditor on any such field or facility inspection. On or before July 31, 2003, the Licensee shall cause the independent field auditor to prepare a written certification that for the entire City, with the exceptions (a) due to lawful preclusion from providing service or the inability to receive necessary approvals from third parties including private property owners or (b) due to the application of Section 3.3, that 100% of the Licensee's homes passed are connected to a node that meets the system design and configuration required by section 5.1. Within 60 days after acceptance of the auditor's certification report by the City, the City shall provide a written statement which acknowledges those neighborhoods in which Licensee has connected to a node (a) 100% of the homes passed by Licensee on January 5, 2001 or (b) 95% of the households described in Section 3.2(d)(ii), but which expressly excludes (x) any areas listed in Section 3.2 (c) for which the upgrade has not been completed, and (y) any households in Licensee's audit report of December 31, 2002 which are described by Section 3.2 (d)(ii) and for which the upgrade has not been completed.

D. Section 3.7 Extension of Time shall be stricken in its entirety.

II. System Design and Configuration

A. Section 5.1 Hub Distribution Centers shall be stricken in its entirety and replaced with the following:

Section 5.1 Hub Distribution Centers

Licensee shall build at minimum a 750MHz hybrid fiber/coaxial two-way cable system ("HFC System") capable of delivering a minimum of 108 channels of Video Programming with three (3) hub distribution centers, one (1) of which shall be located in Boston and shall be designated the headend. The headend shall have the capacity to support the collection, processing and transmission of signals from satellite, microwave, television signals, local origination, cable and other means of communication for all services offered to subscribers of the City of Boston by the Licensee. The headend shall be monitored by the Licensee and maintained commensurate with headend maintenance practices utilized throughout the region. The HFC System shall be constructed throughout the entire City of Boston in accordance with the construction schedule in Section 3.2 herein this License. The Licensee shall install advanced technology which may include, but is not limited to, fiber optic lines to nodes which shall have the capacity to provide service to an average of (500) Five Hundred homes. The configuration of the nodes shall be "scalable" to service an average of two hundred fifty (250) homes per node or utilize other configurations designated by the Licensee, with prior notice to the City. Connections between the nodes and Subscribers may include coaxial cable.

B. A new Section 5.10 shall be added to the License as follows:

Section 5.10 Single Fiber Trunk

On or before December 31, 2002, Licensee shall provide the City with a plan to complete the transition from a dual trunk to a single fiber trunk with the City.

III. Service to Municipal Properties

- A. Section 6.7 Cable Modem Service to Schools and Libraries shall be stricken in its entirety.
- B. Section 6.11 Institutional Network shall be stricken in its entirety, and replaced with the following.

Section 6.11 Boston Municipal Network

(a) On or before December 31, 2003, Licensee shall provide two strands of fiber at not more than 260 buildings mutually agreed upon by the City and the Licensee from Schedule 1 hereto.

(b) Licensee shall connect the two strands of fiber at the Demarcation Point of either the telecommunications service or the cable service in the buildings identified.

(c) Maintenance and connection of the two strands of fiber via a continuous and uninterrupted path through the Licensee's system shall be the responsibility of the Licensee. Data transmission and network management and content shall be the responsibility of the City.

IV. Offices

- A. Section 12.5 Business Office shall be stricken in its entirety and replaced with the following:

Section 12.5 Offices

Licensee shall maintain and operate within the City of Boston during the term of the License seven (7) neighborhood offices for the purpose of receiving and resolving all complaints, including without limitation those regarding service, equipment malfunctions or billing and collection disputes. The seven (7) neighborhood offices shall be located throughout the City of Boston. Licensee reserves the right to relocate or close any existing office within the City should it be commercially impracticable to keep the office in its present location. Such determination for relocation and/or termination shall be supported by relevant data and evidence that no reasonable alternatives are available. The City shall receive 30 days' notice of any proposed relocation or closure of an office. During construction of the Cable Television System, pursuant to Section 3.2 *supra* one neighborhood office at a minimum shall be open for both telephone and walk-in business Monday through Friday from 9:00 A.M. to 5:00 P.M., except on legal holidays observed in Suffolk County, Massachusetts and on Saturday from 9:00 A.M. to 5:00 P.M. After completion of construction of the Cable Television System, Licensee may, at its discretion, reduce its open office hours on Saturday to 9:00 A.M. to 1:00 P.M. Notwithstanding the foregoing, Licensee shall keep each of its offices open from 12 noon until 8:00 P.M. one day per week during the entire term of this Renewal License. Licensee shall provide all Subscribers with at least ten (10) days written notice of a change in neighborhood office hours. The neighborhood

offices shall maintain a staff adequate to process complaints, requests for installation, service or repairs, and all other business in a timely and efficient manner.

Licensee shall maintain and operate within the City of Boston a call center that shall serve Eastern Massachusetts, including the City of Boston. The regional call center shall be staffed with sufficient customer service employees, twenty-four (24) hours per day, seven (7) days per week to promptly receive customer service calls for all issues as well as to receive Subscriber calls for repair service. The regional call center shall document the nature of each call. Licensee shall add telephone lines and service representatives when existing lines are substantially utilized or when a pattern of Subscriber complaints reflects a need for additional service employees. Licensee shall answer, with a customer service employee or representative, an average of ninety percent (90%) of its daily incoming service calls within thirty (30) seconds, measured on a quarterly basis; provided, however, that this standard shall not apply to extraordinary operating circumstances. Further, except during extraordinary operating circumstances, customers will not receive a busy signal more than three percent (3%) of the time measured on a quarterly basis. During periods of construction as set forth in Section 3.2 hereinabove, Licensee shall closely monitor telephone activity and provide the Issuing Authority with quarterly reports of traffic, both in terms of number of calls answered by a customer service representative and time on hold. Said reports shall also contain information respecting the number of calls which received busy signals, the number of calls where the consumer hung up before the call was answered, and the time of day for each such call. Upon request, Licensee shall meet with the Issuing Authority quarterly to evaluate Licensee's ability to serve customers adequately with existing staff and telephone lines.

For purposes of this section, "extraordinary operating circumstances" shall mean *force majeure*, as defined in Section 16.8 *infra* and shall be incorporated as part of said definition.

V. Liquidated Damages

- A. Subsection (1) of Section 14.13 Liquidated Damages shall be stricken in its entirety and replaced with the following:

Section 14.13 Liquidated Damages

For the breach of any of the following provisions of this Renewal License, liquidated damages shall be paid by Licensee within thirty (30) days after request for same by the Issuing Authority in writing:

- (1) For failure to meet any deadline prescribed in Sections 3.2, 3.4 and 6.15 *supra*, One Thousand Dollars (\$1,000) per day, or part thereof, until the Licensee provides the appropriate written certification that it has complied with each deadline.
- (2) For failure to submit reports or supply data in accordance with Sections 5.10, 15.1, 15.2 (first paragraph), 15.5, 15.6 and 15.8, One Hundred Fifty Dollars (\$150) per day, or part thereof, that such noncompliance continues.

- (3) For failure to test, analyze and report on the performance of the System in accordance with Sections 14.10, 14.11 and 14.12 *supra*, One Hundred Fifty Dollars (\$150) per day for each day, or part thereof, that such noncompliance continues.
- (4) For failure to make the drops, pursuant to Section 7.2 *supra*, One Hundred Fifty Dollars (\$150) per day, or part thereof, that such drop(s) have not been installed as required.

Such liquidated damages shall be chargeable, to the extent available, to the letter of credit if not tendered by Licensee within the aforesaid period of time. The provisions of this Section shall be in addition to the provisions of Section 14.14 below and shall be subject to Section 14.15 subsections (a)(i) and (ii) below.

- B. Section 14.15 Determination of Breach shall be stricken in its entirety and replaced with the following:

Section 14.15 Determination of Breach

(a) In the event that the Issuing Authority has reason to believe that Licensee has defaulted in the performance of any provision of this Renewal License, except as excused by *force majeure*, the Issuing Authority shall notify Licensee in writing of the provision or provisions which the Issuing Authority believes may be in default. Licensee shall have fourteen (14) days from the receipt of such notice to:

i) respond to the Issuing Authority in writing, contesting the Issuing Authority's assertion of default and providing such information or documentation as may be necessary to support Licensee's position; or

ii) cure any such default or, in the event that, by the nature of the default, such default cannot be cured within such fourteen (14) day period, take steps satisfactory to the Issuing Authority to cure the default and diligently continue such efforts until said default is cured. Licensee shall report to the Issuing Authority, in writing, at fourteen (14) day intervals as to Licensee's efforts, indicating the steps taken by Licensee to cure the default and reporting Licensee's progress until such default is cured.

b) In the event that fourteen days after the Licensee's receipt of notice pursuant to this subsection, the Issuing Authority determines that Licensee remains in default of any such provision of this Renewal License, the Issuing Authority may request liquidated damages and also determine to pursue any or all of the following remedies:

i) foreclose on all or any part of the security provided pursuant to this Renewal License, including without limitation the performance bond or the letter of credit;

ii) commence an action at law for monetary damages;

iii) declare the License to be revoked subject to Section 14.14 above, and applicable law; or

iv) seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

VI. Reporting on Construction

A. Section 15.1 Construction Reports shall be stricken in its entirety and replaced with the following:

Section 15.1 Construction Reports

Within ten (10) business days after executing this Amendment and every seven days thereafter, the Licensee shall provide to the Issuing Authority a copy of the standard management report prepared by Licensee which shows (a) completed neighborhoods, (b) neighborhoods in which construction is in progress, and (c) the exceptions lists for clauses (a) and (b) hereof (the "Summary Report"). In addition, at the same time it provides the Summary Report, the Licensee shall provide a list of all homes in the City organized by neighborhood in the form of Schedule 4 hereto (the "Exceptions List").

At the time it provides its certification of construction as required by Section 3.4, the Licensee shall provide its final report which shall include: (i) the Summary Report; and (ii) the Exceptions List described above.

In addition to the Summary Reports and the final report, the Licensee shall be required to e-mail the City of Boston Cable Division daily with a list of construction affecting the public rights of way that the Licensee is undertaking within the City of Boston that day. The list of construction shall include a description of the construction, the contractor that is undertaking the construction and the neighborhood and street where the construction is taking place.

Section 14.10 Quarterly Performance Test

Strike Section 14.10.

Provide reports as required under Section 15.7 Performance Tests Reports.

VII. All other terms of the License shall remain in full force and effect.

In witness hereof, the parties have executed this Amendment under seal as of the date first set forth above.

CITY OF BOSTON

Approved as to Form:

By: _____
Thomas M. Menino
Mayor

Corporation Counsel

AT&T BROADBAND

By: _____