AGENDA ITEM #12
October 31, 2006

Public Hearing

MEMORANDUM

October 27, 2006

TO: County Council

FROM: Sonya E. Healy, Legislative Analyst

SUBJECT: **Public Hearing:** Resolution to approve a franchise agreement for use of the public right-of-way for Verizon Maryland Inc.

At the request of the County Executive, the Council President introduced a resolution on October 10, 2006 that would grant a new franchise agreement to Verizon Maryland Inc. to use the public right-of-way for a cable system. This agreement provides that Verizon will pay the County a franchise fee of 5 percent of annual gross revenue derived from the operation of the cable system for a 15-year term (© 2-46).

The Council has held public hearings on all franchise applications. An additional MFP Committee worksession will be held on November 13 at 9:00 a.m. to address issues raised at the public hearing and that emerged during the October 30 Committee meeting. A draft resolution for approval of the Verizon franchise agreement is attached on © 117-118.

The Executive recommends approval of the attached franchise agreement (© 1-60). Under Chapter 49 of the County Code, the Council has sole authority to grant a franchise for use of the public right-of-way. Notice of the franchise application was published, and the Executive received a variety of comments before the October 2, 2006 deadline. The Executive conducted a public hearing on the franchise application on September 28, 2006. According to the Executive Branch, the report submitted by the Office of Cable and Communications Services (© 61-100) addresses the issues raised by the municipalities and individuals who testified at the public hearing.

On February 8, 1996, President Clinton signed the Telecommunications Act of 1996 into law, which amended the 1934 Communications Act and contained provisions to open competition between local telephone companies, long distance providers, and cable companies. Title I regulates "information service," which is defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."[1] Title II regulates

[1] 47 U.S.C. §153(20).

"telecommunications service," which is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[2] Title VI regulates "cable service," which is defined as "the one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service."[3] In addition, the Federal Communications Commission (FCC) was given the task of developing regulations to implement the Act and has conducted numerous rulemakings over several years to implement the law.

As a telecommunications company, Verizon is regulated under Title II, which has allowed the company to deploy its fiber optic system for telephone and internet service without a franchise agreement; however, prior to providing cable service, which is regulated under Title VI, the company must have a franchise agreement approved by the Council.

Terms

Each County franchise agreement contains key terms that franchisees must agree to and abide by related to the consideration provided to the County for the right to operate a cable system, construction requirements, timelines for construction, and customer service protections. This memorandum identifies these major provisions and how these terms are different from other franchise agreements for cable systems. While specific terms of the proposed franchise agreement may be different from other agreements, the overall Verizon agreement may be equitable depending on the final terms of the agreement.

A. Provision of Cable Service

Each franchise agreement contains terms related to the availability of cable service for customers. Under the proposed agreement, Verizon is expected to deploy service to residential consumers on different timelines depending on the service area (© 49).

In the initial service area, Verizon must offer cable service to a significant number of subscribers within 12 months of the effective date of the franchise, and to all residences within 3 years. In the middle service area, Verizon must offer cable service to a significant number of subscribers within 3 years and to all residences within 5 years. In the extended service area, Verizon must offer cable service to a significant number of subscribers within 5 years and to all residences within 7 years. In the expanded service area, Verizon must offer cable service to all residences at which such service is requested within 7 years of the date on which the number of households in the area exceeds 6,000 households. This area is identified on the map in blue and mainly covers the County's Agricultural Reserve and Poolesville (© 49).

Under the proposed agreement, Verizon may make cable service available to businesses at its discretion. In addition, Verizon may refuse to provide cable service in developments or buildings that are subject to exclusive arrangements with other providers or if the company is unable to provide cable for technical reasons.

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[2] 47 U.S.C. § 153(46).
[3] 47 U.S.C. § 522(6).

Other agreements state that the franchisee must make cable service available to all persons including residences, businesses, and other legal entities, within the franchise area, including owners or occupants of multiple dwelling units who request cable service, except for multiple dwelling unit buildings where the operator cannot legally obtain access or cannot reach an agreement for access after good faith negotiations with the building owner.

Other agreements also contain line extension requirements which provide that the operator must extend its cable system within a reasonable time (but not to exceed 90 days) to provide service to any person or business in the franchise area upon request at no charge, other than any applicable installation fees for the individual subscriber's drop, as long as the following conditions are satisfied: (A) the new subscriber requesting service is located 400 feet or less from the termination of the cable system; and (B) the number of dwelling units to be passed by the extension is equal to or greater than 15 per mile measured from any point on the system. If the subscriber's residence does not meet the requirements in (A) the operator can require the subscriber to pay the cost of any line extension in excess of 400 feet. If the subscriber does not meet either requirement the operator must extend service based on an equitable and reasonable cost-sharing arrangement with affected potential subscribers.

Cable Drops for Public Facilities

The proposed agreement provides that Verizon will install and operate a maximum of 100 free drops for buildings used for public purposes that are designated by the County over the term of the franchise, provided that the County pays for drops in excess of 300 feet. In return for the County waiving its right to add additional locations over the term of the agreement, Verizon has agreed to pay the County $1 million ($200,000 within 30 days of the effective date and $200,000 per year over the next 4 years).

Other agreements provide that upon the County's request, the franchisee must without charge install one activated outlet at County designated facilities including public and non-profit educational institutions; County, State, municipal, or agency buildings; facilities owned by or leased to the County; non-profit health care institutions with patient beds; and multi-purpose community centers. The franchisee must provide the highest tier service that contains basic service, and any equipment necessary to receive such service, free of charge to those facilities. The operator may provide higher levels of service at such facilities free of charge.

B. System Operation, Construction, and Maintenance

The Verizon agreement states that the company will provide system tests to ensure that it is in compliance with the franchise agreement and to determine that cable system components are operating as required. This includes proof of performance tests as required by the FCC and special proof of performance tests based on subscriber complaints. The County has the opportunity to observe these tests.

Since the Verizon build-out is subject to Title II regulation, detailed provisions associated with construction are not a part of the proposed franchise agreement. For example, other agreements require that the public receive notice one week prior to construction in at least two ways (i.e. telephone, in person, mail, flyer distribution, newspapers, or another manner reasonable calculated to provide adequate notice).

Other agreements also provide that, at least 90 days prior to the date of initial construction in each initial franchise area and the extended franchise area, the operator must deliver a detailed architectural design plan to the County and a construction manual. Periodic progress reports on construction are required. Mid-term technical reviews are also required once during the eighth and ninth year of the franchise agreement when the County reviews the operator's cable system. The purpose of this review is to evaluate the technical performance capabilities of the operator's system to determine whether to require a system to perform upgrades to conform with technical improvements commonly used in the industry and available on similar systems.

All agreements provide that cable operators must maintain motorized standby power generators capable of at least 24 hours of power at the headend and a battery back-up power capability of at least four hours for all system hubs with automatic response systems to alert the system headend when commercial power is interrupted.

C. Channels and Facilities for Public, Educational, and Government Use

Under the proposed agreement, Verizon will provide a grant of three percent of its gross revenues to the County for the Public, Education, and Government (PEG) channels and institutional network capital expenses. Verizon will provide the County with up to eleven PEG channels, with the company reserving the right to use these channels until the County elects to use these channels. In addition, within 90 days of the County's request, two dedicated, analog access channels will be provided, bringing the total number of channels to 13. In addition, the company can not arbitrarily change channel assignments. If the channel lineup is changed within 30 days of the effective date of the agreement, the company must give no less than 45 days notice to the programmer and must pay the County $50,000 to defer the costs of making logo changes. After that time, any changes made to the channel lineup still require notice but payment amounts are based on a sliding scale.

Other agreements provide for at least 13 analog video access channels for PEG use. At its own expense, the operator must interconnect its system and must make available up to 10 percent of the system's total downstream digital capacity for PEG use (the "Digital Set-aside") subject to a limit of 25 channel equivalents for PEG purposes only. Channel assignments should not be changed unless there is good cause, and the entity responsible for managing the access channel must consent to the change. The operator must provide six months notice to the County, and the entity responsible for the affected PEG programming, prior to any change and must reimburse the County and/or PEG users for any costs incurred for purchasing or modifying any equipment or for making logo changes.

Capital Grant for Access Equipment and Facilities

All cable franchise agreements provide that operators must pay three percent of its gross revenues for use for PEG and institutional network capital expenses as determined by the County. These payments must be made quarterly.

D. Franchise Fee

All cable operators must pay the County, on a quarterly basis, a franchise fee of five percent of gross revenues derived from cable service in the franchise area, including any franchise fee owed to participating municipalities. This payment must be made no later than 30 days following the end of each calendar quarter. Along with the franchise fee payment, companies must provide supporting detail on calculations, and the County may audit an operator's records. Late payments are subject to a five percent charge.

E. Customer Service

Pursuant to the 1992 Cable Television Consumer Protection and Competition Act, the FCC adopted guidelines for improving the quality of customer service provided by cable operators. During the last ten years, FCC standards have become boilerplate language in most local cable franchise agreements. These provisions are found on © 119-120.

Installations, Connections, and Other Operator Services

Under the Verizon agreement, standard installations are 200 feet from the serving terminal or the edge of the property whichever is less. Other agreements have standard installations at 175 feet or less to the primary outlet. If a drop exceeds this length from the nearest right-of-way, the operator may charge a subscriber an additional fee for any drop up to 400 feet. In addition, the point of entry into the residence is at the subscriber's preference when feasible.

Telephone and Office Availability

The Verizon agreement does not require a local cable office in the County, but the company must provide for the pick up and drop off of equipment with a company representative or paid mailer. Other agreements provide that an operator must maintain an office at a convenient location in the franchise area that must be open during normal business hours to allow subscribers to request service, pay bills, and conduct other business.

The Verizon agreement states that the company must provide a telephone answering device 24 hours a day and must hire adequate staff to respond to complaints. Other agreements provide that the operator must maintain at least one local, toll-free, or collect call telephone access line, which must be available to subscribers 24 hours a day, seven days a week. Trained representatives must be available to respond to subscribers inquires during normal business hours.

Prompt Service

The Verizon agreement provides that billing inquires, service, repair, and maintenance not involving a service interruption must be acknowledged in 24 hours or before the end of the next business day, whichever is earlier. All other inquires must be responded to within five business days of the inquiry.

In addition, the Verizon agreement provides that for a service interruption or other service problem, under normal operating conditions, the company *must respond* to a subscriber call within 24 hours, including weekends, of receiving subscriber calls. The company must *begin* actions to correct all other cable service problems the next business day after either subscriber or County notification. The company must *complete* repairs within 72 hours of the time the franchisee commences to respond to the service interruption, not including weekends or when subscriber is not reasonably available for a service call.

Other agreements provide that customer service standards are measured quarterly based on FCC guidelines (© 119-120). Other agreements state that repairs and maintenance for service interruptions and other repairs *not requiring work within a subscribers premises* must be *completed* within 24 hours of the time the subscriber reports the problem to the operator or its representative or the interruption or the need for repairs otherwise becomes know to the operator. Work on all other requests for service must be scheduled for the next available appointment, or at a later time mutually agreeable to the operator and the subscriber. In addition, the operator must use its *best efforts* to *complete such work within three days from the date of the initial request*, except installation requests, provided that the operator must complete the work in the shortest time possible where, for reasons beyond the operator's control, the work could not be completed in those time periods even with the exercise of all due diligence. The failure of the operator to hire sufficient staff or to properly train staff does not justify the operator's failure to comply with this provision.

Other agreements also state that installation requests located up to 400 feet from the nearest right-of-way must be completed within seven business days after an order is placed, a Miss Utility marking is made, or at a later time if requested by the subscriber.

Service Times, Appointments, and Maintenance

Other agreements provide that the operator must perform service calls, installations, and disconnects during normal business hours. The appointment window for installations, service calls, and other installation activities must be at a specific time or, at maximum, in a four-hour time block during normal business hours. The operator must make reasonable efforts to schedule service and installation calls outside normal business hours for the express convenience of the subscriber. In addition, the operator may not cancel an appointment with a subscriber after the close of business on the business day preceding the appointment. If the operator's representative is running late for an appointment with a subscriber and will not be able to keep the appointment, the subscriber must be contacted, and the appointment rescheduled, as necessary, at a convenient time for the subscriber.

All agreements provide that staff must be on call to deal with emergency system maintenance 24 hours a day and under normal operating conditions must provide an immediate response to system outages 24 hours a day.

Rebate Policies

Under the Verizon agreement, service representatives may issue credits at their discretion for missed appointments and service interruptions. The company will provide a credit, upon subscriber request, when all channels received by a subscriber are out of service for four hours or more. The company will provide an automatic credit, if a system outage affects all services for more than 24 consecutive hours. These credits will be issued in an amount proportionate to the time the service was out and the subscriber's monthly bill.

Under other agreements, the operator must repair a service interruption as soon as possible. This obligation is satisfied if the operator offers the subscriber the next available repair appointment within the 24 hour period following the service interruption, or at a later time that is convenient for the subscriber. Under normal operating conditions, if a service interruption is not repaired at the time of the scheduled appointment, the subscriber will receive a credit of 10 percent of the subscriber's normal monthly bill for each 24 hour period, or segment thereof, that the service interruption continues beyond the scheduled repair call.

F. Employment, Training, and Procurement Requirements

Other agreements state that the operator must not discriminate in its hiring practices and must employ procurement practices consistent with the County's Minority, Female and Disabled Persons Program. The operator must report annually on this issue, and it is part of the County's mid-term performance review.

G. Reports and Records

Under the Verizon agreement, upon no less than 30 days notice, the County has the right to inspect and copy at any time during normal business hours and on a nondisruptive basis at a mutually agreed upon location in the County, all books and records related to the cable system. The notice to the provider must specify the reason for the review.

Other agreements provide that the County has the right, upon reasonable notice, to inspect and copy at any time during normal business hours all books, receipts, maps, plans, financial statements, etc. In addition, the operator must submit quarterly construction reports to the County and each participating municipality in which construction was performed during that quarter. The operator must submit updated as-build system design maps to the County, within 60 days of the completion of system construction in any geographic area.

Records Required

The Verizon agreement provides that the company must issue a quarterly report starting six months after cable service is available on a commercial basis directly to multiple subscribers in the franchise area and for each calendar quarter during the term of the agreement, which reports the number of service calls received and resolved during the quarter, including any property damage and line extension requests. Once the franchisee reaches 50,000 subscribers, it must submit a report showing the number of outages for that quarter, and identifying each planned subscriber outage lasting more than one hour at a time. The company must also submit a report showing performance with respect to all applicable customer service standards in the agreement, the reason for noncompliance, and any remedial action plans.

Other agreements state that operators must maintain records of all complaints received, plans, as-build system design maps, records of outages, records of service calls, records of installation/reconnection, and service request. The operator also must maintain a public file showing its plan and timetable for system construction. Copies of these documents must be provided to the County upon request, and the County may require additional information, records and documents from time to time.

Performance Evaluation

Other agreements state that the County may at its discretion hold performance evaluation sessions every three years related, but not limited, to system performance and construction, compliance with cable law and the franchise agreement, customer service and complaint response, and subscriber privacy issues.

H. Insurance and Indemnification

Each franchise agreement has requirements related to insurance that companies must maintain. All of these agreements are the same except Verizon has an additional $1 million coverage requirement for broadcasters liability coverage and a requirement for copyright infringement insurance ($2 million).

All agreements also indemnify the County, County representatives, and municipalities from all claims, suits, causes of action, or judgments arising out of the installation, construction, operation, or maintenance of the cable system. The Verizon agreement exempts PEG programming from indemnification.

I. Enforcement Provisions

All agreements require the posting of a $2 million performance bond to ensure that operators perform their obligations under the franchise agreements. The County may not attempt to collect under this bond unless 30 days have passed since the County provided a franchisee with written notice of its intent to collect under this bond. The County may draw on this amount for any and all damages, losses, costs, and expenses incurred from the failure of the franchisee to comply with material provisions of the agreement, to pay fees, penalties, or liquidated damages.

In extreme cases, the County may take action to terminate or revoke a franchise agreement. The Council recently repealed the County's ability to reduce the duration of franchise agreements under Expedited Bill 40-06. Although the County has never reduced the term of a franchise agreement, this change limits the County's enforcement options to fines and franchise revocation or termination and arguably makes the liquidated damages provisions even more important.

In the Verizon agreement, liquidated damages are capped at $100,000 per year; however the company may pay any amount in excess of the liquidated damages cap. This agreement also provides various cure periods for different violations. In addition, the customer service telephone answering times, call transfer times, and excessive busy signal fines are on a sliding scale based on the percentage of calls outside of mandated FCC guidelines.

Other agreements do not cap liquidated damages and contain a $400 per day penalty for each day that a franchisee fails to submit any required plans indicating expected dates of installation of various parts of the system. In addition, fines are assessed for any violation of customer service standards at a rate of $200 per day regardless of how close franchises are to meeting percentages for call answering times.

Request for Additional Information

At the October 30 MFP meeting, Council staff requests the following additional information from the Executive Branch, the Office of Cable and Communications Services, and Verizon, which will be discussed in further detail at the November 13 Committee meeting:

1. What are Verizon's plans for service to County businesses and multiple dwelling units? Why are these groups excluded from the terms of the franchise agreement?

2. How many households are currently in the identified expanded service area (© 49)?

3. Since the cable drops for public facilities are limited to 300 feet, how many potential public sites would meet this criterion? Of the current free drops tracked by the Office of Cable and Communications Services, how many are within 300 feet? How did the Executive Branch determine that $1 million was adequate consideration for waiving additional request for free drops? Will this money be earmarked for public facility installations or applied to the General Fund?

4. Is Verizon willing to provide "as built" maps to the Office of Cable and Communications Services, so staff can track where the system is located in the County's right-of-way?

5. With the initial Verizon build out, Councilmembers heard complaints from many residents that they were never notified about construction in their neighborhoods, and several public safety issues were reported. What type of notice will County residents receive about new construction related to the FTTP project?

6. Does the Office of Cable and Communications Services believe that the number of PEG channels provided for in the Verizon agreement is adequate for digital migration? How does this compare to guaranteeing up to 10 percent of a cable system's total downstream digital capacity for PEG use?

7. Since there is no requirement in the Verizon agreement for a call center or office located in the County, how will Verizon interact with its customers in the County? If an issue cannot be resolved over the telephone or on the web site, where is the closest location a consumer could go to interact with a customer representative?

8. Why are the service standards for installations and service repairs different in this franchise agreement? For example, in the proposed Verizon agreement a service interruption or other service problem must be *responded to* within 24 hours, the company *must begin* actions to correct the problem the next day and repairs *must be completed* within 72 hours. While other agreements provide that *repairs not requiring work within a subscribers premises must be completed within 24 hours* of the subscriber reporting the problem.

9. The Verizon agreement states that the company must provide a telephone answering device 24 hours a day and must hire staff to respond to complaints. Is it possible that a County consumer may never talk to a live customer service representative when calling to report a complaint?

10. Is Verizon willing to provide information to subscribers about the County's Office of Cable and Communications Services in notices sent to subscribers?

11. What criteria will be used by Verizon to determine if subscribers are eligible for a credit, since the rebate policy states that it is up to the discretion of service representatives to award credits for missed appointments and service interruptions? Why are the rebate policies different among franchisees?

12. Why does the agreement contain a cap on liquidated damages and a sliding scale for compliance on call answering times established by FCC guidelines?

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan
County Executive

MEMORANDUM

October 5, 2006

TO: George L. Leventhal, President
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Verizon Maryland, Inc. Cable Franchise Agreement

I am pleased to transmit to the County Council a proposed Cable Franchise Agreement with Verizon Maryland, Inc. for the provision of cable television service in Montgomery County. I recommend that the Council grant a franchise to Verizon.

Executive staff have reviewed Verizon's application for a franchise, met with representatives of the participating municipalities, and conducted a hearing to receive public comment. The attached report from the Office of Cable and Communications Services, Department of Technology Services, addresses the issues and concerns with the proposed agreement raised by the participating municipalities and others who either testified at the hearing or submitted written comments.

In reviewing the documents and testimony, and as set forth in the Cable Office Report, I have focused on (i) the legal, financial, technical and character qualifications of the proposed franchisee, (ii) whether the agreement will have an adverse impact on services and (iii) whether the agreement is contrary to the public interest. Based on all of the materials, I am satisfied that the proposed agreement is in the best interests of the County and its residents.

This is also an appropriate time to review provisions of the franchise agreements with our other cable television providers to see if any adjustments are necessary or appropriate in light of changes proposed to the Cable Law and the fact that we are entering into a more competitive environment for the provision of cable television service.

Executive staff will be available throughout your review to assist in your efforts. If you have questions or need additional information, please contact Jane Lawton, Cable Communications Administrator, at 240-777-3724.

DMD:jp
Attachments

Cable Franchise Agreement
by and between
Montgomery County, Maryland
and
Verizon Maryland Inc.

Approved on______________, 2006

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between Montgomery County, a charter county, duly organized under the applicable laws of the State of Maryland (the "County"), and Verizon Maryland Inc., a corporation duly organized under the applicable laws of the State of Maryland (the "Franchisee").

WHEREAS, the County 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 the Montgomery County Code Chapter 8A, as amended, and Article 25A, Section 5(B) of the annotated Code of Maryland, as amended;

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Network ("FTTP Network") in the Franchise Area and the FTTP Network will occupy the Public Rights-of-Way within the County, and Franchisee desires to use the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, certain municipalities located within the County and identified in Exhibit A hereto (the "Participating Municipalities") have requested that the County administer and enforce the terms of their cable franchises;

WHEREAS, the County 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 County and Participating Municipalities 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 County and Participating Municipalities deem the award of this Franchise to be appropriate;

WHEREAS, the County and Participating Municipalities 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;

WHEREAS, this Agreement reflects a compromise of disputed views of the parties' legal rights and responsibilities, and as such should not be understood or used as precedent in any other disputes or issues that arise between the parties, or between one of the parties and any third party, outside the scope of this Agreement; and

NOW, THEREFORE, in consideration of the County's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of the County and the Participating Municipalities 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 Title 47 of the United States Code, as amended, and, if not in conflict, the Cable Law, are incorporated herein and shall apply in this Agreement. The words "shall" and "will" are mandatory, and the word "should" expresses an expectation, but is not mandatory, and the word "may" is permissive. 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*: The Montgomery County Code, Chapter 8A.

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). If during the course of this Agreement any service is classified to be or not to be a "Cable Service" by a court of competent jurisdiction in a decision that constitutes a binding legal precedent on the County or Verizon, or by the FCC in a decision that is binding on the County or Verizon, then the term "Cable Service" as used in this Agreement shall be interpreted in accordance with such decision.

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).

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

1.8. *Contiguous Service Area:* The portion of the Franchise Area as outlined in Exhibit B.

1.9. *County*: The County of Montgomery, Maryland.

1.10. *Educational Access Channel*: Any Channel required by this Agreement to be designated by the Franchisee for use by the County on the Cable System for educational purposes.

1.11. *Expanded Service Area.* The portion of the Franchise Area as outlined in Exhibit B.

1.12. *Extended Service Area*: The portion of the Franchise Area as outlined in Exhibit B.

1.13. *FCC*: The Federal agency as presently constituted by the Communications Act, its designee, or any successor agency.

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1.14. *Force Majeure:* An event or events reasonably beyond the ability of Franchisee to control. This includes, but is not limited to, severe or unusual weather conditions, strike, labor disturbance, lockout, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, fire, flood, or other act of God, and sabotage.

1.15. *Franchise Area*: The unincorporated area (entire existing territorial limits) of the County and incorporated areas of the Participating Municipalities and any area added thereto during the term of the Franchise that the Franchisee agrees to serve.

1.16. *Franchisee*: Verizon Maryland Inc. and its lawful and permitted successors, assigns and transferees.

1.17. *Government Access Channel:* Any Channel required by this Agreement to be designated by the Franchisee for use by the County or Participating Municipalities on the Cable System for governmental purposes.

1.18. *Gross Revenue:* Any and all revenues, including cash, credits, property or other consideration of any kind or nature arising from, attributable to, or in any way derived directly or indirectly by the Franchisee, its Affiliates, or by any other entity that is a cable operator of the System, from the operation of the Franchisee's Cable System (including the studios and other facilities associated therewith) to provide cable services. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any basic, optional, premium, per-channel, per-program service, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments, or other consideration received from programmers for carriage of programming on the System; revenues from rentals or sales of Converters or other equipment; any studio rental, production equipment, and personnel fees; advertising revenues; barter; revenues from program guides; revenues from the sale or carriage of other Cable Services; and revenues from home shopping channels and other revenue sharing arrangements. Gross Revenues shall include revenues received by an entity other than the Franchisee, an Affiliate, or another entity that operates the System where necessary to prevent evasion or avoidance of the obligation under this Agreement to pay the franchise fee. The County acknowledges that Verizon maintains its books in accordance with generally accepted accounting principles. However, Gross Revenue shall not include:

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

1.18.2. 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;

1.18.3. Revenues later refunded or rebated to Subscribers;

1.18.4. Revenues wholly generated by services that are defined herein as Non-Cable Services;

1.18.5. Third-party revenues derived from the sale of merchandise over home shopping channels carried on the Cable System, regardless of whether the revenues

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are collected by the third party or collected by the Franchisee on behalf of, and remitted back to, the third party; and revenue of the Franchisee from its sale of merchandise over home shopping channels carried on the Cable System if the merchandise is unrelated to the operation of Franchisee's Cable System to provide Cable Service in the Franchise Area;

1.18.6. Revenues from the sale of Cable Services on the Cable System to a reseller, when the reseller pays the cable Franchise Fees on the resale of the Cable Services;

1.18.7. Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and that Franchisee is required to collect and remit to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, and communication taxes);

1.18.8. Any franchise fees for Non Cable Services;

1.18.9. The provision of Cable Services to customers without charge, including, without limitation, the provision of Cable Services to public institutions as required or permitted herein, provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barters, services or other items of value shall be included in Gross Revenue;

1.18.10. Revenues from sales of capital assets or sales of surplus equipment;

1.18.11. Program launch fees not paid directly to Franchisee; and

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

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

1.20. *Initial Service Area:* The portion of the Franchise Area as outlined in Exhibit B.

1.21. *Middle Service Area*: The portion of the Franchise Area as outlined in Exhibit B.

1.22. *Non-Cable Services*: Any service that does not constitute a Cable Service.

1.23. *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.

1.24. *Normal Operating Conditions*: Those service conditions which are within the control of the Franchisee. Those conditions that are not within the control of the Franchisee include, but are not limited to, Force Majeure events. Those conditions that 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).

1.25. *Participating Municipalities (and individually a "Participating Municipality"):* Additional franchising authorities which have agreed to have the County administer and enforce this Agreement within their corporate limits, which have signed and entered into this Agreement with the consent of Franchisee, and which are identified in Exhibit A.

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

1.27. *PEG Channels:* Refers collectively to all Public Access Channels, Educational Access Channels, and Government Access Channels that Franchisee is required to provide under this Agreement.

1.28. *Person*: An individual, partnership, association, joint stock company, trust, or corporation, but such term does not include the County or a Participating Municipality.

1.29. *Public Access Channel:* Any Channel required by this Agreement to be designated by the Franchisee on the Cable System for use by the general public who are residents of the County, including groups and individuals, and which is available for such use on a non-discriminatory basis for public access purposes.

1.30. *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 lands and waterways used as Public Rights-of-Way, as the same now or may hereafter exist, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System.

1.31. *Service Area:* All of the unincorporated area of the County, together with the areas comprising the Participating Municipalities, all as characterized as in either the Initial Service Area, the Middle Service Area, the Extended Service Area, the Expanded Service Area, and the Contiguous Service Area.

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 on the Cable System.

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. *User*: Person or organization using a PEG Channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.

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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:*

2.1.1. Subject to the terms and conditions of this Agreement and the Cable Law, the County and the Participating Municipalities hereby grant 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 County's or Participating Municipalities' 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 FTTP Network that is not prohibited by Federal or State law provided any requirements for County or Participating Municipalities' authorization or registration not inconsistent with federal and state law are satisfied. The County and Participating Municipalities make no representation or guarantee that their 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 County's and Participating Municipalities' 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.

2.1.2. The Participating Municipalities, having adopted Chapter 8A of the Montgomery County Code by ordinance ("Chapter 8A"), each have requested that the County administer and enforce such ordinance within the corporate limits of the Participating Municipality through one or more County-municipality agreements. The County has agreed to administer and enforce Chapter 8A and the comparable municipal ordinance within the corporate limits of each Participating Municipality. Therefore, the County has the authority to administer and enforce Chapter 8A and the comparable municipal ordinance along with this Agreement within the corporate limits of each Participating Municipality. Termination of any County-municipality agreement shall not result in termination of this Agreement for either the County or the Participating Municipality. Upon termination of any County-municipality agreement, the Participating Municipality shall become responsible for the administration and enforcement of this Agreement within its corporate limits, and shall be entitled to collect and retain only that part of the franchise fee due to it for the franchise within its corporate boundaries. After notice to Franchisee that the County-municipality agreement has been terminated, Franchisee shall communicate directly with the Participating Municipality.

2.2. *County's and Participating Municipalities' Regulatory Authority:* The parties acknowledge that the Franchisee intends to provide Non-Cable Services by means of the FTTP Network. The parties acknowledge that this Franchise does not encompass or reflect the full extent of the County's or Participating Municipalities' authority over the Franchisee and, notwithstanding any provision hereof, the parties reserve all of their rights under state and federal law regarding the scope of such authority. The Franchisee also acknowledges that, subject to state and federal law, the County and Participating Municipalities have the authority to regulate the placement, construction, repair, and maintenance of physical facilities located in the Public Rights-of-Way, including the FTTP Network. The County agrees that it shall not, under the authority of this Franchise, claim any additional authority over the physical facilities that comprise the FTTP Network and that are located in the Public Rights-of-Way. Finally,

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nothing in this Franchise shall be deemed a waiver of any right or authority the County or Participating Municipalities may have now or in the future to regulate information services or telecommunications services, or the use of the FTTP Network to provide such services.

2.3. *Term*: This Franchise shall become effective on [date certain], 2006 (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, or unless the Franchise is renewed or extended by mutual agreement.

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 County or Participating Municipalities reserve 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 itself, at any time during the term of this Franchise.

2.5. Franchise Subject to State and Federal Law:

2.5.1. Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of state and federal law, including but not limited to the Communications Act.

2.5.2. Should any change to state and federal law after the Effective Date have the lawful effect of materially altering the terms and conditions of this Franchise to the detriment of one or both parties, then the parties shall modify this Franchise to ameliorate such adverse effects on and preserve the affected benefits of the Franchisee and/or the County or Participating Municipalities to the extent possible which is not inconsistent with the change in law. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then, at either party's option, the parties agree to submit the matter to mediation. In the event mediation does not result in an agreement, then, at either party's option, the parties agree to submit the matter to non-binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The non-binding arbitration and mediation shall take place in the County, unless the parties' representatives agree otherwise. In any negotiations, mediation, and arbitration under this provision, the parties will be guided by the purpose as set forth below. In reviewing the claims of the parties, the mediators and arbitrators shall be guided by the purpose of the parties in submitting the matter for guidance. The parties agree that their purpose is to modify the Franchise so as to preserve intact, to the greatest extent possible, the benefits that each party has bargained for in entering into this Agreement and ameliorate the adverse affects of the change of law in a manner not inconsistent with the change in law. Should the parties not reach agreement, including not mutually agreeing to accept the guidance of the mediator or arbitrator, this subsection 2.5.2 shall have no further force or effect.

2.6. No Waiver:

2.6.1. The failure of the County or any Participating Municipality 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 County or any Participating Municipality, nor to excuse Franchisee from complying or performing, unless the County or any

Participating Municipality has specifically waived, in writing, such right or such compliance or performance.

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 County or any Participating Municipality from performance, unless the Franchisee has specifically waived, in writing, such right or performance.

2.6.3. Neither this Franchise nor any action by the County or any Participating Municipality hereunder shall constitute a waiver of or a bar to the exercise of any police right or power of the County or any Participating Municipality, including without limitation, the right of eminent domain. This Agreement shall not limit any authority of the County or any Participating Municipality in accordance with Maryland law to condemn, in whole or in part, any property of the Franchisee, provided that the Franchisee shall receive whatever condemnation award the Franchisee would normally be entitled to recover as a matter of Maryland law. Partial condemnation of the Franchisee's property shall not terminate this Agreement except in accordance with the terms of this Agreement.

2.7. Construction of Agreement:

2.7.1. By accepting the Franchise and executing this Agreement, Franchisee, relying upon its own investigation and understanding of the power and authority of the County and Participating Municipalities to grant this Franchise, accepts and agrees to comply with this Agreement and the Cable Law, to the extent not contrary to federal or state law. Franchisee retains all rights to challenge the County's application of the Cable Law to Franchisee. Subject to Section 2.8, in the event of a conflict between the Cable Law and this Agreement, the Cable Law shall prevail, subject to applicable law. Further, the parties recognize that 47 U.S.C. § 541(b)(3) prohibits the County from imposing any requirement that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by Franchisee. Accordingly, the County shall not invoke any provision of the Cable Law against Franchisee in a manner that is inconsistent with federal law.

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.

2.8. *Police Powers*: Nothing in the Agreement shall be construed to prohibit the lawful exercise of the police powers of the County or any Participating Municipality. If the exercise of the County's or any Participating Municipality's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify the Franchise so as to ameliorate the adverse effects of the material alteration and preserve intact, to the greatest extent possible, the benefits and obligations that Franchisee has bargained for in entering into this Agreement. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then, at either party's option, the parties agree to submit the matter to mediation. In addition, if the parties cannot reach agreement on such a modification, either on their own or through mediation, the parties may pursue whatever remedies are available at law or equity to enforce their rights under this Agreement.

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2.9. *Effect of Acceptance:* By accepting the Franchise and executing this Agreement, Franchisee, relying upon its own investigation and understanding of the power and authority of the County and Participating Municipalities to grant this Franchise, acknowledges and accepts the County's and Participating Municipalities' legal right to grant the Franchise, to enter into this Agreement, and to enact and enforce ordinances and regulations related to the Franchise subject to the provisions of this Agreement; agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law; and agrees that the County retains the absolute right to terminate this Agreement for any material violation by Franchisee pursuant to Article 13 of this Agreement, and a Participating Municipality may also so terminate this Agreement within its boundaries.

2.10. *Acceptance Fee:* As additional consideration supporting this Agreement, Franchisee shall pay to the County an acceptance fee of two hundred and fifty thousand dollars ($250,000) for verified reasonable costs associated with the grant of this Franchise within thirty (30) days of Franchisee's execution of this Agreement. As additional consideration supporting this Agreement, Franchisee shall pay to the Participating Municipalities an acceptance fee of forty thousand dollars ($40,000) for verified reasonable costs associated with the grant of this Franchise within thirty (30) days of Franchisee's execution of this Agreement.

2.11. *Participating Municipalities:* If after the effective date of this Agreement, a municipality adopts Chapter 8A of the Montgomery County Code by ordinance and enters into a County-municipal agreement requesting the County to administer and enforce such ordinance within the corporate limits of the municipality, and signs and enters into this Franchise Agreement, such municipality shall then be considered a Participating Municipality. The Franchisee agrees that it shall take any actions the County deems necessary to allow the municipality to become a signatory to this Agreement, including entering into an amendment to this Agreement on mutually agreeable terms. After the municipality has signed and entered into the Franchise Agreement, the Franchisee agrees that it shall provide service to the entire area of the municipality under the same terms and conditions of this Agreement as applicable to the County and other Participating Municipalities.

3. PROVISION OF CABLE SERVICE

3.1. *Service Area:*

3.1.1. *Initial Service Area:* In the Initial Service Area, the Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas within twelve (12) months of the Effective Date of this Franchise, and to all residences within the Initial Service Area at which such service is requested within three (3) years of the Effective Date of the Franchise, except as specified in Section 3.2.

3.1.2. *Middle Service Area:* In the Middle Service Area, the Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas within three (3) years of the Effective Date of this Franchise, and to all residences within the Middle Service Area at which such service is requested within five (5) years of the Effective Date of the Franchise, except as specified in Section 3.2. If Franchisee is unable to reach agreement with the City of Rockville to obtain construction permits for the FTTP network under reasonable terms and conditions, as determined by Franchisee, by December 31, 2007, these timeframes shall not apply to Franchisee's provision of Cable Service to residences served by Franchisee's

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Rockville and Montrose wire centers. Instead, Franchisee shall offer Cable Service to all residences served by the Rockville and Montrose wire centers at which such service is requested within four (4) years of obtaining construction permits for the FTTP network from the City of Rockville, except as specified in Section 3.2.

3.1.3. *Extended Service Area:* In the Extended Service Area, the Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas within five (5) years of the Effective Date of this Franchise, and to all residences in the Extended Service Area at which such service is requested within seven (7) years of the Effective Date of the Franchise, except as specified in Section 3.2.

3.1.4. *Expanded Service Area:* Franchisee shall offer Cable Service to all residences in the Expanded Service Area at which such service is requested within seven (7) years of the date on which the number of households in the Expanded Service Area exceeds six thousand (6,000) households.

3.1.5. *Contiguous Service Area:* Franchisee shall offer Cable Service to all residences in the Contiguous Service Area at which such service is requested at the same time that it begins to offer Cable Service within the wire center serving the Contiguous Service Area.

3.1.6. Franchisee may make Cable Service available to businesses in the Franchise Area at its discretion.

3.2. The Franchisee shall not be excused from the timely performance of its obligation as set forth in subsections 3.1.1 through 3.1.5, except for the following occurrences: (A) for periods of Force Majeure; (B) for periods of delay caused by the County or any Participating Municipality; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; and (D) unlawful action or inaction of any government instrumentality including condemnation or the unlawful failure to issue any necessary permits, action or inaction of any public utility, accidents for which the Franchisee is not responsible, work delays because utility providers denied or delayed the Franchisee access to utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary if such acquisition of qualified labor would be commercially impracticable as defined in 47 U.S.C. § 545(f).

3.2.1. The Franchisee may refuse to provide Cable Service: (A) in developments or buildings that are subject to exclusive arrangements with other providers; (B) when it is unable pursuant to normal industry practice to obtain necessary real property or other physical access rights; (C) 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, provided, however, that, subject to subsection 9.3, Franchisee will provide the County with semi-annual reports that identify such developments or buildings and contain information that reasonably demonstrates why the Franchisee is unable to do so; (D) when its prior service, payment or theft of service history with a Person has been unfavorable; and (E) in areas where the occupied residential household density does not meet the density requirement set forth in subsection 3.2.2.

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3.2.2. *Density Requirement*: Franchisee shall make Cable Services available to residential dwelling units in all areas of the Initial Service Area, the Middle Service Area, and the Extended Service Area where the average density is equal to or greater than the following numbers of 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: (A) Thirty (30) residences per mile during years 1 through 7 of the term of the Franchise; (B) Twenty (20) residences per mile during the years 8 to 10 of the term of the Franchise; and (C) Fifteen (15) residences per mile during the years 11 to 15 of the term of this Franchise. Should, through new construction, an area within a Service Area meet the density requirements after the time stated for providing Cable Service as set forth in subsections 3.1.1, 3.1.2, and 3.1.3 respectively, Franchisee shall provide Cable Service to such area within six (6) months of receiving notice that the density requirements have been met.

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, to a maximum of 100 buildings used for public purposes to be designated by the County over the term of the Franchise and to the number of the public purposes buildings set forth in Exhibit A to be designated by each Participating Municipality over the term of the Franchise; 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, or the edge of the property, whichever is less, solely to provide service to any such building, the County, or a Participating Municipality, as the case may be, 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 that includes the PEG channels per site; and

3.3.1.3. One service outlet activated for the most commonly subscribed to digital tier that includes the PEG Channels. 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 County and the Participating Municipalities 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 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 County or a Participating Municipality within these specified facilities, including those drops or outlets in excess of those currently installed, are the responsibility of the County or the Participating Municipality. If the County or a Participating Municipality requests the Franchisee to provide such services or equipment, the County or the Participating Municipality will pay the Franchisee for those costs.

3.3.5. If there is a change in the Franchisee's technology that affects the ability of the County's or a Participating Municipality'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 County's or a Participating Municipality's public buildings as required in sub-subsection 3.3.1.2 in order to ensure that these public buildings receive the most commonly subscribed to digital tier.

3.3.6. In return for the County waiving its ability to add additional locations over the term of the Franchise, Franchisee shall pay the County a sum of one million dollars ($1,000,000) payable as follows: two hundred thousand dollars ($200,000) within thirty (30) days of the Effective Date, and two hundred thousand dollars ($200,000) per year for the next four (4) years on the anniversary of the Effective Date.

4. SYSTEM OPERATION

4.1. Cable System Tests and Inspections:

4.1.1. The Franchisee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise, and to ensure that the Cable System components are operating as required. All tests shall be conducted in accordance with federal rules and any applicable United States National Cable Television Association's Recommended Practices for measurement and testing. In the event that the FCC's technical performance standards are repealed or are no longer applicable to the Cable System, such standards shall remain in force and effect until the County or its designee and the Franchisee agree to new standards.

4.1.2. The Franchisee shall conduct tests as follows:

4.1.2.1. Proof of performance tests on the Cable System at least once every six months or as required by FCC rules, whichever is more often, except as federal law otherwise limits the Franchisee's obligation. In consultation with the County, the Cable System monitor test points shall be established in accordance with good engineering practices and consistent with FCC guidelines; and

4.1.2.2. Special proof of performance tests, as limited by the County, of the Cable System or a segment thereof when Subscriber or User complaints indicate tests are warranted.

4.1.3. Tests shall be supervised by the Franchisee's senior engineer, who shall sign all records of tests provided to the County.

4.1.4. The County shall have the right to witness and/or review all required tests on newly constructed or rebuilt segments of the Cable System. The Franchisee shall provide the County with at least two business days' notice of, and opportunity to observe, any such tests performed on the Cable System.

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4.1.5. The Franchisee shall provide the County with copies of written reports on all tests performed pursuant to Section 4.1.

4.1.6. If any test indicates that any part or component of the Cable System fails to meet applicable requirements, the Franchisee, without requirement of additional notice or request from the County, shall take corrective action, retest the locations and advise the County of the action taken and results achieved, and supply the County with a copy of the results within thirty days from the date corrective action was completed.

4.1.7. The County may, for good cause shown, waive or limit the system test and inspection provisions in this Section.

5. SYSTEM FACILITIES

5.1. *Cable System Characteristics*: The Cable System shall have at least the following characteristics:

5.1.1. Designed with an initial analog and digital carrier passband between 50 MHz and 860 MHz.

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

5.1.3. Modern design when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the Franchise Term. The FTTP Network shall utilize the ITU G.983 Passive Optical Network standard and have no active elements so as to make it more reliable.

5.1.4. Protection against outages due to power failures, so that back-up power is available at a minimum for at least 24 hours at each headend, and conforming to industry standards, but in no event rated for less than four hours, at each power supply site.

5.1.5. Facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design.

5.1.6. Facilities and equipment sufficient to cure violations of any applicable FCC technical standards and to ensure that the Cable System remains in compliance with the standards specified in subsection 5.1.18.

5.1.7. Facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such standards may be amended from time to time.

5.1.8. All facilities and equipment designed to be capable of continuous twenty-four (24) hour daily operation in accordance with applicable FCC standards except as caused by a Force Majeure event.

5.1.9. All facilities and equipment designed, built and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by a subscriber.

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5.1.10. All facilities and equipment designed, built and operated in such a manner as to protect the safety of the Cable System workers and the public.

5.1.11. Sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable the Franchisee to substantially comply with applicable law, including applicable customer service standards and including requirements for responding to system outages.

5.1.12. All facilities and equipment required to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve system problems.

5.1.13. Design capable of interconnecting with other cable systems in the Franchise Area as set forth in Section 5.3 of this Agreement.

5.1.14. If applicable, antenna supporting structures (towers) designed in accordance with Chapter 8 ("Buildings") of the Montgomery County Code, 2004, as amended, and, within Participating Municipalities, applicable provisions of their respective codes, painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the Federal Communications Commission, and all other applicable codes and regulations.

5.1.15. Facilities and equipment at the headend shall allow the Franchisee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted over the Cable System shall include the closed-captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning.

5.1.16. Shall transmit in high definition any signal, which is received in high definition format.

5.1.17. Shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Cable Services on the System. Such equipment will at a minimum offer as an option that a Person ordering programming must provide a personal identification number or other means provided by the Franchisee only to a Subscriber. Provided, however, that the Franchisee shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

5.1.18. The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, which the County is permitted by a change in law to enforce, and shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures:

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5.1.18.1. Occupational Safety and Health Administration (OSHA) Safety and Health Standards;

5.1.18.2. National Electrical Code;

5.1.18.3. National Electrical Safety Code (NESC);

5.1.18.4. Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;

5.1.18.5. Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and

5.1.18.6. Chapter 8 ("Buildings") of the Montgomery County Code, 2004, as amended.

5.1.18.7. Any applicable Participating Municipality building code.

5.2. The FTTP Network shall have at least the following characteristics:

5.2.1. FTTP Network fiber shall be initially designed utilizing splitters of no greater than thirty-two (32) homes per splitter. The FTTP Network shall be pass-through or passive.

5.2.2. Status monitoring capability shall be a feature of the electronics at the customer premises in the FTTP Network. The FTTP Network shall deliver fiber to an Optical Network Terminal ("ONT") at the Subscriber's premises. The ONT shall automatically measure optical signal levels (and other distortion measurements) at the Subscriber's premises.

5.3. *Interconnection*:

5.3.1. 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.

5.3.2. At the request of the County and any Participating Municipality, 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 County or any Participating Municipality for the PEG Channels on the Cable System.

5.3.3. The Franchisee shall notify the County and any Participating Municipality prior to any interconnection of the Cable System.

5.3.4. The Franchisee shall in good faith cooperate with the County and any Participating Municipality in implementing interconnection of the PEG Cable Service

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with communications systems beyond the boundaries of the County and any Participating Municipality.

5.4. *Emergency Alert System*:

5.4.1. The Franchisee shall install and thereafter maintain for use by the County an Emergency Alert System ("EAS").

5.4.2. This EAS shall at all times be operated in compliance with FCC requirements in order that emergency messages may be distributed over the System. In the event of a state or local civil emergency, the EAS shall be activated by equipment or other acceptable means as set forth in the Maryland State EAS Plan. Franchisee will override the audio and video on all channels, so long as it is consistent with Franchisee's contractual commitments, to transmit EAS alerts received from the designated Local Primary Sources, including LP-1, LP-2, and other stations, assigned by the Maryland State EAS Plan to serve the Montgomery County Operational Area.

5.5. *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.

5.6. Any contractor or subcontractor used by Franchisee to meet its obligations under the Franchise or the Cable Law must be properly licensed under laws of the State and all applicable local ordinances, and each such contractor or subcontractor shall have the same obligations with respect to its work as the Franchisee would have if the work were performed by the Franchisee. Franchisee shall be responsible for the omissions and negligent actions of persons contracting or subcontracting or representing the Franchisee in the course of providing Cable Service to any Subscriber. Franchisee is responsible for and shall address complaints made against its contractors, subcontractors, representatives or agents. All contractors, subcontractors, representatives or agents of the Franchisee shall be properly trained and supervised in accordance with Franchisee's customer service standards for Cable Service.

5.7. *Services for the Disabled*: Franchisee shall comply in all material respects with all applicable requirements of the Americans with Disabilities Act. Franchisee shall comply in all material respects with FCC rules on transmission of closed captioning for the hearing-impaired. For hearing-impaired Subscribers, upon request Franchisee shall provide information concerning the cost and availability of equipment to allow the reception of all basic services for the hearing-impaired.

6. PEG SERVICES

6.1. *PEG Set Aside*:

6.1.1. Franchisee will provide the County with up to eleven (11) PEG Channels in the aggregate, though Franchisee reserves the right to utilize for its own purposes any portion of such PEG Channels in its own discretion, until such time as the County elects to utilize such PEG Channels for their intended purpose. Additionally, the Franchisee shall provide two (2) additional dedicated, analog access channels (for a total of 13) upon reasonable request by the County for actual use by the County or a Participating Municipality within ninety (90) days of the request for such access channels. Except as provided in subsection 6.7.5, each PEG Channel shall be transmitted on the Cable System in standard 6 MHz, unscrambled NTSC format so that every Subscriber can receive and display the PEG signals using the same converters and signal equipment that is used for other Basic Service Channels. Further, each PEG Channel, and any additional PEG channels granted to the County pursuant to subsection 6.7.5, shall be delivered with transmission quality the same as or better than the transmission quality of any other Channel on Basic Cable Service.

6.1.2. The Franchisee shall carry the programming on each of the respective PEG Channels as indicated in Exhibit C. Franchisee shall notify the County of channel assignments for the PEG Channels prior to commencing Cable Service in the Franchise Area. The Franchisee shall not arbitrarily or capriciously change such channel assignments, and the Franchisee shall minimize the number of such changes; provided, however, that the Franchisee may change such channel assignments as it deems appropriate so long as the Franchisee gives the access channel programmer ninety (90) days notice of such change (if commercially practicable) but in no event less than forty-five (45) days. Within thirty (30) days of the Effective Date, Franchisee shall pay the County fifty thousand dollars ($50,000) to defray the costs incurred for making logo changes necessitated by channel designation changes and public education of new channel numbers. Thereafter, if Franchisee changes PEG channel assignments, it shall pay to the County the following amounts to defray the costs incurred for making logo changes necessitated by channel designation changes and public education of new channel numbers: (i) if Franchisee changes the channel assignments for one (1) to three (3) PEG channels, ten thousand dollars ($10,000); (ii) if Franchisee changes the channel assignments for four (4) to six (6) PEG channels, twenty thousand dollars ($20,000); (iii) if Franchisee changes the channel assignments for seven (7) to nine (9) PEG channels, thirty thousand dollars ($30,000); (iv) if Franchisee changes the channel assignments for ten (10) to twelve (12) PEG channels, forty thousand dollars ($40,000); and (v) if Franchisee changes the channel assignments for thirteen or more PEG channels, fifty thousand dollars ($50,000).

6.1.3. *PEG Interconnection*: The County shall provide Franchisee with the ability to interconnect its Cable System with the existing cable operators' PEG Channels via the County's PEG facilities in Rockville, Maryland. If the County is unable to provide for a point of interconnection at the County's PEG facilities in Rockville, Maryland, Franchisee shall make arrangements, through interconnection or otherwise, to obtain PEG programming directly from each PEG access origination point. Franchisee shall comply with these requirements within a reasonable time, but in no event, later than 180 days.

6.1.4. Pursuant to Section 8A-28 of the Montgomery County Code, 1994, as amended, the County has provided for certain cable communications plans which govern the expenditure of all access and institutional grants required by the Franchise Agreement. Franchisee agrees that where an approved item of such plan involves implementation by use of agreements with a third party contractor, then Franchisee shall execute such agreements and make payments thereunder at the direction of the County or its designee(s).

6.1.5. The access Channels for the City of Rockville, the City of Takoma Park, and the Montgomery County Chapter of the Maryland Municipal League shall be provided on the lowest cost tier of service and shall be provided County-wide, except that the Takoma Park channel may be used for the Gaithersburg City channel within the City of Gaithersburg.

6.1.6. *Management of Channels:* Except as to the City of Rockville, City of Takoma Park and Montgomery County Chapter of the Maryland Municipal League channels, the County may designate one (1) or more entities, including a non-profit access management corporation, to perform any or all of the following functions:

6.1.6.1. to manage any necessary scheduling or allocation of capacity on the access Channels; and/or

6.1.6.2. on the County's behalf, to program any Public, Educational, or Government Access Channel.

6.1.7. The County 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, the County and the Participating Municipalities, 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.

6.2. *PEG Grants*:

6.2.1. Franchisee shall provide grants to the County, for the benefit of the County and the Participating Municipalities, to be used for PEG and institutional network capital expenses as determined by the County (the "PEG Grants"), which shall be paid on a quarterly basis, concurrently with the franchise fee payment. These grants will be used for PEG and institutional network purposes. This includes, but is not limited to, studio facilities, studio and portable production equipment, editing equipment and program playback equipment and other similar costs. It also includes, but is not limited to, equipment, capacity, computers, dark fiber, and other similar expenses for the institutional network.

6.2.2. The PEG Grants shall consist of 3% of the Franchisee's Gross Revenues for that quarter and shall be paid at the same time and in the same manner as franchise fees. The first payment shall be due on the same date as the first franchise fee payment made by Franchisee under this Agreement.

6.3. To the extent permitted by federal law, the Franchisee shall be allowed to recover from Subscribers the costs of the PEG Grants or any other costs arising from the provision of PEG services 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.

6.4. If the Franchisee makes changes to the Cable System that require improvements to access facilities and equipment, Franchisee shall make any necessary changes to the Franchisee's headend and distribution facilities or equipment within thirty (30) days so that PEG facilities and equipment may be used as intended in this Agreement. In addition, if the Franchisee is unable or refuses to accept signals from PEG Channels in an analog format, Franchisee shall reimburse each PEG entity for the reasonable costs incurred for replacing any signal transmission equipment which must be replaced to send PEG programming in the signal format required by the Franchisee.

6.5. *Backup Facilities and Equipment:* The Franchisee shall design, build, and maintain all PEG upstream feeds, interconnection, and distribution facilities so that such feeds function as reliably as Franchisee's Cable System as a whole within the County, and are no more likely to fail than is Franchisee's Cable System as a whole within the County.

6.6. Editorial Control: Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on the PEG Channels (except for such programming as the Franchisee may cablecast on such PEG Channels).

6.7. Use of PEG Channels, Facilities and Equipment:

6.7.1. The County and any Participating Municipality, or the entity that manages a PEG Channel, may establish and enforce rules and procedures for use of the PEG Channels pursuant to Section 611(d) of the Communications Act, 47 U.S.C. § 53 1(d). The County shall resolve any disputes among Users regarding allocation of PEG Channels.

6.7.2. The Franchisee will provide downstream transmission of the PEG Channels on its Cable System at no charge to the County or other PEG access programmers.

6.7.3. The County or its licensees, assigns, or agents shall not transmit on the PEG Channels commercial programming or commercial advertisements to the extent that they would constitute competition with the Franchisee for such commercial programming or commercial advertisements, subject to the following:

6.7.3.1. For purposes of this subsection, "Commercial Programming or Commercial Advertisements" shall mean programming or advertisements for which the County or any Participating Municipality receives payment from a third party (a party other than the County, a Participating Municipality or the Franchisee), but shall not include announcements indicating that programming is underwritten by a commercial entity, such as the underwriting announcements typically displayed by the public broadcasting system.

6.7.4. *Costs and Payments Not Franchise Fees*: The capital grants and other support provided pursuant to Article 6 and Section 2.10 and subsection 3.3.6 do not constitute Franchise fee payments within the meaning of 47 U.S.C. § 542, but may be passed through to Subscribers as a separate line item on their monthly bills pursuant to 47 U.S.C. § 542(c)(2).

6.7.5. If capacity set aside for PEG use pursuant to this Agreement is subdivided or compressed (for example, migrated from analog to digital transmission) resulting in multiple transmission paths, the Franchisee shall provide the County thirteen (13) PEG Channels (the "Additional PEG Channels") in addition to the PEG Channels set aside for the County in Article 6 and Exhibit C.

6.7.6. All PEG channels shall have at a minimum the same bandwidth, signal quality, and interactive functionality as federal law may from time to time require for cable service channels. In the event the County or Participating Municipalities desire additional functionality for one or more of the channels set aside for PEG use for itself or for a Participating Municipality, the parties agree to negotiate, in good faith, County proposals on behalf of itself or a Participating Municipality that would enable the affected channels to add the desired functionality.

6.7.7. The County may activate any of the Additional PEG Channels upon reasonable request by the County for actual use by the County or a Participating Municipality within ninety (90) days of the request for such access channels.

7. FRANCHISE FEES

7.1. *Payment to the County:* The Franchisee shall pay to the County a Franchise fee of five percent (5%) of annual Gross Revenue derived from the operation of the cable system to provide cable service in the Franchise Area. Provided that the other cable operators providing Cable Service in the Franchise Area are also required to do the same, in the event that the Communications Act is amended to increase the five percent (5%) cap, the County may, upon not less than sixty (60) days prior written notice to Franchisee, increase the amount of the percentage up to the maximum amount permitted by federal law. If the five percent (5%) cap is eliminated by changes to federal law such that there is no maximum, any increase in the amount of the percentage shall be subject to the mutual agreement of the County and Franchisee in the form of an amendment to this Agreement. Franchisee shall attribute a portion of any national and regional advertising revenues to the Franchise Area based on the ratio of Franchisee's Subscribers in the Franchise Area to the cable subscribers of Franchisee and an Affiliate in the relevant advertising region. 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 made on a calendar year basis. Such payments shall be made no later than thirty (30) 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 trued up within thirty (30) days after the date of the estimated payment. In the event any Franchise fee payment, including any estimated Franchise fee payment, due and owing is not made on or before the required date, the Franchisee shall pay any applicable penalties and interest charges computed from such due date, as provided for in the Cable Law under Section 8A-12(f).

7.2. *Supporting Information:* Subject to Section 9.3, each Franchise fee payment shall be submitted with supporting detail in a form similar to that included in Exhibit G and a statement certified by the Franchisee's authorized financial agent or an independent certified public accountant, reflecting the total amount of monthly Gross Revenues for the payment period. Franchisee shall also indicate the number of subscribers within the corporate limits of each Participating Municipality. The County shall have the right to reasonably require further supporting information.

7.3. *Bundled Services:* If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the Franchise fee payments under this Agreement. In the event that the Franchisee or any Affiliate shall bundle, tie, or combine Cable Services (which are subject to the franchise fee) with Non-Cable Services (which are not subject to the franchise fee), so that subscribers pay a single fee for more than one class of service or receive a discount on Cable Services, a *pro rata* share of the revenue received for the bundled, tied, or combined services shall, to the extent reasonable, be allocated to gross revenues for purposes of computing the franchise fee. To the extent there are published charges and it is reasonable, the *pro rata* share shall be computed on the basis of the published charge for each of the bundled, tied, or combined services, when purchased separately. However, the parties agree that tariffed telecommunications services that cannot be discounted under state or federal law or regulations are excluded from the bundled allocation obligations in this Section.

7.4. *No Limitation on Taxing Authority.* Nothing in this Agreement shall be construed to limit any authority of the County or the Participating Municipalities to impose any tax, fee, or assessment of general applicability. The Franchise fee payments required by this Section shall be in addition to any and all taxes of a general nature or other fees or charges which Franchisee shall be required to pay to the County or the Participating Municipalities or to any state or federal agency or authority, as required herein or by law, all of which shall be separate and distinct obligations of Franchisee. Franchisee may designate Franchise Fee(s) as a separate item in any bill to a Subscriber of Franchisee's Cable System, but shall not designate or characterize it as a tax.

8. CUSTOMER SERVICE

Customer service requirements are set forth in Exhibit D.

9. REPORTS AND RECORDS

9.1. *Open Books and Records:* Subject to applicable law, upon reasonable written notice to the Franchisee, which shall be no less than thirty (30) days, the County shall have the right to inspect and copy at any time during Normal Business Hours and on a nondisruptive basis at a mutually agreed location in the County, all books and records, including all documents in whatever form maintained, including electronic media ("books and records") to the extent that such books and records relate to the Cable System or to the Franchisee's provision of Cable Service and are reasonably necessary to ensure compliance with the terms of this

Agreement. Such notice shall specify the purpose of the review, so that Franchisee may organize the necessary books and records for appropriate access by the County. Franchisee shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the County.

9.2. If any books, records, maps, plans, or other requested documents are too voluminous, not available locally in the County, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at a location mutually agreed to by the County and the Franchisee, provided that (i) the Franchisee must make necessary arrangements for copying documents selected by the County after its review; and (ii) the Franchisee must pay all travel and additional copying expenses incurred by the County (above those that would have been incurred had the documents been produced in the County) in inspecting those documents or having those documents inspected by its designee.

9.3. *Proprietary Books and Records:* If the Franchisee believes that the requested information is confidential and proprietary, the Franchisee must provide the following documentation to the County: (i) specific identification of the information; (ii) statement attesting to the reason(s) Franchisee believes the information is confidential; and (iii) statement that the documents are available at the Franchisee's designated offices for inspection by the County. The County shall take reasonable steps to protect the proprietary and confidential nature of any books, records, Service Area maps, plans, or other County-requested documents that are provided pursuant to this Agreement to the extent they are designated as such by the Franchisee.

9.4. The Franchisee shall take all reasonable steps required to ensure that it is able to provide the County with all information that must be provided or may be requested under this Agreement or applicable law, including the issuance of appropriate subscriber privacy notices. The Franchisee shall be responsible for redacting any data that applicable law prevents it from providing to the County. Nothing in this Section shall be read to require a Franchisee to violate federal or state law protecting subscriber privacy.

9.5. *Copying of Books and Records*: The County shall have the right to copy any such books and records, except to the extent that such books and records are proprietary and/or confidential pursuant to the Maryland Uniform Trade Secrets Act or other applicable law.

9.6. *Complete and Accurate Records*: The Franchisee shall keep complete and accurate books of account and records of its business and operations under and in connection with the Agreement.

9.7. Unless otherwise provided in this Section, all materials and information specified in this Section shall be maintained for a period of five (5) years.

9.8. *Communication with Regulatory Agencies:* Within fifteen (15) days, the Franchisee shall file with the County a copy of any document filed by the Franchisee with a regulatory agency (other than publicly available information) that materially and expressly pertains to the County with respect to the provision of Cable Service. In addition, the Franchisee must provide the County (upon request) any document the Franchisee files or receives from any regulatory agencies.

9.9. *Uses of System*: The Franchisee will notify the County of all products and Cable Services offered over the Cable System as promptly as practicable after each such product or Cable Service is instituted.

9.10. *Annual Report*: Unless this requirement is waived in whole or in part by the County, no later than April 30th of each year during the term of this Agreement, the Franchisee shall submit a written report to the County, in a form reasonably satisfactory to the County, which shall include:

9.10.1. A summary of the previous calendar year's activities in development of the Cable System, including but not limited to descriptions of services begun or dropped;

9.10.2. A summary of complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions, as such records are kept by the Franchisee. Where the Franchisee has identified recurrent Cable System problems, the nature of any such problems and the corrective measures taken or to be taken shall be identified;

9.10.3. A copy of the Franchisee's rules, regulations and policies available to Subscribers of the Cable System, including but not limited to (i) all Subscriber rates, fees and charges; (ii) copies of the Franchisee's contract or application forms for Cable Services; and (iii) a detailed summary of the Franchisee's policies concerning the processing of Subscriber complaints; delinquent Subscriber disconnect and reconnect policies; Subscriber privacy and any other terms and conditions adopted by the Franchisee in connection with the provision of Cable Service to Subscribers;

9.10.4. A statement of Gross Revenues for the previous calendar or fiscal year, certified by the Franchisee's financial agent, including a year-end balance sheet and an income statement showing Subscriber revenue and every material category of non-Subscriber revenue; and operating expenses by category, at whatever operating level such records are kept; which obligation may be satisfied by submitting the Franchisee's audited financial statements prepared for the Franchisee's bondholders or equivalent financial document acceptable to the County;

9.10.5. A list of Persons holding five percent (5%) or more of the voting stock or interests of Franchisee;

9.10.6. A list of officers and members of the Board of Directors of Franchisee and its parents and Franchisee's subsidiaries, if any, or similar officers if the Franchisee is not a corporation;

9.10.7. A copy of stockholders' annual reports issued by Franchisee and its parents; and

9.10.8. The results of any annual opinion surveys the Franchisee conducts, but if the Franchisee considers such results to be proprietary, the Franchisee shall make such results available for the County's review.

9.11. *Quarterly Report:* Beginning six (6) months after Cable Service is available on a commercial basis directly to multiple Subscribers in the Franchise Area, the Franchisee shall submit a written report to the County no later than thirty (30) days after the end of each calendar quarter during the term of this Agreement, which report shall be in a form reasonably satisfactory to the County, that shall include:

9.11.1. A report showing the number of service calls received sorted by a descriptive code indicating the actual service calls that were resolved during that quarter, including any property damage to the extent such information is available to the Franchisee, and any line extension requests received during that quarter;

9.11.2. Once the Franchisee reaches a level of fifty thousand (50,000) Subscribers, a report showing the number of outages for that quarter, and identifying separately each planned Subscriber outage for more than one hour at a time (excluding the maintenance window from 12:00 a.m. to 6:00 a.m.), the time it occurred, its cause, its duration, and the impacted streets and a range of affected addresses in the Franchise Area (or a map area using the most recent edition of the ADC map or its equivalent, as specified by the County) and, when available to the Franchisee, number of homes affected; and, when the Franchisee can reasonably determine that at least five hundred (500) homes were affected, each unplanned outage affecting more than five hundred (500) homes for more than one hour, the time it occurred, the reason for the disruption and its causes, its estimated duration and, when available to the Franchisee, the number of homes affected;

9.11.3. A report showing the Franchisee's performance with respect to all applicable customer service standards in this Agreement, signed and certified by an officer or agent. If the Franchisee is unable to certify full compliance for any calendar quarter, it must indicate in its filing each standard with which it is in compliance and in noncompliance, the reason for the noncompliance and a remedial plan. The Franchisee's failure to file a compliance certificate or noncompliance statement as required herein shall subject the Franchisee to the liquidated damages specified in this Agreement for violation of customer service standards. The Franchisee shall keep such records as are reasonably required to enable the County to determine whether the Franchisee is substantially complying with all such customer service standards, and shall maintain adequate procedures to demonstrate substantial compliance; and

9.11.4. A report that includes the number of homes in the County where Cable Service was provided during that quarter and a projection of the number of homes to which Cable Service will become available in the next ninety (90) days.

9.12. *Special Reports*: Unless this requirement is waived in whole or in part by the County, the Franchisee shall deliver the following special reports to the County not more than ten (10) business days after the occurrence of the event:

9.12.1. A copy and full explanation of any notice of deficiency, forfeiture, or other document relating to the Franchisee issued by any state or federal agency if such notice or other document would require Securities and Exchange Commission Form 8(k) disclosure or would require footnote disclosure in the annual financial statements of the Franchisee or a parent.

9.12.2. A copy and brief explanation of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any partnership or corporation that owns or controls the Franchisee directly or indirectly.

9.13. *Books and Records Required:* The Franchisee shall at all times maintain and make available to the County upon reasonable prior notice by the County:

9.13.1. Complete and accurate books of account and records of its business and operations under and in connection with this Agreement. At a minimum, the Franchisee's financial books and records shall be maintained in accordance with generally accepted accounting principles, and shall identify:

9.13.1.1. Gross revenues, by service category;

9.13.1.2. Operating expenses, at whatever operating level such records are kept, categorized by general and administrative expenses, technical expenses, programming expenses, and overhead, if any;

9.13.1.3. Capital expenditures, including capitalized interest and overhead, if any; and

9.13.1.4. Depreciation expenses, by category, at whatever operating level records thereof are kept.

9.13.2. Records of all written complaints received. The term "complaints" as used herein and throughout the Agreement refers to complaints about any aspect of the Cable System or the Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded may not be limited to complaints requiring an employee service call.

9.13.3. Records of outages, indicating date, estimated duration, estimated area, and the estimated number of Subscribers affected, type of outage, and cause;

9.13.4. Records of service calls for repair and maintenance, indicating the date and time service was requested, 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 solved;

9.13.5. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended;

9.13.6. Copies of all promotional offers made in writing to potential or current Subscribers;

9.13.7. Upon written notice, the County may require additional information, records, and documents pursuant to this Agreement as may be reasonably necessary for the performance of any duties by the County staff as it pertains to the Franchise;

9.13.8. The Franchisee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations; and

9.13.9. The Franchisee shall maintain accurate maps and improvement plans which show the location, size and a general description of all facilities installed in the public ways and any power supply sources, including voltages and connections. Maps shall be based on post-construction inspection to verify location.

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

9.14. *Waiver of Reporting Requirements*: The County may, for good cause shown, waive the reporting provisions in this Section.

9.15. Certain Cable Law Reporting Requirements:

9.15.1. Franchisee's financial statements must be provided to the County pursuant to Section 8A-12(d) of the Cable Law.

9.15.2. The summary to be provided to the County pursuant to Section 8A-14(f) of the Cable Law will be submitted as required by the Cable Office.

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 County, the Participating Municipalities, 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 County in the minimum amounts of five million dollars ($5,000,000), per occurrence; and in the aggregate. 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 liability, broad form property damage, independent contractors and personal injury.

10.1.1.2. Automobile Liability Coverage, with a minimum limit of liability of two million dollars ($2,000,000), per occurrence, combined single limit for bodily injury and property damage coverage. Policy must include coverage for owned automobiles, leased or hired automobiles and non-owned automobiles.

10.1.1.3. Broadcaster's Liability Coverage, covering errors and omissions and negligent acts and other operations of the Franchisee, committed during the term of the Franchise period with the County and the Participating Municipalities, with a limit of liability of at least two million dollars ($2,000,000) per claim and aggregate. Franchisee agrees to provide a one-year discovery period under this policy.

10.1.1.4. Workers' Compensation Coverage meeting statutory requirements of Maryland Law and Employers' Liability Coverage with the following minimum limits: Bodily Injury by Accident - $100,000 each accident, Bodily Injury by Disease - $500,000 policy limits and Bodily Injury Disease - $100,000 each employee.

10.1.1.5. Copyright infringement insurance insuring the County, the Participating Municipalities 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 unless the County approves other language:

> "It is hereby understood and agreed that this insurance coverage may not be materially changed or canceled by the insurance company nor the intention not to renew be stated by the insurance company until at least sixty (60) days after receipt by the County 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 State of Maryland, with an A- or better rating by Best's Key Rating Guide, Property/Casualty Edition.

10.1.4. The Franchisee shall provide the County with an original certificate of insurance providing evidence of all coverage required of this Agreement upon execution of this Agreement, following a material change or any time the Franchisee obtains new insurance policies.

10.1.5. The County may review the amounts of any insurance policies under the Agreement and shall have the right to require reasonable adjustments to such insurance policies consistent with the public interest. The County shall provide the Franchisee written notice at least sixty (60) days in advance of any reasonable adjustments.

10.1.6. All Commercial General and Automobile Liability Insurance policies shall by specific endorsement name the County, Participating Municipalities, their elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees as additional insureds. Such additional insured requirement shall be noted on the original certificate of insurance provided to the County.

10.1.7. Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

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 County and the Participating Municipalities, their 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

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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 County for acts of the County which constitute willful misconduct or negligence, on the part of the County, 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. The County and/or the applicable Participating Municipality shall give the Franchisee written notice of its obligation to indemnify the County or a Participating Municipality 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 County or a Participating Municipality. The County shall take action necessary to avoid entry of a default judgment if such action is needed before the County provides the Franchisee notice; provided, however, that no such action shall in any way prejudice or harm the Franchisee.

10.2.4. 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 County and any Participating Municipality by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the County, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the County 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 County, 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 County, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the County 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 County 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 County's defense of any claims encompassed within this Section 10.2, Franchisee's indemnification shall include, but is not limited to, the County's reasonable attorneys' fees, including fees for outside counsel hired to defend the County, 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 County's out-of-pocket expenses, and the reasonable value of any services rendered by the County's Attorney or the County's staff or their employees. The Participating Municipalities shall have the same rights as the County hereunder with respect to any claim or action asserted against them.

10.2.5. Neither the provisions of this Section nor any damages recovered by the County or Participating Municipalities 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 County or Participating Municipalities have been satisfied by a financial recovery under this Section or other provisions of the Agreement or the Cable Law.

10.2.6. The County and Participating Municipalities 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 County and Participating Municipalities 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.

10.2.7. Nothing in this Agreement shall be construed to waive the County's or Participating Municipalities governmental immunity.

11. TRANSFER OF FRANCHISE

11.1. Application:

11.1.1. A Transfer of the Franchise, or a Transfer of an Interest in the Franchise that results in a change in ownership interest of the Franchise of 5 percent or more, must not occur without prior approval by the County and the Participating Municipalities. However, a Transfer of an Interest to a person who already holds an ownership interest of 25 percent or more does not require such prior approval if Transfer of the Franchise does not occur. A Transfer of the Franchise will not be approved by the County nor by a Participating Municipality when the transferor has held the Franchise less than three years unless the County or the Participating Municipality finds that the transfer is necessary and in the best interests of the County or the Participating Municipality and its residents.

11.1.2. An application to Transfer the Franchise must meet the requirements of Section 8A-8(b) of the Cable Law and provide complete information on the proposed transaction, including the legal, character, financial, technical and other pertinent qualifications of the transferee, and on the potential impact of the transfer on subscriber services or rates. The information required in Section 8A- 8(e)(1) through (3), (10) and (12) of the Cable Law must be provided by the proposed transferee. The information required in Section 8A-8(e)(4) through (9) of the Cable Law must also be provided whenever the proposed transferee expects material changes to occur in those areas as a result of the transfer.

11.1.3. An application for Transfer of an Interest in the Franchise must describe the proposed transaction in detail and identify the interest to be transferred, the transferor, and transferee. If the proposed transferee is not a current equity owner of the Franchisee, the application must include the information required by Section 8A-8(e)(1) through (2).

11.1.4. An application for a Transfer must provide all information necessary to provide a complete and accurate understanding of the transaction and of the financial position of the Cable System before and after the proposed transaction, including all documents and information related to the transaction.

11.2. A public hearing must be held on an application for Transfer of an Interest in a franchisee of 25 percent or more.

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11.3. Before approving Transfer of the Franchise, the County and the Participating Municipalities must consider the legal, financial, technical and character qualifications of the transferee to operate the System, and whether operation by the proposed franchisee will adversely affect the cable services to Subscribers or otherwise be contrary to the public interest. Before approving a Transfer of an Interest in the Franchisee, the County and the Participating Municipalities must consider whether the transferee's interest will have any effect on the Franchisee's operation of the System, the Franchisee's qualifications, or the public interest.

11.4. The Council must take final action on an application for Transfer of the Franchise after receiving a recommendation from the County Executive. The County Executive may take final action on an application for Transfer of an Interest.

11.5. Approval by the County or a Participating Municipality of a Transfer of the Franchise does not constitute a waiver or release of any of the rights of the County or Participating Municipality under the Cable Law or this Agreement, whether arising before or after the date of the Transfer. A Transfer does not release any non-performance prior to the Transfer. All such non-performance shall become the responsibility of the new Franchisee unless the County or Participating Municipality otherwise agrees.

11.6. The County and the Participating Municipalities may impose a grant fee to cover their costs in excess of the filing fee in considering an application for Transfer of the Franchise. The amount of such fee shall not exceed two hundred thousand dollars ($200,000) adjusted annually for inflation based on the annual average of the Consumer Price Index for all urban consumers for the Washington-Baltimore MSA, as published by the Bureau of Labor Statistics.

11.7. *Transferee's Agreement.* No application for a Transfer of the Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Agreement and the Cable Law, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this Agreement and the Cable Law for all purposes, including renewal, unless the County and Participating Municipalities, in their sole discretion, expressly waive this requirement in whole or in part.

11.8. *Release of Guarantee:* Any entity guaranteeing the performance of the Franchisee may apply to the County for release of the guarantee under the following circumstances:

11.8.1. The Franchisee has demonstrated for five consecutive years compliance in all material respects with the terms of the Franchise Agreement and the Cable Law; and

11.8.2. A Guarantor which controls the Franchisee promises to not interfere with Franchisee's performance of its obligations under the Franchise Agreement and the Cable Law.

11.9. *Definitions*:

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

11.9.2. Control: The legal or practical ability to exert actual working control over the affairs of the Franchisee, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner.

11.9.3. *Transfer of the Franchise:* Any transaction in which an ownership or other interest in the Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons so that control of the Franchisee is transferred; or the rights held by the Franchisee under this Franchise Agreement are transferred or assigned to another Person or group of Persons. Notwithstanding, the following transactions do not constitute a transfer of the Franchise:

11.9.3.1. A transaction among or between affiliates if (1) the initial Franchisee provides an unconditional guarantee of performance of the new Franchisee in a form acceptable to the County prior to the closing of the transaction; (2) the transferee agrees in writing, prior to closing, that it will abide by and accept all terms of this Agreement and the Cable Law, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this Agreement and the Cable Law for all purposes, including renewal; (3) the Franchisee has no uncured defaults from the time of the notice through the date of closing of the transaction; and (4) the Franchisee has provided the County at least 90 days notice and responds completely to all information requests by the County;

11.9.3.2. A sale of ownership or other interest in an entity controlling the Franchisee, either directly or indirectly, unless the sale occurs before the Franchisee has completed buildout of its cable system as promised in the Franchise Agreement;

11.9.3.3. 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.

11.9.4. *Transfer of an Interest:* The sale or transfer, directly or indirectly, of an existing or newly created equity interest in the Franchisee that does not result in a transfer of control of the Franchisee. Notwithstanding, the following transactions do not constitute a Transfer of an Interest, provided the Franchisee responds completely to all information requests by the County:

11.9.4.1. A transaction among or between affiliates;

11.9.4.2. A sale of ownership or other interest in an entity controlling the Franchisee, either directly or indirectly;

11.9.4.3. 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.

12. RENEWAL OF FRANCHISE

12.1. The County, any Participating Municipalities and Franchisee agree that any proceedings undertaken by the County or Participating Municipalities that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of

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the Communications Act, 47 U.S.C. § 546 and Section 8A-22 of the Cable Law to the extent that it is not inconsistent with federal law.

12.2. In addition to the procedures set forth in said Section 626 of the Communications Act and in the event that the County or any Participating Municipality engages in a formal renewal of the Franchise, the County and any Participating Municipality agree to notify Franchisee of any assessments of their future cable-related community needs and interests or of the past performance of Franchisee under the then current Franchise term upon which the County or the Participating Municipality intends to rely during formal renewal proceedings. The County and any Participating Municipality further agree that if they issue any request for a proposal under 47 U.S.C. § 546(b), 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.

13. ENFORCEMENT AND TERMINATION OF FRANCHISE

13.1. *Audits and Actions Regarding Fee Payments; Limitations.* The County shall have the right to inspect books and records relating to the Cable System and to audit and recompute any amounts determined to be payable under this Agreement, whether the records are held by Franchisee, an Affiliate, or any other agent of Franchisee.

13.1.1. Franchisee shall be responsible for making available to the County all records necessary to confirm the accurate payment of Franchise fees and PEG Grants, without regard to by whom they are held. Such records shall be made available pursuant to the requirements of Article 9 herein. Franchisee shall maintain such records in accordance with its normal record retention policy, which Franchisee shall provide to the County within thirty (30) days of the execution of this Agreement and shall provide again whenever Franchisee changes that policy over the course of the Franchise Term.

13.1.2. The County's audit expenses shall be borne by the County unless the audit discloses an undisputed underpayment of more than five percent (5%) of any quarterly payment, in which case the County's reasonable and verifiable out-of-pocket costs of the audit shall be borne by Franchisee as a cost incidental to the enforcement of the Franchise, provided, however that the Franchisee's obligation to pay or reimburse the County's verified audit expenses shall not exceed in the aggregate fifty thousand dollars ($50,000) per audit, adjusted annually for inflation based on the annual average of the Consumer Price Index for all urban consumers for the Washington-Baltimore MSA, as published by the Bureau of Labor Statistics. Any additional undisputed amounts due to the County as a result of the audit shall be paid within thirty (30) days following written notice to Franchisee by the County of the underpayment, which notice shall include a copy of the audit report. If recomputation from an undisputed amount results in additional revenue to be paid to the County, Franchisee shall pay any applicable penalties and interest charges computed from such due date, as provided for in the Cable Law. Any audit fees paid by the County shall not be determined based on a percentage of audit findings basis.

13.1.3. In the event the Franchisee disputes any underpayment discovered as the result of an audit conducted by the County, the Franchisee and the County shall work together in good faith to promptly resolve such dispute. Both parties shall maintain all rights and remedies available at law regarding any disputed amounts.

13.2. *End of Franchise Term:* Upon completion of the term of the Franchise granted under this Agreement, if a new, extended, or renewed Franchise is not granted to the Franchisee by the County or a Participating Municipality, the Franchisee's right to provide Cable Service shall terminate as applicable, subject to applicable federal law.

13.3. The County Council shall have the right to revoke the Franchise for the Franchisee's material violation of this Agreement pursuant to the Cable Law.

13.4. *Rights and Remedies:*

13.4.1. The rights and remedies reserved to both parties herein are cumulative and shall be in addition to all other rights and remedies which either party may have with respect to the subject matter of this Agreement, whether reserved herein or authorized by applicable law.

13.4.2. The following violations by the Franchisee of this Agreement are material violations of this Agreement for purposes of this Article:

13.4.2.1. Transfer of the Franchise without approval pursuant to Article 11, or failure to notify pursuant to subsection 11.9.3;

13.4.2.2. Habitual or persistent failure to provide Cable Service as specified in Article 3;

13.4.2.3. Failure to make Cable Service available to the Initial Service Area, the Middle Service Area, the Extended Service Area, the Expanded Service Area, or the Contiguous Service Area under the terms and conditions established in Article 3;

13.4.2.4. Habitual or persistent failure to meet FCC technical standards;

13.4.2.5. Failure to maintain the EAS pursuant to Section 5.4 in the event of an emergency;

13.4.2.6. Habitual or persistent failure to provide PEG Grants pursuant to Section 6.2;

13.4.2.7. Habitual or persistent failure to provide the PEG Channels pursuant to Article 6;

13.4.2.8. Habitual or persistent failure to provide Cable Service to public buildings pursuant to Section 3.3;

13.4.2.9. Habitual or persistent failure to pay Franchise fees pursuant to Article 7;

13.4.2.10. Habitual or persistent failure to meet reports and records requirements in a timely manner pursuant to Article 9;

13.4.2.11. Habitual or persistent failure to satisfy insurance requirements pursuant to Section 10.1;

13.4.2.12. Habitual or persistent failure to maintain a performance bond or letter of credit pursuant to Sections 13.5 and 13.6;

13.4.2.13. Habitual or persistent violation of consumer protection requirements pursuant to applicable law;

13.4.2.14. Habitual or persistent violation of Subscriber privacy requirements pursuant to 47 U.S.C. § 551;

13.4.2.15. Habitual or persistent discrimination among Subscribers in violation of 47 U.S.C. § 541(a)(3); and

13.4.2.16. Habitual or persistent material customer service standard violations other than those for which liquidated damages have been assessed and paid.

13.5. Performance Bond:

13.5.1. Except as provided below, the Franchisee shall obtain and maintain during the entire Franchise Term, including any extensions thereof, a performance bond in the County's and Participating Municipalities' favor in the amount of two million ($2,000,000), in substantially the same form attached hereto as Exhibit E and as acceptable to the County, in order to ensure the Franchisee's faithful performance of its obligations under this Agreement. The County may not attempt to collect under this bond unless thirty (30) days have passed since the County 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.

13.5.2. The performance bond shall provide the following conditions:

13.5.2.1. The bond shall be either (i) written on an annual term and may be extended for additional annual terms at the option of the surety or (ii) the bond shall be cancelable by the surety giving not less than sixty (60) days written notice to the County, stating therein the effective date of such termination or cancellation. Such notice shall not limit or terminate any obligations resulting from default by the Franchisee that may have accrued under this bond as a result of default by the Franchisee prior to the effective date of such termination.

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

13.5.3. There shall be recoverable by the County and/or by the County on behalf of any Participating Municipality from the principal and surety, any and all amounts due to the County and/or any Participating Municipality and any and all damages, losses, costs, and expenses incurred by the County and/or any Participating Municipality 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 County agency or body having jurisdiction over its acts or defaults, to pay fees or penalties due to the County and/or any Participating Municipality, to pay any claims, taxes or liens due to the County and/or any Participating Municipality related to activities arising under this Agreement or to pay liquidated damages to the County. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

13.5.4. The total amount of the performance bond required by this Agreement shall be forfeited in favor of the County and/or to the County on behalf of any Participating Municipality in the event:

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

13.5.4.2. the Franchisee carries out a transfer requiring County and Participating Municipality approval as stated in Article 11 of this Agreement without obtaining County and Participating Municipality approval.

13.5.5. The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition.

13.5.6. 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 County a substitute, renewal or replacement bond in conformance with the provisions of this Agreement.

13.5.7. *Reduction of Bond:* The County 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 $250,000.00 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 County, and may be further reduced to the sum of $50,000.00 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 County. Reductions granted or denied upon application by the Franchisee shall be without prejudice to the Franchisee's subsequent applications or to the County's right to require the full bond at any time thereafter. Further, in the event the County approves a reduction of the Franchisee's performance bond, the County may, at any time, increase the amount of the performance bond to reflect any increased risks to the County 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 five hundred thousand dollars ($500,000). The County shall provide the Franchisee written notice at least sixty (60) days in advance of any such increase in the performance bond resulting from this subsection.

13.5.8. In the event the Franchisee is unable to secure a performance bond as required under this Agreement, the Franchisee shall be able to provide either a letter of credit, cashier's check, or other security acceptable to the County.

13.6. *Letter of Credit:*

13.6.1. In addition to the performance bond, the Franchisee shall provide to the County a letter of credit in the amount of $100,000 (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 County. The Franchisee shall maintain such Letter of Credit at all times throughout the term of the Agreement and for a period of one year following the expiration or termination of the Agreement.

13.6.2. If the County notifies the Franchisee of any amounts due to the County or a Participating Municipality pursuant to this Agreement or applicable law, and the Franchisee does not make such payment within thirty (30) days, the County 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.

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

13.6.4. 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 $100,000.

13.6.5. In the event the Third Party Agent serves notice to the County that it elects not to renew the Letter of Credit, the County 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 County, before the effective Letter of Credit expires.

13.7. *Liquidated Damages:*

13.7.1. Because the Franchisee's failure to comply with provisions of this Agreement will result in injury to the County and/or Participating Municipalities, and because it will be difficult to estimate the extent of such injury, the County 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.

13.7.2. The County, or its designee, shall have the authority to waive or reduce the liquidated damage amounts herein for good cause.

13.7.3. Cure periods listed below shall begin to run at the time the Franchisee is notified in writing of a violation by the County, 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.

13.7.4. On an annual basis from the Effective Date, the Franchisee shall be liable for liquidated damages up to one hundred thousand ($100,000) (the "Liquidated Damages Cap"); provided, however, the Franchisee may pay any amount in excess of the Liquidated Damages Cap. The liquidated damages may be assessed only by the County and any assessments shall be made in the following manner:

13.7.4.1. For failure to substantially comply with requirements for PEG use of the Cable System pursuant to Sections 3.3, 6.1, 6.4, 6.5 and 6.6 and subsections 6.7.2, and 6.7.5: $1000 per day for each day compliance is delayed beyond a fourteen (14) day cure period, if the Franchisee has not undertaken substantial corrective action to cure the violation within that fourteen (14) day cure period;

13.7.4.2. For failure to provide complete and accurate information, reports, or filings lawfully required under this Agreement: $200 per day for each day that each such filing is delayed beyond a thirty (30) day cure period;

13.7.4.3. For each day during which the County determines that the Franchisee has violated customer service standards pursuant to Exhibit D, except for those standards set forth in sub-subsections 13.7.4.4 and 13.7.4.5 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;

13.7.4.3.1. A separate violation under sub-subsection 13.7.4.3 shall be deemed to occur whenever the County 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.

13.7.4.4. For failure to issue an undisputed refund or credit pursuant to Exhibit D after being directed by the County to do so: $200 per violation, treating each failure to comply as a separate violation, following a seven (7) day cure period;

13.7.4.5. 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: $500 for each quarter in which such standards were not met if the failure was by less than 5%; $1,000 for each quarter in which such standards were not met if the failure was by 5% or more but less than 15%; and $2,000 for each quarter in which such standards were not met if the failure was by 15% or more;

13.7.4.6. For failure to render payment for Audit Fees pursuant to Section 13.1, or failure to pay capital grants or expenditures, or liquidated damages up to the Liquidated Damages Cap: $100 for each day each such payment is delayed, following a seven (7) day cure period;

13.7.4.7. For failure to file, obtain or maintain the required performance bond or other security instruments in a timely fashion: $200 per day, following a fourteen (14) day cure period;

13.7.4.8. 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;

13.7.4.9. For failure, unless such failure is beyond the Franchisee's control, of the Emergency Alert System to perform in the event of a public emergency or vital information situation: $250 per occurrence;

13.7.4.10. For a Transfer without approval: $2,000/day for each day the violation continues;

13.7.4.11. For failure to restore damaged property: $50 per day, in addition to the cost of restoration as required elsewhere herein;

13.7.4.12. For any other significant violations of this Agreement or the Cable Law (if applicable): $50 per day for each violation for each day the violation is not remedied beyond a thirty (30) day cure period.

14. MISCELLANEOUS PROVISIONS

14.1. *Actions of Parties:* In any action by the County or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner.

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.

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 that event, the parties shall negotiate in good faith to reconstitute this Agreement in a form that, to the maximum extent possible, is consistent with the parties' original intent and preserves the benefits bargained for by each party. 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 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 County.

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, liquidated damage, or penalty relating to noncompliance or default, where such noncompliance or alleged defaults were caused by a Force Majeure. In the event that any such delay in performance or failure to perform affects only part of the Franchisee's capacity to perform, the Franchisee shall perform to the maximum extent it is able to perform and shall take all reasonable steps within its power to correct such noncompliance or default in as expeditious a manner as possible.

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:

William Roberts
President
Verizon Maryland Inc.
1 East Pratt Street, 8E
Baltimore, Maryland 21202

with a copy to:

Jack White
Senior Vice President & General Counsel – Verizon Telecom
One Verizon Way
Room VC43E010
Basking Ridge, NJ 07920-1097

14.5.2. Notices to the County shall be mailed to:

County Executive
Office of the County Executive
101 Monroe Street
Rockville, MD 20850

with a copy to:

Cable Communications Administrator
Office of Cable Television
100 Maryland Avenue
Rockville, MD 20850

14.6. *Entire Agreement:* This Agreement embodies the entire understanding and agreement of the County, any Participating Municipalities and the Franchisee with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the County, any Participating Municipalities and the Franchisee with respect to the subject matter hereof, including, without limitation, any and all written or oral statement or representations by any official, employee, agent, attorney, consultant, or independent contractor of the County, a Participating Municipality or the Franchisee.

14.7. *Exhibits:* The exhibits to this Agreement (the "Exhibits"), attached hereto, and all portions thereof, are, except as otherwise specified in such Exhibits, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Exhibits shall be the same as those applicable to any amendment or modification hereof, except as specified in such Exhibit or elsewhere in this Agreement.

14.8. *Captions and Headings*: 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 of this Agreement shall, to any extent, be held to be illegal, invalid, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

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. *No Oral Modifications*: This Agreement shall not be modified except by written instrument executed by the County (and the relevant Participating Municipality as appropriate) and the Franchisee.

14.12. *Prohibition Against Discrimination:* The Franchisee shall adhere to the Equal Employment Opportunity regulations of the FCC and to all federal, state and local laws, and executive orders pertaining to discrimination, equal employment opportunity and affirmative action that are applicable to the Franchisee.

14.13. Connections to the Cable System; Use of Antennas:

14.13.1. To the extent consistent with federal law, Subscribers shall have the right to attach devices to the Cable System to allow them to transmit signals or service to video cassette recorders, receivers and other terminal equipment, and to use their own remote control devices and converters, and other similar equipment, so long as such devices do not interfere with the operation of the Cable System, or the reception of any cable Subscriber, nor serve to circumvent the Franchisee's security procedures, nor for any purpose to obtain services illegally. The Franchisee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the Cable System.

14.13.2. The Franchisee shall not, as a condition to providing Cable Service, require a Subscriber to remove any existing antenna or disconnect an antenna, or prohibit or discourage a Subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable law and technically able to shield the Cable System from any interference.

14.14. *Franchisee Bears Its Own Costs*: Unless otherwise expressly provided in this Agreement, all acts that the Franchisee is required to perform must be performed at its own expense.

14.15. *County Bears Its Own Costs*: Unless otherwise expressly provided in this Agreement, all acts that the County and any Participating Municipality are required to perform must be performed at their own expense.

14.16. Rights of Third Parties: Nothing herein shall be construed to give any Person other than the Franchisee or the County or any Participating Municipality a right to assert any claim or cause of action against the Franchisee, the County or a Participating Municipalities, its employees, elected or appointed officials, officers, commissions, commissioners, boards or agents.

14.17. *Rate Regulation*: The County and Participating Municipalities reserve all of their rights to regulate Franchisee's rates subject to applicable law.

14.18. *Governing Law:* This Franchise Agreement shall be governed in all respects by the laws of the State of Maryland and applicable federal law.

14.19. *Jurisdiction and Venue:* Franchisee consents to venue and jurisdiction in the U.S. District Court for the District of Maryland and the Circuit Court for Montgomery County, Maryland.

14.20. *Employment, Training, And Procurement Requirements*:

14.20.1. *Employment*:

14.20.1.1. Franchisee shall, in accordance with Federal, State, County and local laws and ordinances and regulations, afford equal opportunity and non-discrimination in employment to all individuals, regardless of their race, color, religion, age, sex, national origin, sexual orientation or handicap. Franchisee shall comply will all applicable requirements of the Americans with Disabilities Act.

14.20.1.2. Franchisee agrees that it shall give documentary evidence as to the steps it took to ensure that a good faith effort was made by it to comply with subsection 14.21.1 above.

14.20.2. *Training:* Franchisee shall provide training on an ongoing basis for its employees to maintain and upgrade skills and to prepare for promotional opportunities.

14.20.3. Procurement:

14.20.3.1. Franchisee shall establish and maintain a program to purchase goods and services from minority, female, and disabled-owned ("MFD") businesses consistent with the purposes of the County's MFD program.

14.20.3.2. Franchisee shall file with the County a copy of Franchisee's Annual Report which Franchisee files with the Maryland Public Service

Commission detailing total procurement, MFD procurement by MFD category, procurement type, and dollar value within the State of Maryland.

14.20.4. *Performance:* Performance in employment and MFD procurement shall be considered in any request for renewal of this Franchise.

[SIGNATURE PAGE FOLLOWS]

AGREED TO THIS _____ DAY OF____________ , 2006.

IN WITNESS WHEREOF, the parties have set their hands and seals on the date written above.

MONTGOMERY COUNTY, MARYLAND

By: ______________________________
Douglas M. Duncan
County Executive

VERIZON MARYLAND INC.

By: ______________________________
William R. Roberts
President

EXHIBIT A

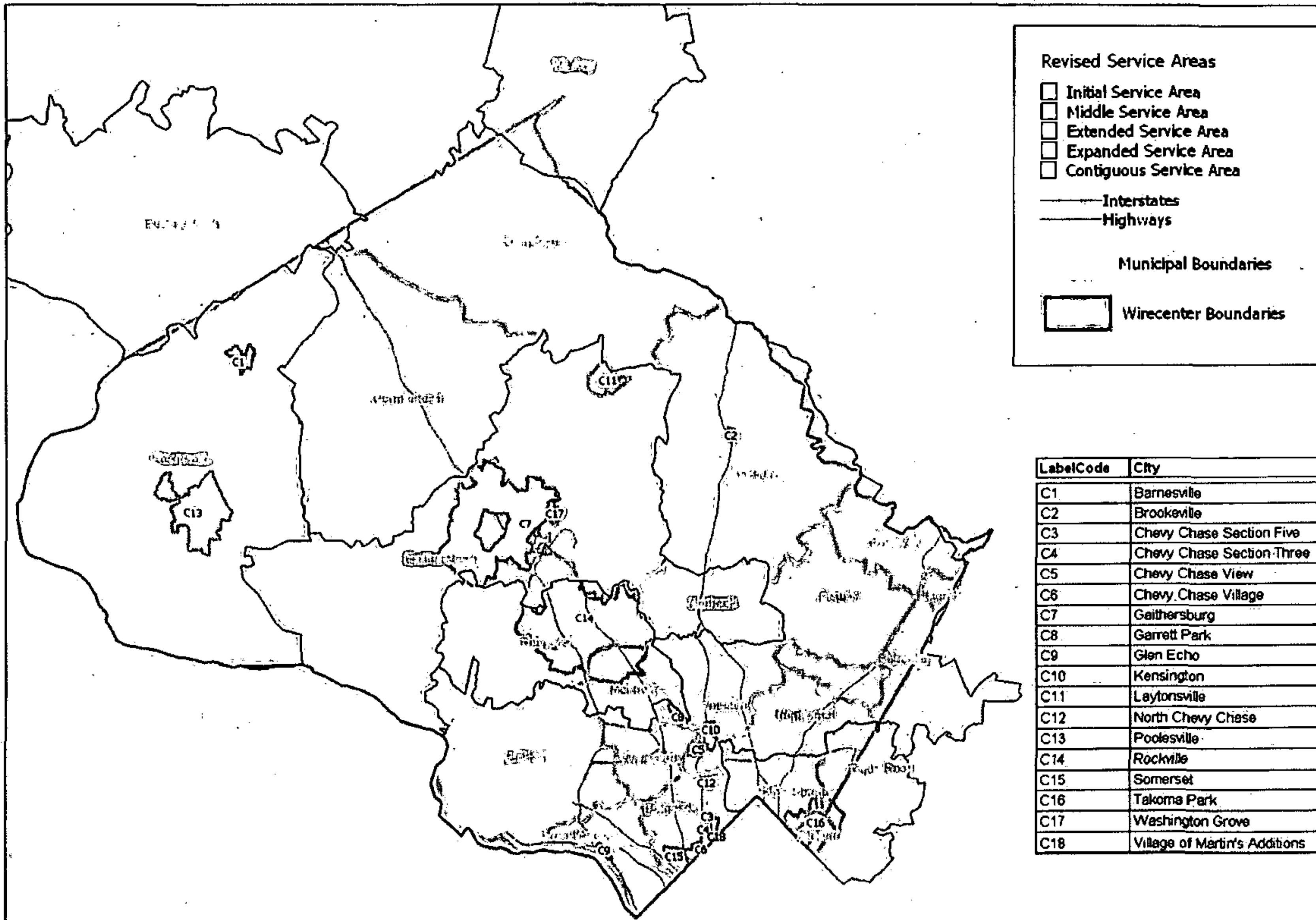
PARTICIPATING MUNICIPALITIES

Barnesville (1 public building)
Brookeville (1 public building)
Chevy Chase Village (1 public building)
Chevy Chase Section 3 (1 public building)
Town of Chevy Chase (1 public building)
Chevy Chase Section 5(1 public building)
Chevy Chase View (1 public building)
Garrett Park (1 public building)
Glen Echo (1 public building)
Kensington (2 public buildings)
Laytonsville (1 public building)
North Chevy Chase (1 public building)
Poolesville (1 public building)
Rockville (5 public buildings)
Somerset (1 public building)
Takoma Park (5 public buildings)
Washington Grove (1 public building)
Village of Martin's Additions (1 public building)

EXHIBIT B

INITIAL, MIDDLE, EXTENDED, EXPANDED AND CONTIGUOUS SERVICE AREAS

The service areas are shown in the attached map.



LabelCode	City
C1	Barnesville
C2	Brookeville
C3	Chevy Chase Section Five
C4	Chevy Chase Section Three
C5	Chevy Chase View
C6	Chevy Chase Village
C7	Gaithersburg
C8	Garrett Park
C9	Glen Echo
C10	Kensington
C11	Laytonsville
C12	North Chevy Chase
C13	Poolesville
C14	Rockville
C15	Somerset
C16	Takoma Park
C17	Washington Grove
C18	Village of Martin's Additions

EXHIBIT C

PEG CHANNELS

1. Seven of the thirteen (13) PEG channels shall be allocated as follows:

(A) One full-time analog video channel for County Government use;

(B) One full-time analog video channel for Educational Access use by the Montgomery County Public Schools;

(C) One full-time analog video channel for Educational Access for use by Montgomery College;

(D) One full-time analog video channel for Public Access use by Montgomery Community Television or other County designee;

(E) One full-time analog video channel for Governmental use by the City of Rockville;

(F) One full-time analog video channel for Governmental use by the City of Takoma Park;

(G) One full-time analog video channel for Governmental use by the Montgomery County Chapter of the Maryland Municipal League.

2. The remaining PEG channels shall be allocated by the County in its sole discretion.

3. Subject to the County's rights regarding allocation of channels, franchisee shall carry the following PEG Channels currently being provided in the County:

- University of MD College Park: 1 Channel
- Montgomery County Governmental Access Channel: 1 Channel
- Montgomery College: 1 Channel
- City of Rockville Governmental Access: 1 Channel
- City of Takoma Park/City of Gaithersburg Governmental Access: 1 Channel
- University of MD University College: 1 Channel
- Public access: 2 Channels
- Montgomery County Public Schools: 2 Channel
- Montgomery County Chapter of the Maryland Municipal League: 1 Channel

EXHIBIT D

CUSTOMER SERVICE STANDARDS

This Exhibit 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 law or regulation, as the same may be amended from time to time, including, without limitation, consumer protection laws.

I. <u>DEFINITIONS</u>

The County and the Franchisee agree that the following definitions shall govern the County'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), a minimum of thirty (30) days in advance of such change.

- *Customer Service Center/Business Office:* As used in 47 C.F.R. § 76.309(c)(1)(v) and Section 8A- 14(a) of the Cable Law, 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 County.

- *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* or a major fiber cut that would require the report of an unplanned outage in subsection 9.11.2.

- *System Outage:* A Service Interruption affecting at least ten percent (10%) of the Subscribers in the Service Area lasting at least four (4) continuous hours.

II. <u>CUSTOMER SERVICE STANDARDS</u>

A. Except as modified by a specific provision of this Exhibit, 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 or by an automated attendant.

C. In addition, no increase in rates or charges shall be implemented unless each Subscriber subject to the increase in rates and charges has been notified of the change at least sixty (60) days in advance of the change. In lieu of the Franchisee providing sixty (60) days written or electronic notice to each Subscriber subject to the increase, notification may be cablecast to Subscribers by the Franchisee in a manner approved by the County, but in the event a cablecast notice is provided to Subscribers, the Franchisee also shall give each Subscriber subject to the increase written notice of the increase no less than thirty (30) days before the increase is implemented. In addition, the Franchisee shall provide oral or written notification of any pending increases to rates and charges to any Person who requests Cable Service or becomes a Subscriber after any approval of increases to rates and charges but before the rate increase becomes effective.

D. 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. The Franchisee must hire sufficient staff so that it can adequately respond to customer inquiries, complaints, and requests for service in its office, over the phone, and at the Subscriber's residence.

E. There shall be a location within the Franchise Area that shall be open and accessible to the public to make payments and to pick up or drop off equipment. In order to allow the Franchisee to efficiently pick up equipment and for Subscribers to easily drop off the Franchisee's equipment, the Franchisee may satisfy the foregoing pick up and drop off requirement by having a Franchisee representative going to the Subscriber's residence, by using a pre-paid mailer, or by establishing a local business office in the County. Any physical location required under this paragraph shall be accessible to persons with disabilities and shall be in compliance with the Americans with Disabilities Act and any applicable laws of the State of Maryland.

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

G. 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. Franchisee shall have TDD/TTY (or equivalent) equipment, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the Franchisee.

H. The Franchisee shall keep an emergency system maintenance and repair staff, capable of responding to and repairing System Malfunctions, System Outages, or Service Interruptions, on a twenty-four (24) hour basis at all times, and under Normal Operating Conditions shall Respond twenty-four (24) hours a day, seven (7) days a week.

I. Under Normal Operating Conditions, billing inquiries and requests for service, repair, and maintenance not involving Service Interruptions must be acknowledged by a trained customer service representative within twenty-four (24) hours, or prior to the end of the next business day, whichever is earlier. The Franchisee shall respond to all other inquiries within five (5) business days of receipt of the inquiry or complaint. Final resolution shall not be unreasonably delayed.

J. To the extent consistent with federal law, no charge shall be made to the Subscriber for repairs or maintenance of Franchisee-owned equipment or facilities, except for the cost of repairs to the Franchisee's equipment or facilities where it can be shown that the equipment or facility was damaged by a Subscriber.

K. 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.

L. 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:

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

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

M. Under Normal Operating Conditions, the Franchisee shall complete repairs within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

N. The Franchisee's service representatives will have the ability to issue service credits, at their sole discretion, to address customer complaints related to missed appointments and Service Interruptions.

O. 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.

P. Under Normal Operating Conditions, if a System Outage affects all 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.

Q. The Franchisee shall provide the following materials to each Subscriber at the time Cable Service is installed, at least annually thereafter, and at any time upon request. Copies of all such materials provided to Subscribers shall also be provided to the County and posted on Franchisee's website.

(1) a written description of products and services offered, including a schedule of rates and charges, a list of channel positions, and a description of programming services, options, and conditions;

(2) a written description of the Franchisee's installation and service maintenance policies, and any other of its policies applicable to its subscribers;

(3) written instructions on how to use the Cable Service;

(4) written instructions for placing a service call;

(5) a written description of the Franchisee's billing and complaint procedures, including the address and telephone number of the County office responsible for receiving Subscriber complaints;

(6) a copy of the service contract, if any;

(7) notice regarding Subscribers' privacy rights pursuant to 47 U.S.C. § 551;

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(8) notice of the availability of universal remote controls and other compatible equipment (a list of which, specifying brands and models, shall be provided to any Subscriber upon request).

(9) The provision of information regarding delinquent subscriber disconnect and reconnect procedures under Section 8A- 14(d) of the Cable Law will be accomplished by Franchisee posting such information on its website.

R. Subscribers and the County will be notified of any changes in programming services or channel positions, and any significant changes in any other information required to be provided by this section in writing. Notice must be given to subscribers and the County a minimum of thirty (30) days in advance of such changes and other significant changes if the change is within the control of the cable operator.

S. All Franchisee promotional materials, announcements, and advertising of residential Cable Service to Subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials must clearly and accurately disclose price terms and in the case of telephone orders, the Operator shall take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers before the order is accepted.

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

U. The Franchisee shall establish a clear procedure for resolving complaints filed by Subscribers. Complaints may be made orally, in writing (including by e-mail), at the complainant's option.

V. Subject to Section 2.2 and subsection 2.7.1, the customer service standards set forth herein shall be in addition to the rights and remedies provided by Title 13 of the Maryland Commercial Law Article (the Maryland Consumer Protection Act), as amended, and Chapter 11 (Consumer Protection) of the Montgomery County Code, 2004, as amended. This subsection does not evidence any consent or recognition by Franchisee of the legality of any provision of Title 13 of the Maryland Commercial Law Article (the Maryland Consumer Protection Act), as amended, or Chapter 11 (Consumer Protection) of the Montgomery County Code, 2004, as amended.

W. Section 8A-14(e) of the Cable Law shall be implemented in the following manner. The Franchisee shall schedule and conduct maintenance on the Cable System so that interruption of service is minimized and occurs during periods of minimum Subscriber use of the Cable System. The Franchisee shall provide reasonable prior notice to Subscribers and the County before interrupting service for planned maintenance or construction, except where such interruption is expected to be two hours or less in duration. Such notice shall be provided by methods reasonably calculated to give Subscribers actual notice of the planned interruption.

X. The Subscriber's preference as to the point of entry into the residence shall be observed whenever feasible. Runs in building interiors shall be as unobtrusive as possible. The Franchisee shall use due care in the process of installation and shall restore the subscriber's property to its prior condition. Such restoration shall be undertaken and completed promptly if an unsafe condition exists, or if not, as soon as possible after the damage is incurred and shall be completed within no more than thirty (30) days after the damage is incurred.

Y. In locations where the Franchisee's System must be underground, drops must be placed underground as well. Except as federal law may otherwise require, in any area where the Franchisee would be entitled to install a drop above-ground, the Franchisee will provide the homeowner the option to have the drop installed underground if requested, but may charge the homeowner the difference between the Actual Cost of the above-ground installation and the Actual Cost of the underground installation.

Z. The Franchisee shall use its best efforts to collect on delinquent subscriber accounts before terminating service. In all cases, the Franchisee shall provide the customer with at least ten (10) working days written notice, with the telephone number to call to arrange payment or to resolve disputes, prior to disconnection.

AA. Under Normal Operating Conditions, each of the following standards shall be met by Franchisee at least 95% of the time, as measured on a quarterly basis:

(1) Prompt Service. The Standard Installation shall be performed within seven (7) business days after an order is placed subject to Section 3.2. and subsection 3.2.I. of the Agreement. If an ONT is not already installed on the customer's premises, it shall be installed within seven (7) business days after an order is placed by the customer.

(2) Service Times. The Franchisee shall perform service calls, installations, and disconnects at least during Normal Business Hours. The Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours 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.

(3) Cancellation. The Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day preceding the appointment. If the Franchisee's representative is running late for an

appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted, and the appointment rescheduled as necessary, at a time which is convenient for the Subscriber.

EXHIBIT E

MODEL BOND TO BE ATTACHED

EXHIBIT F

MODEL LETTER OF CREDIT TO BE ATTACHED

EXHIBIT G

MONTGOMERY COUNTY
FRANCHISE FEE SCHEDULE/REPORT

For the Quarter Ending:

Total Service Subscribers:

	Month 1	**Month 2**	**Month 3**
1. Monthly Recurring Cable Service Charges			
Basic Service			
Premium Service			
Other Monthly Charges(e.g. equipment rental)			
Total Monthly Recurring			
2. Usage Based Charges (e.g., Pay-Per-View, Video-On-Demand, Installation)			
3. Other Misc. (e.g., Late Charges, Advertising, Leased Access)			
4. Franchise Fees Collected			
5. PEG Fees Collected			
Less:			
1. *Other Tax/Fee Collected*	$	$	$
2. Uncollectibles/Deferrals	$	$	$
Total Receipts Subject to Franchise Fee Calculation			
Franchise Fee Rate 5%			
Franchise Fee Due			
PEG Grants Rate 3%			
PEG Grants Due			
Total Fee and Grants Due			

Quarter Franchise Fee	$
Quarter PEG Grants	$
Quarter Total	$

Report to the County Executive

Regarding the Proposed Grant

of a Cable Television Franchise

to

Verizon Maryland, Inc.

by

the Office of Cable and Communications Services,

Montgomery County Department

of Technology Services

5 October 2006

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Executive Summary

This Report addresses the proposed grant of a cable television franchise to Verizon Maryland, Inc. ("Verizon MD"). Verizon MD filed a franchise application and an accompanying proposed Franchise Agreement on September 11, 2006, requesting that the County grant the company a franchise to provide cable services in the entire County. Verizon MD filed its application after a review process and negotiations with the County. The Office of Cable and Communications Services, Department of Technology Services (the "Cable Office"), recommends that you approve the proposed franchise because the proposed franchise will serve the interests of cable subscribers and the County.

The Proposed Franchise.

We have negotiated the terms of the proposed Franchise Agreement with representatives of Verizon MD. We have considered the interests of all the affected parties -- including County residents, cable subscribers, the municipalities within the County, the Montgomery County Public Schools, Montgomery College, County government, and outside agencies -- in an effort to achieve an equitable balance among all of those interests. We have also considered the effects of the proposed franchise on the County's agreements with the incumbent cable operators, Comcast Cablevision of Potomac, LLC ("Comcast") and RCN ("Existing Cable Operators").

We believe that the terms of the proposed Franchise Agreement appropriately balance the legitimate interests of the County in developing competition for cable service and those of the Existing Cable Operators. Verizon MD has requested authority to serve the entire County and to do so through an orderly buildout of the fiber-to-the-premises ("FTTP") system Verizon calls "FiOS" over a reasonable time period. The proposed Franchise Agreement allows Verizon MD to phase-in cable service as the FiOS system is built over the first seven years of the franchise term, placing different areas of the County in "initial," "middle," "expanded," "extended," and "contiguous" service areas. The Cable Office believes that it is in the interests of the County, cable subscribers in the County, and all County residents to encourage competition. The investment required for Verizon MD to build and/or activate the FiOS system throughout the County requires reasonable timelines to avoid unaffordable construction costs and to allow the system to be brought on line in a manner that takes advantage of new technological developments (for example in serving multiple dwelling units). Accordingly, the Cable Office supports Verizon MD's request to roll out its services in phases.

The principal terms of the proposed Franchise Agreement are as follows:

- A franchise would be granted for a term of 15 years.
- Verizon MD would construct an FTTP system capable of providing voice, video and broadband access services.
- To accommodate interactive services, the system will be two-way activated.

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- The proposed Franchise Agreement contains customer service standards addressing telephone and service responsiveness, billing, installation, and notice to subscribers. These standards are enforceable by means of liquidated damages and a security fund.

- Verizon MD will provide 13 PEG channels, 11 analog channels for PEG use now and 2 additional analog channels reserved for future use when requested by the County. Thirteen more channels (for a total of 26) will be available if Verizon MD converts the analog PEG channels to a digital format.

- The County, on its behalf and on behalf of the participating municipalities, will receive a franchise fee of 5% of gross revenues.

- Verizon MD will provide the County, on its behalf and on behalf of the participating municipalities, with a capital support grant equal to 3% of gross revenues related to cable services, to be used by the County and the participating municipalities to support PEG access and the Fiber-Net/ institutional network.

- Verizon MD will provide the County free cable drops and free cable service to up to 100 government buildings designated by the County, and $200,000 payments in each of the first 5 years of the franchise.

- Verizon MD will provide the participating municipalities 27 free cable drops and free cable service to government buildings designated by the participating municipalities in the following manner: five for Takoma Park, two for Kensington, and one for each of the other participating municipalities.

- Verizon MD will carry all public, governmental and educational programming. Such programming will be carried on the channels designated for PEG use.

- Verizon MD will reimburse the County up to $250,000, and the participating municipalities up to $40,000 for the expenses they incurred in granting the franchise.

- Verizon MD will comply with all applicable federal, state and local laws and regulations that may apply to the operation, construction and repair of the system. All construction, maintenance and installations must be performed by experienced maintenance and construction personnel.

- Verizon MD will comply with system technical standards and testing requirements that will insure that the system meets the requirements set forth in the franchise, as well as all applicable state and federal laws and regulations.

- Verizon MD will provide a security fund of $100,000 and a performance bond in the amount of $2,000,000. The performance bond is primarily intended to protect the County against major defaults by the company. The security fund is designed to allow the County to enforce the franchise on a day-to-day basis, by drawing down specified liquidated damage amounts in the event Verizon MD fails to comply with particular franchise requirements. If the County draws on the fund, Verizon MD is required to restore the security fund to its full amount.

Conclusion.

The proposed grant of a cable television franchise to Verizon MD will provide nearly 96 percent of the residents of the County with access to two state-of-the-art cable systems over the next seven years. The Cable Office anticipates that the resulting competition between Verizon MD and Comcast will benefit cable subscribers through better service, slowing future rate increases, and improved programming choices. The transaction also offers the County and the participating municipalities, additional funding for institutional networks and facilities and equipment for public, educational and government use. These facilities will improve communication among the governmental and educational entities in the County and between the governmental entities and the public.

The Cable Office believes that the grant of the proposed franchise offers substantial benefits to the County and the participating municipalities and their residents, and the Cable Office recommends that the County Executive, in turn, recommend to the County Council that the Council approve the proposed franchise.

REPORT OF THE OFFICE OF CABLE AND COMMUNICATIONS SERVICES, MONTGOMERY COUNTY DEPARTMENT OF TECHNOLOGY SERVICES, TO THE COUNTY EXECUTIVE REGARDING THE AWARD OF A CABLE FRANCHISE TO VERIZON MARYLAND, INC.

I. INTRODUCTION.

This Report addresses the proposed grant of a cable franchise to Verizon Maryland, Inc. ("Verizon MD"), a wholly-owned subsidiary of Verizon Communications, Inc. Verizon MD has filed an application with the Office of Cable and Communications Services, Montgomery County Department of Technology Services (the "Cable Office"), requesting that the County grant the company a franchise authorizing the company to provide cable service in the entire County. The application proposes that Verizon MD roll out service to the entire County in accordance with a detailed schedule set out in the attached proposed Franchise Agreement. Under this schedule, Verizon MD would "roll out" service in phases in certain geographically defined areas of the County. Verizon MD proposes ultimately to serve approximately 96% of the total population of the County, subject to the same density requirements as Comcast[1]. Within each of these service areas Verizon MD will compete with Comcast,

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[1] The density requirement in the proposed Franchise Agreement provides that Verizon MD must cable services available to residential dwelling units in all areas of the Initial Service Area, the Middle Service Area, and the Extended Service Area where the average density is equal to or greater than the following numbers of 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: (A) Thirty (30) residences per mile during years 1 through 7 of the term of the Franchise; (B) Twenty (20) residences per mile during the years 8 to 10 of the term of

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which has developed a base of over 200,000 subscribers, and whose system passes nearly all of the 313,000 homes in the County. In addition, in certain areas, Verizon MD will also compete with the County's other cable operator RCN.

After a thorough review process, the Cable Office has concluded that Verizon MD's entry into the County's video programming service market will provide a number of benefits to subscribers and all residents of the County. These benefits include improved quality of cable service, stabilized rates, and increased programming choices. All residents in the County would benefit from Verizon MD's proposal because Verizon MD will provide additional financial support for PEG access and institutional networks which provides for improved communications systems with the public. Accordingly, the grant of a franchise to Verizon MD will be in the County's and the participating municipalities' best interests. The terms of the proposed Franchise Agreement and the reasons for the Cable Office's conclusions are set forth in this Report.

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the Franchise; and (C) Fifteen (15) residences per mile during the years 11 to 15 of the term of this Franchise.

II. The Proposed Franchise agreement with Verizon MD.

County staff negotiated the terms of the proposed Franchise Agreement with representatives of Verizon MD taking into account, among other factors, the cable-related needs of the Montgomery County community. The County negotiators relied on various sources of information about the County's needs. First, extensive formal needs studies were conducted by the County during the Comcast renewal process, during the awarding of the franchise to RCN and during various transfer negotiations in the past ten years. Second, the County has had substantial experience with the Comcast and RCN franchises which address those identified needs. The conclusions of the formal studies were embodied in the obligations contained in the Comcast franchise agreement, and were later replicated in the RCN franchise. As the two companies have fulfilled their respective obligations, the County and its residents have benefited, ratifying the conclusions of the earlier studies. However, many of the identified needs could not be addressed with the resources available in the Comcast and RCN franchises. Therefore, the Cable Office concludes that those same needs remain today.

The Cable Office has considered the interests of all the affected parties -- including County residents, cable subscribers, the participating municipalities within the County, the Montgomery County Public Schools, Montgomery College, County government and outside agencies, as well as the interests of RCN and Comcast - in an effort to achieve an equitable balance among all of those interests.

A. *Applicable Law.*

The federal law governing the award of initial cable television franchises is set forth in various sections of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 (the "Cable Act"). Section 621(a)(1) of the Cable Act, 47 U.S.C. § 541(a)(1), states that a local franchising authority, such as the County, may award one or more non-exclusive franchises within its jurisdiction. In exercising its franchising authority, the County "may not unreasonably refuse to award an additional competitive franchise."[2] As part of the franchising process, the County may require adequate assurances that an applicant: (i) will provide adequate public, educational and governmental access channel capacity, facilities or financial support; and (ii) possesses the financial, technical and legal qualifications to provide cable service.[3] The County may also impose construction-related requirements on a cable operator through the franchising process.[4]

The Montgomery County Code specifies the procedures to be followed for the grant of a cable franchise. These procedures are generally laid out in Sections 8A-8 and 8A-9 of the County Code. Under Section 8A-8, a person seeking an initial franchise must apply to the County and pay the application fee specified in the County's

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[2] *See* 47 U.S.C. § 541(a)(1).

[3] *See* Section 621(a)(4)(B)-(C) of the Cable Act, 47 U.S.C. § 541(a)(4)(B)-(C).

regulations. To be considered, an application must contain the information identified in Section 8A-8(d) of the County Code (*e.g.*, a list of the persons who own or control the applicant, a demonstration of the applicant's technical, legal and financial qualifications and a detailed description of the geographic area to be served by the proposed cable system).

The County Executive must conduct a public hearing on an application for a new franchise.[5] This hearing must be conducted within ninety days after the County Executive accepts an application for filing.[6] At the public hearing, the County Executive, or designee, may accept written and oral testimony and any other materials relevant to an application.[7]

Effective November 12, 1998, the County Code was amended to encourage rapid processing of an application from an applicant that proposes to overbuild an existing cable system and introduce competition for cable service. Under these procedures, the County must consider both the basic criteria set forth in Section 8A-9(e) of the County Code for the review of a new franchise and two additional standards. The basic criteria are: (1) the applicant's character; (2) the applicant's technical, financial and legal qualifications; (3) the nature of the proposed facilities, equipment and services; (4) the

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[4] *See* Section 632(a)(2) of the Cable Act, 47 U.S.C. § 552(a)(2).

[5] *See* Section 8A-9(d) of the County Code.

[6] *Id.*

[7] *Id.*

applicant's record of performance in other communities, if any; and (5) the public interest. The special factors applicable to overbuilds are: (1) the beneficial effects of competition, including any reduced rates to consumers, higher technical standards, or more varied programming offerings; and (2) the effect of the overbuild on the public.[8] After evaluating an application for a new franchise, any oral or written testimony and other materials, the County Executive must propose to grant or deny the franchise application. In the case of an application for an overbuild of the existing cable system, the County Executive's proposal must be made within 120 days of the date the application was accepted for filing.[9]

The County Code also provides that the County and the applicant must agree on the terms of a franchise agreement within 60 days of the date the applicant receives notice of the proposed grant.[10] The County and the applicant may agree to extend the 60-day negotiation period for an additional 60 days.[11] Once a proposed franchise agreement has been negotiated, the terms of that agreement must be advertised for three successive weeks in one or more newspapers of general circulation in the County.[12] In the case of an application for an overbuild franchise, the proposed

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[8] *See* Section 8A-9(f) of the County Code.

[9] *See* Section 8A-9(g) of the County Code.

[10] *See* Section 8A-9(h) of the County Code.

[11] *Id.*

[12] *See* Section 8A-9(i) of the County Code.

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franchise agreement must be submitted to the County Council within 10 days after the end of the advertising period.[13] The Council may then: (i) grant the franchise; (ii) grant the franchise, with conditions; (iii) remand the proposed franchise agreement to the County Executive with specific recommendations; or (iv) deny the franchise application.[14]

If you propose to deny an overbuild application, you must immediately recommend to the Council that it deny the franchise application.[15] Your recommendation must explain the reasons for your conclusion.[16] The Council may then: (i) deny the franchise application; (ii) remand the proposed franchise agreement to you, with instructions; or (iii) grant a franchise to the applicant.[17]

B. The Review Process Conducted by the County.

In early 2005, the County approached Verizon MD about Verizon MD's plans to provide video programming and other services (*e.g.*, telephony and Internet access) to the residents of the County. In May 2005, Verizon MD entered into negotiations with the County over the terms of a cable television franchise. Verizon MD voluntarily

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[13] *See* Section 8A-9(j) of the County Code.

[14] *See* Section 8A-9(k)(1) of the County Code.

[15] *See* Section 8A-9(k)(2) of the County Code.

[16] *Id.*

[17] *Id.*

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elected to negotiate in advance of filing the application required by Chapter 8A of the Montgomery County Code (the "Cable Law").

After on-again, off-again discussions, Verizon MD filed a lawsuit against the County in federal district court seeking to invalidate the County's Cable Law and a court mandated franchise. The Court denied Verizon MD's motion for immediate relief, refused to invalidate any portions of the County's Cable Law at that time, and instructed Verizon MD to file a franchise application. With the consent of both parties, the Court then appointed a mediator to assist the County and Verizon MD with their franchise negotiations. The parties met over the course of several weeks. As a result of those meetings, the Executive staff, the Cable Administrator, and Verizon MD agreed upon the terms and conditions of a franchise agreement – the proposed Franchise Agreement – which the parties believe addresses and balances the needs and interests of both parties.

Verizon MD has now applied for a cable franchise which includes the proposed negotiated franchise agreement. In accordance with Section 8A-8(a) of the County Code, Verizon MD submitted a formal cable franchise application, which was received by the Cable Office on September 11, 2006.

After review by the Cable Office, Verizon MD's application was accepted by the County Executive for consideration on September 21, 2006, subject to the condition that Verizon MD would provide the information sought in technical and financial information requests from the County. On September 13, 2006, that application, including the terms of the proposed Franchise Agreement was made available to the public. The advertising period closed on September 27, 2006. The public hearing on the application and proposed agreement required by Section 8A-9(d) of the County Code was held on September 28, 2006. The public record on the application and the proposed agreement closed on October 2, 2006. The Cable Office, on behalf of the County Executive and the participating municipalities, has taken the following steps to evaluate Verizon MD's application and proposed Franchise Agreement:

- Considered the comments submitted for the record during and after the September 28th hearing.
- Retained Ashpaugh & Sculco CPAs, PLC ("A&S") to examine Verizon MD's financial capability to construct, operate and maintain the cable system it is proposing.
- Engaged Columbia Telecommunications Corporation ("CTC"), the County's telecommunications network engineering consultants, to examine the technical design of Verizon MD's proposed system and the construction practices that Verizon MD will utilize.
- Considered whether the RCN and Comcast franchise obligations have met the cable-related needs and interests of the County which the Buske Group identified in connection with the renewal of Comcast's franchise.
- Met with the municipal co-franchisors; considered their recommendations and input, and addressed the participating municipalities' community needs.
- Received and considered the comments of the incumbent cable provider, Comcast, which submitted comments for the record after the public hearing.

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These steps are discussed in more detail below.

1. September 28, 2006 Public Hearing.

In accordance with Section 8A-9(d) of the County Code, the County Executive held a public hearing on September 28, 2006, to solicit comment on Verizon MD's cable television franchise application. The public hearing was conducted on behalf of the participating municipalities as well. The following individuals presented testimony at the hearing: Jane E. Lawton, (Cable Communications Administrator); Briana Gowing, (Assistant Vice President, External Affairs, Verizon); The Honorable Susan Hoffman (Councilmember, City of Rockville); Richard Turner (Executive Director, Montgomery Community Television); Brian Baker, (PEG Network); Jaime Todaro (Rockville, Maryland resident); Samuel Jones (Silver Spring, Maryland resident); Larry Spiwak (Rockville, Maryland resident); Michael Egan (Brookeville, Maryland resident) Joe Corbet (Olney, Maryland resident); Zeinab Issa (Takoma Park, Maryland resident); Don Libes (Potomac, Maryland resident); Burrough Schrack; Arthur Cassanova, (Rockville, MD resident and President of condominium association); and Ben Stanfield (Rockville, MD resident). The hearing record remained open until close of business on October 2, 2006; written comments were received from Jim Schleckser (Telecommunications Advisory Committee (TAC)); Hunter Atkinson, (Silver Spring, Maryland resident); Harry Ways (Potomac, Maryland resident); George Knippen, (Kensington, Maryland resident); Jonathan Morrison (Brookeville, Maryland resident);

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Herbert Schmitz (Potomac, Maryland resident); Caroline Watson (Gaithersburg, Maryland resident); Rick Harris (Tech Council of Maryland (TCM)); Paul Stauffer (Gaithersburg, Maryland resident); Ken Husted (N. Bethesda, Maryland resident); Jay Wattenberg (Boyds, Maryland resident); John Wolf (Rockville, Maryland resident); William and Lynne Mohr (Potomac, Maryland residents); Jason and Taylor Gordon; Councilmember Bruce R. Williams (Takoma Park); Chris Noonan Sturm (Potomac, Maryland resident); and Comcast, and made part of the public record.

2. **Financial Evaluation.**

Pursuant to Section 8A-9(e) of the County Code, the County considered the franchise applicant's financial qualifications in determining whether to grant a franchise. Accordingly, the Cable Office retained A&S to review the confidential financial materials and supporting documentation included in Verizon MD's application. After reviewing the confidential and proprietary financial information submitted by Verizon MD, A&S prepared a report (i) analyzing the company's financial representations, and (ii) identifying potential issues of concern to the County. *See* A&S Report attached hereto as Exhibit A.

3. **Technical Evaluation.**

At the Cable Office's request, CTC reviewed Verizon MD's application, and evaluated the company's system design and proposed construction procedures. CTC reviewed information provided in Verizon MD's application and, where possible, conducted discussions with Verizon MD technical staff. CTC directly inspected portions of the existing Verizon MD system in the County. CTC prepared a report on the technical aspects of the proposed cable system, and the sufficiency of the construction standards Verizon MD proposes to use. CTC Report, "Verizon Communications Video Franchise in Montgomery County, Maryland", dated September 2006 ("CTC Report"). *See* CTC Report attached as Exhibit B. In the report, CTC states that Verizon is not providing service to MDU's because their technology limits their ability to do so. The CTC report also identifies the strengths and flexibility of the FiOS system as installed by Verizon. In addition, as part of the County's technical oversight of the existing systems, CTC observed Verizon MD construction of its fiber-to-the-premises or "FiOS" system in the County. CTC also assisted neighboring Arlington County and Anne Arundel County in their negotiations with Verizon.

Based on Verizon MD's submitted application and its successful use of comparable video technologies in other markets, the CTC Report concludes that Verizon MD has the technical capability to provide video service in the county—significantly, however, such capability does not have bearing on whether Verizon MD will indeed provide high quality technical service or high quality customer service, which are a matter of will as well as of technical ability.

4. Community Needs Assessment.

The Buske Group conducted a community needs assessment in connection with the renewal of Comcast's cable franchise. The assessment consisted of a statistically valid telephone survey of County residents regarding cable television services in the County, which was conducted in January 1997, and of a series of twelve community workshops which were conducted in early 1997. Through this ascertainment process, the County identified the community's future cable-related needs in areas such as signal quality, customer service, new services, and PEG and I-Net services. The Buske Group's work has remained helpful to the County over the intervening years in the context of several transfer negotiations and the RCN franchise negotiations.

In the Cable Office's opinion, the findings contained in the County's prior needs assessment continue to be valid and informative. The County's actual experience with the grants, facilities, equipment and services provided by Comcast and RCN and the past franchise negotiations has helped us further refine the County's needs and to identify previously defined needs which have not been met by the other two current franchisees. Furthermore, those findings remain informative as the County wishes to treat all three operators comparably wherever practical. Accordingly, the present and future cable-related needs and interests of the community were considered and advocated during negotiations with Verizon MD. The resulting franchise agreement, which the Cable Office is now submitting to you, advances these needs and interests. In particular, the proposed agreement, among other things: (i) protects consumers' interests; (ii) requires Verizon MD to provide a cable system that is reliable, and technically capable of providing a broad range of services as demand develops; and (iii) supports the community's PEG and institutional network needs.

5. **Meetings with Municipal Co-franchisors.**

The Cable Office staff has consulted with the municipal co-franchisors. These consultations included meetings with officials and staff members from the participating municipalities. The County's engineering consultant and legal counsel were also made available to address technical and legal issues that were raised by the participating municipalities. As a result of the meetings and consultations between the Cable Office and the municipal co-franchisors, changes were made to the proposed Franchise Agreement in order to insure that municipal interests were protected and municipal community cable-related needs were addressed.

The County Cable Office has also received comments from the incumbent cable provider, Comcast, and has considered that company's concerns.

C. *Findings.*

1. **Cable-Related Community Needs.**

As previously noted, the County conducted a detailed needs assessment in connection with the renewal of Comcast's cable franchise. The ascertainment resulted in a number of significant findings, especially in the areas of PEG channel capacity, PEG

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access capital support, institutional communications and Internet access. Through the RCN and Comcast franchises the County has received, and is receiving, support in these areas. However, the County has been able to identify specific additional needs which require further support. The proposed Verizon franchise agreement submitted with this report does provide further support to these needs. In particular, the agreement provides additional funding for PEG equipment and facilities, and the institutional network which provides for critical governmental and public safety communications needs of the County. The proposed agreement also requires Verizon MD to provide free cable drops and services to up to 100 County buildings to supplement those provided in the other two agreements. Verizon MD has agreed to provide a capital grant in the amount of one million dollars to be paid in $200,000 payments over five years. All PEG channels will be carried on Verizon MD's system. Verizon MD will provide customer services that meet FCC and County current standards and will also construct facilities which meet FCC technical and testing standards. In the end, all of the benefits provided to the County and to the participating municipalities in the proposed agreement are either substantially equivalent to or greater than the benefits to be furnished by Comcast and RCN over the remaining term of their respective franchises. This parity should advance the potential for competition between the companies while still addressing the County's and the participating municipalities' cable-related needs.

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2. The Technical Capabilities of the Proposed System.

Verizon MD is using fiber-to-the-premises ("FTTP") technology to provide video, data and voice service. FTTP is a flexible and capable technology. Compared to other forms of communications transmission, it boasts the highest theoretical capacity per user. It makes possible a wide range of potential applications and services, and enables Verizon MD to constantly upgrade capability and capacity simply by upgrading end equipment and software, while using the same fiber cable. One of the advantages of the FTTP technology selected by Verizon MD is that it can provide video service without the requirement for new or unproven technologies in the storage or origination of video. The Verizon MD video facilities can use the same equipment used in any cable-TV headend. At the neighborhood level, the typical FTTP architecture calls for backbone fiber on the primary arterial streets, which meets the local distribution fiber at a cabinet placed in the ROW. The local distribution fiber then travels from the cabinets to pedestals or pole enclosures in front of the homes and businesses throughout the community. Depending in part on whether the cables are backbone or distribution plant, the cables typically contain 24 to 432 strands of fiber.

Verizon MD has indicated that the system will initially have a minimum digital capacity of 110 MHz. CTC reviewed the system design described in Verizon MD's application and submitted its findings to the Cable Office in a Report dated September 2006. While CTC did state that it would be helpful to receive additional information

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concerning the system, CTC concluded that Verizon MD's technical design is capable of providing the services proposed.

Based on the representations contained in Verizon MD's application, and the conclusions set forth in CTC's September 2006 report, the Cable Office believes that the proposed system, as described, with the additional requirements of the proposed Franchise Agreement, will be reliable and capable of providing the services Verizon MD has identified, and will adequately address the community's cable-related needs and interests, in light of the costs of meeting those needs. In addition, the Cable Office has determined that the construction practices proposed by Verizon MD in its application, together with those included in the proposed Franchise Agreement, will insure that the system is built properly and safely. In sum, Verizon MD appears to be technically qualified to construct and operate a cable system in the County.

3. Financial Review.

A&S has reviewed the confidential financial data Verizon MD submitted in its application. Because Verizon MD's financial filings are considered "confidential," this Report will not discuss or otherwise divulge the content of the filings. However, based on the findings in A&S's September 18, 2006 report, our discussions with A&S, and the data included in Verizon MD's application, the Cable Office believes Verizon MD is financially qualified to construct and operate the proposed system. Further the proposed Franchise Agreement includes a performance bond and security fund which

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can be drawn upon if Verizon MD defaults on its obligations. The proposed Franchise Agreement also contains insurance requirements, which will ensure that Verizon MD is able to pay for any injuries it causes, and indemnification clauses which obligate Verizon MD to defend the County or participating municipalities in any court actions or proceedings arising out of the company's inability to perform.

4. **Issues Raised at Public Hearing.**

The majority of those parties who testified at the public hearing expressed support for the grant of a franchise to Verizon. While some expressed certain specific concerns, none of the witnesses testifying at the public hearing opposed the grant of a franchise to Verizon. For example, while supporting the grant of the franchise, one councilmember of a municipality expressed her concerns regarding 1) the proposed coverage and timetable for service offered in Rockville and surrounding areas, 2) the need for additional free drops, and 3) her disappointment that the agreement does not require Verizon to retain the same PEG channel numbering as on the Comcast and RCN systems.

Other issues raised at the public hearing include: concerns regarding the lack of training for cable company technicians dealing with deaf and hard of hearing customers when the customers seek to use the HD boxes, the TTY Method, and to report Open Captioning problems. In addition witnesses raised concerns about customer service

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issues; requests for pricing information; concerns regarding the provision of service to multiple dwelling units; and customer service requirements.

5. Issues Raised by the Municipal Co-franchisors.

Although they generally support Verizon MD's entry and look forward to the benefits of competition, the participating municipalities have raised a number of issues regarding the proposed Franchise Agreement, including but not limited to issues of the service area limits, PEG compensation and support and reimbursement for legal expenses. The Cable Office has met with representatives of the municipalities and their legal counsel. The proposed Franchise Agreement has been revised to reflect many of the municipalities' comments and the participating municipalities are in agreement with the County on the current text of the proposed agreement.

6. Issues Raised by the Incumbent Provider.

Comcast filed comments on the proposed Franchise Agreement with Verizon Maryland on October 2, 2006 ("Comcast's Position Statement"). In its Position Statement Comcast stated that it believes it can effectively compete in the marketplace and that Comcast does not oppose the Verizon franchise. Comcast's Position Statement identifies what Comcast believes are areas where "the Verizon agreement contains conditions more favorable than those imposed upon Comcast or Starpower." Comcast also identifies what it believes are "cost differences between" the Comcast and RCN franchises and that of Verizon. The areas include reporting and performance review requirements; certain customer service standards, and the provision of free cable drops and service for public buildings, including the distance limitation on the provision of the free cable drops.

Comcast requests that the Comcast franchise agreement be revised "to incorporate the County's current thinking regarding franchise obligations" as reflected in the proposed agreement.

7. Written Testimony Received from County Residents after the September 28, 2006, Hearing.

The County received written testimony from the Telecommunications Advisory Committee, the Tech Council of Maryland Rockville, Maryland, Takoma Park Councilmember Bruce R. Williams and Comcast. In addition, the County received written testimony or testimony summaries from fifteen residents. All of the testimony supported the grant of a franchise to Verizon. However, some of the testimony proposed in general terms adding or deleting various provisions of the agreement. For example, one commenter objected to the requirement that Verizon provide PEG channels. Another commenter requested that a provision to directly support/fund local government web communications be included in franchises. Other "additional terms" proposed included a provision for a la carte pricing of cable channels; a requirement that all service solicitation ads contain a contact mailing address; a requirement that all

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telephones be answered by a real person in less than 10 minutes; and a requirement that fine print be legible.

D. *Summary of the Proposed Franchise Agreement.*

The proposed Franchise Agreement is designed to provide cable subscribers in the County with access to a state-of-the-art system that is capable of competing effectively, and fairly, with Comcast's network. The proposed Franchise Agreement also provides the County, and the participating municipalities, with financial support for institutional networks and PEG facilities and equipment. As a result, the County's PEG and institutional network capabilities will be enhanced. In addition, the proposed agreement should reduce County and municipal expenditures for telecommunications services since Verizon MD will be providing County agencies and the participating municipalities with certain free cable service connections and additional funds.

In establishing the terms and conditions of the proposed franchise, the Cable Office relied on its experience with the franchises of other cable operators in the County. This experience informed the Cable Office as to the on-going, unmet needs and interests identified in the County's prior needs ascertainments. The County also considered the specific obligations that were included in Comcast and RCN's agreements and incorporated comparable obligations into the proposed Franchise Agreement. Consequently, the draft agreement effectively advances the community's cable-related needs.

1. Terms of the Agreement.

The principal terms of the proposed Franchise Agreement are as follows:

- A franchise would be granted for a term of 15 years.
- Verizon MD would construct an FTTP system capable of providing voice, video and broadband access services.
- To accommodate interactive services, the system will be two-way activated.
- The proposed Franchise Agreement contains customer service standards addressing telephone and service responsiveness, billing, installation, and notice to subscribers. These standards are enforceable by means of liquidated damages and a security fund.
- Verizon MD will provide 11 analog channels for PEG use, with 2 additional analog channels reserved for future use when requested by the County. Thirteen more channels (for a total of 26) will be available if Verizon MD converts the analog PEG channels to a digital format.
- The County, on its behalf and on behalf of the participating municipalities, will receive a franchise fee of 5% of gross revenues.
- Verizon MD will provide the County, on its behalf and on behalf of the participating municipalities, with a capital support grant equal to 3% of gross revenues related to cable services, to be used by the County and the participating municipalities to support PEG access and the Fiber-Net/institutional network.
- Verizon MD will provide the County free cable drops and free cable service to up to 100 government buildings designated by the County and $200,000 payments in each of the first 5 years of the franchise.
- Verizon MD will provide the participating municipalities free cable drops and free cable service to 27 government buildings designated by the participating municipalities in the following manner: five for Takoma Park, two for Kensington, and one for each of the other participating municipalities.
- Verizon MD will carry all public, governmental and educational programming. Such programming will be carried on the channels designated for PEG use.

- Verizon MD will reimburse the County, up to $250,000, and the participating municipalities, up to $40,000, for the expenses they incurred in granting the franchise.

- Verizon MD will comply with all applicable federal, state and local laws and regulations that may apply to the operation, construction and repair of its system. All construction, maintenance and installations must be performed by experienced maintenance and construction personnel.

- Verizon MD will comply with system technical standards and testing requirements that will insure that the system meets the requirements set forth in the franchise, as well as all applicable state and federal laws and regulations.

- Verizon MD will provide a security fund of $100,000 and a performance bond in the amount of $2,000,000. The performance bond is primarily intended to protect the County against major defaults by the company. The security fund is designed to allow the County to enforce the franchise on a day-to-day basis, by drawing down specified liquidated damage amounts in the event Verizon MD fails to comply with particular franchise requirements. If the County draws on the fund, Verizon MD is required to restore the security fund to its full amount.

The central component of the proposed agreement is the construction of a state-of-the-art cable system. Since the system will be bidirectional, Verizon MD will also have the technical ability to offer interactive applications, such as impulse pay-per-view, and high-speed Internet access. In fact, Verizon MD intends to provide both telecommunications services such as local phone service and high-speed Internet services over its system. Many of these services will be bundled and offered at discounted rates.

Unlike Comcast's system, Verizon MD's network will utilize a fiber-to-the-premises (FTTP) technology to provide video, data and voice service. Such a design meets several objectives. FTTP is a flexible and capable technology. Compared to other forms of communications transmission, it boasts the highest theoretical capacity per user. It makes possible a wide range of potential applications and services, and enables Verizon MD to constantly upgrade capability and capacity simply by upgrading end equipment and software, while using the same fiber cable. One of the advantages of the FTTP technology selected by Verizon MD is that it can provide video service without the requirement for new or unproven technologies in the storage or origination of video. The Verizon MD video facilities can use the same equipment used in any cable-TV headend.

At the neighborhood level, the typical FTTP architecture calls for backbone fiber on the primary arterial streets, which meets the local distribution fiber at a cabinet placed in the ROW. The local distribution fiber then travels from the cabinets to pedestals or pole enclosures in front of the homes and businesses throughout the community. It eliminates the need for hundreds of amplifiers, which degrade and distort signals as they are transmitted out across the network. Accordingly, the system should be capable of delivering high-quality pictures.

The proposed Franchise Agreement also addresses the most critical needs of the PEG community and institutional network users by providing substantial financial support to the County and the participating municipalities throughout the franchise term. This support can be used for, but is not limited to, acquisition of new production equipment, building new studio facilities, renovating existing facilities, and purchasing

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institutional network equipment. The agreement also requires Verizon MD to furnish free cable drops to 100 County and 27 municipal buildings, and to provide an additional capital grant of one million dollars to the County. In addition, the draft agreement insures that existing PEG channels will be carried, without material degradation, on Verizon MD's cable system.

In the interest of promoting competition, the draft franchise agreement authorizes Verizon MD to roll out services to the entire County in phases. As discussed above, the Cable Office has concluded that this phased roll-out is appropriate because of the high costs of market entry. If the County were to impose immediate universal service obligations on Verizon MD, the company states that it would bypass the County, thereby denying the benefits of competition to the County's residents. Such an outcome would not be in the public interest and would run counter to the County's goal of promoting competition in the cable market.

2. **Customer Service.**

Based on its experiences with Comcast and RCN, the County has included customer service standards in the proposed Franchise Agreement. These standards should ensure that subscribers' interests are protected during the term of the Verizon MD franchise. Specific customer service requirements are summarized below.

- Verizon MD will only charge standard installation rates for service drops of 200 feet or less, unless extraordinary circumstances justify a higher charge. Except as applicable law may otherwise require, Verizon MD may charge a potential subscriber an additional charge, where a drop would exceed 200

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feet in length. In locations where Verizon MD's system must be placed underground, drops must also be installed underground. Verizon MD must observe a subscriber's preference as to the location of a drop, whenever feasible.

- Verizon MD must maintain a local, toll-free or collect telephone line that subscribers can access 24 hours a day, seven days a week. Customer service representatives must be available to respond to subscriber telephone inquiries during normal business hours.

- Under normal operating conditions, Verizon MD must meet the following standards at least 90 percent of the time, measured quarterly: (i) a subscriber must receive a busy signal less than 3 percent of the time; (ii) telephone answering time cannot exceed 30 seconds; and (iii) an answering machine or service capable of receiving and recording subscriber complaints or inquiries must be used when Verizon MD's business office is closed.

- Verizon MD must hire sufficient staff so that it can adequately respond to consumer inquiries, complaints and requests for service.

- Under normal operating conditions, the following requirements must be met 95 percent of the time, measured on a quarterly basis: (i) installations located no more than 400 feet from the nearest public right-of-way must generally be completed within seven business days after an order is placed if there is an ONT present, if no ONT is present then an ONT will be installed within 7 days; (ii) must Respond to request for repairs respecting Service Interruptions within twenty-four (24) hours, including weekends, of receiving subscriber calls. Repairs must be completed within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period; (iii) service calls, installations and disconnects must be performed at least during normal business hours; (iv) the appointment window for installations, service calls and other activities will either be a specific time or, at a maximum, a 4-hours time block during normal business hours; and (vi) an appointment may not be cancelled after the close of business on the business day preceding an appointment.

- Emergency maintenance and repair staff must be available to respond to and repair system malfunctions and interruptions at all times.

- Important information about Verizon MD's operations (*e.g.*, instructions for placing a service call, and a written description of products and services offered) must be provided to subscribers at the time cable service is installed, at least annually thereafter, and at any time upon request.

- Subscribers and the County must be given at least 30 days' notice of any change in rates, programming services and channel positions, if the particular change is within Verizon MD's control. The required notice must be provided in writing, and on Verizon MD's system.

- Bills must be clear, concise, and understandable. In addition, Verizon MD's bills must be fully itemized.

- Under Normal Operating Conditions, Verizon MD must 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.

- Under Normal Operating Conditions, if a System Outage affects all Cable Services for more than twenty-four (24) consecutive hours, Verizon MD must 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.

3. Rates.

In the proposed Franchise Agreement, the County reserves its right to regulate Verizon MD's rates, to the maximum extent permitted by law. The rates for Verizon MD's services, however, cannot be regulated by the County as a matter of state and federal law. In general, the rates Verizon MD has proposed are competitive with Comcast's for comparable services.

4. **Revisions to the Proposed Franchise Agreement Requested by the Participating Municipalities.**

Representatives of the municipal co-franchisors requested certain revisions to the proposed Franchise Agreement. For instance, the municipalities requested that certain revisions be made in the proposed Franchise Agreement in order to clarify how certain franchise benefits would be distributed.

After discussions with the County's legal counsel, the Cable Office revised the draft agreement in a manner that addresses the participating municipalities' concerns and requests. These changes include clarifying throughout the document that the participating municipalities are co-franchisors and are direct beneficiaries of the promises by Verizon MD in the agreement. The municipalities will receive 27 free cable drops and cable service from Verizon MD as follows: five for Rockville, five for Takoma Park, two for Kensington, and one for each of the other participating municipalities, subject to the same conditions/restrictions/limitations that are applicable to the 100 drops for the County. In addition, the municipalities will receive $40,000 to reimburse their costs associated with the consideration and grant of the franchise.

The participating municipalities suggested additional amendments. After discussion with the County, the participating municipalities are in agreement that the above amendments to the proposed agreement are adequate and accurately reflect the needs and interests of the municipal co-franchisors.

E. *Applicable Legal Standards.*

As noted in Section II.A., the County Code specifies seven criteria to be considered when examining an application for an overbuild franchise. Based on the foregoing findings and the contents of Verizon MD's application, these criteria indicate that the County would be justified in granting the proposed franchise. This Report will examine the criteria in turn.

Character of the Applicant

Verizon MD has been providing telecommunications services in the County for many years. The Cable Office is unaware of any activities by Verizon MD, its owners, or its management team that would call their character into question.

Technical, Financial and Legal Qualifications

Verizon MD appears to be technically, financially, and legally qualified. Verizon MD has a long history of providing telecommunications services to residential subscribers. Although the company's history as a cable operator is short, Verizon MD appears to have technical and managerial personnel capable of building and operating a cable system. According to CTC, Verizon MD's system design is capable of providing the services Verizon MD proposes to sell, and the system is state-of-the-art. Finally, A&S's financial analysis indicates that Verizon has committed adequate financial resources to construct the system.

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Nature of the Proposed Facilities, Equipment and Services

Verizon MD proposes to build a Fiber to the Premises system capable of providing cable, Internet and telephone service. Such a system would be beneficial to the County and its residents, and the construction and operation of the system in the County appears to pose no unusual risks or hazards.

The Public Interest

As discussed throughout this report and in the following section, competition for cable service will benefit cable subscribers and County and municipal residents in many ways. Thus, it is in the public interest to promote competition unless that competition poses risks that outweigh the benefits. We perceive no such risks. The proposed agreement contains safeguards protecting the County and the participating municipalities against failure to complete the system and other harms arising from Verizon MD's presence in the County. Therefore, the proposed agreement is in the public interest.

Benefits of Competition

Competition in the delivery of cable service should provide significant benefits to the County and the participating municipalities and their residents. For instance, competition may result in moderating cable rates for cable subscribers. Anecdotal evidence provided by Verizon MD at the September 28, 2006, hearing suggests that incumbent cable operators will typically freeze or lower rates in response to true competition. Although neither Comcast nor RCN has adjusted its rates to compete with Verizon MD, subscribers should benefit as consumers migrate to Verizon MD's system. In the end, we expect all three companies' rates to be pushed towards price competition as long as vigorous competition exists.

Another benefit we expect from Verizon MD's entry into the cable market is improved service quality. Since providers must vie for a limited number of consumers in certain areas of the County, there is a strong incentive to be responsive to subscriber needs, and to provide reliable, high-quality services. In the past, cable subscribers in the County have complained about poor picture quality and other problems. With the advent of competition, it is likely that traditional deficiencies will be avoided or quickly corrected, since consumers can easily change service providers.

We also believe that competition will encourage Verizon MD, RCN and Comcast to roll out new services in order to attract and retain subscribers. Verizon MD, for example, is bundling cable, phone and internet services as part of its plan to build a subscriber base, while Comcast and RCN are both also offering high-speed Internet access and telephone service to their subscribers. RCN currently bundles its services, also. Such innovation should continue during the term of each company's franchise.

In addition, subscriber totals may increase as a result of competition, since Verizon MD may attract some County residents who have never subscribed to

Comcast's services. If so, the combined franchise fees payable to the County and the participating municipalities will increase over the life of Verizon MD's franchise.

Finally, it is important to recognize that Verizon's system buildout will be balanced throughout the County, without regard to race, ethnicity or economic means. Although Verizon MD will initially serve a limited portion of the County, the racial and income demographics of Verizon MD's initial service area are virtually identical to those of the overall County. Accordingly, the terms of the proposed franchise will prevent any discrimination arising out of Verizon MD service availability.

Effects of the Overbuild on the Public

Construction of Verizon MD's system will cause some disruption in the County's and the participating municipalities' rights-of-way and on private property of potential subscribers requesting FiOS service. The Cable Office does not anticipate other adverse affects on the public. The beneficial effects have been discussed above. On the whole, the effects on the public should be positive.

F. Recommendation.

Based on the foregoing, the staff recommends that the County Executive forward to the Council the proposed Franchise Agreement with a recommendation that the Council approve it in all respects.

III. CONCLUSION.

The proposed Franchise Agreement will provide cable subscribers in Verizon MD's service area competitive, state-of-the-art cable services. As a result of the competitive environment fostered by the County, many cable consumers should ultimately enjoy better cable service, and many new services. In addition, the County and the participating municipalities will benefit from increased financial support for PEG facilities and the institutional network, as well as free cable service and connections. This support will further improve communication between governmental entities and the public and among different County agencies. The capital grants and free connections included in the proposed agreement will also reduce the County's and the participating municipalities' expenditures for telecommunications services and equipment.

In negotiating the proposed Franchise Agreement, the Cable Office considered the interests and concerns of all the affected parties, including Comcast and RCN. We have also considered the cable-related needs and interests identified in the County's 1997 needs assessment and the County's experiences since then. The resulting proposed Franchise Agreement, which is comparable in its requirements to Comcast's and RCN's agreements, properly balances the interests of the affected parties, and advances the needs and interests of the community. Accordingly, it is appropriate to grant Verizon MD a cable franchise.

In sum, the Cable Office believes the proposed Franchise Agreement will offer substantial benefits to the County and its residents. Consequently, the Cable Office recommends that the County Executive forward the proposed Franchise Agreement to the County Council for approval.

EXHIBIT A

ASHPAUGH & SCULCO, CPAs, PLC
Certified Public Accountants and Consultants

September 18, 2006

AS1011-16

Jane Lawton
Cable Communications Administrator
Montgomery County, Maryland
Department of Technology Services
Office of Cable Communications
100 Maryland Avenue, Room 250
Rockville, MD 20850

Subject: Review of the Cable Television Franchise Application of Verizon Maryland, Inc. with Montgomery County, Maryland

Dear Ms. Lawton:

Ashpaugh & Sculco, CPAs, PLC ("A&S") was requested to review the cable franchise application and supporting documents of Verizon Maryland, Inc. ("Verizon") filed with Montgomery County, Maryland (the "County") on or about September 12, 2006. This letter report will address the steps taken in this review. Our review and analysis is based only on the material and supporting information provided to the County by Verizon with the application and the draft franchise agreement.

Verizon is a telephone company operating in the State of Maryland. We have identified the following issues and concerns, which should be addressed by the County with Verizon:

1. Cross subsidy issues

   Since Verizon is the local telephone company and will presumably use the assets and labor force of the telephone utility, cross subsidy issues will arise in the pricing structure of the services offered. In addition, Verizon plans to offer telephone, cable and internet services over the same system and equipment which will also create the possibility of cross subsidies in the pricing of competitive services. Federal law will prohibit the County from regulating Verizon's cable rates. However, the County should remain alert to any adverse consumer effects from actual or perceived unfair cross-subsidies and be ready to act, to the extent consistent with state and federal law.

2. Franchise Fees and Obligations

   By the draft franchise agreement, Verizon is agreeing to pay franchise fees and meet franchise obligations consistent with the incumbent operator, Comcast Cable, and the other cable television franchisee, RCN. If it did not, the financial impact of the migration of cable television revenues to Verizon could decrease in franchise fees paid the County and reduce the support for the other items identified in the franchise agreement.

1133 Louisiana Avenue, Suite 106 • Winter Park, FL 32789 • 407 645 2020 • Fax 407 645 4070
gashpaugh@ascpas.com • csculco@ascpas.com

3. Rates

Verizon has provided a listing of cable television products and prices that it anticipates offering in the County that is attached as Exhibit 1. As can be seen on Exhibit 1, Verizon's rates and service offerings are competitive with the other cable television providers in the County.

4. Financial Qualifications

The build out of Verizon's system appears to be complete in 6 years, with the major investment coming in years 1 through 4 as shown on the pro forma financials of Verizon, attached as Exhibit 2. The cash flow is maintained by debt in years 1 through 5 and by system revenues from that point forward. The pro forma financials assume a healthy growth in customers and in revenues, although specific information on numbers of customers and revenue per customer was not provided. It appears the major risk to the County would be Verizon not having cash flow sufficient to meet its needs. In this case, Verizon would need to rely on revenues generated by its telephone operations. Based on the pro forma financials provided by Verizon, the applicant appears to be in a solid financial position and financially capable of operating a cable television franchise in the County.

The above is only an analysis based on the information filed with the County and included in the draft franchise agreement. If additional information was available from Verizon or other sources, our analysis and this report may be different. If you have any questions or need anything further, please let me know.

Sincerely yours,

ASHPAUGH & SCULCO, CPAS, PLC

Garth T. Ashpaugh, CPA
President & Member

EXHIBIT 1

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Here's everything you need to create your perfect FiOS TV package. First, choose your service. Then, add to it from our selection of digital packages and premium channels below.

Service Tiers	Channels	Monthly Price
Basic Local	15 - 35	$12.95
FiOS TV Premier *	180 + Basic	$39.95
La Conexión *	115 + Basic	$32.95

Packages *	Channels	Monthly Price
Sports	15	$ 5.95
Movies	44	$11.95
Sports / Movies Combo	59	$14.95
Spanish-Language	25	$11.95

Premium Channels *	Channels	Monthly Price
HBO	14	$14.95
Cinemax	12	$14.95
HBO / Cinemax Combo	26	$24.95
Playboy / Playboy en Español	2	$14.95

International Premiums *	Channels	Monthly Price
International Channels	16	Individually Priced

Video on Demand (VOD) *	
New Releases	$ 3.95
Library Title	$ 2.95

Pay Per View (PPV) *	
WWE (Wrestling)	$ 7.95 / month
On Demand Adult	$11.95 / month
PPV Movies	$ 3.95 each
PPV Events	Prices Vary
PPV Sports	Prices Vary

Set Top Box	Monthly Rental
Standard	$ 3.95
High Definition (HD)	$ 9.95
DVR (includes HD)	$12.95

Installation and Service Fees	One-Time Charge
Install Up To 3 Existing Outlets	Free
Additional Outlet / STB Hookup	$19.95
New Outlet Installation	$54.95 per outlet
Outlet Relocation	$54.95 per outlet
STB Addition/Upgrade/Downgrade	$24.95
Premises Visit	$50.00
Setup of TV Equipment	$50.00 (New TV w/ STB)
STB Disconnect	$24.95 + $ 5.00 / STB
Downgrade from Digital to Analog	$50.00 + $ 5.00 / STB
Service Disconnect	Free
Service Reconnect	$50.00 (Up to 3 outlets)
Seasonal Service Suspension	$24.95 (2-6 months)
Replacement Remote	$ 5.95 + S&H
Unreturned / Damaged STB	$240.00 Standard $350.00 HD $550.00 DVR

* The FiOS TV Premier and La Conexión service tiers, as well as Packages, Premium Channels, International Premium Channels, VOD and PPV require a set top box.

Refer to the channel lineup for a complete listing of channels included in each package.

verizon

We never stop working for you.

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EXHIBIT 2

Pro Forma Financials for Verizon

[REDACTED]

Exhibit B

Verizon Communications Video Franchise in Montgomery County, Maryland

September 2006

Prepared by
Columbia Telecommunications Corporation
5550 Sterrett Place, Suite 200
Columbia, MD 21044
410.964.5700
www.internetCTC.com

CTC
COMMUNICATIONS ENGINEERING & ANALYSIS FOR THE PUBLIC INTEREST

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Introduction

This Report evaluates whether Verizon Communications has the technical qualifications to operate a cable system in Montgomery County, Maryland. Based on Verizon's submitted application and its successful use of comparable video technologies in other markets, this Report concludes that Verizon has the technical capability to provide video service in the county—significantly, however, such capability does not have bearing on whether Verizon will indeed provide high quality service or technical customer service, which are a matter of will as well as of technical ability.

CTC has assisted the County in engineering oversight of cable systems in Montgomery County for over twenty years. CTC has inspected and tested the cable systems currently operated by Comcast Communications and the system operated by RCN Communications. As part of the County's technical oversight of the existing systems, CTC was present as Verizon constructed its fiber-to-the-premises (FTTP) "Fios" system in the County. CTC also assisted neighboring Arlington County and Anne Arundel County in their negotiations with Verizon.

CTC reviewed information provided in Verizon's application and, where possible, conducted discussions with Verizon technical staff. CTC directly inspected the existing Verizon system in the County.

Fiber-to-the-Premises (FTTP) Technology

Verizon is using fiber-to-the-premises (FTTP) technology to provide video, data and voice service.

FTTP is the architecture Verizon is deploying in limited parts of the U.S. as its "Fios" system. In other areas, it has chosen to rely on its current copper plant and DSL technology. FTTP is a flexible and capable technology. Compared to other forms of communications transmission, it boasts the highest theoretical capacity per user. It makes possible a wide range of potential applications and services, and enables Verizon to constantly upgrade capability and capacity simply by upgrading end equipment and software, while using the same fiber cable.

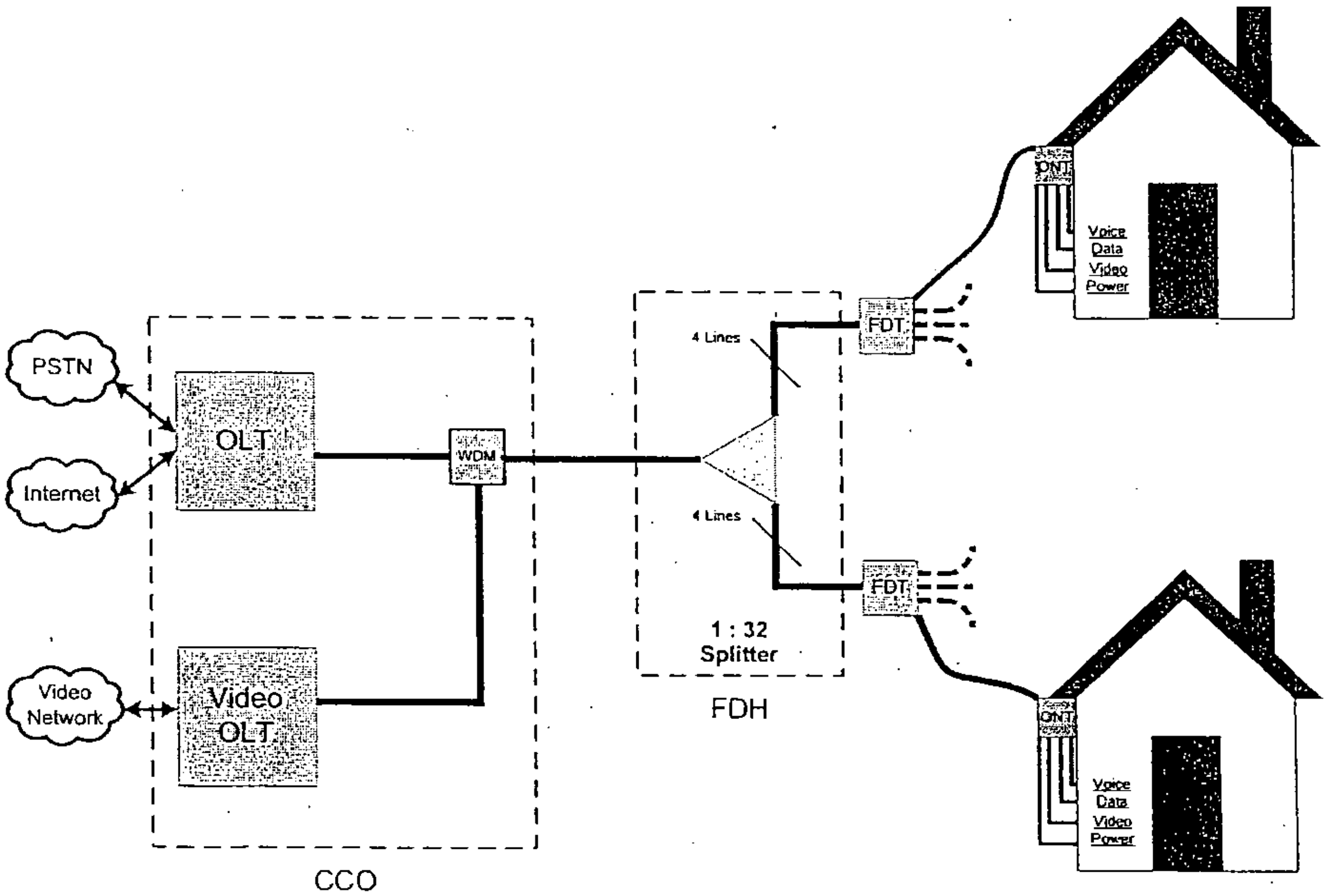
At the neighborhood level, the typical FTTP architecture calls for backbone fiber on the primary arterial streets, which meets the local distribution fiber at a cabinet placed in the public right-of-way (ROW). The local distribution fiber then travels from the cabinets to pedestals or pole enclosures in front of the homes and businesses throughout the community. Depending in part on whether they are backbone or distribution plant, the cables typically contain 24 to 432 strands of fiber.

With respect to new electronics in the public rights-of-way and at customer premises (illustrated in Figure 1), this architecture generally calls for:

- Optical Network Terminal (ONT) boxes on the outside of subscribing premises

- Passive (non-powered) Fiber Distribution Terminals (FDT) in pole enclosures or pedestals
- Passive (non-powered) Fiber Distribution Hubs (FDH) in cabinets

Figure 1: FTTP electronics in the Right of Way and at the Premises



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Compatibility with User Equipment

Although FTTP is a new technology, the ONT to be installed at the subscriber's residence has a cable-TV output identical to the cable provided by Comcast and RCN. It is designed to provide a service technically similar to the video service provided by cable operators. It is compatible with the existing video cabling in subscribers' homes. The signal is compatible with standard cable-ready televisions and with cable set-top converters commonly used in the cable industry.

Compatibility with personal digital video recorders (DVRs), such as TiVo, depends on the configuration of the cable set-top converter. While the FTTP technology does not preclude the use of DVRs, the cable set-top converter is necessary to view digital content and any encrypted or scrambled content. If the set-top converter cannot be tuned by the DVR, the converter will not enable the DVR to work properly. The County should verify that the set-top converters selected by Verizon work with widely-available DVRs and other consumer components, and verify that Verizon installers and consumer information provide adequate guidance to customers. Verizon video subscribers in neighboring communities have reported to franchising authorities that installers did not connect subscriber DVRs during the installation and that they were unable to use their DVRs to tune to programs other than local channels or PEG channels.

System Powering

The system is powered from both the Verizon Central Office (CO) and the home, but the customer is now ultimately responsible for powering – an important distinction from traditional phone networks, which powered the phone line from the CO down the copper phone line. Fiber does not carry electrical current, so backup powering is now required at the customer premises—if power goes out, the system's only backup is a battery located at the home that will typically last four to six hours unless Verizon makes provision for further backup (if Verizon is planning to make such provision, CTC has not been informed of this). Additionally, under the terms of the proposed franchise agreement, it is the subscriber's responsibility to replace batteries as they wear out.

Carriage of Video Signals

As the video signal travels through the Verizon fiber network, it uses a separate wavelength or color of light from the data and voice signals. When a video subscriber makes a selection with a cable set-top converter or orders or makes a selection that requires communicating with the Verizon network, this signal travels back to the subscriber using the same wavelengths or colors of light as the data and voice network.

Analog and digital video signals are obtained from programmers via fiber optic connections or satellite downlinks at a Verizon facility. Based on technical discussions with Verizon technical staff, Verizon plans to obtain all eleven public, educational, and government (PEG) video channels at the Montgomery County Office Building in a similar manner as RCN currently picks up the channels. Verizon will transport the channels from the COB to its facilities. Verizon will be technically able to provide the PEG programming with the same quality as it is provided on the Comcast network. Verizon will be responsible for all transport, processing, and conversion of the programming. If the County is unable to provide for a point of interconnection at the County's PEG facilities in Rockville, Maryland, the draft franchise requires that Verizon obtain PEG programming directly from each PEG access origination point.

Construction and Activation

Verizon performed a significant amount of construction in Montgomery County in 2005 and 2006 to install its Fios system. The construction was a mixture of overlash of fiber optic cable to existing Verizon cables and new cable construction. Areas of the County with underground utilities required new construction.

Where Verizon has completed its construction, it has been providing voice and data service. As a result, Verizon Fios has been an active system for months. As discussed, the ONT devices in the premises contain the interfaces to operate video. What remains is for Verizon to connect its Montgomery County system to video programming, and for Verizon to connect customer ONTs to customer video cabling and televisions.

Existing Video Offerings in Region

Verizon is offering video service in the Washington, DC area, including in neighboring Howard County. The provided channel lineup includes analog, digital, HDTV, pay-per-view, video-on-demand, and digital music programming. The technical variety is comparable to that provided by Comcast and RCN. Although Verizon's entry is relatively recent, it is able to demonstrate the ability to operate video service in the region.

Use of Proven Video Technology

One of the advantages of the FTTP technology selected by Verizon is that it can provide video service without the requirement for new or unproven technologies in the storage or origination of video. The Verizon video facilities can use the same equipment used in any cable-TV headend. The Alcatel FTTP equipment used by Verizon can operate simply as a "pipe" from this headend to the customer's home or business. As discussed, at the customer's premise, the video signal leaves the "pipe" in a standard cable-TV format and physical cable interface and can use the premise cabling.

Because the FTTP equipment can act as a simple "pipe" for cable-TV, it does not require that the video be compressed or transported in Internet Protocol (IP) format or streamed, as is required by the "Project Lightspeed" and other initiatives used by AT&T, BellSouth, and Qwest. The high capacity of FTTP enables Verizon to essentially carry an entire traditional cable-TV lineup to its customers, in addition to providing voice and high-speed data. As a result, Verizon has been able to provide some form of video service over FTTP systems for the past two years, while AT&T, as of the time of this report, is still in trials with its technologies. No cable company or telephone company has yet served hundreds of thousands of customers over a cable-TV quality "IP streaming" network, while FTTP enables Verizon to avoid a "bleeding edge" network and quickly reach customers with existing technologies.

Service to Multi-Dwelling Units (MDUs)

One of the limitations of the Alcatel FTTP technology used by Verizon is that it is currently limited in its ability to provide service to multi-dwelling units (MDUs) or multi-tenant office buildings. Based on recent discussions with Alcatel, there is expected to be an MDU solution available in the beginning of 2007 that can integrate with the hub/headend equipment currently in use by Verizon, and that will not require Verizon to dedicate a separate ONT or fiber cabling to each MDU customer.

There are, however, approaches that Verizon could use today to provide MDU services. These approaches depart from the vendor choice and architecture currently used for the single-family home customers. One option would be for Verizon to use separate hub equipment and fibers from the single-family home customers and use business-grade equipment to connect each MDU building. Another would be for Verizon to treat each MDU customer as a separate single-family home customer and, as mentioned, dedicate an ONT to each customer, as well as install fiber optic cables to each MDU customer. Another would be to seek solutions from other FTTP equipment vendors.

Verizon has also told neighboring communities that they are developing an MDU solution but currently do not have one. Verizon is not known to have designed or constructed its Fios service in MDUs in neighboring communities in the Washington, DC area, other than to low-density developments that have separate outdoor utility entry to each dwelling (as opposed to high-rise or higher density buildings with communications utilities terminated in centralized closets).

Verizon's draft Franchise Agreement with the County (Section 3.2.1) states that it "may refuse to provide Cable Service . . . 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, provided, however, that, subject to subsection 9.3, Franchisee will provide the County with semi-annual reports that identify such developments or buildings and contain information that reasonably demonstrates why the Franchisee is unable to do so . . ." There is comparable language in other agreements signed by Verizon in neighboring Counties.

As mentioned, there are feasible technical alternatives; however, more in-depth analysis is necessary to determine the degree to which these are "commercially reasonable," relative to the solution that may be available in 2007.

FTTP Technology Proven

The Alcatel FTTP equipment deployed by Verizon in Montgomery County has been deployed over the past few years by several data, video, and voice service providers in the U.S. and internationally. It conforms with standards developed by the International Telecommunications Union (ITU) for FTTP. The manufacturer has a significant installed base of FTTP equipment and continues to upgrade its FTTP product line with higher speed equipment. FTTP equipment is not as commonplace or mass-produced as cable-TV equipment, such as DOCSIS modems, but this can be expected to change as Verizon and others continue to deploy it.

Emergency Alert

Under the proposed Franchise agreement, emergency alert will occur subject to the Maryland state plan rather than directly by the County. It is our understanding that this arrangement is acceptable to the County's first responders, based on their conversations with the County Cable Office.

Safety and Code Violations in the Public Rights of Way

The proposed Franchise Agreement requires Verizon to comply with County ordinance in the Public Right of Way but does not, unlike the Comcast and Starpower agreements, prescribe specific response time and penalties. It is our understanding that the County plans to address these issues through other means.

Design and Configuration of Verizon Network in Montgomery County

Verizon's submittal does not include the locations of key buildings and hub-sites. Ideally, this information should be reviewed in order for the County to accurately evaluate the proposed PEG solution and the amount of flexibility that exists in the network design. Verizon indicated that this information can be reviewed at their offices but we have not been provided the opportunity to perform this review. However, based on a general review of the information that has been provided, we believe that Verizon has the technical capability to provide adequate video service in Montgomery County.

PUBLIC NOTICE

Proposed Cable Franchise Between Montgomery County and Verizon Maryland, Inc.

Pursuant to Chapter 8A-9 of the Montgomery County Code, the following is provided as a summary of the terms of the proposed cable franchise agreement between Montgomery County and the Participating Municipalities, and Verizon Maryland, Inc. The proposed agreement provides cable subscribers in the County a competitive alternative for cable television service. It will also provide additional benefits in the form of funding and facilities for public, educational and governmental (PEG) use. The key franchise terms include:

1. 15 year term;
2. a Fiber to the Premise Network capable of providing voice, video and broadband access services;
3. customer service standards addressing telephone and service responsiveness, billing, installation, and notice to subscribers;
4. payment to the County of a franchise fee of 5% of gross revenues;
5. 11 channels set aside for PEG use, with 2 additional channels reserved for future use, and 13 more channels available if the initial capacity set aside for PEG use is subdivided or compressed in a digital format;
6. payment to the County of an additional 3% of gross revenues, to be used by the County and the participating municipalities to support PEG access and the Institutional Network;
7. free cable drops and service to up to 100 County buildings and $200,000 payments in each of the first 5 years of the franchise, in lieu of the company's obligation to add additional cable drops and service during the term of the franchise;
8. system technical standards and testing requirements; and
9. performance guarantees.

Information regarding the application and proposed franchise is available for review in the Department of Technology Services, Cable Office, 100 Maryland Avenue, Suite 250, Rockville or on the Internet at www.montgomerycountymd.gov/cable.

For questions regarding the matter, contact Jane E. Lawton, County Cable Communications Administrator, at 240-777-3724 or email at jane.lawton@montgomerycountymd.gov.

10518065 (9-13,9-20,9-27-06)

The Gazette Newspapers

9030 Comprint Court, Gaithersburg, Maryland 20877, 301-670-2620

CERTIFICATION OF PUBLICATION

THIS IS TO CERTIFY THAT THE ANNEXED LEGAL ADVERTISEMENT HAS BEEN PUBLISHED IN THE GAZETTE NEWSPAPERS FOR THE NUMBER OF INSERTIONS INDICATED BELOW.

PUB NOTICE PROPOSED CABLE MC & VERIZON

Gazette Legal Advertising Department

Ashby Elizabeth Tanner
Notary Public, State of Maryland
Montgomery County
My Commission Expires April 6, 2010

Copy of Ad attached
Ad Order Number: 0010518065
Dates: St.: 9/13/06 End: 9/27/06 Ins.: 3

PUBLIC HEARING NOTICE

PUBLIC HEARING
Thursday, September 28, 2006
At 7:00 PM
Stella B. Werner Council Office Building
3rd Floor Hearing Room
100 Maryland Avenue, Rockville, Maryland

CABLE TELEVISION FRANCHISE

Montgomery County has received an application for a cable franchise agreement from Verizon Maryland, Inc.

In accordance with Section 8A-9(d) of the Montgomery County Code, a public hearing has been scheduled to receive input regarding the application. This hearing will be conducted jointly with participating municipalities pursuant to requirements of applicable local ordinances.

Copies of the application and related public documents are available for inspection in the Department of Technology Services, Cable Office, 100 Maryland Avenue, Suite 250, Rockville or on the Internet at www.montgomerycountymd.gov/cable.

Individuals may either testify in person at the public hearing, or provide written comments for the record. To pre-register to testify at the hearing, contact the County's Cable Office at 240-777-3684. Written comments may be submitted through 5:00 PM on Monday, October 2, 2006 or as otherwise directed by the Hearing Officer. Comments should be mailed or delivered to DTS-Cable Office, 100 Maryland Avenue, Suite 250, Rockville, MD 20850. Comments may also be submitted via email to amy.wilson@montgomerycountymd.gov.

Interpreter services are available for deaf or hearing impaired citizens with five (5) working days advanced notice. Call 240-777-3684 or email amy.wilson@montgomerycountymd.gov giving the name and telephone number of the requesting citizen and the type of interpreter services needed.

10518030 (9-13-06)

115

The Gazette Newspapers

9030 Comprint Court, Gaithersburg, Maryland 20877, 301-670-2620

CERTIFICATION OF PUBLICATION

THIS IS TO CERTIFY THAT THE ANNEXED LEGAL ADVERTISEMENT HAS BEEN PUBLISHED IN THE GAZETTE NEWSPAPERS FOR THE NUMBER OF INSERTIONS INDICATED BELOW.

PUBLIC HEARING CABLE TELEVISION FRANCHIS

Gazette Legal Advertising Department

Ashby Elizabeth Tanner

Ashby Elizabeth Tanner
Notary Public, State of Maryland
Montgomery County
My Commission Expires April 6, 2010

Copy of Ad attached
Ad Order Number: 0010518030
Dates: St.: 9/13/06 End: 9/13/06 Ins.: 1

OFFICE OF CABLE AND
COMMUNICATION SERVICES
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MONTGOMERY COUNTY DEPT
OF TECHNOLOGY SERVICES

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Resolution No: ____________
Introduced: October 10, 2006
Adopted: ____________

COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND

By: Management and Fiscal Policy Committee

Subject: Grant of franchise to Verizon Maryland Inc. to use the public right-of-way for a cable system.

Background

1. Section 49-11 and 49-12 of the County Code provide that the County Council may grant a franchise for use of the public right-of-way after:

   a) the franchise applicant publishes the application once a week for three consecutive weeks in a newspaper of general circulation in the County;

   b) the County Executive makes "diligent inquiry" into the value of the franchise and the adequacy of the proposed compensation the applicant will pay to the County;

   c) the Executive holds a hearing on the application if any taxpayer or affected property owner objects to the franchise within 10 days after publication of the application;

   d) the Executive makes a written recommendation to the Council about the franchise, including a description of the application and any objections to it, findings about the value of the franchise, and any other relevant matters; and

   e) the Council decides that the franchise is expedient and proper.

2. On September 13, 20, and 27, 2006, notice was published about the Verizon Maryland Inc. application for a franchise to use the public right-of-way to operate a cable system. The Executive received many comments by the October 2, 2006 deadline and conducted a hearing on the franchise application on September 28, 2006.

3. On October 6, 2006, the Council received the Executive's recommendation to grant a franchise to Verizon Maryland Inc. for a 15-year cable television franchise.

4. On October 31, 2006, the Council held a public hearing on the proposed franchise.

5. On October 30 and November 13, 2006, the Council's Management and Fiscal Policy Committee considered the franchise application and recommended {approval/approval with amendments/denial} of the proposed franchise agreement.

Action

The County Council for Montgomery County Maryland approves the following resolution:

> The Council finds that granting a franchise to Verizon Maryland Inc. for use of the public right-of-way for a cable system is {expedient and proper}. The Council {grants/grants with amendments/denies} the franchise under the terms of the attached franchise agreement.

This is a correct copy of Council action.

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Linda M. Lauer
Clerk of the Council

Rates for channels sold on a per-channel or per-program basis are not regulated.

CUSTOMER SERVICE GUIDELINES

Pursuant to the 1992 Cable Act, the Commission adopted federal guidelines which provide a standard for improving the quality of customer service rendered by cable operators. These guidelines provide minimum levels of service which should be provided by a cable operator. The guidelines address issues such as the cable operator's communications with customers over the telephone, installations, service problems, changes in rates or service, billing practices and information that must be provided to all customers. **Although the standards were issued by the Commission, local franchising authorities are responsible for adopting and enforcing customer service standards. Franchising authorities may also adopt more stringent or additional standards with the consent of the cable operator or through enactment of a state or municipal law.**

Subscriber Calls to a Cable System

Under the federal guidelines, each cable system must maintain a local, toll-free or collect-call telephone line available 24 hours a day, 7 days a week. During normal business hours, company representatives must be available to respond to customer inquiries. After normal business hours, (the hours during which most similar businesses in the community are open to serve customers), the cable system may use an answering service or machine so long as messages are answered the next business day. In addition, the cable system's customer service center and bill payment locations must be conveniently located and must be open at least during normal business hours and should include at least one night per week and/or some weekend hours.

A call to a cable system must be answered -- including time the caller is put on hold -- within 30 seconds after the connection is made. If the call is transferred, the transfer time may not exceed 30 seconds. Also, cable system customers may receive a busy signal no more than three percent of the time. Although no special equipment is required to measure telephone answering and hold time, cable operators should use their best efforts in documenting compliance. These requirements must be met 90 percent of the time, measured quarterly, under normal operating conditions.

Installations, Service Interruptions and Service Calls

Federal guidelines state that standard installations -- which are those located up to 125 feet from the existing distribution system -- must be performed within seven days after an order has been placed. Except in situations beyond its control, the cable operator must begin working on a service interruption no later than 24 hours after being notified of the problem. A service interruption has occurred if picture or sound on one or more channels has been lost. The cable operator must begin to correct other service problems the next business day after learning of them. Cable operators may schedule appointments for installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during normal business hours. Cable operators may also schedule service calls outside of normal business hours for the convenience of the customer. No appointment cancellations are permitted after the close of business on the business day prior to the scheduled appointment. If the cable installer or technician is running late and will not meet the specified appointment time, he or she must contact the customer and reschedule the appointment at the convenience of the subscriber. These requirements concerning installations, outages and service calls must ordinarily be met at least 95 percent of the time, measured quarterly, under normal operating conditions.

Changes in Rates or Service and Billing Practices

Thirty days advance written notice (using any reasonable written means) must be given to subscribers and local franchising authorities of any changes in rates, programming services or channel positions, if the change is within the control of the cable operator. Cable operators are not required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by a Federal agency, State, or franchising authority on the transaction between the operator and the subscriber. Cable system bills must be clear, concise and understandable, with full itemization. Cable operators should respond to written complaints about billing matters within 30 days. Refunds must be issued no later than either the customer's next billing cycle or 30 days following resolution of the request, whichever is earlier, or upon the return of equipment when service is terminated. Credits must be issued no later than the billing cycle following the determination that a credit is warranted.

Information to Customers

The following information must be provided to customers at the time of installation and at least annually to all subscribers and at any time upon request: products and services offered; prices and options of programming services and conditions of subscription to programming and other services; installation and service maintenance policies; instructions on how to use the cable service; channel positions of programming carried on the system; and billing and complaint procedures, including the address and telephone number of the local franchising authority's office.

UNAUTHORIZED RECEPTION OF CABLE SERVICES

The 1984 Cable Act provides damages and penalties of up to two years in prison and/or $50,000 in fines to be assessed against anyone determined to be guilty either of the unauthorized interception or reception of cable television services or of the manufacture or distribution of equipment intended to be utilized for such a purpose. The Commission does not prosecute unauthorized reception of cable services. Rather, cable operators aggrieved by a violation may bring an action in a United States district court or in any other court of competent jurisdiction. Knowledge of violations should be reported directly to the cable system.

SIGNAL CARRIAGE REQUIREMENTS

The 1992 Cable Act established new standards for television broadcast station signal carriage on cable systems. Under these rules, each local commercial television broadcast station was given the option of selecting mandatory carriage ("must-carry") or retransmission consent ("may carry") for each cable system serving the same market as the commercial television station. The market of a television station is established by its Area of Dominant Influence ("ADI"), as defined by Arbitron and/or modified by the Commission. Every county in the country is assigned to an ADI, and those cable systems and television stations in the same ADI are considered to be in the same market. Upon the request of a television station or a cable system, the Commission has the authority to change the ADI to which a station is assigned. As a result of Arbitron abandoning the television research business, the Commission has determined that, effective January 1, 2000, the market of a television station shall be its Designated Market Area ("DMA") as determined by Nielsen Media Research.

Must-Carry/Retransmission Consent Election

Every three years, every local commercial television station has the right to elect either must-carry or retransmission consent. The initial election was made on June 17, 1993, and was effective on October 6, 1993. The next election occurred on October 1, 1996, and was effective January 1, 1997. All subsequent

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