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FEB 09 2012



MEMORANDUM TRANSPORTATION & DEVELOPMENT DEPARTMENT
MEMO NO. TDA12-051

DATE: FEBRUARY 9, 2012

TO: MAYOR AND CITY COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 PAT MCDERMOTT, ASSISTANT CITY MANAGER
 R.J. ZEDER, TRANSPORTATION AND DEVELOPMENT DIRECTOR *RJZ*

FROM: MARGARET COULTER, REGULATORY AFFAIRS MANAGER *mc*

SUBJECT: ADOPTION OF ORDINANCE NO. 4345 GRANTING COX
COMMUNICATIONS ARIZONA, LLC A CABLE TELEVISION LICENSE AGREEMENT
AND CLASS 6 CABLE TELEVISION AND RELATED SERVICES LICENSE FOR THE
CITY OF CHANDLER.

RECOMMENDATION: Staff recommends approval of Ordinance No. 4345 granting Cox Communications Arizona, LLC a Cable Television License Agreement and Class 6 Cable Television and Related Services License for the City of Chandler.

BACKGROUND: The City issued a non-exclusive 15-year cable license agreement on May 15 1980 to Dimension Cable Services (owned first by American Cable Services then through a merger/acquisition by Times Mirror Cable of Arizona). Dimension Cable Services renewed its license on May 15, 1995, and then the company was subsequently purchased by Cox Communications, Inc. (Cox) which assumed the license.

The most recent license expired on May 14, 2010, but a provision in the license allowed Cox (with a new organizational name of Cox Communications Arizona, LLC) to continue to operate under the existing license while the City and Cox finalized the negotiation of a renewal license. Before this could be completed the City needed to update Chapter 46 of the City Code related to Cable Television Licenses in order to reflect new State Statutes related to such licenses. The City also finalized an audit of the License Fee payments and reviewed construction compliance of the System's aerial plant.

The new license incorporates all the changes made in the Chandler Code related to cable television licenses. It establishes a non-exclusive 15-year Cable Television License Agreement between the City of Chandler and Cox Communications Arizona, LLC for the continuation of

the construction and operation of a cable & fiber system to provide cable television-related services to the City of Chandler and satisfies the license requirements of a Class 6 Cable Television and Related Services License according to Chapter 46 of the Chandler City Code. Of note is that it provides Customer Service provisions that are more detailed and designed to set the highest levels and standards of service to Subscribers within the State of Arizona. The Construction Standards in the Agreement also reflect City Code and Utility Development Manual changes that have occurred over the past 15 years.

FINANCIAL IMPLICATIONS: Cox will continue to pay a license fee of five (5) percent of gross revenues as defined in the license. Cox is entitled to reductions in payments of License Fees as provided by Title 9 of Arizona Revised Statutes which includes permit and inspection fees. Cox will continue to make available, at no cost to the City, four PEG cable channels. Cox will also continue to provide Basic Service to City buildings that are receiving Cable Service at the beginning of the term of this Agreement. Upon written request from the City Manager, at no charge to the City, Licensee shall provide Licensee's Basic Service tier to additional City Buildings.

PROPOSED MOTION: Move to introduce and tentatively approve Ordinance No. 4345 granting Cox Communications Arizona, LLC a Cable Television License Agreement and Class 6 Cable Television and Related Services License for the City of Chandler.

Attachment: Ordinance No 4345
Exhibit A-Cable Television License Agreement

ORDINANCE NO. 4345

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER,
MARICOPA COUNTY, ARIZONA, APPROVING A CABLE TELEVISION
LICENSE AGREEMENT BETWEEN THE CITY OF CHANDLER AND COX
COMMUNICATION ARIZONA, LLC

WHEREAS, the City of Chandler (“City”) is authorized to grant, renew, deny and terminate Licenses for the installation and maintenance of Cable Systems and otherwise regulate cable television within the City’s boundaries by virtue of federal and state statutes, but the City’s police powers, by its authority over its public rights of way, and by other City powers and authority to establish a Class 6 Cable Television and Related Services License (hereinafter “Agreement”); and

WHEREAS, Since May 15, 1980, Cox Communications Arizona LLC (“Licensee”), or its predecessor in interest, has maintained and operated a cable television system (the “Cable System”) in the Right-of-Way pursuant to Ordinances No. 852, No. 1409 and No. 2539 ; and

WHEREAS, the Chandler City Council has determined that it is in the best interest of, and consistent with, the convenience and necessity of the City of Chandler to authorize the approval of a Cable Television License Agreement between the City and Licensee; and

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AS FOLLOWS:

Section 1: The Mayor and the City of Chandler City Council hereby approves Exhibit A-the Cable Television License Agreement between the City of Chandler and Cox Communications Arizona, LLC, a Delaware Limited Liability Company.

Section 2: That the Mayor is authorized to execute this Agreement and establish a Class 6 Cable Television and Related Services License as applicable and to establish Fees.

Section 3: That all officers and employees of the City of Chandler shall perform all administrative and ministerial acts to carry out the authorization set forth in this Ordinance.

Section 4: This Ordinance shall become effective thirty days from and after its final adoption: provided, however, that the agreement hereby granted shall not become effective unless and until Licensee has accepted said agreement as provided herein and has carried out such other terms and conditions as may be required before said agreement shall become effective.

INTRODUCED AND TENTATIVELY ADOPTED by the City Council of the City of Chandler, Maricopa County, Arizona, this ___ day of _____, 2012.

ATTEST:

MAYOR:

CITY CLERK

JAY TIBSHRAENY

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ____ day of _____, 2012.

ATTEST:

MAYOR

CITY CLERK

JAY TIBSHRAENY

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4345 was duly passed and adopted by the City Council of the City of Chandler, at a regular meeting held on the ____ day of _____, 2012 and that a quorum was present thereat.

City Clerk

Published:

APPROVED AS TO FORM:



EXHIBIT A

COX COMMUNICATIONS ARIZONA, LLC

CITY OF CHANDLER

CABLE TELEVISION LICENSE AGREEMENT

Effective as of May 15, 2010

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CABLE TELEVISION LICENSE AGREEMENT

This Cable Television License Agreement (the "Agreement" or "License") is made and entered into effective as of the 15th day of May, 2010, by and between the City of Chandler (the "City") and Cox Communications Arizona, LLC, a Delaware limited liability company ("Licensee").

RECITALS

A. Pursuant to federal, state and local law, including Chapter 46, Division V of the Chandler City Code, the City is authorized to grant, renew, deny, and terminate licenses for the installation, operation, and maintenance of Cable Systems and otherwise regulate Cable Services within the City boundaries by virtue of federal and state statutes, by the City's police powers, by its authority over its public rights-of-way, and by other City powers and authority.

B. The City issued a non-exclusive 15-year cable license agreement May 15, 1980, to American Cable Television, Inc., dba Dimension Cable Services. Through a series of transactions, ownership of American Cable Television, Inc. changed from Bruce Merrill to a wholly-owned subsidiary of The Times Mirror Company. After the Dimension Cable Services license was renewed on May 15, 1995, American Cable Television, Inc. was acquired by Cox Communications, Inc. ("Cox"), whose wholly-owned subsidiary CoxCom, Inc. later became the licensee.

C. Licensee Cox has maintained and operated a Cable System in the City pursuant to the Cable Television License Agreement dated May 15, 1995 (the "Existing License") that was entered into between City and CoxCom, Inc., a Delaware corporation (which converted into CoxCom, LLC, a Delaware limited liability company as of July 1, 2011, and into Cox Communications Arizona, LLC, a Delaware limited liability company as of December 31, 2011), and that expired by its terms on May 14, 2010 and which by its terms has carried over to date.

D. Licensee and the City desire to enter into a new license to provide Cable Services within the City to take effect upon the expiration of the Existing License.

E. The City has reviewed Cable Service in the City, including but not limited to a review of Licensee, Licensee's record of service in the City, Licensee's Facilities, the cable-related community needs of the City for both the present and future, Licensee's ability to carry out its commitments, and Licensee's overall financial, legal, and technical qualifications to hold a license from the City.

F. Based on such review, the City hereby finds that it would serve the public interest to grant a license on the terms and conditions hereinafter set forth, and Licensee agrees to obtain a license under these conditions.

AGREEMENT

In consideration of the foregoing recitals, which are incorporated herein by reference, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows.

1. **Definitions.** The definitions set forth in Chapter 46 of the Chandler City Code are applicable to this Agreement. In addition:

Confidential Information means any and all technical data marked Confidential, materials marked Confidential, reports marked Confidential, and other information marked Confidential owned by or developed by, or on behalf of Licensee and/or its Affiliates, any information marked Confidential that relates to the Cable System, and any and all financial data marked Confidential and information marked Confidential relating to Licensee's business, that Licensee discloses in writing, visually, or through some other media, or that the City learns or obtains through observation, analysis, compilation, or other study of such information, data, or knowledge provided that is marked as Confidential, except any portion thereof that (a) is known to the City at the time of the disclosure, as evidenced by its written records and was not acquired by the City on a confidential basis; (b) is disclosed to the City by a third party having a right to make such disclosure; (c) becomes published, or otherwise publicly known through no fault of the City; or (d) is independently developed by or for the City without use of Confidential Information disclosed hereunder as evidenced by its written records.

Customer means Subscriber.

2. **Grant of Authority; Term.**

2.1. The City hereby grants to Licensee the right and authority to operate a Cable System in the City and for that purpose to erect, install, solicit, construct, repair, replace, rebuild, reconstruct, maintain, and retain in, on, over, upon, across, and along any Streets and Public Ways such poles, wires, cable fiber optics, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, power supplies, network reliability units, and other property or equipment as may be necessary or appurtenant to the Cable System; and, in addition, so to use, operate, and provide similar facilities or properties rented or leased from other Persons, including but not limited to any public utility or other entity licensed or permitted to do business in the City.

2.2. This License is subject to the provisions of Chapter 46 of the Chandler City Code. Licensee is required to comply with all of the provisions of Division V, Cable Television and Related Services and other applicable provisions of Chapter 46 and Chapter 47 of the Chandler City Code. Nothing in this License Agreement shall require Licensee to obtain a Fiber Optic License in connection with Facilities of its Cable System.

2.3. **Competitive Parity.**

2.3.1. Licensee's right to use and occupy the Streets and Public Ways in the City for the purpose herein provided shall not be exclusive. However, the City agrees not to allow any person to enter into the Streets and Public Ways for the purpose of constructing or operating a Cable System, or for the purpose of providing Cable Service or video programming service to any part of the License Area, including by means of an "open video system" (as such term is defined in the Cable Act), without first obtaining a permit, license, authorization, or other agreement from the City or such other governmental entity then entitled to grant such permit, license, authorization, or other agreement.

2.3.2. The material provisions of the agreement under which any competitor is authorized to enter the Streets and Public Ways shall be reasonably comparable to those contained herein.

2.4. Prior Occupancy. Any privilege claimed under this License by Licensee in any Street and Public Way or other public property is subordinate to any (a) prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity, (b) prior lawful occupancy or use thereof by any other Person, and (c) prior easements therein; provided, however, that nothing herein extinguishes or otherwise interferes with property rights established independently of this License.

2.5. Term. This grant of authority runs for a term of fifteen (15) years, effective as of midnight on May 15, 2010, and ending at 11:59 p.m. on May 14, 2025.

3. License Fees.

3.1. License Fee. Licensee shall pay to the City License Fees in an amount equal to five percent (5%) of Licensee's Gross Revenues during the term of this License. Licensee acknowledges that the City may elect to appropriate the first one hundred thousand dollars (\$100,000) of each year's License Fees for the operation of the Public, Education and Government Channels provided for in Section 4 of this Agreement.

3.2. Reductions/Offsets/Credits. Licensee is entitled to reductions in payments of License Fees as provided in Section 12.6 of this Agreement and Title 9 of Arizona Revised Statutes. These include:

3.2.1. Other than License Fees on Gross Revenues authorized pursuant to Title 9 of Arizona Revised Statutes and this Agreement, any amounts Licensee paid to the City during the prior quarter for rental, application, construction, permit, inspection, inconvenience and other fees and charges related to Licensee's use of the Streets and Public Ways.

3.2.2. As provided in A.R.S. § 9-506(E), Licensee is authorized to retain License Fees from its Subscribers as and in the amount set forth from time to time in agreement(s) between the City and Licensee for in-kind cable service or payments.

3.3. Payment of License Fees. The payment of License Fees shall be made pursuant to the provisions of Chapter 46 of the Chandler City Code.

3.4. License Fees Audit and Underpayment/Overpayment.

3.4.1. The City is authorized to inspect and audit the records of licensee pursuant to Chapter 46 of the Chandler City Code. If a City audit shows overpayments, City shall pay Licensee the overpaid amount as provided in Chapter 46 of the Chandler City Code. If Licensee determines in an internal audit that it overpaid License Fees, Licensee shall not take any offset for such overpayment(s) against License Fees without notifying the City and proposing a commensurate schedule for recoupment from subsequent quarterly payments of License Fees, without interest. If a City audit or an internal audit shows any underpayment, Licensee shall pay

any underpayment within thirty (30) Days and interest shall apply at one percent (1%) per month from the date the amount was due.

3.4.2. Within fifteen (15) Days after notice from Licensee that it contests an audit determination of License Fees under this Section, the City shall schedule an administrative hearing before an individual then serving as a hearing officer pursuant to Section 62-570 of the Chandler City Code. For purposes of this Agreement, the term "taxpayer" in Section 62-570 shall be replaced with the word "Licensee." The Licensee may be heard in person or by its authorized representative at such hearing. Hearings shall be conducted informally as to the order of proceeding and presentation of evidence. The hearing officer shall admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability. Further, copies of records and documents prepared in the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight, admissibility, and authenticity. Summary accounting records may be admitted subject to satisfactory proof of the reliability of the summaries. In all cases, the decision of the hearing officer shall be made solely upon substantial and reliable evidence. All expenses incurred in the hearing shall be paid by the party incurring the same. Within fifteen (15) Days after the conclusion of such hearing, the City shall issue a determination. The determination is subject to all review and appeal provided by applicable law. If there is no person designated or serving as a hearing officer pursuant to Section 62-570 of the Chandler City Code, then the process established pursuant to Section 46-8.17 of the Chandler City Code will be used.

4. City Channels.

4.1. City Channels. Licensee will provide the City the channel capacity for two (2) channels of public, educational or governmental access programming as required by federal and state law in the Basic Service tier of the Cable System and two (2) channels of noncommercial governmental programming in the digital programming tier of the Cable System.

4.2. Government Channel. Licensee shall continue to make available in the Basic Service Tier at no charge to the City one (1) channel on the Cable System designated as a Government Channel to be used by City government officials and agencies. The Government Channel is for use by the City for non-commercial, informational programming regarding government activities and programs.

4.3. Education Channel. Licensee shall continue to make available in the Basic Service tier at no cost to the City one (1) channel on the Cable System designated as an Education Channel. The Education Channel shall be used by the City for non-commercial, informational programming regarding educational activities and programs.

4.3.1. The operation of the Educational Access channel shall be the responsibility of the Educational Access Governing Board ("EAGB") or educational institution designated by the City to act as the EAGB which shall represent all elementary and secondary school districts, all colleges, and all private non-profit school systems as established by the Licensor. EAGB sets general policy on use of the educational access channel.

4.3.2. The executive committee, consistent with the rules and policies adopted by the EAGB, may arrange to utilize the facilities, equipment and personnel available for community

programming to produce and program the educational access channel. These facilities, equipment and personnel shall be provided at cost to users approved by the EAGB or the executive committee.

4.4. Digital Channels.

4.4.1. Public Safety Channel. Licensee shall continue to make available in the digital programming tier at no cost to the City one (1) Public Safety Channel for downstream use by the City fire/police departments. At no cost to the City, Licensee shall secure the audio and video portions of the signal delivered over the Public Safety Channel so that the signal may only be received by specially-equipped converters.

4.4.2. Additional Digital Channel. Within one hundred twenty (120) Days of written request by the City, Licensee shall make available in the digital programming tier at no cost to the City one (1) channel to be designated as a secured Government, Public Service or Education Channel for use by the City for non-commercial, informational programming regarding government or educational activities and programs. Until the City has given notice to Licensee pursuant to this Subsection, the provisions of Section 4.9 shall not apply to this channel.

4.4.3. Converters. Any additional specially-equipped converters or additional secured transmission equipment that Licensee elects to provide for the existing secured Public Safety Channel or for any additional secured Government or Public Safety Channel shall be provided for in a separate agreement between the City and Licensee for in-kind cable service or payments.

4.5. Point of Origin. The City Channels shall each originate from a studio designated by the City within the corporate limits of the City. Licensee shall establish the connection to the Cable System necessary for each of the City Channels to originate from this location at no cost to the City. Licensee shall incur costs and expenses to provide, maintain and operate facilities and equipment of the cable television system, including facilities and equipment for signal carriage, processing, reformatting and interconnection:

- a: To connect the cable television system, as it may be relocated from time to time, to transmit programming to and from existing locations of public, educational or governmental access facilities and to allow monitoring of access programming at the facilities; and
- b: To transmit public, educational and governmental access channels to subscribers with the same prevailing quality, functionality and identification as other channels.

4.6. Maintenance of Equipment. Licensee shall provide at no charge to the City prompt and regular periodic maintenance and replacement of any cables, amplifiers, and other distribution equipment owned by Licensee and used for the City Channels. The City shall provide and operate and maintain at its expense all other equipment and facilities necessary for operation of the City Channels.

4.7. Downstream Programming from Another City or Town. If the City elects to receive downstream programming from another city or town above and beyond that they have in place at the execution of this License, the City shall pay all costs incurred by Licensee in

providing for the City to receive such programming. The City must obtain the necessary consents from the city or town that originated the programming before Licensee takes any steps to provide the City with such programming.

4.8. Location of Channels. Licensee may, in its sole discretion, determine the tier and channel location of the City Channels and the method for delivering these channels over the Cable System; provided that any decision that changes the locations of City Channels locations will be made in consultation with the City, and Licensee will use its best efforts to give a reasonable period of notice not less than ninety (90) Days. Licensee will provide at no charge to the City notice of the changed location channel in its printed or online materials as designated in the Subscriber Service Standards in Section 46-8.11(E)(2)(c) of the Chandler City Code within the time periods specified for notice to Subscribers.

4.9. Unused Capacity. Licensee may utilize unused capacity on the City Channels for any purpose under rules and procedures that the City shall establish. Licensee and the City will annually review the use of the City Channels and, upon mutual agreement between Licensee and the City, the City may relinquish one or more of the City Channels to Licensee for use as Licensee sees fit.

4.10. On Demand Content. Upon written request from the City, Licensee shall work with the City to place reasonable amounts of educational or governmental content (as determined by Licensee) on Licensee's network in the form of "on demand" programming. This "on demand" programming will be made available only during such time as one or more of the City Channels is inactive and shall contain programming that would have been suitable for display on the inactive City Channel(s).

5. Services to the City.

5.1. Service to City Buildings. Licensee will continue to provide Basic Service to City buildings that are receiving Cable Service at the beginning of the term of this Agreement. Upon written request from the City Manager, at no charge to the City, Licensee shall provide Licensee's Basic Service tier to additional City Buildings.

5.2. Drops to City Buildings. If making service available to a City Building requires no more than a Standard Drop, Licensee shall make service available without charge to City Buildings. If making service available to a City Building requires more than a Standard Drop, Licensee will not be required to make such service available unless the City entity requesting such service pays to Licensee an amount equal to the actual labor and material costs incurred by Licensee for the additional Facilities and work, less Licensee's cost for a Standard Drop. Absent a showing by Licensee to the City Manager of unusual circumstances, which may include without limitation street crossings or plant extensions, any Standard Drop to any City Buildings shall be accomplished within ten (10) Days of the written request for service or, if later in the case of a City Building not owned by the City, after owner's execution of any necessary easement documents.

6. **Required Service; System Design and Capacity.**

6.1. **System Design.** The Cable System, as installed, uses a hybrid fiber optic/coaxial cable network. The Cable System is built so that fiber is provided to all neighborhood nodes. Extending from each optic site is radio frequency coaxial cable.

6.2. **System Capacity.** The channel capacity of the Cable System is expandable as future needs arise. At a minimum, system capacity of 750 MHz must be available for signal transmission on the Cable System.

7. **Changes in Cable Technology.**

7.1. **Periodic Meetings.** The City and Licensee will meet periodically but at least every three (3) years or upon the written request of either to discuss changes in cable television laws, regulations, technology, competing services, the needs of the community, and other factors impacting cable television. As a result of these discussions, this License may be modified by mutual agreement of the City and Licensee to respond to a change in laws, regulations, technology, competing services, the needs of the community, or other factors affecting cable television.

7.2. **Certain Conditions.** If any of the following conditions occur, and upon written request of either Licensee or the City, the City Manager and Licensee will meet and discuss in good faith the terms of a mutually agreeable amendment to this License:

7.2.1. Cable Service similar to the Cable Service offered by Licensee is provided by any Competitor that is not subject to similar licensing requirements of the City; or

7.2.2. Any other significant event occurs, including but not limited to changes of federal or state law or a final non-appealable order or judgment by a court of competent jurisdiction, which either the City or Licensee believes may affect the current terms and conditions of this License.

7.3. **Purpose.** The purpose of the meetings set forth in this Section is to use best efforts to reach mutually acceptable agreement for recommendation to the City Council for proposed action on amendments to this License to relieve the City or Licensee from any commercial impracticability that arises during the term of this License. This Section 7 is intended to facilitate a process whereby the parties may reach a mutually acceptable agreement to amend this License, but does not require that this License be amended.

8. **Line Extension.**

8.1. **Residential Service.** Licensee shall extend its Cable System to serve dwelling units within the City as specified in this Section 8.1. Each unit in an MDU (as defined in Section 46-1 of the Chandler City Code) is counted as a dwelling unit in determining the residential density, provided a mutually acceptable agreement granting Licensee reasonable access to the MDU has been executed and delivered. Licensee is not required to make service available to residents of an MDU where the owner of the property has not granted Licensee reasonable access to the property.

8.1.1. When requested by a resident or developer in the City, Licensee shall, at Licensee's sole expense, extend the Cable System to any single family residence or dwelling within the City, provided that such extension involves density of forty (40) existing homes per cable plant mile measured from the nearest technically feasible point of connection on the Cable System, determined by Licensee in its sole discretion.

8.1.2. When a resident or developer in the City requests an extension of service to an area that does not meet the minimum density set forth above in Section 8.1.1, Licensee must comply with such request only if the resident or developer agrees to pay to Licensee an amount equal to all incremental costs incurred beyond those for an extension otherwise involving a density of forty (40) existing homes per mile. The incremental costs to be paid will be Licensee's costs (reasonable labor and materials) of extending the Cable System consistently with Licensee's overall system design to the residence, or to and throughout the development, from the nearest technically feasible point of connection on the Cable System, as determined by Licensee in its sole discretion. The costs will include splicing in one or more taps and extending cable.

8.1.3. Where there is a request by a developer for an extension to a development that does not meet the minimum density test set forth above in Section 8.1.1 and where, instead of proceeding under Section 8.1.2 above, the developer agrees to pay Licensee's full costs (reasonable labor and materials) of extending the Cable System from the nearest technically feasible point of connection on the Cable System to the nearest Street and Public Way access to the development, Licensee shall then extend the Cable System within the development, at Licensee's sole cost, if it has a density of forty (40) existing homes per mile measured from the nearest Street and Public Way access to the development to which the developer elected to pay to have the Cable System extended.

8.1.4. Absent a showing by Licensee to the City Manager of circumstances beyond Licensee's reasonable control, an extension of service pursuant to Sections 8.1.1, 8.1.2, or 8.1.3 above must be accomplished within one hundred twenty (120) Days after the developer or resident's written request.

8.1.5. To prevent unnecessary disruption and damage to Streets and Public Ways and other property, the installation of Cable System must be accomplished in new subdivisions at the same time, and in the same trench as other communications, electric, and other permanent services to structures.

8.2. Commercial Service. Licensee shall make Cable Services available to commercial establishments as set forth below. Licensee will not be required to make service available to commercial establishments where the owner of the property has not granted Licensee reasonable access to the property.

8.2.1. When requested by the owner of a commercial or residential establishment in the City, Licensee shall, at Licensee's sole expense, extend the Cable System to any commercial or industrial establishment within the City, provided that such extension involves density of one hundred (100) hook-ups per cable plant mile measured from the nearest technically feasible point of connection on the Cable System determined by Licensee in its sole discretion.

8.2.2. When the owner of a commercial or industrial establishment within the City requests an extension of service to an area that does not meet the minimum density set forth in Section 8.2.1 above, Licensee shall be required to comply with such request only if the owner agrees to pay to Licensee an amount equal to all incremental costs incurred beyond those for an extension otherwise involving a density of one hundred (100) hook-ups per cable plant mile. The incremental costs to be paid will be Licensee's costs (reasonable labor and materials) of extending the Cable System consistently with Licensee's overall system design to the establishment from the nearest technically feasible point of connection on the Cable System, as determined by Licensee in its sole discretion. The costs will include splicing in one or more taps and extending cable.

8.2.3. Absent a showing by Licensee to the City Manager of circumstances beyond Licensee's reasonable control an extension of service pursuant to Sections 8.2.1 or 8.2.2 above shall be accomplished within one hundred twenty (120) Days after the owner's execution of any necessary easement documents and/or capital contribution agreements.

9. **Service Drops.**

9.1. **Standard Drop.** Licensee shall make Cable Service available to any single family residence or any commercial establishment within the City at the standard connection charge if the connection requires a Standard Drop.

9.2. **Non-Standard Drop.** If making Cable Service available requires more than a Standard Drop, Licensee will not be required to make such Cable Service available unless the Person requesting such Cable Service pays to Licensee the standard connection charge and an amount equal to the reasonable, actual labor and material costs incurred by Licensee for the additional Facilities and work beyond the Standard Drop.

9.3. **Bulk Billing.** Licensee may offer bulk billing service, but may not require a bulk billing agreement as a condition of providing service, when the Person requesting service pays to Licensee the applicable amount(s) set forth in Section 9.2 above.

10. **Construction Requirements and Technical Standards.** Licensee shall construct, install, operate, and maintain its system in a manner such that it operates at all times consistent with all laws, the construction standards of the City, and the FCC Rules and Regulations, Part 76 SubPart K (Technical Standards), as amended from time to time. In addition, the City may at any time conduct independent measurements of the Cable System.

11. **Emergency Service.** In accordance with the provisions of FCC Rules and Regulations Part 11, Subpart D, Section 11.51(h)(1), as they may from time to time be amended, Licensee shall install and maintain an Emergency Alert System and shall transmit all Emergency Act Notifications and Emergency Act Terminations relating to local and state-wide situations as may be designated to be an emergency by the Local Primary, the State Primary and/or the State Emergency Operations Center, as those authorities are identified and defined within FCC Rules and Regulations, Part 11.

12. **Use of Streets and Public Ways.**

12.1. Location of Licensee's Property. Any poles, wires, cable lines, conduits, or other properties of Licensee to be constructed or installed in Streets and Public Ways shall be so constructed or installed only at such locations and in such manner approved by the City consistent with the City's technical and permitting regulations. Licensee or its authorized contractors will obtain any required permits before any physical work is done in the City's rights-of-way or on City-owned property.

12.2. City Authority to Regulate Construction. City has the authority to regulate the time or location of construction to assure and preserve effective traffic flow, prevent hazardous road conditions, and to minimize notice impacts or any other public purpose.

12.3. Undergrounding.

12.3.1. Licensee shall place all of its new Facilities underground. No underground Facilities may be moved to poles. Licensee may not install any poles.

12.3.2. Subject to later undergrounding as required in this Section 12.3, Licensee may replace existing aerial Facilities with Facilities that are no larger in cross-section than the existing aerial Facilities and for which Licensee shall obtain all applicable necessary construction permits. Nothing contained in this Section 12.3 requires Licensee to construct, operate, and maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, stand-by and other power supplies, network reliability units, pedestals, or other related equipment.

12.3.2.1. Where aerial Facilities of other utilities in the same span are placed underground, Licensee shall concurrently (or earlier) place its existing aerial Facilities underground.

12.3.2.2. Such undergrounding shall be at Licensee's own expense, except to the extent that (i) public funds are designated specifically to compensate Licensee therefor or (ii) third-party (such as but not limited to a developer) funds are made available to compensate Licensee therefor. That one or more other utilities with prior existing rights to the Streets and Public Ways are eligible for and granted public funds because they hold prior rights shall not entitle Licensee to specific designation of public funds for changes required by undergrounding.

12.3.3. All new underground wires or cable placed by Licensee after the effective date of this License shall be placed in conduit except for service drops. Service drops shall be installed pursuant to the standards set forth in the City of Chandler Utility Permit Manual.

12.4. Changes Required by Public Improvements. Licensee shall comply with Section 46-8.12(M) of the Chandler City Code. Any removal or relocation made thereunder shall be paid for by Licensee, except to the extent that (i) public funds are designated specifically to compensate Licensee therefor or (ii) third-party (such as but not limited to a developer) funds are made available to compensate Licensee therefor. That one or more other utilities with prior existing rights to the Streets and Public Ways are eligible for and granted public funds because

they hold prior rights shall not entitle Licensee to specific designation of public funds for changes required by public improvements.

12.5. Street Repair. If Licensee causes damage to pavement, sidewalks, driveways, landscaping, or other property during construction, installation, or repair of its Facilities, Licensee or its authorized agent shall replace and restore such places in compliance with Chandler City Code Section 46-8.12(P).

12.6. Offset or Credit. If the City imposes requirements for repairing and restoring damage to pavement, sidewalks, driveways, landscaping or other property caused by Licensee that Licensee believes exceed the standard specified in Section 12.5, Licensee may assert an offset or credit with respect to License Fees for the increased cost of repair or restoration that is attributable to the excessive standard only if:

a: Licensee has given the City written notice identifying the specific requirement that exceeds the standard specified in Section 12.5 for which it asserts an offset or credit and any excess cost for which Licensee asserts an offset or credit was incurred no more than one hundred eighty (180) Days before Licensee gave the City written notice identifying the specific requirement that exceeds the standard specified in Section 12.5; and

b: Licensee has given the City written notice identifying the specific requirement that exceeds the standard specified in Section 12.5 no later than the first time Licensee submits an itemized report to the City under Section 46-8.8(K) of the Chandler City Code identifying an offset associated with that specific requirement.

12.7. Permitting.

12.7.1. For all permits applied for by Licensee, the City agrees to act timely and in any event in accordance with any timelines established by the City for permit issuance. Where changes are identified by Licensee after the issuance of a permit and during the construction phase, Licensee shall apply for a permit revision if required by the City.

12.7.2. On application, the City shall grant Licensee an Annual Maintenance Permit ("AMP"). The AMP shall authorize Licensee access to its existing Facilities and shall be on parity with permits granted to other utilities and shall be negotiated on an annual basis between Licensee and the City consistent with the City of Chandler Utility Manual.

12.7.3. On application, the City shall grant Licensee an Annual Emergency Permit ("AEP"). The AEP shall authorize Licensee emergency access to its existing Facilities and shall be on parity with permits issued to other utilities and shall be negotiated on an annual basis between Licensee and the City consistent with the City of Chandler Utility Permit Manual.

13. Service Provisions.

13.1. Service Standards. Licensee shall at all times satisfy FCC customer service standards, as amended from time to time by the FCC, and comply with Section 46-8.11 of the Chandler City Code as now in effect.

13.2. Complaint Procedures. Licensee shall comply with the following Subscriber Complaint procedures.

13.2.1. Licensee shall ensure that all Subscribers and general citizens have recourse to a satisfactory process to submit complaints. Licensee shall respond to all Subscriber Complaints within a reasonable time. Licensee shall follow a written internal appeal procedure for disputes over Subscriber Complaints.

13.2.2. Licensee shall establish and maintain a written log listing all Subscriber Complaints. The written log shall include the name and telephone number, if given, of the Person making the complaint and Licensee's action on the complaint. The log shall be maintained by Licensee for three (3) years and, to the extent permitted by federal law, shall be available to the City Manager and the public for inspection upon request during Licensee's normal business hours, which shall be a minimum of fifty (50) hours Monday through Friday, and four (4) hours on Saturday.

13.2.3. Licensee shall provide, in writing, upon request of the City Manager, details from its written log relating to any Subscriber Complaint.

13.2.4. Licensee shall timely reply to the City about any general citizen complaint that the City refers to Licensee.

13.3. Subscriber Solicitation Procedures.

13.3.1. All Licensee personnel, agents, and representatives, including subcontractors, shall wear a cable uniform or clearly display a photo-identification badge when acting on behalf of Licensee in the City.

13.3.2. Licensee shall afford each Subscriber of the Cable System a three (3)-Day right of rescission for ordering installation of Cable Service from the Cable System provided that such right of rescission will end when physical installation of Cable System equipment on such Subscriber's premises begins.

13.4. Rights of Individuals. Licensee may not deny Cable Service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, sex, age, or disability; provided, however, that Licensee may not be required to provide Cable Services to any Person who does not pay the applicable line extension connection fee, fees for drops in excess of Standard Drops, and/or Cable Service charge(s). Licensee shall comply at all times with all other applicable federal, state, and local laws and regulations, as amended from time to time, relating to nondiscrimination.

14. Inspection of Records.

14.1. Inspection of Records. At all reasonable times as related to determination of License compliance, Licensee shall permit any duly authorized representative of the City to examine any and all financial records kept or maintained by Licensee or under its control that reasonably relate to Licensee's accurate payment of License Fees.

14.2. Scope of Information. Unless otherwise specified, all of Licensee's recordkeeping and disclosure obligations include and are limited to information that reasonably relate to Licensee's accurate payment of License Fees. This does not include personally identifiable Subscriber information without the Subscriber's consent in violation of Section 631 of the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 551.

14.3. Maps. Licensee shall at all times make and keep full and complete plans and records showing the exact location of all Cable System equipment installed or in use in Streets and Public Ways, and other places in the City and make them available to the City for review upon request. Upon request, Licensee shall provide the City Manager route maps or sets of maps drawn to scale, showing the location of Licensee's underground and above ground Facilities. Upon request, the City and Licensee shall provide the other with route maps or sets of maps drawn to scale, showing the location of their respective underground and above ground Facilities.

15. Insurance. Licensee shall maintain in full force and effect, at no cost and expense to the City, during the term of this License, commercial general liability insurance in the amount of five million dollars (\$5,000,000) combined single limit for bodily injury and property damage. The City shall be designated as an additional insured. Such insurance will not be cancelable except upon thirty (30) Days prior written notice to the City. Upon written request, Licensee shall provide a certificate of insurance showing evidence of the coverage required by this Section. Licensee may self-insure the above-described policy coverages if Licensee or its parent is of sufficient financial standing to provide such insurance.

16. Letter of Credit.

16.1. Amount; Purpose. Within thirty (30) Days after the effective date of this License, Licensee shall deposit with the City an irrevocable letter of credit in an amount not to exceed ten thousand dollars (\$10,000) (replenishable as specified in Section 16.3 below) issued by a federally insured commercial lending institution. The form and substance of said letter of credit will be used to assure (a) the faithful performance by Licensee of all provisions of this License; (b) compliance with all orders, permits, and directions of any Department of the City having jurisdiction over Licensee's acts or defaults under this License; and (c) Licensee's payment of any penalties, liquidated damages, claims, liens, and taxes due to the City that arise by reason of the construction, operation, or maintenance of the Cable System, including cost of removal or abandonment of any of Licensee's property.

16.2. Drawing on Letter of Credit. The letter of credit may be drawn upon by the City by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the City Manager certifying that Licensee has been found, pursuant to Sections 19 through 22 below, to have failed to comply with this License, stating the nature of noncompliance, and stating the amount being drawn. The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this License or authorized by law, and no action proceeding against a letter of credit will affect any other right the City may have.

16.3. Replenishing. The letter of credit shall be structured in such a manner so that if the City at any time draws upon the letter of credit, upon notice to Licensee by the issuing

lending institution, Licensee shall immediately increase the amount of available credit by the amount necessary to replenish that portion of the available credit exhausted by the honoring of the City's draft; provided, however the maximum amount available to be drawn on this letter of credit for any one event shall not exceed ten thousand dollars (\$10,000). The intent of this Section is to make available to the City at all times a letter of credit in the amount of ten thousand dollars (\$10,000).

17. Liquidated Damages.

17.1. Licensee understands and agrees that failure to comply with any time and performance requirements as stipulated in this License Agreement or in Chapter 46 of the Chandler City Code will result in damage to the City and it is impracticable to determine the actual amount of such damage in the event of delay or nonperformance.

17.2. Licensee agrees to the liquidated damages set forth below and chargeable to the Letter of Credit for based on the following:

1. Failure to Complete System Construction or reconstruction in accordance with these Licensing Requirements and/or the License, unless the City Council specifically approves the delay by motion or resolution – five hundred dollars (\$500) a Day;
2. Failure to provide a cable connection within the time(s) set forth in Chapter 46 of the Chandler City Code and/or this Licensing Agreement – fifty dollars (\$50) a Day;
3. Failure to properly restore the public Right-of-Way or to correct related violations of specifications, code, or standards after having been notified by the City to correct such defects – six hundred dollars (\$600) a Day;
4. Failure to comply with Subscriber service standards of these Licensing Requirements – one hundred fifty dollars (\$150) a Day;
5. Failure to test, analyze and report on the performance of the Cable System following a written request – one hundred fifty dollars (\$150) a Day;
6. Failure to provide in a continuing manner the type of services proposed in the accepted Application, renewal Proposal, or License, unless the City Council specifically approves modification of a Licensee's obligation – five hundred dollars (\$500) a Day;
7. Failure to cure any violation of Customer Service Standards in Chapter 46 of the Chandler City Code, following notice and an opportunity to cure pursuant to the provisions of that Section -- one hundred fifty dollars (\$150) a Day; and
8. Any other material action or non-action by the Licensee, as agreed upon between the City and Licensee, and set forth in the License -- one hundred fifty dollars (\$150) a Day.

18. **Notice of Violation; Right to Cure or Respond.** In the event that the City believes that Licensee has not complied with the terms of this License, the City shall informally discuss the matter with Licensee. If these discussions do not lead to resolution of the issue, the City shall

notify Licensee in writing of the exact nature of the alleged noncompliance. Licensee shall have thirty (30) Days from receipt of the notice of violation: (a) to respond to the City, contesting the assertion of noncompliance; (b) to cure such default; or (c) if, by the nature of default, such default cannot be cured within the thirty (30)-Day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

19. **Effect of Expiration, Revocation or Termination of License.**

19.1. Continuity of Service. It is the right of all Subscribers to continue receiving Cable Service as long as their financial and other obligations to Licensee are honored. If this License expires or terminates, Licensee shall cooperate with the City to ensure continuity of Cable Service to all Subscribers for a period not to exceed ninety (90) Days. Said period may be extended by written agreement between the City and Licensee. During such period, Licensee shall be entitled to the revenues for operating the Cable System.

19.2. Other Services. Upon expiration, revocation, or termination of this License for any reason, Licensee shall have one hundred eighty (180) Days from the date of expiration, revocation, or termination to enter into good faith negotiations with the City or other governmental authority to obtain a license, permit, or other approval or agreement that may then lawfully be required in order to allow Licensee to continue using Licensee's Facilities in the Streets and Public Ways for any lawful service other than Cable Service that Licensee may then provide over its Facilities in the License Area.

19.3. Holding Over. In any circumstance whereby Licensee would continue to occupy the Streets and Public Ways after the expiration of this Agreement, such holding over shall be deemed to operate as a renewal or extension of this Agreement on a month-to-month basis that may be terminated at any time by the City upon sixty (60) Days' written notice to Licensee, or by Licensee upon sixty (60) Days' written notice to the City.

20. **Transfers.**

20.1. Prior Consent. Except as otherwise provided in Section 46-8.5 of the Chandler City Code, Licensee's right, title, or interest in this License may not be sold, transferred, assigned, or otherwise encumbered.

20.2. Grant, Rent, or Lease. As long as a grant, rent, or lease of all or a portion of the Cable System does not amount to a transfer, Licensee in the normal course of providing Cable Services or other telecommunication services may grant, rent, or lease use of the Cable System to other Persons. Any such use shall be restricted to and consistent with such uses as Licensee is authorized in this License or under other applicable law. Any such use shall be in compliance with applicable federal and state law. No such grant, lease, or rent by Licensee will, however, relieve Licensee of any requirement or obligation under this License as to its use of the Streets and Public Ways. The City shall be notified of any such grant, rental, or lease if the use of the portion of the Cable System is or will be for Cable Services or for any activity for which a license fee is applicable.

21. **Controlling Authorities.**

21.1. **Local Ordinances.** Licensee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations placed upon Licensee that are contained in this License. In the event of a conflict between any ordinance or Chandler City Code provision and this License, this License shall control.

21.2. **Federal and State Laws.** This License is subject to and shall be governed by all requirements of the Cable Act as amended from time to time, of Arizona Revised Statutes §§ 9-505 through 9-510, as amended from time to time, and of other federal and state laws and regulations governing cable communications as amended from time to time. In a conflict between the terms and conditions of this License and the terms and conditions on which the City can grant a license, federal and state law shall control.

22. **Licensee's Representations and Warranties.**

22.1. **Authority.** Licensee represents and warrants that it has the power and authority to enter into this License by and through the representative who has signed this License on its behalf, and that it has the power and ability to do all the acts required of it by this License.

22.2. **Misrepresentation.** Licensee has not misrepresented or omitted material facts, has not accepted this License with intent to act contrary to the provisions herein, and represents and warrants that, as long as it operates the Cable System, it will be bound by the terms and conditions of this License or a subsequently issued license.

22.3. **Attorneys.** Licensee further acknowledges that it was represented throughout the negotiations of this License by its own attorneys and had opportunity to consult with its own attorneys about its rights and obligations regarding this License.

23. **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees.

24. **Confidentiality.** This Agreement is subject to the Arizona Public Records Law, A.R.S. § 39-121 et seq. The City will provide notice as promptly as practical to Licensee of any public records request made which includes Confidential Information provided to the City. Licensee shall have five (5) business days to obtain relief in the form of an order from the Maricopa County Superior Court or, only in a case where a question of federal law is presented, the United States District Court for the District of Arizona setting forth what Confidential Information is not subject to disclosure pursuant to the Arizona Public Records Law or all Information provided by Licensee including Confidential Information will be disclosed without liability or obligation by the City. The City will not initiate, support, represent or defend, or be responsible any legal action to prevent disclosure of any Confidential Information or other information provided by owner whether marked "Confidential" or not. Nor will City be liable for attorneys' fees and/or any other costs or expenses of any nature whatsoever in directly or indirectly asserting or directly or indirectly defending the right of Licensee to keep any Confidential Information from public disclosure pursuant to the Arizona Public Records Law.

25. **Conflict of Interest.** Licensee acknowledges that this License is subject to A.R.S. § 38-511.

26. **General Provisions.**

26.1. **Filings.** When not otherwise prescribed herein, all matters that this License requires to be filed with the City shall be filed with the office of the City Clerk.

26.2. **Force Majeure.**

26.2.1. Licensee shall not be held in default under, or in noncompliance with, the provisions of this License, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation, or revocation of this License) where such alleged noncompliance or default occurred or was caused by an act of God, an act or omission of governmental military or civilian authority, strike or lockout, riot, epidemic or quarantine, war, earthquake, fire, flood, tidal wave, unusually severe rain, wind, or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, terrorist acts, governmental, administrative or judicial order or regulation or other circumstances that could not have been avoided through Licensee's exercise of reasonable care, prudence and diligence. This provision includes work delays caused by waiting for utility providers to service or monitor their own above-ground or underground facilities to which Licensee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

26.2.2. Furthermore, the parties hereby agree that it is not the City's intention to subject Licensee to penalties, fines, forfeitures, or revocation of the License for so-called "technical" breach(es) or violation(s) of this License, which include but are not limited to the following: (i) in instances or for matters where a violation or a breach by Licensee of the License was good faith error that resulted in no or minimal negative impact on the Subscribers within the License Area or (ii) where strict performance with the terms of the License would result in practical difficulties and hardship to Licensee that outweigh the benefit to be derived by the City and/or Subscribers.

26.3. **Governing Law; Venue.** The provisions of this License are subject to applicable federal law, including but not limited to the Cable Act and the rules, regulations, and orders of the FCC, and are also subject to Arizona law not in conflict with such federal law. In the event of any conflict between the provisions of this License and such state or federal law, the provisions of such state or federal law shall prevail. Proper venue is in the Superior Court of Maricopa County or the United States District Court for the District of Arizona.

26.4. **Amendments.** This License may be modified only through a written amendment executed by authorized persons for both parties. Any such changes, including unauthorized written amendments, shall be void and without effect.

26.5. **Severability.** If any Section, sentence, paragraph, term, or provision of this License or any ordinance, regulation, law, or document incorporated herein by reference is held to be illegal, invalid, unconstitutional, or unenforceable, by the decision of any court of

competent jurisdiction, such decision will not affect the validity of the remaining portions hereof all of which shall remain in full force and effect for the term of this License.

26.6. Notice. Unless otherwise provided for in this License, all notices to be given hereunder shall be given in writing and may be hand delivered or given by certified first class mail, postage prepaid addressed to the parties at the addresses set forth below. Such notices will be deemed served and effective when delivered to the designated persons listed below during ordinary business hours or on the date of delivery by U.S. Mail registered or certified return receipt requested.

To Licensee: Cox Communications Arizona, LLC
1550 West Deer Valley Road
Building C
Phoenix, Arizona 85027
Attn: Senior VP & General Manager

With a copy, which is not notice, to: Cox Communications, Inc.
1400 Lake Hearn Drive
Atlanta, Georgia 30319
Attn: Legal Department

To the City: City of Chandler
Mail Stop 403
PO Box 4008
Chandler, Arizona 85244-4008
Attn: Regulatory Affairs Manager

With a copy, which is not notice, to: City of Chandler
Mail Stop 602
PO Box 4008
Chandler, Arizona 85244-4008
Attn: City Attorney

Licensee and the City are required to notify the other party of any changes to the foregoing information within fifteen (15) Days of any change.

26.7. Headings. The headings contained herein are intended solely to facilitate the reading thereof. Such headings shall not affect the meaning or interpretation of the text herein.

26.8. Integration; Acquired Licenses. This License constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, drafts, discussion outlines, correspondence, memoranda, or otherwise regarding the subject matter hereof. This License hereby preempts and cancels any other license agreements granted by the City that are acquired by Licensee through the purchase or acquisition of other Cable Systems and/or cable operators. Upon completion of an acquisition the terms of this License shall govern Licensee's newly acquired Cable System(s) or cable operation(s).

IN WITNESS WHEREOF, the parties have executed this License on the dates set forth below to take effect as of May 15, 2010, as specified in Section 2.5.

CITY OF CHANDLER

By: _____
Jay Tibshraeny
MAYOR

Date: _____

ATTEST:

Marla Paddock, City Clerk

APPROVED AS TO FORM:

Mary Wade, City Attorney
MW

COX COMMUNICATIONS ARIZONA, LLC, a
Delaware limited liability company

By: _____
J. Stephen Rizley
Senior VP and General Manager

Date: 30 June 2012