

**A FRANCHISE RENEWAL AGREEMENT**

**between the**

**City of Yonkers**

**and**

**Cablevision Systems Westchester Corporation**

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# **FRANCHISE RENEWAL AGREEMENT**

**between the  
City of Yonkers  
and**

**Cablevision Systems Westchester Corporation**

**WHEREAS**, the City of Yonkers (hereinafter referred to as “City”) has requisite authority to grant cable television franchises and renewals permitting and regulating the use of its streets, rights of way, and public grounds; and,

**WHEREAS**, Cablevision Systems Westchester Corporation (hereinafter referred to as “Franchisee”), having previously secured the permission of the City to use such streets, rights of way, and public grounds under a franchise agreement that is operating under temporary authority validly issued by the New York State Public Service Commission, has petitioned the City for a renewal of such franchise; and,

**WHEREAS**, the City and Franchisee have complied with all Federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal; and,

**WHEREAS**, the City has approved, after consideration in a full public proceeding affording due process, the character, financial condition, and technical ability of Franchisee; and,

**WHEREAS**, during said public hearings and proceedings, various proposals of the parties for constructing, maintaining, improving, and operating the Communications System described herein were considered and found adequate and feasible; and,

**WHEREAS**, imposition of the substantially equivalent burdens and costs on other franchised competitors by the City is a basic assumption of the parties in this Agreement; and

**WHEREAS**, this franchise renewal, as set out below, is non-exclusive and complies with the franchise standards of the New York State Public Service Commission,

### **THEREFORE**

The City and Franchisee agree as follows:

#### **1. DEFINITION OF TERMS**

- 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. “Area Outage”: a total or partial loss of video, audio, data or other signals carried on the “Communications System” in a location affecting five or more subscribers.
- 1.3. “Cable Service” or “Service”: the one-way transmission to subscribers of (i) video programming (meaning programming provided by, or comparable to programming provided by a television broadcast station), and (ii) other programming service (meaning information that a cable operator makes available to all subscribers generally), including subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service; or as otherwise defined in the Communications Act of 1934, as amended.
- 1.4. “Capability”: the ability of the “Franchisee” to activate a described technological or service aspect of the “Communications System” without delay.
- 1.5. “City”: the City of Yonkers.
- 1.6. “Communications Act”: The Communications Act of 1934, as amended.
- 1.7. “Communications System” or “System” or “cable system”: the facility, which is the subject of this franchise, consisting of antennas, wire, coaxial cable, amplifiers, towers, microwave links, wave guide, optical fibers, optical transmitters and receivers, satellite receive/transmit antennae, and/or other equipment designed and constructed for the purpose of producing, receiving, amplifying, storing, processing, or distributing

analog and/or digital audio, video, data or other forms of electronic, electromechanical, optical, or electrical signals.

- 1.8. “Control”: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of Franchisee’s affairs.
- 1.9. “FCC”: the Federal Communications Commission.
- 1.10. “Franchise”: the rights and obligations described in this document, and used interchangeably with the term “Agreement”.
- 1.11. “Franchise Fee”: the percentage, as specified in this Agreement, of Franchisee’s Gross Receipts remitted by the “Franchisee” to the “City” in exchange for the rights granted pursuant to the “Franchise.”
- 1.12. “Franchisee”: Cablevision Systems Westchester Corporation, and its lawful successors and assignees.
- 1.13. “Gross Receipts”: All revenues, as determined in accordance with generally accepted accounting principles, which are derived by Franchisee from the operation of the Cable System to provide Cables Services in the City.
  - 1.13.1. “Gross Receipts” shall include, without limitation: all Subscriber revenues earned or accrued net of bad debts relating to: (i) Basic Service; (ii) fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including, without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; late or delinquent charge fees; Cable Service related repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) video on demand and pay-per-view; (iv) revenues from the sale or lease of access channel(s) or channel capacity; and (v) compensation received by Franchisee that is derived from the operation of Franchisee’s Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as “home shopping” or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising derived from the operation of Franchisee’s Cable System to provide Cable Service within the Service Area, subject to the

exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue. Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the City shall be entitled, after notification to Franchisee, to seek amendment of this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment.

- 1.13.2. "Gross Receipts" shall not include: payment by Subscribers of a billing line item for recovery of Franchise Fees, revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Receipts during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues not classified as Cable Service revenue under federal or state law including, without limitation, revenue received from telecommunications services (as that term is defined by 47 U.S.C. § 153(46)); revenue received from information services (as that term is defined by 47 U.S.C. § 153(20)), including, without limitation, cable modem service, Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee not to Cable Service in accordance with federal law, rules, regulations, standards or orders; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Receipts; the sale of Cable Services on the Cable System for resale in which the purchaser is

required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the City including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Receipts); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; any fees or charges collected from Subscribers or other third parties for any PEG Grant payments.

1.14. "Person": an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.15. "NYSPSC": the New York State Public Service Commission or any successor State agency with similar responsibilities.

1.16. "State": the State of New York.

1.17. "Transfer of the Franchise":

1.17.1. Any transaction in which:

1.17.1.1. a fifty percent or greater ownership or other interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Franchisee is transferred; or



1.17.1.2. the rights held by Franchisee under the Franchise and the certificate of confirmation issued therefore by the NYSPSC are transferred or assigned to another Person or group of Persons.

1.17.2. However, notwithstanding Sub-subsections 1.17.1.1 and 1.17.1.2 above, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

## **PART I -- THE FRANCHISE**

### **2. GRANT OF FRANCHISE**

- 2.1. Franchisee is hereby granted, subject to the terms and conditions of this Agreement, the right, privilege, and authority to construct, operate, and maintain a Communications System within the streets, alleys, and public ways of the City.
- 2.2. Franchisee may erect, install, extend, repair, replace, and retain in, on, over, under, or upon, across and along the public streets, alleys, and ways within the City, such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the System in conformance with the City's generally applicable local laws, ordinances, rules and regulations.
- 2.3. Nothing in this Agreement shall be deemed to waive the requirements of the various applicable codes and ordinances of the City regarding permits; fees to be paid to the City for such permits or construction, or the manner of construction.
- 2.4. No privilege or power of eminent domain shall be deemed to be bestowed by this Agreement other than that conferred pursuant to statutory law.

### **3. NON-EXCLUSIVE NATURE OF THIS FRANCHISE**

- 3.1. This Agreement shall not be construed as any limitation upon the right of the City to grant to other persons rights, privileges, or authorities similar to

the rights, privileges, and authorities herein set forth, in the same or other streets, alleys, or other public ways or public places. The City specifically reserves the right to grant at any time such additional franchises for this purpose as it deems appropriate, subject to applicable NYSPSC regulations and Sections 17 and 37 of this Agreement provided, however, that any such additional franchises granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with the existing facilities of the System.

**4. TERRITORIAL LIMITS**

4.1. The rights and privileges awarded pursuant to this Agreement shall relate to and over the entire present territorial limits of the City. In the event that any area outside the territorial limits of the City is annexed during the term of this Agreement, the Franchisee shall be authorized to serve such area and, at its option, may extend service therein under the same general terms and conditions that exist in this Agreement.

**5. FRANCHISE SUBJECT TO LAW AND REGULATION**

5.1. All terms and conditions of this Agreement are subject to Federal and State law and to the rules and regulations of the FCC and the NYSPSC, as such may be amended from time to time.

5.2. All terms and conditions of this Agreement are subject to the approval of the NYSPSC.

5.3. All rights and privileges granted hereby are subject to the police power of the City to adopt and enforce laws, rules and regulations necessary for the health, safety and general welfare of the public. Expressly reserved to the City is the right to adopt, in addition to the provisions of this Agreement and existing laws, rules, and regulations, such additional laws, rules, and regulations as it may find necessary in the exercise of its police power; provided, however, that such additional laws, rules and regulations are reasonable, properly within the authority of the City to enact, not materially in conflict with the privileges granted in this Agreement, and consistent with all Federal and State laws, rules regulations and orders.

5.4. Within sixty (60) days of receipt of formal notification of the City's approval of this Franchise, Franchisee shall file a request for certification of this Franchise with the NYSPSC and shall provide the City with evidence of such filing.

5.5. The Mayor, or other person as designated by the City, shall have responsibility for the continuing administration of the rights and interests

of the City under this Franchise. Notwithstanding the foregoing, however, any award or denial of a franchise, revocation, termination or final notice of default shall require vote of the City's governing body.

- 5.6. Franchisee shall comply with all laws, rules and regulations of the local, state and federal governments and their regulatory agencies or commissions which are now or may hereinafter be applicable to the construction, maintenance or operation authorized herein, including, without limitation, all ordinances now in force or that may hereafter be enacted, provided however, that any ordinances enacted by the City do not materially alter the materials terms of this Agreement. Franchisee shall also abide by all prevailing industry practices and codes in constructing, maintaining and operating its Communications System.

**6. CONDITIONS ON USE OF STREETS AND PUBLIC GROUNDS**

- 6.1. Any work that requires the disturbance of any street or that will interfere with traffic shall be undertaken in accordance with the generally applicable ordinances, local laws and regulations of the City.
- 6.2. No poles, underground conduits or other wire-holding structures shall be erected by Franchisee without the approval of the appropriate municipal official through established permit procedures to the extent that same now or hereafter may exist, with regard to the location, height, type and any other pertinent aspect of such wire-holding facilities; provided however, such approval may not be unreasonably withheld or delayed.
- 6.3. All structures, lines and equipment erected by Franchisee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, easements and other public ways and places, and to cause minimum interference with rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. Existing poles, posts and other structures of the electric power company or any telephone company or any other public utility that may be available to Franchisee shall be used to the extent practicable in order to minimize interference with travel. Where both power and telephone utilities are placed underground, Franchisee's cable also shall be placed underground. In addition, Cablevision will cooperate with the City Engineer, and any other appropriate City official to remove obsolete, out-dated, unused and abandoned cable equipment, at Franchisee's sole cost and expense, during the term of this Agreement.
- 6.4. Franchisee shall have the right and authority to remove, trim, cut, and keep clear trees and bushes upon and overhanging all streets, alleys, easements,

sidewalks, and public places in the City to the minimum extent necessary to keep same clear of poles, wires, cables, conduits and fixtures.

- 6.5. In the case of any disturbance of pavement, sidewalk, driveway or other surfacing, Franchisee shall, at its own cost and expense in accordance with the generally applicable local laws and ordinances, rules and regulations, and within thirty (30) days, replace and restore such pavement, sidewalk, driveway or surfacing so disturbed to as good a condition as existed before said work was commenced. In the event that any municipal property is damaged or destroyed by Franchisee, such property shall be repaired or replaced by Franchisee within thirty (30) days and restored to as good a condition as existed before said work was commenced.
- 6.6. All structures and all lines, equipment and connections, in, over, under and upon streets, sidewalks, alleys and public ways and places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, and substantial condition, and in good order and repair. In connection therewith, any openings or obstructions in streets, public ways, or other municipal or public property made by the Franchisee shall be guarded and protected at all times, subject to the approval of the City, by the placement of adequate barriers, fences, or other protective devices, at the sole expense of the Franchisee. During the periods of dusk and darkness, the protective devices shall be clearly designated by warning lights.
- 6.7. In exercising rights pursuant hereto, Franchisee shall not endanger or interfere with the lives of persons, nor interfere with any installations of the City, any public utility serving the City or any other person permitted to use the streets and public grounds, nor unnecessarily hinder or obstruct the free use of the streets and public grounds. The grant of this Franchise does not establish priority for use over other present or future permit or Agreement holders or the City's own use of the streets and public grounds. The City shall at all times control the distribution of space in, over, under or across all streets and public grounds that are occupied by the System. All rights granted for the construction and operation of the System shall be subject to the continuing right of the City to require such reconstruction, relocation, change or discontinuance of the facilities and equipment used by Franchisee in the streets, alleys, avenues, and highways of the City, as shall in the opinion of the City be necessary in the public interest.
- 6.8. Nothing in this Agreement shall hinder the right of the City or any governmental authority to perform or carry on, directly or indirectly, any public works or public improvements of any description. Should the System in any way interfere with the construction, maintenance, or repair

of such public works or public improvements, Franchisee shall, at its own cost and expense, protect or relocate its System, or part thereof, as reasonably directed by the City. In case of emergencies, Franchisee shall immediately commence work to remove or relocate the object of such interference. In all other instances Franchisee shall, within ten (10) days of notice of such interference protect, remove or relocate its system or part thereof, as may be directed by the City. In the event that after notice, Franchisee fails to act to remove or relocate such interfering portion of the cable system, Franchisee acknowledges and agrees that the City has the absolute right to remove such interfering portion of the cable system so as to remove such interference at the sole cost and expense of Franchisee and Franchisee shall reimburse the City for the actual cost and expenses within thirty (30) days after receipt of an invoice from the City. In this event, the City shall not be liable for any damages that may occur to the cable system, and Franchisee hereby waives any rights or claims for damages that it may have against the City arising from these events, to the full extent it may be legally be permitted to do so. If public funds are available to any other operator of a cable system or other authorized service provider or utility using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, the City shall treat the Franchisee in the same manner as any other private utility company or profit-making beneficiary of such funds applied for by the City on its behalf.

- 6.9. Upon request of a person or entity holding a building or moving permit issued by the City, Franchisee shall temporarily raise or lower its wires or other property or relocate the same temporarily so as to permit the moving or erection of buildings. The expenses of any such temporary removal, raising or lowering of wires or other property shall be paid in advance to Franchisee by the person requesting same. In such cases, Franchisee shall be given not less than ten (10) working days prior written notice in order to arrange for the changes required.
- 6.10. Within thirty (30) days of the effective date of this Agreement, Franchisee shall make available at its office for the City's inspection a map of Franchisee's then-current plant in the City. Prior to the beginning of any new major construction relating to the System (as opposed to the mere repair, maintenance or line extensions from the existing System), or any addition of new facilities, including, but not limited to new cables, wires, or overlashed fibers, the installation or repair of which will affect the City's rights of way, Franchisee shall comply with the permitting process of the City, including, but not limited to, furnishing a description of substantially all of the physical elements composing the new facilities, including, but not limited to, the headend. To the extent required by

applicable law and regulations, the City must approve such locations prior to any such major construction; such determination shall not be unreasonably delayed. Moreover, Franchisee shall cooperate with the City Engineer or other appropriate City official to ensure that any such new major construction complies with all applicable Federal, State and local rights of way codes, rules and regulations.

- 6.11. All information provided by Franchisee to the City pursuant to this Section 6 shall be treated by the City as proprietary and confidential and shall be made available only (i) to persons who require access to such information in order to perform their duties on behalf of the City, or (ii) to persons who are entitled to such information pursuant to a valid request for same under Article 6 of the Public Officers Law aka the Freedom of Information Law.

**7. ASSIGNMENT OR TRANSFER OF FRANCHISE**

- 7.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, as amended, no Transfer of the Franchise shall occur without the prior consent of the City, provided that such consent shall not be unreasonably withheld or delayed. In considering an application for the Transfer of the Franchise, the City may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.17 above.
- 7.2. In the event of any approved Transfer of the Franchise, the transferee shall assume all Franchise obligations and liabilities of the former Franchisee, except as noted herein. To the extent permitted by applicable law, any consent by the City, if granted, may be absolute or conditional, e.g. with respect to the assumption or non-assumption of liability, including but not limited to assumption of all obligations of this Agreement and all monies owed the City pursuant to this Franchise.
- 7.3. A copy of a completed FCC Form 394, or such similar form as hereinafter may be provided by the FCC for such purposes, if required by applicable law, accompanied by all required addenda and attachments between Franchisee and the proposed transferee or assignee shall be provided to the City .

- 7.4. To the extent required by applicable law, the proposed assignee, transferee or purchaser shall execute the section of FCC Form 394 (or its successor or a document containing all of the same information) acknowledging that it has a current copy of this Franchise Agreement and will use its best efforts to comply with the terms of the Franchise and applicable state laws or local ordinances and related regulations.

**8. ENFORCEMENT AND TERMINATION OF FRANCHISE**

- 8.1. The City may revoke this Franchise and all rights of Franchisee hereunder for any of the following reasons:
- 8.1.1. Franchisee takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or files a petition or answer seeking an arrangement or reorganization or readjustment of its indebtedness under Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property, or is adjudged bankrupt by order of decree of a court, or an order is made approving a petition filed by any of its creditors or stockholders seeking reorganization or readjustment of its indebtedness under any law or statute of the United States or of any state thereof; or
- 8.1.2. Franchisee attempts or does practice a fraud or deceit in its securing of this Franchise; or
- 8.1.3. Franchisee practices fraud or displays repeated negligence in the accurate reporting of information to the City, including but not limited to information pertaining to Franchisee's calculation of the City's franchise fee.
- 8.2. Prior to revoking this Franchise pursuant to Section 8.1, or if at any time the City believes that Franchisee has not complied with the terms of the Franchise, the City shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem in a reasonable time, the City shall then notify Franchisee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article, the "Noncompliance Notice").
- 8.3. Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the City, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii)

in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to remedy such noncompliance and notify the City of the steps being taken and the date by which Franchisee projects that it will complete cure of such noncompliance. Upon cure of any noncompliance, the City shall provide written confirmation that such cure has been effected.

- 8.4. **Liquidated Damages:** For the violation of any of the following provisions of this Franchise, liquidated damages shall be paid by the Franchisee to the City. Any such liquidated damages shall be assessed as of the date that is sixty (60) days from the Franchisee's receipt of the Noncompliance Notice, provided that the Franchisee has not cured the noncompliance upon which the Noncompliance Notice was issued, in accordance with the procedures set forth in Sections 8.2 and 8.3 above. On an annual basis from the Effective Date, the Franchisee shall not be liable for liquidated damages that exceed ten thousand dollars (\$10,000). Liquidated damages shall be assessed as follows:

For failure to provide Cable Service as set forth in Sections 15.1-15.2	\$100 per day for each day the violation continues;
For failure to maintain and operate the Cable System in accordance with Article 12	\$100 per day for each day the violation continues (provided that such penalty shall be inapplicable if the NY PSC imposes a penalty on Franchisee for such a violation);
For failure to provide PEG Services to residents of the City specified in Section 17.4	\$100 per day for each day the violation continues;
For failure to provide City with any reports or records required by the Agreement within the time period required	\$100 per day for each day the violation continues;
For failure to carry the insurance specified in Section 19.1.	\$100 per day for each day the violation continues;
For a transfer specified in Article 7 without required approval	\$100 per day for each day the violation continues; and



- 8.4.1. Any liquidated damages assessed pursuant to this section shall not be a limitation upon any other provisions of this Franchise and applicable law, including revocation or any other statutorily or judicially imposed penalties or remedies; provided, however, that in the event that the City collects liquidated damages for a specific breach for a specific period of time, pursuant to this Section 8.4, the collection of such liquidated damages shall be deemed to be the exclusive remedy for that specific breach for such specific period of time only.
- 8.4.2. The parties agree that each case of non-compliance as set forth in this Section 8.4 shall result in damage to the City, compensation for which will be difficult to ascertain. The parties agree that the liquidated damages in the amounts set forth in this Section 8.4 are fair and reasonable compensation for such damage.
- 8.4.3. Consistent with Section 8.6 hereof, Franchisee acknowledges that, in addition to the City's right to enforce any of the monetary penalty provisions set forth herein, the City may also seek any and all remedies available to it at law and equity. Notwithstanding the foregoing, the City may waive any of the above penalties at its sole discretion.
- 8.5. Consistent with Section 8.7 below, (i) if Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (ii) if Franchisee has not remedied the alleged noncompliance within sixty (60) days or the date projected pursuant to Section 11.2(iii) above, the City shall provide Franchisee at least thirty (30) business days prior written notice of a public hearing, which will specify the time, place and purpose of such public hearing, including, whether revocation of this Franchise is a possible consequence at such hearing, and provide Franchisee the opportunity to be heard and to present evidence.
- 8.6. In the event the City, after the public hearing set forth in Section 8.7, determines that Franchisee is in default of any provision of this Franchise, the City may:
  - 8.6.1. Seek specific performance with respect to any provision, which reasonably lends itself to such remedy, as an alternative to or in addition to damages; or
  - 8.6.2. Commence an action at law for monetary damages or seek other equitable relief; or

- 8.6.3. In the case of a substantial noncompliance with a material provision of this Franchise, seek to revoke the Franchise in accordance with Section 8.7.
- 8.7. Revocation Hearing: At any designated public hearing at which the City has informed the Franchisee that revocation is a possible consequence, in accordance with the written notice requirements set forth in Section 8.1 and Section 8.2 hereof, Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, and to require the production of evidence. A complete verbatim record and transcript shall be made of such hearing for Franchisee's own use and at its sole cost and expense.
- 8.7.1. Following any public hearing at which revocation is a possible consequence, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions to the City in writing and promptly thereafter the City shall provide a written determination to the Franchisee setting forth: (1) whether an event of default has occurred under this Franchise; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Franchisee. The City shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the City determines that it will revoke the Franchise, the City shall promptly provide Franchisee with a written determination setting forth the City's reasoning for such revocation. Franchisee may appeal such written determination of the City to an appropriate court, which shall, to the extent permitted under applicable law, have the power to review the decision of the City de novo. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the City. Franchisee shall be entitled to such relief as the court finds appropriate, subject to either party's right to appeal to a higher court.
- 8.7.2. The City may, at its sole discretion, take any lawful action that it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.
- 8.8. Abandonment of Service: Franchisee shall not abandon any Cable Service or portion thereof without the prior written consent of the City and the approval of same by the NYSPC. The provisions of this Section 8.8 shall survive the expiration or earlier termination of this Agreement.

- 8.9. Upon expiration, termination or revocation of this Franchise, and in the absence of other authority, the City, in its sole discretion, may, but shall not be obligated to, direct the Franchisee, at its sole cost and expense, to remove all of the cables and appurtenant devices constructed or maintained in the public right-of-way in connection with the services authorized herein and provided to subscribers within the City, or any portion of such cables and devices designated by the City subject to the following:
- 8.9.1. the City shall have the right to inspect and approve the condition of the public right-of-way after such removal and, to the extent that the City determines that said right-of-way and other property have not been left in materially as good condition, as that prevailing prior to the Franchisee's removal of the cables and appurtenant devices, the Franchisee shall be liable to the City for the actual cost of restoring the right-of-way to said condition;
  - 8.9.2. all provisions protecting the City, including but not limited to, the liability insurance and indemnity provisions set forth herein shall remain in full force and effect during the entire period of removal and associated repair of all streets, sidewalks and other property damaged by such removal, and for not less than one hundred twenty (120) days thereafter;
  - 8.9.3. removal shall be commenced within thirty (30) days of the removal order by the City and shall be substantially completed within twelve (12) months thereafter including all reasonably associated repairs to the right-of-way;
  - 8.9.4. notwithstanding the foregoing, if Franchisee, its affiliated entities or assignees should, within six (6) months after such expiration, termination or revocation obtain certification from the FCC to operate an Open Video System or any other federal or state certification to provide service over the System the provisions relating to removal of the cables and appurtenant devices shall not apply.
- 8.10. Except as expressly provided in this Agreement or at law, Franchisee shall have no recourse against the City for any loss, expense or damage resulting from the terms and conditions of this Agreement or resulting from the City's failure to have authority to grant the rights conveyed in this Agreement. The City has made no representations or warranties hereunder and Franchisee agrees that it is relying upon its own investigation and

understanding of the power and authority of the City to grant Franchisee its rights under this Agreement.

- 8.11. If the Franchisee shall fail to perform any of its obligations under this Agreement, the City may, but shall not be obligated, to perform the same at the expense of the Franchisee: (a) immediately and without notice, in the case of emergency, and (b) in any other case, if such failure is proven by law and continues after thirty (30) days from the date of the giving of notice by the City to the Franchisee of the City's intention to perform same; provided, however, that where the Franchisee has responded to the City's notice and is diligently pursuing a cure for such failure to perform and the public health and safety are not at risk, the City shall allow the Franchisee a reasonable amount of time to correct such failure without performing such obligations of the Franchisee. In the event the City self-performs under this Section 8.11, the Franchisee shall: (a) reimburse the City for all such actual expenses within thirty (30) days of its receipt of an invoice therefore; and (b) hold the City harmless for all losses and damages, including consequential damages, to Franchisee's plant or equipment arising from such self-cure, so long as such losses and damages are not attributable to the City's gross negligence. Moreover, notwithstanding anything else contained in this Agreement, to the extent permitted by law, in no event and under no circumstances shall the City be liable to Franchisee for any incidental, special, or consequential damages. The Franchisee's or any successor's obligations under this section shall survive the expiration or earlier termination of this Agreement.

## 9. **SEVERABILITY**

- 9.1. With the exception of material provisions as defined in Section 9.2 of this Franchise, should any other section, subsection, sub-section, sentence, paragraph, term or provision of this Agreement be held invalid or unconstitutional by any court of competent jurisdiction or rendered a nullity by Federal or State legislative or regulatory action, the remaining sections, subsections, sub-sections, sentences, paragraphs, terms or provisions of this Agreement shall remain in full force and effect for the term of the Franchise.
- 9.2. For the purposes of this Section, material provisions are deemed to be those establishing the City's right to:
- 9.2.1. collect from the Franchisee a franchise fee of not more than five (5%) of gross receipts as defined herein, less any amount payable to the NYSPSC, as per Section 18;

- 9.2.2. require, that the Franchisee maintain the cable system as per Sections 11 and 12;
  - 9.2.3. require public, educational and government access grants as per Section 17;
  - 9.2.4. establish reasonable consumer protection provisions as per Part V;
  - 9.2.5. evaluate and approve transfers and assignments of the Cable System as set forth in Section 7;
  - 9.2.6. establish the effective date and term of this Franchise as described in Section 10;
  - 9.2.7. require availability of Cable Service as per Section 16 and
  - 9.2.8. the provision establishing the Franchisee's right to a level playing field as set forth by the terms and provisions of Section 36 herein.
- 9.3. If a material provision, as defined in this Section 9, is held to be invalid by a court of competent jurisdiction or rendered a nullity by Federal or state legislative or regulatory action, the Franchisee and the City shall promptly and in good faith renegotiate provisions of this Agreement affected by the loss of the aforementioned material provision to ensure that each party to this Agreement is restored, insofar as is reasonably possible, to its approximate status relative to the other as existed prior to such judicial, legislative or regulatory action.

**10. EFFECTIVE DATE AND TERM**

- 10.1. The effective date of this Agreement shall be the date this Agreement is granted a certificate of confirmation by the NYSPSC.
- 10.2. The term of this Agreement shall be ten (10) years from the effective date.
- 10.3. No later than thirty (30) months prior to the end of the term of this Agreement, City and the Franchisee agree to commence negotiations on a renewal of this Agreement. The parties shall negotiate in good faith. Such negotiations shall include (but not be limited to) monthly in-person meetings at a mutually agreed upon location. If no agreement on a renewal is reached within eighteen (18) months of the commencement of negotiations, the parties shall seek the assistance of a mutually agreed upon form of dispute resolution regarding the resolution of outstanding issues. The Franchisee or City can request the use of alternative dispute resolution to be overseen by a mutually agreed upon third party, and the

other party shall not unreasonably withhold its consent to such services. Notwithstanding this Section 10.3, the provisions herein shall not constitute a waiver by the parties to invoke their rights under Section 626 of the Communications Act, 47 U.S.C. Section 546, as amended.

## **PART II -- THE SYSTEM**

### **11. COMPLIANCE WITH FEDERAL AND STATE LAW AND REGULATIONS**

11.1. Notwithstanding any provision to the contrary herein, Franchisee is subject to and shall be governed by all applicable provisions of federal and State law as it may be amended, including but not limited to the Communications Act.

### **12. SYSTEM SPECIFICATIONS**

12.1. Subject to federal and State law and the rules and regulations of the FCC and NYSPSC, and subject to the System's capability of providing the services and facilities prescribed in this Agreement, the technical design of the System serving the City shall be at the option of Franchisee and as further described in this section.

12.2. All such construction and any subsequent maintenance, repair, or improvement of said System shall use materials of good and durable quality and shall be performed in a safe, workmanlike, thorough, and reliable manner, including, but not limited to meeting all of the following safety, construction and technical specifications and codes and standards at all times: Occupational Safety and Health Administration Regulations (OSHA); National Electrical Code (NEC) and National Electrical Safety Code (NESC) provisions; all applicable Federal, state and municipal construction requirements including rules and regulations of the FCC and NYSPSC; all applicable building, electrical and zoning codes and land-use restrictions. At all times, the Franchisee shall bear full and ultimate responsibility for the work of its contractors, independent or otherwise, and any claims for damage, misfeasance or malfeasance arising from the Franchisee's use of said contractors. In such circumstances, the City shall deal directly and solely with the Franchisee who shall take whatever actions are reasonably necessary to address and redress the City's concerns in the manner prescribed in this Agreement.

12.3. Franchisee's System shall provide for a minimum channel capacity of not less than 75 channels on the effective date of this Agreement. The exercise of this Agreement shall include reasonable efforts in good faith to

maximize the number of energized channels available to subscribers, subject to the rights and obligations granted and imposed by Federal law and regulation. Franchisee shall also include programming of interest to the Spanish-speaking population of the City.

- 12.4. The System shall incorporate equipment capable of providing standby powering of the System so as to minimize Area Outages caused by interruption of power furnished by the utility company. The standby powering equipment shall provide for automatic cut-in upon failure of the AC power and automatic reversion to the AC power upon resumption of AC power service. The equipment also shall be so designed as to prevent the standby power source from powering a “dead” utility line.
- 12.5. The design and construction of the System will include substantial utilization of fiber optic technology. In addition, throughout the term of this Franchise, Franchisee shall maintain a technologically current cable television distribution system serving the City in accordance with Section 27.1 of this Franchise.
- 12.6. The System shall be so designed as to enable Franchisee to provide service throughout the territorial limits of the City. The System shall be so constructed so as to be capable of providing service to all residential housing units throughout the territorial limits of the City at Franchisee’s costs and expense, subject to the provisions of Section 15.1. The Franchisee may extend the System to any commercial or business customer that Franchisee is authorized to serve, subject to the provisions of Section 15.1.2.
- 12.7. The cable system shall provide for the availability and operation of cablecast origination point from the public and educational building sites specified in Exhibit B of this Agreement.

**13. SYSTEM PERFORMANCE STANDARDS**

- 13.1. All signals carried by the System shall be transmitted with a degree of technical quality not less than that prescribed by the rules and regulations of the federal and state regulatory agencies having jurisdiction.
- 13.2. The cable System shall be 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 of licensed FCC operators.

**14. SYSTEM MAINTENANCE AND REPAIR**

- 14.1. Franchisee shall establish and adhere to maintenance policies that provide service to subscribers at or above the performance standards set forth herein.
- 14.2. When interruption of service is necessary for the purpose of making repairs, adjustments, or installations, Franchisee shall do so at such time and in such manner as is reasonably calculated to cause the least possible inconvenience to subscribers.
- 14.3. Franchisee shall have a local or toll-free telephone number so that requests for repairs or adjustments can be received at any time, twenty-four (24) hours per day, and seven (7) days per week.
- 14.4. The response of Franchisee to such requests shall be in accordance with Federal and State law and regulation at a minimum and, at all times, commensurate with Franchisee's responsibility to maintain service to each subscriber with the degree of quality specified herein.

**PART III -- THE SERVICE**

**15. GENERAL SERVICE OBLIGATION**

- 15.1. Franchisee shall provide service throughout the territorial and jurisdictional limits of the City upon the lawful request of any and all persons who are owners or tenants of residential or commercial property within the territorial and jurisdictional limits of the City. No person residing or conducting a business located within the City seeking to become a subscriber shall be refused service pursuant to Franchisee's terms and conditions of service, subject to the following:
  - 15.1.1. Subject to Section 15.2, all residential structures within the territorial limits of the City shall receive such service at established and verifiable monthly rates; provided, however, that nothing herein shall prohibit Franchisee from offering promotional discounts, nor shall this provision confer any authority to regulate Franchisee's rates. With the exception of customized installations, all residential structures served by aerial plant and situated within one-hundred and fifty (150) feet from the trunk or feeder cable shall receive such service at a cost no greater than the standard installation charge.



15.1.2. All commercial structures within the territorial limits of the City shall be able to receive such service, provided the owners or tenants of such structures, and such structures themselves, meet the reasonable requirements and conditions of Franchisee, for the provision of said service.

15.1.3. Franchisee shall extend the System to serve all areas of the City along public rights-of-way which have a density of twenty-five (25) homes per linear mile of aerial cable or greater, or areas with less than 25 homes per linear mile of aerial cable where residents agree to a contribution-in-aid-of construction as per the standards established in Section 895.5 of the rules and regulations of the NYS PSC.

15.2. Franchisee shall not unlawfully discriminate against any person as to the availability, maintenance, and pricing of Cable Service. Access to Cable Service will not be denied to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides. Nothing herein shall be construed to limit the Franchisee's ability to offer or provide bulk rate discounts where applicable, to the extent permitted under federal and State law. Moreover, nothing contained herein shall prohibit Franchisee from making available discounted rates for installation and services for special categories of subscribers including, but not limited to, the financially disadvantaged, senior citizens, the physically challenged and not-for-profit organizations. The City encourages Franchisee to make such discounted rates available to such special categories of subscribers in order to encourage the fullest distribution and availability of cable programming and information services.

## **16. MUNICIPAL AND SCHOOL SERVICE**

16.1. Upon written request from City, Franchisee shall provide one (1) standard installation of broadcast basic cable television service without installation or monthly service charge to one (1) receiver location in each municipal building, school, library and bona fide municipal senior citizens center specified in Exhibit A of this Agreement.

16.1.1. Franchisee shall, without charge, provide a minimum of one (1) standard aerial connection for basic service, as provided below, at the location designated by the appropriate official as the location of the "headend" of the internal R.F. distribution system of each Municipal office building, Library, School and municipal senior centers within the City (hereinafter singly or collectively referred to

as the “premises”). Relocations of such installations shall be made in writing to Franchisee by the appropriate school officials and shall be performed at the Franchisee’s cost , unless such installation is attributable solely to the City’s preference of location. Franchisee shall make a connection of one outlet in each such premise for the purpose of enabling the said premises to distribute the basic cable television service. Moreover, on written notice from the City’s Superintendent of Schools or from the Corporation Counsel’s Office of the City of Yonkers, Franchisee shall meet with the Superintendent, or his or her designee to discuss in good faith the Superintendent’s request for any further additional drops per school upon a showing of demonstrated need and to the extent technically practicable and economically reasonable.

16.1.1.1. Franchisee shall make such tie-in and connection at the location designated by the appropriate official as the location of the internal R.F. distribution system of the premises. The responsibility of Franchisee shall terminate when the tie-in and connection to the internal R.F. distribution system is completed, and the responsibility for performance of the internal R.F. distribution system, and for distribution of the transmissions throughout such system shall be solely that of the administrator of the premises. Franchisee makes no representation or warranty as to the ability of such distribution system to carry the programs transmitted over its Cable System. However, Franchisee will offer, without charge, reasonable technical consulting services to the premises in order to make the internal system work effectively for the purpose intended herein.

16.1.1.2. In addition to making the installation, Franchisee at its sole expense, and if necessary for the building to receive service, will provide to each building so connected, a single electronic device, defined as a cable television tuner, descrambler or converter or functional equivalent, capable of receiving such service. In the event that Franchisee provides free service and a free device to multiple locations within certain buildings in the City, it shall only be required to provide more than one device to each connected building pursuant to this Section 16.1.1.2 in the circumstances where the building in question has multiple locations that are receiving free service as of the date of execution of this

Agreement, and the additional devices to be supplied shall be limited to replacing defective or obsolescent devices (as necessary) already in place as of the date of execution of this Agreement.

16.1.2. For purposes of this Section 16, a standard installation is an installation where Franchisee is serving the area and the premises to be connected with an aerial installation is located fewer than 500 feet from the nearest trunk or feeder cable and there are no access or safety problems posed by such installation. For non-standard installations, the cost of the aerial cable installation beyond 500 feet will be paid by the recipient. For underground installations, Franchisee shall charge the recipient its actual cost. Such costs shall be submitted to said recipient, in writing, before installation is begun.

16.1.3. As used in this Agreement, the terms:

16.1.3.1. "School" shall mean those educational institutions within the City licensed, chartered by the New York State Board of Regents pursuant to the New York Education Law; and

16.1.3.2. "Library" shall mean a library established for free public purposes by official action of a City, district, or the legislature, where the whole interest belongs to the public, provided, however, that the term shall not include a professional, technical or public school library.

16.1.3.3. "Municipal office buildings" shall mean the City Hall, its police, fire or ambulance corps buildings, and such other municipal buildings as specifically designated in Exhibit A herein.

16.2. Franchisee shall provide to the City at a point of connection agreeable to the City, free of charge, one (1) high-speed cable modem (together with standard installation of same), all appurtenant equipment and free monthly Internet access service, including a standard installation, to a minimum of one input location (personal computer; local area network input device or equivalent) in the locations specified in Exhibit A of this Agreement, including: (i) City Hall, (ii) the municipal building location at 87 Nepperhan Avenue, or its replacement as designated in writing by the City (iii) at a total of three (3) locations reasonably requested by the City for

Police, Fire and Parks Departments of the City and (iv) at each of the schools and libraries specified in Exhibit A of this Agreement to receive basic Optimum Online, or its successor service, provided by Franchisee. The City shall be permitted, at its own cost, to network up to three (3) additional personal computer terminals in the designated buildings (four computers in total for each location) to the cable modem provided by Franchisee. Notwithstanding same, Franchisee shall permit the schools and libraries receiving such modems, at their own cost, to network the cable modem to up to ten (10) personal computer terminals at such school and library locations. Use of the high-speed cable modem services in this Section 16.2 shall be subject to Franchisee's standard use policies, as may be amended from time to time, and shall be used only with modems and related equipment provided by Franchisee.

- 16.3. In the event that additional municipal and school district locations are established within the City which are entitled to the installation, equipment and services described in Section 16.1 above, it shall so notify Franchisee in writing. Franchisee shall perform standard installation, provide equipment and extend services to each such building within sixty (60) days of notice. For non-standard installations, Franchisee shall complete such installations within a reasonable time period, to be agreed upon by the parties, from receipt of the City's written request. The City shall make timely notification to Franchisee, so Franchisee may benefit by collaboration with construction and/or telecommunications contractors preparing the building for occupation. Franchisee shall be entitled to deduct the sum of Seven Hundred Fifty Dollars (\$750) per additional location as a credit against its next franchise fee payment due the City.
- 16.4. Franchisee shall diligently and in good faith work with the MIS Department of the City of Yonkers to provide and maintain a connection between City Hall and 87 Nepperhan Avenue, or its replacement as designated in writing by the City to enable the City to connect the City's broadcasts to the City's website, including a receiver (or demodulator) and recordable DVD, however, in no event shall the obligation to the Franchisee to provide and maintain the connection described in this section exceed five thousand dollars (\$5,000) in any calendar year. It shall be the City's responsibility to provide and pay for all other internal wiring and electrical work. The City acknowledges that the connection required by this Section 16.4 has already been provided by Franchisee.

- 16.5. Franchisee shall work in good faith to assist the City in its efforts to secure discounted rates for data transmission services offered by any affiliate of the Franchisee in Westchester County. Upon request of the City, Franchisee will facilitate these discussions with its affiliate company or companies and provide information to the City about the availability of such discounted rates.
- 16.6. Franchisee confirms and the City acknowledges that the Franchisee has constructed and activated a direct-connection to a node that connects to its headend and the School District studio located at Roosevelt High School. The connection shall be specifically reserved for the transmission of educational access programming from the studio location to Franchisee's headend, for retransmission onto its subscriber distribution system. Franchisee shall support, maintain and operate said connection at its own expense. Such connection shall be for the sole benefit of Franchisee's subscribers.

**17. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS**

- 17.1. Franchisee shall comply with applicable Federal and State law, rules, and regulations requiring and pertaining to public, educational, and governmental (PEG) access to the System.
- 17.2. Franchisee shall provide the City and the residents of the City with equitable access to all non-commercial PEG access services provided by Franchisee as part of its PEG access policy. Should Franchisee's said policies be inconsistent with the standards established in Section 895.4 of the rules of the NYSPSC pertaining to non-commercial governmental, educational or public access, such rules shall govern.
- 17.3. In consideration for the rights granted in this Agreement, Franchisee shall provide:
  - 17.3.1. An initial PEG capital grant to the City in the amount of Three Hundred Fifty Thousand, Dollars (\$350,000) (the "Initial PEG Capital Grant"), which shall be payable within sixty (60) days of the Effective Date.
  - 17.3.2. In addition to the Initial PEG Capital Grant, and upon each annual anniversary of the Effective Date, and within thirty (30) days of same, Franchisee shall pay to City an annual grant (the "Annual PEG Capital Grant") in the amount of Forty Thousand Dollars

(\$40,000.00), for a total Annual PEG Capital Grant in the Amount of Four Hundred Thousand Dollars (\$400,000).

- 17.3.3. The Initial PEG Capital Grant and each Annual PEG Capital Grant shall be used by the City exclusively for PEG costs, including, but not limited to, costs for studio facilities, studio and portable production equipment, editing equipment, program playback equipment, and other PEG costs as may be ascertained by the City.
- 17.4. Subject to applicable rules and regulations of the FCC and the NYSPSC, Franchisee shall provide capacity on its lowest tier of service available to all subscribers for up to:
  - 17.4.1. one dedicated educational access channel;
  - 17.4.2. one dedicated public access channel; and
  - 17.4.3. one dedicated governmental access channel.
- 17.5. The City shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the City from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel; provided, however, that nothing herein shall be construed to require the City to indemnify the Franchisee pursuant to this Section. The City shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. §531.
- 17.6. In accordance with 47 U.S.C. §558, the Franchisee shall not incur any liability arising from or in connection with any PEG Channels unless the programming carried on the PEG Channels involves obscene material.
- 17.7. The provisions in this Section 17 related to support for PEG shall be competitively neutral when compared to such requirements as may be contained in any other cable television franchise granted by the City and shall not be part of the franchise fee provided for in Section 18 of this

Agreement; provided, however, that nothing herein shall be construed to alter or waive any federal or state law applicable to a determination of what is considered a franchise fee.

## **PART IV -- FRANCHISEE'S OBLIGATIONS TO THE CITY**

### **18. FRANCHISE FEE**

- 18.1. Beginning within thirty (30) days of the effective date of this Agreement, Franchisee shall pay to the City during the term of this Agreement an annual sum equal to three percent (3%) of Franchisee's Gross Receipts; as such term is defined in Section 1.13 of this Agreement. The City, in its sole discretion, may elect to raise the percentage specified up to a maximum Franchise fee of five percent (5%) or the then highest percentage permitted by law; provided, however, that the City may make such a change in the Franchise fee percentage no more than once in any year and only after giving the Franchisee at least ninety (90) days' advance written notice before such a change would take effect. If at any time during the duration of this Agreement, the City chooses to increase the Franchise Fee pursuant to this Section 18.1, it may only do so if all other franchisees providing Cable Service in the franchise area are required to pay a franchise fee at the same or higher rate as the proposed Franchise Fee. Such payment shall be made on a quarterly basis for the periods January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31. Each such payment shall be due no later than sixty (60) days after the close of each such period. In the event that said payments are not received within sixty (60) days after the close of each such quarterly period, following at least thirty (30) days written notice from the City that the fee has not been received, Franchisee shall pay interest of nine percent (9%) per annum on the amount not remitted to the City retroactive to the first day that such payment was due.
- 18.2. Each quarterly payment shall be accompanied by a report prepared by Franchisee setting out the basis for the computation of the payment.
- 18.3. Subject to the confidentiality requirements set forth in this Agreement, not more than once every two (2) years (unless mutually agreed to by both parties), Franchisee shall be responsible for making available to the City for inspection and audit all records necessary to confirm the accurate payment of Franchise Fees, whether records are held by the Franchisee or an Affiliate, or any other entity that collects and receives funds related to the Franchisee's Cable Service operation in the City subject to the

payment of Franchise Fees under this Agreement, including, by way of illustration and not limitation, any entity that sells advertising on the Franchisee's behalf. Franchisee shall maintain such records for a period of six (6) years, provided that, if the City commences an audit within that six (6) year period, Franchisee shall continue to maintain such records for the duration of any audit in progress at the end of that six (6) year period. The City shall conduct its audits expeditiously, and neither the City nor the Franchisee shall unreasonably delay the completion of an audit. Such records may be independently audited by an entity appointed by the City at the City's expense (in addition to the audit that may be requested by the PSC). However, in the event the audit concludes that Franchisee's payments hereunder were underpaid by an amount greater than 3% of the proper payment, then, in addition to making any additional payments required to bring Franchisee into compliance with this Section, the City shall collect reasonable and customary costs of the audit to be paid by Franchisee to the City within sixty (60) days following written notice to Franchisee by the City of the underpayment, which notice shall include a copy of the audit report; provided, however, that Franchisee's obligation to pay or reimburse the City's audit expenses shall not exceed an aggregate of Fifty Thousand Dollars (\$50,000). If re-computation results in additional revenue to be paid to the City, such amount shall be subject to interest charges computed from the due date, at the then-current rate set forth in Section 5004 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) during the period such unpaid amount is owed. If the audit determines that there has been an overpayment by Franchisee, the Franchisee may credit any overpayment against its next quarterly payment. Said audit shall be conducted by an independent third party and no auditor so employed by the City shall be compensated on a success based formula, e.g., payment based on a percentage of an underpayment, if any. The accuracy or validity of the conclusion and assessment in this section are subject to Franchisee's right to contest such findings with the auditor, the City or in any appropriate legal or administrative action.

- 18.4. No acceptance of any such payment shall be construed as an accord that the payment is the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under this Agreement. Nothing herein shall be construed in such a way to affect a waiver by either party of applicable statutes of limitation with respect to franchise fee payments.
- 18.5. The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by the Franchisee is due and, during such six (6) year



period, Franchisee shall maintain all records necessary to confirm the accurate payment of Franchise Fees.

- 18.6. The amount and method of calculation of the franchise fees paid by Franchisee pursuant to this Agreement shall be competitively neutral compared to the amount and method of calculation of a franchise fee contained in any other cable television franchise granted by City.

**19. INDEMNITY AND INSURANCE**

- 19.1. Franchisee shall purchase and maintain the following levels of general liability insurance and a supplementary policy of excess liability insurance or umbrella coverage during the term of this Agreement that will protect Franchisee and the City from any claims against either or both which may arise directly or indirectly as a result of Franchisee's performance hereunder:

19.1.1. Commercial General Liability Insurance in the amount of two million dollars (\$2,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System.

19.1.2. Automobile Liability Insurance in the amount of two million dollars (\$2,000,000) combined single limit for bodily injury and property damage coverage

19.1.3. Excess liability or umbrella coverage: \$10,000,000.

19.1.4. Workers' Compensation Insurance as required and in conformity with all legal requirements of the State of New York.

19.1.5. Employers' Liability Insurance per the statutory limits required by the Laws of New York State.

- 19.2. Franchisee shall indemnify, defend and hold harmless the City, its officers, employees, and agents from and against all losses and claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description, resulting from bodily injury, property damage or personal injury, brought or recovered, by any act or omission of Franchisee, its agents, employees, contractors and subcontractors in the construction, operation, maintenance, service or repair of the communications System or any portion thereof, or of any failure to comply with any of the provisions of this Franchise Agreement applicable to Franchisee or any failure to comply with any law, ordinance, or regulation, or by reason of any suit or claim for royalties, license fees, or infringement of patent rights arising

from Franchisee's performance under this Agreement. Notwithstanding any provision contained herein and to the contrary, Franchisee shall not indemnify the City for any damages, liability or claims resulting from the willful misconduct or gross negligence of the City, its officers, agents, employees, 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 except as provided in Section 17.6. With respect to Franchisee's indemnity obligations set forth in this Subsection 19.2, Franchisee shall provide the defense of any claims brought against the City by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the City, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the City from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the City, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the City and the City does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the City shall in no event exceed the amount of such settlement.

- 19.3. Each insurance policy shall bear the name of the City as an additional insured.
- 19.4. All Franchisee insurance policies and certificates of insurance shall stipulate that the coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the City. If any policy is canceled, it shall be replaced forthwith with insurance that meets the requirements of this Agreement so that there is no lapse in coverage.
- 19.5. Upon written request, Franchisee shall furnish to the City copies of certificates of insurance in conformity with the requirements of this Franchise Agreement.
- 19.6. All insurance coverages shall be subject to the reasonable approval of the City as the form of the policies and certificates of insurance. Franchisee shall obtain all insurance required pursuant to this Agreement from companies authorized to do business within the state of New York and approved by the Superintendent of Insurance, which companies shall maintain a rating of at least Best's A-. The City may, at any time after

reasonable written notice, review Franchisee's compliance with the provisions of this Section. In the event Franchisee's insurance carrier is downgraded to a rating of lower than Best's A-, Franchisee shall have ninety (90) days to obtain coverage from a carrier with a rating of at least Best's A-.

- 19.7. The City shall be responsible for its own acts of willful misconduct, negligence, or breach subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify the City for acts of the City which constitute willful misconduct, negligence or breach on the part of the City, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.
- 19.8. Consistent with 47 U.S.C. 555a, in any court proceeding pending on or initiated after the Effective Date hereof, involving any claim against the City arising from the regulation of Cable Service pursuant to this Franchise, or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of this Franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

**20. RATES AND CHARGES**

- 20.1. Rates and charges imposed by Franchisee for cable television service shall be subject to regulation in accordance with Federal law.
- 20.2. Franchisee shall comply with all notice requirements contained in federal and State law, rules, and regulations pertaining to rates and charges for cable television service.
- 20.3. Franchisee shall provide a one-time grant to the City in the amount of Seventy Thousand Dollars (\$70,000) for the use of bona fide municipal senior citizen facilities in the Service Area, which shall be payable within sixty (60) days of the Effective Date.
- 20.4. Franchisee shall not unlawfully discriminate against individuals or classes or individuals in the establishment and application of its rates and charges for service.

**21. EMPLOYMENT PRACTICES**

21.1. Franchisee will not refuse to hire, nor will it bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions, or privileges of employment because of age, race, creed, color, national origin, or sex.

**22. CITY'S RIGHT TO INQUIRE ABOUT SYSTEM**

22.1. City, at any time, may make reasonable inquiries related to its regulatory responsibilities concerning the operation of the System. Franchisee shall respond to such inquiries in a timely fashion. Consistent with the requirements of the Cable Law and 47 C.F.R 76.601, the NY PSC may order, and the City shall have the right and authority to request that the NY PSC order, the Franchisee to test, analyze, and report on the performance of the System. The City shall have the right to witness and/or review all required tests on newly constructed or rebuilt segments of the Cable System. If the City employs a third party consultant or independent contractor to witness and/or review the tests on the City's behalf, such consultant or contractor shall be required execute a binding nondisclosure agreement.

22.2. Franchisee represents and warrants that its installation and construction personnel and contractors shall at all times conduct themselves and perform their installation and construction work in a professional, quality manner.

22.3. The City shall have the right to inspect all construction work subject to the provisions of this Agreement and to make such tests as it shall find necessary to ensure compliance with the terms of this Agreement and other pertinent provisions of law.

22.4. At all reasonable times and for the purpose of enforcement of this Agreement. Franchisee shall permit examination by any duly authorized representative of the City, of all System facilities, together with any appurtenant property of Franchisee situated within the City and outside of the City if such property is utilized in the operation of the System serving the City.

22.5. The City shall treat all non-publicly available information submitted to it pursuant to this Section 22 as proprietary and confidential, subject to valid requests for such information under Article 6 of the Public Officers Law.

**23. CITY'S RIGHT TO INSPECT FRANCHISEE'S BOOKS AND RECORDS**

23.1. Upon no less than thirty (30) business days written notice to the Franchisee, City shall have the right to inspect all books, records, maps, plans, financial statements and other like material of Franchisee pertaining to the Franchisee's provision of Cable Service in the Franchise Area, as are reasonably necessary to ensure compliance with the terms of this Franchise, at any time during normal business hours and on a non disruptive basis. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City. Any records inspected by the City pursuant to this Section 23 shall be made available by Franchisee to the City in a mutually agreeable format and at a designated office of the Franchisee in Westchester County. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to publicly disclose or allow the City to copy information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. Any such proprietary or confidential information disclosed to the City shall be treated by the City as proprietary and confidential under Section 87(2) (d) of the New York Public Officers Law and the City shall only disclose such information to its employees, representatives, and agents who have a need to know, or in order to enforce the provisions hereof. For purposes of this Section, "proprietary or confidential" information includes, but is not limited to: information related to the Cable System design; trade secrets; Subscriber lists; marketing plans; financial information unrelated to the calculation of Franchise Fees; or other information that is reasonably determined by the Franchisee to be competitively sensitive. If the City receives a request under FOIL or similar law for the disclosure of information that Franchisee has designated as confidential, trade secret or proprietary, the City shall notify Franchisee of such request. If City determines in good faith that public disclosure of the requested information is required under FOIL or pursuant to a court order, City shall so notify Franchisee and before making disclosure shall give Franchisee a reasonable period of time to seek to obtain judicial redress to preclude public disclosure. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

23.2. If any of such information is not kept in the City, or upon notice Franchisee is unable to provide the records in the City, and if the City shall determine that an examination of such maps or records is necessary or

appropriate to the performance of the City's responsibilities under this Agreement, then all travel and maintenance expenses, in excess of fifty-five miles (55) miles per day, necessarily incurred in making such examination shall be paid by Franchisee. The City shall treat all non-publicly available information submitted to it pursuant to this Section 23 as proprietary and confidential, subject to valid requests for such information under Article 6 of the Public Officers Law.

**24. REPORTS TO BE FILED BY FRANCHISEE WITH THE CITY**

- 24.1. On written request, Franchisee shall make available to the City a copy of any technical, operational, or financial report or filing the Franchisee submits to the NYSPSC, the FCC, or other governmental entities that concern Franchisee's operation of the System in the City.
- 24.2. On written request, Franchisee shall furnish to the City such additional information and records with respect to the operation, affairs, transactions or property of the System in the City, and the Cable Service provided to the City under this Agreement, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the City in connection with this Agreement.
- 24.3. Franchisee shall file with the City, simultaneously with mailing to subscribers in the City, copies of all printed materials prepared for general distribution to subscribers.

**25. MANDATORY RECORD KEEPING**

- 25.1. Franchisee shall comply with all record keeping requirements established by Federal and State law, rules, and regulation.
- 25.2. The Franchisee shall maintain a full and complete set of plans, records, and "as built" maps showing the exact location of all cable installed or in use in the City, exclusive of subscriber service drops.
- 25.3. All records, logs, and maps maintained pursuant to this Agreement shall be made available to the City or its designee during Franchisee's regular business hours upon reasonable request
- 25.4. The City shall treat all non-publicly available information submitted to it pursuant to this Section 25 as proprietary and confidential, subject to valid requests for such information under Article 6 of the Public Officers Law. Such records shall be made available for inspection purposes only to those persons within the City who require access to such information in order to perform their duties on behalf of the City.

**26. MUNICIPAL EMERGENCIES**

26.1. Franchisee shall comply with all Federal and State Emergency Alert System (“EAS”) requirements in order that emergency messages may be distributed over the Communications System.

**27. CITY’S RIGHT TO COMPARABLE SERVICES**

27.1. Franchisee agrees that the capabilities of the System shall be maintained technologically current throughout the duration of the Franchise, as compared with other systems in Westchester County of comparable size operated by the Franchisee. Franchisee further agrees that it will exercise reasonable efforts to deploy the same or comparable Cable Services, including the same or similar number of available channels and categories of programming, in the City that are provided to other similarly situated communities operated by Franchisee, or any Affiliate of Franchisee, in Westchester County, on other than a trial or test basis. This requirement shall be subject to Franchisee’s reasonable right to determine the commercial practicality of providing such Cable Service in the City, including its ability to obtain a reasonable rate of return on investment over the remaining term of the Franchise.

**PART V -- FRANCHISEE’S OBLIGATIONS TO SUBSCRIBERS AND CUSTOMER SERVICE REQUIREMENTS**

**28. COMPLIANCE WITH FEDERAL AND STATE LAW AND REGULATION**

28.1. Franchisee shall comply with all Federal and State laws and regulations including but not limited to Occupational Safety and Health Administration Regulations (OSHA); National Electrical Code (NEC) and National Electrical Safety Code (NESC) provisions; all applicable federal, state and municipal construction requirements including rules and regulations of the FCC and NYSPSC; all applicable building, electrical and zoning codes and land-use restrictions as well as federal and state consumer service requirements that regulate Franchisee’s customer service responsibilities. In the event of conflicting provisions, Franchisee shall comply with the provision establishing a stricter standard.

**29. EMPLOYEE IDENTIFICATION TRAINING**

29.1. Each employee of Franchisee entering upon private property, including employees of contractors and subcontractors employed by Franchisee, shall have on their person, and shall produce upon request, picture

identification that clearly identifies the person as a representative of Franchisee and, notwithstanding any local law, shall display such identification when entering upon private property for the purpose of installing, repairing, soliciting or removing services.

- 29.2. Franchisee shall provide proper training for employees and shall institute policies and procedures that foster courteous and professional conduct.
- 29.3. All vehicles of the Franchisee entering upon private property or transporting employees who are about to enter upon private property, including those of contractors and subcontractors employed by the Franchisee, shall be clearly and consistently identified with the Franchisee's name and logo.
- 29.4. Franchisee shall prominently display its corporate logo or name at all sites within the City where Franchisee or a contractor or subcontractor of Franchisee is performing work within the public rights of way. Franchisee represents that it will defend, indemnify and hold the City harmless for any damage, claim, injury or cause of action against the City instituted by third parties or for any damage, claim, cause or action or injury caused to the City or to any of its employees arising from the negligent or intentional acts or omissions of Franchisee's contractors and subcontractors while acting on behalf of Franchisee.

### **30. REQUIREMENT FOR ADEQUATE TELEPHONE SYSTEM**

- 30.1. Franchisee shall utilize a 24-hour telephone system that shall meet, at a minimum, performance standards set by Federal and State law and regulations.
- 30.2. Franchisee shall have the ongoing responsibility to insure that the telephone system utilized meets the customer service needs of its subscribers. In evaluating the performance of Franchisee under this section, the City may review telephone systems in use in other jurisdictions by other cable companies, cable industry-established codes and standards, pertinent regulations in other jurisdictions, evaluations of telephone system performance commonly used in the industry, and other relevant factors.

### **31. CUSTOMER SERVICE REQUIREMENTS**

- 31.1. Franchisee shall comply with the consumer protection and customer service standards set forth in Parts 890 and 896 of the NY PSC rules and regulations.



- 31.2. Franchisee shall ensure that the subscriber's premises are restored to their pre-existing condition if damaged by Franchisee's employees or agents in any respect in connection with the installation, repair or disconnection of cable service.
- 31.3. All customer complaint resolution services and product user guides and self-install maps shall be equally available in English and in Spanish.

## **PART VI -- GUARANTEE OF FRANCHISEE'S PERFORMANCE**

### **32. PERIODIC PERFORMANCE EVALUATION SESSIONS**

- 32.1. Upon thirty (30) days prior notification by the City, Franchisee shall be prepared to participate in a meeting or series of meetings evaluating the performance of Franchisee under this Agreement. The timing of such performance evaluation sessions shall be solely in the discretion of the City; however, each such session shall not be initiated sooner than one year after the close of a previously conducted performance evaluation session. Franchisee shall not be required to disclose any confidential or proprietary information at any Performance Review held in a public forum. To the extent Franchisee identifies any information addressed at a Performance Review as confidential or proprietary, Franchisee shall cooperate with the City to arrange a meeting with designated City representatives in an informal non-public forum to review any such confidential or proprietary information to the extent necessary to effectuate the objectives of this Section 33.1; provided, however, that the information disclosed to the City by the Franchisee at any such informal non-public meeting shall be treated by the City as confidential; and provided further that Franchisee shall cooperate with the City to provide for review of the confidential and non-confidential information and documents as the City may reasonably need to conduct its Performance Review.
- 32.2. Topics which may be discussed at any performance evaluation session shall be related to the operation of the System in the City, and may include, but not be limited to, System performance, compliance with this Agreement and applicable law, customer service and complaint response, subscriber privacy, services provided, programming offered, fees described in this Agreement, local taxes and penalties, free or discounted services, applications of new technologies, and judicial, federal or State filings.
- 32.3. During review and evaluation, Franchisee shall fully cooperate with the City and shall provide such information, and documents, as the City may reasonably need to perform its review.

- 32.4. Within thirty (30) days after the conclusion of the Performance Review, the City shall provide Franchisee written documentation (“Performance Review Report”) setting forth its determinations regarding Franchisee’s compliance with the terms and conditions of this Franchise. The Performance Review Report shall not contain any confidential information disclosed by the Franchisee during the Performance Review. Each performance evaluation session shall be deemed to have been completed as of the date the City issues a final report on its findings.
- 32.5. No such evaluation session may be the basis of a revocation proceeding, nor shall notice to Franchisee of such a session constitute the notice required under Section 8 of this Agreement.

**33. NOTICE**

- 33.1. Notices required under this Agreement shall in writing and shall be mailed, first class, postage prepaid, to the addresses below. Either party may change the place where notice is to be given by providing such change in writing at least thirty (30) days prior to the time such change becomes effective. The time to respond to notices under this Agreement shall run from receipt of such written notice.
- 33.2. Notices to the Franchisee shall be mailed to:

Cablevision Systems Westchester Corporation  
6 Executive Plaza  
Yonkers, NY 10701-6832  
Attention: Director of Government Affairs, Suburban New York

With a copy to:

Cablevision Systems Corporation  
1111 Stewart Avenue  
Bethpage, NY 11714  
Attention: Legal Department

Notices to the City shall be mailed to:

City of Yonkers  
40 South Broadway  
Yonkers, New York 10701  
Attention: Corporation Counsel

With a copy to:  
City of Yonkers

40 South Broadway  
Yonkers, New York 10701  
Attention: Mayor's Office

**34. SECURITY**

- 34.1. The Franchisee shall continue to maintain during the entire term of this Agreement and at its sole cost and expense, the performance bond in the sum of twenty-five thousand (\$25,000.00) dollars in a form satisfactory to the City to guarantee the faithful performance by the Franchisee of its obligations under this Agreement.
- 34.2. In the event the Franchisee chooses to satisfy this obligation with a security fund, within thirty (30) days of any withdrawal from the security fund made pursuant to this Agreement, the Franchisee shall restore said fund to the full amount prescribed in this section.
- 34.3. If the Franchisee fails to pay to the City the amount of any penalty or fine as provided herein, or if the City is compelled to pay for any damages, costs or expenses because of any breach of this Agreement by the Franchisee and the Franchisee fails to repay the City within thirty (30) days of written notification that a payment is due, then the City may withdraw the necessary or prescribed amount from the performance bond and utilize said amount for the purpose delineated in this Agreement.
- 34.4. In the event the performance bond is forfeited to the City in whole or in part because of the failure of the Franchisee to perform as hereinabove set forth, the Franchisee shall have twenty (20) business days after receipt of written notice from the City that such collateral has been forfeited in whole or in part, to replace the collateral so forfeited.

**35. EFFECT OF CITY'S FAILURE TO ENFORCE FRANCHISE PROVISIONS**

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

- 35.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise, the Cable Law or other applicable state or federal law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or a waiver of performance of this Agreement, nor shall it excuse the City from performance, unless such right or such performance has been specifically waived in writing.
- 35.3. Any penalties or claims arising out of any breach of this Agreement shall be effective from the date such breach is found to have commenced and notice is provided. Franchisee's responsibility to cure any such breach or remit any such penalties shall not be diminished by the failure of the City to enforce any provision of this Agreement.

**36. COMPETITIVE FAIRNESS**

- 36.1. In the event that the City grants one (1) or more franchise(s) or similar authorizations for the construction, operation and maintenance of any cable communications facility which shall offer services substantially equivalent to services offered by Franchisee, it shall not make the grant on more favorable or less burdensome terms.
- 36.2. In the event that a non-franchised multi-channel video programmer/distributor provides service to residents of the City, the Franchisee shall have a right to petition for Franchise Agreement amendments that relieve the Franchisee of burdens in this Agreement that create a competitive disadvantage to the Franchisee. Such petition shall: i) indicate the presence of a non-franchised competitor(s); ii) identify the basis for Franchisee's belief that certain provisions of the Agreement place Franchisee at a competitive disadvantage; iii) identify the provisions of this Agreement to be amended or repealed in order to eliminate the competitive disadvantage. The City shall not unreasonably deny Franchisee's petition.

**37. APPROVAL OF THE NYSPSC; APPLICABLE LAW**


- 37.1. The terms of this Agreement, and any subsequent amendments hereto, are subject to applicable federal, state and local law, the Rules and Regulations of the FCC, the NYSPSC, and any other applicable regulatory body with appropriate jurisdiction, as such may be amended from time to time. Further, the terms of this Franchise Agreement and any subsequent amendments are subject to the approval of the NYSPSC.

**38. ENTIRE AGREEMENT; APPLICABLE LAW**

- 38.1. This Agreement, including any schedules or exhibits attached hereto, contains the entire understanding of the parties and supersedes any and all agreements, whether written or oral, relating to the subject matter hereof, provided, however, that the City hereby reserves all the rights it may have as a result of any violation by the Franchisee of any prior Franchise Agreement entered into between the parties, or any extensions or amendments thereto.
- 38.2. This Agreement shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement as of the date written below.


**City of Yonkers**

By:   
Philip A. Amicone, Mayor

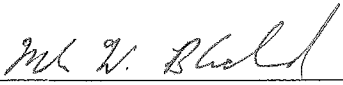
Date: 11/16/11

**Cablevision Systems Westchester Corporation**

By:   
Adam Falk, Area Vice President, Suburban New York

Date: 12/15/11  


Approved as to form:

  
, Corporation Counsel

## Exhibit A

### CABLEVISION'S FREE SERVICE LOCATIONS (94 INDIVIDUAL BUILDING LOCATIONS)

#### Municipal Videos

Firehouse #12 75 Fortfield Ave Yonkers, NY 10701	Firehouse #14 2187 Central Park Ave. Yonkers, NY 10710	Firehouse #10 573 Saw Mill River. Rd. Yonkers, NY 10701
DPW Command Center 255 Lake Ave. Yonkers, NY 10701	Firehouse # 8 571 Warburton Ave. Yonkers, NY 10701	Firehouse #13 340 Kimball Ave. Yonkers, NY 10704
Firehouse # 6 86 Oak Street Yonkers, NY 10705	Firehouse #3 98 Vark Street Yonkers, NY 10701	PD #1 / Training 730 E. Grassy Sprain Road Yonkers, NY 10710
Winchester Arms Club Winchester Drive Yonkers, NY 10710	No YO Preservation 219 Ridge Ave. Yonkers, NY 10703	Fire Dept (HQ / Firehouse #1) 5-7 New School Street Yonkers, NY 10701
Firehouse #11 433 Bronxville Road Yonkers, NY 10710	PD #3 / Chema Comm Ctr 435 Riverdale Ave. Yonkers, NY 10705	WARC 567 Yonkers Ave. Yonkers, NY 10704
YO Comm Action Prog 164 Ashburton Ave. Yonkers, NY 10701	Continuing Education 75 Riverdale Ave Yonkers, NY 10705	Coyne Park Range 771 McLean Ave. Yonkers, NY 10704
Parks & Recreation 285 Nepperhan Ave. Yonkers, NY 10701	Coyne Pk Comm Ctr 777 McLean Ave Yonkers, NY 10704	Yonkers City Hall 40 South Broadway Yonkers, NY 10701
Yonkers Police Dept 104 South Broadway Yonkers, NY 10701	Hudson River Museum 511 Warburton Ave. Yonkers, NY 10701	YO City Hall – Annex 87 Nepperhan Ave. Yonkers, NY 10701
Cola Community Ctr 945 Broadway Yonkers, NY 10701	YO Office for Aging. 2 Park Ave Yonkers, NY 10701	Yonkers PAL 127 Broadway Yonkers, NY 10701

### Exhibit A (Cont.)

Scotti Comm Ctr  
680 Bronx River Road  
Yonkers, NY 10704

PD#2 / Firehouse #7  
441 Central Park Ave.  
Yonkers, NY 10704

DPW – Sewer Dept  
735 Saw Mill River Rd.  
Yonkers, NY 10710

PD Comm Aff / Fire. #4  
36 Radford St.  
Yonkers, NY 10705

PD #4 / Firehouse #9  
53 Shonnard Pl.  
Yonkers, NY 10703

DPW – Recycling Center  
725 Saw Mill River Rd  
Yonkers, NY 10710

Nodine Comm Ctr  
140 Fillmore St  
Yonkers, NY 10701

DPW  
170A Saw Mill Road  
Yonkers, NY 10701

Mayor's Help Ctr / PD  
28 Wells Ave  
Yonkers, NY 10701

PD – Fleet & ESU  
1106 Yonkers Ave  
Yonkers, NY 10704

PD – Property  
160 Saw Mill River Rd  
Yonkers, NY 10701

DPW – Water Plant  
1070 Nepperhan Ave  
Yonkers, NY 10703

DPW – Vehicle & Refuse  
1130 Nepperhan Ave  
Yonkers, NY 10703

Veterans Services  
120 Main Street  
Yonkers, NY 10701

Jail  
26 Alexander Street  
Yonkers, NY 10701

### School / Library Videos

Will Library  
1500 Central Park Ave.  
Yonkers, NY 10710

Bd of Ed / Riverfront Lib  
1 Larkin Center  
Yonkers, NY 10701

Hudson View Academy  
170 Hudson Terrace  
Yonkers, NY 10701

Foxfire School  
1061 No Broadway  
Yonkers, NY 10705

P.S. #31  
7 Ravenswood Rd.  
Yonkers, NY 10710

School #14  
60 Crescent Place  
Yonkers, NY 10704

Lincoln High School  
375 Kneeland Ave.  
Yonkers, NY 10704

Emerson Grade School  
160 Bolmer Ave.  
Yonkers, NY 10703

P.S. #28  
Rosedale Road  
Yonkers, NY 10710



Mark Twain M.S.  
Woodlawn Ave.  
Yonkers, NY 10704

School #17  
745 Midland Ave.  
Yonkers, NY 10704

Bd of Ed / Saunders HS  
145 Palmer Rd.  
Yonkers, NY 10701

**Exhibit A (Cont.)**

P.S. #18  
77 Park Hill Apt.  
Yonkers, NY 10701

P.S. #23 School  
56 Van Cort Park Ave.  
Yonkers, NY 10701

Enrico F.M.S.  
27 Poplar St  
Yonkers, NY 10701

P.S. #13  
195 McLean Ave.  
Yonkers, NY 10705

P.S. #21  
100 Lee Ave.  
Yonkers, NY 10705

P.S. #27  
132 Valentine Lane  
Yonkers, NY 10705

Hostos School (PS. #19)  
75 Morris St.  
Yonkers, NY 10705

P.S. #22  
1408 Nepperhan Ave.  
Yonkers, NY 10703

P.S. #28  
18 Rosedale Road  
Yonkers, NY 10710

P.S. #11  
99 Wakefield Ave.  
Yonkers, NY 10704

P.S. #16  
759 Broadway  
Yonkers, NY 10701

Lincoln High School  
375 Kneeland Ave  
Yonkers, NY 10704

Museum School #25  
579 Warburton Ave.  
Yonkers, NY 10701

Christ The King School  
750 Broadway  
Yonkers, NY 10701

M.L.King School  
115 Locust Hill Ave.  
Yonkers, NY 10701

Gorton High School  
Shonnard Road  
Yonkers, NY 10703

Ferncliff Manor  
1154 Saw Mill River Rd.  
Yonkers, NY 10710

Instruction Television  
215 Seminary Ave.  
Yonkers, NY 10704

YO Comm Ctr @ St Mark's  
1373 Nepperhan Ave.  
Yonkers, NY 10703

Roosevelt High School  
631 Tuckahoe Rd.  
Yonkers, NY 10710

Cedar Place School  
20 Cedar Place  
Yonkers, NY 10705

Sacred Heart High School  
34 Convent Ave.  
Yonkers, NY 10703

Martin Luther King  
135 Locust Hill Ave.  
Yonkers, NY 10701

P.S. #9  
53 Fairview Street  
Yonkers, NY 10703

Intermed School  
105 Avondale Rd.  
Yonkers, NY 10710

Pearls School  
348 Hawthorne Ave.  
Yonkers, NY 10705

Palisade Prep School  
190 No Broadway  
Yonkers, NY 10703

Paideia School #15  
175 Westchester Avenue  
Yonkers, NY 10707

Pulaski School  
150 Kings Cross  
Yonkers, NY 10583

School #5  
118 Lockwood Avenue  
Yonkers, NY 10701

**Exhibit A (Cont.)**

Leake & Watts School  
463 Hawthorne Ave.  
Yonkers, NY 10705

St. Ann School  
40 Brewster Ave.  
Yonkers, NY 10701

St. Mary's School  
15 St. Mary's St.  
Yonkers, NY 10701

St. Anthony's School  
1395 Nepperhan Ave.  
Yonkers, NY 10703

The Paul Apostle School  
77 Lee Ave  
Yonkers, NY 10701

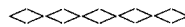
Riverside High School  
565 Warburton Avenue  
Yonkers, NY 10701

St. John School  
670 Yonkers Ave.  
Yonkers, NY 10704

St. Joe's Sch Auditorium  
10 St. Joseph Ave.  
Yonkers, NY 10703

School #30  
30 Nevada Place  
Yonkers, NY 10705

Yonkers High School  
150 Rockland Avenue  
Yonkers, NY 10705



School/Library Free Modem

Will Library  
1500 Central Park Ave.  
Yonkers, NY 10710

Bd of Ed / Riverfront Lib  
1 Larkin Center  
Yonkers, NY 10701

Hudson View Academy  
170 Hudson Terrace  
Yonkers, NY 10701

St. Marks Lutheran Sch  
7 St. Mark's Pl.  
Yonkers, NY 10704

Christ the King School  
750 Broadway  
Yonkers, NY 10701

Ferncliff Manor  
1154 Saw Mill River Road  
Yonkers, NY 10710

Roosevelt High School  
631 Tuckahoe Rd.  
Yonkers, NY 10710

Westchester School  
45 Park Ave.  
Yonkers, NY 10703

Stein Yeshiva  
287 Central Park Ave.  
Yonkers, NY 10704

St. Marks Lutheran School  
7 St. Mark's Place  
Yonkers, NY 10704

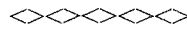
St. Mary's School  
15 St. Mary's St.  
Yonkers, NY 10701

St. Eugene School  
707 Tuckahoe Rd.  
Yonkers, NY 10710

St. Anthony's School  
1395 Nepperhan Ave.  
Yonkers, NY 10703

St. Bartholomew School  
278 Saw Mill River Road  
Yonkers, NY 10701

St. Joe's Sch Auditorium  
10 St Joseph Ave.  
Yonkers, NY 10703



**Exhibit A (Cont.)**

Municipal Free Modems

YonkersCity Hall  
40 South Broadway  
Yonkers, NY 10701

YO City Hall – Annex  
87 Nepperhan Avenue  
Yonkers, NY 10701

Firehouse # 14  
2187 Central Park Ave.  
Yonkers, NY 10710

Yonkers Animal Shelter  
120 Fullerton Ave.  
Yonkers, NY 10704

Yonkers Police Department  
104 South Broadway  
Yonkers, NY 10701

**Exhibit B**  
(PEG Origination Points)

Yonkers City Hall  
40 South Broadway  
Yonkers, NY 10701

Roosevelt High School  
631 Tuckahoe Road  
Yonkers, NY 10710

Saunders High School  
145 Palmer Road  
Yonkers, NY 10701