

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Section 621(a)(1) of the
Cable Communications Policy Act of 1984 as
amended by the Cable Television Consumer
Protection and Competition Act of 1992

MB Docket No. 05-311

**REPLY COMMENTS OF ANNE ARUNDEL COUNTY, CARROLL COUNTY,
CHARLES COUNTY, HOWARD COUNTY, MONTGOMERY COUNTY, AND THE
CITY OF BALTIMORE, MARYLAND**

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March 28, 2006

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SUMMARY

The Reply Comments of Anne Arundel County, Carroll County, Charles County, Howard County, Montgomery County, and the City of Baltimore, Maryland (the “Maryland Counties”) show that Verizon has entirely failed to identify any instances of misbehavior by local franchising authorities, but that Verizon’s own substantive positions and internal practices are the primary cause of any delay in the franchising process.

In the NPRM, the Commission specifically asked for concrete details about alleged problems with local franchising authorities. The Bells have not only failed to meet that challenge, but they have deliberately evaded it. Verizon’s comments contain almost no empirical data aside from anonymous smears. The Bells’ promised exposé of the evils of local franchising has turned out to be a campaign of innuendo and nothing more.

This fundamentally dishonest tactic discredits Verizon’s entire submission and makes it impossible for the Commission to rely in any way on Verizon’s factual claims. Any such reliance would fatally corrupt this proceeding and render any subsequent order vulnerable to reversal on due process grounds. Fundamental fairness and due process demand that Verizon’s targets have a fair chance to refute Verizon’s claims.

In those few cases where it *is* possible to track down the objects of Verizon’s smear campaign, the allegations generally turn out to be false. For example, Verizon misrepresented negotiations in Tampa in such a way as to overstate the PEG support the City was requesting. Similarly, Verizon took out of context and misrepresented the intent of a phrase used by the Larchmont-Mamaroneck Cable Television Board of Control in a New York rulemaking proceeding. Verizon also misrepresented the Montgomery County requirements for

reimbursement of costs. Until the Bells have proved and documented their accusations and afforded their targets a fair chance to respond, the Commission must presume that other unidentifiable Bell claims also misrepresent the facts.

The true source of delay is that Verizon confronts local communities with extraordinary and inflexible demands. Howard County, which has completed a franchise agreement with Verizon, found the prospect of cable competition so important that it was willing to agree to many franchise provisions that it would not otherwise have found acceptable. But the need to work through these demands makes negotiations with Verizon unnecessarily slow.

First, the company insists on beginning discussions based not on an existing franchise agreement fine-tuned to meet a community's cable-related needs and interests, but on Verizon's own cookie-cutter "Model Franchise Agreement" or "MFA." The MFA was evidently created by an ivory-tower committee having no actual cable experience. It contains many provisions unlike anything seen in cable franchises before, together with a large number of loopholes, givebacks, and exemptions favoring the company. Second, Verizon stubbornly resists even minor changes to its stock language. This makes compromise difficult. Third, in those cases where Verizon *can* be induced to agree to a change in its generic template, the company must go through a complicated and time-consuming internal process to do so, in which even minor changes in language must be referred to a Verizon "committee" – a group whose members never come into contact with actual franchising authorities. These internal defects of Verizon's process mean that while a dedicated, tenacious community with strong expertise in cable law can eventually make progress toward a mutually acceptable document, the process takes far longer than it would with a more reasonable negotiating partner.

In addition, a host of specific provisions in the Verizon cookie-cutter MFA raise serious problems that take time to address in franchise negotiations. Verizon seeks to constrain local governments' police powers and governmental authority in several ways, including demands for binding arbitration of police power issues. Verizon also opposes the inclusion of any construction or plant-related provisions under a cable franchise, insisting on a definition of "cable system" that is at odds with the federal Cable Act. While the Maryland Counties are not averse to considering Verizon's arguments about the proper regulatory treatment of its system, or to the possibility of reconfiguring their regulatory approaches so as to cope more effectively with an environment of mixed-use systems, any sensible resolution is delayed by Verizon's blind fixation on its particular way of formulating the issue.

Verizon seeks to constrain local consumer protection authority by preventing a community from establishing customer service rules without Verizon's consent. Verizon has also begun to demand that local governments limit their customer service rules (and presumably their application of the Commission's own rules) to cable service only. Through its narrow indemnification language, Verizon leaves the community at risk for litigation costs in the event of a legal challenge to Verizon's novel franchise language.

The standard Verizon MFA language contains language allowing Verizon to drop out of the market completely after three years if it doesn't like the results – thus placing continuity of service at risk for subscribers and diminishing the promise of competition. Verizon's "gross revenues" definition carves out advertising commissions and creates thirteen other exemptions, including some whose meaning is unclear and some that raise specific problems. Moreover, Verizon's MFA language omits any sort of audit provisions to determine whether franchise fees have been correctly paid. The MFA also permits Verizon to escape its PEG carriage

obligations entirely if one of several rather loose conditions regarding interconnection arrangements should be fulfilled.

As Howard County's example shows, a community can reach agreement with Verizon in spite of the roadblocks Verizon creates. But these and other factors in the company's approach to negotiations guarantee delay, despite the best efforts of local franchising authorities. This explains why other cable competitors, such as Ameritech, RCN, and BellSouth, have been able to obtain cable franchises much faster than has Verizon.

While it is impossible to address every incorrect claim in the Bell companies' initial comments, certain points stand out. Verizon asserts that localities have franchising authority solely because of their interest in managing the public rights-of-way. This is false; their franchising rights flow from their property rights and their police powers. And historically cable franchising has served at least five crucial purposes: fair compensation for use of property, promoting the deployment of advanced communications networks, advancing the First Amendment value of expanding access to communications media, managing the public rights-of-way, and consumer protection.

Verizon argues that every benefit received by a community through a cable franchise counts against the five percent franchise fee cap. This is false. There is a specific exception for capital costs of public, educational, or governmental access facilities, and the legislative history makes clear that only monetary benefits are counted. Verizon's scorn for the benefits of franchising, which it refers to frequently as "pet projects," shows the company's disinterest in any real attempt to meet local needs and interests. With respect to institutional networks, Verizon confuses a *network* not accessible to ordinary subscribers with the idea of a network of a *completely different type* from those available to ordinary subscribers. In addition, in

discussing the requirements of Section 611, Verizon forgets the right to require facilities and equipment under Section 624. Verizon's First Amendment argument ignores the fact that the right to speak does not entail access to any specific economic resource the speaker may wish to use, and also the fact that Verizon is already free to speak using its existing system.

The Commission should acknowledge that it lacks jurisdiction to interfere in local franchise negotiations; reject requests that a third tier of federal regulation be imposed on the franchising process; determine whether Verizon's actions in this docket fall within the scope of 47 C.F.R. § 76.6(c); require Verizon to withdraw its original filing and resubmit a version with all attacks on unidentified franchising authorities removed; require Verizon to identify every community referred to in its Comments and provide an opportunity for those communities to respond; and require Verizon to make its model franchise agreement publicly available.

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I. INTRODUCTION

Anne Arundel County, Carroll County, Charles County, Howard County, Montgomery County, and the City of Baltimore, Maryland (together referred to herein as the “Maryland Counties”¹) respectfully submit these Reply Comments in response to the Notice of Proposed Rulemaking, FCC 05-189, released by the Commission on November 18, 2005 (“NPRM”).²

¹ This general term is retained for continuity with the group of counties that filed initial comments in this proceeding: Comments of Anne Arundel County, Carroll County, Charles County, Howard County, and Montgomery County, filed Feb. 13, 2006 (“Maryland Counties’ Initial Comments”). While the City of Baltimore is not a county strictly speaking, it is treated as a county for certain purposes under Maryland law. *See, e.g.*, Constitution of Maryland, Article XI-A.

² *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television and Consumer Competition Act of 1992*, MB Docket No. 05-311, Notice of Proposed Rulemaking (November 18, 2005).

The NPRM in this proceeding offered the Bell telephone company (“telco”) cartel the prospect of gaining the right to use local governments’ property on easy terms, without having to negotiate for it, by having the Commission impose a new layer of federal regulation on the negotiation process – the negotiation that is generally required in a free market when one wants to use someone else’s assets.³ The Bell cartel has taken full advantage of this invitation to express these companies’ frustration with having to pay a fair-market price for the assets they want, and their eagerness to embrace onerous federal regulation – as long as it is onerous for someone else.

It is essential to keep in mind that, among other things, the Bells are asking the Commission to control the use of *other people’s property*: to say for what purposes, on what terms and with what protections (or absence thereof) a local community must let its own property be used by private parties. While the telco rhetoric speaks always about regulation, this proceeding is not simply about regulation, but also about property rights.⁴

Some aspects of cable franchising do involve regulation – for example, rules made under a community’s police powers to protect consumers. Other aspects are property-based: for example, the right of local communities, like other market participants, to work out

³ The Maryland Counties note that local cable franchising is already subject to an extraordinary level of federal regulation in the form of the Cable Act, Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 521 *ff.* Thus, local franchising authorities are already more constrained than ordinary market participants in the use of their property. These Reply Comments do not address whether the philosophy of a “light regulatory touch” would be better served by deregulating local governments in this area.

⁴ In Montgomery County, for example, the County owns portions of the public rights-of-way in fee simple, while other portions are dedicated (the underlying fee remains with the adjoining property owner). The County acts as the owner with respect to the control and use of both types of public rights-of-way property. On local governments’ property rights as they

agreements to gain the best possible services and infrastructure in the most effective and best adapted ways for their specific situations. Some requirements could be justified on either basis. For example, safety precautions for a company's operations in the public rights-of-way involve both what governments do generally to protect their citizens, and what a property owner does to protect the property. Both of these concerns reflect the basic principle of self-determination that is part of our federalist system. No centralized authority, such as the Commission, should unnecessarily infringe upon the rights of other entities to work out agreements and rules to meet specific situations.⁵

The Bell companies, then, are seeking not deregulation, but a massive new regime of federal regulation – federal interference in negotiations between other parties. The Bells, of course, see this as deregulation, because the Commission's regulation of someone *else* would give them a free hand. But that is simply a matter of being the beneficiary of the intensified regulation of others. (Thus, for example, if the Commission were to set a fixed, low price for all sales of fiber-optic cable, the Bells would have life easier because they would no longer have to negotiate a price, but fiber manufacturers would be justified in perceiving this as regulatory intrusion.⁶) Imposing the heavy hand of federal regulation on local communities

affect communications issues, *see* Frederick E. Ellrod III and Nicholas P. Miller, *Property Rights, Federalism, and the Public Rights-of-Way*, 26 *Seattle U. L. Rev.* 475, 483-506 (2003).

⁵ Thus, the Maryland Counties do not here seek to defend state “level playing field” statutes. There is no such statute in Maryland. *Cf.* Comments of Verizon on Video Franchising, filed Feb. 13, 2006, at 76-80 (“Verizon Comments”).

⁶ The Bells have inconsistently argued elsewhere that the market should be left to operate without regulatory intervention in areas where they have superior bargaining leverage, such as interconnection agreements and the offering of unbundled network elements. It is only where the Bells do not unquestionably have the upper hand that they are suddenly seized with enthusiasm for federal regulatory intervention.

(who represent all the citizens) would be to increase regulatory burdens for the many as a way of reducing them for the few – those few whom the Commission is responsible for regulating.

The very extensive comments filed by the telcos and the MSOs, and others, in this proceeding make it impossible for these Reply Comments to address all relevant issues. The Maryland Counties support the more global comments of the National Association of Telecommunications Officers and Advisors (NATOA), the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, the Alliance for Community Media, and the Alliance for Communications Democracy, filed February 13, 2006 (“NATOA Comments”), and the reply comments filed by the same parties, on the array of general legal points raised by commenters.

In these Reply Comments, the Maryland Counties will focus on the comments of Verizon, which is the incumbent local exchange carrier for Maryland, and which has been in cable franchise negotiations with three of the Maryland Counties.⁷ Substantively, these Reply Comments will focus primarily on the real explanation for any slowness in Verizon’s franchise negotiations – Verizon’s own unreasonable demands and cumbersome negotiating techniques – rather than on the numerous legal errors and misinterpretations with which the company’s comments are rife.

⁷ It is interesting that Verizon is not the first Bell company to obtain a cable franchise from a Maryland county. In 1993, SBC Communications – now AT&T – acquired the Montgomery County cable franchise from Hauser Communications. (Even prior to the Telecommunications Act of 1996, a RBOC was permitted to own a cable system *outside* its telephone service area.) As with its other cable ventures to date, however, SBC’s Maryland foray into the video market did not last. In two separate transactions in the late 1990s, SBC sold out its cable operation and retired from the video market. The former SBC franchise in Montgomery County is now held by Comcast.

II. VERIZON FAILS TO IDENTIFY ANY MISBEHAVIOR BY LOCAL FRANCHISING AUTHORITIES.

A. Verizon Systematically Avoids Identifying the Targets of Its Allegations and Thus Prevents Rebuttal.

In the NPRM, the Commission specifically asked for concrete details about alleged problems with local franchising authorities: “Commenters arguing that such abuses are occurring are asked to provide *specific examples* of such demands. Parties should submit *empirical data* on the extent to which LFAs unreasonably refuse to award competitive franchises.”⁸ The Commission even referred to an earlier Verizon comment to illustrate the fact that such examples and empirical data were needed because allegations against local franchising authorities were being made in vague and nonspecific ways.⁹ Thus, the Bells were specifically challenged in this proceeding to make good on their abstract and nebulous complaints.

The initial comments in this proceeding show that the Bells have not only failed to meet that challenge, but they have deliberately evaded it. Verizon’s comments contain almost no empirical data aside from anonymous smears: the company attributes allegedly objectionable actions to “one community in Virginia,” “one county in Florida,” “one community in California,” and the like, without ever saying which community it is talking about.¹⁰ The same carefully vague and nonspecific language is used in the attached Declaration of Marilyn O’Connell (“O’Connell Declaration”), who describes herself as “responsible for overseeing Verizon’s efforts to obtain local cable franchises,” but not as having any personal knowledge

⁸ NPRM at ¶ 13 (emphasis added).

⁹ NPRM at ¶ 13 n.58.

of any negotiations at all.¹¹ In neither the 89-page comments nor the 29-page O’Connell Declaration does Verizon name *even one community* that has acted improperly in a franchise negotiation. Rather, Verizon has systematically refused to identify in its filing any of the communities it attacks. The Bells’ promised exposé of the evils of local franchising has turned out to be a campaign of innuendo and nothing more.¹²

Given Verizon’s pretensions that it has faced numerous examples of bad behavior, this failure is nothing short of astounding. There can be only one purpose for Verizon’s refusal to identify its targets. Verizon is afraid to make its accusations clear, for fear that if it does they will be exposed as misstatements and misrepresentations. It is easy to combine misstatements, half-truths, statements out of context, and one-sided rhetoric to produce the appearance of a reasonable case. The test comes when the object of such calumny has a chance to rebut and to point out the falseness of the characterization. Verizon’s Comments are carefully designed to deny local franchising authorities that opportunity.

For example, did any municipality actually “demand” that Verizon “provide funds for the town to purchase street lights from a third party owner,” as Verizon alleges?¹³ If there is any truth to this claim at all and it is not merely fabricated out of whole cloth, what explanation and what context lie behind such a seemingly odd situation? We don’t know. The

¹⁰ Verizon Comments at 31-32.

¹¹ Ms. O’Connell has never appeared at the table in negotiations in Anne Arundel, Montgomery or Howard Counties.

¹² The other Bell commenters have done little better, often relying primarily on newspaper reports (whose inaccuracies are discussed by other commenters in this proceeding). Here, however, as has been noted, the focus is on Verizon. Only that Bell company has in fact engaged in any significant number of franchise negotiations in the last several years.

Commission has no idea what might have gone on in this hypothetical community, and local franchising authorities cannot cast any light on the matter, because Verizon has carefully withheld the name of the allegedly offending community. And while Verizon's lavish expenditure of paper and toner is intended to suggest a wide range of activity to which the company objects, the Commission has no way of knowing whether there is any truth to the company's claims, or even how many different communities Verizon is really talking about. For all the reader can know, Verizon may be citing the same few incidents over and over again, as well as mischaracterizing the incidents themselves.

This fundamentally dishonest tactic does not merely discredit Verizon's entire submission. It also makes it impossible for the Commission to rely in any way, to any extent, on Verizon's factual claims. Any reliance on such unsubstantiated anecdotes would fatally corrupt this proceeding and render any subsequent order vulnerable to reversal on due process grounds. Fundamental fairness, and the due process clause of the Constitution, demand that Verizon's targets have a fair chance to refute Verizon's claims. Unless and until Verizon identifies the objects of its factual claims and allows them a full and fair opportunity to investigate the allegations and respond, action on those claims would render a Commission action arbitrary and capricious and constitutionally infirm.¹⁴

In other contexts, the Commission has taken steps to prevent similar abuses of its process. *See, e.g.*, 47 C.F.R. § 1.1204(b) (any rulemaking petition that cites the actions of a

¹³ Verizon Comments at 57.

¹⁴ *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Verizon itself has been known to argue that it has been deprived of procedural due process when an agency acts adversely to its rights without giving the company "a meaningful opportunity to be heard." *See, e.g., New*

state or local government as grounds for preemption must be served on that government); § 1.1206(a) (same for declaratory ruling petitions); *Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act*, FCC 98-295 (Nov. 17, 1998) (requiring service of Section 253 petitions on state and local governments to which the petition applies). Such rules recognize that preemption cannot be based on anecdotal evidence without a fair chance for the accused to respond. Given the Commission's previous request for *specific* evidence, and the flagrant nature of Verizon's actions, the Maryland Counties hereby request the Commission to determine as part of this proceeding whether Verizon's actions fall within the scope of 47 C.F.R. § 76.6(c) (prohibiting frivolous proceedings and abuse of process).

B. Where Verizon's Accusations Can Be Identified, They Are Incorrect.

In those few cases where it *is* possible to track down the objects of Verizon's smear campaign, the telco allegations generally turn out to be false. At best, they are distortions or misrepresentations of the facts. For example, on p. 65 of the Verizon Comments, the company refers to "one franchising authority in Florida." Upon reviewing Verizon's description of events, the City of Tampa determined that it was apparently the city Verizon was maligning. In fact, the allegation was false. Verizon said the City had "demanded" large public, educational, and governmental (PEG) access support amounts, but in fact the City had merely cited amounts stated in a needs assessment to show that the City could justify the much smaller amount the City was requesting as part of the negotiation. The City asked Verizon to correct its filing. Accordingly, Verizon filed an "errata" [*sic*] on March 6, 2006, deleting the gross misstatement of fact that had characterized its original filing.

England Telephone and Telegraph Company v. Conversent Communications of Rhode Island, L.L.C., 178 F. Supp. 2d 81, 95 (D.R.I. 2001).

Again, in one of the few cases where Verizon actually names a local government – referring to comments filed before the New York Public Service Commission (“NY PSC”), not to franchise negotiations – Verizon misrepresented what the local government said. Verizon said that the towns of Larchmont and Mamaroneck had told the NY PSC that once Verizon had a cable franchise, they could require Verizon to “‘entirely rebuild’” its system. Verizon cited this as a claim of “regulatory authority” by those communities.¹⁵ In fact, the Comments in Support of Petition of Town of Babylon filed by the Larchmont-Mamaroneck Cable Television Board of Control (“Larchmont-Mamaroneck”) on May 5, 2005¹⁶ argued that Verizon should be required to obtain a cable franchise *before* constructing its fiber network, because if it did not consult the locality before designing and building its system, the system Verizon constructed might not be able to meet the necessary local cable-related needs and interests, such as the need for upstream links from origination sites for PEG programming.¹⁷ That is, Larchmont-Mamaroneck was seeking to save Verizon time, cost and trouble by ensuring that local needs and interests would be factored into the design from the beginning, rather than having to be retrofitted later. The only respect in which the company might be required to “rebuild” its system in this context is to the extent that such rebuilding might be

¹⁵ Verizon Comments at 80-81; O’Connell Declaration at ¶ 53. The same claim is repeated, with the same lack of specificity, in an *ex parte* filing made by Verizon on March 9, 2006 by letter from Dee May to Marlene H. Dortch, attaching a letter bearing the date February 24, 2006, reporting a meeting with Chairman Martin, Attachment 2 (“Section 621 Franchise Proceeding: Summary of Arguments”) at p. 14 (“March 9 Ex Parte”).

¹⁶ These comments were filed in Case No. 05-0250, ID No. PSC-12-05-00012-P, *Petition for an Expedited Declaratory Ruling of the Town of Babylon, New York et al. Concerning Unfranchised Construction of Cable Television Systems in New York by Verizon Communications Inc. in Violation of the Public Service Law*.

¹⁷ With respect to such upstream links, *see* section III.B.8 below.

necessary to meet local cable-related needs and interests – which the community certainly has authority to require under the Cable Act.¹⁸

One additional misstatement by Verizon can be refuted directly by the Maryland Counties. In the March 9 Ex Parte at Attachment 1, p. 2, the company says that “one Maryland LFA demands fees for attorneys at multiple layers of review, and has indicated that Verizon must match the estimated \$650,000 the incumbent paid.”¹⁹ While Verizon again failed to identify the object of its claim, representatives of Montgomery County were told by Commission staff that Verizon was referring to the County. In fact, however, this \$650,000 figure cannot be tied to any reimbursement of costs of which the County is aware, and the County has never stated that Verizon was required to reimburse the County in that amount. (Reimbursement, of course, would in any case be tied to the actual costs caused by Verizon’s application processing, not to a particular number specified in advance.)

Every description by Verizon of alleged franchising problems could be just as distorted and inaccurate as these. But not every target of Verizon’s calumny will necessarily be in a position to point that out. Accordingly, until the Bells have proved and documented their accusations and afforded their targets a fair chance to respond, the Commission must presume that other unidentifiable Bell claims also misrepresent the facts.

If one removes all the anonymous smears from the Verizon Comments, what is left? Two communities (Fairfax City and Fairfax County) are cited favorably for not obtaining

¹⁸ The Maryland Counties understand that the Larchmont-Mamaroneck Cable Television Board of Control will file a more detailed correction of Verizon’s misleading statements separately in this proceeding.

¹⁹ It appears that this may also be the object of the anonymous smear in the Verizon Comments at 60.

outside assistance in negotiating with Verizon.²⁰ Two communities (Tampa and Howard County) are cited as being the targets of anti-competitive campaigns by cable incumbents.²¹ In an attached declaration by a paid consultant,²² although not in the text of its Comments, Verizon implies that the City of Philadelphia was at fault for failing to reach agreement on a cable franchise with RCN (in the 2001 period, when RCN was severely curtailing its expansion plans for lack of capital). But even here Verizon's declarant can do no more than make a generic and conclusory claim that the City "attempted to impose terms that were not reasonable."²³ We are not told what terms Verizon or RCN considered unreasonable. In fact RCN itself, as Verizon's consultant admits, denies that local franchising is a barrier to entry.²⁴ We are left, then, with the remarkable fact that Verizon cannot identify *one single example* to support its empty allegations that franchising authorities behave unreasonably.

To set the record straight, the Commission should require Verizon to withdraw its original filing and resubmit a version with all the anonymous smears removed. But that is not a sufficient remedy. By now innumerable parties – in and out of the Commission – have

²⁰ O'Connell Declaration at ¶ 37.

²¹ O'Connell Declaration at ¶ 60 n.6 and ¶ 63. Verizon also notes that Cablevision filed suit against a New York community, the Village of Massapequa, that did grant Verizon a franchise. Declaration of Thomas W. Hazlett, Attachment B to Verizon Comments, at ¶ 18 n.16 ("Hazlett Declaration").

²² The Maryland Counties address Verizon's consultant's remarks as part of Verizon's filing. It may be noted, however, that *Verizon* appears to regard paid consultants' work as inherently suspect. See Verizon Comments at 3, 34-35, 59-63.

²³ Hazlett Declaration at ¶¶ 11 n.11, 42-43.

²⁴ See Hazlett Declaration at ¶ 48; Comments of RCN Telecom Services, Inc., filed Feb. 13, 2006, at 2; see also p. 4 ("If RCN, a relatively small entity, can comply with the

downloaded and read Verizon's cleverly neutered allegations. Calumny, once let loose, is hard to catch up with, and many people may be left with the false impression that Verizon has provided actual examples. The Maryland Counties therefore request that the Commission employ its authority over Verizon as a regulated entity to require the company to specifically identify each and every community referred to in its Comments, the individual Verizon employees or agents who were the source of the alleged information in each case, and any documents on which the company relied in making each claim. The resulting information should be made public and sufficient time allowed for local franchising authorities to review it, identify any claims that involve them, determine the real facts of the matter, and respond.

III. VERIZON'S FRANCHISE DEMANDS ARE THE PRINCIPAL CAUSE OF DELAY IN FRANCHISE NEGOTIATIONS.

Verizon claims that any delay in granting franchises is "largely" the fault of the local franchising authority. Verizon Comments at 5. But Verizon has wholly failed to show any such misbehavior, as shown above. On the contrary, those of the Maryland Counties that have engaged Verizon in negotiations can report the true source of delay: from the start, Verizon confronts local communities with extraordinary and inflexible demands. Moreover, in those areas where Verizon may be brought grudgingly to compromise, the company does so through a slow, tortuous internal process that multiplies the difficulty and expense for local communities and the time consumed by the process.

It must be kept in mind, to begin with, that Verizon could obtain franchises almost immediately if it were willing to accept them on the same terms as incumbent cable operators.

franchising procedures currently in place, then surely the RBOCs, with their far greater resources, should be able to do the same").

Local communities such as the Maryland Counties are eager to grant such franchises, and any local legislative procedures needed to implement them would be unlikely to consume more than a month or two. (Howard County, for example, made this offer to Verizon at least three times at the beginning of negotiations.) But Verizon refuses to accept any such franchise.

No doubt Verizon feels that its situation is sufficiently different from that of the traditional MSO that some of the traditional franchise provisions may need to be adjusted to accommodate the Bell company. And here, too, local communities such as the Maryland Counties are happy to work with Verizon to make the kinds of adjustments that are appropriate to differing circumstances (as distinct from accepting without question the “solutions” arbitrarily dictated by Verizon). Howard County, for example, modified its cable code to take into account Verizon’s Title II status. But Verizon’s demands go far beyond this.

As noted above, three of the Maryland Counties have direct experience of franchise negotiations with Verizon. One, Howard County, has already concluded a Verizon franchise agreement. Howard County encountered many of the problems described below in arriving at that agreement. But the County found the prospect of cable competition so important that it was willing to agree to many franchise provisions that it would not otherwise have found acceptable. In any negotiation, of course, a party will not achieve everything it wants. But the degree of shortfall will vary depending on the situations of the parties. Based on its specific situation, including the terms of the existing Comcast franchise, Howard County decided, in its legislative judgment, to agree to many of Verizon’s provisions. By contrast, most of Anne Arundel County is already served by two cable operators, and both incumbent franchises are currently up for renewal. All local franchising authorities are interested in promoting

competitive entry. But different communities may have good reason to take a more or less searching look at some of Verizon's more extreme negotiating positions.

A. Verizon's Approach to Negotiations Creates Unnecessary Delay.

What makes Verizon so hard to negotiate with? First, the company insists on beginning discussions based not on an existing franchise agreement that has been fine-tuned to work effectively to meet the community's cable-related needs and interests, but on Verizon's own cookie-cutter "Model Franchise Agreement" or "MFA." As far as the Maryland Counties know, Verizon has not made public this one-size-fits-all MFA (the Maryland Counties request that the Commission direct Verizon to do so at once, in the interest of clarification, as a condition of continuing this proceeding). But its contents can be extrapolated with a fair degree of confidence based on the extremely close resemblance of the initial drafts received from Verizon by every community the company approaches.

The Maryland Counties appreciate the desire of Verizon to simplify its life by having the same agreement everywhere. Indeed, each of them has a similar interest in executing similar agreements with each of its own franchisees (although this interest indicates that a community should start with and modify the incumbent's franchise agreement, not the Verizon MFA). But Verizon's obsession with its cookie-cutter MFA creates problems for negotiation. The MFA was evidently created, prior to any actual franchise negotiations, by an ivory-tower committee having no actual cable experience. It contains many provisions unlike anything seen in cable franchises before, together with a large number of loopholes, givebacks, and exemptions that represent the wildest dreams of any cable operator for a company-favorable deal. Thus, every Verizon negotiation begins with a document heavily biased against the local

franchising authority – as opposed to the incumbent’s cable franchise agreement, which by definition is already the product of negotiation and compromise.

Second, Verizon stubbornly resists even minor changes to its stock language. This makes compromise difficult. In a normal cable negotiation, the parties spar over draft contract language. They seek to determine whether their goals are compatible, and if so, develop language that is satisfactory to both. Where their goals are not entirely in line with each other, the parties engage in a series of trade-offs and compromises yielding a result that is livable for each party, though not ideal for either. In contrast, Verizon is reluctant to adjust its pre-approved language at all, no matter how sound the reasons a local franchising authority may offer for a change. And Verizon, with its hundred years of monopoly history and its long experience in lobbying, rather than negotiating, with governments, is extremely unwilling to adjust its goals or reach compromises. From the local government’s perspective, the average MSO is a tough customer and franchise negotiations always a challenge; but Verizon is far worse.

Third, in those cases where Verizon *can* be induced to agree to a change in its generic template, the company must go through a complicated and time-consuming internal process to do so. First one must debate the matter with the Verizon employees and outside counsel at the negotiating table, who tend to be less familiar with cable law than the MSOs, but are well trained in explaining at great length how impossible it is for Verizon to yield on anything of importance. Then, when the local franchising authority suggests alternative language or different provisions in an attempt to meet Verizon’s concerns without giving away its own rights or ceding unreasonable authority to the company, it is told that the Verizon

representatives at the table cannot pass on such a change, but that it must be taken back to the “Committee.”

This Committee is apparently a group of unidentified Verizon personnel, indefinite in number, who must pass on even minor variances from the company’s stock language. The Committee does not appear at the negotiating table, and the identities of its members are not disclosed. The Maryland Counties understand from Verizon representatives that the Committee meets periodically on some internally determined schedule, and that a potential language change must normally be brought up at one of these periodic Committee meetings. Thus, it is almost never possible to resolve a disputed provision on the spot, as local franchising authorities normally seek to do in franchise negotiations. Instead, the community must wait for Verizon to take back the suggestion, hold a Committee meeting, present the proposal to the Committee, and come back at the next meeting with Verizon’s answer. Often that answer is not “yes,” but comes in the form of an incrementally small shift in Verizon’s original position, often insufficient to address the concern that gave rise to the initial problem. Thus, on any given issue a local franchising authority may be forced to go through numerous cycles of this sort, each one consuming the time that elapses between consecutive negotiating sessions.

Fourth, the unresponsiveness of the Committee is itself a stumbling block. The Committee members never come into contact with actual franchising authorities, or hear the arguments or concerns of local governments at better than second-hand. They never benefit from the experience of having to justify Verizon’s cast-in-stone positions to someone who sees things from another perspective. Thus, the Verizon Committee is institutionally prone to strike

rigid postures and reject compromises. The experience of the Maryland Counties in actual negotiations shows that reaching compromises with Verizon is a long and difficult process.

The result of these internal defects of Verizon's process is that while a dedicated, tenacious community with strong expertise in cable law can eventually make progress toward a mutually acceptable document, the process takes far longer than it would with a more reasonable negotiating partner.

B. Verizon's Substantive Demands Cause Unnecessary Delay.

A second source of delay caused by Verizon is substantive rather than procedural. A host of specific provisions in the Verizon cookie-cutter MFA raise serious problems that take time to address in franchise negotiations.

Since Verizon insists that its negotiating documents are confidential, out of an abundance of caution this discussion will refer only to publicly available documents.²⁵ A useful sample of a document largely preserving Verizon's original language is the company's franchise agreement with the City of Fairfax, Virginia (not to be confused with Fairfax County, within whose boundaries the separately incorporated City of Fairfax is located). A copy of this document, entitled Cable Franchise Agreement by and between City of Fairfax, Virginia and Verizon Virginia Inc. (Oct. 31, 2005), is attached as Exhibit 4 ("Verizon-Fairfax City Agreement"). A second sample, which preserves some Verizon MFA language that does not appear in the Verizon-Fairfax City Agreement, is An Agreement Between the City of Beaumont, California and Verizon California, Inc. (Dec. 2, 2004), attached as Exhibit 5 ("Verizon-Beaumont Agreement").

²⁵ The Maryland Counties do not, however, concede that Verizon's position as to confidentiality is necessarily correct.

To make clear the differences between Verizon's language and that of a normal cable franchise, this discussion will refer primarily for convenience to the Montgomery County-Comcast franchise agreement, the Cable Television Franchise Agreement Between Montgomery County, Maryland and SBC Media Ventures, L.P. (June 10, 1998) ("Montgomery County Agreement"). This document is available online at:

<http://www.montgomerycountymd.gov/mcgtmpl.asp?url=/content/cableOffice/June98franchise.asp>

While each community's franchise is unique, Montgomery County's well-established agreement serves as a useful reference point for what one normal cable franchise looks like.²⁶

1. Verizon Seeks to Constrain Local Governments' Police Powers and Governmental Authority.

Under any cable franchise, a local government must retain its police powers and its governmental authority generally. The fact that a cable operator signs a contract with the local government does not place it above the law. Rather, when the local government signs a franchise agreement, it is prevented by the Contracts Clause of the Constitution from impairing that contract by unilateral action,²⁷ but in every other respect retains its ability to legislate and to act for the public health, safety, and welfare. Thus, a normal cable franchise agreement such as Montgomery County's contains clauses to preserve the police powers and governmental powers of the franchising authority:

²⁶ Montgomery County also has a second franchise agreement, with RCN, which is similar in most respects to Comcast's. *See*:

<http://www.montgomerycountymd.gov/mcgtmpl.asp?url=/content/cableOffice/s tarpower ccapprv080399 franchise.asp>

²⁷ *See* U.S. Constitution, Art. 1 § 10. Contracts Clause claims preserve the integrity of the contract, but do not override governmental police powers. *See, e.g., Atlantic Coast Line R.R. v. Goldsboro*, 232 U.S. 548, 558 (1914); *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934).

All rights and privileges granted herein are subject to the police powers of the County and each Participating Municipality and their rights under applicable laws and regulations to exercise their governmental powers to their full extent and to regulate the Franchisee and the construction, operation and maintenance of the Franchisee's Cable System.²⁸

Typically, local law regarding cable franchises reflects this same preservation of governmental powers, as in the case of Montgomery County's Cable Law:

A franchisee is subject to and must comply with all applicable local, municipal, County, state and federal laws, ordinances, codes, rules, regulations, and orders including those pertaining to nondiscrimination.

A franchisee is expressly subject to the County's police power under Article 25A, Section 5(S) to the Annotated Code of Maryland.²⁹

Verizon's standard language conflicts with this basic principle in several places. To begin with, Verizon seeks to have its contract simply override the law if there is any conflict:

In the event of a conflict between the Cable Law and this Agreement, this Agreement shall prevail.³⁰

Convincing Verizon to alter this position can be time-consuming. Verizon also typically demands to be exempted, by contract, from provisions of local law:

The City and the Franchisee recognize and agree that certain provisions of the Cable Law are not applicable to the Franchisee, including, but not limited to the following: Section 94-77, Section 94-78, Section 94-93, Section 94-94, and Sections 94-96 to 94-100.³¹

The notion of overriding general law by special contract with a private entity raises difficulties in the best of cases. Among other things, Maryland law prohibits local governments from

²⁸ Montgomery County Agreement at § 2(f).

²⁹ Montgomery County Code, § 8A-6(a) and (b) ("Cable Law").

³⁰ Verizon-Fairfax City Agreement at § 2.7.1.

³¹ Verizon-Fairfax City Agreement at § 14.11; *see also* Verizon-Beaumont Agreement at § 14.10.

“contracting away” their police powers. *See, e.g., Attman/Glazer P.B. Co. v. Mayor and Aldermen of Annapolis*, 314 Md. 675, 552 A.2d 1277 (1989). Properly adapting existing code to accommodate cable operators that are also ILECs takes longer than Verizon’s “special exception for us” approach, but is far better in the long run. Here, the matter is still more difficult, because Verizon claims that these exceptions are necessary because of its peculiar theory about the nature of its cable system (*see* Section III.B.2 below). Thus, working out acceptable language on the franchising authority’s police powers is complicated in Verizon’s case by the company’s strong insistence that the community accept Verizon’s idiosyncratic views about local regulatory powers.

Moreover, Verizon insists upon a disturbingly open-ended provision in which Verizon can demand unspecified modifications of the franchising authority’s law or contracts or other powers based on what Verizon considers an alteration of the franchise agreement. Under its cookie-cutter MFA language, Verizon has the option of invoking *binding arbitration* to determine, in effect, the scope of the local government’s police powers.³² There is no restriction in Verizon’s scheme on the kinds of steps an arbitrator (not a court) could order – limits on the community’s police powers, changes to the franchise agreement, or entirely separate changes in the community’s law or practice – in order to “ameliorate” matters for the benefit of Verizon.

Nothing in the Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of the City’s police powers. However, if the reasonable, necessary and lawful exercise of the City’s police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties **to ameliorate the negative effects on the Franchisee** of the material alteration. If the parties

³² Verizon also claims the right to terminate the franchise entirely if the “amelioration” is not to its satisfaction, as indicated in the provision quoted below.

cannot reach agreement on the above-referenced modification to the Franchise, then **Franchisee may terminate this Agreement** without further obligation to the City in the event the **Franchisee determines (in its sole discretion)** that the City's exercise of its police power significantly impairs the Franchisee's ability to provide Cable Service in the Franchise Area **or, at Franchisee's option, the parties agree to submit the matter to binding arbitration** in accordance with the commercial arbitration rules of the American Arbitration Association.³³

And yet further, Verizon includes a parallel provision, seeking to bind the community to arbitration in the same way, to "ameliorate the negative effects" of any change in *state* law.³⁴ In effect, Verizon demands that the community become its insurer against any adverse actions by the state, with no limitation on the kinds of changes or restrictions an arbitrator might order.

It is unreasonable for Verizon to demand that a local government submit its governmental powers to binding arbitration at the whim of Verizon. Certainly such overreaching clauses are not needed to protect the integrity of the contract, which is in any case sufficiently guaranteed by the Contracts Clause.

2. Verizon Denies a Community's Police Power Authority Over Its Facilities Under a Cable Franchise.

Normally a cable franchise involves provisions allowing the franchising authority to protect public safety and the public rights-of-way with respect to the company's operations in its streets. Such provisions address construction safety, restoration of damaged streets and other property, notice of disruptions to the rights-of-way, and the like. Thus, for example, Section 5 of the Montgomery County Agreement, and Section 8A-17 of the Cable Law, set up rules to govern how a cable operator's plant impacts the County's public rights-of-way.

³³ Verizon-Fairfax City Agreement at § 2.8 (emphasis added).

³⁴ Verizon-Fairfax City Agreement at § 2.7.3.

Verizon, however, has its own theory on this subject. In Verizon's world-view, its plant is purely a telecommunications facility, and not a cable system. Thus, Verizon stringently opposes the inclusion of any construction or plant-related provisions whatever in a cable franchise agreement *or* cable law. To this end, Verizon introduces an entirely novel definition of "cable system," which purports to invoke the federal definition, but then attempts to declare that the "cable system" does not include the actual physical plant:

Cable System or System: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), meaning Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area. **The Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities** of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.³⁵

Verizon also demands that a local franchising authority agree to specific limitations on its regulatory authority under cable law, rather than letting the law in this area speak for itself:

City Does Not Regulate Telecommunications: The City's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance or operation of the Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending the Franchisee's existing Telecommunications Facilities for the provision of Non-Cable Services.³⁶

³⁵ Verizon-Fairfax City Agreement at § 1.5 (emphasis added). The Montgomery County Agreement, by contrast, basically follows the federal definition; *see* § 1(g).

³⁶ Verizon-Fairfax City Agreement at § 2.2.

Verizon's definition is at odds with the federal Cable Act, which states that the "facility" of a cable operator *is* a "cable system" to the extent it is used for cable service.³⁷ At least one state public service commission, in fact, has ruled that Verizon cannot include this kind of provision in a cable franchise.³⁸ Yet Verizon continues to be wedded to this novel and dubious language.

Verizon's purpose in taking this inflexible position seems to be to fend off any normal right-of-way regulation as it applies to Verizon's plant, despite the plain need for safety and operational rules to manage the public rights-of-way. In the Verizon Comments, the company throws every possible argument at this issue, depicting local right-of-way regulation as

³⁷ 47 U.S.C. § 522(7) states: "the term 'cable system' means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include . . . (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; . . ." This is a statutory definition and cannot be rewritten at will by the Commission, as Verizon requests (*see* Verizon Comments at 87).

³⁸ *See* State of New York Public Service Commission, Case 05-V-1263, Petition of Verizon New York Inc. for a Certificate of Confirmation for its Franchise with the Village of Massapequa Park, Nassau County, slip op. at 18-20 (Dec. 14, 2005) ("Nowhere in the Federal Cable Act does it state that a mixed-use facility is exempt from cable regulations once that system is used to provide cable service"); Case 05-V-1571, Petition of Verizon New York Inc. for a Certificate of Confirmation for its Franchise with the Village of South Nyack, Rockland County, at 7-9 (Feb. 8, 2006) (holding that local authority over mixed-use facilities is consistent with municipalities' traditional police powers and striking Verizon's clauses on this matter from the franchise agreement). Verizon misstates, and then debates, this result in the Verizon Comments at 82 n.50.

heralding a parade of horrors including a “prohibitory effect” and the restriction of “transmission technology.”³⁹

Without attempting to address the various fallacies of Verizon’s legal arguments,⁴⁰ the Maryland Counties suggest that a reality check is needed here. Local regulation of public rights-of-way use obviously does not prevent entry (since numerous companies have entered this market), and does not address the details of an operator’s technology. Rather, it has to do with safety issues, restoration of damage, relocation of facilities when other work in the rights-of-way makes it necessary, bonding and insurance, and the like. As Verizon itself notes, it is often subject to such authority even aside from cable franchising⁴¹ (as in Howard County, which has a separate utility agreement with Verizon) – and MSOs have flourished under such rules for decades. There is no reason to suppose that normal right-of-way management authority poses any harm to Verizon’s operations, although it may not comport with the company’s desire to fend off local authority at every point. The most that Verizon can claim in its Comments is that *maybe* some community sometime might abuse this authority. That hypothetical possibility is not sufficient to justify a new regime of federal regulation.⁴²

³⁹ Verizon Comments at 83-86.

⁴⁰ See NATOA’s Reply Comments for a more detailed discussion. It may be noted in passing, however, that Verizon is incorrect in claiming that its cable plant “does not change the character or extent of its use of the rights-of-way,” Verizon Comments at 83. It may also be noted that Verizon itself demands consideration of its cable and non-cable identities in tandem when that is to the company’s advantage, rather than maintaining a rigorous separation between the two; *see, e.g.*, Verizon Comments at 79.

⁴¹ Verizon Comments at 83.

⁴² If the mere possibility of abuse were sufficient to make any authority improper, it would follow that the Commission itself should be stripped of all authority – not to mention

The Maryland Counties are not averse to considering Verizon's arguments about the proper regulatory treatment of its system, or to the possibility of reconfiguring their regulatory approaches so as to cope more effectively with an environment of mixed-use systems, as Howard County has already done. But this is not a simple matter to resolve, and any sensible resolution is further delayed by Verizon's blind fixation on its particular way of formulating the issue and the "cable system" definition. The company is not generally open to compromise on this issue and can only with great difficulty be brought to discuss it in a constructive way at all (as distinct from merely reiterating its demand that the stock MFA language be used). Thus, Verizon's insistence that a local community accept without question the company's novel, legally dubious construction of the "cable system" definition and local authority over cable is a major delaying factor in franchise negotiations.

3. Verizon Seeks to Constrain Local Consumer Protection Authority.

One task generally undertaken by a local franchising authority, pursuant to its police powers to protect the public welfare, is that of consumer protection in the cable area. The Commission has expressly recognized this role. Its rules not only set forth minimum customer service standards to be observed by all cable operators, but also explicitly preserve the authority of a franchising authority to establish or enforce further rules.⁴³ Accordingly, the Montgomery County Agreement contains specific customer service requirements, along with the general requirement that the franchisee satisfy "FCC regulations, or other applicable

that Verizon itself would have to be prohibited from exercising any power or authority, since its power is certainly open to abuse.

⁴³ 47 C.F.R. § 76.309.

federal, state, or local law or regulation, as the same may be amended from time to time.”⁴⁴ The provision for amendment is essential. As conditions change over time, it may be appropriate for rules to be relaxed or strengthened. As MSOs devise new ways to take advantage of their customers or new loopholes in the Commission’s baseline rules, the local government needs to be able to exercise its legislative and police power authority to fill the gaps.

Verizon, however, wishes to be exempted from local authority to establish customer service rules. The Verizon cookie-cutter MFA comes complete with its own set of Verizon-approved customer service standards. *See* Verizon-Fairfax City Agreement, Exhibit D. The specifics of these Bell-friendly rules include a number of issues that cannot be examined here in detail. But a crucial limitation is found in section 8 of the Verizon-Fairfax City Agreement, where the parties agree that “Customer Service Requirements are set forth in Exhibit D, *which shall be binding unless amended by written consent of the parties*” (emphasis added). It seems clear that Verizon is seeking by this language to *prevent* the local franchising authority from exercising its rights under 47 C.F.R. § 76.309(b)(3)-(4) and to ensure that Verizon will not be subject to local law unless Verizon gives its written consent to the law.⁴⁵

Here, as elsewhere, Verizon’s basic attitude is that it is above the law: it cannot be forced to submit to local laws that it does not approve. Such an attitude is understandable in a

⁴⁴ Section 9(a). *See also* Cable Law at 8A-14.

⁴⁵ The observant eye will note that the introductory paragraph to Verizon’s Exhibit D in the Verizon-Fairfax City Agreement reads, “the Franchisee shall at all times satisfy any additional requirements established by applicable federal and state or regulation, as the same may be amended from time to time, including, without limitation, consumer protection laws” (emphasis added). The dangling “or,” which does not fit the syntax, suggests that at some

company with a century's tradition of monopoly power. It is not, however, acceptable in a franchise agreement. While Verizon has agreed to move from its original position in some cases, convincing it to do so, again, delays franchise negotiations.

Recently a further issue with respect to customer service has surfaced. Verizon seems to have become suddenly aware that the Commission's rules (and many local governments' rules) are stated in terms of how a *cable operator* must answer the telephone, keep appointments, provide clear and accurate bills, and the like. These rules do not distinguish between such elementary customer requirements as they relate to cable service, and as they may relate to other services provided by a cable operator, such as high-speed Internet access. The phones have to be answered whether the call turns out to be about video or about data. Verizon, however, believes that its treatment of Internet access customers is exempt from the customer service rules that apply to cable service customers. Thus, Verizon has started to demand that local governments *limit* their customer service rules (and presumably their application of the Commission's own rules) to cable service only. (Verizon's introductory provision to Exhibit D of the Verizon-Fairfax City Agreement, which says that Verizon's customer service rules "apply to the Franchisee *to the extent it is providing Cable Services,*" may be intended to produce this result.)

Verizon's demand is problematic in view of the Commission's explicit statement that local communities are to continue overseeing customer service issues for, *e.g.*, cable modem

point this provision said "federal and state or *local,*" but that Verizon has deliberately, if incompletely, omitted "local" here.

service, given that neither the Commission nor anyone else is currently performing that task.⁴⁶ Thus, Verizon's insertion of this further issue – this additional exemption from local police powers – also has the effect of delaying the completion of franchise agreements.

4. Verizon Seeks to Impose on Local Franchising Authorities the Risks of Adopting Verizon's Franchise Provisions.

A standard principle of cable franchising is that accommodating a cable operator should not place the franchising authority at greater risk. To this end, a franchise agreement normally includes indemnification provisions by which the franchisee holds the community harmless from any damage or liability arising from the franchise. For example, in Montgomery County the franchisee indemnifies the County against claims

arising out of the construction, maintenance, or operation of its Cable System; copyright infringements or a failure by the Franchisee to secure consents from the owners, authorized distributors, or Franchisees of programs to be delivered by the Cable System . . . ; the conduct of the Franchisee's business in the County; or *in any way arising out of the Franchisee's enjoyment or exercise of the Franchise.*⁴⁷

Verizon, however, draws its indemnification language much more narrowly in the cookie-cutter MFA. For example, in the Beaumont franchise, Verizon indemnifies the community only against

. . . any liability for damages and for any liability or claims resulting from **tangible property damage or bodily injury** (including accidental death), to the

⁴⁶ See, e.g., Letter from K. Dane Snowden, Chief, Consumer & Governmental Affairs Bureau, to Kenneth S. Fellman, Esq., Chairman, Local and State Government Advisory Committee (May 14, 2002).

⁴⁷ Montgomery County Agreement at § 13(g)(1) (emphasis added). See also Cable Law § 8A-10(c).

extent **proximately caused** by Franchisee's **negligent construction, operation, or maintenance** of its **Cable System** . . .⁴⁸

Thus, here Verizon leaves the community at risk of litigation costs, at least, if it were sued for Verizon's violation of copyright or other intellectual property laws, privacy laws, violations of FCC regulations, or the like. Verizon would also escape liability if the damage were not *proximately* caused by the company, or if the damage flowed from the company's actions but Verizon could not be shown to be negligent – or if the negligence did not pertain to “construction, operation, or maintenance of its Cable System.” The latter phrase is of particular interest given Verizon's eccentric definition of “Cable System,” as noted above. If the “Cable System” consists of no more than the specific lightwaves used to transmit video, then under this language Verizon might argue that the indemnification clause covered *no* damage or harm unless, say, a subscriber contrived to shoot himself in the eye with an optical laser beam.

In particular, Verizon carefully omits – and refuses to consider – the most likely eventuality of all: that a cable incumbent will sue the local community on account of its grant of a franchise to Verizon. Since Verizon is insistent that such a franchise be granted only on Verizon's own terms, it is especially significant that the company is demanding the *franchising authority* assume all the risk that Verizon's pet language might be found to conflict with a state

⁴⁸ Verizon-Beaumont Agreement at § 10.2.1 (emphasis added). In the City of Fairfax, Verizon agreed to somewhat broader language. See Verizon-Fairfax City Agreement at § 10.2.1. However, that appears to be the exception rather than the rule.

level playing field statute, with federal law, or with the incumbent's own franchise terms. As Verizon's own filing observes, this is not an idle threat; at least one such case has been filed.⁴⁹

5. Verizon's Three-Year Bailout Clause Threatens Continuity of Service and Substantially Weakens the Promise of Competition.

One of the most remarkable features of the Verizon cookie-cutter MFA is an option for Verizon to drop out of the market completely after three years if it doesn't like the results.

Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of three (3) years from the Effective Date of this Franchise, if at the end of such three (3) year period Franchisee does not then **in good faith believe** it has achieved a **commercially reasonable** level of Subscriber penetration on its Cable System.⁵⁰

In other words, on standards so loose as to be practically nonexistent, Verizon reserves the right to cease providing cable service and turn off its then-existing subscribers.

This sort of clause is not part of a normal cable franchise. On the contrary, a normal franchise constitutes both a right and an obligation to provide service. Franchise agreements typically include continuity-of-service provisions to ensure that if a company does cease operations (for example, due to transfer or revocation), it will continue running the system long enough to make sure that subscribers do not suffer a lapse of service.⁵¹

⁴⁹ Hazlett Declaration at ¶ 18 n.16, citing a Cablevision suit against the Village of Massapequa Park. Even if a local government were preserved from actual damages by the Cable Act's immunity clause, 47 U.S.C. § 555a, the cost of defending such a suit could be considerable.

⁵⁰ Verizon-Beaumont Agreement at § 13.6.

⁵¹ *Cf.* Montgomery County Agreement at § 4(a) (continuing obligation to make cable service available during term of agreement).

Indeed, this escape clause diminishes substantially the promise of competition that Verizon is trading on. Verizon's lax build-out provisions (not discussed specifically here)⁵² generally imply that the company need not even complete its initial service commitment before this three-year option can take effect. It is quite possible that a community could incur the substantial cost of franchise negotiations at Verizon's glacial pace, suffer a lawsuit by the incumbent cable operator, see streets and yards torn up for installation of Verizon's fiber network, and then find at the end that there was no video competition after all, because Verizon didn't consider its penetration "commercially reasonable" and pulled the plug.

For these reasons local communities have been reluctant to agree to Verizon's "exit stage left" provision. Yet the company, here as elsewhere, has proved highly resistant to compromise. Even the much watered-down suggestion that normal continuity of service provisions should apply *if Verizon is the only remaining cable operator* have not found favor with the company. Some communities have succeeded in qualifying Verizon's exit provision in such a way as to make it less problematic – but it is, again, a long and painful process.

6. Verizon's Definition of "Gross Revenues" Deprives Local Franchising Authorities of Normal Franchise Fees.

The definition of "gross revenues" determines the amount of the franchise fees received by the community as part of the fair compensation paid by the cable operator for its use of the community's property. That definition is thus a major topic in any franchise negotiation, and the result, in an actual franchise agreement, represents a compromise between the local franchising authorities and a cable operator. In the Montgomery County Agreement, for example (§ 1(s)), the definition excludes bad debt and taxes imposed directly on subscribers or

⁵² See, e.g., Verizon-Fairfax City Agreement at § 3.1.

users, but includes advertising revenues (including agency commissions) and the operator's pass-through cost for PEG support. Launch fees are not specifically referred to in this example; a local franchising authority would generally take the position that such fees represent revenue from the operation of the system to provide cable services and thus are included unless specifically carved out.

Verizon's cookie-cutter MFA language is considerably narrower. Verizon carves out advertising commissions⁵³ and creates thirteen other exemptions, including some whose meaning is unclear⁵⁴ and some that raise specific problems. For example, § 1.20.4 of the Verizon-Fairfax City Agreement specifies a long list of things that Verizon considers non-cable services, including "charges made to the public for commercial or cable television that is used for two-way communication," which does not appear to be a non-cable service under federal law, and a catch-all that leaves a very wide range for Verizon's discretion in deciding what to include: "any other revenues *attributed by Franchisee* to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders" (emphasis added). Similarly, § 1.20.8 lists a number of specific items that are classified as "taxes of general applicability," some as broad as "communication taxes," and some of which are not taxes at all ("non-cable franchise fees"). Verizon expressly carves out launch fees at

⁵³ See Verizon-Fairfax City Agreement at § 1.20.

⁵⁴ See, e.g., Verizon-Fairfax City Agreement at § 1.20.1: "Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System."

§ 1.20.11, and at § 1.20.13 reduces gross revenues by the amount of PEG support paid to the city, an exception that makes no sense under the *Dallas* franchise fee decision.⁵⁵

Thus, Verizon takes a number of controversial steps to reduce the franchise fees it pays the local franchising authority. And while such issues are always contentious even with a conventional MSO, they are even more so with Verizon, for the institutional reasons described above.

7. Verizon Omits Audit Provisions for Franchise Fees.

Since franchise fees are paid essentially on a self-reporting basis – the cable operator submits a check, quarterly as a rule, based on its own calculation of the relevant gross revenues – the right to a franchise fee is largely meaningless without the right to review or (in a loose sense) “audit” the franchisee’s books and determine whether the amounts are correct. Thus, a franchise agreement almost always includes provisions reserving the right to audit and specifying procedures. In Montgomery County’s case, as frequently occurs, there is also a provision requiring the franchisee to bear the cost of the audit if it reveals an underpayment of five percent or more of the amount paid.⁵⁶ Verizon, however, makes no reference to audit rights in its cookie-cutter MFA language. It does include a three-year limitation period on recovery⁵⁷ – which suggests that any dispute about audits would need to be resolved promptly to prevent the loss of a local franchising authority’s rights, despite the lack of any specific language in the franchise agreement. Thus, local communities have had to

⁵⁵ *City of Dallas, Texas v. FCC*, 118 F.3d 393 (5th Cir. 1997) (holding that franchise fees are part of the franchise fee base, for reasons that apply in exactly the same way to the operator’s PEG costs).

⁵⁶ *See, e.g.*, Montgomery County Agreement at § 8(e); Cable Law at § 8A-12.

induce Verizon to insert new language regarding franchise fee audits and to work through that language line by line – consuming valuable time.

8. Verizon Relies on the Cable Incumbent for Transmission of PEG Programming, and Excuses Itself From PEG Carriage Altogether Under Broad Conditions.

For PEG programming to appear on a cable system, it must first be brought from the origination point (a studio, council chamber, school) to the headend. This “upstream” transmission is thus a crucial link in the chain that makes PEG channels possible. A normal cable franchise typically makes the cable operator responsible for this upstream transmission from a specified number of sites, depending among other things on the size of the community. For example, twelve such sites are listed in § 7(c) of the Montgomery County Agreement.

A cable franchise also typically provides for interconnection among cable systems or similar networks, to ensure that traffic such as PEG programming can be moved among such systems as needed. The Montgomery County Agreement, for instance, requires that the franchisee design its system so as to make interconnection feasible, and immediately initiate negotiations for interconnection with another operator upon the County’s request.⁵⁸

The Verizon cookie-cutter MFA also has interconnection language, but no provision for upstream transmission.⁵⁹ Evidently Verizon expects to piggyback on the incumbent cable operator’s carriage of the PEG signals and pick them up from the incumbent at some central point. Such an arrangement may in fact turn out to be the best way to handle PEG distribution

⁵⁷ See Verizon-Fairfax City Agreement at § 7.3.

⁵⁸ Montgomery County Agreement at § 6(o)(1)-(2)

⁵⁹ See Verizon-Fairfax City Agreement at § 6.1.4.

in a given situation.⁶⁰ It might also be necessary, however, for Verizon to shoulder some of the burden of upstream transmission. Thus, the Verizon language by itself may be inadequate.

But much more important is the fact that Verizon has built itself an escape clause that could result in a failure to carry PEG altogether on the Verizon system:

Franchisee shall use reasonable efforts to interconnect its Cable System with the existing cable operator(s). . . . If the cost of interconnection would be unreasonable, interconnection is not technically feasible or would cause an unacceptable increase in Subscriber rates, or if an existing cable operator will not agree to reasonable terms and conditions of interconnection, **the Franchisee will be under no obligation to carry PEG programming originating on the cable system of the existing cable operator or to interconnect the Cable System.**⁶¹

The effect of Verizon's language is arguably to say that interconnection is the *only* way in which Verizon has to obtain the PEG programming, and if one of several rather loose conditions is fulfilled – “not technically feasible,” “cause an unacceptable increase in Subscriber rates” (which are controlled by Verizon), or “an existing cable operator will not agree to reasonable terms and conditions of interconnection” – then Verizon is under no obligation to carry the PEG programming.

This is unacceptable. PEG programming is normally placed on the basic tier precisely so that everyone who receives cable will have an opportunity to benefit from these forms of

⁶⁰ For example, in Montgomery County RCN (the overbuilder) does not provide separate upstream carriage from the PEG origination sites, but acquires the PEG signals by interconnection from Comcast. The interconnection is made at the County's Technical Operation Center.

⁶¹ Verizon-Fairfax City Agreement at § 6.1.4 (emphasis added). It is probably incorrect to speak of PEG programming as “originating on” an incumbent's system, since that programming originates at studios and other sites that generally are not part of the incumbent's system.

access. For Verizon to have *carte blanche* to decide that it doesn't like the arrangement and simply drop PEG altogether would defeat that purpose.

Here, again, Verizon's fixed ideas about the terms under which it will operate as a cable franchisee place significant roadblocks in the way of speedily negotiating a reasonable franchise agreement.

C. Verizon's Own Practices Cause the Delays Of Which Verizon Complains.

The eight particular issues outlined above represent only the high points of the problems created by Verizon's obsessive adherence to its own cookie-cutter MFA. Many other unusual and contentious demands can be found in the detailed language of other provisions. These examples, however, show that Verizon does not approach franchise negotiations as a reasonable participant expecting to compromise, but rather with the mind-set of a monopolist: Verizon lays down the law, and its "negotiating partners" are expected to knuckle under.

This conclusion is supported by a noteworthy fact: it is *only* Verizon that has experienced this mysterious slowdown in the franchise process.⁶² The traditional cable MSOs, of course, have managed to create a booming business in far less time than the telephone cartel's century of operation, obtaining (and renewing) local franchises all the while. Ameritech had no trouble obtaining a number of local cable franchises in the Midwest and was on its way to becoming a major cable presence – until AT&T (SBC) pulled the plug. Other

⁶² While AT&T complains about the same issue, AT&T has not engaged in enough franchise negotiations to have any empirical data to contribute to the fact-gathering enterprise here.

overbuilders such as RCN also succeeded in gaining local franchises.⁶³ And another RBOC, BellSouth, obtained a number of local franchises in the 1996-97 time period, each completed within several months (with two taking only six weeks from start to finish).⁶⁴

Clearly franchising, by itself, is not the problem. Other entities of all sorts have been able to prosper under local franchises. If Verizon, uniquely, finds the process a “long, hard slog,”⁶⁵ one may reasonably conclude that the problem has to do with Verizon and not with the process itself. That conclusion is fully borne out by the above outline of substantive and procedural impediments Verizon has created for itself. If one comes into the franchise negotiating process inflexibly demanding unreasonable terms, *of course* one will not see quick results. But if Verizon (or the other complainants) were willing to negotiate flexibly, on reasonable terms, they could complete the local franchising process promptly and move on to what everyone wants to see – market competition, rather than the Bells’ preferred tactic of massive lobbying on every possible front for regulatory advantage.

The Maryland Counties’ initial comments, and (in greater detail) the NATOA Comments, pointed out that the Commission lacks authority to interfere with local cable franchising.⁶⁶ If, however, the Commission concludes that its jurisdiction over Verizon as a communications carrier gives it authority to direct Verizon’s action, then the Maryland Counties do have a recommendation for an action the Commission can take to expedite the

⁶³ See NATOA Comments at 22-23.

⁶⁴ For a detailed discussion of BellSouth’s franchising experience, *see* letter comments filed in this docket by John C. Howell, The Howell Group, LLC, Telecommunications Consulting Associates, on March 28, 2006.

⁶⁵ Verizon Comments at 28.

franchise process: Order Verizon to withdraw, and not to pursue, the kinds of terms instanced above. An authoritative ruling from the Commission against Verizon's regulatory *hubris* might be sufficient to make the company recognize that a reasonable approach will take it further and faster than the creaking, centralized, rigid style of a long-time monopolist.

IV. NUMEROUS CLAIMS IN THE BELL COMPANIES' INITIAL COMMENTS ARE INCORRECT.

The Commission should consult the initial and reply comments of NATOA *et al.* for a more comprehensive refutation of the various legal and policy arguments put forward by the Bell companies and others. Here, the Maryland Counties offer only a few comments on particularly egregious misstatements in the initial round. The Commission should not accept any of Verizon's statements about the rights of local franchising authorities as uncontested or as accurate, even if they are not specifically mentioned here.

A. Local Franchising Serves Five Crucial Purposes.

According to Verizon, "[t]he cable regulatory regime grants localities franchising authority because of their interest in managing the public rights-of-way."⁶⁷ This is incorrect, or at least incomplete. Local communities' rights to permit another entity to use their property under specified conditions flow from at least two sources – property rights and, with respect to some of the conditions, police powers. And historically cable franchising has served at least five crucial purposes.

⁶⁶ See Maryland Counties' Initial Comments at 30-38; NATOA Comments at 4-20.

⁶⁷ Verizon Comments at 21; see also *id.* at 30, 37, 83. To the extent that this comment is intended to assert that the *federal* "regime" grants localities franchising authority, it is

(1) A cable franchise is a free-market bargain between a willing buyer and willing seller, in which a community gives a franchisee the right to use its property in exchange for consideration agreed to by the parties.⁶⁸ (Thus, for example, the consideration paid by a cable franchisee is not a tax, because the franchisee receives back something specific of value in exchange for the payment, just as an apartment tenant receives value in return for the rent.)

(2) A cable franchise promotes the deployment of advanced communications networks by ensuring that the franchisee will build out its system without redlining and more quickly than the franchisee's economic interest alone might require, although it also allows the franchisee a good return on investment.⁶⁹

(3) A cable franchise is a way of advancing the First Amendment value of expanding access to communications media – means of conveying speech – by obtaining some of that consideration in in-kind form, such as access channels and the tools necessary to produce programming.

necessary to keep in mind that local communities have that authority prior to and independent of any federal law or regulation, which merely place certain restrictions on pre-existing rights.

⁶⁸ The fact that a local community owns a uniquely valuable asset in its public rights-of-way does not make the transaction something other than a free-market deal. Cable programmers have unique products; MSOs have long had the only broadband systems in town; sports stars and opera singers negotiate contracts based on their unique qualifications; but the contracts represent legitimate market transactions.

⁶⁹ Verizon admits this interest at one point, Verizon Comments at 48, contradicting its other statements about the purpose of cable franchising, in order to plead that there is no need for build-out requirements – on the remarkable ground that there is no need for a competitor where the cable incumbent already provides service. This position is inconsistent with Verizon's whole case that the urgent need for competition justifies giving massive concessions to the Bells.

(4) A cable franchise is a vehicle for managing the public rights-of-way, including contractual remedies, such as liquidated damages, for private entities that use and occupy the public rights-of-way on a long-term basis.

(5) A cable franchise provides the context in which a local government exercises its police power rights to make consumer protection rules in the form of customer service requirements, either by separate ordinance or as part of the contract.

In particular, it should be noted that striking a bargain for a franchise can involve all kinds of mutually beneficial trade-offs, such as in-kind payment, that provide compensation in forms useful to both parties, even where that particular form of compensation could not have been *required* by the local community. This aspect of franchise negotiations may form the real basis that lies behind some of Verizon's unverifiable allegations about in-kind requests.⁷⁰ For example, if such an item represents a *suggestion* by a local franchising authority as to how Verizon might match an incumbent's obligations without uselessly duplicating facilities, it might well represent a helpful movement toward a compromise, misrepresented by Verizon as a demand.⁷¹ But of course this possibility can never be tested unless and until Verizon comes clean about its allegations.

⁷⁰ See, e.g., Verizon Comments at 57.

⁷¹ Most amusing is Verizon's use of the charged word "tributes," Verizon Comments at 58. As noted above, this sort of distortion proved to be exactly what Verizon was doing in one of the few cases where the target of an anonymous smear could be identified; see p.8 regarding Verizon's misstatement about the City of Tampa.

B. The Cable Act Provides for Consideration Over and Above A Five Percent Franchise Fee.

Verizon argues that every possible benefit received by a community through a cable franchise should be counted against the five percent franchise fee cap.⁷² Verizon is mistaken on the law. The Cable Act clearly provides for monetary benefits over and above five percent of gross revenues, because, among other things, there is a specific exception for capital costs of public, educational, or governmental access facilities, a category which embraces most of the items about which Verizon complains.⁷³ Moreover, to the extent that Verizon seeks to claim that *non-monetary* benefits should also be counted against the franchise fee cap, the legislative history shows otherwise.⁷⁴

Verizon's attempt to rule out many of the benefits secured by cable franchises for the last forty years is telling. The Maryland Counties' initial comments described in detail some of these benefits and their importance for citizens of local communities.⁷⁵ The experience of the City of Baltimore provides additional insight into the value of the franchise provisions Verizon is at such pains to disparage.

Baltimore is home to approximately 115,000 cable subscribers. Under the terms of the current cable franchise, which was renewed in December 2004, Comcast must serve all parts of

⁷² Verizon Comments at 54-55, 71.

⁷³ 47 U.S.C. § 542(g)(2)(C). Other exceptions for monetary benefits are also listed under § 542(g)(2). Arguably, the fact that the Cable Act permits such additional benefits is the only thing that saves the five percent franchise fee limit from infirmity under the Takings Clause.

⁷⁴ H.R. Rep. 98-934 (1984) at 4702, 4753, makes clear that only "monetary payments" are counted against the five percent cap. Verizon's argument for an over-expansive definition of "franchise fee" is summarized in Verizon's March 9 Ex Parte at Attachment 2, p. 5.

the City. That recent renewal, incidentally, took approximately eight months to negotiate. To date, Verizon has not requested a cable franchise from the City, although it has signed such a franchise with nearby Howard County and is in negotiations with Anne Arundel and Montgomery County.

The recent franchise agreement – entered into under essentially today’s market conditions – provides for eight PEG channels. It includes capital support for PEG access in the amount of \$0.50 per subscriber per month, increasing to \$0.62 by year ten of the twelve-year agreement. In addition, Comcast provides a total of \$650,000 in lump-sum grants over the life of the franchise. The City’s fledgling public access program already features programming from local churches, youth groups, and nonprofit organizations such as the NAACP. The educational access channel employs programming from the Annenberg Foundation and produces local programming for the public schools. The government channel allows residents in historically underserved areas of the city to see their government in action and to feel more engaged in that process. One of the benefits of multiple showings of programs on this channel is that everyone – shift workers, doctors, postal workers – has an opportunity to view the programming.

Baltimore’s new franchise agreement also provides for an institutional network connecting city agencies including the Police Homeland Security Project, transit and traffic-control facilities (including remotely controlled message signs), the Mayor’s Office of Information Technology, and general services (covering building security and monitoring). The I-Net carries video, Internet traffic and VoIP. Over 230 video security cameras are tied into the Homeland Security project over the network, providing greatly enhanced security for the City. The network has also

⁷⁵ See Maryland Counties’ Initial Comments at 3-22.

been used to interconnect state and city judicial and law enforcement agencies, speeding up data and information transfer to all the agencies involved.

To the City, these are concrete benefits for its citizens, gained as part of the City's compensation for the use of a valuable resource – the City's public rights-of-way. Verizon, however, scorns such benefits. The Company's pet name for them is "pet projects," as if improved educational opportunities, advanced networking, civic involvement, and the widening of First Amendment interest in free speech were mere trivialities.⁷⁶ This attitude illustrates the company's disinterest in any real attempt to meet local needs and interests. It must also be kept in mind that it is for the local community through its legislative powers to define these needs and interests – that is not Verizon's prerogative.⁷⁷ That decision seems "arbitrary" to the company, Verizon Comments at 71, because Verizon dismisses the community's interests as trivial.⁷⁸

Thus, the Cable Act expressly allows a community to define its cable-related needs and interests and to achieve them, in some part, through a cable franchise. Because different communities have different needs and interests, the results will vary. Not every community needs a specified number of PEG channels, or a specified level of PEG support; some need less, or more, than some arbitrary number Verizon might think it viable to propose. And these needs vary over time. Nothing is more common than for a franchise agreement to provide for certain equipment and facilities for PEG use and then for the community to find, years later,

⁷⁶ See, e.g., Verizon Comments at 54.

⁷⁷ See *Union CATV, Inc. v. City of Sturgis*, 107 F.3d 434 (6th Cir. 1997).

that technical advances, deterioration of equipment, increasing population, and the like have outdated the original estimates.⁷⁹

Finally, in the category of a solution that truly is looking for a (nonexistent) problem, Verizon suggests that the Commission should impose burdensome and unnecessary new reporting obligations about PEG costs on local communities.⁸⁰ To the best of the Maryland Counties' knowledge, there are no reported instances of any abuse that would be remedied by such new federal regulations.

C. Institutional Networks Form a Key Element of the Benefits Permitted Under Local Franchises.

The Maryland Counties have outlined some of the immense benefits of "I-Nets" in their initial comments.⁸¹ While Verizon's confusions and misunderstandings of the law about I-Nets are too rampant to refute in detail here, two specific points may be made. One is that Verizon confuses a *network* not accessible to ordinary subscribers – an *institutional* network – with the idea of a network of a *completely different type* from those available to ordinary subscribers.⁸² Obviously what distinguishes an "institutional network" from a subscriber network under the

⁷⁸ Most ludicrous is Verizon's refusal to admit that PEG programming adds to diversity and makes little or no demand on Verizon's enormous fiber capacity. *See* Verizon Comments at 71.

⁷⁹ These facts provide part of the answer to Verizon's puzzlement as to why a community that already has a cable franchise can have needs and interests that are not already fully satisfied. *See* Verizon Comments at 65, 70. Another part of the answer is found in the fact that a negotiation, which by definition involves a compromise, is unlikely to provide full satisfaction of all a local community's needs.

⁸⁰ Verizon Comments at 72.

⁸¹ Maryland Counties' Initial Comments at 20-21.

⁸² Verizon Comments at 75.

Cable Act definition of the term is whether the network is accessible to individual subscribers, not whether anyone offers *similar* services to subscribers over another network. In addition, in discussing the requirements of Section 611, Verizon forgets the right to require facilities and equipment under Section 624.⁸³ A community requires the construction of an I-Net (which may be used by the cable operator for purposes other than governmental use) under Section 624; it requires that capacity be designated for educational or governmental use on that network under Section 611.

D. Verizon Cannot Use the First Amendment As a Tool to Seize Local Property.

Again, Verizon's First Amendment argument⁸⁴ rehashes failed cable industry arguments of the past in enough different ways that a detailed refutation would be impractical here. Two points, however, should be emphasized. One is that *the right to speak does not entail access to any specific economic resource the speaker may wish to use*. Thus Verizon cannot claim a right to expropriate local public rights-of-way for cable service purposes by wrapping itself in the flag of the First Amendment. If a property owner (for example) sells a railroad an easement across a property specifically for transportation purposes, it does not follow that the railroad automatically has a right to open a bookstore on that property.⁸⁵ The second point is that Verizon cannot sensibly argue that the need to obtain local permission to use local property prevents Verizon from speaking – because Verizon can *already speak using its existing system*. The need for a franchise *cannot* keep the company “from offering service at

⁸³ See 47 U.S.C. § 544(b)(1), (b)(2)(A); § 531(b).

⁸⁴ See, e.g., Verizon Comments at 56.

*all*⁸⁶ – it is *already* offering service. What Verizon is after here, to put the matter plainly, is not the right to speak, but the ability to make a great deal of money by selling video programming. And there is no constitutional right to use and permanently occupy someone else’s property for that purpose.

E. The Industry Comments Are Rife With Other Misstatements and Errors.

Numerous other points adduced by the industry to encourage the Commission to deprive local communities of their franchising rights are also erroneous or misleading. For example, Verizon opens its Comments by claiming that “most local franchising authorities” granted “exclusive franchises.”⁸⁷ This is false. Few exclusive franchises were ever granted. Almost every local community has been ardently seeking competition for as long as there has been any chance that an overbuilder might be interested. Verizon also devotes some pages to casting aspersions on unnamed consultants who serve local communities, just as Verizon’s own outside counsel serve Verizon itself.⁸⁸ This is perhaps another instance of monopoly thinking arising from Verizon’s long history of market power. In Verizon’s fantasy world, dastardly consultants make local communities’ decisions based on their own profit-making interests; but Verizon ignores the real-world fact that no independent consultant would last long if it failed to

⁸⁵ See, e.g., *Virginia Electric and Power Company v. Northern Virginia Regional Park Authority*, 2005 WL 2240965, 618 S.E.2d 323 (Va. 2005).

⁸⁶ Verizon Comments at 47.

⁸⁷ Verizon Comments at 1-2. At p. 9, Verizon hedges by referring to “*de facto* exclusive franchise arrangements” – meaning, basically, that until recently no one, including the Bells, could be found who was willing to compete against the incumbent MSOs.

⁸⁸ Verizon Comments at 3, 34-35, 59-62, 63.

carry out its employer's wishes. And what local communities wish is to encourage competition as soon as possible, on fair and reasonable terms.

V. CONCLUSION

When a negotiation takes a long time, either party may be at fault. Verizon has entirely failed to show that any delay in negotiations is caused by local franchising authorities; rather, Verizon has ignored the Commission's express instruction to provide details and has to resorted instead to a campaign of innuendo. The detailed discussion above, however, shows that Verizon is primarily responsible for any delays that may have occurred in franchise negotiations.

Because the commenters have failed to show misconduct by franchising authorities, but have merely demonstrated their own bad faith and onerous demands, the Commission should take no action, or, if it believes the process of negotiating franchises with Verizon is moving too slowly, should exercise its regulatory authority over Verizon to curb that company's negotiating excesses. Specifically, the Commission should:

- acknowledge that it lacks jurisdiction to interfere in local franchise negotiations;
- reject requests that a third tier of federal regulation be imposed on the franchising process;
- determine whether Verizon's actions in this docket fall within the scope of 47 C.F.R. § 76.6(c);
- require Verizon to withdraw its original filing and resubmit a version with all attacks on unidentified franchising authorities removed;

- require Verizon to identify every community referred to in its Comments, the individual Verizon employees or agents who were the source of the alleged information, and any documents on which the company relied in making these claims;
- make the above information public and provide sufficient time for local franchising authorities to review it, identify any claims that involve them, determine the real facts of the matter, and respond; and
- require Verizon to make its model franchise agreement publicly available at once.

Respectfully submitted,



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Montgomery County, and the City of Baltimore,
Maryland

March 28, 2006

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CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)

The below-signed signatory has read the foregoing Reply Comments of Anne Arundel County, Carroll County, Charles County, Howard County, Montgomery County, and the City of Baltimore, Maryland, and, to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and it is not interposed for any improper purpose.

Respectfully submitted,

March 28, 2006

Date

Frederick E. Ellrod III

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Section 621(a)(1) of the
Cable Communications Policy Act of 1984 as
amended by the Cable Television Consumer
Protection and Competition Act of 1992

MB Docket No. 05-311

DECLARATION OF JOHN LYONS

I, John Lyons, declare as follows:

1. I submit this declaration in support of the Reply Comments of Anne Arundel County, Carroll County, Charles County, Howard County, Montgomery County, and the City of Baltimore, Maryland, in the above-captioned matter ("Reply Comments"). I am fully competent to testify to the facts set forth herein, and if called as witness, would testify to them.

2. I am the CATV Administrator for Anne Arundel County and have participated in the County's negotiations with Verizon regarding a cable franchise.

3. I have reviewed the Reply Comments and am familiar with the contents thereof and the matters referred to therein insofar as they relate to Verizon's negotiations with Anne Arundel County.

4. I declare under penalty of perjury that the facts contained within the Reply Comments insofar as they relate to insofar as they relate to Verizon's negotiations with Anne Arundel County are true and correct to the best of my knowledge and belief, and that this declaration was executed on March 27, 2006, at Annapolis, Maryland.

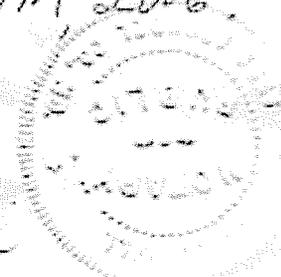
John Lyons

Signed before me on March 27th, 2006

Carol Hall

Notary Public

Commission Expires 1/09



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Section 621(a)(1) of the
Cable Communications Policy Act of 1984 as
amended by the Cable Television Consumer
Protection and Competition Act of 1992

MB Docket No. 05-311

DECLARATION OF DEAN SMITS

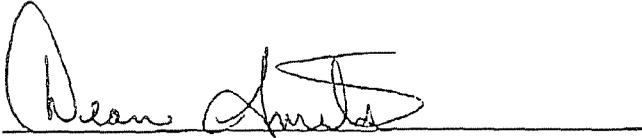
I, Dean Smits, declare as follows:

1. I submit this declaration in support of the Reply Comments of Anne Arundel County, Carroll County, Charles County, Howard County, Montgomery County, and the City of Baltimore, Maryland, in the above-captioned matter ("Reply Comments"). I am fully competent to testify to the facts set forth herein, and if called as witness, would testify to them.

2. I am the Cable Administrator for Howard County and have participated in the County's negotiations with Verizon regarding a cable franchise.

3. I have reviewed the Reply Comments and am familiar with the contents thereof and the matters referred to therein insofar as they relate to Verizon's negotiations with Howard County.

4. I declare under penalty of perjury that the facts contained within the Reply Comments insofar as they relate to insofar as they relate to Verizon's negotiations with Howard County are true and correct to the best of my knowledge and belief, and that this declaration was executed on March 28, 2006, at Ellicott City, Howard County, Maryland.

A handwritten signature in black ink, appearing to read "Dean Smits", written over a horizontal line.

Dean Smits

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Section 621(a)(1) of the
Cable Communications Policy Act of 1984 as
amended by the Cable Television Consumer
Protection and Competition Act of 1992

MB Docket No. 05-311

DECLARATION OF ALISOUN K. MOORE

I, Alisoun K. Moore, declare as follows:

1. I submit this declaration in support of the Reply Comments of Anne Arundel County, Carroll County, Charles County, Howard County, Montgomery County, and the City of Baltimore, Maryland, in the above-captioned matter ("Reply Comments"). I am fully competent to testify to the facts set forth herein, and if called as witness, would testify to them.
2. I am Chief Information Officer of Montgomery County and have participated in the County's negotiations with Verizon regarding a cable franchise.
3. I have reviewed the Reply Comments and am familiar with the contents thereof and the matters referred to therein insofar as they relate to Verizon's negotiations with Montgomery County.

4. I declare under penalty of perjury that the facts contained within the Reply Comments insofar as they relate to insofar as they relate to Verizon's negotiations with Montgomery County are true and correct to the best of my knowledge and belief, and that this declaration was executed on March 28, 2006 , at Rockville, Maryland.



Montgomery County

EXHIBIT 4

**CABLE FRANCHISE AGREEMENT BY AND BETWEEN CITY OF FAIRFAX,
VIRGINIA AND VERIZON VIRGINIA INC. (OCT. 31, 2005)**

Cable Franchise Agreement
by and between
City of Fairfax, Virginia
and
Verizon Virginia Inc.

Approved by the City of Fairfax Council on September 27, 2005

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EXHIBIT F - LETTER OF CREDIT

EXHIBIT G - ACCEPTANCE OF FRANCHISE BY THE FRANCHISEE

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the City of Fairfax, Virginia (the "City") and Verizon Virginia Inc., a corporation duly organized under the applicable laws of the State of Virginia (the "Franchisee").

WHEREAS, the City wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, the City is a "franchising authority" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to Chapter 5.1 of the Fairfax City Code (the "Cable Law");

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the Commonwealth of Virginia;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the City, and Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, the City and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions;

WHEREAS, the City Council conducted a public hearing and heard testimony concerning the economic consideration, the impact on private property rights, the impact on public convenience, the public need and potential benefit, the Franchisee's financial, technical, and legal qualifications to provide Cable Service, and other factors relevant to the award of this Franchise, and the City Council deems the award of this Franchise to be appropriate;

WHEREAS, the City Council made a finding that, subject to the terms and conditions set forth herein and in the Cable Law, the grant of a nonexclusive franchise to Franchisee will enhance the public welfare; and

WHEREAS, the City Council found that the terms and conditions of this Franchise are not more favorable or less burdensome than those in the existing Franchises granted within the City;

NOW, THEREFORE, in consideration of the City Council's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of the City pursuant to and consistent with the Cable Law, pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

Except as otherwise provided herein, the definitions and word usages set forth in the Cable Law are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1. *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, the Franchisee.

1.2. *Basic Service*: Any service tier, which includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.

1.3. *Cable Law*: Chapter 94, Article III of the Fairfax City Code, known as the City of Fairfax Communications Ordinance, to the extent authorized under and consistent with federal and state law.

1.4. *Cable Service* or *Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6).

1.5. *Cable System* or *System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), meaning Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area. The Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

1.6. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4).

1.7. *City*: The City of Fairfax, Virginia, or the lawful successor, transferee, or assignee thereof.

1.8. *City Council*: The City Council of the City of Fairfax, Virginia, as defined in Section 94-63 of the Cable Law.

1.9. *City Manager*: The chief executive officer of the City, of his designee or successor.

1.10. *Communications Act*: The Communications Act of 1934, as amended.

1.11. *Communications Administrator*: The present or succeeding employee of the City designated as the Community Relations Manager or Cable Television Specialist, or as

the Communications Administrator, who shall have the duties prescribed in the Cable law and as otherwise prescribed by the City Council.

1.12. *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of corporate affairs.

1.13. *County*: Fairfax County, Virginia, or the lawful successor, transferee, or assignee thereof.

1.14. *Educational Access Channel*: Any Channel required by this Agreement to be provided by the Franchisee to the City on the Cable System for educational use.

1.15. *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.16. *Force Majeure* An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.17. *Franchise Area*: The territorial boundaries of the City and any area added thereto during the Franchise Term, which the Franchisee agrees to serve.

1.18. *Franchisee*: Verizon Virginia Inc., and its lawful and permitted successors, assigns and transferees.

1.19. *Government Access Channel*: Any Channel required by this Agreement to be provided by the Franchisee to the City on the Cable System for government use.

1.20. *Gross Revenue*: Any and all cash, credits, property or consideration of any kind or nature that constitute revenue in accordance with Generally Accepted Accounting Principles derived directly or indirectly from the operation of the Cable System to provide Cable Services in the Franchise Area. Gross Revenues will be calculated on bundled services in accordance with Section 7.4. Consistent with the foregoing, the following, without limitation, shall be included in Gross Revenues to the extent derived from the operation of the Cable System to provide Cable Services in the Franchise Area: monthly fees collected from Subscribers for any basic, optional, premium, per-channel, per-program service, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; revenues from rentals or sales of converters or other equipment used to provide Cable Service over the Cable System; studio rental, production equipment rental, and personnel fees; fees from third party unaffiliated programmers for leased access programming; advertising revenues after deducting agency commissions; revenues from the sale or carriage of other Cable Services over the Cable System

in the Franchise Area; and revenues that Franchisee receives from home shopping channels for the use of the Cable System to sell merchandise. However, Gross Revenue shall not include:

1.20.1. Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System;

1.20.2. Bad debts written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.20.3. Refunds, rebates or discounts made to Subscribers or other third parties;

1.20.4. Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders;

1.20.5. Any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, notwithstanding that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise, which portion shall be included in Gross Revenue;

1.20.6. The sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable franchise fees from purchaser's customer;

1.20.7. The sale of Cable Services to customers, which are exempt, as required or allowed by the City including, without limitation, the provision of Cable Services to public institutions as required or permitted herein;

1.20.8. Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees);

1.20.9. Any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise; provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue;

1.20.10. Sales of capital assets or sales of surplus equipment;

1.20.11. Program launch fees;

1.20.12. Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing;

1.20.13. Any fees or charges collected from Subscribers or other third parties for PEG Grant.

1.21. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20).

1.22. *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.23. *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services and Telecommunications Services.

1.24. *Normal Business Hours*: Those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.25. *Normal Operating Conditions*: Those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. See 47 C.F.R. § 76.309(c)(4)(ii).

1.26. *PEG*: Public, Educational, and Governmental.

1.27. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity, but such term does not include the City.

1.28. *Public Access Channel*: Any Channel required by this Agreement to be provided by the Franchisee to the City on the Cable System and set aside by the Franchisee for use by the general public who are residents of the Franchise Area.

1.29. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the City. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.30. *Service Area:* The current area of the City and any additions thereto as outlined in Exhibit A and any additional service areas added pursuant to this Franchise (see paragraph 1.16 above for the Franchise Area).

1.31. *Service Date:* The date that the Franchisee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Franchise Area. The Franchisee shall memorialize the Service Date by notifying the City in writing of the same, which notification shall become a part of this Franchise.

1.32. *Service Interruption:* The loss of picture or sound on one or more cable channels.

1.33. *Subscriber:* A Person who lawfully receives Cable Service of the Cable System with Franchisee's express permission.

1.34. *Telecommunications Facilities:* Franchisee's existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

1.35. *Telecommunication Services:* Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

1.36. *Title II:* Title II of the Communications Act.

1.37. *Title VI:* Title VI of the Communications Act.

1.38. *Transfer of the Franchise:*

1.38.1. Any transaction in which:

1.38.1.1. an ownership or other interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that control of Franchisee is transferred; or

1.38.1.2. the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

1.39. *Video Programming:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20).

2. **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority:* Subject to the terms and conditions of this Agreement and the Cable Law, the City Council hereby grants the Franchisee the right to own, construct, operate and maintain the Cable System in the Public Rights-of-Way within the Franchise Area, for the sole purpose of providing Cable Service. This franchise grants no authority for Franchisee to use the City's Public Rights-of-Way for any other purpose unless otherwise expressly provided herein. However, nothing in this Agreement shall be construed to prohibit Franchisee from offering any service over the Cable System that is not prohibited by Federal or

State law provided any requirements for City authorization or registration not inconsistent with federal and state law are satisfied. The City Council makes no representation or guarantee that its interest in or right to control any Public Right-of-Way is sufficient to permit Franchisee's use, and Franchisee shall gain only those rights to use that are within the City Council's power to convey. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2. *City Does Not Regulate Telecommunications:* The City's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance or operation of the Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending the Franchisee's existing Telecommunications Facilities for the provision of Non-Cable Services.

2.3. *Term:* This Franchise shall become effective November 1, 2005 (the "Effective Date"). The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein.

2.4. *Grant Not Exclusive:* The Franchise and the right it grants to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the City reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

2.6. *No Waiver:*

2.6.1. The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Cable Law or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.6.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse the City from performance, unless such right or performance has been specifically waived in writing.

2.7. *Construction of Agreement:*

2.7.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives. In the event of a conflict between the Cable Law and this Agreement, this Agreement shall prevail.

2.7.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.7.3. Should any change to state law have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the City in the event the Franchisee determines (in its sole discretion) that the change in state law significantly impairs the Franchisee's ability to provide Cable Service in the Franchise Area or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.8. *Police Powers:* Nothing in the Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of the City's police powers. However, if the reasonable, necessary and lawful exercise of the City's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the City in the event the Franchisee determines (in its sole discretion) that the City's exercise of its police power significantly impairs the Franchisee's ability to provide Cable Service in the Franchise Area or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.9. *Acceptance Fee:* As additional consideration supporting this Agreement, Franchisee shall pay to the City, at the time of tendering the Acceptance attached as Exhibit G, an acceptance fee of fifty thousand dollars (\$50,000) payable to the "City of Fairfax" to be used to offset in whole or in part any direct costs incurred by the Cit in granting the Franchise.

3. **PROVISION OF CABLE SERVICE**

3.1. *Service Area:*

3.1.1. *Franchise Area:* Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas of the Service Area and may make Cable Service available to businesses in the Service Area, within twenty-four (24) months of the Service Date of this Franchise, and shall offer Cable Service to all residential areas in the Service Area within five (5) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the City; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Franchise Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; (F) in developments or buildings that Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and

(G) in areas where the occupied residential household density does not meet the density requirement set forth in Sub-subsection 3.1.1.1.

3.1.1.1. *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than thirty (30) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsections 3.1.1 and 3.1.2 respectively, Franchisee shall provide Cable Service to such area within six (6) months of receiving notice from the City that the density requirements have been met.

3.1.2. *Additional Service Areas:* Aside from the Service Area, Franchisee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any Renewals thereof. If Franchisee desires to add Additional Service Areas within the Franchise Area, Franchisee shall notify the City in writing of such Additional Service Area at least ten (10) days prior to providing Cable Services in such areas.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses in accordance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, all residential dwelling units that are within two hundred (200) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed two hundred (200) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings:*

3.3.1. Subject to Section 3.1, Franchisee shall provide the following, without charge within the Service Area, at each fire station, public school, police station, public library, and such buildings used for public purposes as designated initially by the City in Exhibit A and thereafter during the Franchise Term in writing to the Franchisee; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than three hundred (300) feet from the serving terminal whichever is less, solely to provide service to any such school or public building, the City shall have the option of paying Franchisee's direct costs for such extension in excess of three hundred (300) feet, or of releasing Franchisee from the obligation, or postponing Franchisee's obligation to provide service to such building:

3.3.1.1. The first service drop for each site;

3.3.1.2. One Subscriber digital converter activated for the most commonly subscribed to digital tier per site;

3.3.1.3. One service outlet activated for the most commonly subscribed to digital tier. The Parties recognize that this only pertains to the flat rate digital tier offered by Franchisee and does not include any pay per view services or similar services.

3.3.2. The City shall be responsible for the cost of any “terminal equipment,” including TV monitors, VCRs, and/or computers.

3.3.3. The Franchisee shall be permitted to recover, from any school or other public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than three hundred (300) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed.

3.3.4. The cost of inside wiring, additional drops or outlets and additional converters requested by the City within these specified facilities, including those drops or outlets in excess of those currently installed, are the responsibility of the City. If the City requests the Franchisee to provide such services or equipment, the City will pay the Franchisee for those costs.

3.3.5. If the City makes a request to the Franchisee in writing, the Franchisee shall rewire public buildings, move drops or entrance links, and make other changes to installations of inside wiring. The City will be responsible for the cost of all such work, and the City will pay the Franchisee for its direct cost plus ten percent (10%) to offset the Franchisee’s project administration.

3.3.6. If there is a change in the Franchisee’s technology that affects the ability of the City’s public buildings to receive the most commonly subscribed to digital tier, the Franchisee shall be required to replace, at the Franchisee’s expense, all the digital converters provided to the City’s public buildings as required in subsection 3.3.1.2 in order to ensure that these public buildings receive the most commonly subscribed to digital tier.

4. **SYSTEM OPERATION**

The parties recognize that Franchisee’s FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The jurisdiction of the City over such Telecommunications Facilities is restricted by federal and state law, and the City does not assert jurisdiction over Franchisee’s FTTP Network in contravention of those limitations.

5. **SYSTEM FACILITIES**

5.1. *System Characteristics:* the Cable System shall meet or exceed the following requirements:

5.1.1. The System shall be designed with an initial analog passband of 860 MHz.

5.1.2. The System shall be designed to be an active two-way plant for subscriber interaction, if any, required for selection or use of Cable Service.

5.2. *Interconnection:*

5.2.1. The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area at suitable locations as determined by the Franchisee. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

5.2.2. At the request of the Communications Administrator, the Franchisee shall, to the extent permitted by applicable law and its contractual obligations to third parties, use every reasonable effort to negotiate an interconnection agreement with any other franchised cable system in the City for the PEG channels on the Cable System.

5.2.3. The Franchisee shall notify the City prior to any interconnection of the Cable System.

5.2.4. The Franchisee shall in good faith cooperate with the City in implementing interconnection of the PEG Cable Service with communications systems beyond the boundaries of the City

5.3. *Emergency Alert System:*

5.3.1. Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

5.3.2. The City shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the City shall hold harmless and defend Franchisee, its employees, officers and assigns from and against any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

5.4. *Home Wiring:* The Franchisee shall comply with all applicable FCC requirements, including any notice requirements, with respect to home wiring. Prior to a Subscriber's termination of Cable Service, the Franchisee will not restrict the ability of the Subscriber to remove, replace, rearrange or maintain any cable wiring located within the interior space of the Subscriber's dwelling unit, so long as such actions are consistent with FCC standards. The Franchisee may require a reasonable indemnity and release of liability in favor of the Franchisee from a Subscriber for wiring that is installed by such Subscriber.

5.5. *Relocation:* Relocation is addressed in Section 4 of the telecommunications franchise between the City and the Chesapeake & Potomac Telephone Company of Virginia (prior name of the Franchisee) granted July 20, 1982.

6. **PEG SERVICES**

6.1. *PEG Set Aside:*

6.1.1. On its Basic Service Tier, the Franchisee will deliver up to nineteen (19) PEG Channels in the aggregate to the Subscribers in the City, including eighteen (18) PEG Channels as specified by the County and one (1) PEG Channel as specified by the City. If a PEG Channel provided under this Article is not being utilized by the City, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as City elects to utilize the PEG Channel for its' intended purpose.

6.1.2. The Franchisee shall make available to all Subscribers residing within the City in those areas where the Franchisee has authority to provide Cable Service at least the following:

6.1.2.1. those PEG Channels listed on Exhibit C, which shall be specified by the County and subject to waiver or adjustment solely by the County; and

6.1.2.2. one PEG Channel as specified by the City (the "City's PEG Channel").

6.1.3. Within ten (10) days after the Effective Date of this Agreement, the City shall notify Franchisee of the programming to be carried on the City's PEG Channel. Such notification shall constitute authorization to Franchisee to transmit such programming within and without the City. Thereafter, the Franchisee shall assign the City's PEG Channel on its channel line-up as set forth in such notice to the extent such channel assignment does not interfere with the Franchisee's existing or planned channel line-up.

6.1.4. Franchisee shall use reasonable efforts to interconnect its Cable System with the existing cable operator(s). Prior to the Service Date, the Franchisee shall initiate interconnection negotiations with the existing cable operator(s) to cablecast, on a live basis, public, educational and governmental access programming consistent with this Franchise. Interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection. Franchisee shall negotiate in good faith with existing cable operator(s) respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms and conditions. The City shall require the existing cable operator(s) to provide such interconnection to the Franchisee on reasonable terms and conditions. The Franchisee and the existing cable operator(s) shall negotiate the precise terms and conditions of an interconnection agreement. The City shall use its best efforts to facilitate these negotiations. If Franchisee is unable to reach such an agreement within thirty (30) days after requesting in writing to interconnect with other local cable operator(s), City shall assist in mediating such dispute. If no agreement is reached within an additional thirty (30) days, Franchisee agrees that City shall designate the point of interconnection. If the cost of interconnection would be unreasonable, interconnection is not technically feasible or would cause an unacceptable increase in Subscriber rates, or if an existing cable operator will not agree

to reasonable terms and conditions of interconnection, the Franchisee will be under no obligation to carry PEG programming originating on the cable system of the existing cable operator or to interconnect the Cable System.

6.2. *PEG Grant:*

6.2.1. Franchisee shall provide grants to the City to be used for PEG and institutional network capital expenses as determined by the City (the "PEG Grants").

6.2.2. The PEG Grants provided by Franchisee hereunder shall be in the aggregate totaling three percent (3%) for each quarter of the amount that results from subtracting from Gross Revenues for that quarter the Franchise Fees paid to the City for that Quarter. Such payments shall be made no later than forty five (45) days following the end of each calendar quarter. In the event the Franchisee is unable to compute the PEG Grant within the foregoing time frame, the Franchisee may make an estimated PEG Grant based on the payment for the previous quarter. Estimated payments must be trued up within thirty (30) days after the date of the estimated payment.

6.2.3. The City shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 6.2.

6.3. City shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the City, from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel.

6.4. To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs of an Annual PEG Grant or any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection costs to Subscribers.

7. **FRANCHISE FEES**

7.1. *Payment to City:* The Franchisee shall pay to the City a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty five (45) days following the end of each calendar quarter. In the event the Franchisee is unable to compute the Franchisee fee payment within the foregoing time frame, the Franchisee may make an estimated

Franchise fee payment based on the payment for the previous quarter. Estimated payments must be tried up within thirty (30) days after the date of the estimated payment.

7.2. *Supporting Information:* Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation.

7.3. *Limitation on Franchise Fee Actions:* The period of limitation for recovery of any Franchise fee payable hereunder shall be three (3) years from the date on which payment by Franchisee is due.

7.4. *Bundled Services:* If Cable Services subject to the Franchise fee required under this Article 7 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders.

8. CUSTOMER SERVICE

Customer Service Requirements are set forth in Exhibit D, which shall be binding unless amended by written consent of the parties.

9. REPORTS AND RECORDS

9.1. *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the City shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise, which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. The City agrees to treat any information disclosed by Franchisee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

9.2. *Records Required:* Franchisee shall at all times maintain:

9.2.1. Records of all written complaints for a period of three years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.2.2. Records of outages for a period of three years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.2.3. Records of service calls for repair and maintenance for a period of three years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.2.4. Records of installation/reconnection and requests for service extension for a period of three years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.2.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

10. INSURANCE AND INDEMNIFICATION

10.1. *Insurance:*

10.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, throughout the entire Franchise Term, the following insurance coverage:

10.1.1.1. Commercial General Liability Insurance insuring the City and the Franchisee with respect to the construction, operation and maintenance of the Cable System, and the conduct of the Cable Service business in the City in the minimum amounts of \$2,000,000 per occurrence; \$2,000,000 aggregate for each occurrence. Such commercial general liability insurance must include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

10.1.1.2. Copyright infringement insurance insuring the City and the Franchisee in the minimum amount of \$2,000,000 for copyright infringement occasioned by the operation of the Cable System.

10.1.2. All insurance policies and certificates maintained pursuant to this Agreement shall provide the following:

“It is hereby understood and agreed that this insurance coverage may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until at least 30 days after receipt by the City’s Secretary or clerk of a written notice of such intention to cancel or not to renew.”

10.1.3. Each of the required insurance policies shall be with insurers qualified to do business in the Commonwealth of Virginia, with an A-*VII* or better rating by Best’s Key Rating Guide, Property/Casualty Edition.

10.1.4. Upon written request, Franchisee shall deliver to the City Certificates of Insurance showing evidence of the required coverage.

10.1.5. All Commercial General Liability Insurance policies shall name the City, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees as additional insureds.

10.2. *Indemnification:*

10.2.1. Subject to the provisions below, the Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments, whether for damages or otherwise arising out of or alleged to arise out of the installation, construction, operation, or maintenance of the Cable System, including but not limited to any claim against the Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other intellectual property right of any Person, firm, or corporation.

10.2.2. This indemnity does not apply to programming carried on any Channel set aside for PEG use, or Channels leased pursuant to 47 U.S.C. § 532, or to operations of the PEG Channels to the extent such operations are carried out by a person other than the Franchisee or its agents. Further, the Franchisee shall not be required to indemnify the City for acts of the City which constitute willful misconduct or negligence, on the part of the City, its officers, employees, agents, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access, or EAS.

10.2.3. In no event shall the Franchisee be responsible for indemnifying the City under Section 10.2 for any act or omission by the Franchisee that has been specifically approved by the City, or for any act or omission by the City or its elected and appointed officers, boards, commissions, commissioners, agents, or employees that results in personal injury or property damage.

10.2.4. The City shall give the Franchisee written notice of its obligation to indemnify the City under Section 10.2 within thirty (30) days of receipt of a claim, suit, cause of action, or proceeding for which the Franchisee is obligated to indemnify the City. The City shall take action necessary to avoid entry of a default judgment if such action is needed before the City provides the Franchisee notice; provided, however, that no such action shall in anyway prejudice or harm the Franchisee.

10.2.5. With respect to Franchisee's indemnity obligations set forth in Section 10.2, Franchisee shall provide the defense of any claims, suits, causes of action, or proceedings brought against the City by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the City, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the City from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense,

provided however, that after consultation with the City, Franchisee shall have the right to defend, settle or compromise any claim, suit, cause of action, or proceeding arising hereunder, so long as the settlement includes a full release of the City, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the City does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the City shall in no event exceed the amount of such settlement. In the event that Franchisee fails, after notice pursuant to subsection 10.2.4, to undertake the City's defense of any claims encompassed within this Section 10.2, Franchisee's indemnification shall include, but is not limited to, the City's reasonable attorneys' fees, including fees for outside counsel hired to defend the City, incurred in defending against any such claim, suit, cause of action, or proceeding, any interest charges arising from any claim, suit, cause of action, or proceeding arising under this Agreement or the Cable Law, the City's out-of-pocket expenses, and the reasonable value of any services rendered by the City Attorney, or the City staff or its employees.

10.2.6. Neither the provisions of this Section nor any damages recovered by the City shall be construed to limit the liability of the Franchisee or its subcontractors for damages under the Agreement or the Cable Law or to excuse the faithful performance of obligations required by the Agreement, except to the extent that any monetary damages suffered by the City have been satisfied by a financial recovery under this section or other provisions of the Agreement or the Cable Law.

10.2.7. The City shall at no time be liable for any injury or damage occurring to any Person or property from any acts or omissions of Franchisee in the construction, maintenance, use, operation or condition of the Cable System. It is a condition of this Agreement that the City shall not and does not by reason of this Agreement assume any liability whatsoever of the Franchisee for injury to Persons or damage to property; provided, however, that the City shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the City for which the City is legally responsible, subject to any and all defenses and limitations of liability provided by law.

11. TRANSFER OF FRANCHISE

11.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the City, provided that such consent shall not be unreasonably withheld, delayed or conditioned.

11.2. *No Consent Required For Transfers Securing Indebtedness:* The Franchisee shall not be required to obtain the consent or approval of the City for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness. However, upon request by the City, the Franchisee shall provide the City with the Franchisee's audited financial statements prepared for the Franchisee's bondholders in order to notify the City if there is a mortgage or security interest granted on substantially all of the assets of the Cable System.

11.3. *No Consent Required For Any Affiliate Transfers:* The Franchisee shall not be required obtain the consent or approval of the City for any transfer of an ownership or

other interest in Franchisee, the Cable System, or the Cable System assets to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee. However, the Franchisee will notify the City within thirty (30) days if at any time a transfer of the Franchise or the Franchisee's assets to an Affiliate occurs.

12. RENEWAL OF FRANCHISE

12.1. The City and Franchisee agree that any proceedings undertaken by the City that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

12.2. In addition to the procedures set forth in said Section 626 of the Communications Act, the City agrees to notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. The City further agrees that such assessments shall be provided to Franchisee promptly so that Franchisee has adequate time to submit a proposal under Section 626 and complete renewal of the Franchise prior to expiration of its term.

12.3. Notwithstanding anything to the contrary set forth herein, Franchisee and the City agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the City and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof.

12.4. Franchisee and the City consider the terms set forth in this Article 12 to be consistent with the express provisions of Section 626.

13. ENFORCEMENT AND TERMINATION OF FRANCHISE

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

13.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the written notice described in Section 13.1 to: (i) respond to the City, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such default; or (iii) in the event that, 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.

13.3. *Public Hearing:* In the event that Franchisee fails to respond to the written notice described in Section 13.1 pursuant to the procedures set forth in Section 13.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to Section 13.2(iii) above, if it intends to continue its investigation into the default, then

the City shall schedule a public hearing. The City shall provide Franchisee at least thirty (30) business days prior written notice of such hearing, which will specify the time, place and purpose of such hearing, and provide Franchisee the opportunity to be heard.

13.4. *Enforcement:* Subject to applicable federal and state law, in the event the City, after the hearing set forth in Section 13.3, determines that Franchisee is in default of any provision of the Franchise, the City may:

13.4.1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

13.4.2. Commence an action at law for monetary damages or seek other equitable relief; or

13.4.3. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.5.

13.5. *Revocation:* Should the City seek to revoke the Franchise after following the procedures set forth in Sections 13.1 through 13.4 above, the City shall give written notice to Franchisee of its intent. The notice shall set forth the exact nature of the noncompliance. The Franchisee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from Franchisee, the City may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.5.1. At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the City, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

13.5.2. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the City shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Franchisee. The City shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the City determines that the Franchise shall be revoked, the City shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of the City to an appropriate court, which shall have the power to review the decision of the City *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the franchising authority.

13.5.3. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

13.6. *Franchisee Termination:* Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of three (3) years from the Service Date of this Franchise, if at the end of such three (3) year period Franchisee has less than twenty five percent (25%) market penetration of the homes passed in the Franchisee's total cable service area in the Washington D.C. Designated Market Area. Notice to terminate under this Section shall be given to the County in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. Franchisee shall also be required to give its then current Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

13.7. *Performance Bond:* Prior to the Service Date, the Franchisee shall provide to the City security for the performance of its obligations under this agreement in the amount of one hundred thousand dollars (\$100,000), in substantially the same form attached hereto as Exhibit E, in order to ensure the Franchisee's faithful performance of its obligations under this Agreement. The City may not attempt to collect under this bond unless thirty (30) days have passed since the City provided the Franchisee with written notice of its intent to collect under this bond. If within this thirty (30) day time frame, Franchisee gives written notice it disputes entitlement to payments from Franchisee for which it has refused to make payment, the parties shall promptly meet to attempt to resolve the dispute in good faith amongst themselves.

13.7.1. The form of this security may, at Franchisee's option, be a performance bond, letter of credit, cash deposit, cashier's check or any other security acceptable to the City.

13.7.2. In the event that a performance bond provided pursuant to the Agreement is not renewed or is cancelled, Franchisee shall provide new security pursuant to this Article with 30 days of such cancellation or failure to renew.

13.7.3. Neither cancellation, nor termination nor refusal by surety to extend the bond, nor inability of the Franchisee to file a replacement bond or replacement security for its obligations, shall constitute a loss to the City recoverable under the bond.

13.7.4. There shall be recoverable by the City from the principal and surety, any and all amounts due to the City and any and all damages, losses, costs, and expenses incurred by the City resulting from the failure of the Franchisee to comply with the material provisions of this Agreement, to comply with all orders, permits and directives of any City agency or body having jurisdiction over its acts or defaults, to pay fees, penalties or liquidated damages due to the City, or to pay any claims, taxes or liens due to the City. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

13.7.5. The total amount of the performance bond required by this Agreement shall be forfeited in favor of the City in the event:

13.7.5.1. the Franchisee abandons the Cable System at any time during the Franchise Term or any extension thereto; or

13.7.5.2. the Franchisee carries out a transfer requiring City approval as stated in Article 11 of this Agreement without obtaining City approval.

13.7.6. The Franchisee shall not permit the performance bond to expire or approach less than thirty (30) days prior to expiration without securing and delivering to the City a substitute, renewal or replacement bond in conformance with the provisions of this Agreement.

13.7.7. *Reduction of Bond:* The City may approve a reduction in the amount of the bond upon written application by the Franchisee, which approval shall not be unreasonably withheld. The amount of the bond may be reduced to \$50,000.00 when the Cable System has been extended to more than fifty percent (50%) of the occupied dwelling units within the Franchise Area, as certified by the Franchisee to the City, and may be further reduced to the sum of \$25,000.00 when the Cable System has been extended to more than ninety percent (90%) of the occupied dwelling units within the Franchise Area, as certified by the Franchisee to the City. Reductions granted or denied upon application by the Franchisee shall be without prejudice to the Franchisee's subsequent applications or to the City's right to require the full bond at any time thereafter. Further, in the event the City approves a reduction of the Franchisee's performance bond, the City may, at any time, increase the amount of the performance bond to reflect any increased risks to the City and the public and/or require the Franchisee to provide additional sureties to any and all bonds or to replace existing bonds with new bonds that satisfy the criteria in this Article; provided, however, that any such performance bonds or additional sureties shall not exceed one hundred thousand dollars (\$100,000). The City shall provide the Franchisee written notice of at least sixty (60) days in advance of any such increase in the performance bond resulting from this subsection.

13.8. *Letter of Credit:*

13.8.1. In addition to the performance bond, the Franchisee shall provide to the City a letter of credit in the amount of ten thousand dollars (\$10,000) (the "Letter of Credit"), in substantially the same form as that attached hereto as Exhibit F. The Letter of Credit shall be provided by a third party agent ("Third Party Agent") approved by the City. The Franchisee shall maintain such Letter of Credit at all times throughout the term of the Agreement.

13.8.2. If the City notifies the Franchisee of any amounts due to the City pursuant to this Agreement or applicable law, and the Franchisee does not make such payment within thirty (30) days, the City may withdraw the amount in question, with any applicable interest and penalties, from the Letter of Credit by notice to the Franchisee and the Third Party Agent specifying the amount and purpose of such withdrawal. However, if within this thirty (30) day time frame, Franchisee gives written notice it disputes entitlement to payments from Franchisee for which it has refused to make payment, the parties shall promptly meet to attempt to resolve the dispute in good faith amongst themselves.

13.8.3. If at the time of a withdrawal from the Letter of Credit by the City, the amount available with the Third Party Agent is insufficient to provide the total payment of the claim asserted in the City's notice of withdrawal, the balance of such claim shall not be discharged or waived, but the City may continue to assert the same as an obligation of the Franchisee to the City.

13.8.4. No later than thirty (30) days after mailing of notification to the Franchisee by certified mail, return receipt requested, of a withdrawal under the Letter of Credit, the Franchisee shall restore the amount of the Letter of Credit to ten thousand dollars (\$10,000).

13.8.5. In the event the Third Party Agent serves notice to the City that it elects not to renew the Letter of Credit, the City may withdraw the entire amount of the Letter of Credit unless the Franchisee provides a substitute Letter of Credit, in substantially the same form as that attached hereto as Exhibit F, from a Third Party Agent approved by the City, before the effective Letter of Credit expires.

13.9. *Liquidated Damages:*

13.9.1. Because the Franchisee's failure to comply with provisions of this Agreement will result in injury to the City, and because it will be difficult to estimate the extent of such injury, the City and the Franchisee agree to the liquidated damages provided for in this Section, with such liquidated damages representing both parties' best estimate of the damages resulting from the specified violations. Such damages shall not be a substitute for actual performance by the Franchisee of a financial payment, but shall be in addition to any such actual performance. The failure of a Franchisee to hire sufficient staff or to properly train its staff shall not preclude the application of the provisions in this Section.

13.9.2. The Communications Administrator, or designee, shall have the authority to waive or reduce the liquidated damage amounts herein for good cause.

13.9.3. Cure periods listed below shall begin to run at the time the Franchisee is notified in writing of a violation by the City, unless otherwise specified below. Should the County elect to receive liquidated damages for any of the violations enumerated herein, such liquidated damages shall be the County's sole remedy for the violations occurring during the period of time to which the liquidated damages apply.

13.9.4. On an annual basis from the Effective Date, the Franchisee shall not be liable for liquidated damages that exceed ten thousand (\$10,000) (the "Liquidated Damages Cap"). The liquidated damages shall be assessed in the following manner:

13.9.4.1. For each day during which the City determines that the Franchisee has violated customer service standards pursuant to Exhibit E, except for those standards set forth in Subsection 13.9.4.2 below: \$200 per violation, treating each failure to comply as a separate violation, following a seven (7) day cure period, except that such cure period does not apply to customer service standards that themselves provide a time to act or a specific cure period;

13.9.4.1.1. a separate violation under Subsection 13.9.4.1 shall be deemed to occur whenever the City reasonably determines that a separate customer service standard violation has occurred on one day. Thus, for example, if the Franchisee fails to provide Cable Service to one subscriber for two days pursuant to Exhibit D, there would be two violations; if the Franchisee fails to keep an appointment pursuant to Exhibit D with one Subscriber on one day and on that same day, independent of the missed appointment, the Franchisee fails to disclose price terms to that same Subscriber, then there would be two violations. However, the Franchisee shall not be charged with multiple violations for a single act or event affecting a single Subscriber or for a single act or event affecting multiple Subscribers on the same day. For example, the failure of the Franchisee to send out its annual notice to multiple Subscribers would constitute a single violation.

13.9.4.2. For failure to meet customer service standards with regard to telephone answering time, time to transfer a call to a customer service representative, or excessive busy signals: if such standards are not met according to the terms in which such standards are established in Exhibit D: \$100 for each quarter in which such standards were not met if the failure was by less than 5%; \$200 for each quarter in which such standards were not met if the failure was by 5% or more but less than 15%; and \$300 for each quarter in which such standards were not met if the failure was by 15% or more;

13.9.4.3. For failure to pay any Franchisee Fees pursuant to Article 7 or PEG Grants pursuant to Section 6.2: \$100 per day after a seven day cure period;

13.9.4.4. For failure to file, obtain or maintain the required performance bond or letter of credit pursuant to Sections 13.7 and 13.8 in a timely fashion: \$200 per day, following a fourteen (14) day cure period; and

13.9.4.5. For violation of applicable technical standards established by the FCC or other lawful authority: \$100 per day for each day the violation continues after a thirty (30) day cure period.

14. MISCELLANEOUS PROVISIONS

14.1. *Actions of Parties:* In any action by the City or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

14.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision

shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

14.4. *Force Majeure:* Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

14.4.1. Furthermore, the parties hereby agree that it is not the City's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by the City and/or Subscribers.

14.5. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

14.5.1. Notices to Franchisee shall be mailed to:

Robert W. Woltz, Jr.
President
600 E. Main Street
Suite 1100
Richmond, VA 23219

14.5.2. with a copy to:

Randal Milch
Senior VP and Deputy General Counsel
1095 Avenue of Americas
New York, NY 92223

14.5.3. Notices to the City shall be mailed to:

Communications Administrator
10455 Armstrong Street
Fairfax, VA 22030

14.6. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the City, and it supersedes all prior or contemporaneous agreements, representations or understanding of the parties regarding the subject matter hereof.

14.7. *Amendments:* Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.8. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.9. *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.10. *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.11. *Franchisee's FTTP Network:* The City and the Franchisee recognize and agree that certain provisions of the Cable Law are not applicable to the Franchisee, including, but not limited to the following: Section 94-77, Section 94-78, Section 94-93, Section 94-94, and Sections 94-96 to 94-100.

14.12. *Modification:* This Franchise shall not be modified except by written instrument executed by both parties.

14.13. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the cable system and any capacity used for cable service or otherwise, to the City or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

14.14. City and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

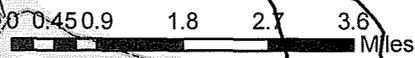
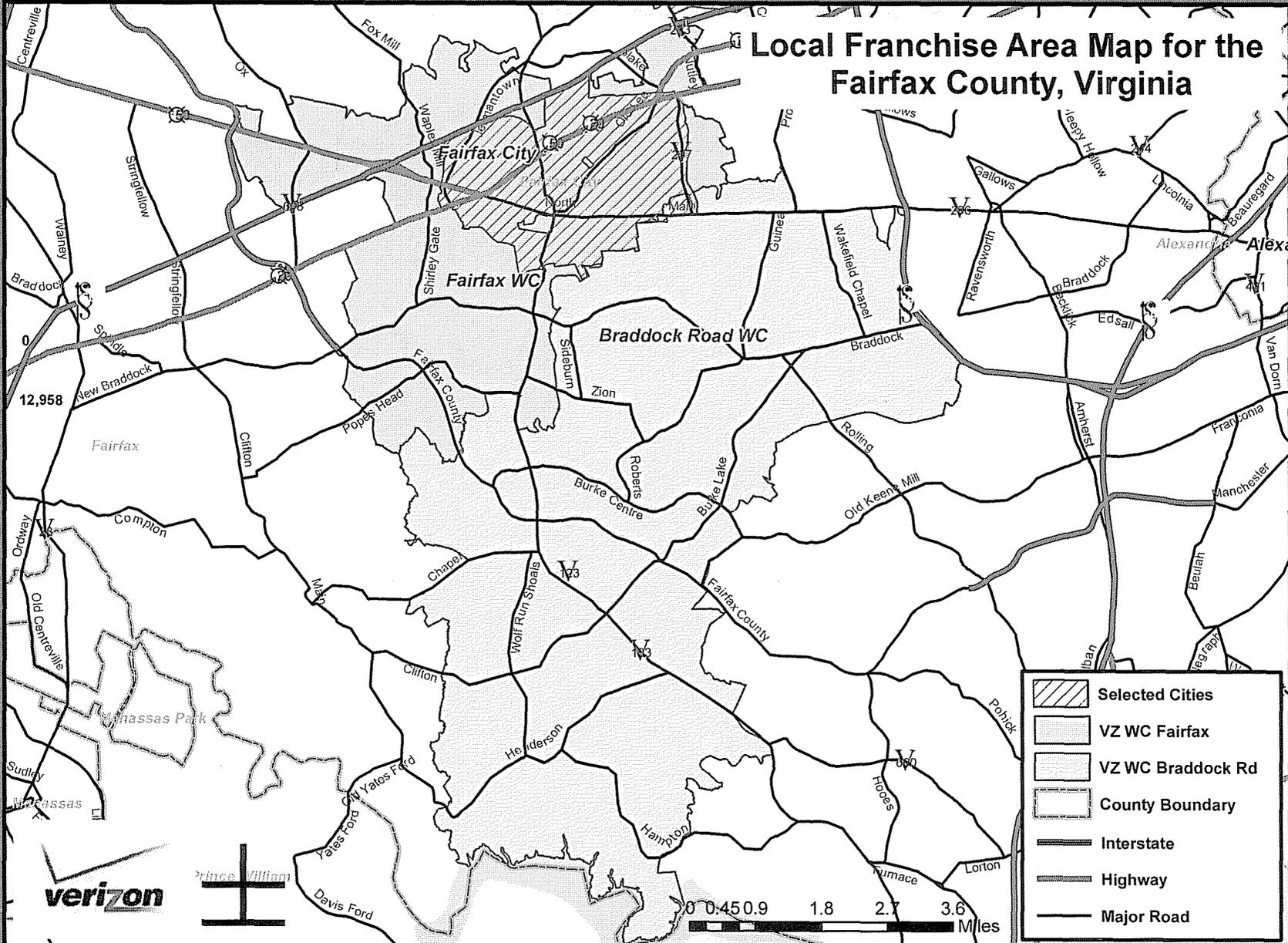
[SIGNATURE PAGE FOLLOWS]

EXHIBIT A

SERVICE AREA

The service area is shown in the attached map.

Local Franchise Area Map for the Fairfax County, Virginia



	Selected Cities
	VZ WC Fairfax
	VZ WC Braddock Rd
	County Boundary
	Interstate
	Highway
	Major Road

August 2005

EXHIBIT B

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

<u>Site Name</u>	<u>Street #</u>	<u>Street</u>
City Hall	10455	Armstrong Street
Sisson House - City Hall Annex	10455	Armstrong Street
Green Acres Center	4401	Sideburn Road
Wood Complex - Police Station	3730	Old Lee Highway
Fire Station #3	4081	University Drive
Fire Station #33	10101	Fairfax Boulevard
Property Yard - Administration Building	3410	Pickett Road
Property Yard - Sign and Signal Building	3410	Pickett Road
Old Town Hall	3999	University Drive
Fairfax Museum and Visitor Center	10209	Main Street
Ratcliffe-Allison House	10386	Main Street
Water Treatment Plant	20521	Belmont Ridge Road
 <u>Future Sites</u>		
Police Station (new building)		Old Lee Highway
Blenheim Visitor Center		Old Lee Highway
Community Center		TBD

EXHIBIT C

THE COUNTY'S PEG CHANNELS

Franchisee shall provide the following PEG Channels to the City as specified by the County and subject to waiver or adjustment solely by the County:

- Public access: 4
- Fairfax County Public Schools: 3
- George Mason University: 1
- Northern Virginia Community College: 1
- University of Virginia and/or Virginia Polytechnic Institute: 1
- Shared channel for institutions of higher education: 1
- County Governmental Access Channels: 3
- Reston Community Channel: 1
- Reserved for educational and/or governmental access use as allocated by the County: 3

EXHIBIT D

CUSTOMER SERVICE STANDARDS

This Section sets forth the minimum customer service standards that the Franchisee must satisfy. In addition, and subject to the provisions of this Agreement, the Franchisee shall at all times satisfy any additional requirements established by applicable federal and state or regulation, as the same may be amended from time to time, including, without limitation, consumer protection laws. These standards shall, starting six (6) months after the Service Date, apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise Area.

I. DEFINITIONS

The City and the Franchisee agree that the following definitions shall govern the City's enforcement of and the Franchisee's obligations under the customer service standard requirements under this Exhibit D:

- *As Soon As Possible*: As used in 47 C.F.R. § 76.1603(b), means no sooner than thirty (30) days in advance of such change.
- *Customer Service Center*: As used in 47 C.F.R. § 76.309(c)(1)(v), means that the Franchisee must provide for the pick up or drop off of equipment in one of the following manners: (i) by having a Franchisee representative going to the Subscriber's residence, (ii) by using a pre-paid mailer, or (iii) by establishing a local business office in the City.
- *Customer Service Representative*: As used in 47 C.F.R. § 76.309(c)(1)(ii), means a live representative, an Automated Response Unit ("ARU"), or a Voice Response Unit ("VRU"). If an ARU or VRU is used, then the Franchisee must make every effort to assure that the device provides customer service similar to that provided by a qualified live representative.
- *Next Billing Cycle*: As used in 47 C.F.R. § 76.309(c)(3)(i)-(ii) and in this Agreement, means the Subscriber's next available billing cycle.
- *Resolution of the Request*: As used in 47 C.F.R. § 76.309(c)(3)(i)(A), means the Subscriber's Next Billing Cycle following determination by the Franchisee of the Subscriber's right to a refund.
- *Respond (or Begin Working On* as used in 47 C.F.R. § 76.309(c)(2)(ii)): Franchisee's investigation of a Service Interruption by receiving a Subscriber call and placing the Subscriber's service repair request into the Franchisee's automated repair response system and, if required, taking action.
- *Return of the Equipment*: As used in 47 C.F.R. § 76.309(c)(3)(i)(B), a Subscriber's equipment is considered returned when the Franchisee has accepted the condition of the

equipment and billed for any outstanding charges, all of which shall be completed no later than the Subscriber's Next Billing Cycle.

- *Standard Installation:* Installations where the customer's premises are within two hundred (200) feet of the serving terminal, or the edge of the property, whichever is less, and where an ONT is already present.
- *System Malfunctions:* Service impacting event originating at the Franchisee's video hub offices or super-headend.

II. CUSTOMER SERVICE STANDARDS

A. The Franchisee shall comply with the customer service standards set forth in 47 C.F.R. §§ 76.309(c), 76.1602, 76.1603, and 76.1619, as such standards may be amended from time to time.

B. Measurement of the standard in 47 C.F.R. § 76.309(c)(1)(ii) may include all calls received by the Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.

C. The Franchisee shall employ an operator or maintain a telephone answering device twenty-four hours per day, each day of the year, to receive Subscriber complaints and answer inquiries during Normal Business Hours.

D. The Franchisee shall establish maintenance service capable of promptly locating and correcting System Malfunctions.

E. The Franchisee shall maintain a publicly-listed, local toll-free telephone number that shall be available to Subscribers to request service calls, twenty-four hours per day, each day of the year. Under Normal Operating Conditions, the Franchisee shall Respond not later than the next business day after a service call is received, and corrective action shall be completed as promptly as practicable. Appropriate records shall be made of service calls, showing when and what corrective action was completed.

F. If requested by a mobility-limited customer, the Franchisee shall arrange for pickup and/or replacement of converters or other Franchisee equipment at the Subscriber's address or by a satisfactory equivalent.

G. In the event that Franchisee fails to provide service to Subscribers for more than twenty-four hours, the Franchisee shall provide the affected Subscribers with a pro rata credit or rebate of the Subscriber's fees paid or payable, upon request by a Subscriber.

H. The failure of the Franchisee to hire sufficient staff or to properly train its staff shall not justify a Franchisee's failure to comply with the provisions in Exhibit D.

I. The Franchisee shall maintain a public file containing all notices provided to Subscribers under these customer service standards. The notices shall be placed promptly in the public file and maintained for at least one year from the date of the notice.

J. The Franchisee shall establish a clear procedure for resolving complaints filed by Subscribers. Complaints may be made orally or in writing, at the complainant's option.

K. The Franchisee shall provide an initial response to a complaint within five (5) days of its receipt and a final response within thirty (30) days after a written complaint is received. At the time of installation, upon request, and annually, the Franchisee shall provide all Subscribers the Communications Administrator's contact information.

L. The customer service standards set forth herein shall be in addition to the rights and remedies provided by the Virginia Consumer Protection Act of 1977, as amended.

EXHIBIT E

Franchise Bond

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS: That (name & address) (hereinafter called the Principal), and (name and address) (hereinafter called the Surety), a corporation duly organized under the laws of the State of (state), are held and firmly bound unto (name & address) (hereinafter called the Obligee), in the full and just sum of _____ Dollars (\$_____), the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal and Obligee have entered into a Franchise Agreement dated _____ which is hereby referred to and made a part hereof.

WHEREAS, said Principal is required to perform certain obligations under said Agreement.

WHEREAS, the Obligee has agreed to accept this bond as security against default by Principal of performance of its obligations under said Agreement during the time period this bond is in effect.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall perform its obligations under said Agreement, then this obligation shall be void, otherwise to remain in full force and effect, unless otherwise terminated, cancelled or expired as hereinafter provided.

PROVIDED HOWEVER, that this bond is executed subject to the following express provisions and conditions:

1. In the event of default by the Principal, Obligee shall deliver to Surety a written statement of the details of such default within 30 days after the Obligee shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein.
2. This Bond shall be effective _____, 20____, and shall remain in full force and effect thereafter for a period of one year and will automatically extend for additional one year periods from the expiry date hereof, or any future expiration date, unless the Surety provides to the Obligee not less than sixty (60) days advance written notice of its intent not to renew this Bond or unless the Bond is earlier canceled pursuant to the following. This Bond may be canceled at any time upon sixty (60) days advance written notice from the Surety to the Obligee.

EXHIBIT F

LETTER OF CREDIT

**JPMorgan
JPMorgan Chase Bank
Global Trade Services**

IRREVOCABLE STANDBY LETTER OF CREDIT

Issue Date:

L/C No.:

Amount: USD \$10,000 (Ten Thousand Dollars and 00/100 United States Dollars)

Beneficiary:

City of Fairfax

Applicant:

Verizon Global Funding Inc
d/b/a (Verizon Virginia Inc.)
1095 Avenue of the Americas
Room 3000
New York, NY 10036

TO:

City of Fairfax

We hereby establish this irrevocable standby Letter of Credit No. _____ in your favor, for an aggregate amount not to exceed the amount indicated above, expiring at JPMorgan Treasury Services, Tampa, Florida, at our close of business on _____.

This Letter of Credit is available with JPMorgan Chase Bank against presentation of your draft at sight drawn on JPMorgan Chase Bank when accompanied by the documents indicated herein.

Beneficiary's dated statement purportedly signed by the Communications Administrator or the Director of the Department of Finance reading as follows:

"The amount of this drawing USD \$ _____, under JPMorgan Chase Bank Letter of Credit No. _____ represents funds due us as Verizon Virginia, Inc. has failed to perform its duties pursuant to the Cable Franchise Agreement By and Between the City of Fairfax, Virginia, and Verizon Virginia Inc., dated _____, 2005."

It is a condition of this Irrevocable Letter of Credit that it shall be automatically extended without amendment for additional one year periods from the present or each future expiration date, unless at least 30 days prior to such date, we send you notice in writing by registered mail return receipt requested or hand delivery at the above address that we elect not to renew this Letter of Credit for such additional period.

Upon such notice to you, you may draw drafts on us at sight for an amount not to exceed the balance remaining in this Letter of Credit within the then applicable expiry date, accompanied by your dated statement purportedly signed by the Communications Administrator or the Director of the Department of Finance reading as follows:

“The amount of this drawing USD \$ _____ under JPMorgan Chase Bank Letter of Credit number _____ represents funds due us as we have received notice from JPMorgan Chase Bank of their decision not to extend Letter of Credit Number _____ for an additional year.”

All correspondence and any drawings hereunder are to be directed to JPMorgan Treasury Services, Standby Letter of Credit Dept., 4th Fl., 10420 Highland Manor Drive, Tampa, Florida 33610. Customer Inquiry Number is 1-866-632-5101 and choose option No. 3.

We hereby agree with you that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored.

This Letter of Credit is subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication No. 590.

This Letter of Credit shall be governed by, and construed in accordance with, the laws of Virginia without regard to principles of conflict of laws.

Authorized Signature (Bank)

EXHIBIT G

ACCEPTANCE OF FRANCHISE BY THE FRANCHISEE

The Franchisee hereby accepts the franchise to erect, construct, maintain, and operate the Cable System offered by Ordinance No. 2005-16 of the City (the "Granting Ordinance"). By this acceptance, the Franchisee agrees that it shall be bound by the terms and conditions of the Agreement and any amendments thereto (the "Franchise Documents").

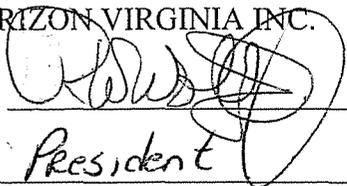
By accepting the franchise, the Franchisee further: (1) acknowledges and accepts the City's legal right to issue and enforce the franchise; (2) agrees that it will not oppose the City's intervention in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of the Franchise Documents; (4) agrees that the franchise and Granting Ordinance shall not be effective until and unless all conditions precedent are satisfied; and (5) agrees that the franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

The Franchisee declares that it has carefully read all of the terms and conditions of the Franchise Documents, and accepts and agrees to abide by the same.

Upon the franchise becoming effective, the Franchisee shall be immediately bound to maintain and operate the Cable System under the terms, conditions and limitations set forth in the Franchise Documents, as of the time and date it files this written acceptance with the City.

AGREED TO THIS 25 DAY OF October, 2005.

VERIZON VIRGINIA INC.

By: 

Its: President

 **FORM APPROVED**

Attorney

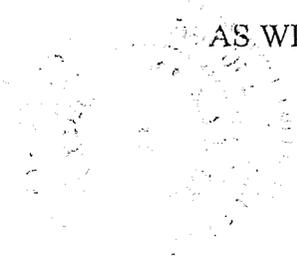
Date 10/21/05

COMMONWEALTH OF VIRGINIA:

I HEREBY CERTIFY, that on this 25 day of October, 2005, before me, the subscriber, a Notary Public of the Commonwealth of Virginia, in and for the City of Fairfax, Virginia, aforesaid personally appeared Robert W. Woltz, Jr of Verizon Virginia Inc and acknowledged the foregoing Acceptance of Franchise by the Franchisee in the City of Fairfax, Virginia, to be the act and deed of said company.

City of Fairfax, Virginia

AS WITNESS my hand and Notary Seal


Robert J. Andrews
Notary Public

My Commission Expires: March 31, 2009

EXHIBIT 5

**AN AGREEMENT BETWEEN THE CITY OF BEAUMONT, CALIFORNIA AND
VERIZON CALIFORNIA, INC. (DEC. 2, 2004)**

An Agreement
Between the City of Beaumont, California
and Verizon California, Inc.

Granting Nonexclusive Rights to Operate and Provide Cable Service Within the
City of Beaumont, California and Setting Forth Terms and Conditions Relating to
the Exercise of Those Rights

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the City of Beaumont, California, a duly organized municipal corporation under the applicable laws of the State of California (the Local Franchising Authority or "LFA") and Verizon California Inc., a corporation duly organized under the applicable laws of the State of California (the "Franchisee").

WHEREAS, the LFA wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a Cable System (as hereinafter defined) in the Franchise Area as designated in this Franchise; and

WHEREAS, the LFA is a "franchising authority" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to California Government Code § 53066; and

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the State of California;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the LFA, and Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its citizens, has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee's plans for its Cable System are adequate, and has considered, at a duly noticed public hearing and in accordance with Section 53066.3, California Government Code: (a) Whether there will be significant positive or negative impacts on the City; (b) Whether there will be an unreasonable adverse economic or aesthetic impact upon public or private property within the Franchise Area; (c) Whether there will be an unreasonable disruption or inconvenience to existing users, or any adverse effect on future use, of utility poles, public easements, and the Public-Rights-of-Way contrary to the intent of Section 767.5 of the Public Utilities Code; (d) Whether the franchise applicant has the technical and financial ability to perform; (e) Whether there is any impact on the franchising authority's interest in having universal Cable Service; (f) Whether other societal interests generally considered by franchising authorities will be met; (g) Whether the operation of an additional cable television system in the City is economically feasible; and (h) Such other additional matters, both procedural and substantive, as the City may determine to be relevant;

WHEREAS, the LFA has determined that in accordance with the applicable provisions of Chapter 5.36 of the Beaumont Municipal Code and Section 53066.3 of the California Government Code, the grant of a nonexclusive franchise to Franchisee is consistent with the public interest;

WHEREAS, the LFA has found Franchisee to be financially, technically and legally qualified to operate the Cable System; and

WHEREAS, the LFA and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the LFA's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to the Residents of the Franchise/Service Area of the LFA pursuant to and consistent with Chapter 5.36 of the Beaumont Municipal Code, pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS.**

Except as otherwise provided herein, the definitions and word usages set forth in the Cable Law are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1. *Access Channel*: A video Channel, which Franchisee shall make available to the LFA without charge for public, educational, or governmental use for the transmission of video programming as directed by the LFA.

1.2. *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with the Franchisee.

1.3. *Basic Service*: Any service tier, which includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchisee.

1.4. *Cable Law*: Chapter 5.36 of the Beaumont Municipal Code, as it may be amended from time to time, and to the extent authorized under and consistent with federal and state law. As set forth below in Subsection 14.10, the LFA and the Franchisee recognize and agree that due to the nature of the Franchisee's FTTP Network, certain provisions of the Cable Law are not applicable to the Franchisee.

1.5. *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6).

1.6. *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), meaning Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area. The Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of video programming directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

1.7. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4).

1.8. *Communications Act*: The Communications Act of 1934, as amended.

1.9. *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of corporate affairs.

1.10. *Educational Access Channel*: An Access Channel available for the sole use of the local public schools in the Franchise Area.

1.11. *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.12. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's Cable System is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.13. *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA and such additional areas as may be included in the corporate (territorial) limits of the LFA during the term of this Franchise.

1.14. *Franchisee*: Verizon California, Inc., and its lawful and permitted successors, assigns and transferees.

1.15. *Government Access Channel*: An Access Channel available for the sole use of the LFA and other local governmental entities located in the Franchise Area.

1.16. *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee from the operation of the Cable System to provide Cable Service in the Service Area, provided, however, that Gross Revenue shall not include:

1.16.1. Revenues received by any Affiliate or other Person, in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System;

1.16.2. Bad debts written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.16.3. Refunds, rebates or discounts made to Subscribers or other third parties;

1.16.4. Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders;

1.16.5. Any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, notwithstanding that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise, which portion shall be included in Gross Revenue;

1.16.6. The sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable franchise fees from purchaser's customer;

1.16.7. The sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein;

1.16.8. Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees);

1.16.9. Any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise; provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue;

1.16.10. Sales of capital assets or sales of surplus equipment;

1.16.11. Program launch fees; or

1.16.12. Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing.

1.17. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20).

1.18. *Interactive On-demand Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(12).

1.19. *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.20. *Local Franchise Authority (LFA)*: The City of Beaumont, California or the lawful successor, transferee, or assignee thereof.

1.21. *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services, Interactive On-demand Services and Telecommunications Services.

1.22. *Normal Business Hours*: Those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.23. *Normal Operating Conditions*: Those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. See 47 C.F.R. § 309(c)(4)(ii).

1.24. *PEG*: Public, educational, and governmental.

1.25. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.26. *Public Access Channel*: An Access Channel available for the use solely by the residents in the Franchise Area.

1.27. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the LFA. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.28. *Respond*: Franchisee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.

1.29. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, as outlined in Exhibit A, and any additional service areas.

1.30. *Service Interruption*: The loss of picture or sound on one or more cable channels or channel equivalents.

1.31. *Significant Outage*: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area

1.32. *Subscriber*: A Person who lawfully receives Cable Service of the Cable System with Franchisee's express permission.

1.33. *Telecommunications Facilities*: Franchisee's existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

1.34. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

1.35. *Title II*: Title II of the Communications Act.

1.36. *Title VI*: Title VI of the Communications Act.

1.37. *Transfer of the Franchise*:

1.37.1. Any transaction in which:

1.37.1.1. an ownership or other interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that control of Franchisee is transferred; or

1.37.1.2. the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

1.37.2. However, notwithstanding Sub-sections 1.37.1.1 and 1.37.1.2 above, a *Transfer of the Franchise* shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

1.38. *Video Programming*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20).

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS.

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Cable Law, the LFA hereby grants the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2. *LFA Does Not Regulate Telecommunications:* The LFA's regulatory authority under Title VI of the Communications Act does not extend to the construction, installation, maintenance or operation of the Franchisee's FTTP Network to the extent the FTTP Network is being constructed, installed, maintained and operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services.

2.3. *Term:* This Franchise shall become effective on the date that the Franchisee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Franchise Area (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise.

2.4. *Grant Not Exclusive:* The Franchise and the right it grants to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the LFA reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

2.6. *No Waiver:*

2.6.1. The failure of the LFA on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Cable Law or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the LFA, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.6.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse the LFA from performance, unless such right or performance has been specifically waived in writing.

2.7. *Construction of Agreement:*

2.7.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives. Pursuant to Section 5.36.227(b) of the Cable Law, in the event of a conflict between the Cable Law and this Agreement, this Agreement shall prevail.

2.7.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 of the Communications Act, 47 U.S.C. § 545.

2.7.3. Should any change to federal, state or local law, rules, or regulations have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.7.4. The LFA and the Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

2.8. *Police Powers*: Nothing in the Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of the LFA's police powers. However, if the reasonable, necessary and lawful exercise of the LFA's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

3. PROVISION OF CABLE SERVICE.

3.1. *Service Area*:

3.1.1. *Service Area*: Franchisee shall provide Cable Service to all residential areas of the Service Area, and may make Cable Service available to businesses in the Service Area, within twelve (12) months of the Effective Date of this Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; and (F) in developments or buildings that Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density requirement set forth in Sub-section 3.1.1.1.

3.1.1.1. *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than 20 occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsections 3.1.1, Franchisee shall provide Cable Service to such area within six (6) months of receiving notice that the density requirements have been met.

3.1.2. *Additional Service Areas:* Aside from the Service Area, Franchisee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any Renewals thereof. If Franchisee desires to add additional Service Areas within the Franchise Area, Franchisee shall notify the LFA in writing of such additional service areas at least ten (10) days prior to providing Cable Services in such areas.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, all residential dwelling units that are within one hundred twenty five (125) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed 125 feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings:* Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each fire station, public school, police station, public library, and such other buildings used for municipal purposes as may be designated by the LFA as provided in Exhibit B; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred twenty five (125) feet solely to provide service to any such school or public building, then the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of one hundred twenty five (125) feet, or of releasing Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover, from any public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than one hundred twenty five (125) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed.

3.4. *Access to Open Trenches:* The LFA agrees to include Franchisee in the platting process for any new subdivision. The LFA agrees, at a minimum, to require as a condition of issuing a permit for open trenching to any utility or developer that (i) the utility or developer give Franchisee at least ten (10) days advance written notice of the availability of the open trench, and (ii) that the utility or developer provide Franchisee with reasonable access to the

open trench. Notwithstanding the foregoing, Franchisee shall not be required to utilize any open trench.

4. SYSTEM OPERATION.

4.1. The parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The jurisdiction of the LFA over such Telecommunications Facilities is restricted by federal and state law, and the LFA does not assert jurisdiction over Franchisee's FTTP Network in contravention of those limitations.

5. SYSTEM FACILITIES.

5.1. *System Characteristics:* Franchisee's Cable System shall at all times during the Franchise Term, meet or exceed the following requirements:

5.1.1. The System shall be designed with an initial analog passband of 860 MHz.

5.1.2. The System shall be designed to be an active two-way plant utilizing the return bandwidth to permit such services as impulse pay-per-view and other interactive services.

5.2. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

5.3. *Emergency Alert System:*

5.3.1. Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

5.3.2. The LFA shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the LFA shall hold Franchisee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

6. PEG SERVICES.

6.1. *PEG Set Aside*

6.1.1. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide on the Basic Service Tier one (1) dedicated Educational Access Channel, and one (1) dedicated Government Access Channel (collectively,

“EG Channels”). Franchisee reserves the right to program the EG Channels during the hours not used by the LFA or its designee.

6.1.2. Within ten (10) days after the Effective Date of this Agreement, the LFA shall notify Franchisee of the programming to be carried on each of the EG Channels set aside by Franchisee, as listed in Exhibit C. Thereafter, Franchisee shall assign the EG Channels on its channel line-up as set forth in such notice, to the extent such channel assignments do not interfere with any pre-existing channels.

6.1.3. Franchisee shall use reasonable efforts to interconnect its Cable System with the existing cable operator(s). Promptly after the LFA’s award of the Franchise, the Franchisee shall initiate interconnection negotiations with the existing cable operator(s) to cablecast, on a live basis, educational and governmental access programming consistent with this Franchise. Interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection. Franchisee shall negotiate in good faith with existing cable operator(s) respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms and conditions. The LFA shall require the existing cable operator(s) to provide such interconnection to the Franchisee on reasonable terms and conditions. The construction costs and ongoing expenses of interconnection shall be fairly shared between the Franchisee and the existing cable operator(s). The Franchisee and the existing cable operator(s) shall negotiate the precise terms and conditions of an interconnection agreement. The LFA shall use its best efforts to facilitate these negotiations. If Franchisee is unable to reach such an agreement within thirty (30) days after requesting in writing to interconnect with other local cable operator(s), LFA shall assist in mediating such dispute. If no agreement is reached within an additional thirty (30) days, Franchisee agrees that LFA shall designate the point of interconnection. If the cost of interconnection would be unreasonable, interconnection is not technically feasible or would cause an unacceptable increase in Subscriber rates, or if an existing cable operator will not agree to reasonable terms and conditions of interconnection, the Franchisee will be under no obligation to interconnect the Cable System or carry EG programming originating on the cable system of the existing cable operator(s).

6.2. All local producers and users of any of the EG facilities or Channels shall agree in writing to hold harmless Franchisee and the LFA from any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a EG facility or Channel.

6.3. To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs arising from the provision of EG services from Subscribers and to include such costs as a separately billed line item on each Subscriber’s bill. Without limiting the forgoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection costs to Subscribers.

7. FRANCHISE FEES.

7.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than thirty (30) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within 90 days following the close of the calendar year for which such payments were applicable.

7.2. *Supporting Information:* Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation.

7.3. *Limitation on Franchise Fee Actions:* The period of limitation for recovery of any Franchise fee payable hereunder shall be four (4) years from the date on which payment by Franchisee is due.

7.4. *Bundled Services:* If Cable Services subject to the Franchise fee required under this Article 7 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders.

8. CUSTOMER SERVICE.

Franchisee's obligations concerning Customer Service Requirements shall include the following, which shall be binding unless amended by written consent of the parties.

8.1. Cable System Office Hours and Telephone Availability:

8.1.1. Franchisee will maintain a local, toll-free or collect call telephone access line, which will be available to its customers 24 hours a day, seven days a week.

8.1.2. Trained Franchisee representatives will be available to respond to customer telephone inquiries during Normal Business Hours. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty-five (45) hours per week. Franchisee representatives shall identify themselves by name when answering this number.

8.1.3. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options. After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call

to a queue for a live representative. The Franchisee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

8.1.4. Under Normal Operating Conditions, telephone answer time, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis. Measurement of this standard shall include all calls received by the Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.

8.1.5. Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a failure to comply with requirements in Subsection 8.1.4.

8.1.6. Under Normal Operating Conditions, customers will receive a busy signal no more than three percent (3%) of the time.

8.2. *Installations, Outages and Service Calls:* Under Normal Operating Conditions, each of the following standards will be met no less than ninety percent (90%) of the time, measured on a calendar quarterly basis, excluding customer requests for connection later than seven (7) business days:

8.2.1. Standard installations will be performed within seven (7) business days after an order has been placed (or at a later time if requested by the Subscriber) and an optical network terminal (ONT) device has been installed at the Subscriber's premises. For purposes of this provision, standard installations are those that are located up to one hundred twenty five (125) feet from the existing distribution system.

8.2.2. Under Normal Operating Conditions, the Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

8.2.2.1. Within twenty-four (24) hours, including weekends, of receiving subscriber calls respecting Service Interruptions in the Service Area.

8.2.2.2. The Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the LFA of a Cable Service problem.

8.2.3. The appointment window alternatives provided to customers for arrivals to perform installations, service calls, and other activities will be either a specific time or, at a maximum, a four (4) hour scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At the Franchisee's discretion, the Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends.

8.2.4. If a Franchisee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

8.2.5. Under Normal Operating Conditions, the Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Franchisee to verify the problem if requested by the Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

8.2.6. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, the Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

8.3. *Customer Complaints:* Under Normal Operating Conditions, the Franchisee shall investigate Subscriber complaints referred by the LFA within seventy-two (72) hours. The Franchisee shall notify the LFA of those matters that necessitate an excess of seventy-two (72) hours to resolve, but those matters must be finally resolved within fifteen (15) days of the initial complaint. The LFA may require reasonable documentation to be provided by the Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

8.4. *Billing:*

8.4.1. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes and/or other governmentally imposed fees. The Franchisee shall maintain records of the date and place of mailing of bills.

8.4.2. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

8.4.3. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with 8.4.2. above.

8.4.4. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

8.4.4.1. The Subscriber pays all undisputed charges;

8.4.4.2. The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and

8.4.4.3. The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

8.4.4.4. It shall be within the Franchisee's sole discretion to determine when the dispute has been resolved.

8.4.5. Under Normal Operating Conditions, the Franchisee shall initiate investigation and resolution all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

8.4.6. The Franchisee shall provide a telephone number and address on the bill for Subscribers to contact the Franchisee.

8.4.7. The Franchisee shall forward a copy of any billing inserts or other mailing sent to Subscribers to the LFA upon request.

8.4.8. The Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option, where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may in the future, at its' discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of the Franchisee, the payment alternative may be limited.

8.4.9. Bills shall be considered paid when appropriate payment is received by the Franchisee or its' authorized agent. Appropriate time considerations shall be included in the Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

8.5. *Deposits, Refunds and Credits:*

8.5.1. The Franchisee may require refundable deposits from Subscribers with 1) a poor credit or poor payment history, 2) who refuse to provide credit history information to the Franchisee, or 3) who rent Subscriber equipment from the Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit the Franchisee may charge

Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit the Franchisee may charge for Subscriber equipment is the cost of the equipment which the Franchisee would need to purchase to replace the equipment rented to the Subscriber.

8.5.2. The Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. The Franchisee shall pay interest on other deposits if required law.

8.5.3. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

8.5.4. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

8.6. *Disconnection / Denial of Service:*

8.6.1. The Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless the Franchisee provides a notice of the delinquency and impending termination at least ten (10) days prior to service suspension and twenty (20) days prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

8.6.2. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

8.6.3. Nothing in these standards shall limit the right of the Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Franchisee's equipment, abusive and/or threatening behavior toward the Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow the Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.

8.6.4. Charges for cable service will be discontinued at the time of requested termination of service by the subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by the Franchisee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Franchisee equipment or early termination charges apply pursuant to the Subscriber's service

contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by the Franchisee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from the Franchisee and to receive Cable Service or other multi-channel video service from another Person or entity.

8.7. Communications Between Franchisee and Subscribers:

8.7.1. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of the Franchisee shall wear a clearly visible identification card bearing their name and photograph. The Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of the Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have the Franchisee's logo plainly visible. The vehicles of those of contractors and subcontractors working for the Franchisee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

8.7.2. The Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Franchisee may be referred to the LFA.

8.7.3. All notices identified in this Section shall be by either:

8.7.3.1. A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or

8.7.3.2. A separate electronic notification

8.7.4. The Franchisee shall provide reasonable notice to Subscribers of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of the Franchisee, and the Franchisee shall provide a copy of the notice to the LFA including how and where the notice was given to Subscribers.

8.7.5. The Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 8.7.4, at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Franchisee:

8.7.5.1. Products and Cable Service offered;

8.7.5.2. Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment

rentals, program guides, installation, downgrades, late fees and other fees charged by the Franchisee related to Cable Service;

8.7.5.3. Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

8.7.5.4. Channel positions of Cable Services offered on the Cable System;

8.7.5.5. Complaint procedures, including the name, address and telephone number of the LFA, but with a notice advising the Subscriber to initially contact the Franchisee about all complaints and questions;

8.7.5.6. Procedures for requesting Cable Service credit;

8.7.5.7. The availability of a parental control device;

8.7.5.8. Franchisee practices and procedures for protecting against invasion of privacy; and

8.7.5.9. The address and telephone number of the Franchisee's office to which complaints may be reported.

A copy of notices required in this Subsection 8.7.5., will be given to the LFA at least fifteen (15) days prior to distribution to subscribers if the reason for notice is due to a change that is within the control of Franchisee and as soon as possible if not within the control of Franchisee.

8.7.6. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

8.7.7. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific dial location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the dial location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

8.7.8. Every notice of termination of Cable Service shall include all of the following information:

8.7.8.1. The name and address of the Subscriber whose account is delinquent;

8.7.8.2. The amount of the delinquency;

8.7.8.3. The date by which payment is required in order to avoid termination of Cable Service; and

8.7.8.4. The telephone number for the Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.

9. REPORTS AND RECORDS.

9.1. *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days' written notice to the Franchisee, the LFA shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. The LFA agrees to treat any information disclosed by Franchisee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. § 551.

9.2. *Records Required:* Franchisee shall at all times maintain:

9.2.1. Records of all written complaints for a period of three years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.2.2. Records of outages for a period of three years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.2.3. Records of service calls for repair and maintenance for a period of three years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.2.4. Records of installation/reconnection and requests for service extension for a period of three years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.2.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

10. INSURANCE AND INDEMNIFICATION.

10.1. *Insurance:*

10.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.1.1.1. Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA.

10.1.1.2. Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

10.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of California.

10.1.2. The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 10 except Worker's Compensation Insurance..

10.1.3. Each of the required insurance policies shall be noncancellable except upon thirty (30) days prior written notice to the LFA. Franchisee shall not cancel any required insurance policy without submitting documentation to the LFA verifying that the Franchisee has obtained alternative insurance in conformance with this Agreement.

10.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of California with an A or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

10.1.5. Upon written request, Franchisee shall deliver to LFA Certificates of Insurance showing evidence of the required coverage.

10.2. *Indemnification:*

10.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend the LFA, its officers, employees, agents and boards, from and against any liability for damages and for any liability or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System, provided that the LFA shall give Franchisee written notice of its obligation to indemnify the LFA within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, employees, agents, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with EG Access or the EAS, or the distribution of any Cable Service over the Cable System.

10.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 10.2.1, Franchisee shall provide the defense of any claims brought against the LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the LFA, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such settlement does not include the release of the LFA and the LFA does not consent to the terms of any such settlement or compromise, and provided the settlement is reasonable, Franchisee shall not settle the claim or action but its obligation to indemnify the LFA shall in no event exceed the amount of such settlement.

10.2.3. LFA shall hold Franchisee harmless and shall be responsible for damages, liability or claims resulting from willful misconduct or negligence of the LFA.

10.2.4. The LFA shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the LFA for which the LFA is legally responsible, subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify the LFA for acts of the LFA which constitute willful misconduct or negligence, on the part of the LFA, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

10.2.5. In any administrative or judicial proceeding involving a third party claim against the LFA arising from the LFA's grant of this Franchise or the operation hereof, Franchisee at its option and own cost and expense may intervene in such proceeding and the LFA consents to such intervention. In any such proceeding, the LFA agrees to assert its limitation from liability to the full extent permitted by Section 635A of the Communications Act, 47 U.S.C. § 555a, or similar applicable law.

11. TRANSFER OF FRANCHISE.

11.1. Subject to Subsection 14.12, *infra*, and Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or otherwise excluded under Section 1.37 above.

12. RENEWAL OF FRANCHISE.

12.1. The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Subsection 14.12, *infra*, and Section 626 of the Communications Act, 47 U.S.C. § 546.

12.2. In addition to the procedures set forth in said Section 626 of the Communications Act, the LFA agrees to notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. The LFA further agrees that such assessments shall be provided to Franchisee promptly so that Franchisee has adequate time to submit a proposal under Section 626 and complete renewal of the Franchise prior to expiration of its term.

12.3. Notwithstanding anything to the contrary set forth herein, Franchisee and the LFA agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the LFA and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the LFA may grant a renewal thereof.

12.4. Franchisee and the LFA consider the terms set forth in this Article 12 to be consistent with the express provisions of Section 626.

13. ENFORCEMENT AND TERMINATION OF FRANCHISE.

13.1. *Notice of Violation:* In the event that the LFA believes that Franchisee has not complied with the terms of the Franchise, the LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, the LFA shall notify Franchisee in writing of the exact nature of the alleged noncompliance.

13.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the written notice described in Section 13.1 to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such default; or (iii) in the event that, 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 LFA of the steps being taken and the projected date that they will be completed.

13.3. *Public Hearing:* In the event that Franchisee fails to respond to the written notice described in Section 13.1 pursuant to the procedures set forth in Section 13.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to Section 13.2(iii) above, if it intends to continue its investigation into the default, then the LFA shall schedule a public hearing. The LFA shall provide Franchisee at least thirty (30) business days prior written notice of such hearing, which will specify the time, place and purpose of such hearing, and provide Franchisee the opportunity to be heard.

13.4. *Enforcement:* Subject to Subsection 14.12, *infra*, and applicable federal and state law, in the event the LFA, after the hearing set forth in Section 13.3, determines that Franchisee is in default of any provision of the Franchise, the LFA may:

13.4.1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

13.4.2. Commence an action at law for monetary damages or seek other equitable relief; or

13.4.3. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.5.

13.5. *Revocation:* Should the LFA seek to revoke the Franchise after following the procedures set forth in Sections 13.1 through 13.4 above, the LFA shall give written notice to Franchisee of its intent. The notice shall set forth the exact nature of the noncompliance. The Franchisee shall have forty-five (45) days from such notice to object in writing and to state its reasons for such objection. In the event the LFA has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a public hearing. The LFA shall cause to be served upon the Franchisee, at least twenty (20) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.5.1. At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the LFA, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

13.5.2. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the LFA shall determine (i) whether an Event of Default has occurred; (ii) whether such Event of Default is excusable; and (iii) whether such Event of Default has been cured or will be cured by the Franchisee. The LFA shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the LFA determines that the Franchise shall be revoked, the LFA shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the franchising authority.

13.5.3. The LFA may, at its sole discretion, take any lawful action which it deems appropriate to enforce the LFA's rights under the Franchise in lieu of revocation of the Franchise.

13.6. *Franchisee Termination:* Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of three (3) years from the Effective Date of this Franchise, if at the end of such three (3) year period Franchisee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System. Franchisee may consider Subscriber penetration levels outside the Franchise Area in this determination. Notice to terminate under this Section 13.6 shall be given to the City in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. Franchisee shall also be required to give its then current Subscribers not less than ninety (90) days prior written notice of its intent to cease operations.

14. MISCELLANEOUS PROVISIONS.

14.1. *Actions of Parties:* In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

14.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the LFA. Nothing in this Subsection is intended to limit the requirements of Subsection 2.7.3.

14.4. *Force Majeure:* Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

14.4.1. Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by the LFA and/or Subscribers.

14.5. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

14.5.1. Notices to Franchisee shall be mailed to:

Verizon California, Inc.
Attn: Tim McCallion, President – Pacific Region
112 Lakeview Canyon Road,
Thousand Oaks, CA 91362

14.5.2. with a copy to:

Verizon Communications, Inc.
Attn: Randal Milch, Senior Vice President and Deputy General
Counsel
1095 Avenue of the Americas
New York, NY 10036

14.5.3. Notices to the LFA shall be mailed to:

City Manager
City of Beaumont
550 E. Sixth Street
Beaumont, CA 92223

14.6. *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the LFA as to the provision of Cable Services in the Franchise Area only. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.7. *Captions*: The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.8. *Severability*: If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.9. *Recitals*: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.10. *Franchisee's FTTP Network*: The LFA and the Franchisee recognize and agree that due to the nature of the Franchisee's FTTP Network, certain provisions of the Cable Law are not applicable to the Franchisee, including, but not limited to Sections 5.36.370, 5.36.375, 5.36.505 and 5.36.510.

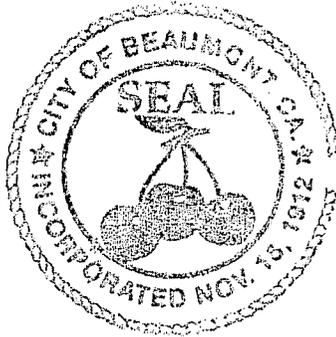
14.11. *Modification*: This Agreement shall not be modified except by written instrument executed by both parties.

14.12. *FTTP Network Sale Prohibition*: Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, any spectrum capacity used for cable service or otherwise, to the LFA or any third party. Franchisee shall not be required to

remove the FTTP Network(s) or to relocate the FTTP Network(s) as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

SIGNATURE PAGE FOLLOWS

AGREED TO THIS 2nd DAY OF November, 2004.



City of Beaumont, California

By: [Signature]
Name: Larry Hessel
Title: Mayor
Date: 11/3/04

Seal

Attest:

City Clerk: [Signature] (Deputy)
Approved as to Form:

City Attorney:

Verizon California Inc.

By: [Signature]
Name: Timothy J. McCallion
Title: President
Date: 2/3/05

EXHIBITS

Exhibit A: Service Area Map

Exhibit B: Municipal Buildings to be Provided Cable Service

Exhibit C: EG Channels

[Signature]
FORM APPROVED
Attorney
Date: 1/2/05

EXHIBIT A
SERVICE AREA MAP

The franchised service area is shown in the map set forth below.

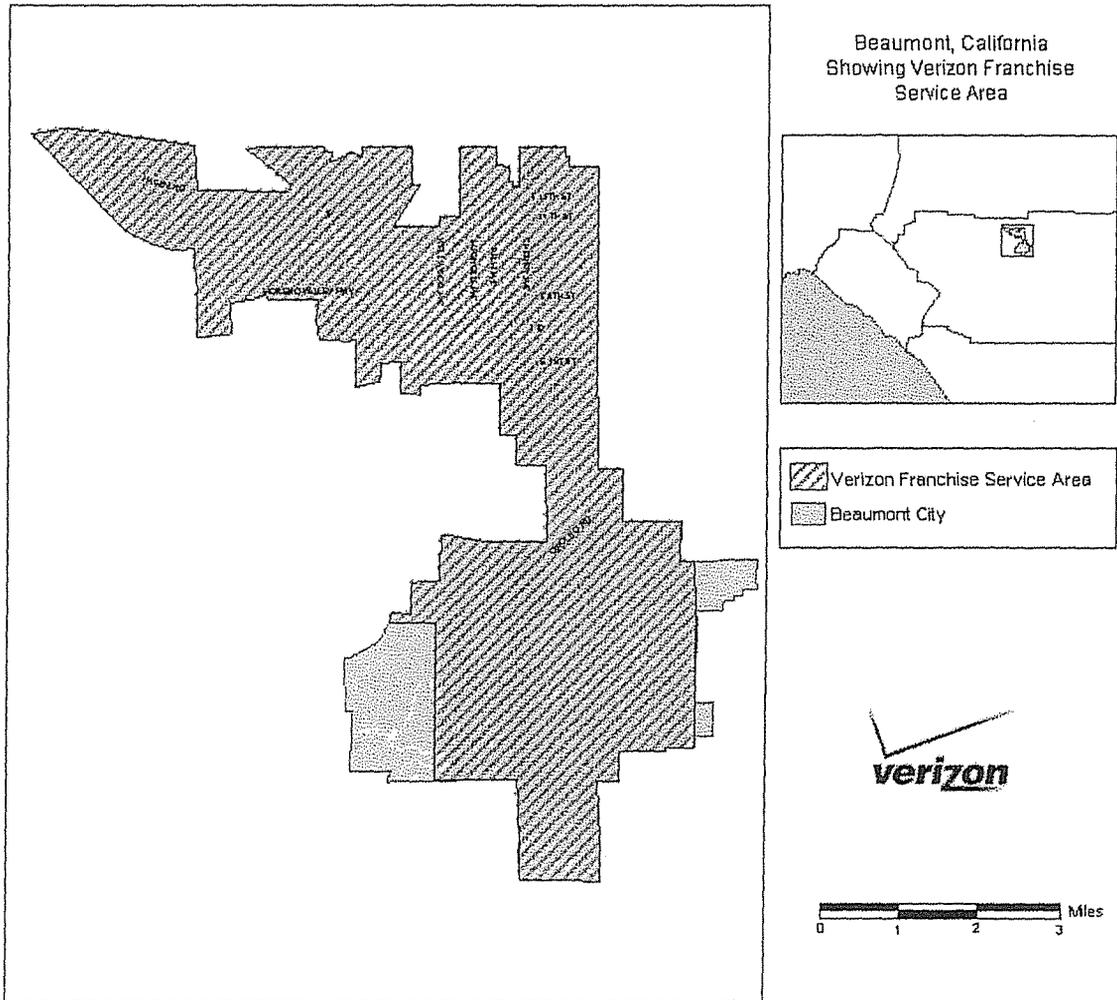


EXHIBIT B

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

[TO BE DESIGNATED BY THE CITY OF BEAUMONT]

EXHIBIT C
EG CHANNELS

[TO BE DESIGNATED BY FRANCHISEE]