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May 2, 2008

BY HAND

Honorable Jaclyn A. Brillling
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 08-V-____ (Petition of Verizon New York Inc. for Limited Waivers of Certain Rules in Connection with a Proposed Cable Television Franchise Agreement with the City of New York)

Dear Secretary Brillling:

This letter and its four Attachments comprise the Petition of Verizon New York Inc. (“Verizon”) for limited waivers of certain Commission rules in connection with a proposed cable television franchise agreement (the “Agreement”) between Verizon and the City of New York (the “City”).¹ The Agreement will shortly be submitted to the City’s Franchise and Concession Review Committee (“FCRC”), which will hold a public hearing on May 20 and will vote on the

¹ The specific waivers are listed in Exhibit 13 to Verizon’s Statement of the Basis and Rationale for Limited Waivers (included in Attachment 2B to this Petition).

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Agreement on May 27.² Following approval by the FCRC, formal signing of the Agreement, and registration by the City Comptroller, the Agreement will be submitted to this Commission for confirmation pursuant to § 221 of the Public Service Law. As explained in greater detail below, this waiver petition is being submitted separately from, and prior to, Verizon's confirmation petition in order to enable the Commission, should it conclude it is prepared to do so, to vote on both petitions at its July 16 Public Session under the timelines required by the Commission's interpretation of the State Administrative Procedure Act ("SAPA").

The Agreement is the result of more than a year of intensive negotiations between Verizon and the City. The negotiations were authorized and carried out through a lengthy and deliberate process, under the supervision of City officials and agencies with the experience, knowledge, resources, and legal obligations to ensure that the needs of the people of the City were fully met.

Pursuant to the Agreement, for the first time in the City's history, a single provider, Verizon, will offer a competitive cable television service throughout the entire City. Neither of the incumbent cable television providers in the City — Cablevision and Time Warner — has ever made a commitment of such broad scope; instead, they have chosen to confine themselves to separate, non-overlapping fiefdoms within the City. No cable television provider other than Verizon — whether an incumbent or a new entrant — has yet expressed any interest in negotiating a City-wide franchise.

² A copy of the Agreement that will be submitted to the FCRC is provided as Attachment 1 to this Petition. Exhibit 1 to Appendix D to the Agreement contains confidential critical infrastructure information and has been omitted from Attachment 1. *See* Verizon's Request for Confidential Treatment and for Issuance of Protective Order (Attachment 3 to this Petition).

Verizon will provide its cable television service over an advanced, all-fiber-optic video and broadband network that the Agreement recognizes as a “leading technology” that “includes more extensive fiber facilities . . . than is currently, or ever has been, provided by any other Cable Service provider within the City,” and that offers the “highest level of performance and capability (including, but not limited to, with respect to plant or other equipment; transmission capacity to subscribers’ premises; channel offerings; video-on-demand services; construction techniques; consumer service; facilities, equipment, systems and operations; and performance standards), that has been commonly accepted, developed and commercially deployed in the wireline cable television industry and is economically reasonable and technically feasible.”³

The Agreement also offers a number of other unprecedented benefits to the City and its people, including the provision of up to 53 channels for public, educational, and governmental (“PEG”) access,⁴ grants to the City totaling some \$14 million dollars (together with additional grants to Community Access Organizations (“CAOs”)),⁵ and a commitment on Verizon’s part to enhance the City’s own institutional network by providing hundreds of miles of fiber-optic cable spans running between over 100 sites within the City.⁶

Most importantly, Verizon’s network will offer, for the first time, a head-to-head competitive challenge to the City’s cable incumbents by a wireline provider able to offer a world-

³ Agreement §§ 7.1, 1.30.

⁴ *Id.* §§ 8.1.1, 8.1.2.

⁵ *Id.* §§ 5.7, 8.2, 8.3. CAOs are not-for-profit corporations, designated by the City’s Borough Presidents, “under whose jurisdiction the Public Access Channels shall be placed for purposes of” the PEG provisions of the Agreement. *Id.* § 8.1.7.

⁶ *Id.* § 9 & App. D.

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class video service that will also be the cornerstone of numerous double-, triple-, and quadruple-play packages of video, data, landline voice, and wireless services. No other provider appears to be ready, willing, and able to mount such a challenge across the entire City; certainly, the two incumbents have not evinced either the ability or the desire to go beyond their current service areas to challenge each other. As in other areas, wireline cable competition can be expected to impose competitive discipline on prices, promote innovation, and improve the quality of the service provided to the people of the City.

Verizon respectfully petitions the Commission for limited waivers of certain of the Commission's rules that are necessary in order to enable the parties to implement the Agreement. Those rules never contemplated a massive deployment effort on the scale called for by this Agreement, nor did they envision the complications of undertaking such an effort in the unique environment of the City. The requested waivers are necessary and appropriate in order to bring the benefits of this landmark Agreement to the City and its residents.

The Commission has in the past asserted that requests for waivers of the Commission's rules trigger the rule making requirements of SAPA, including publication of a notice of proposed rule making in the *State Register*.⁷ For this reason, it would be impossible for the Commission to rule on the waiver requests (and, therefore, on Verizon's petition for confirmation) at its July 16 Public Session if Verizon sought the waivers at the same time as, or as part of, its confirmation

⁷ Verizon does not agree that the SAPA rule making requirements necessarily apply to requests for waivers of the Commission's rules; however, in the interests of expediting the Commission's consideration of the Agreement, we do not seek to litigate that issue here. (The Commission has properly concluded that the SAPA rule making requirements do not apply to confirmation petitions as such, and thus does not publish SAPA notices for such petitions when no waivers are sought.)

filing.⁸ The result could be a delay of one full month in Verizon's ability to bring the competitive and other benefits of the Agreement to the residents of the City.⁹ Also delayed would be Verizon's efforts to stem line losses to the cable incumbents and to gain new revenues through full triple-play competition. For this very reason, Verizon anticipates strong opposition to this filing on both the procedural and substantive fronts from the cable incumbents in an effort to defend their dominant position; as a recent editorial in CRAIN'S NEW YORK BUSINESS observed, "The cable companies will continue to fight a rearguard action to delay the newcomer's entry as long as possible because they have so much to lose: The Crain's poll showed that 51% of New York cable subscribers would switch if they were offered an alternative."¹⁰

Accordingly, Verizon is filing its waiver request at this time.¹¹ The request relates to general provisions of the Agreement that are essential to Verizon's ability and willingness to implement the Agreement, and would thus not be mooted even if minor changes to the Agreement were adopted as a result of the FCRC hearing. No party will be prejudiced, and indeed the filing schedule will give the parties additional time to fully address the issues raised by the Petition.¹²

⁸ The FCRC's public hearing on Verizon's application is currently scheduled for May 20 and its vote is scheduled for May 27. Even if Verizon filed its waiver petition and the Commission submitted a SAPA notice to the *State Register* on the day of the FCRC vote, the earliest possible *State Register* publication date would be June 11, and the 45-day comment period therefore would not end until twelve days after the July 16 Public Session.

⁹ Absent a Special Session, the Commission's next Public Session after July 16 will be held on August 20.

¹⁰ Editorial, *Competition can fix cable TV; Letting Verizon into the market would cut prices, improve service*, CRAIN'S NEW YORK BUSINESS (April 19, 2008).

¹¹ Submission of a SAPA notice by May 6 will allow publication of the notice in the May 21 issue of the *State Register*, which in turn will allow the 45-day comment period to end by July 7. A draft SAPA notice is provided as Attachment 4 to this Petition.

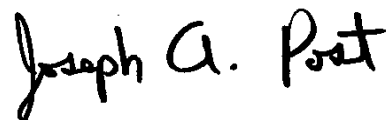
¹² The filing allows a review process of almost two-and-a-half months before the targeted Public Session date.

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Finally, Verizon respectfully requests that the Commission promptly issue a notice setting a schedule for the submission of comments on this Petition by interested parties that will give Verizon a reasonable opportunity to reply and will allow for a decision at the Commission's July 16 Public Session.¹³

Any questions that Staff may have concerning this Petition may be directed to the undersigned (at 212-321-8126) or to Keefe B. Clemons at (212-321-8136).

Respectfully submitted,

Handwritten signature of Joseph A. Post in black ink.

cc (except for confidential materials included in Attachment 3):

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¹³ Comments submitted by the public pursuant to the Commission's SAPA notice can be addressed separately.

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LIST OF ATTACHMENTS

Attachment 1 is the Franchise Agreement to be submitted to the FCRC.

Attachment 2 sets forth the basis and rationale for Verizon's request for certain limited waivers of Commission rules that are necessary in order to enable Verizon and the City to implement the Agreement. The Statement of Basis and Rationale for Limited Waivers is Attachment 2A; the exhibits to the Statement are provided in Attachment 2B.

Attachment 3 sets forth Verizon's request pursuant to §§ 87 and 89 of the Public Officers Law, and 16 NYCRR § 6-1.3, that certain highly-sensitive confidential commercial information and critical infrastructure information included in this Petition be protected from disclosure. (In accordance with the Commission's rules, this request is directed to the Commission's Records Access Officer ("RAO"), and is being provided separately to him, along with unredacted copies of the confidential materials.) The information in question has been deleted from the public version of this filing, and is being provided only to the RAO. Further, for the reasons set forth in Attachment 3, Verizon requests that the Commission or the RAO promptly issue a protective order that will enable the confidential information to be provided as necessary to other parties to this proceeding under appropriate safeguards.

Attachment 4 is a draft notice of proposed rule making pursuant to SAPA.

ATTACHMENT 1 TO PETITION FOR LIMITED WAIVERS

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**In the Matter of the Petition of Verizon
New York Inc. for Limited Waivers of
Certain Rules in Connection with a
Proposed Cable Television Franchise
Agreement with the City of New York
(New York, Bronx, Queens, Kings, and
Richmond Counties)**

Case 08-V- _____

PROPOSED FRANCHISE AGREEMENT

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May 2, 2008

Cable Franchise Agreement

by and between

The City of New York

and

Verizon New York Inc.

VERIZON/NEW YORK CITY PROPOSED FRANCHISE AGREEMENT

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VERIZON/NEW YORK CITY PROPOSED FRANCHISE AGREEMENT

THIS AGREEMENT (the “Agreement”) is entered into by and between the City of New York, a validly organized and existing political subdivision of the State of New York (the “City”) and Verizon New York Inc., a corporation duly organized under the applicable laws of the State of New York (“Verizon” or the “Franchisee”).

WHEREAS, the City is a “franchising authority” in accordance with Title VI of the Communications Act, (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended; and

WHEREAS, the Franchisee is in the process of upgrading its existing Telecommunications Services (as hereinafter defined) and Information Services (as hereinafter defined) network through the installation of the FTTP Network (as hereinafter defined) in the Franchise Area (as hereinafter defined) which transmits Non-Cable Services pursuant to authority determined by Franchisee to have been granted by Section 27 of the New York Transportation Corporations Law, as amended, and Title II of the Communications Act, which Non-Cable Services are not subject to the Cable Law (as hereinafter defined) or Title VI of the Communications Act; and

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

WHEREAS, no cable franchisee has ever agreed to provide Cable Service throughout the entire territorial boundaries of the Franchise Area; and

WHEREAS, the City wishes to grant Franchisee a nonexclusive franchise to operate a Cable System (as hereinafter defined) throughout the entire territorial boundaries of the Franchise Area; and

WHEREAS, pursuant to Section 363(a) of the New York City Charter (the “City Charter”), franchises are to be awarded by the City in accordance with the provisions of authorizing resolutions adopted by the City Council of the City (the “City Council”); and

WHEREAS, the City Council adopted Resolution No. 538 on September 27, 2006 (the “Resolution”) which authorizes, until September 27, 2011, the Department of Information Technology and Telecommunications (“DoITT”) to grant nonexclusive franchises for the provision of cable television services; and

WHEREAS, the delivery of Cable Services is in the City’s interest, and the availability of such competitive service to all households in the City on a timely basis pursuant to the terms of this Agreement will significantly benefit the City; and

WHEREAS, the City, pursuant to the terms of the Cable Act (as hereinafter defined), has identified the City’s future cable-related community needs and interests and, pursuant to the City

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Charter, has issued a solicitation for cable television franchises (the “Solicitation”) to which the Franchisee responded; and

WHEREAS, in response to the Solicitation, the Franchisee offered to operate and maintain a Cable System and provide Cable Services (as hereinafter defined) and to perform certain additional undertakings; and

WHEREAS, the Franchisee and the City completed arm’s-length negotiations regarding the terms and conditions pursuant to which the City intends to grant to the Franchisee, and the Franchisee intends to accept from the City, a franchise (the “Franchise”) described generally in Section 4.1 hereof and more specifically as described by the complete terms of this Agreement; and

WHEREAS, the City has, with respect to the proposed grant of the Franchise, complied with the New York State Environmental Quality Act (“SEQRA”) (Section 8-0101 et seq. of the New York State Environmental Conservation Law), the SEQRA regulations set forth at Part 617 of Title 6 of the New York Code of Rules and Regulations, and the City Environmental Quality Review process (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of the City of New York); and

WHEREAS, the Department of City Planning determined pursuant to Section 363(c) of the City Charter that the grant of this Franchise would not have land use impacts or implications and therefore is not subject to the Uniform Land Use Review Procedure (“ULURP”) set forth in Section 197-c of the City Charter;

WHEREAS, the Franchisee has completed all required submissions under the City’s VENDEX process, and the City’s review thereof has been completed; and

WHEREAS, pursuant to Section 371 of the City Charter, the Franchise and Concession Review Committee (the “FCRC”) held a public hearing on the proposed Franchise terms of this Agreement memorializing the terms and conditions of the proposed Franchise; and

WHEREAS, said hearing before the FCRC was held within 30 days of the date that DoITT filed the proposed Franchise with the FCRC; and

WHEREAS, a notice of said hearing and a summary of the terms and conditions of the proposed Franchise were properly published in the City Record; and

WHEREAS, at least 15 days, excluding Sundays and legal holidays, elapsed between publication of said hearing notice and summary in the City Record and the commencement of such hearing before the FCRC; and

WHEREAS, before the FCRC hearing, the requirements regarding publication of notice of such hearing as set forth in Section 371 of the City Charter were met; and

WHEREAS, the FCRC has approved the grant to the Franchisee of the Franchise and the terms of this Agreement as described herein; and

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WHEREAS, pursuant to Section 595.1 of Title 9 of the New York Code of Rules and Regulations, the Franchisee's technical ability, financial condition, and character were considered and approved by the City in a full public proceeding affording due process; the Franchisee's plans for its Cable System were considered and found to be adequate and feasible in a full public proceeding affording due process; the Franchise complies with the franchise standards of the NY PSC (as hereinafter defined); and the Franchise is nonexclusive; and

WHEREAS, the City and the Franchisee have determined that this Agreement complies with the franchise standards set forth in the Resolution, Section 363 of the City Charter, Section 626 of the Cable Act as amended, Section 221 of the Public Service Law, the regulations of the Public Service Commission, and all other applicable laws and regulations; and

WHEREAS, the City, following said public hearing, determined that this Franchise granting the Franchisee a nonexclusive franchise complies with the franchise standards set forth in the Cable Act, the Resolution, the aforementioned Public Service Law, the regulations of the NY PSC (including any necessary waivers that the parties may seek and obtain) and all other applicable laws and regulations; and

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

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

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

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

1.2. *Application*: Application of Verizon New York Inc. for a Cable Television Franchise in the City of New York, filed on April 15, 2008.

1.3. *Agreement*: This Agreement, together with the Appendices attached hereto and all amendments or modifications hereof.

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

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1.5. *Borough President*: Each President of one of the five boroughs within the City of New York, any Borough President's designee, or any successor thereto.

1.6. *Cable Act*: The Cable Communications Policy Act of 1984 (codified at 47 U.S.C. §§ 521-573).

1.7. *Cable Law*: The Cable Act, Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, to the extent authorized under and consistent with federal law.

1.8. *Cable Service or Cable Services*: Shall be defined herein as it is defined under 47 U.S.C. § 522(6), as amended.

1.9. *Cable System or System*: Shall be defined herein as it is defined under 47 U.S.C. § 522(7), as amended.

1.10. *Channel*: Shall be defined herein as it is defined under 47 U.S.C. § 522(4), as amended.

1.11. *Channel Position*: Shall mean the position on a television receiver, tuner, converter or similar device which is selected to receive a specific Channel.

1.12. *Communications Act*: The Communications Act of 1934, as amended, including, without limitation, the Cable Act.

1.13. *Closing*: Shall be defined as provided in Section 2.1 hereof.

1.14. *Commissioner*: Shall mean the Commissioner of DoITT, the Commissioner's designee or any successor thereto.

1.15. *Community Access Organization ("CAO")*: Shall mean, with respect to any particular borough of the City, the nonprofit corporation that has been designated in connection with that borough pursuant to the agreements substantially in the form set forth in Appendix C to this Agreement.

1.16. *Controlling Person*: A Person with the ability to exercise de facto or de jure control over day-to-day policies and operations or the management of Franchisee's affairs.

1.17. *Corporation Counsel*: The Corporation Counsel of the City, the Corporation Counsel's designee, or any successor thereto.

1.18. *DoITT*: The Department of Information Technology and Telecommunications, or any successor thereto.

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

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1.20. *FCRC*: Shall mean the Franchise and Concession Review Committee of the City of New York.

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

1.22. *Franchise Area*: The incorporated area (entire existing territorial limits) of the City, and such additional areas as may be annexed or acquired.

1.23. *Franchisee*: Verizon New York Inc. and its lawful and permitted successors, assigns and transferees (including for which consent of the City is required under Article 13 hereof).

1.24. *FTTP Network*: The Franchisee's fiber-to-the-premise telecommunications network in the Franchise Area as described in the Application.

1.25. *FTTP Network Created*: All transport connections and equipment in the FTTP Network have been established and are operational to the fiber distribution terminal serving the residence requesting fiber-enabled services (whether Cable Service or Non-Cable Services). Additionally, for MDUs, Franchisee has obtained building access and prepositioned its facilities in the MDU which are necessary for serving residences within the MDU requesting fiber-enabled services (whether Cable Service or Non-Cable Services).

1.26. *Government/Educational Access Channel*: An Access Channel which the Franchisee shall make available for the sole noncommercial use of the City or for noncommercial use by local public schools and public school districts in the Franchise Area and other not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents in the Franchise Area as specified by the City, as provided in Article 8 and Appendix B to this Agreement.

1.27. *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee (or any Affiliate) from the operation of the Cable System to provide Cable Service in the Franchise Area, as follows:

1.27.1. Gross Revenue includes, without limitation: all Subscriber revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Franchise Area, including, without limitation, Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls,

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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 channel(s) or channel capacity; (v) compensation received by Franchisee that is derived from the operation of the Cable System to provide Cable Service with respect to commissions that are paid to Franchisee or an Affiliate providing Cable Service under this Franchise as compensation for promotion or exhibition of any products or services on the Cable System, such as a “home shopping” or similar channel, subject to the exceptions below; and (vi) charges described to Subscribers as attributable to Franchise Fees (as hereinafter defined) and PEG Grants. Gross Revenue shall also include all advertising revenue which is received directly or indirectly by the Franchisee, any Affiliate from or in connection with the distribution of any Service over the System (and including, without limitation, compensation for use of studio or other facilities and equipment associated with production or distribution of any programming or advertising to be distributed as part of a Cable Service). The allocation shall be based on the number of Subscribers in the Franchise 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.

1.27.2. Except as provided above, Gross Revenue shall not include: 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 and in accordance with generally accepted accounting principles (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law; 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, provided, however, that any portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System paid to Franchisee or an Affiliate for the sale of such merchandise shall be included in Gross Revenue; 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 the LFA, a state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity; taxes imposed on Subscribers by law, which the Franchisee is obligated to collect; any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); 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.

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1.27.3. Gross Revenues derived from Cable Services provided over the Cable System in the Franchise Area that are provided to Subscribers as part of a bundle of services that include Non-Cable Services shall be treated in accordance with Section 10.5 hereof.

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

1.29. *Landlord*: The term "landlord" shall mean and include the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling, or any designee of the foregoing enumerated Persons formally authorized to approve physical alterations, improvements or modifications to such dwelling including the installation of Franchisee's facilities.

1.30. *Leading Technology*: The highest level of performance and capability (including, but not limited to, with respect to plant or other equipment; transmission capacity to subscribers' premises; channel offerings; video-on-demand services; construction techniques; consumer service; facilities, equipment, systems and operations; and performance standards), that has been commonly accepted, developed and commercially deployed in the wireline cable television industry and is economically reasonable and technically feasible.

1.31. *Local Franchise Authority ("LFA" or the "City")*: The City of New York, New York, or the lawful successor, transferee, or assignee thereof.

1.32. *Multiple Dwellings ("MDUs")*: Shall have the meaning set forth therefore in NY CLS Mult D § 4(7).

1.33. *Non-Cable Services*: Any service that does not constitute Cable Service pursuant to law including, but not limited to, Information Services and Telecommunications Services.

1.34. *Non-Residential Subscriber*: A Subscriber that is not a Resident.

1.35. *Non-Standard Installation*: Any installation which does not constitute a Standard Installation as defined in Section 1.45 hereof.

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

1.37. *NY PSC*: The New York Public Service Commission.

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

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

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1.40. *Public Access Channel*: An Access Channel which the Franchisee shall make available to a CAO, at no charge, as provided in Article 8 and Appendices B and C to this Agreement.

1.41. *Public Rights-of-Way*: The surface of, and the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, public grounds and public places or waters within and belonging to the City and any other property within the City, to the extent to which there exist public easements or public rights of way. Public Rights-of-Way do not include the electromagnetic spectrum above the surface of a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.42. *Resident*: An occupant who: (i) resides in a dwelling which has or is entitled to receive from the City a residential certificate of occupancy, including, without limitation, a private dwelling, class A multiple dwelling, or an interim multiple dwelling; or (ii) has continuously resided in the same building as a permanent resident and who takes occupancy pursuant to a lease (or other similar arrangement) of at least six (6) months duration. For purposes of this Agreement, the terms “private dwelling,” “class A multiple dwelling,” and “interim multiple dwelling” shall have the same meaning as they have or may have in NY CLS Mult D, as such law may from time to time be amended.

1.43. *Residential Subscriber*: A Subscriber that is a Resident.

1.44. *Service Area*: All portions of the Franchise Area with a video service office (“VSO”) that is open for sales and Cable Service is being offered.

1.45. *Standard Installation*: A residence requesting Cable Service that is Video Network Created as of the date of the request for service.

1.46. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System.

1.47. *Telecommunication Services*: Shall be defined herein as it is defined under 47 U.S.C. § 153(46), as amended.

1.48. *Title VI*: Title VI of the Communications Act, Cable Communications, as amended.

1.49. *Video Network Created*: Video transport connections and equipment have been established and are operational to the fiber distribution terminal serving the residence requesting Cable Service. Additionally, for MDUs, Verizon has obtained building access and prepositioned its video facilities in the MDU which are necessary for serving requesting residences within the MDU.

1.50. *Video Programming*: Shall be defined herein as it is defined under 47 U.S.C. § 522(20), as amended.

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1.51. *Video Service Office or VSO*: A wire center that has been upgraded by Franchisee to be video-capable and which thereby may be opened for sales for the provision of Cable Service by Franchisee.

1.52. *Wholly Owned Affiliate*: Any entity of which 100% of the ownership interest is ultimately held by Verizon Communications, Inc.

2. CLOSING; CLOSING CONDITIONS

2.1. *Closing*: This Agreement shall be executed and the obligations herein shall commence on the closing of this Agreement (herein referred to as the “Closing”). The Closing shall be the first day on which all of the following conditions have been met and this Agreement has been fully executed and delivered:

2.2. *FCRC Resolution*: The FCRC shall have adopted a resolution approving this Franchise;

2.3. *Certified Copies of Resolutions*: The Franchisee shall have furnished the City with a certified copy of the resolution(s) duly adopted by the Board of Directors or other authorized representative of the Franchisee, approving the execution, delivery and performance of this Agreement and approving the execution, delivery and performance of all other documents, certificates, and other instruments required to be furnished to the City by and pursuant to the terms of this Agreement;

2.4. *Opinion of Franchisee’s Counsel*: The City shall have received an opinion dated as of the date of the Closing from outside counsel to the Franchisee in form and substance reasonably satisfactory to the Commissioner and the Corporation Counsel;

2.5. *Representations and Warranties*: The Franchisee shall have provided the City with a certificate of an officer of the Franchisee certifying that the representations and warranties made by the Franchisee in this Agreement are true and correct as of the Closing;

2.6. *Government Approvals*: The Franchisee shall have provided the City with evidence of approval of the transactions contemplated by this Agreement from any necessary governmental authorities, and all notice periods and waiting periods required by law to pass in connection with such transactions shall have passed, except the certificate of confirmation to be issued or renewed by the PSC pursuant to Section 591.4 of the PSC regulations and issuance of an FCC CUID;

2.7. *Performance Bond*: The Franchisee shall have furnished to the City the Performance Bond, pursuant to Article 15 hereof;

2.8. *Security Fund/Letter of Credit*: The Franchisee shall have deposited with the City the Security Fund/Letter of Credit, pursuant to Article 15 hereof;

2.9. *Liability Insurance Policy*: The Franchisee shall have secured its liability insurance policy pursuant to Article 12 hereof;

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2.10. *Guaranty*: The Franchisee shall have secured and delivered to the Commissioner and the Comptroller a guaranty executed by the Guarantor in the form set forth at Appendix H to this Agreement, which guaranty shall have been authorized, executed and delivered by the Guarantor;

2.11. *W-9 Form*: The Franchisee shall have submitted an IRS W-9 form certifying the Franchisee's tax ID number;

2.12. *VENDEX*: The Franchisee has completed all required submissions under the City's VENDEX process, and the City's review thereof has been completed; and

2.13. *Other Documents*: The Franchisee shall have delivered such other documents as may be reasonably requested by the City.

2.14. *Waiver*: To the extent permitted by law, any of the above Closing conditions may be waived by the Commissioner, provided such waiver shall not be a waiver of any substantive requirement of this Agreement as set forth hereinafter.

3. EFFECTIVE DATE AND TERM:

3.1. *Effective Date & Term*: This Agreement and the Franchise granted herein shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following the Closing; provided that implementation of this Agreement shall be subject to the applicable registration provisions of City Charter sections 375 and 328. The term (the "Term") of this Agreement and the Franchise granted herein shall be twelve (12) years from the Effective Date, or until June 30, 2020, whichever is later, unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the City in writing of the same, which notification shall become a part of this Franchise.

3.2. *Termination*: The termination of this Agreement and the Franchise granted hereunder shall occur upon the earliest to occur of: (i) the end of the Term; or (ii) the earlier termination of the Franchise and this Agreement as provided for in this Agreement. The Franchise shall be considered revoked and terminated automatically upon any termination of this Agreement as provided hereunder.

3.3. *Renewal on Expiration*: Subject to 47 U.S.C. § 546, the City reserves the right at the end of the Term to grant, or grant on new terms and conditions, or not grant, renewal of the Franchise without any presumption in favor of a renewal of the Franchise.

4. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

4.1. *Grant of Authority*: The City hereby grants the Franchisee the right to provide Cable Service within the Franchise Area until the end of the Term, subject to the terms and conditions of this Agreement. The parties acknowledge that this Agreement is not in and of itself a sufficient source for the right of the Franchisee to occupy the Public Rights-of-Way for the provision of any service and is intended to grant such right only in accompaniment with a separate authority to occupy the affected Public Rights-of-Way. The parties further

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acknowledge (a) that this Agreement does not include all of the terms and conditions which the City would require for such occupancy, (b) that the Franchisee claims that it has preexisting authority to occupy any or all of the Public Rights-of-Way with the facilities that are being installed to provide Cable Services under this Agreement, (c) that the City disputes such claim, and (d) that such dispute is the subject of the Pending Litigation (as defined in Section 18.14 hereof). The parties further acknowledge that if the Pending Litigation results in a final determination (after all opportunities to appeal have been either pursued or expired) that with respect to any of the Public Rights-of-Way the Franchisee does not have authority preexisting this Agreement to occupy such Public Rights-of-Way, then the Franchisee's right to occupy such Public Rights-of-Way with such facilities, including for the provision of Cable Services, shall be conditional on the Franchisee's reaching agreement with the City on the terms and conditions of such occupancy, and that absent such agreement, this Agreement and the Franchise granted hereunder shall terminate immediately on written notice from the City.

4.2. *The FTTP Network:* Consistent with Section 18.14 and 18.15 hereof, upon delivery of Cable Service, by subjecting Franchisee's mixed-use facilities to the NY PSC's minimum franchise standards and the City's police power, the City has not been granted broad new authority over the construction, placement and operation of Franchisee's mixed-use facilities.

4.3. *Grant Not Exclusive:* The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the City reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under law or this Franchise to provide Cable Service.

4.4. *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal and state law as may be amended, including but not limited to the Communications Act. Further, the parties to this Franchise agree that this Franchise is consistent with applicable federal and state law and the parties agree to be bound by the terms hereof.

4.5. *No Waiver:* The failure of either the City or 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 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 the other (neither the City nor the Franchisee) from compliance or performance, unless such right or such compliance or performance has been specifically waived in writing.

4.6. *Construction of Agreement:*

4.6.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives.

4.6.2. Nothing herein shall be construed to limit the scope or applicability of 47 U.S.C. § 545, as amended.

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4.6.3. Should any change to state law, rules or regulations have the lawful effect of materially altering the terms and conditions of this Agreement, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on either party of the material alteration. Any modification to this Franchise shall be in writing and shall be subject to Section 222 of the New York Public Service Law and Title 16, Chapter VIII, Part 892, Subpart 892-1, Section 892-1.4 of the Official Compilation of Codes, Rules and Regulations of the State of New York requiring application to the NY PSC and approval of any modification. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

4.7. *Police Powers:* Nothing in this Franchise shall be construed to prohibit the City's reasonable, necessary and lawful exercise of the City's police powers, including, without limitation, in addition to the implementation and enforcement of the provisions of this Agreement and existing applicable laws and regulations, the enactment, adoption, implementation and enforcement of such additional laws and regulations as the City may deem necessary in the exercise of its police power, including any lawful right to compel relocation of Cable System facilities in the Public Rights-of-Way in the event of sewer and water line work, road-widenings and other adjustments to the Public Rights-of-Way, and the provisions of New York City Administrative Code § 6-115.1 (the "MacBride Principles"); provided, however, that such laws and regulations are reasonable and not materially in conflict with the privileges granted in this Franchise and consistent with all federal and state laws, regulations and orders.

4.8. *Restoration and Inspection of Municipal Property:* In order to avoid interference with the City's ability to deliver public services, any municipal property damaged or destroyed shall be promptly repaired or replaced by the Franchisee and restored to pre-existing condition.

4.9. *Restoration of Subscriber Premises:* The Franchisee shall ensure that each Subscriber's premises are restored to at least their pre-existing condition if damaged by the Franchisee's employees or agents in any respect in connection with the installation, repair, provision or disconnection of Cable Service.

5. DEPLOYMENT; PROVISION OF CABLE SERVICE

5.1. *Initial Deployment:* Subject to the exceptions and checkpoint extensions set forth in this Article, the FTTP Network will pass all households served by Franchisee's wire centers within the Franchise Area in accordance with the table attached hereto as Appendix F, with final completion no later than June 30, 2014. For purposes of this Agreement including Appendix F, "pass" or "passage" of a household shall mean MDU's whether or not network created and single family units whether or not a drop is installed.

5.1.1. *Exceptions:* The FTTP Network deployment schedule set forth in Appendix F shall be subject to the following exceptions: (A) for periods of Force Majeure; (B) for periods of delay beyond the normal permitting or approval time period, or due to issuance of a stop work order issued by the City, where such stop work order is not caused by action on the part of Franchisee; and (C) for periods of delay resulting from Franchisee's inability to obtain authority to access private rights-of-way.

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5.1.2. *Checkpoint Extensions:* Within thirty (30) days of each of the dates set forth below (each, a “Checkpoint”), the Franchisee shall conduct an evaluation of its “video penetration rate” (as hereinafter defined) in the Franchise Area and, in the event such evaluation determines that Franchisee has not achieved the applicable video penetration rate at each such Checkpoint, the Franchisee shall be afforded an extension of its deployment and service availability obligations pursuant to Sections 5.1, 5.2 and 5.3 hereof, in accordance with the following:

5.1.2.1. *First Checkpoint:* If, by June 30, 2010, Franchisee has achieved a video penetration rate in the Franchise Area which is less than fifteen percent (15%), then: Franchisee will be granted a twelve (12) month extension to complete final City-wide deployment and service availability, with the annual per borough deployment schedule from the date of such checkpoint being proportionately extended to reflect the extended final completion date.

5.1.2.2. *Second Checkpoint:* If, by June 30, 2011, Franchisee has achieved a cumulative video penetration rate in the Franchise Area which is less than twenty percent (20%), then: Franchisee will be granted a twelve (12) month extension to complete final City-wide deployment and service availability, with the annual per borough deployment schedule from the date of such checkpoint being proportionately extended to reflect the extended final completion date.

5.1.2.3. *Third Checkpoint:* If, by June 30, 2012, Franchisee has achieved a cumulative video penetration rate in the Franchise Area which is less than twenty-five percent (25%), then: Franchisee will be granted a twelve (12) month extension to complete final City-wide deployment and service availability, with the annual per borough deployment schedule from the date of such checkpoint being proportionately extended to reflect the extended final completion date.

5.1.2.4. For purposes of this Agreement, the term “video penetration rate” shall mean:

FiOS TV billable lines in service
(FTTP passed single family units whether or not a drop is installed
+ residential units within FTTP network created MDU’s)
in VSOs that are open for sales (OFS).

5.1.3. In the event Franchisee seeks to exercise its right to an extension of its deployment and service availability obligations at any Checkpoint pursuant to this Section 5.1, Franchisee shall, within sixty (60) days from the applicable Checkpoint, provide the City with written documentation, in a format to be reasonably determined by Franchisee, justifying the basis for Franchisee’s exercise of such extension. Such written documentation shall be treated as confidential and proprietary consistent with Section 11.1 hereof, and shall include, the number of residential units within FTTP Network Created MDUs and FTTP passed single family units (hereinafter, “SFUs,”) along with other elements of the formula set forth in Section 5.1.2.4 of this Agreement, as may be reasonably necessary to satisfy the objectives of this Section 5.1.3.

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5.1.4. Consistent with the schedule set forth in Appendix F, nothing herein shall be construed to limit Franchisee's discretion with respect to the order of geographic areas to be wired, provided, however, that at each Checkpoint described above, the estimated median household income of all homes passed shall not be greater than the average household income of all households in New York City (based on the calculations set forth in the 2000 census data).

5.2. *VSO Conversions*: Subject to periods of Force Majeure and the checkpoint extensions set forth at subsection 5.1.2 above, not later than June 30, 2014 Franchisee shall have completed the upgrade of all of Franchisee's wire centers located within or serving the Franchise Area such that all of Franchisee's wire centers within or serving the Franchise Area constitute video-capable VSOs open for sales.

5.3. *Service Availability*:

5.3.1. *Initial Availability of Cable Service*: Franchisee shall make Cable Service available to all residential dwelling units, at Franchisee's expense, except that Franchisee may charge a standard installation fee, and may make Cable Service available to businesses, in conformance with Section 5.4. The parties hereto agree that the terms of this Section 5.3.1 satisfy the minimum standards set forth in 16 NYCRR Section 895.5.

5.4. *Provision of Service*: Subject to the exceptions set forth in Subsection 5.5 hereof, Franchisee shall make Cable Service available to all residential dwelling units in the Service Area. Franchisee agrees that it shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area.

5.4.1. *Installations of Cable Service – Standard Installations*: Franchisee shall perform all Standard Installations of Cable Service within seven (7) business days after any such request is received by the Franchisee, unless a later date is agreed to with the requesting potential residential Subscriber.

5.4.1.1. If the Franchisee is unable to fulfill a potential residential Subscriber's request for Standard Installation of Cable Service within seven (7) business days of Franchisee's receipt of such request or the later date as agreed to with the requesting potential residential Subscriber (as the case may be), the Franchisee shall promptly provide notice to such potential residential Subscriber setting forth: (i) the basis for Franchisee's inability to perform the requested Standard Installation within seven (7) business days or the later date as agreed to with the requesting potential residential Subscriber (as the case may be); and (ii) the date by which Franchisee anticipates performing such Standard Installation. Such notice shall be provided in oral, written, electronic or other format acceptable to the Commissioner; provided, however, that in no event shall Franchisee fulfill such Standard Installation request subsequent to the later of: (i) the date which is seven (7) business days from the date which is seven (7) business days following a potential Subscriber's initial request for Standard Installation or the later date as agreed to with the requesting potential residential Subscriber (as the case may be); or (ii) a further later date agreed to with the Subscriber.

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5.4.1.2. All Standard Installations will be in accordance with FCC requirements governing appropriate grounding and connection of equipment to ensure reception of Cable Service.

5.4.1.3. Consistent with the requirements of Appendix A the Franchisee will offer Subscribers “appointment window” alternatives for arrival to perform all Standard Installations.

5.4.2. *Installations of Cable Service – Non-Standard Installations:* Franchisee shall perform all Non-Standard Installations of Cable Service within six (6) months after any such request is received by the Franchisee, unless either a later date is agreed to with the requesting potential residential Subscriber or Franchisee advises the requesting potential residential Subscriber of the current unavailability of Cable Service at the location as set forth in Subsection 5.4.2.1.

5.4.2.1. If the Franchisee is unable to fulfill a potential residential Subscriber’s request for Non-Standard Installation of Cable Service within six (6) months of Franchisee’s receipt of such request or the later date as agreed to with the requesting potential residential Subscriber (as the case may be), Franchisee shall promptly provide notice to such potential residential Subscriber setting forth: (i) the basis for the current unavailability of Cable Service at the requesting location; and (ii) a good faith estimate of the date by which Franchisee believes that Cable Service may be available at the location. Such notice shall be provided in oral, written, electronic or other format acceptable to the Commissioner; provided, however, that in no event shall Franchisee fulfill such Non-Standard Installation request subsequent to the later of: (i) the date which is six (6) months from the date which is six (6) months following a potential Subscriber’s initial request for Non-Standard Installation or the later date as agreed to with the requesting potential residential Subscriber (as the case may be); or (ii) a further later date agreed to with the Subscriber.

5.5. *Exceptions:* Franchisee’s Cable Service availability obligation as set forth in Section 5.4 shall be subject to the following exceptions: (A) where the FTTP Network has not been deployed or a VSO is not yet opened for sales; (B) for periods of Force Majeure; and (C) periods of delay caused by Franchisee’s inability, after good faith efforts, to obtain valid legal authority to access any MDU in the Franchise Area for the purpose of providing Cable Service to units within such MDU on other than commercially unreasonable terms and conditions with respect to each such MDU.

5.5.1. *Commercial Unreasonability:* The phrase “commercially unreasonable terms and conditions” means any one or more of the following circumstances:

5.5.1.1. The landlord is imposing buildout, installation and/or maintenance requirements to serve the MDU that require a financial investment which results in a return on invested capital (ROIC) by four (4) years from the date on which the MDU is open for sales that is less than Franchisee’s weighted average cost of capital, wherein $ROIC = (\text{Net Income} + \text{after tax interest}) / \text{Net Average Operating Assets}$;

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5.5.1.2. The landlord is requiring removal or other remediation of hazardous materials;

5.5.1.3. The landlord, despite the legal requirements of Public Service Law Section 228, is demanding payment above the compensation contemplated by Section 228; and

5.5.1.4. A bulk sales, exclusive marketing or other arrangement is in effect in the MDU that reduces Franchisee's reasonably anticipated penetration rate resulting in a return on invested capital (ROIC) by four (4) years from the date on which the MDU is open for sales that is less than Franchisee's weighted average cost of capital, wherein $ROIC = (\text{Net Income} + \text{after tax interest}) / \text{Net Average Operating Assets}$.

5.5.2. *Access:* The phrase "Franchisee's inability, after good faith efforts, to obtain valid legal authority" as used herein shall be understood in the context, where applicable, of the legal obligations of landlords under Section 228 of the New York State Public Service Law ("Section 228"), or any successor provision of like effect, and therefore in instances in which the Franchisee believes that a landlord is in violation of Section 228, Franchisee is obligated to provide such landlord with notice of Section 228 and the legal obligations imposed upon such landlord pursuant thereto and pursue remedies available thereunder as appropriate in Franchisee's judgment, acting reasonably.

5.5.2.1. *Additional Procedures:* Beginning July 1, 2012, in each case in which the Franchisee needs to obtain access to the property in response to a request for Cable Service where the FTTP Network has been deployed and the VSO is opened for sales, Franchisee shall undertake (and document in written form) the following steps within the following time periods:

5.5.2.1.1. Send promptly (but in no event later than thirty (30) days after receipt of a request for Cable Service) to the property owner or managing agent notice of its intent to wire for Cable Service;

5.5.2.1.2. Attempt to negotiate a survey date and writing method with the property owner or agent;

5.5.2.1.3. If not yet successful in obtaining access, send a second (2nd) notice of intent to wire including specific reference to Franchisee's access rights, and attempt to wire;

5.5.2.1.4. If the property owner or agent prevents wiring, request assistance from the Commissioner and/or the PSC; and

5.5.2.1.5. If access is not provided within one hundred and eighty (180) days of the first notice to the property owner or agent of intention to wire, file a petition pursuant to 16 NYCRR § 898.4 seeking an order for entry to the property.

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5.5.2.2. The Commissioner may waive, or extend the dates for complying with, the requirements of this Section 5.5.2 upon a showing of good cause by the Franchisee.

5.6. *Periodic Reevaluation:* In the event that Franchisee delays service availability to any MDU in the Franchise Area pursuant to the terms of Section 5.5, Franchisee agrees that it will conduct periodic reevaluations of each such MDU to determine whether circumstances have changed in a manner that would enable Franchisee to obtain valid legal authority to access such MDU on commercially reasonable terms and conditions.

5.7. *Technology and Education Fund/Municipal Facilities Service Grant:* In lieu of, and in satisfaction for, the Franchisee's obligation to provide free service outlets and free Cable Service to public buildings, and in order to further the City's objective of funding technological and educational needs throughout the City, the Franchisee hereby agrees to pay to the City the aggregate sum of Four Million Dollars (\$4,000,000)(the "Technology, Educational & Municipal Facilities Grant") payable in accordance with the following schedule: (i) the first (1st) Technology, Educational & Municipal Facilities Grant payment in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) shall be payable on the date which is thirty (30) days from the Effective Date hereof; (ii) the second (2nd) Technology, Educational & Municipal Facilities Grant payment shall be payable in the amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) on the date which is thirty (30) days from the fourth (4th) anniversary of the Effective Date hereof; and (iii) the third (3rd), and final, Technology, Educational & Municipal Facilities Grant payment shall be payable in the amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) on the date which is thirty (30) days from the seventh (7th) anniversary of the Effective Date hereof.

5.7.1. The Technology, Educational & Municipal Facilities Grant will be used by the City to support the provision of technology services to City government locations and/or City government-related locations in each of the five boroughs of the City where technology services are made or to be made available to the community, such as (for example) New York City Housing Authority community centers, City Department for the Aging community centers and similar facilities. Decisions as to the specific facilities to be supported by said Technology, Educational & Municipal Facilities Grant within each borough shall be made by the City in consultation with the Borough President of the applicable borough. Franchisee shall exercise no discretion as to the allocation or distribution of funds from the Technology, Educational & Municipal Facilities Grant in any manner whatsoever.

6. SYSTEM FACILITIES

6.1. *Quality of Materials and Work:* Franchisee shall construct and maintain its System using materials of good and durable quality, and in a manner that limits disruption to public use of City streets, and all work involved in the construction, installation, maintenance and repair of the Cable System shall be performed in a safe, thorough and reliable manner, and in a manner which protects the City's property from damage.

6.2. *System Characteristics:* During the Term hereof, Franchisee's Cable System as described in Appendix J, shall meet or exceed the following requirements:

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6.2.1. The System shall initially be designed and operated with a digital carrier passband between 50 and 860 MHz and shall provide for a minimum channel capacity of not less than 77 channels on the Effective Date.

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

6.2.3. The Cable System must conform to all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, and shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures:

6.2.3.1. Cable Law;

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

6.2.3.3. National Electrical Code;

6.2.3.4. National Electrical Safety Code (NESC).

6.3. Cable System Tests and Inspections:

6.3.1. The Franchisee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise, and to ensure that the Cable System components are operating as required; provided, however, that Franchisee's testing obligations under this Article 6 shall be limited solely to those tests which are designed for, and applicable to, a fiber optic network transmitting optical spectrum. All tests shall be conducted in accordance with federal rules and any applicable United States National Cable Television Association's Recommended Practices for measurement and testing. In the event that the FCC's technical performance standards are repealed or are no longer applicable to the Cable System, such standards shall remain in force and effect until the Commissioner, or a designee thereof, and the Franchisee agree to new standards.

6.3.2. The Franchisee shall conduct tests as follows:

6.3.2.1. Proof of Performance tests on the Cable System at least once every six (6) months or as required by FCC rules, whichever is more often, except as federal law otherwise limits the Franchisee's obligation. In consultation with DoITT, the Cable System monitor test points shall be established in accordance with good engineering practices and consistent with FCC guidelines;

6.3.2.2. Special Proof of Performance tests, as limited by the City, of the Cable System or a segment thereof when Subscriber complaints indicate tests are warranted;

6.3.2.3. Tests shall be supervised by a senior engineer of the Franchisee, who shall sign all records of tests provided to the City;

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6.3.2.4. The City shall have the right to designate a City employee (or a third party consultant operating on the City's behalf, provided that such third party consultant executes, in advance, a nondisclosure agreement in a form reasonably acceptable to Franchisee) to visually inspect Franchisee's Cable System in order to verify compliance with Section 6.1 hereof and witness and/or review all required Proof of Performance Tests. The Franchisee shall provide the City with at least two (2) business days' notice of, and opportunity to observe, any such Proof of Performance Tests performed on the Cable System;

6.3.2.5. The Franchisee shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the City upon the City's request. The City shall have the same rights the FCC has to inspect the Franchisee's performance test data;

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

6.3.2.7. The Commissioner may, for good cause shown, waive or limit the system test and inspection provisions in this Section 6.3.

6.4. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area, and, to the extent necessary to effectuate the objectives of Article 8 hereof, with agreed upon CAO facilities. Franchisee shall use reasonable efforts to interconnect its Cable System with the existing cable operator(s). Franchisee shall initiate interconnection negotiations with the existing cable operator(s) to cablecast, on a live basis, Public, Educational and Governmental Access programming consistent with this Franchise. Interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection. Franchisee shall attempt to negotiate in good faith with existing cable operator(s) respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms and conditions. The Franchisee and the existing cable operator(s) shall negotiate the interconnection agreement on reasonable terms and conditions. If, despite Franchisee's reasonable efforts, Franchisee is unable to successfully negotiate interconnection of its Cable System with the existing cable operator(s), the City shall make all best efforts to facilitate such negotiations between Franchisee and such other cable operator(s).

6.5. *Emergency Alert System:* Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and the State of New York, including the NY PSC's rules and regulations and the current New York EAS Plan, in order that emergency messages may be distributed over the System.

6.6. *Program Services:* Franchisee shall strive to offer over the Cable System a diversity of video programming services, including, without limitation, a broad category of programming that includes locally-based, not-for-profit, and minority-managed public interest educational programming; provided however that nothing contained in this Agreement shall be

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interpreted as a requirement for provision of specific video programming services (except the requirement for provision of PEG Access Channels).

7. LEADING TECHNOLOGY

7.1. *Leading Technology:* The parties hereto acknowledge and agree that the FTTP Network, and the Cable Services provided thereby, as described in Appendix J, will when built constitute a “Leading Technology” that includes more extensive fiber facilities, in lieu of coaxial cable facilities, than is currently, or ever has been, provided by any other Cable Service provider within the City as of the Effective Date.

7.1.1. The Franchisee will, at the City’s request (but not before the first anniversary of the Effective Date of the Franchise Agreement and not more often than once in any thirty-six (36) month period), prepare and submit to the City a report (in a mutually agreeable format) setting forth the Franchisee’s review and assessment of the current state of cable technology and its current plans, if any, to enhance its Cable System (provided however, that this reporting requirement will be in abeyance to the extent that a substantial competing franchisee delivering service through one-hundred percent (100%) of all cable systems owned and operated by such competing franchisee(s) in the City is then using a system in the City that fails to provide at least comparable capacity, reliability and feature richness to Franchisee’s system).

7.1.2. Upon the submission of each report as described in the preceding Section 7.1.1 the City may undertake an evaluation of such report, with an opportunity for Franchisee to comment on any City evaluation, and Franchisee will subsequently commence good faith discussions with the City, and implement agreements resulting from such good faith discussions, regarding enhancements, if any, to be made to the Cable System to maintain its leading technology status (provided however, that the requirement pursuant to this Section 7.1.2. will be in abeyance to the extent that a substantial competing franchisee delivering Cable Service through one-hundred percent (100%) of all cable systems owned and operated by such competing franchisee(s) in the Franchise Area is then using a system in the Franchise Area that fails to provide at least comparable capacity, reliability and feature richness to the FTTP Network).

8. PEG SERVICES

8.1. PEG Set Aside:

8.1.1. In order to ensure universal availability of Public, Educational and Government Access programming, Franchisee shall, not later than one hundred eighty (180) days from the Effective Date (or, with respect to any Governmental/Educational Access Channels, such later date as may be agreed upon by the City and Franchisee in the event Franchisee reasonably requests an extension in order to complete necessary work), provide on the Basic Service Tier use of twenty-five (25) access channels in total, as set forth immediately below in Section 8.1.1.1 (each, an “Access Channel”):

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8.1.1.1. *Public Access Channel*:. Four (4) Public Access Channels for each Borough (i.e. four (4) Public Access Channels for Manhattan, four (4) Public Access Channels for Staten Island, four (4) Public Access Channels for Brooklyn, four (4) Public Access Channels for the Bronx, four (4) Public Access Channels for Queens).

8.1.1.2. *Government/Educational Access Channels*: Five (5) Governmental/Educational Access Channels, one of which is designated by the City for Educational Access Channel programming, which are cablecast City-wide.

8.1.2. In addition to providing the Access Channels described in Section 8.1.1 above, the Franchisee shall provide the City with the following additional Access Channels on the Basic Service Tier, subject to the conditions set forth below:

8.1.2.1. No sooner than January 1, 2009, and within one hundred eighty (180) days of Franchisee's receipt of a written request from the City, Franchisee shall provide to the City: (i) an additional two (2) Public Access Channels for each Borough (for a total of ten (10) additional Public Access Channels); and (ii) one (1) additional Governmental/ Educational Access Channel which shall be cablecast City-wide.

8.1.2.2. No sooner than January 1, 2012, and within one hundred eighty (180) days of Franchisee's receipt of a written request from the City, Franchisee shall provide to the City: (i) one (1) additional Public Access Channel for each Borough (for a total of five (5) additional Public Access Channels); and (ii) two (2) additional Governmental/Educational Access Channels which shall be cablecast City-wide.

8.1.2.3. No sooner than the date which is the sixth (6th) Anniversary of the Effective Date hereof, and within one hundred eighty (180) days of Franchisee's receipt of a written request from the City, Franchisee shall provide to the City an additional two (2) Public Access Channels for each Borough (for a total of ten (10) additional Public Access Channels).

8.1.2.4. No single additional Access Channel or additional Access Channels provided pursuant to this Section 8.1 shall be activated by Franchisee unless all existing Access Channels are providing original, non-text, non-duplicative programming for at least eighty percent (80%) of the time between 6:00 a.m. and 12:00 a.m. for the preceding six (6) consecutive months.

8.1.3. The City hereby authorizes Franchisee to transmit all Access Channel programming within and without City jurisdictional boundaries. In the event that one or more Public or Governmental/Educational Access Channels are not being utilized by the City or the CAO's, the provisions of 16 NYCRR 895.4 (c)(12) shall be applicable.

8.1.4. Within ten (10) days after the Effective Date of this Agreement, the City shall notify Franchisee of the programming to be carried on each of the Public or Governmental/Educational Access Channels set aside by Franchisee as listed in Appendix B. Thereafter, Franchisee shall assign the Public or Governmental/Educational Access Channel programming on such Public or Governmental/Educational Access Channels on its channel line-up as set forth in such notice, to the extent such Access Channel assignments do not interfere

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with any pre-existing channels assignments or contractual obligations. Franchisee shall not be required to make Borough-specific Public or Governmental/Educational channels available to Subscribers until one or more VSOs in the specific borough are open for sales.

8.1.5. The Franchisee shall carry the programming on each of the respective Public or Governmental/Educational Access Channels as indicated in Appendix B. In the future, the Franchisee shall assign the Public or Governmental/Educational Access Channels on its channel line up as configured elsewhere within the City to the extent such channel assignments do not interfere with any other channels or fall outside the range of the Franchisee's respective channel lineup. The Franchisee shall not arbitrarily or capriciously change such channel assignments, and the Franchisee shall minimize the number of such changes; provided, however, that the Franchisee may change such channel assignments as it deems appropriate so long as (i) the Franchisee gives the appropriate CAO(s) or the Governmental/Educational/Access Channel programmer ninety (90) days notice of such change (if commercially practicable) but in no event less than forty-five (45) days, and (ii) the Franchisee provides, free of charge, public announcements of such changes that shall include (A) to the extent Franchisee has advertising availability, advertising such Public or Governmental/Educational Access Channels changes on advertising inserts on local channels carrying non-satellite programming in prime time at least thirty (30) seconds per day for the time period of thirty (30) to fifteen (15) days prior to such change and two (2) minutes per day for the fourteen (14) days prior to such change (provided, however, that if Franchisee does not have advertising availability at the commencement of the thirty (30) to fifteen (15) day period, as soon as advertising space becomes available, Franchisee shall then provide the advertising contemplated under this Section 8.1.5), and (B) providing notice of such changes in at least two monthly Subscriber bill inserts prior to such change (if commercially practicable) but in no event less than one monthly Subscriber bill insert; provided, however, that such bill inserts shall not be necessary in the event the Franchisee provides the requisite notice of such changes to all Subscribers in a letter separate from their bill.

8.1.6. *Governmental/Educational Interconnection:* The City shall designate in writing to the Franchisee up to one (1) physical site for each Governmental/Educational Access Channel provided pursuant to Section 8.1 hereof (for a total of up to eight (8) sites) within the Franchise Area for the purpose of interconnection of Governmental/Educational Access Channel facilities with the Cable System (each, a "GE Access Interconnection Site").

8.1.6.1. Upon one hundred eighty (180) days written notice from the City (or such later date as may be agreed upon by the City and the Franchisee) and subject to the successful completion of all required site preparation work by the City and provision of access to Franchisee for equipment, installation and provisioning, Franchisee shall, without charge to the City, provide upstream Governmental/Educational Access Channel transmission connections between its video channel aggregation point and each of the GE Access Interconnection Sites in order to permit the signals to be correctly routed from the GE Access Interconnection Site for the distribution to Subscribers.

8.1.6.2. The City shall provide to Franchisee at the GE Access Interconnection Sites a suitable video signal and a suitable audio signal for each Governmental/Educational Access Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for

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transmitting the Governmental/Educational Access Channel signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and facilities and such cooperation of the City as is reasonably necessary for Franchisee to fulfill such obligations; provided, however, that neither Franchisee nor the required site work contemplated hereunder shall impose any unreasonable material burdens on the City.

8.1.6.3. Such upstream transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of Governmental/Educational Access Channel signals to Subscribers. If Franchisee makes changes to the Cable System that require improvements to Governmental/Educational Access Channel facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the City, make such changes in either the equipment and facilities referred to in this Subsection 8.1.6 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

8.1.7. *Community Access Organizations:* The respective Borough Presidents have each designated an independent, not-for-profit, nonmembership corporation, organized pursuant to the New York Not-for-Profit Corporation Law, to serve as the Community Access Organization for the applicable Borough, under whose jurisdiction the Public Access Channels shall be placed for purposes of Article 8 of this Agreement. The CAO's shall undertake such activities and shall adopt such rules and regulations as are required, and may adopt rules and regulations not inconsistent with this Agreement, the CAO Agreements (as hereinafter defined) attached as Appendix C to this Agreement, the Certificate of Incorporation of the CAO's, the By-Laws of the CAO's, the rules and regulations of the Public Service Commission, and applicable law. The CAO's shall each maintain tax-exempt status under Section 501(c) of the Internal Revenue Code of 1986, as amended.

8.1.8. *Use of Public Access Channels.* The Public Access Channels for each Borough shall be under the jurisdiction of the CAO for such Borough. Such Public Access Channels shall be used for the purpose of distributing noncommercial services by the public, any other charitable, nonprofit purpose or other similar purpose, including, without limitation, the generation of revenues by activities reasonably related to such uses and purposes, or any other purpose agreed to between the Franchisee and the CAO.

8.1.8.1. *Public Access Interconnection:* The Franchisee shall effectuate the interconnection of any Public Access Channel facilities with the Cable System for purposes of transmitting the Public Access Channels contemplated in this Article 8 in accordance with the terms of the CAO Agreements (as hereinafter defined).

8.1.9. *No Editorial Control by Franchisee:* The Franchisee shall not exercise editorial control over programming or distribution of services over any Access Channel used by any Person(s), so long as such Access Channel is being used for the purposes authorized herein

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and except where the Franchisee is utilizing any such Access Channel pursuant to the fallow time provisions of the Cable Law.

8.1.10. *PEG Channel Quality*: Each Public and Governmental/Educational Access Channel shall be delivered with transmission quality at least the same as the transmission quality of any other channel on Franchisee's lowest tier of service, provided, however, that Franchisee shall have no responsibility to improve upon or modify the quality of any Public or Governmental/Educational Access Channels content provided to Franchisee by any Public or Governmental/Educational Access Channel programmer.

8.2. *Governmental and Educational Access Grant*: Franchisee shall provide a grant to the City in the amount of Ten Million Dollars (\$10,000,000) in twelve (12) equal annual installments of Eight Hundred Thirty Three Thousand Three Hundred Thirty Three Dollars and Thirty Three Cents (\$833,333.33) over the Franchise Term to be used in support of the production of local Governmental/Educational Access programming (the "Annual GE Grant"). Each annual installment of the Annual GE Grant shall be payable to the City by the Franchisee not later than the date which is sixty (60) days from each anniversary of the Effective Date during the Term hereof (except for the first installment of the Annual GE Grant, which shall be payable not later than the date which is sixty (60) days of the Effective Date). Such grant shall be used solely by the City for Educational Governmental Access, capital costs. Upon request by Franchisee, the City shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 8.2.

8.3. *Community Access Grant*: Franchisee shall pay to the CAO's certain funding (collectively, the "CAO Grants") pursuant to the terms of certain Community Access Organization Grant and Use Agreements by and between the respective CAO's in the City and the Franchisee (collectively the "CAO Agreements"), substantially in the form attached hereto as Appendix C. The Franchisee and the City acknowledge and agree that:

8.3.1. the amount of the CAO Grants and the terms and conditions of the CAO Agreements were negotiated solely between the Franchisee and the respective CAO's and the City was not a party to any such negotiations;

8.3.2. the CAO Grants, or any portion thereof, shall not constitute a deduction against Franchise Fees payable to the City by Franchisee pursuant to this Agreement; and

8.3.3. consistent with applicable federal and state law, the City shall not exercise any editorial control over any programming carried on any Access Channels set aside for any CAO's pursuant to this Agreement or the CAO Agreements.

8.4. *Franchisee PEG Liability Immunity*: In accordance with 47 U.S.C. §558, the Franchisee shall not incur any liability arising from or in connection with any Access Channels.

8.5. *Recovery of Costs*: To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs of the grants referenced in this Article 8 and Section 5.7 from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the forgoing, if allowed under state and federal laws, Franchisee may

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externalize, line-item, or otherwise pass-through interconnection and any franchise-related costs to Subscribers.

9. INET

Requirements for an Institutional Network are set forth in Appendix D.

10. FRANCHISE FEES

10.1. *Payment to City:* Franchisee shall pay to the City a Franchise Fee of five percent (5%) of annual Gross Revenue (the “Franchise Fee”). In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. In the event that said payments are not received by the LFA within forty-five (45) days following the end of the applicable calendar quarter, following at least thirty (30) days written notice from the LFA that the Franchise Fee has not been paid, Franchisee shall pay interest on such overdue Franchise Fee amount at the then-current interest 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) to the LFA retroactive to the first day that such Franchise Fee payment was due. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable.

10.2. *Acceptance of Payment:* 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.

10.3. *Supporting Information:* Along with each quarterly Franchise Fee payment, the Franchisee shall submit to DoITT, or such other entity as the Commissioner may designate, with a copy to the Comptroller, a report in a form reasonably acceptable to the Commissioner (a form of such report that is currently in acceptable form is attached hereto as Appendix K) showing the basis for the computation for such quarterly Franchise Fee payment.

10.4. *Limitation on Franchise Fee Actions:* 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 Franchisee is due. Franchisee shall maintain the records necessary to confirm the accurate payment of Franchise Fees during this period and during any pendency of litigation.

10.5. *Bundled Services:* If Cable Services subject to the Franchise Fee required under this Article 10 are provided to Subscribers in conjunction with Non-Cable Services, and the total cost of the bundle reflects a discount from the aggregate retail prices of the services contained therein, the Franchise Fee shall be applied to the retail price of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount.

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10.5.1. By way of illustrative example of the formula described in the foregoing Section 10.5, if Cable Service A is sold separately at a price of \$40 a month, Non-Cable Service B is sold separately at a price of \$40 a month and Non-Cable Service C is sold separately at a price of \$40 a month, but the three services when purchased together are sold for \$100 a month, the amount of the \$100 per month collected by the Franchisee from each subscriber purchasing the bundle which is to be included under Gross Revenues under this Franchise (i.e., the amount attributable to Cable Service) shall be \$33.33 per month. As a second example, if Cable Service A is sold separately at a price of \$50 a month, Non-Cable Service B is sold separately at a price of \$63 a month, Non-Cable Service C is sold separately at a price of \$74 a month, but the three services when purchased together are sold for \$150 a month, the amount of the \$150 per month collected by the Franchisee from each subscriber purchasing the bundle which is to be included under Gross Revenues under this Franchise (i.e., the amount attributable to Cable Service) shall be \$40.11 per month.

10.6. *626 Offset*: The Franchise Fee as defined herein shall not constitute a set off against the special franchise tax as provided for in N.Y. Real Property Tax Law Section 626; provided, however, that the LFA agrees that it shall impose the same special franchise tax offset waiver restriction upon all other existing and new providers of Cable Service or cable service (as such term may be defined by other providers) in the Franchise Area expressed in writing in the franchise agreement, or the renewal of any existing franchise agreement of each respective cable provider. The operation of this subparagraph shall be strictly limited to Franchise Fees lawfully imposed upon Cable Service, and shall not be construed to affect the Franchisee's rights under any provision of state or federal law regarding the provision of services other than Cable Service.

11. REPORTS AND RECORDS

11.1. *Open Books and Records*: Upon reasonable written notice to the Franchisee and consistent with Section 11.1.1 below, the City shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise, including, but not limited to, the calculation of Franchise Fees in accordance with Section 10.5 hereof. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years. Any records to be inspected by the City pursuant to this Article 11 shall be made available by Franchisee to the City in a mutually agreeable format and location, including, at the City's request, at a designated office of the Franchisee in the City. Notwithstanding anything to the contrary set forth in this Agreement, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. 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. Any information disclosed to the City that the Franchisee reasonably identifies as confidential or competitively sensitive (including, without limitation, financial

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information related to the calculation of Franchise Fees) shall be treated by the City as confidential under Section 87(2) (d) of the New York Public Officers Law and the City shall disclose such information only to employees, representatives, and agents thereof who have a need to know, or in order to enforce the provisions hereof. If the City receives a request under FOIL or similar law for the disclosure of information that Franchisee has designated as confidential, competitively sensitive, a trade secret or proprietary, the City shall notify Franchisee of such request. If the City determines in good faith that public disclosure of the requested information is required under FOIL or pursuant to a court order, the 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. Nothing in this Article 11 is intended to be inconsistent with the authority of the Comptroller under Section 93(b) of the New York City Charter to perform audits.

11.1.1. *Franchisee's Response to Records Requests:* In the event the City provides the Franchisee with a written request to inspect or review Franchisee's books and records pursuant to Section 11.1 above, Franchisee shall, within fifteen (15) days of Franchisee's receipt of such written request, provide the City with access to any information Franchisee is reasonably able to collect in response to such request and shall, within thirty (30) days from receipt of such request make available to the City all pertinent information in response to such request, consistent with the terms of Section 11.1 above; provided however, that to the extent there is additional information which Franchisee is unable to reasonably collect in such thirty (30) day period, Franchisee shall provide the City with a written notice setting forth the nature of such additional information and the date on which Franchisee shall provide access to such additional information.

11.2. *Annual and Quarterly Reports:* Subject to the confidentiality requirements of Section 11.1 above, the Franchisee shall submit a written report to the Commissioner no later than forty-five (45) days after the end of each calendar year or calendar quarter, as the case may be, during the Term of this Franchise (except where otherwise expressly indicated herein), which report shall be in a form reasonably satisfactory to the Commissioner, that shall include the information described in Sections 11.2.1 through 11.2.4; provided, however, that unless otherwise expressly described below, Franchisee's reporting obligations pursuant to this Section 11.2 shall not commence until six (6) months after Cable Service is made available by Franchisee on a commercial basis directly to multiple Subscribers in the Franchise Area.

11.2.1. After July 1, 2012, Franchisee shall provide the City with an annual report regarding the MDUs for which Franchisee is using the "Additional Procedures" contained in section 5.5.2.1 of this Franchise and the status of such procedures.

11.2.2. A quarterly report showing the total number of Significant Outages (as defined in Appendix A of this Franchise) which occurred during the quarter, and with respect to each such Significant Outage, the time it occurred, its cause and duration and the households.

11.2.3. In addition to the reports to be provided as expressly set forth in this Article 11, the Franchisee shall also provide the reports described in Section 10.3 and Appendix

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A (including but not limited to Sections 2.5.3, 3.4.3, 6.5.3 and 7.5.3) and Exhibit 2 to Appendix A of this Franchise.

11.2.4. Franchisee shall provide at each Checkpoint date as listed in section 5.1.2 of this Franchise, a report (based on the calculations set forth in the 2000 census data) showing the estimated median household income of all homes passed and the average household income of all households in New York City.

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

11.3.1. Records of all written complaints for a period of six (6) years after receipt by Franchisee. The term “complaint” as used herein refers to complaints about any aspect of the Cable System or Franchisee’s cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

11.3.2. Records of outages for a period of six (6) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

11.3.3. Records of service calls for repair and maintenance for a period of six (6) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

11.3.4. Records of installation/reconnection and requests for service extension for a period of six (6) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended;

11.3.5. Commencing on February 15, 2009, in order to track compliance with the benchmarks established in Appendix F, records showing the number of MDUs and SFUs passed by the FTTP Network in each Borough during the preceding year, and the cumulative number of MDUs and SFUs passed by the FTTP Network in each Borough since Franchisee commenced construction of the FTTP Network;

11.3.6. Commencing on February 15, 2009, records showing which wire centers servicing the Franchise Area have been upgraded so as to make them video capable VSOs open for sales consistent with Section 5.2 of this Franchise. Such records shall also show which wire center upgrades, if any, have been delayed due to the exceptions contained in the opening clause of Section 5.2 of this Franchise;

11.3.7. Commencing on February 15, 2009, records of MDUs and SFUs that were Video Network Created during the preceding year and the total number of MDUs and SFUs in each Borough throughout the City that have been Video Network Created throughout the City. Such records shall show the number of MDUs and SFUs by Borough that could not be Video Network Created due to an exception contained in Section 5.5 of this Franchise which became effective during the year, and the cumulative number of MDUs and SFUs in each Borough that are not Video Network Created due to the exceptions contained in Section 5.5 of this Franchise;

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11.3.8. Franchisee shall maintain records documenting the applicability of the Section 5.5.1 exceptions; and make such records available for inspection by the Commissioner or the Commissioner's designee at a designated Franchisee office location;

11.3.9. A map showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service;

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

11.3.11. Notwithstanding the requirements of Section 11.1 of this Agreement, upon written notice, the Commissioner may request additional information pursuant to this Franchise as may be reasonably necessary for the performance of any of the Commissioner's duties or any other City official's duty as it pertains to this Franchise. Franchisee's response to such request may be provided to the Commissioner in oral or written form, at Franchisee's sole discretion.

11.4. *Service Availability Meeting:* Not later than eight (8) months from each calendar year, upon ten (10) days written notice from the Commissioner, a representative of the Franchisee will hold a meeting with the Commissioner or designated representatives thereof to discuss information on the status of Franchisee's deployment of Cable Services in the City and Franchisee's compliance with the requirements of Article 5 of this Franchise (the "Annual Service Availability Meeting"). If, as a result of any Annual Service Availability Meeting, the Commissioner or designated representative thereof reasonably determines that an additional meeting regarding the topics addressed in the Annual Service Availability Meeting is required, the parties shall hold one (1) additional meeting per calendar year to further discuss such topics. Any information provided to the City by Franchisee in connection with any Annual Service Availability Meeting or additional meeting pursuant to this Section 11.4 shall be treated by the City as confidential and proprietary consistent with Section 11.1 hereof.

11.5. *System-Wide Statistics:* Any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints, or if expressly described otherwise in this Franchise.

11.6. *File for Public Inspection:* Throughout the term of this Agreement, the Franchisee shall maintain a file available for public inspection during normal business hours at its service centers, or such other business office as may be designated by Franchisee, as required by Appendix A to this Agreement.

12. INSURANCE AND INDEMNIFICATION

12.1. *Insurance Generally; Types of Insurance:* The Franchisee shall continuously maintain one or more liability insurance policies meeting the requirements of this Section 12 throughout the Term (with the minimum limits and special conditions specified). Such insurance shall be issued by companies that meet the standards of Section 12.2(a) hereof and shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City. The Franchisee has, as a condition of the Closing, provided proof of insurance pursuant to Section 12.3 hereof documenting compliance with the insurance requirements of this Section 12 as of the Closing.

(a) The Franchisee shall provide a Commercial General Liability Insurance policy covering the Franchisee as Named Insured and the City as an Additional Insured. Coverage for the City as Additional Insured shall specifically include the City's officials, employees and agents, and shall be at least as broad as Insurance Services Office ("ISO") Form CG 2010 (11/85 ed.) This policy shall protect the City and the Franchisee from claims for property damage and/or bodily injury, including death, which may arise from the performance of, or failure to perform, the Franchisee's obligations under this Agreement and the activities and operations conducted in connection with the provision of Cable Service under this Agreement. Coverage under this policy shall be at least as broad as that provided by ISO Form CG 0001 (1/96 ed.), must be "occurrence" based rather than "claims-made", and shall include, without limitation, the following types of coverage: Premises Operations, Products and Completed Operations, Contractual Liability (including the tort liability of another assumed in a contract), Broad Form Property Damage, Medical Payments, Independent Contractors, Personal Injury (Contractual Exclusion deleted), Cross Liability, Explosion, Collapse and Underground Property, and Incidental Malpractice. If such insurance contains an aggregate limit, it shall apply separately to the operations and activities undertaken pursuant to the Franchise. The Commercial General Liability Insurance policy described herein shall be maintained at all times with limits no less than Five Million Dollars (\$5,000,000) combined single limit per occurrence and Ten Million Dollars (\$10,000,000) aggregate.

(b) The Commercial General Liability Insurance policy referred to in the preceding subsection (a) shall contain each of the following endorsements:

(i) The City of New York together with its officials, employees and agents is an Additional Insured with coverage as broad as ISO Forms CG 2010 (11/85 ed.) and CG 0001 (1/96 ed.); and

(ii) The Duties in the Event of Occurrence, Claim or Suit condition of the policy is amended per the following: if and insofar as knowledge of an "occurrence", "claim", or "suit" is relevant to the City of New York as Additional Insured under this policy, such knowledge by an agent, servant, official, or employee of the City of New York will not be considered knowledge on the part of the City of New York of the "occurrence", "claim", or "suit" unless the following position shall have received notice thereof from such agent, servant, official, or employee: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department; and

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(iii) Any notice, demand or other writing by or on behalf of the Named Insured to the Insurance Company shall also be deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured. Any response by the Insurance Company to such notice, demand or other writing shall be addressed to Named Insured and to the City at the following addresses: Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, N.Y. 10007; and Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, NY 10007 (or replacement addresses of which the City notifies the Franchisee); and

(c) The Franchisee shall provide Workers Compensation Insurance and Disability Benefits Insurance in accordance with the Laws of the State of New York (with minimum limits as required by New York State law without regard to jurisdiction) on behalf of all employees undertaking activities or providing services pursuant to this Agreement.

(d) The Franchisee shall provide, and ensure that each subcontractor (if any) provides, Employers' Liability Insurance affording compensation due to bodily injury by accident or disease sustained by any employee arising out of and in the course of his/her employment under this Agreement. The Employers' Liability Insurance policy described herein shall be maintained at all times with limits no less than \$1 million per accident/disease/policy limit.

(e) The Franchisee shall provide a Comprehensive Business Automobile Liability policy for liability arising out of any automobile including owned, non-owned, leased and hired automobiles to be used in connection with undertaking activities or providing services pursuant to this Agreement. The Automobile Liability Insurance policy described herein shall be maintained at all times with limits no less than Two Million Dollars (\$2,000,000) combined single limit each accident. If automobiles are used for transporting hazardous materials, the Franchisee shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

(f) All insurers shall waive their rights of subrogation against the City, its officials, employees and agents.

(g) The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on indemnity in this Agreement given as a matter of law.

12.2. General Requirements for Insurance Policies:

(a) All required insurance policies shall be maintained with companies that are authorized or permitted to conduct business in the State of New York and have an A.M. Best rating of at least A- VII or a Standard and Poor's rating of at least AA, unless prior written approval is obtained from the Mayor's Office of Operations (or successor entity thereto).

(b) The Franchisee shall be solely responsible for the payment of all premiums for all required policies and all deductibles and self-insured retentions to which such

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policies are subject, whether or not the City is an insured under the policy. Any self-insured retention must be reasonable and is subject to approval by the City.

(c) Except for insurance required pursuant to Sections 12.1(c) and 12.1(d) herein, all policies shall contain a provision stating that the insurer or its authorized representative(s) shall use reasonable efforts to provide thirty (30) days prior written notice of intent to non-renew, cancellation or material adverse change to the City, except that ten (10) day notice for nonpayment of premium shall apply. Such notice shall be sent to the City pursuant to Section 18.6 hereof, and to the City's Comptroller ("the Comptroller"), attn: Office of Contract Administration, Municipal Building, Room 1005, New York, New York 10007 (or replacement addresses of which the City notifies the Franchisee).

(d) On or before the date of cancellation, termination or material adverse change affecting the City of any policies with respect to notices described in the preceding subsection (c) of this section 12.2., the Franchisee shall obtain and furnish to the City, with a copy to the Comptroller, replacement insurance binders demonstrating that replacement insurance fully compliant with this Section 12 has been obtained.

12.3. Proof of Insurance:

(a) The Franchisee has delivered to the City, as a condition of the Closing, for each policy required under this Agreement, a Certificate or Certificates of Insurance evidencing the effectiveness of all insurance required under this Agreement. All Certificates of Insurance shall be in a form reasonably acceptable to the City and shall certify the issuance and effectiveness of the types of insurance required herein, each with the specified minimum limits and conditions.

(b) A Certificate or Certificates of Insurance confirming renewals of, or changes to, insurance policies required hereunder shall be submitted to the City within ten (10) days of the expiration or renewal date of coverage of policies required under this Agreement. Such Certificates of Insurance shall comply with the requirements of the preceding subsection (a).

(c) The Franchisee shall be obligated to provide the City with a copy of any policy required by this Section 12 upon the demand for such policy by the Commissioner or the New York City Law Department; provided, however, that any policies or other related information provided by Franchisee (or Franchisee's designee, including, but limited to, an Affiliate or Franchisee's insurer) to the City pursuant to this subsection 12.4(c) shall be treated by the City as confidential and proprietary consistent with the provisions of Section 11.1 of this Franchise.

12.4. Operations of the Franchisee:

(a) Acceptance by the City of a certificate hereunder does not excuse the Franchisee from securing a policy consistent with all provisions of this Section 12 or of any liability arising from its failure to do so.

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(b) The Franchisee shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and shall be authorized to provide service pursuant to this Agreement and the Franchise only during the effective period of all required coverage.

(c) In the event of any loss, damage, injury or accident arising under this Agreement, the Franchisee (once the Franchisee's Risk Management Claims Group becomes aware of any of the foregoing circumstances) shall promptly notify in writing the commercial general liability insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any loss, damage, injury, or accident, and any claim or suit arising under this Agreement from the operations of the Franchisee or its subcontractors, promptly, but not later than 20 days after Franchisee's Risk Management Claims Group becomes aware of such event. The Franchisee's notice to the commercial general liability insurance carrier must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Franchisee as Named Insured." The Franchisee's notice to the insurance carrier shall contain the following information: the name of the Franchisee, the number of the applicable policy, the date of the occurrence, the location (street address and borough) of the occurrence, and, to the extent known to the Franchisee, the identity of the persons or things injured, damaged or lost. Additionally:

(i) At the time notice is provided to the insurance carrier(s), the Franchisee shall provide copies of such notice to the Comptroller and the Commissioner. Notice to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, New York 10007 (or replacement addresses of which the City notifies the Franchisee). Notice to the Commissioner shall be sent to the address set forth in Section 18.6 hereof; and

(ii) If the Franchisee fails to provide any of the foregoing notices in a timely and complete manner, the Franchisee shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

12.5. *Insurance Notices, Filings, Submissions:* Wherever reference is made in this Section 12 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Section 18.6 hereof.

12.6. *Disposal of Hazardous Materials:* If pursuant to this Agreement the Franchisee is involved in the disposal of hazardous materials, the Franchisee shall dispose of such materials only at sites where the disposal site operator maintains Pollution Legal Liability Insurance in the amount of at least Two Million Dollars (\$2,000,000) for losses arising from such disposal site.

12.7. *Other Remedies:* Insurance coverage in the minimum amounts provided for herein shall not relieve the Franchisee or subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or applicable law.

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12.8. *Franchisee Indemnification Obligations:* The Franchisee shall indemnify, defend and hold the City, its officers, agents and employees (the “Indemnitees”) harmless from any and all liabilities, suits, damages, claims and expenses (including, without limitation, reasonable attorneys’ fees and disbursements) (“Damages”) that may be imposed upon or asserted against any of the Indemnitees arising out of the Franchisee’s performance of, or its failure to perform, its obligations under this Agreement and/or its provision of services hereunder, provided, however, that the foregoing liability and indemnity obligation of the Franchisee pursuant to this Section 12.8 shall not apply to any Damages to the extent arising out of any willful misconduct or gross negligence of an Indemnitee. Insofar as the facts and law relating to any Damages would preclude the City from being completely indemnified by the Franchisee, the City shall be partially indemnified by the Franchisee to the fullest extent provided by law, except to the extent such Damages arise out of any willful misconduct or gross negligence of any Indemnitee. This indemnification is independent of the Franchisee’s obligations to obtain insurance as provided under this agreement.

12.9. *Defense of Claim, Etc:* If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 12.8 herein, then upon demand by the City, the Franchisee shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee’s name, by the attorneys for or approved by the Franchisee’s insurance carrier (if the defense of such claim, action or proceeding is provided by the insurance carrier) or by the Franchisee’s attorneys. The foregoing notwithstanding, in the event an Indemnitee believes additional representation is needed, such Indemnitee may engage its own attorneys to assist such Indemnitee’s defense of such claim, action or proceeding, as the case may be, at its sole cost and expense. The Franchisee shall not settle any claim with respect to which the Franchisee is required to indemnify the Indemnitees pursuant to Section 12.8 without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

12.10. *No Claims Against Officers, Employees, or Agents:* Franchisee agrees not to make any claim against any officer or employee of the City or officer or employee of an agent of the City, in their individual capacity, for, or on account of, anything done or omitted in connection with this Agreement, to the extent that such officer or employee of the City or officer or employee of an agent of the City was acting within the lawful course and scope of his employment or agency. Nothing contained in this Agreement shall be construed to hold the City liable for any lost profits, or any consequential damages incurred by Franchisee or any Person acting or claiming by, through or under Franchisee.

12.11. *Limitation on Indemnification:* As between the City and the Franchisee, the indemnifications obligations of the Franchisee pursuant to Section 12.8 above shall not apply to any Damages arising out of the distribution of programming over the Governmental/Educational Access Channels, the Institutional Network available to and used by the City, and/or the Public Access Channels, to the extent that such claim does not arise out of an act or failure to act by the Franchisee.

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12.12. *No Applicability to Pending Litigation:* Franchisee's indemnification obligations pursuant to this Article shall have no applicability to the litigation referenced and defined in Section 18.14.

13. TRANSFER OF FRANCHISE

13.1. *City Approval Required:* Subject to the provisions of this Article, the Franchisee shall apply to the City for approval of any transaction in which any change is proposed with respect to ten percent (10%) or more for voting interests or twenty-five percent (25%) or more for non-voting interests of the ownership of the Franchisee, the Cable System, the Cable System assets, or the Franchise by submitting FCC Form 394 or such other form as the FCC may prescribe for that purpose; provided however that the foregoing, requirements of this Section 13.1 shall not be applicable with respect to transfers of any ownership interests contemplated hereunder which are effectuated as a result of any transactions involving the exchange of publicly traded shares. The application shall be made at least one hundred twenty (120) calendar days prior to the contemplated effective date of the transaction. Such application shall contain complete information on the proposed transaction, including details of the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application:

13.1.1. all information and forms required under federal law;

13.1.2. any shareholder reports or filings with the Securities and Exchange Commission that pertain to the transaction;

13.1.3. a report detailing any changes in ownership of voting or non-voting interests of over five percent;

13.1.4. other information necessary to provide a complete and accurate understanding of the financial position of the Cable System before and after the proposed transaction;

13.1.5. complete information regarding any potential impact of the transaction on Subscriber rates and service; and

13.1.6. any contracts that relate to the proposed transaction as it affects the City and, upon request by the City, all documents and information that are related or referred to therein and which are necessary to understand the proposed transaction; provided, however, that if the Franchisee believes that the requested information is confidential and proprietary, then the Franchisee must provide the following documentation to the City: (i) specific identification of the information; (ii) a statement attesting to the reason(s) Franchisee believes the information is confidential; and (iii) a statement that the documents are available at the Franchisee's designated offices for inspection by the City.

13.2. *City Action on Transfer:* To the extent not prohibited by federal law, the City may: (i) grant; (ii) grant subject to conditions directly related to concerns relevant to the transactions; (iii) deny any such transactions; or (iv) not take action, in which case the

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transactions shall be deemed granted, unless the requesting party and the LFA expressly agree in writing to an extension, pursuant to Section 617 of the Communications Act, 47 U.S.C. § 537.

13.3. *Waiver of Transfer Application Requirements:* To the extent consistent with federal law, the City may waive in writing any requirement that information be submitted as part of the transfer application, without thereby waiving any rights the City may have to request such information after the application is filed.

13.4. *Subsequent Approvals:* The City's approval of a transaction described in this Article in one instance shall not render unnecessary approval of any subsequent transaction.

13.5. *Approval Does Not Constitute Waiver:* Approval by the City of a transfer described in this Article shall not constitute a waiver or release of any of the rights of the City under this Agreement, whether arising before or after the date of the transfer.

13.6. *No Consent Required For Transfers Securing Indebtedness:* The Franchisee shall not be required to file an application or obtain the consent or approval of the City for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness. However, the Franchisee will notify the City within ten (10) days if at any time there is a mortgage or security interest granted on substantially all of the assets of the Cable System. The submission of the Franchisee's audited financial statements prepared for the Franchisee's bondholders shall constitute such notice.

13.7. *No Consent Required For Any Affiliate Transfers:* The Franchisee shall not be required to pay any fee or file an application or obtain the consent or approval of the City for any transfer of an ownership or other interest in Franchisee, the Cable System, or the Cable System assets to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee. However, the Franchisee will notify the City within thirty (30) days if at any time a transfer covered by this subsection occurs.

14. RENEWAL OF FRANCHISE

14.1. *Governing Law:* The City and Franchisee agree that any proceedings undertaken by the City that relate to renewal or possible renewal of this Franchise shall be subject to, and shall not be inconsistent with, the Cable Law, including without limitation 47 U.S.C. § 546, as such may be amended from time to time.

14.2. *Informal Negotiations:* Notwithstanding anything to the contrary set forth herein, Franchisee and the City agree that at any time during the Term, while affording the public appropriate notice and opportunity to comment consistent with New York State law and the City Charter, the City and Franchisee may, each acting in its discretion, agree to undertake and finalize, pursuant to 47 U.S.C. §546(h), informal negotiations regarding renewal of the Franchise granted hereunder and, if agreement is reached on the terms and conditions of such a renewal the

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City may grant such a renewal, consistent with the applicable procedures and requirements of New York State law and the City Charter.

14.3. *Non-Renewal/Termination:* In the event that the City (i) does not grant a renewal of the Franchise at the scheduled expiration date of the Term; or (ii) this Agreement is terminated for any other lawful reason prior to the scheduled expiration of the Term, then the Term of the Franchise shall expire and all rights of the Franchisee under the Franchise shall cease, provided however that nothing in this Section shall be inconsistent with the terms of Section 18.21, provisions of this Agreement expressly providing for the survival of certain provisions after such termination or expiration, or the provisions of subsection 14.3.1 below.

14.3.1. If the Franchisee continues to provide Cable Service after the termination or expiration of the Term of the Franchise, and the Franchise has not been renewed, then the Franchisee shall be bound by all of the Franchisee's obligations under this Franchise for the period of such continuing provision of Cable Service.

14.4. *Consistent Terms:* Franchisee and the City consider the terms set forth in this Article 14 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law.

15. DEFAULT AND REMEDIES

15.1. *Defaults.* In the event of any breach, default, failure or other noncompliance by the Franchisee in the performance of any obligation of the Franchisee under this Agreement (each such breach, default, failure or other noncompliance being referred to herein as a "Default"), which Default is not cured within the specific cure period provided for in this Agreement (or if no specific cure period is provided for in this Agreement then within the cure period described in Section 15.3 below), then the City may:

15.1.1. cause a withdrawal from the cash Security Fund, pursuant to the provisions of Section 15.11 herein;

15.1.2. make a demand upon the Performance Bond pursuant to the provisions of Section 15.9 herein;

15.1.3. draw down on the Letter of Credit pursuant to the provisions of Section 15.10 herein;

15.1.4. pursue any rights the City may have under the Guaranty;

15.1.5. seek and/or pursue money damages from the Franchisee as compensation for such Default;

15.1.6. seek to restrain by injunction the continuation of the Default; and/or

15.1.7. pursue any other remedy permitted by law, or in equity, or as set forth in this Agreement, provided however the City shall only have the right to terminate this Agreement upon the occurrence of a Revocation Default (defined hereinafter).

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15.2. *Notice of Default:* If at any time the City believes that Franchisee has committed any Default, the City shall notify the Franchisee's designated franchise service manager, and the Franchisee representatives identified in Section 18.6 hereof, of such alleged Default. If, thereafter, the City determines that Franchisee is not in Default, the City shall promptly provide the Franchisee with written notice of such determination. However, if the City determines that such notice has failed to result in a resolution of the matter, the City shall then notify Franchisee in writing of the alleged Default and identifying the specific provision of the Franchise on which the alleged Default is based (for purposes of this Article, the "Notice of Default").

15.3. *Franchisee's Right to Cure or Respond:* Except as set forth in Section 15.3.1 below, Franchisee shall have thirty (30) days from receipt of the Notice of Default to: (i) respond to the City, if Franchisee contests (in whole or in part) the allegation of Default; or (ii) cure such alleged Default. Upon cure of any alleged Default, the City shall provide written confirmation that such cure has, to the knowledge of the Commissioner or designated representative thereof, been effected.

15.3.1. With respect to the following Franchise obligations, Franchisee shall have ten (10) days from the receipt of Notice of Default to (i) respond to the City, if Franchisee contests (in whole or in part) the allegation of Default; or (ii) cure such alleged Default: (a) payment of Franchise Fees, Annual GE Grants, or Technology, Educational & Municipal Facility Grants; and (b) maintenance of Security pursuant to Sections 15.9, 15.10 and 15.11.

15.4. *Extended Time to Complete Cure:* Notwithstanding anything in the preceding to the contrary, no Default shall exist if a breach or default is curable, and a cure period is provided therefor in this Article 15 or otherwise, but work to be performed, acts to be done, or conditions to be removed to effect such cure cannot, by their nature, reasonably be performed, done or removed within the cure period provided, so long as the Franchisee shall have commenced curing the same within the specified cure period and shall diligently and continuously prosecute the same promptly to completion.

15.5. *Miscellaneous Matters Regarding Default, Cure and Remedies:* The rights and remedies described in Section 15.1 hereof shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed appropriate by the City, except as provided herein. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy, nor shall any delay or omission in taking any action or exercising any remedies with respect to any Default be construed to be a waiver of or acquiescence to any Default. The exercise of any such right or remedy by the City shall not release the Franchisee from its obligations or any liability under this Agreement, provided that nothing in this Section 15.5 or in this Agreement is intended to authorize or shall result in double recovery of damages by the City.

15.6. *Revocation Defaults; Definition of Revocation Default:* A Revocation Default shall mean any of the following occurrences or events:

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15.6.1. any failure by the Franchisee to maintain in effect the cash Security Fund described in Section 15.11 hereof and/or the Letter of Credit described in Section 15.10 hereof in accordance with the provisions of said sections, which failure continues for ten (10) business days after notice;

15.6.2. any failure by the Franchisee to maintain in effect the Performance Bond described in Section 15.9 hereof in accordance with the provisions of said section, which failure continues for ten (10) business days after notice;

15.6.3. if the Franchisee intentionally makes a material false entry, or repeated false entries that are material in the aggregate, in the books of account of the Franchisee applicable to this Agreement, or a material false statement (or repeated false statements that are material in the aggregate) in reports or other filings submitted to the City (materiality for purposes of this clause being defined as material with respect to accurately documenting the Franchisee's compliance with its obligations under this Agreement);

15.6.4. if the Franchisee fails to maintain insurance coverage or otherwise materially breaches Article 12 hereof and such failure continues for ten (10) business days after notice from the City to the Franchisee;

15.6.5. if the Franchisee engages in a course of conduct intentionally designed to practice fraud or deceit upon the City;

15.6.6. if the Franchisee, intentionally engages or has engaged in any material misrepresentation in any representation or warranty contained herein;

15.6.7. if there is any transfer of the Franchise other than in accordance with Article 13;

15.6.8. the conviction, guilty plea or plea of nolo contendere of the Franchisee, any Controlling Person, any director or officer of the Franchisee, or any employee or agent of the Franchisee or of any Controlling Person acting under the express direction or with the actual consent of any of the foregoing, of any offense, including, without limitation, bribery or fraud, arising out of or in connection with this Agreement, the award of the franchise granted pursuant to this Agreement, provided that such shall constitute a Revocation Default with respect to any of the foregoing with respect to a malfeasant director, officer, employee or agent of the Franchisee or of any Controlling Person only if the Franchisee or the applicable Controlling Person refuses to disassociate itself from, or terminate the employment of, said director, officer, employee or agent;

15.6.9. the conviction or guilty plea of any City officer, employee, or agent of the offense of bribery or fraud with respect to this Agreement which arises out of any act of the Franchisee of any Controlling Person, or of any agent or employee thereof acting under the express direction or actual consent of the foregoing;

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15.6.10. any abandonment of service in default of the obligations described in Section 15.13 hereof; and

15.6.11. any persistent and repeated pattern of material Defaults, even if individual Defaults constructing such a persistent and repeated pattern are subsequently cured after their occurrence or remediated by recourse to security provided to the City under Sections 15.9 through 15.11 hereof or by other means; provided, however, that this provision shall not apply to alleged Defaults subject to good faith disputes.

15.7. *Remedies of the City for Revocation Defaults:* In the event of a Revocation Default, the City may (in addition to any other remedy which the City may have under Section 15.1 hereof) at its option, give to the Franchisee a written notice (“Notice of Revocation”), in accordance with Section 15.8 hereof, stating that this Agreement and the Franchise granted hereunder shall be revoked on the date specified in such notice (which date shall not be less than ninety (90) days from the giving of the notice), and this Agreement and the Franchise granted hereunder shall terminate on the date set forth in such notice as if such date were the date provided in this Agreement for the scheduled expiration of this Agreement and the franchise granted herein. Notwithstanding the preceding however, during the period between the Notice of Revocation provided pursuant to this Section 15.7 and thirty days prior to the date of revocation set forth in such notice, the Franchisee may submit to the City any material it wishes to document that no Revocation Default has occurred or that revocation as a remedy for such Revocation Default would not be in the best interests of the City. If the City after reviewing such material determines that a Revocation Default has not occurred, or determines in its discretion that termination as a remedy for such Revocation Default would not be in the best interests of the City, then the City shall notify the Franchisee of its withdrawal of the Notice of Revocation which notice shall thereby no longer be effective.

15.8. *Revocation:* In the event the City has not received a satisfactory response from Franchisee to the Notice of Revocation, it may then seek revocation of the Franchise at a hearing. The City shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such hearing, a written notice specifying the time and place of such hearing which shall not be earlier than as provided for in Section 15.7 and stating its intent to revoke the Franchise.

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

15.8.2. Following the hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions to the City in writing and thereafter the City shall determine (i) whether an event of Revocation Default has occurred under this Franchise; (ii) whether such event of Revocation Default is excusable; and (iii) whether such event of Revocation 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

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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 have the power to review the decision of the City de novo. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the City.

15.9. Performance Bond:

15.9.1. *Establishment:* The Franchisee shall arrange for, and shall maintain throughout the term of this Agreement, a performance bond, for the benefit of the City, on the form attached hereto as Appendix E and from an institution satisfactory to the City, in an amount as provided in Section 15.9.2 below (the "Performance Bond"). The "City of New York acting by and through the Department of Information Technology and Telecommunications" shall serve as the sole obligee under the Performance Bond. The attorney-in-fact who signs the Performance Bond must file with the bond a certified copy of his/her power of attorney to sign the bond. The Performance Bond shall serve as security (together with the other elements of security provided for under this Agreement) for Franchisee's timely performance of its obligations under this Agreement.

15.9.2. *Amount and Term:* The initial amount of the Performance Bond shall be Fifty Million Dollars (\$50,000,000), which amount may at Franchisee's option be periodically reduced pursuant to the following schedule if at the scheduled reduction date Franchisee has timely completed its deployment obligations under Appendix F hereof. The Performance Bond provided hereunder shall provide that it shall remain in effect during the term of this Agreement and for one year thereafter unless within such one year period DoITT notifies the Franchisee that the Performance Bond shall remain in full force and effect because of the pendency of any litigation or the assertion of any claim which has not been brought to final judgment and for which the Performance Bond provides security.

15.9.2.1. *Reduction Schedule:* The required amount of the Performance Bond shall be reduced in accordance with the following schedule as of December 31 of the year indicated so long as Franchisee has attained the "NYC Total" percentage of households passed required as of that date as set forth in Appendix F, except that the date for reduction in calendar year 2014 shall be June 30 of that year, subject to the same requirement. If Franchisee does not attain the "NYC Total" percentage of households passed required as of the date as set forth in Appendix F due to the triggering of one or more of the Checkpoint Extensions provided for in Section 5.1.2 or otherwise, then the required amount of the Performance Bond shall be reduced only when the "NYC Total" percentage of households passed thereafter is attained.

2008: Thirty-Five Million Dollars (\$35,000,000)
2009: Thirty Million Dollars (\$30,000,000)
2010: Twenty-Five Million Dollars (\$25,000,000)
2011: Fifteen Million Dollars (\$15,000,000)
2012: Ten Million Dollars (\$10,000,000)

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2013: Five Million Dollars (\$5,000,000)

2014: One Million Dollars (\$1,000,000)

15.9.3. *Claim Against the Performance Bond:* The City may make a claim against the Performance Bond in such amounts as are necessary to satisfy (to the degree possible) the Franchisee's obligations referenced in Section 15.9.2 (and to reimburse the City for costs, losses or damages incurred as the result of such failure(s) by Franchisee to meet its obligations), as such claim may be permitted by a final judgment of a court of competent jurisdiction. The City may not seek recourse against the Performance Bond for any costs, losses or damages for which the City has previously been compensated through a drawdown against the Performance Bond, recourse to the Letter of Credit, or withdrawal from the cash Security Fund.

15.10. *Letter of Credit:*

15.10.1. *Establishment:* The Franchisee shall arrange for, and shall maintain throughout the term of this Agreement and for one year thereafter, a letter of credit, for the benefit of the City, in a form and issued by a bank satisfactory to the City, in an amount as provided in Section 15.10.2 below (the "Letter of Credit"). The Letter of Credit shall serve as security (together with the other elements of security provided for under this Agreement) for Franchisee's timely performance of its obligations under this Agreement. The "City of New York acting by and through the Department of Information technology and Telecommunications" shall be named as the beneficiary. The original Letter of Credit shall be deposited with the City. The Letter of Credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be canceled or not renewed by the issuer/surety until at least ninety (90) days after receipt by the New York City Department of Information Technology and Telecommunications of a written notice stating such intention to cancel or not to renew."

15.10.2. *Amount:* The Letter of Credit shall be in the amount of Twenty Million Dollars (\$20,000,000).

15.10.3. *Drawdown Against the Letter of Credit:*

15.10.3.1. The City may draw down against the Letter of Credit such amounts as are necessary to satisfy (to the degree possible) the Franchisee's obligations under this Agreement not otherwise met in accordance with this Agreement (and to reimburse the City for costs, losses or damages incurred as the result of such failure(s) by Franchisee to meet its obligations), as such drawdown may be permitted by a judgment of a court of competent jurisdiction. The City may not seek recourse against the Letter of Credit for any costs, losses or damages for which the City has previously been compensated through a drawdown against the Letter of Credit, recourse to the Performance Bond, or withdrawal from the cash Security Fund.

15.10.3.2. In addition to its right to draw down on the Letter of Credit for any of the reasons set forth in 15.10.3.1 hereof, the City may draw down in full on the Letter of Credit at any time such Letter of Credit has less than thirty (30) days to run before it is

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scheduled to expire and no replacement or renewal Letter of Credit has been given in its place. In the event of a drawdown for such reason, the City will hold the proceeds as cash security (paying to itself any interest earned) in lieu of a Letter of Credit (with the City having the right to make withdrawals for the same purposes as drawdowns are permitted on the Letter of Credit) until a replacement Letter of Credit is put in place, at which time such drawdown proceeds will be returned to the Franchisee less any proper withdrawals and any reasonable transaction expenses. In the event of a drawdown on the Letter of Credit as contemplated by this Section 15.10.3.2, and until such time as a replacement Letter of Credit is obtained in accordance herewith, the replenishment obligations of the Franchisee with respect to the moneys held by the City following such drawdown as cash security shall correspond to the replenishment obligations (and rights) of the Franchisee applicable to the cash Security Fund under Section 15.11.

15.10.3.3. Within two business days after any drawdown against the Letter of Credit, the City shall notify Franchisee of the date and amount thereof.

15.10.4. *Replenishment:* Until the expiration of one year after the Term, within 30 days after receipt of notice (the “Replenishment Period”) from the City that at least One Hundred Thousand Dollars (\$100,000) (cumulatively or in a single instance) has been drawn down against the Letter of Credit, Franchisee shall obtain a replacement or additional Letter of Credit such that the total amount available under the letter(s) of credit obtained shall be restored to the amount required in Section 15.10.2.

15.11. *Cash Security Fund:*

15.11.1. *Establishment and Amount:* Franchisee shall deposit with DoITT as a condition to the Closing a certified check, bank check or wire transfer, payable to the “City of New York,” in the amount of One Million Dollars (\$1,000,000), to be held by the City as security (together with the other elements of security provided for under this Agreement) for performance of Franchisee’s obligations under this Agreement (the “Security Fund”).

15.11.2. *Withdrawals From or Claims Under the Security Fund:* The City may make withdrawals from the Security Fund of such amounts as are necessary to satisfy (to the degree possible) Franchisee’s obligations under this Agreement that are not otherwise satisfied (and to reimburse the City for costs, losses or damages incurred as the result of Franchisee’s failure(s) to satisfy its obligations), to the extent that such withdrawal may be permitted by a judgment of a court of competent jurisdiction. The City may not seek recourse against the Security Fund for any costs, losses or damages for which the City has previously been compensated through a withdrawal from the Security Fund, recourse to the Performance Bond provided for in this Agreement or drawdown against the Letter of Credit provided for in this Agreement. Within two business days after any withdrawal from the Security Fund, the City shall notify the Franchisee of the date and amount thereof.

15.11.3. *Replenishment:* Until the expiration of one year after the end of the Term, within 30 days after receipt of notice (the “Replenishment Period”) from the City that any amount has been withdrawn from the Security Fund as provided in Section 15.11.2, the Franchisee shall restore to the Security Fund the amount thus withdrawn.

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15.11.4. *Return of Security Fund:* Within thirty (30) days of the end of the Term, the City shall pay over to the Franchisee any amounts remaining in the Security Fund.

15.12. *Not a Limit on Liability:* Neither the Franchisee's obligations under this Agreement nor Franchisee's liability for non-performance of any such obligations are limited in nature or amount by the acceptance or availability of the Performance Bond provided pursuant to Section 15.9, the Letter of Credit provided pursuant to Section 15.10 or the cash Security fund provided by Section 15.11.

15.13. *Abandonment of Service:* Franchisee shall not abandon provision of any Cable Service or portion thereof in the City without the City's prior written consent as provided in the Cable Law.

16. CUSTOMER PROTECTION STANDARDS

16.1. *Generally:* Franchisee shall comply with the consumer protection standards set forth in Parts 890 and 896 of the NY PSC rules and regulations and the provisions of Appendix A hereto.

16.2. *Privacy Protection:* The Franchisee shall comply with the provisions of 47 U.S.C. § 551 and any other applicable law, including any local standards to the extent not inconsistent with the terms of this Franchise established in accordance with applicable law, with respect to the protection of the privacy of Subscribers.

16.3. *Parental Control:* Franchisee shall make available to any Subscriber, if not already incorporated in standard equipment that is offered to all Subscribers, a device that offers as an option the ability to limit access to programming to Persons who provide a personal identification number or other means provided by the Franchisee only to a Subscriber, or other similar means of allowing parents to control children's access to programming in the Subscriber household. Provided, however, that it is not the intention of the parties that this Agreement be construed as placing any responsibility or liability on the Franchisee for the exercise of or failure to exercise such parental controls as are offered and Franchisee shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls as are offered.

16.4. *Information to City:* The Franchisee shall provide subscriber information requested by the City for the purpose of enforcement of this Franchise, to the extent the provision of such information does not violate applicable law (including, without limitation, 47 U.S.C. § 551).

17. EMPLOYMENT AND PURCHASING

17.1. *Right to Bargain Collectively:* The Franchisee shall recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. The Franchisee shall recognize and deal with the representatives duly designated or selected by the majority of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or any other terms, conditions, or

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privileges of employment as required by law. The Franchisee shall not dominate, interfere with, participate in the management or control of, or give financial support to any union or association of its employees.

17.2. *No Discrimination:* The Franchisee shall not: (i) refuse to hire, train, or employ; (ii) bar or discharge from employment; or (iii) discriminate against any individual in compensation, hours of employment, or any other term, condition, or privilege of employment, including, without limitation, promotion, upgrading, demotion, downgrading, transfer, layoff, and termination, on the basis of race, creed, color, national origin, sex, age, handicap, marital status, affectional preference or sexual orientation in accordance with applicable law. The Franchisee agrees to comply in all respects with all applicable federal, state and local employment discrimination laws and requirements during the term of this Agreement.

17.3. *Local Employment Plan:* Within thirty (30) days of the Effective Date hereof, the Franchisee shall, at its own cost and expense, develop, maintain and implement and disclose to the City (subject to appropriate and lawful confidentiality restrictions), a plan, consistent with Franchisee's collective bargaining agreements, for the recruitment, education, training, and employment of residents of the City for the opportunities to be created by the deployment and provision of service contemplated in this Agreement.

17.4. *City Vendors:* To the extent feasible and consistent with applicable law, and with due regard to price and quality considerations, the Franchisee shall utilize vendors located in the City in connection with the deployment and provision of service contemplated by this Agreement.

17.5. *Local Law Requirements:* The Franchisee agrees to comply in all respects with the provisions of the Mayor's Executive Order No. 50 (April 25, 1980) (codified at Title 10 Sections 1-14 of the Rules of the City of New York) and City Administrative Code 6-108.1 (1984) and all rules and regulations promulgated thereunder (collectively, the "EEO Requirements"), as such EEO Requirements may be amended, modified or succeeded throughout the Term of this Agreement. Notwithstanding the fact that the EEO Requirements do not apply on their face to Franchisee in its capacity as a franchisee, the Franchisee shall comply in all respects with the provisions of such EEO Requirements and successor and replacement laws, orders and regulations adopted following the date of this Agreement. As required by said Executive Order No. 50, the provisions of Sections 50.30 and 50.31 of the Final Rule implementing said Order are incorporated herein by this reference.

18. MISCELLANEOUS PROVISIONS

18.1. *Competition:* The parties agree that this Agreement, when compared to the terms of the City's cable television franchise agreements in existence as of the Closing, contains economic and regulatory burdens which, when taken as a whole, are not greater or lesser than those placed upon other cable operators operating within the Franchise Area.

18.2. *Actions of Parties:* Any action to be taken by the City and/or the Commissioner pursuant to this Agreement shall be taken in accordance with the applicable provisions of the City Charter, as said Charter may be amended or modified throughout the Term of this

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Agreement. In any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned, unless expressly agreed otherwise herein.

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

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

18.5. *Force Majeure:* Subject to the procedures set forth in the last sentence of this Section 18.5, the Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure; provided, however, that in the event that any delay in performance resulting from such a Force Majeure affects only part of Franchisee's capability to perform, Franchisee shall perform to the extent it is able to do so and shall take all steps, reasonably within its ability, to minimize the length and effect of such Force Majeure delay. The Franchisee shall notify the Commissioner in writing of the occurrence of an event of Force Majeure, or a series of related events constituting an event of Force Majeure, which resulted in or is resulting in a delay in performance, such notice to be provided within twenty (20) business days of the event or series of events, or if notification within such period is not practicable under the circumstances, as soon as practicable.

18.6. *Notices:* Every notice, order, petition, document, or other direction or communication to be served upon the City or the Franchisee shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, or by a nationally recognized overnight delivery service, to the following addresses (unless expressly stated otherwise in this Agreement):

If to the Franchisee, to:

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Verizon New York Inc.
Maura Breen, Senior Vice President & General Manager – New York Region
140 West Street
31st Floor
New York, NY 10007

with a copy to:

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

With a copy to:

Verizon Communications
140 West St., 22nd Floor
New York, NY 10007
Attention: Franchise Service Manager

If to the City, to:

Department of Information Technology and Telecommunications
75 Park Place, Ninth Floor
New York, NY 10007
Attention: Commissioner

with a copy to:

New York City Law Department
100 Church Street, Sixth Floor
New York, NY 10007
Attention: Chief, Economic Development Division

Except as otherwise provided herein, the receipt of such notice, direction, or order shall be equivalent to direct personal notice and shall be deemed to have been given when received. Either party may change the above notice addresses by notice to the other party.

18.7. *Additional Representations and Warranties*: In addition to the representations, warranties, and covenants of the Franchisee to the City set forth elsewhere herein, the Franchisee represents and warrants to the City and covenants and agrees that, as of the Closing:

18.7.1. *Organization, Standing and Power*: The Franchisee is a corporation duly organized and validly existing under the laws of the State of New York and is duly authorized to

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do business in the State of New York and in the City. The Franchisee has all requisite power and authority to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby. Certified copies of the Franchisee's constituent documents, as amended to date, will be provided to the Commissioner upon request.

18.7.2. *Authorization:* The execution, delivery and performance of this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Franchisee. This Agreement and all other agreements entered into in connection with the transaction contemplated hereby have been duly executed and delivered by the Franchisee and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Franchisee.

18.7.3. *Compliance with Law:* The Franchisee is in compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the provision of the services contemplated herein and has obtained or will obtain prior to the provision of service to the public all government licenses, permits, and authorizations necessary for the provision of the service, except approval by the NY PSC.

18.7.4. *Ownership Interests:* Franchisee is a wholly owned subsidiary of NYNEX Corporation, which itself is a wholly owned subsidiary of Verizon Communications, Inc.

18.7.5. *Compliance with City Contracts:* The Franchisee has not received notice from the City of any default or noncompliance with any existing written contract or other written agreement with the City, unless such default or noncompliance has subsequently been cured or otherwise resolved to the City's satisfaction or such notice has been withdrawn by the City or otherwise determined by the City or a court of competent jurisdiction to have been issued in error.

18.8. *Compliance with Laws; Licenses and Permits:* With respect to its activities pursuant to this Agreement, the Franchisee shall comply with: (i) all applicable laws, rules, regulations, orders, writs, decrees and judgments (including, but not limited to, those of the PSC and the FCC) and any other federal, state agency or authority of competent jurisdiction; and (ii) all local laws and all rules, regulations, orders, of the City and of DoITT consistent with this Agreement. The Franchisee shall have the sole responsibility for obtaining all permits, licenses and other forms of approval or authorization necessary to construct, operate, maintain, upgrade, replace or repair the System, or any part thereof.

18.9. *Entire Agreement:* This Agreement and the Exhibits and Appendices hereto constitute the entire agreement between Franchisee and the City and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

18.10. *Amendments and Modifications:* Amendments and/or modifications to this Franchise shall not be effective unless mutually agreed to in writing by the parties and shall be subject to the approval of the NY PSC, pursuant to the Cable Law.

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18.11. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the articles, sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement. Terms such as "hereby," "herein," "hereof," "hereinafter," "hereunder," and "hereto" refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term "may" is permissive; the terms "shall" and "will" are mandatory, not merely directive. All references to any gender shall be deemed to include all others, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

18.12. *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by a final order of any court of competent jurisdiction or by, or a final order of any state or federal regulatory authority having competent jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, subject to the obligations of the parties as applicable under Section 18.4 above.

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

18.14. *Pending Litigation:* Nothing in this Franchise shall be construed to prejudice or affect any position taken by either the City or Franchisee in the litigation now pending in the Supreme Court, County of New York, captioned The City of New York v. Verizon New York Inc., Index No. 402961/03 (the "Pending Litigation").

18.15. *FTTP Network Status:* In the event of a lawful termination or non-renewal of the Franchise, the legal status of the FTTP Network in the rights-of-way will revert to whatever status it has as a system providing only services that do not include Cable Service, as such status may be ultimately determined by the final outcome of the litigation referred to in Section 18.14 above. In implementation of the intent of the preceding sentence, if and so long as the Franchisee shall have separate lawful authority to maintain facilities providing services of the type being carried over the FTTP Network in the City's Public Rights-of-Way, the Franchisee shall not be required to remove or relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Service.

18.16. *NY PSC Approval:* This Franchise is subject to confirmation by the NY PSC. Franchisee shall file a petition for confirmation with the NY PSC within sixty (60) days after the date hereof. Franchisee shall also file any necessary notices with the FCC.

18.17. *Rates and Charges:* The rates and charges for Cable Service provided pursuant to this Franchise shall be subject to regulation in accordance with federal law, and in no event shall Franchisee be subject to rate regulation, except to the extent Franchisee is no longer subject to

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Effective Competition (as that term is defined by federal law) or such rate regulation is authorized to be imposed as a result of a change in federal law.

18.18. *Publishing Information:* Except as otherwise permitted in this Franchise, the City hereby requests that Franchisee omit publishing information specified in 47 C.F.R. § 76.952 from Subscriber bills.

18.19. *No Third Party Beneficiaries:* This Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

18.20. *City Official:* The Commissioner is the City official that is responsible for the continuing administration of this Agreement.

18.21. *Holdover.* To the extent required or permitted by PSC regulations, in the event the Franchisee continues to provide Cable Service within the Franchise Area after the term of this Agreement, the Franchisee shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement or the Franchise granted pursuant to this Agreement.

18.22. *Investigations Clause:* Franchisee shall comply with the City's standard "Investigations Clause" to be included in City contracts and agreements pursuant to Section 4(b) of Mayoral Executive Order 16 of 1978, as set forth in Appendix I hereto, and in the event of any failure as described therein shall be subject to the penalties set forth therein.

18.23. *Interpretation:* This Agreement and the provisions contained herein shall not be construed or interpreted for or against any party because that party drafted, or caused that party's legal representative to draft, any of its provisions.

18.24. *Voluntary Execution:* The parties acknowledge that each has read this Agreement, that each fully understands its rights, privileges and duties under this Agreement, and that each enters into this Agreement freely and voluntarily. Each party further acknowledges that it has had the opportunity to consult with counsel of its own choosing in the negotiation or agreement to the provisions of this Agreement.

18.25. *Execution in Counterparts:* This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute a single agreement.

[The remainder of this page is intentionally blank.]

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AGREED TO THIS ____ DAY OF _____, 2008.

The City of New York:

By: _____
Deputy Mayor

By: _____
Paul Cosgrave, Commissioner

Approved as to form and certified as to legal authority:

Acting Corporation Counsel

Attest:

By: _____
City Clerk [City Seal]

Verizon New York Inc.

By: _____
Maura C. Breen, Senior Vice President &
General Manager - NY/CT Region, Verizon Telecom

Approved as to form:

John Raposa, Vice President & Deputy General Counsel –
Verizon Telecom

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APPENDICES

Appendix A: Customer Protection Standards

Appendix B: PEG Channels

Appendix C: Form Community Access Organization Agreement

Appendix D: Institutional Network

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Appendix F: FTTP Upgrade Schedule

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Appendix K: Form of Franchise Fee Report

APPENDIX A

CONSUMER PROTECTION STANDARDS

APPENDIX A
CONSUMER PROTECTION STANDARDS
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Section 1
SOLICITATION OF SUBSCRIPTIONS

1.1 Uniforms/Identification Cards/Name Badges. Each employee of the Franchisee who routinely comes into contact with members of the public at their places of residence must wear a picture identification card clearly indicating his or her employment with the Franchisee. The photograph on the identification card shall prominently show the employee's name and/or identification number. Such employee shall prominently display such identification card and shall show it to all such members of the public. Each employee of any contractor or subcontractor of the Franchisee who routinely comes into contact with members of the public at their places of residence must wear a picture identification card clearly indicating his or her name, the name of such contractor or subcontractor and the name of the Franchisee. The parties acknowledge that each Franchisee employee who routinely comes into contact with members of the public at their places of residence shall wear a uniform provided by the Franchisee, in addition to the foregoing requirements with respect to identification cards, except to the extent such requirement is affected by or subject to any contractual agreement(s) between the Franchisee and any Person other than the City.

1.2 Subscription Information.

1.2.1 At the time of installation to the Subscriber who is receiving the installation, and at least once a year to all Subscribers, with a copy to DoITT, the Franchisee shall provide the following subscription information in a clear, complete and comprehensible form:

(i) a description of the Cable Services provided by the Franchisee, accompanied by a listing of the charges for each such Service, either alone or in combination;

(ii) a listing of all rates, terms and conditions for each Cable Service or tier of Cable Service, both alone and in combination, and all other charges, such as for installation, for application of Cable Service to additional television sets, for deposits on equipment, for stolen or lost converters and other equipment, for returned checks and for relocating cable outlets;

(iii) a general explanation of other devices which may be used in conjunction with the System, such as devices provided as contemplated in 47 C.F.R. § 76.1621, remote control devices, and parental control devices (to the extent technology enabling parental control capability is not already incorporated in other devices) and a listing of the Franchisee's charges for connecting such devices to the System;

(iv) a description of the Franchisee's billing and collection procedures (including payment requirements to avoid disconnection of service), the use of payment coupons, the amount of any applicable late fees, and a description of the option of paying in person, consistent with these consumer protection standards;

- (v) the procedure for the resolution of billing disputes;
- (vi) a description of the Franchisee's policies concerning credits for service interruptions and outages, consistent with these consumer protection standards;
- (vii) an explanation of the procedures and charges, if any, for upgrading, downgrading or disconnecting Services, consistent with these consumer protection standards;
- (viii) the required time periods for installation requests, consistent with these consumer protection standards; and
- (ix) a statement that all Franchisee employees, contractors, or subcontractors who routinely come into contact with members of the public at their places of residence shall wear a uniform and Franchisee identification card, to the extent required by Section 1.1, which they shall prominently display and show to all such members of the public.

1.2.2 Within fifteen (15) days of a written request by the Commissioner to the Franchisee, the Franchisee shall provide the Commissioner with a written description of Franchisee's procedures for accommodating non-English speaking Subscribers ("Franchisee's Non-English Procedures").

1.2.3 The Franchisee shall deliver three (3) copies of all such subscription information to the Commissioner within three (3) days after distributing it to the first Subscriber or potential Subscriber. The Franchisee agrees that the City assumes no liability for the subscription information by virtue of its review of such information.

1.3 Right of Rescission. Anyone who requests the installation of Cable Service from the Franchisee shall have the right to rescind such request at any time prior to the point in time at which physical installation upon the premises begins. Anyone who requests a particular Service from the Franchisee shall have the same right of rescission, except that such right shall expire once the requested Service is actually received by such Person.

Section 2 **INSTALLATION**

2.1 Information Provided to Subscribers.

2.1.1 At the time of installation, the Franchisee shall provide each Subscriber with certain literature. Such literature, which need not be bound together, shall constitute the "Welcome Kit." The Welcome Kit shall provide the following information, materially accurate as of the first day of the previous month, in a clear, complete and comprehensible form:

- (i) the location, hours of operation and telephone number(s) for each of the Franchisee's existing Service Centers and a telephone number for information as to where each Payment Center is located;
- (ii) the toll-free telephone number for the Franchisee's customer service telephone system, including any cable information service line established by the Franchisee (which is described further in this Appendix A), accompanied by a brief description of the services and information that may be obtained by dialing each number;
- (iii) a general description of how equipment, including, but not limited to, devices provided as contemplated in 47 C.F.R. § 76.1621, wireless remote control devices, parental control devices (to the extent technology enabling parental control capability is not already incorporated in other devices), is obtained and used in conjunction with the System, and the terms for rental and loaner equipment, including deposit requirements, if any, and procedures for return of equipment and the Subscriber's liability for lost, stolen or damaged equipment;
- (iv) the policies governing Service Interruptions, Significant Service Interruptions, Outages, and Significant Outages as defined in Section 6.2.1 of this Appendix A and repair service;
- (v) the policies and procedures for obtaining credits consistent with Section 10 of this Appendix A and the return of any deposits;
- (vi) the complaint resolution process, including notice that anyone who is dissatisfied with the way in which the Franchisee has handled a complaint has the right to speak to a Franchisee supervisor or to contact the NY PSC and the City at the addresses and telephone numbers listed in the Welcome Kit, and any such changes shall be communicated to Subscribers via the Franchisee's semi-annual notice to Subscribers (which address and telephone number of the City may be changed by the Commissioner, in a notice to be provided to the Franchisee, from time to time). ;
- (vii) the procedures by which the Subscriber will be notified of any rate increases, any change in programming Services (as defined in Section 8.1.1 of this Appendix A), any change in the price or conditions for the rental of equipment, any change in the location or hours of the Service Centers, any change in billing practices, practices regarding Service interruption, or any significant change in the policies or information set forth in the Welcome Kit;
- (viii) the requirements concerning Subscriber privacy which are set forth in the Cable Act or any rules or regulations established by the City pursuant to Section 16.3 of this Agreement;
- (ix) if provided to the Franchisee by the City in a format reasonably acceptable to the Franchisee: (A) a listing of the currently available Public and Governmental/Educational Access Channels, (B) a description of the purposes and

uses of such Channels, and (C) general information regarding how a Person can utilize or obtain further information regarding such Channels; Franchisee shall also make the foregoing information available on its website, subject to Franchisee's technical capability to do so, including, but not limited to, limitations with respect to character capacity;

- (x) the rules governing the termination of Cable Service;
- (xi) the steps for resubscribing to Cable Service after an involuntary termination.

With respect to the provision of the Welcome Kit to new Subscribers, the Franchisee shall also provide any information to such Subscribers that is required by applicable law but is not listed above.

2.1.2 The Franchisee shall train and make available customer service representatives to aid by telephone visually impaired consumers who cannot read the Welcome Kit. The Franchisee shall also make available by telephone bilingual customer service representatives to communicate with non-English speaking consumers regarding the information contained in the Welcome Kit.

2.1.3 The Franchisee shall distribute the then current version of the Welcome Kit to all new Subscribers at the time of installation, and to any other person on request. Any Person who makes such a request in person to a customer service representative or salesperson of the Franchisee must be supplied with a copy of the Welcome Kit immediately. The Franchisee must mail, by first class, the Welcome Kit to any Person who requests one by telephone within ten (10) business days of such request.

2.1.4 The Franchisee shall provide each customer service representative and each salesperson of the Franchisee with copies of the most current Welcome Kit and shall advise them of the requirements of this Section 2.1 of this Appendix A.

2.1.5 The Franchisee shall submit the Welcome Kit, as well as any subsequent updates of it, to the Commissioner within three (3) days after distributing it to the first Subscriber or potential Subscriber and from time to time thereafter upon the Commissioner's request.

2.2 Channel Line-Up. The Franchisee must either (i) provide Subscribers with a Channel Line-up card for all Cable Services which shall be updated on an annual basis thereafter; or (ii) provide Subscribers with dial location information electronically on screens that can be controlled by the consumer, provided, however, that the Franchisee shall automatically provide such a card (and annual updates thereof) to all Subscribers who cannot access such information electronically, and shall further provide such a card to any Subscriber upon request.

2.3 Procedure for Installation

2.3.1 Once a request for Cable Service is received, the Franchisee shall offer “appointment window” time blocks of not more than four (4) hours on weekdays, for the selection of the Subscriber or potential Subscriber, during which the Franchisee’s work crew shall arrive to perform the installation of the necessary equipment to receive Cable Service (on Saturdays the Franchisee may in its discretion offer “appointment windows,” but shall, in any event, comply with the full 8:00 a.m. to 5:00 p.m. working period described in Section 2.3.2 below). The Franchisee shall use reasonable efforts to complete the installation during that appointment.

2.3.2 The Franchisee shall provide installation services including initial installation, continuously at least during the periods of 8:00 a.m. to 5:00 p.m. on weekdays and 8:00 a.m. to 5:00 p.m. on Saturdays and, for connection of additional outlets and upgrading of Cable Service for which all work can be performed indoors, continuously during the periods of 8:00 a.m. to 5:00 p.m. As required by Section 5.4 of the body of this Agreement, the Franchisee shall provide installation throughout its Franchise Area on a nondiscriminatory basis.

2.3.3 Consistent with the terms of Article 5 of the Franchise , unless a later date is requested by a potential Subscriber, the Franchisee shall complete installation of Cable Service for any new Subscriber and any upgrade or downgrade for any existing Subscriber within seven (7) business days after any such request is received, provided that if weekend installation is requested, installation shall be completed by no later than the fourth (4th) Saturday following the date the request is received. Notwithstanding the foregoing, such time period shall not apply to any building not currently wired for Cable Service as to which the Franchisee is, upon a showing to and with the approval of the Commissioner, in compliance with its obligations regarding access to such building pursuant to Article 5 of the body of this Agreement, or except as provided in Section 18.5 of the body of this Agreement.

2.3.4 The Franchisee shall comply with the procedures set forth in Section 11.3 of this Appendix A regarding contact with Subscribers to perform any visit to a Subscriber’s premises to perform its obligations under this Section 2.3.

2.4 Nature of the Request for Installation

2.4.1 The Franchisee shall not discriminate among Subscribers or potential Subscribers because someone living in the same household is already or was a Subscriber, unless the Franchisee can demonstrate, to the Commissioner’s satisfaction, that: (i) the Franchisee has a reasonable basis for believing that a Person(s) living in the household is (are) attempting to deceive the Franchisee or (ii) such Person(s) has (have) failed to respond to a reasonable request from the Franchisee for information which would enable the Franchisee to determine whether such Person(s) is (are) entitled to receive Cable Service.

2.5 Records of Requests for Cable Service

2.5.1 The Franchisee shall keep records capable of showing all requests for Cable Service, which shall contain, with respect to each request for Cable Service, the name and address of the Person requesting Cable Service, the date on which Cable Service was requested, the date and appointment period on which Cable Service was scheduled to be provided and the date and appointment period on which Cable Service was actually provided. In the event that the Franchisee is unable to provide Cable Service, the Franchisee shall keep records showing in reasonable detail the number of attempts the Franchisee has made to provide such Cable Service and the reason the Franchisee was unable to provide Cable Service. These records shall be assembled continuously.

2.5.2 Any information in the records required by Section 2.5.1 may be destroyed six (6) years after such information was collected, unless the Commissioner authorizes the Franchisee, in writing, to destroy any information required by Section 2.5.1 prior to the expiration of such six (6) year period. However, the Commissioner may require the Franchisee to retain such information for a longer period of time or may require that the information be turned over to the Commissioner in lieu of its destruction in accordance with Section 11.1 of the body of this Agreement.

2.5.3 A report summarizing the information contained in the records required by Section 2.5.1 regarding all requests for Cable Service for the preceding quarter shall be submitted in written or electronic form to the Commissioner by the forty-fifth (45th) day following the end of each calendar quarter, containing the following information

- (i) the number of requests for Standard Installations;
- (ii) the number of Standard Installations made;
- (iii) the number of Standard Installation and service appointments made;
- (iv) the number of Standard Installation and service appointments met; and
- (v) the number of Standard Installations and service appointments rescheduled by the Franchisee.

To the extent permitted by state and federal privacy laws, upon request of the Commissioner, the Franchisee shall cooperate in good faith with the Commissioner to verify and supplement the information contained in the report required by the preceding sentence and the Franchisee's compliance with its obligations under Section 2.5.1; provided, however, that nothing herein shall be construed to require the Franchisee to disclose any records or information, the disclosure of which would be inconsistent with Franchisee's obligations pursuant to applicable state or federal privacy laws, including, but not limited to, any records or information collected and retained by the Franchisee pursuant to Section 2.5.1 hereof. The Commissioner may waive the submission of such records as the Commissioner deems appropriate.

2.5.4 Franchisee's reporting requirements pursuant to Section 2.5.3 hereof shall not commence until the third (3rd) calendar quarter following the Effective Date of this Agreement. Notwithstanding the foregoing, with respect to reports in connection with Franchisee's obligation under Section 2.3.3 hereof regarding Saturday installation requests, Franchisee's reporting obligations shall commence on the date which is one (1) year from the Effective Date of this Agreement.

Section 3 **SERVICE CENTERS**

3.1 Service Centers

3.1.1 Subject to the requirements of Subsection 3.1.1.1 hereof, the Franchisee shall initially establish and maintain one (1) Service Center in each of the five (5) Boroughs of the Franchise Area. The Franchisee shall notify Subscribers and the Commissioner of the opening, and thereafter any change in the location, of these Service Centers.

3.1.1.1 With respect to each Borough in the Franchise Area, Franchisee's obligation to establish and maintain each Service Center pursuant to Section 3.1.1 hereof shall not commence until ninety (90) days from the date on which Franchisee determines that Franchisee has achieved a Subscriber base of ten thousand (10,000) Subscribers in the applicable Borough.

3.1.1.2 Within ninety (90) days from the date on which Franchisee achieves an aggregate Subscriber base of sixty thousand (60,000) Subscribers in any Borough, Franchisee shall establish and maintain one (1) additional Service Center in each such Borough; provided however, that nothing herein shall be construed to require Franchisee to establish and maintain more than a total of two (2) Service Centers in any Borough. All such Service Centers will be conveniently located near mass transit.

3.1.2 Except on the legal holidays recognized by the City of New York, a list of which shall be supplied to the Franchisee upon request to the Commissioner, these Service Centers shall be open continuously for at least nine (9) hours on weekdays and for at least five (5) hours on Saturdays, subject to Franchisee's contractual agreements with Persons other than the City. The Franchisee shall staff each Service Center so it is capable of providing on Saturday the same level of service it provides during any weekday, such that waiting time for any service on Saturday is not significantly different than during any weekday.

3.1.3 The Service Centers shall be designed so as to provide access in accordance with applicable law.

3.1.4 The Franchisee shall maintain on file at each Service Center, or on its website for public inspection current copies of its billing practices and payment requirements and general informational materials (including monthly bill stuffers) and shall keep such records at its central office for a period of two (2) years, to be mailed or

otherwise delivered to a specified Service Center within a reasonable time upon the City's or a Subscriber's request. The foregoing records shall be maintained independent of, and in addition to, Franchisee's public inspection file maintained pursuant to 47 C.F.R. § 76.1700.

3.2 Training of Employees

3.2.1 Franchisee employees who regularly come in contact with the public shall be trained to perform efficiently the various tasks, including responding to consumer inquiries and complaints, necessary to provide consumer services in a responsible and courteous manner.

3.2.2 All Franchisee employees shall identify themselves by name or preassigned identification number when answering Franchisee telephone lines routinely used by members of the public. The Franchisee shall maintain a system to enable the Franchisee to identify the particular employee who answered any telephone call in such manner.

3.2.3 Franchisee employees shall refer any Person who is dissatisfied with the resolution or handling of any complaint concerning the Franchisee to a supervisor. Franchisee supervisors shall be available to speak to such Persons. If, due to unforeseen circumstances, a supervisor is temporarily unavailable to speak with such a Person, then that Person will be contacted by a supervisor as soon as practicable. If the Subscriber is not contacted by the supervisor or otherwise requests such information, a nonsupervisory employee shall inform the Subscriber of the foregoing information.

3.2.4 The Franchisee shall ensure that some employees at its office speak any language used by a substantial percentage of the Franchisee's Subscribers with whom they come into contact in the course of their employment.

3.2.5 To the extent the Franchisee uses contractors or subcontractors who regularly come into contact with the public on the Franchisee's behalf, the Franchisee shall ensure that such contractors or subcontractors receive the training and follow the procedures outlined in Sections 3.2.1-3.2.4 above.

3.3 Telephone Lines

3.3.1 The Franchisee shall have local telephone or toll-free lines for receiving requests for repair or installation services, for reporting service interruptions and for responding to billing questions. The lines shall be answered twenty-four (24) hours per day, seven (7) days per week by Franchisee employees with respect to service problems (such as for the reporting of interruptions or outages in service and the scheduling of service repairs) and, at a minimum, during normal business hours with respect to installation-related and billing-related matters and questions; but in no event shall such lines be operated for fewer hours than required, or less comprehensively than required, by applicable federal or state requirements. In the event a Franchisee employee receives, but is unable to respond to, a Subscriber call after normal business hours

regarding any of the issues described in this Section 3.3.1, such Franchisee employee shall create a notation on Subscriber's record (to enable informed employee response upon business hours follow-up), including any appropriate Subscriber information, consistent with Franchisee's practices and procedures. For purposes of this Section 3.3.1, normal business hours shall have the meaning set forth in 47 C.F.R. § 76.309 and 16 NYCRR § 890.

3.4 Standard of Service for the Telephone System

3.4.1 The Franchisee shall maintain a telephone system throughout the term of this Agreement which shall be capable, at a minimum, of meeting each of the following standards:

(i) each telephone call shall be answered within at least thirty (30) seconds;

(ii) callers shall receive a busy signal not more than three percent (3%) of the time in any one (1) month period;

(iii) callers shall not be kept on hold for longer than thirty (30) seconds;

(iv) no more than ten percent (10%) of all calls (measured on a quarterly basis) shall be kept on hold for thirty (30) seconds;

(v) any automated menu system shall provide, within ninety (90) seconds (or one hundred twenty (120) seconds during peak periods), an opportunity, which may include pressing "0" or remaining on the line without entering a menu option, for the caller to connect to a customer service representative; and

(vi) all menus and subsidiary menus shall provide an opportunity to connect to a customer service representative.

3.4.2 Reasonable variations in these performance standards shall be permitted during abnormal operating conditions, including, by way of illustrative example, during trunk line failures.

3.4.3 The Franchisee shall provide quarterly reports to the Commissioner containing information relevant to the question of whether its telephone system continues to conform to Section 3.4.1 of this Appendix A. Franchisee's quarterly reports provided pursuant to this subsection 3.4.3 shall be measured for purposes of compliance with the requirements hereof solely on a quarterly basis, but shall reflect, for informational purposes, Franchisee's metrics on a month-by-month basis. If the Commissioner determines, based on complaints or any other evidence, that the Franchisee's telephone service does not meet the standards set forth in this Section 3.4, or any variations in those standards previously agreed to by the Commissioner, then the Commissioner has the authority to order the Franchisee to take appropriate action to meet

such standards. Failure of the Commissioner to issue such order, however, shall not constitute a waiver of the City's rights with respect to any failure by the Franchisee to comply with its obligations pursuant to this Appendix A or this Agreement.

Section 4 **BILLING**

4.1 The Format of a Subscriber's Bill

4.1.1 The bill shall be designed in such a way as to present the information contained therein clearly, comprehensibly and accurately to Subscribers.

4.1.2 The bill shall contain itemized charges for each category of Cable Service and piece of equipment for which a charge is imposed (including late charges, if any), an explicit due date, the name and address of the Franchisee and telephone number for the Franchisee's office responsible for inquiries, billing, the NY PSC's toll-free Subscriber Assistance telephone number and the telephone number specified by the Commissioner for the resolution of billing disputes. The bill shall state the billing period, amount of current billing and appropriate credits or past due balances, if any. Unless prohibited by law, the Franchisee may accurately designate that portion of a Subscriber's bill attributable to the amount of any compensation payment to be made by the Franchisee or any other Person to the City pursuant to this Agreement.

4.2 Billing Procedures

4.2.1 All bills shall be rendered monthly, unless otherwise authorized by the Subscriber, or unless service was provided for less than one (1) month (because, for example, the Subscriber received service, from activation to cancellation, for less than one month.)

4.2.2 The Franchisee shall use reasonable efforts to cooperate with any regulated and accredited banking or financial institution that provides Subscribers with an optional payment mechanism whereby they can directly pay any bills electronically from their residence or business, when such mechanism is economically and technically feasible and viable, and provided that the Commissioner may reduce or relieve the Franchisee of such obligations where such relief is appropriate in light of the circumstances, including the nature of the institution and the burden to the Franchisee. To the extent permitted by applicable law, the Franchisee may "pass through" to the Subscriber any charges imposed on the Franchisee in connection with such bill payment by any such institution, so long as the Franchisee provides prior notice of such charge to the Subscriber.

4.2.3 The Franchisee shall credit any Subscriber who has voluntarily interrupted Cable Service, pursuant to the requirements established by the Franchisee, with a rebate on his or her monthly bill for the period(s) during which service was voluntarily interrupted, provided that the Franchisee may charge any such Subscriber a reconnection charge.

4.2.4 Any returned check charge imposed by the Franchisee shall be consistent with the requirements of N.Y. General Obligations Law, Ch. 24-A § 5-328 or any successor provision thereto.

4.3 Procedures for Collecting Late Bills

4.3.1 No bill shall be due less than fifteen (15) days from the date of the mailing of the bill by the Franchisee to the Subscriber.

4.3.2 A bill shall not be considered delinquent until at least forty-five (45) days have elapsed from the mailing of the bill to the Subscriber and payment has not been received by the Franchisee, provided that no bill shall be mailed more than fifteen (15) days prior to the date Cable Services covered by such bill commence, except in cases where a Subscriber requests advance billing. Late fees not to exceed the maximum percent allowed by law may be applied to a delinquent bill, so long as the billing dispute resolution procedures set forth in Section 4.4 of this Appendix A have not been initiated.

4.3.3 The Franchisee shall not physically or electronically discontinue Cable Service for nonpayment of bills rendered for Cable Service until: (i) the Subscriber is delinquent in payment for Cable Service; and (ii) at least five (5) days have elapsed after a separate written notice of impending discontinuance has been served personally upon a Subscriber; or (iii) at least eight (8) days have elapsed after mailing to the Subscriber a separate written notice of impending discontinuance (for which postage is paid by the Franchisee), addressed to such Person at the premises where the Subscriber requests billing; or (iv) at least five (5) days have elapsed after a Subscriber has either signed for or refused a certified letter (postage to be paid by the Franchisee) containing a separate written notice of impending discontinuance addressed to such Person at the premises where the Subscriber requests billing. Notice of impending Cable Service discontinuance must clearly state the amount in arrears, the total amount required to be paid to avoid discontinuance of Cable Service, collection fees, if any, reconnection charges if applicable, and the date by which such payment must be made, the location of Service Centers where such payment may be made, or how the Subscriber can get information (e.g., via the Franchisee's website and/or by calling a toll-free number) about the location of each Payment Center where such payment may be made. Receipt of a subsequently dishonored negotiable instrument in response to a notice of discontinuance shall not constitute payment, and the Franchisee shall not be required to issue an additional notice prior to discontinuance.

4.3.4 As described in Section 4.5 of this Appendix A, the Franchisee may under certain circumstances refer a delinquent account to a private collection agency. The Franchisee agrees that it will not, and will instruct all collection agencies collecting delinquent accounts on behalf of the Franchisee not to, refer any delinquent account to a credit agency except if the Subscriber has closed an account with an outstanding balance of more than fifty dollars (\$50) and that balance has been pending for more than ninety (90) days. If, however, the Subscriber subsequently pays the

outstanding balance, the Franchisee shall notify any credit agencies that were previously informed of the outstanding balance.

4.4 Procedure for the Resolution of Billing Disputes

4.4.1 The billing dispute resolution procedure shall be initiated once a Subscriber contacts the Franchisee's department which handles billing questions or the Commissioner, in writing, so long as such contact occurs within thirty (30) days from the date of receipt of the bill by the Subscriber. If the Subscriber contacts the Commissioner, the Commissioner shall notify the Franchisee, by mail, by telephone or by electronic means, that the dispute resolution procedure has been initiated and the Franchisee shall then contact the Subscriber to discuss the dispute.

4.4.2 The Subscriber shall not be required to pay the disputed portion of the bill until the dispute is resolved. The Franchisee shall not apply finance charges, issue delinquency or termination notices, or initiate collection procedures for the disputed portion of the bill pending resolution of the dispute.

4.4.3 The Franchisee shall promptly undertake whatever review is necessary to resolve the dispute, and shall notify the Subscriber of the results of the review as soon as it is completed, but in no case later than twenty (20) business days after receipt from the Subscriber of the billing dispute, problem or complaint notification.

4.4.4 The Franchisee shall, upon the Subscriber's or the City's written request, notify the Subscriber in writing of its proposed resolution of the billing dispute, shall provide the address and telephone number to be provided from time to time by the Commissioner and by which a Subscriber may notify the City of a billing dispute, problem or complaint, and shall inform the Subscriber that unless an appeal is taken to the Commissioner within ten (10) business days after the date of postmark on the notification letter, the Franchisee's resolution of the dispute shall be considered final. If, in response to a Subscriber's written request, the Franchisee resolves the dispute over the phone or in person, then no written response need be provided to the Subscriber. Where no appeal is taken, the amount the Franchisee claims is due must be paid within twenty (20) days after the date of postmark on the notification letter.

4.4.5 If the Subscriber appeals the Company's resolution within the aforementioned period, the amount under dispute by the Subscriber will not be due until at least one (1) week after the dispute has been resolved by Franchisee.

4.4.6 The procedures set forth in Sections 7.3.1 - 7.3.5 of this Appendix A shall apply to billing disputes appealed to the Commissioner.

4.5 Referral of Delinquent Accounts to a Collection Agency

4.5.1 If the billing dispute resolution procedures have not been initiated, the delinquent account may be referred to a private collection agency for appropriate action no sooner than ten (10) business days after it becomes delinquent or, where a

Subscriber voluntarily terminates any Cable Service and the amount due is delinquent but not in dispute, no sooner than ten (10) business days after the final bill is mailed to the Subscriber.

4.5.2 If the billing dispute resolution procedures have been initiated, the delinquent account shall not be referred to a collection agency prior to the conclusion of those procedures, including any appeal to the Commissioner.

4.5.3 The Franchisee agrees that a referral to a private collection agency in violation of Sections 4.3.4, 4.5.1, or 4.5.2 of this Appendix A shall result in injury to the Subscriber which will be difficult to ascertain and to prove. The Franchisee therefore agrees that, it will send to the affected Subscriber a letter of apology and notify, in writing, the collection agency, copies of which such letter and notice shall be sent to the Commissioner. Further, if any credit agency is contacted by the Franchisee or any collection agency collecting delinquent accounts on behalf of the Franchisee in violation of Section 4.3.4 of this Appendix A, the Franchisee shall, in addition to taking the foregoing actions, (i) notify the credit agency contacted as a result of such referral that the referral was wrongly made and should not adversely affect the Subscriber's credit standing, a copy of which notice(s) shall be sent to the affected Subscriber and the Commissioner.

Section 5

EQUIPMENT PROVIDED BY THE FRANCHISEE

5.1 Types of Equipment To Be Provided

5.1.1 The Franchisee shall comply with 47 C.F.R. § 76.1621 or any successor provision thereto.

5.1.2 The Franchisee shall supply a closed caption decoder to any hearing impaired Subscriber who requests one at a charge not to exceed the Franchisee's cost, unless the technology for such decoding is already incorporated in other equipment being provided to the subscriber.

5.2 Terms for Rental and Loaner Equipment

5.2.1 As provided in this Appendix A, the Franchisee may require deposits on certain equipment it provides to Subscribers, provided that the Franchisee shall return to Subscribers their deposits together with a reasonable amount of interest, and provided further that there shall be no discrimination among or between Subscribers in either the requirement for or the amount of any deposit. The Franchisee shall permit the return of such equipment to any Service Center. When equipment is returned, the Franchisee shall either promptly test it to ensure that it is not damaged or waive any damage claims, and shall give the Subscriber a receipt showing, in addition to the date and time of the return and the Subscriber name, the model and serial number of the returned equipment. The Franchisee shall return to the Subscriber his or her deposit, plus interest minus any reasonable amount, if any, deducted for damage to the equipment or

the amount of any outstanding balance owed to the Franchisee within the next applicable billing cycle.

5.2.2 If such equipment is lost, damaged or stolen by reason of an intentional, wrongful act by, or the gross negligence of, the Subscriber, or if the Subscriber gives the equipment to a third party to return to the Franchisee and the third party does not do so, then the Subscriber shall be liable for the value of the equipment as determined by the Franchisee and consistent with Franchisee's annually published rates. If such equipment is lost, damaged or stolen through the wrongful act of a third party, or any other event outside the Subscriber's control (such as a burglary or a fire in the Subscriber's building), then the Subscriber shall have no liability for the equipment, provided that the Subscriber files with the Franchisee a police report on the cause of any such loss, theft or damage to any equipment. The Franchisee shall keep records showing the resolution of Subscriber claims regarding lost, stolen or damaged equipment, which records shall be submitted in written or computer disk form to the Commissioner as the Commissioner may reasonably request from time to time, within fifteen (15) days of such request.

5.2.3 For billing purposes, the return of rental equipment shall be deemed to have taken place on the day such equipment is returned.

5.3 Notice That Equipment Is Available. The Franchisee shall provide in the Welcome Kit information about the availability and function of the equipment described in this Section 5 of this Appendix A, as well as where such equipment may be obtained.

5.4 Demonstration of Equipment. The Franchisee shall provide free demonstration of such equipment at the Service Centers.

Section 6

SERVICE OUTAGES AND SERVICE INTERRUPTIONS

6.1 The Franchisee shall exercise its best efforts to limit any scheduled Outage (as hereinafter defined) of any Cable Service for any purpose to periods of minimum use. Except in emergencies or incidents requiring immediate action, the Franchisee shall provide the Commissioner and all affected Subscribers with prior notice of scheduled Outage, if such scheduled Outages will last longer than four (4) hours.

6.2 Time Periods by Which Outages and Service Interruptions Must Be Corrected and Repairs Made.

6.2.1 The Franchisee shall maintain sufficient repair and maintenance crews so as to be able to correct Outages, Significant Outages, Service Interruptions, Significant Service Interruptions, and other problems requiring repair, within the following time periods:

(i) In the event of an "Outage," which is defined for purposes of this Appendix A as loss of picture or sound on all basic channels or on all channels

provided on any other service tier or on one or more premium channels occurring during normal operating conditions that is not caused by the Subscriber's television receiver or the Subscriber and that affects fewer than one hundred (100) Subscribers served from the same VSO, such Outage shall be repaired within forty-eight (48) hours after the Franchisee receives a request for repair service, unless the request is made after 4:00 p.m. on a Friday, in which event the repair shall be made no later than the next business day. For purposes of this Section 6, "loss of picture or sound" shall mean the absence of picture or sound quality that conforms to the requirements of Section 6.2 of the Franchise.

(ii) In the event of a "Significant Outage," which is defined for purposes of this Appendix A as loss of picture or sound on all basic channels or on all channels provided on any other service tier or on one or more premium channels occurring during normal operating conditions, which is not caused by the Subscriber's television receiver or the Subscriber, and that affects one hundred (100) or more Subscribers served from the same VSO, such Significant Outage shall be corrected within eighteen (18) hours after the Franchisee learns of it.

(iii) In the event of a "Service Interruption," which is defined for purposes of this Appendix A as the loss of picture or sound on one or more cable channels affecting fewer than one hundred (100) Subscribers served from the same VSO, excluding conditions beyond the control of the Franchisee, the Franchisee shall begin working on the problem promptly and in no event later than twenty-four (24) hours after the Service Interruption becomes known.

(iv) In the event of a "Significant Service Interruption," which is defined for purposes of this Appendix A as the loss of picture or sound of one or more cable channels that affects one hundred (100) or more Subscribers served from the same VSO, Franchisee shall repair the problem within forty-eight (48) hours after the Franchisee receives a request for repair service, unless the request is made after 4:00 p.m. on a Friday, in which event the repair shall be made no later than the next business day.

6.2.2 The Franchisee shall maintain, at all times, an adequate repair and service force in order to satisfy its obligations pursuant to the foregoing Section 6.2.1. In order to satisfy its obligations pursuant to Section 6.2.1, in cases where it is necessary to enter upon a Subscriber's premises to correct any reception problem or other service problem, the Franchisee shall make available service calls continuously during the period of 7:30 a.m. to 7:00 p.m. May 1 through October 30 and 7:30 a.m. to 6:00 pm November 1 through April 30 on weekdays and continuously for at least eight (8) hours on each Saturday. During weekday periods, a Subscriber may request any four (4) hour period for the Franchisee to correct any such problem, provided that the Franchisee's customer service representatives shall at all times endeavor to be aware of service or other problems in adjacent areas which may obviate the need to enter a Subscriber's premises. The Franchisee shall provide on Saturday the same level of service it provides during any weekday, such that repair services provided on Saturday are not significantly different than during any weekday (other than a weekday evening).

6.2.3 The Franchisee shall comply with the procedures set forth in Section 11.3 of this Appendix A regarding contact with Subscribers in connection with any visit to a Subscriber's premises in connection with its obligations under this Section 6.2. In no event shall the Franchisee cancel any necessary scheduled service call later than 5:00 pm on the preceding business day, except in circumstances beyond the Franchisee's control.

6.3 Failure To Meet Time Periods May Be Excused. The Franchisee's failure to correct Outages, Significant Outages, Service Interruptions, or Significant Service Interruptions, or to make repairs within the stated time periods shall be excused if the Franchisee could not obtain access to a Subscriber's premises.

6.4 Repair Service and Disconnection Charges. In the event that the Cable Act is amended, or following a final order or determination by a court or regulatory agency having competent jurisdiction, following the exhaustion of all appeals thereto, such that the requirements of this section are not prohibited under applicable law and equivalent obligations are imposed upon all cable operators in the Franchise Area, then the following provisions shall be applicable:

(a) the Franchisee shall not impose any fee or charge any Subscriber for any service call to his or her premises to perform any repair or maintenance work, unless such work was necessitated by an intentional act or negligence of such Subscriber.

(b) The Franchisee shall not charge any fee for disconnection when a Subscriber returns the Company's equipment to a Service Center or via the self-addressed envelope provided by the Company. A fee may, however, be charged if the Franchisee has to collect the equipment from the Subscriber's premises and the Subscriber has been informed in advance of such charge and the alternative methods of returning the Franchisee's equipment. If the Subscriber pays the amount in arrears to the Franchisee when the Franchisee is on the Subscriber's premises to disconnect Service, then the Franchisee may charge the Subscriber a reasonable collection fee, provided that such Subscriber is notified of such collection fee in the notice required by Section 4.3.3.

6.5 Records of Repair Service Requests

6.5.1 Franchisee shall keep records showing in both individual and summary form all requests for repair service received from Subscribers, which shall show, at a minimum, the name and address of the affected Subscriber, the date and the approximate time of request, the date and approximate time the Franchisee responds, the date and approximate time Cable Service is restored, the type and the probable cause of the problem.

6.5.2 Any information in the records required by Section 6.5.1 of this Appendix A may be destroyed six (6) years after such information was collected, unless the Commissioner authorizes the Franchisee, in writing, to destroy any information required by Section 6.5.1 prior to the expiration of such six (6) year period. However, the

Commissioner may require the Franchisee to retain such information for a longer period of time, if relevant to an active audit or dispute, or may require that the information be turned over to the Commissioner in lieu of its destruction.

6.5.3 The Franchisee shall submit to the Commissioner a report in such form and containing such information as the Commissioner may reasonably request, not including specific Subscriber names or addresses, summarizing the information contained in the records required by Section 6.5.1 of this Appendix A in written or computer disk form on a quarterly basis, such report to be submitted by the forty-fifth (45th) day following the end of each calendar quarter. Upon request of the Commissioner, the Franchisee shall cooperate in good faith with the Commission to verify and supplement the information contained in the report required by the preceding sentence and the Franchisee's compliance with its obligations under Section 6.5.1 of this Appendix A; provided, however, that nothing herein shall be construed to require the Franchisee to disclose any records or information, the disclosure of which would be inconsistent with Franchisee's obligations pursuant to applicable state or federal privacy laws, including, but not limited to, any records or information collected and retained by the Franchisee pursuant to Section 6.5.1 hereof. The Commissioner may waive the submission of such reports as the Commissioner deems appropriate.

6.5.4 In addition to providing the foregoing records, commencing six (6) months from the Effective Date hereof and subject to the confidentiality provisions of Section 11.1 of the Franchise, Franchisee shall submit to the Commissioner, within forty-five (45) days of the end of each calendar quarter during the Term hereof, a report setting forth the number of Significant Outages which occurred during the preceding calendar quarter, summarized by both Borough and VSO.

6.6 Plan for Correction. In the event the Commissioner notifies the Franchisee in writing that DoITT has determined that there has been an excessive number identified a routine pattern of Significant Outages in any Borough or community served by a particular VSO, Franchisee shall submit to the Commissioner, on a quarterly basis within forty-five (45) days of the end of each applicable calendar quarter during the Term hereof and subject to the confidentiality provisions of Section 11.1, a "Plan for Correction" outlining Franchisee's plan for minimizing the occurrence of such Significant Outages in the applicable Borough or community. Franchisee's obligation to submit such quarterly Plan for Correction pursuant to this Section 6.6 shall cease upon Franchisee's demonstration, to the reasonable satisfaction of the Commissioner, that Franchisee has minimized the occurrence of Significant Outages in the applicable Borough or community for two (2) consecutive calendar quarters.

Section 7 **SUBSCRIBER COMPLAINTS**

7.1 Operation of the Service Centers and Payment Centers. As set forth in Section 3 of this Appendix A, the Franchisee shall operate its Service Centers, train its

employees and maintain its telephone lines so that Subscribers' complaints are resolved quickly, professionally and politely. The Franchisee agrees to use reasonable efforts to monitor Franchisee's Payment Centers to ensure that such Payment Centers are operating in a manner consistent with the terms of this Appendix A, to the extent applicable; provided, however, that nothing herein shall be construed to limit any rights Franchisee may have or liabilities Franchisee may incur pursuant to applicable law or the terms of this Appendix A. For purposes of this Appendix A, "Payment Center" shall be defined as "a facility operated by a third party where Subscribers may make payments."

7.2 Time Period for the Resolution of Complaints. Except where another time period is required by any other provision of this Appendix A or this Agreement, the Franchisee shall make its best efforts to resolve all complaints received by the Franchisee within ten (10) business days, or earlier to the extent practicable. Within two (2) business days of receiving a written complaint or a complaint forwarded to the Franchisee by the Commissioner, the Franchisee shall notify the Person who made the complaint, either by telephone or in writing, that the complaint has been received and that the Franchisee will make its best efforts to resolve such complaint within ten (10) business days of receipt of such complaint by the Franchisee. Complaints which constitute billing disputes shall be subject to the procedures set forth in Section 4.4 of this Appendix A in lieu of the requirements of this Section 7.2.

7.3 Appeal of a Resolution to the Commissioner

7.3.1 As provided in Section 2.1.1 (vi) of this Appendix A, a Subscriber may notify the Commissioner about a complaint that is not resolved to the Subscriber's satisfaction. As set forth in Section 2.1.1(vi) of this Appendix A, the Franchisee shall also provide notice in the Welcome Kit of the right described in the preceding sentence.

7.3.2 The Commissioner shall notify the Franchisee by mail, telephone, or electronic means, of any such appeal within one (1) week after it is received by the Commissioner.

7.3.3 If the Franchisee's stated resolution of the complaint is appealed to the Commissioner, then the Franchisee shall assist the Commissioner in the investigation thereof by the Commissioner, by providing or making available whatever documents, materials or other types of information are reasonably requested by the Commissioner.

7.3.4 The Commissioner shall have thirty (30) days in which to complete the investigation and to notify the Franchisee of the manner in which the Commissioner believes the dispute should be resolved. Before completing the investigation, the Commissioner shall consult both with the Person who registered the complaint and with the Franchisee; provided, however, that final resolution of any dispute shall be in Franchisee's sole discretion, to the extent such resolution is not inconsistent with this Agreement, applicable federal, state, or local laws.

7.3.5 Complaints may be referred to the Commissioner before the Franchisee has issued a resolution, if the Franchisee has exceeded the time allowed for resolving complaints under Section 7.4 of this Appendix A.

7.4 Referral of Complaints from the Commissioner to the Franchisee

7.4.1 If the Commissioner is contacted directly about a complaint concerning the Franchisee, the Commissioner shall notify the Franchisee.

7.4.2 Within ten (10) business days after being notified about the complaint, the Franchisee shall issue to the Commissioner a report detailing the investigation thoroughly, describing the findings, explaining any corrective steps which are being taken and indicating that the Person who registered the complaint has been notified of the resolution.

7.5 Complaint Records

7.5.1 The Franchisee shall maintain complaint records, which shall record the date a complaint is received, the name and address of the affected Subscriber, a description of the complaint (which may be located in the “comments” section of the Franchisee’s records), the date of resolution, a description of the resolution and an indication of whether the resolution was appealed to the Commissioner.

7.5.2 Any information in the records required by Section 7.5.1 may be destroyed six (6) years after such information was collected, unless the Commissioner authorizes the Franchisee, in writing, to destroy any information required by Section 7.5.1 prior to the expiration of such six (6) year period. However, the Commissioner may require the Franchisee to retain such information for a longer period of time, if relevant to an active audit or dispute, or may require that the information be turned over to the Commissioner in lieu of its destruction.

7.5.3 The Franchisee shall submit to the Commissioner the records required by Section 7.5.1 of this Appendix A, in summary form only, in written or electronic form on a quarterly basis; provided, however, that nothing herein shall be construed to require the Franchisee to disclose any records or information, the disclosure of which would be inconsistent with Franchisee’s obligations pursuant to applicable state or federal privacy laws, including, but not limited to, any records or information collected and retained by the Franchisee pursuant to Section 7.5.1 hereof.

7.5.4 In addition to providing the foregoing records, commencing six (6) months from the Effective Date hereof and subject to the confidentiality provisions of Section 11.1 of the Franchise, Franchisee shall submit to the Commissioner, within forty-five (45) days of the end of each calendar quarter during the Term hereof, a report setting forth the following information with respect to Subscriber complaints:

(i) the total number of complaints received by Franchisee in each Borough;

(ii) the nature and current status of all complaints received by Franchisee in each Borough, described in appropriate sub-categories, including, but not limited to, billing, equipment related issues, installation related issues, credit adjustments, missed appointments and service calls, and such other complaint categories as may be tracked in Verizon's internal customer service system; and

(iii) the percentage of complaints resolved and percentage of complaints outstanding in each Borough.

Section 8 **NOTICE**

8.1 Notice Required

8.1.1 The Franchisee shall provide notice to the Commissioner and all Subscribers of any of the following changes, which notice shall be provided no later than thirty (30) days prior to the effective date of any such change (provided, however, all such notices shall be provided in a manner consistent with NY PSC rules), unless the Franchisee does not know of such change at that time, in which case the Franchisee must provide such notice: (a) within five (5) business days of the date upon which the Franchisee first knows of such change, in writing to the Commissioner and electronically on the Channel on which available Cable Services are listed or any other Channel as may be designated by the Franchisee, at least ten (10) times a day during the two (2) week period immediately following such fifth business day, and (b) to all affected Subscribers in the earliest practicable monthly bill sent to Subscribers or a separate mailing made within the same period following such change:

(i) any change in the rates or charges or significant terms or conditions for the receipt of any Cable Service (provided that any such notification may be provided solely via email or via U.S. mail); or

(ii) any significant change in billing practices (provided that any such notification may be provided solely via email or via U.S. mail)

(iii) any notices with respect to programming or network changes as required under NYCLS Pub. Ser. §224-a.

The foregoing notice requirements are in addition to the notice requirements contained elsewhere in this Appendix A, including those regarding the termination of Cable Service and Outages and Service Interruptions.

8.1.2 The Franchisee shall post on the earliest practicable date at any affected Service Centers any anticipated change in the location or significant changes in the hours of operation of such Service Centers.

8.1.3 The Company shall, as part of any annual updates to its Subscriber Handbook, list any significant change of any of the policies or other information set forth

in the Subscriber Handbook. On its website the Company shall make available the most current version of its Subscriber Handbook.

8.1.4 Unless otherwise explicitly provided, all notices required by Section 8.1.1 shall be in writing no later than the periods specified in Section 8.1.1, except that any notice in connection with a change in Channel Position or an increase or decrease in the number of hours a Cable Service is carried over the System may be provided electronically on the System, so long as such electronic notice is made at least ten (10) times a day during the two (2) week period prior to the effective date of such change. All notices required by Section 8.1.1 of this Appendix A shall specify, as applicable, the Cable Service or Cable Services affected, the new rate, charge, term or condition, the effect of the change, and the effective date of the change.

8.1.5 The Franchisee shall comply with any and all applicable state and local law notice requirements including, but not limited to, those required by Section 224-a of the New York Public Service Law and Section 890 of the NY PSC regulations.

Section 9 **TERMINATION OF SERVICE AND DISCONNECTION**

9.1 Notice of Termination of Service. As described in Section 4.3.3 of this Appendix A, the Franchisee may terminate Cable Service to any Subscriber whose bill has not been paid after it becomes delinquent, so long as the Franchisee gives proper notice to the Subscriber as provided in Section 4.3.3 of this Appendix A and the billing dispute resolution procedures have not been initiated.

9.2 Termination on Sundays, Holidays or Evenings. The Franchisee shall not terminate Cable Service to Subscribers at any time when the Service Centers are closed.

9.3 Resubscription to Cable Service. The Franchisee shall not refuse to serve a former Subscriber whose Cable Service was terminated by the Franchisee, so long as all past bills and late charges have been paid in full, and subject to verification that any such Subscriber has a credit rating acceptable to Franchisee.

9.4 Length of Time to Disconnection. If disconnection occurs at the Subscriber's written or oral request, then, for billing purposes, it shall be deemed to have occurred three (3) days after the Franchisee receives the request for disconnection unless (i) it in fact occurs earlier or (ii) the Subscriber requests a longer period.

9.5 Scheduling Appointments. The Franchisee shall provide Subscribers with "appointment window" time blocks of no more than four (4) hours on weekdays running continuously from 7:30 a.m. to 9:00 p.m. for selection of Subscribers, during which its work crew shall visit the Subscriber's premises to disconnect service and to remove any Franchisee equipment. On Saturdays, the Franchisee shall also provide such service disconnection and equipment removal at any time between 9:00 a.m. to 5:00 p.m., but may, in its sole discretion, choose not provide "appointment window" time blocks.

Further, the Franchisee shall comply with the procedures set forth in Section 11.3 of this Appendix A regarding contact with Subscribers in connection with any visit to a Subscriber's premises in connection with its obligations under this Section 9.5.

Section 10
CREDITS

10.1 Grounds. As a result of the Franchisee's failure to comply with these consumer protection standards, the Franchisee shall provide to each affected Subscriber or potential Subscriber, as applicable, the following credits:

(i) for any Significant Service Interruption as defined in Section 6.2 which lasts more than four (4) continuous hours in any twenty-four (24) hour period (provided that, to the extent access to the Subscriber's premises is required to effect such repair, the Subscriber has granted the Franchisee such access), a minimum credit in an amount equal to one-thirtieth (1/30) times the recurring charges for Cable Services (i.e. all charges for Cable Service minus non-recurring charges, such as installation and pay-per-view charges) to be charged to the affected Subscriber for the then current monthly billing period for the Cable Service(s) as to which the Significant Service Interruption occurred for each twenty-four (24) hour period during which a Significant Service Interruption continues for at least four (4) continuous hours, provided that: (i) the affected Subscriber has reported the Significant Service Interruption to the Franchisee and (ii) the Franchisee has verified that the reported Significant Service Interruption has occurred consistent with the Subscriber's claim;

(ii) for any Outage as defined in Section 6.2 which lasts more than four (4) continuous hours in any twenty-four (24) hour period (provided that, to the extent access to the Subscriber's premises is required to effect such repair, the Subscriber has granted the Franchisee such access), a minimum credit in an amount equal to one-thirtieth (1/30) times the recurring charges for Cable Services (i.e. all charges for Cable Service minus non-recurring charges, such as installation and pay-per-view charges) to be charged to the affected Subscriber for the then current monthly billing period for the Cable Service(s) as to which the Outage occurred for each twenty-four (24) hour period during which a Service Outage continues for at least four (4) continuous hours, provided that (i) the affected Subscriber has reported the Outage to the Franchisee and (ii) the Franchisee has verified that the reported Outage has occurred consistent with the Subscriber's claim;

(iii) for any Significant Outage, as defined in Section 6.2, which lasts more than four (4) continuous hours in any twenty-four (24) hour period (provided that, to the extent access to the Subscriber's premises is required to effect such repair, the Subscriber has granted the Franchisee such access) a minimum credit in an amount equal to one-thirtieth (1/30) times the average bill for recurring charges for Cable Services (i.e., all charges for Cable Service minus nonrecurring charges, such as installation and pay-per-view charges) to be charged to the affected Subscribers in the affected area for the then current monthly billing period for the Cable Service(s) as to which the Significant

Outage occurred for each twenty-four (24) hour period during which the Significant Outage persists for at least four (4) hours, provided that: (i) the affected Subscriber has reported the Significant Outage to the Franchisee and (ii) the Franchisee has verified that the reported Significant Outage has occurred consistent with the Subscriber's claim;

(iv) for a failure of a Verizon representative to arrive at the Subscriber's premises within the appointment window period for repair service calls, a credit of \$25 will be applied to the customer's bill in the next available billing period. However, to the extent the Subscriber is not available when the crew arrives or if the crew does not have appropriate access to the Subscriber premises in order to address the service issue, this credit will not apply.

10.2 Application of Credits. With respect to any credit described in Section 10.1(i)-(iii), the Company shall, upon request of or notice from a Subscriber, provide a credit on such Subscriber's bill for Subscribers affected by a Significant Service Interruption, Outage or Significant Outage. With respect to any credit described in Section 10.1(iii), the Company shall automatically (without requiring a request from each Subscriber) provide a credit on each Subscriber's bill for Subscribers affected by a Significant Outage that occurs, at least in part, between 6:00 p.m. and 12:00 a.m. In the event the Franchisee cannot determine all Subscribers affected by a Significant Outage in excess of four (4) continuous hours or no part of such Significant Outage occurs between the hours of 6:00 p.m. and 12:00 a.m. then Franchisee shall provide a credit to any eligible Subscriber who makes application therefor by either written or oral notice within ninety (90) days of such Significant Outage.

Section 11 **MISCELLANEOUS REQUIREMENTS**

11.1 Charge for Downgrades. The Franchisee may impose a charge upon a Subscriber for any downgrading of a Subscriber's Cable Service in accordance with Section 890.63 of the PSC regulations.

11.2 Overpayment Credits. If, at any time, the Franchisee becomes aware or if it is determined that a Subscriber is entitled to credit(s) otherwise than as a result of the operation of Section 10 of this Appendix A, the Franchisee shall (i) promptly credit such Subscriber's account, or (ii) in the event the Subscriber has terminated service, promptly issue a check.

11.3 Procedures for Contacting Subscribers. Following the scheduling of an appointment with any Subscriber within the time periods specified elsewhere in this Appendix A (the "appointment period"), the Franchisee shall:

(i) make a reasonable effort, within a reasonable time prior to the appointment period, to telephone the Subscriber or potential Subscriber to confirm the appointment, provided, however, that the obligation to make such telephone call shall not apply where the appointment is scheduled to occur: (i) within forty-eight (48) hours of the initial scheduling of the appointment or (ii) before or during the next business day if

the request is made after 4:00 p.m. on a Friday. If such telephone call is not answered, in person or by an answering machine, the Franchisee shall use best efforts to make a second call to such Subscriber or potential Subscriber within a reasonable time thereafter to confirm the appointment; and

(ii) during the appointment period, either: (a) arrive at the Subscriber's or potential Subscriber's premises, as promised, or (b) prior to such arrival, telephone the Subscriber's or potential Subscriber's premises to determine whether the Subscriber is present during such appointment period. If, upon arrival at the Subscriber's or potential Subscriber's premises, the Franchisee is not able to secure access to the premises, the Franchisee's employee or representative shall make a reasonable effort to arrange for the premises to be telephoned immediately to determine whether the Subscriber or potential Subscriber is present. If such telephone call is not answered in person, the Franchisee shall, if possible, leave a notice under the door of the premises advising that the Franchisee did arrive at the premises during the appointment period, and the completion of such tasks shall be deemed an appropriate cancellation by the Franchisee of the scheduled appointment. In the event that, prior to arrival at the Subscriber's or potential Subscriber's premises, the Franchisee telephones the Subscriber to determine whether the Subscriber is present at the premises and such call is not answered in person or by a device which states that the Subscriber is, in fact, present and awaiting the Franchisee's arrival, then the Subscriber shall be deemed to have cancelled the scheduled appointment.

(iii) From time to time, the Franchisee may use contractors or subcontractors to perform work at a Subscriber's premises. If the City receives a significant number of complaints from Subscribers regarding confusion in identifying such contractors or subcontractors performing work at Subscribers' premises, the City and Franchisee shall discuss and mutually agree upon a practice to address such issue.

11.4 Receipts. In connection with any transaction between the Franchisee and a Subscriber which involves a visit to a Subscriber's premises or place of business, the Franchisee will, in each such case when requested by the Subscriber, provide such Subscriber a written receipt briefly describing such transaction and the date and time thereof. The Franchisee shall reasonably seek to inform each such Subscriber in writing of the availability of such a receipt.

11.5 Governing Federal and State Law. In the event that any of the provisions of this Appendix A of this Agreement are preempted by and unenforceable under any rules or regulations promulgated by the NY PSC, adopted by the New York State legislature, the FCC or the United States Congress, the rules or regulations adopted by the applicable governing body or regulatory agency shall govern and the Franchisee's compliance with such rules or regulations shall be deemed satisfactory performance.

Section 12

FAILURE TO COMPLY WITH THESE REQUIREMENTS

12.1 Material Requirements. Any breach, default, failure or other noncompliance by the Franchisee in the performance of any obligation of the Franchisee under this Appendix A shall constitute a Default as defined in Section 15.1 of the body of this Agreement. Any such Default that constitutes substantial and material Default shall fall within the scope of Section 15.6.11 of the body of this Agreement and any persistent or repeated pattern of such Defaults shall fall within the scope of Section 15.6.11 of the body of this Agreement, provided that no substantial and material Default nor any persistent or repeated pattern of action or inaction in connection with this Appendix A shall be deemed to fall within the scope of Section 15.6.11 of the body of this Agreement by reason of actions or inactions which are taken in the good faith belief that such do not constitute a Default, during pendency of a good faith dispute as to whether such actions or inactions at issue constitute a Default.

12.2 Reporting. The Franchisee shall provide reports documenting its compliance with the requirements of this Appendix A and other customer service matters as set forth in Exhibit 2 attached hereto and made a part hereof.

Section 13 **ANNUAL CABLE CONSUMER REPORT CARD**

13.1 Annual Cable Consumer Report Card Requirements. The Franchisee shall provide an Annual Cable Consumer Report Card setting forth the information described in Exhibit 3 attached hereto and made a part hereof; provided, however, that Franchisee's obligation to provide such Annual Cable Consumer Report Card shall not commence until forty-five (45) days from the end of the first full calendar year in which each cable operator in the Franchise Area, or portion thereof, is subject to a substantially equivalent obligation as contemplated under this Section 13.1 pursuant to the terms of a valid and effective cable franchise agreement by and between each such respective cable operator and the City.

Exhibit 1 to Appendix A

DESIGNATION AND LOCATION OF SERVICE CENTERS

SERVICE CENTER

[To be filled in by Verizon]

CONSUMER PROTECTION REPORTING REQUIREMENTS

SERVICE REPORTS

Significant Outage Report (Quarterly)

The Franchisee shall provide reports of Significant Outages, Significant Outage Reports, containing the date, time, location, number of homes affected, cause and duration of each outage, and such other information as the Commissioner shall reasonably require. Franchisee shall also include information related to automatic credits provided to Subscribers in relation to Significant Outages reported.

Interconnection Report (Upon Request)

Upon request of the Commissioner, the Franchisee shall submit to the Commissioner a report detailing its compliance with the requirements set forth in Section 8.1.6 of the Agreement.

TELEPHONE REPORT

A report containing the information detailing compliance with the standards required in Section 3.4.1 of Appendix A of the Agreement shall be submitted to the Commissioner in the form contained in the attached exhibit and according to the definitions set forth herein. Such report shall be submitted on a quarterly basis, except that a report regarding Supervisor Callback Within Four Hours shall be supplied upon request. If due to technological, service or other changes the Franchisee believes changes in the form of this report is appropriate, the Franchisee may petition the Commissioner for a change in form, which the Commissioner may grant if in his or her discretion such a change is in the interest of subscribers. To the extent there are references below to voicemail systems or other call response methods that the Company does not utilize, those sections shall not apply.

A. Telephone Reporting Definitions

1. Calls Offered.

All “calls” other than those which receive busy signals, made to the Franchisee’s sales, service, pay-per-view (other than pay-per-view automatic ordering), billing and any other lines for subscribers or potential subscribers (in short, all lines other than the Franchisee’s business office lines and its automated pay-per-view ordering lines), twenty-four (24) hours a day. All calls described in this report may be initiated by a voice response unit rather than a live representative.

2. Calls Handled.

All Calls Offered to the VRU which are not Lost Calls (see below).

3. Lost Calls.

a. Number: All Calls Offered which request, or hold for, a live customer service representative (“CSR”) (i.e., calls which neither request an automated response nor leave a taped message, or request an automated response then continue to hold for a CSR) but hang up before a live CSR comes to the phone.

b. Percent: Percentage of Calls Offered which are Lost Calls.

4. Average Wait Time.

“Wait Time” is defined as the number of seconds a caller waits, after the conclusion of recorded or automated phone system instructions and routing, before the earliest of the following occurs: a live CSR comes to the phone, or the caller leaves a recorded message, or the caller hangs up. Average Wait Time is the total Wait Time of all Calls Offered, which remain on the line after the commencement of Wait Time until they receive service from a live CSR, leave a recorded message, or hang up, divided by the number of such calls. Calls Offered which hang up prior to the commencement of Wait Time will not be counted in either the numerator or denominator of this calculated average, nor will any After Hours calls.

5. All Trunks Busy.

The Total amount of time in the reporting period during which the level of use of the Franchisee’s phone lines was such that a caller attempting to call any one of the phone lines included in Calls Offered would have received a busy signal (a period is considered within All Trunks Busy if, for example, all “service” lines are busy, even if “billing” lines are available, unless the Franchisee’s system automatically rolls calls from occupied lines into available lines).

6. Overflow Device. (During Normal Hours).

a. Total Calls Seeking CSR:

All Calls Offered during Normal Hours which remain on the line at the conclusion of any recorded or automated phone system instructions and routing. This should be the same number as the denominator in the calculation of Average Wait Time.

b. Calls Receiving CSR Within Thirty (30) Seconds:

The number of Total Calls Seeking CSR which were picked up by a live CSR within 30 seconds of the commencement of Wait Time. This number shall not include any calls picked up by a CSR after thirty (30) seconds of Wait Time has run, or any calls which leave a message, or any Lost Calls.

c. Total Messages Left:

The number of Total Calls Seeking CSR which leave messages. The number in this category when added to the number in the Calls Receiving CSR Within Thirty (30) Seconds category will add up to less than Total Calls Seeking CSR, because the following types of Total Calls Seeking CSR will not be included in either category: calls which are lost because the caller hangs up after thirty (30) seconds without leaving a message and callers who receive help from a CSR after waiting more than thirty (30) seconds.

d. Messages Requiring Callbacks:

The number of Total Calls Seeking CSR which leave messages which require callbacks. The difference between this category and Total Messages Left will be callers who leave messages which do not require further contact (because, for example, the caller's message reports an outage or other problem which was resolved shortly after the call, or the message simply reports an opinion on programming content) or are unreturnable (because, for example, the caller left no phone number or identification).

e. Messages Returned Within One (1) Business Day:

This is the number of Messages Requiring Callbacks which were returned within one (1) business day (including both calls which are successfully completed and calls in which the customer does not answer the phone).

f. Automated Calls Within Thirty (30) Seconds:

The number of Calls Offered which are handled by automated interaction between the customer and the telephone and/or billing system. This number shall not include any calls which roll over to the overflow device or during which for any other reason the automated response to the caller does not commence within thirty (30) seconds of the conclusion of initial recorded or automated phone service instructions and routing.

7. After Normal Hours.

a. Calls Offered After Hours:

All Calls Offered which come in After Hours. (These calls are separate from the Overflow Device category because all After Hours callers who remain on the line after recorded and automated information has been offered are immediately rolled into the message recording system, with no regular CSR availability).

b. After Hours Messages Returned Within One (1) Business Day:

Defined in the same manner as Messages Returned Within One (1) Business Day, except this category covers the messages received After Hours.

8. Supervisor Callback Requests:

All Calls Offered, requesting contact with a supervisor, including both requests made to live CSRs as well as requests left on recorded messages.

9. Supervisor Callback Within Four Hours:

All supervisor Callback requests which are returned by a supervisor within four (4) "calling hours." "Calling hours" are defined as 9 a.m. to 10 p.m. on weekdays, 10 a.m. to 10 p.m. on weekends. (It is recognized that some late evening callers requesting a supervisor may request that a callback be made later than the early morning hours of the following day. While such callbacks should not be included in Supervisor Callback Within Four Hours, it is understood that callbacks that take longer than four hours at the request of the caller are acceptable exceptions to the four hour requirement, provided the Company keeps records of such requests and makes them available to the Commissioner at the Commissioner's request.)

Exhibit 3 to Appendix A

ANNUAL CABLE CONSUMER REPORT CARD

Subject to the terms of Section 13.1 hereof, within forty-five (45) days from the end of each calendar year, Franchisee shall post on its website, and provide to the leasing or sales office of each MDU with which Franchisee has executed a marketing agreement for Cable Service, an Annual Cable Consumer Report Card setting forth the following information on a City-wide basis:

- (1) Customer service performance information, including:
 - (a) Percentage of calls answered by voice response units (“VRU”);
 - (b) Percentage of calls abandoned by VRU; and
 - (c) Percentage of busy calls by VRU.

- (2) Subscriber rights and remedies, including but not limited to contact information related to Subscriber complaints and customer service within Verizon, as well as contact information for DoITT for Subscriber issues; Subscriber credit policy, privacy notice, and billing and payment information.

- (3) Price of services information.

- (4) Content/channel changes and improvement information.

- (5) Significant Outage information, including:
 - (a) Summary of categories of Significant Outages that occurred by VSO, in the Franchise Area during the preceding calendar year;

 - (b) Percentage of each category of Significant Outage that occurred by VSO in the Franchise Area during the preceding calendar year; and

 - (c) Remedies performed Franchisee for each category of Significant Outage during the preceding calendar year.

APPENDIX B

PEG CHANNELS

PEG CHANNELS		
Date	Number of Channels	
Within 180 Days of the Effective Date	4 P each Borough, 5 City-wide E/G	25 channels
January 1, 2009	Additional 2 P each Borough, Additional 1 City-wide E/G	11 channels
January 1, 2012	Additional 1 P each Borough, Additional 2 City-wide E/G	7 channels
6 years after Effective Date	Additional 2 P each Borough	10 channels
		53 channels total

APPENDIX C

FORM OF COMMUNITY ACCESS ORGANIZATION (“CAO”)

GRANT AND USE AGREEMENT

BY AND BETWEEN

VERIZON NEW YORK INC.

AND

[CAO]

THIS AGREEMENT (the “Agreement”) made on this [] day of [], 2008, is entered into by and between Verizon New York Inc., a corporation duly organized under the applicable laws of the State of New York (“Verizon”), with a place of business at 140 West Street, New York, New York 10007 and [CAO], a New York not-for-profit corporation (the “CAO”) designated by the Borough President of [borough name] (the “Borough President”), with a place of business at [address].

WHEREAS, the City of New York (the “City”), pursuant to Section 363(a) of the City Charter and Resolution No. 538 of the City Council, is entering into a Franchise Agreement granting Verizon a nonexclusive franchise (“Franchise Agreement”) to operate a Cable System (the “System”) throughout the entire territorial boundaries of the City (“Service Area”), which among other boroughs includes the Borough of [borough name] (as hereinafter defined); and

WHEREAS, Verizon has negotiated with the CAO and has agreed to provide the CAO with the grants and services pursuant to the terms hereof for the benefit of the Residents of the Borough of [borough name]; and

WHEREAS, the Franchise Agreement requires Verizon to place under the jurisdiction of the CAO Access Channels on the System, to be known as public access channels (“Public Access Channels”), and to provide to the CAO such grants as have been independently agreed upon as a result of direct negotiations between the CAO and Verizon and as described herein; and

WHEREAS, the CAO is a not-for-profit corporation organized pursuant to New York State law and has been designated by the Borough President as the CAO to receive such grants as shall be made available by Verizon pursuant to this Agreement; and

WHEREAS, the CAO has been organized to operate for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended (the “Code”), including, among other purposes, the administration and management of Public Access Channels in the Borough, and such

other purposes which shall qualify the CAO as exempt under Section 501(c)(3) of the Code; and

WHEREAS, the CAO desires to obtain the funds necessary to carry out its purposes and objectives from the grants provided for herein and from any other lawful sources; and

WHEREAS, Verizon desires to support the purposes and objectives of the CAO in the CAO's objectives of the development and production of public services and programming to be distributed on the Public Access Channels and to be made available to all cable television subscribers in [borough name]; and

WHEREAS, the CAO will engage in activities and will develop programming to be distributed on the Public Access Channels for the benefit of Subscribers, to the System, thereby increasing the public service potential of cable television in the City;

NOW THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, and the mutual agreements herein contained, the parties agree as follows:

SECTION I -DEFINITIONS

1.1 Borough: The entire existing territorial boundaries of the Borough of [borough name], and such additional areas as may be annexed or acquired.

1.2 All other capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to such terms in the Franchise Agreement.

SECTION II -GRANT OF SUPPORT TO THE CAO

2.1 Public Access Channel Grant

2.1.01 Verizon shall make a Public Access Channel grant to the CAO to be used in support of the production of local public access programming ("Public Access Channel Grant").

2.1.02 The Public Access Channel Grant provided by Verizon hereunder shall be in the form of a per month, per Subscriber grant for the Term of the Franchise Agreement in accordance with the following schedule:

Year 0 - Year 1: The Public Access Channel Grant shall be in the amount of DOLLAR (\$_____) per month, per Subscriber until the first anniversary of the Effective Date;

Year 1 – Year 2: The Public Access Channel Grant shall increase to and remain at DOLLAR (\$_____) per month, per Subscriber until the second anniversary of the Effective Date;

Year 2 – Year 3: The Public Access Channel Grant shall increase to and remain at DOLLAR (\$____) per month, per Subscriber until the third anniversary of the Effective Date;

Year 3 – Year 4: The Public Access Channel Grant shall increase to and remain at DOLLAR (\$____) per month, per Subscriber until the fourth anniversary of the Effective Date;

Year 4 – Year 5: The Public Access Channel Grant shall increase to and remain at DOLLAR (\$____) per month, per Subscriber until the fifth anniversary of the Effective Date;

Year 5 – Year 6: The Public Access Channel Grant shall increase to and remain at DOLLAR (\$____) per month, per Subscriber until the sixth anniversary of the Effective Date;

Year 6 – Year 8: The Public Access Channel Grant shall increase to and remain at DOLLAR (\$____) per month, per Subscriber until the eighth anniversary of the Effective Date;

Year 9 – Year 10: The Public Access Channel Grant shall increase to and remain at DOLLAR (\$____) per month, per Subscriber until the tenth anniversary of the Effective Date; and

Year 11 – Year 12: The Public Access Channel Grant shall increase to and remain at DOLLAR (\$____) per month, per Subscriber until the expiration date of the Agreement.

Calculation of the Public Access Channel Grant will commence with the first calendar month during which Verizon obtains its first Subscriber in the Borough. The per month, per Subscriber payments detailed herein will be calculated based on the number of Subscribers to Verizon's Basic Service tier in the Borough. The Public Access Channel Grant payment, along with a brief summary of the Subscriber information upon which it is based certified by a financial representative of Verizon, shall be delivered to the CAO within forty-five (45) days after the end of each calendar quarter. Verizon shall file a copy of said statement with DoITT.

2.1.03 Subject to Section 2.5, each Public Access Channel Grant payment shall be non-refundable.

2.1.04 The failure of the CAO to fully allocate or expend any monies provided pursuant to this Section 2.1 shall not affect Verizon's payment obligations under this Section 2.1.

2.2 Cash Grant

Verizon shall make cash grants to the CAO (each, a “Cash Grant”) payable as follows:

DOLLARS (\$_____) shall be due and payable within ninety (90) days of the Effective Date;

DOLLARS (\$_____) shall be due and payable on the first anniversary of the first payment pursuant to this Section 2.2;

DOLLARS (\$_____) shall be due and payable on the second anniversary of the first payment pursuant to this Section 2.2; and

DOLLARS (\$_____) shall be due and payable on the third anniversary of the first payment pursuant to this Section 2.2.

Each Cash Grant shall be non-refundable.

2.3 Use of Funds

Such Public Access Channel Grant and Cash Grant shall be used by the CAO in its discretion for public access costs, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, cameras, office equipment, renovation or construction of Public Access Channel facilities, and other public access costs as may be ascertained by the CAO.

2.4 Recovery of Costs

2.4.01 To the extent permitted by federal law, Verizon shall be allowed to recover the costs of any Public Access Channel Grant and Cash Grant from Subscribers and to include such costs as a separately billed line item on each Subscriber’s bill. Without limiting the foregoing, if allowed under state and federal laws, Verizon may also externalize, line-item, or otherwise pass-through interconnection costs to Subscribers.

2.4.02 The CAO shall negotiate and seek to impose equivalent obligations to the obligations contained in Section 2.1 of this Agreement on all providers of Cable Service or cable service (as such term may be defined by other providers) in the Borough pursuant to any new agreement or the renewal of any existing agreement between the CAO and any cable provider. In the event that any new agreement or any renewal agreement between the CAO and any provider of Cable Service or cable service (as such term may be defined by other providers) in the Borough contains obligations, taken as a whole, that are lesser in amount or aggregate value than the obligations imposed in Section 2.1, Verizon’s obligations under Section 2.1 shall be reduced to an equivalent amount.

2.4.03 The CAO shall negotiate and seek to require of any provider of Cable Service or cable service (as such term may be defined by other providers) in the Borough a substantially equivalent economic burden to that imposed on Verizon in Section 2.2 of this Agreement.

2.5 Delivery of Payments; Interest

All payments by Verizon to the CAO pursuant to this Agreement shall be made payable to the CAO and shall be delivered to the address designated in writing therefor by the Executive Director or Chief Financial Officer of the CAO. In the event that a Public Access Channel Grant or Cash Grant payment is not received by the CAO by the respective due date set forth herein, following at least thirty (30) days written notice from the CAO that such payment has not been received, Verizon shall pay interest on such overdue Public Access Channel Grant or Cash Grant at the then-current interest 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) to the CAO retroactive to the first day that such Public Access Channel Grant or Cash Grant payment was originally due. Verizon shall be allowed to submit or correct any payments that were incorrectly omitted, and may offset against future payments any payments that were incorrectly submitted, within ninety (90) days after the close of the calendar year for which such payments were applicable.

2.6 Publicity for Access Services

At the time of installation, Verizon shall provide each Subscriber with certain literature. Such literature, which need not be bound together, shall constitute the "Welcome Kit." If provided to Verizon by the CAO in a format mutually agreeable to both Verizon and the CAO, Verizon shall reproduce and include in the Welcome Kit the following information, materially accurate as of the first day of the previous month, in a clear, complete and comprehensible form: (A) a listing of the currently available Public Access Channels; (B) a description of the purposes and uses of such Public Access Channels; and (C) general information regarding how a Person can utilize or obtain further information regarding such Public Access Channels. The cost of reproducing and distributing any materials provided to Verizon by the CAO pursuant to this Section shall be borne solely by Verizon, provided, however, that the CAO shall be solely responsible for any costs associated with each original production of such materials. Verizon shall also make the foregoing information available on its website, subject to Verizon's technical capability to do so, including, but not limited to, limitations with respect to character capacity.

2.7 Mailing to Subscribers

On an annual basis, if requested by the CAO, Verizon shall reproduce and mail, consistent with the privacy protection policies of Verizon, in Verizon's annual notification to Subscribers, such materials provided by the CAO in a format mutually agreeable to both Verizon and the CAO with respect to programming on the Public

Access Channels and the activities of the CAO, as may be reasonably specified by the CAO. The cost of reproducing and distributing any materials provided to Verizon by the CAO pursuant to this Section shall be borne solely by Verizon, provided, however, that the CAO shall be solely responsible for any costs associated with each original production of such materials. Subject to the CAO providing the above-referenced materials in a format mutually agreeable to both Verizon and the CAO in a sufficient period of time, but no less than eighty (80) days prior to such mailing, Verizon shall also include these materials in its Welcome Kit to Subscribers in the Borough. Verizon shall also make the foregoing information available on its website, subject to Verizon's technical capability to do so, including, but not limited to, limitations with respect to character capacity. Verizon shall provide the CAO with at least thirty (30) days notice of the date by which such materials referenced in this Section 2.7 will be required.

2.8 Additional Obligations of Verizon

2.8.01 Each Public Access Channel shall be delivered with transmission quality at least the same as the transmission quality of any other channel on Verizon's lowest tier of service, provided, however, that Verizon shall have no responsibility to improve upon or modify the quality of any Public Access Channel's content provided to Verizon by the CAO.

2.8.02 Subject to the service availability requirements set forth in the Franchise Agreement, Verizon shall provide to the CAO, without charge, one service outlet activated for Basic Service at the location of the CAO's master control with an address of [_____]. Notwithstanding the foregoing, however, Verizon will not provide such complimentary drop unless and until Verizon's Cable Service is available to be offered at such location. Cable Service may not be resold or otherwise used in contravention of Verizon's rights with third parties respecting programming. Equipment provided by Verizon, if any, shall be replaced at retail rates if lost, stolen or damaged.

2.8.03 Verizon does not currently collect ratings information specific to viewership of Public Access Channels. In the event that Verizon does collect for itself such specific standalone public access viewer information, Verizon may make such specific information available to the CAO at the CAO's cost and expense subject to any limitation of 47 U.S.C. §551.

2.8.04 To the extent technically feasible and commercially reasonable, Verizon shall display Public Access Channel program content titles in electronic on-screen channel listings in the same manner as it designates all other programming on the System; provided, however, that Verizon shall not be responsible for any inaccuracies in such information.

SECTION III -OBLIGATIONS OF THE CAO

3.1 Consideration for Cash Grant and Public Access Channel Grant; Use for Educational or Charitable Purposes

As consideration for the Cash Grant and Public Access Channel Grant by Verizon to the CAO, the CAO shall: (i) administer and manage the Public Access Channels provided for its use by Verizon and the use of the CAO's facilities, equipment, and supplies, in a fair and reasonable manner; and (ii) develop and support programming to be cablecast on the Public Access Channels, which is responsive to the needs and interests of the Residents of the Borough. The CAO shall use the Public Access Channels and the Cash Grant and Public Access Channel Grant provided by Verizon to the CAO primarily for educational or charitable purposes within the meaning of Section 501(c)(3) of the Code.

3.2 Maintenance of Tax-Exempt Status

The CAO shall conduct its activities so as to maintain its tax exempt status under Section 501(c)(3) of the Code or other applicable laws.

3.3 Public Access Channel Rules and Regulations

3.3.01 The CAO shall maintain reasonable rules and regulations to provide for open access to Public Access Channel time, facilities, equipment, supplies, and training on a non-discriminatory basis and to the extent required by applicable law. Said rules and regulations providing for open access may dedicate segments of Public Access Channel time and/or specific channels to particular or related subject matters or uses.

3.3.02 If the CAO provides programming grants, it shall establish reasonable rules and regulations governing the procedure for applying to the CAO for programming grants and the selection of grant recipients by the CAO.

3.3.03 The CAO shall make all rules and regulations publicly available.

3.4 Compliance with Privacy Law

The CAO shall comply with the requirements of applicable law regarding privacy protection.

3.5 Annual Report

The CAO shall prepare and mail to Verizon each year an annual income and expenditure report for the preceding year.

SECTION IV -PUBLIC ACCESS CHANNEL SERVICES

4.1 Compliance with Federal, State and Local Law

Verizon and the CAO shall comply with all applicable local, state, and federal laws with respect to program content on the Public Access Channels.

4.2 Public Access Channel Set Aside

4.2.01 In order to ensure universal availability of public access programming, Verizon shall initially provide on the Basic Service Tier use of four (4) Public Access Channels to the CAO during the Term of the Franchise Agreement, subject to increase as provided in the Franchise Agreement. Verizon shall carry the programming on each of the respective Public Access Channels as indicated in Appendix B to the Franchise Agreement. In the future, Verizon shall assign the Public Access Channels on its channel line up as configured elsewhere within the City to the extent such channel assignments do not interfere with any other channels or fall outside the range of Verizon's respective channel lineup. Verizon shall not arbitrarily or capriciously change such channel assignments, and Verizon shall minimize the number of such changes; provided, however, that Verizon may change such channel assignments as it deems appropriate so long as (i) Verizon gives the CAO ninety (90) days notice of such change (if commercially practicable) but in no event less than forty-five (45) days, and (ii) Verizon provides, free of charge, public announcements of such changes that shall include (a) to the extent Verizon has advertising availability, advertising such Public Access Channel changes on advertising inserts on local channels carrying non-satellite programming in prime time at least thirty (30) seconds per day for the time period of thirty (30) to fifteen (15) days prior to such change and two (2) minutes per day for the fourteen (14) days prior to such change (provided, however, that if Verizon does not have advertising availability at the commencement of the thirty (30) to fifteen (15) day period, as soon as advertising space becomes available, Verizon shall then provide the advertising contemplated under this Section 4.2.01), and (b) providing notice of such changes in at least two (2) monthly Subscriber bill inserts prior to such change (if commercially practicable) but in no event less than one (1) monthly Subscriber bill insert; provided, however, that such bill inserts shall not be necessary in the event Verizon provides the requisite notice of such changes to all Subscribers in a letter separate from their bill.

4.2.02 The provisions of 16 NYCRR §895.4 (c)(12) shall apply to this Agreement.

4.3 Indemnity for Public Access Channels

In accordance with 47 U.S.C. §558, Verizon shall not incur any liability arising from or in connection with any program carried on the Public Access Channels.

4.4 Rights to Public Channel Programming

Verizon shall have no rights to programming carried on the Public Access Channels by virtue of cablecasting or distributing such programming over its System, except for Verizon's right to transmit such programming to its Subscribers. All rights to the programming content are intellectual property of the owner, regardless of the individual or entity requesting transmission. Verizon shall have no editorial control over programming on the Public Access Channels.

4.5 Public Access Channel Interconnection

4.5.01 Verizon, at its expense, shall interconnect its Cable System to the CAO's studio at (_____) ("Public Access Channel Interconnection Site"). Verizon shall take reasonable steps to accomplish such interconnection within one hundred eighty days (180) of the Effective Date.

4.5.02 Verizon shall construct the auxiliary connections designated by the CAO on Exhibit 1 hereto between the content originating locations (each, a "Public Access Channel Origination Site") and the Public Access Channel Interconnection Site to enable additional programming to be inserted at the Public Access Channel Interconnection Site. In the event the CAO desires to substitute a location currently designated on Exhibit 1 with an alternate location, Verizon agrees to commence good faith discussions with the CAO regarding the substitution of such Public Access Channel Origination Site within thirty (30) days of Verizon's receipt of written notice from the CAO of the CAO's desire to commence such discussions. The cost related to any substitution of a Public Access Channel Origination Site shall not exceed the cost to Verizon for constructing the auxiliary connection for the original Public Access Channel Origination Site, as designated on Exhibit 1. Upon one hundred eighty days (180) days written notice from the CAO to Verizon that a Public Access Channel Origination Site is fully functional for its intended purpose, an auxiliary connection shall be made operable by Verizon. The CAO is obligated to furnish, install and maintain the equipment necessary to perform any switching or aggregation functions at the affected Public Access Channel Interconnection Site.

4.5.03 Subject to the successful completion of all required site preparation work by the CAO and provision of access to Verizon for equipment installation and provisioning, Verizon shall, without charge to the CAO, provide links between Verizon's video channel aggregation site and the Public Access Channel Interconnection Site in order to permit the signals to be correctly routed from the Public Access Channel Interconnection Site to the appropriate Public Access Channel for distribution to Subscribers, provided, however, that neither Verizon nor the required site work shall unreasonably or materially interfere with the CAO's operations or otherwise impose additional material burdens on the CAO.

4.5.04 The CAO shall provide to Verizon at the Public Access Channel Interconnection Site a suitable video and audio signal(s) for each Public Access Channel. Verizon, upon receipt of the suitable video signal(s), shall provide, install and maintain in good working order the equipment necessary for transmitting the Public Access Channel signals from the Public Access Channel Interconnection Site to Verizon's video channel aggregation site for further processing for distribution to Subscribers. Verizon's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Verizon, of suitable required space, environmental conditions, electrical power supply, access, pathway, and other facilities and such cooperation of the CAO as is reasonably necessary for Verizon to fulfill such obligations, provided, however, that Verizon shall not unreasonably or materially interfere with the CAO's operations or otherwise impose additional material burdens on the CAO.

4.5.05 The CAO hereby authorizes Verizon to transmit all Public Access Channel programming within the Borough's jurisdictional boundaries and without the Borough's jurisdictional boundaries to the extent such programming is transmitted to the adjacent borough or the immediately adjacent local franchising authorities in the adjacent county and to the extent those areas are served by a VSO also serving the Borough.

SECTION V -MISCELLANEOUS PROVISIONS

5.1 Effective Date and Term

5.1.01 This Agreement shall take effect on the date that the NY PSC issues a certificate of confirmation for the Franchise Agreement (the "Effective Date"). Notwithstanding the foregoing, Verizon will not be required to fulfill any obligations under Sections 2.1 (Public Access Channel Grant), 2.6 (Publicity for Access Services), 2.7 (Mailing to Subscribers), 4.2 (Public Access Channel Set Aside), and 4.5 (Public Access Channel Interconnection) until one or more VSOs are Open for Sales in the Borough.

5.1.02 This Agreement shall remain in effect throughout the Term of the Franchise Agreement, as provided in the Franchise Agreement, provided that the designation of the CAO by the Borough President remains in effect. The period of time during which this Agreement is in effect shall be "the term of this Agreement." In the event that the Franchise Agreement is terminated for any lawful reason prior to the scheduled expiration of the Term, then the term of this Agreement shall expire and all rights and obligations of the CAO and Verizon under this Agreement shall cease. Notwithstanding the foregoing, in the event Verizon continues to provide Cable Service in the Service Area after the termination or expiration of the Term of the Franchise Agreement, then Verizon shall be bound by all of the obligations under this Agreement for the period of such continuing provision of Cable Service in the Service Area.

5.2 Application to Successors

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

5.3 Confidential Information

Except as may be required by applicable law, the CAO shall treat any information disclosed by Verizon (and so designated by Verizon) as confidential and proprietary, and shall only disclose it to employees, directors, the Borough President, DoITT, the Comptroller, representatives, and agents thereof who have a need to know, or in order to enforce the provisions hereof. Notwithstanding anything to the contrary set forth herein, Verizon shall not be required to publicly disclose or allow the CAO to copy information that it reasonably deems to be proprietary or confidential in nature in connection with Verizon's disclosure of information pursuant to this Agreement. For purposes of this Agreement, "proprietary or confidential" information shall be defined as any information

that is reasonably determined by Verizon to be competitively sensitive. If the CAO receives a request for the disclosure of information that Verizon has designated as confidential, trade secret or proprietary, the CAO shall notify Verizon of such request. If the CAO determines in good faith that public disclosure of the requested information is required, the CAO shall so notify Verizon, and before making disclosure shall give Verizon a reasonable period of time to seek to obtain judicial redress to preclude public disclosure. Verizon shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

5.4 Separability

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

5.5 Entire Agreement

This Agreement constitutes the entire agreement between Verizon and the CAO and it supersedes all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof. Any local laws or parts of local laws that materially conflict with the provisions of this Agreement are superseded by this Agreement.

5.6 Amendments and Modifications

Amendments and/or modifications to this Agreement shall not be effective unless mutually agreed to in writing by the parties.

5.7 Captions and Headings

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

5.8 Recitals

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

5.9 Construction of Agreement

The provisions of this Agreement shall be liberally construed to effectuate their objectives.

5.10 Governing Law

This Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Verizon, and shall be governed by and construed in accordance with federal law and the laws of the State of New York.

5.11 No Third Party Beneficiaries

This Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement. Nothing in this Agreement shall be interpreted to provide that Verizon and the CAO are partners, joint venturers, agents or assignees of the other.

5.12 Force Majeure

Subject to the procedures set forth in the last sentence of this Section 5.12, Verizon shall not be held in default under, or in noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure; provided, however, that in the event that any delay in performance resulting from such a Force Majeure affects only part of Verizon's capability to perform, Verizon shall perform to the extent it is able to do so and shall take all steps, reasonably within its ability, to minimize the length and effect of such Force Majeure delay. Verizon shall notify the CAO in writing of the occurrence of an event of Force Majeure, or a series of related events constituting an event of Force Majeure, which resulted in or is resulting in a delay in performance, such notice to be provided within twenty (20) business days of the event or series of events, or if notification within such period is not practicable under the circumstances, as soon as practicable.

5.13 Enforceability

Each party represents and warrants to the other that this Agreement (i) has been duly executed and delivered by such party and (ii) constitutes the valid and legally binding obligation of such party, enforceable in accordance with its terms.

[balance of page intentionally left blank]

5.14 No Right of Set Off

Except as otherwise set forth herein, including but not limited to Section 2.5, all Public Access Channel Grant and Cash Grant payments shall be made without set-off.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first above written.

[CAO NAME]

ATTEST:

BY: _____
[Signatory]

VERIZON NEW YORK, INC.

ATTEST:

BY: _____
[Signatory]

APPENDIX D

FRANCHISE FIBER RIGHT OF USE

Pursuant to the terms of Article 9 of the Franchise, and in consideration for the rights and benefits provided to the Franchisee under the Franchise, the Franchisee shall provide to the City the exclusive right to use of certain fiber optic strands as more fully described in **Exhibit 1** to this **Appendix D**. For purposes of this **Appendix D**, capitalized terms used herein but not otherwise defined below shall have the meanings ascribed to such terms in the Franchise.

Section 1 DEFINITIONS

1.1 “Connection Points” shall mean the locations at which the City Equipment may be connected to the Franchise Fibers as described on **Exhibit 1** to this **Appendix D**.

1.2 “Franchise Fibers” are identified in **Exhibit 1** to this **Appendix D** as the span locations of the fiber optic strands to be granted to the City hereunder.

1.3 The “City Equipment” shall mean any optronic, electronic, optical, or power equipment, and any other facilities, material or equipment owned, possessed or utilized by the City in connection with the use of the Franchise Fibers, including all innerducts (and other conduit tubing) and fiber optic cable in any telecommunications network owned by the City and connecting to any of the Franchise Fibers.

1.4 “Governmental Authority” shall mean any federal, state, regional, county, city, municipal, local, territorial, or tribal government, whether foreign or domestic, or any department, agency, bureau or other administrative or regulatory body obtaining authority from any of the foregoing, including without limitation, courts, public utilities and other authorities.

1.5 “Underlying Rights” shall mean all deeds, leases, easements, rights-of-way agreements, licenses, franchises, permits, grants and other rights, titles and interests that are necessary for the construction, installation, maintenance, operation, use or repair of the Franchise Fibers and Verizon’s supporting facilities, as applicable.

1.6 “Underlying Rights Requirements” shall mean the requirements, terms, conditions, obligations, liabilities, restrictions, and/or limitations on the City’s right to use and operate the Franchise Fibers and to access, install, repair, maintain and replace the City Equipment as set forth in the Right of Use granted by Article 9 of the Franchise and this **Appendix D**, in the Underlying Rights, in all applicable government codes, ordinances, laws, rules, permits, approvals and regulations, and all safety, operational and other rules and regulations imposed in connection with any of the foregoing or otherwise.

1.7 “Verizon Network” shall mean all of the physical facilities constructed, maintained and/or operated by the Franchisee or its Affiliates in the City which are utilized by Franchisee or its Affiliates for the provision of services, including, without limitation, Telecommunications Services, Information Services, or Cable Services.

Section 2 GRANT OF RIGHTS

2.1 *Right of Use of Franchise Fibers:* On the terms and subject to the conditions set forth herein, and consistent with the priority list set forth in **Exhibit 1** to this **Appendix D**, Franchisee grants to the City during the Term of the Franchise an exclusive right of use of the Franchise Fibers (the “Right of Use”) solely for the City’s noncommercial use.

2.2 *Franchisee’s Title:* Franchisee shall retain undivided, absolute legal title and ownership in the Franchise Fibers and the City’s rights pursuant to this **Appendix D** and Article 9 of the Franchise shall be limited solely to the Right of Use described herein during the Term of the Franchise.

2.3 *Limitation on City’s Rights:* Nothing herein shall be construed to confer upon the City any right to maintain, modify or alter the Franchise Fibers or Verizon’s supporting facilities, or the right of physical access to the Franchise Fibers or Verizon’s supporting facilities, or the right to encumber or use Verizon’s supporting facilities or any part thereof.

Section 3 TERM

3.1 *Term:* Subject to the terms of the Franchise, Section 3.2 hereof, and the priority list set forth on **Exhibit 1** to this **Appendix D**, the City’s Right of Use shall commence on the Effective Date of the Franchise and shall terminate in accordance with Section 3.2 of this **Appendix D**.

3.2 *Termination:* Upon the earlier of: (i) the expiration of the Term of the Franchise in accordance with Section 3.2 of the Franchise or (ii) the earlier termination of the Franchise pursuant to the terms of the Franchise, the City’s Right of Use shall immediately terminate, and all rights of the City to use the Franchise Fibers, or any parts thereof, shall cease upon written notice to the City from the Franchisee of such termination (the “Termination Notice”). Upon receipt by the City of the Termination Notice, the City shall immediately cease all use of the Franchise Fibers and at the City’s sole cost and expense remove any and all City Equipment connected with the Franchise Fibers or the Verizon’s supporting facilities.

Section 4 USE OF THE FRANCHISE FIBERS

4.1 *Compliance with Underlying Rights:* The City represents, covenants and warrants that it will use the Franchise Fibers granted hereunder in compliance with and subject to the Underlying Rights Requirements and all other applicable codes, ordinances, laws, rules and regulations of any Governmental Authority having jurisdiction over such Franchise Fibers.

4.2 *Permitted Use:* Subject to the provisions of the Right of Use granted by Article 9 of the Franchise and this **Appendix D**, the City may use the Franchise Fibers for the noncommercial purposes of the City and for no other purpose. The City acknowledges and agrees nothing herein shall be construed to confer upon the City any rights to use any fibers or other equipment or facilities, other than the Franchise Fibers, included or incorporated in the Verizon's supporting facilities or any portion of the Verizon Network except as expressly set forth in the Franchise.

Section 5 UNDERLYING RIGHTS

5.1 *Franchisee Underlying Rights:* Subject to the terms and provisions of this **Appendix D**, Franchisee agrees to obtain and maintain during the Term all Underlying Rights necessary for its construction, installation, maintenance and repair of the Franchise Fibers. The Right of Use granted hereunder is subject to the terms of the Underlying Rights, and is subject to the terms under which the Underlying Rights are owned or held by the grantor or grantors of the Underlying Rights, including covenants, conditions, restrictions, easements, reversionary and other interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. The Right of Use granted hereunder is further subject and subordinate to the prior right of the grantor or grantors of the Underlying Rights to use the right of way for other activities, including railroad operations, telecommunications uses, pipeline operations or any other purposes, and to the prior right of Franchisee to use its rights granted under the Underlying Rights. The rights granted to the City herein, if any, are made expressly subject to each and every limitation, restriction, condition or reservation in or affecting the Underlying Rights. Nothing herein shall be construed to be a representation, warranty or covenant of Franchisee's right, title or interest with respect to any of the Underlying Rights or with respect to the City's right to benefit from any of the Underlying Rights.

Section 6 ACCESS TO CONNECTION POINTS

6.1 *Connection:* The Franchisee shall provide the City with access to the Franchise Fibers at the Connection Points designated in **Exhibit 1** to this **Appendix D**. All terminations at Connection Points will be performed by the Franchisee in accordance with Franchisee's applicable specifications and operating procedures. The cost of such terminations at all Connection Points shall be the sole responsibility of the Franchisee.

6.2 *Access to Connection Points:* The City shall provide the Franchisee with all necessary legal, technical and physical access to all Connection Points as necessary to effectuate the objectives and obligations of this **Appendix D**.

6.3 *No Access by the City:* The City will not be entitled to any physical access to the Franchise Fibers or Verizon's supporting facilities.

6.4 *Franchisee Control:* Franchisee shall control all activities concerning access to the Verizon Network, including the Franchise Fibers and Verizon's supporting facilities.

6.5 *No Maintenance or Repair by Franchisee:* Any maintenance or repair work required respecting the Franchise Fibers required by the City for any reason, including, without limitation, splicing of the Franchise Fibers or the installation of handholes or other physical access points shall be undertaken only by Franchisee at the City's request. All such work shall be performed for such charges and on such terms and conditions as are agreed to by the Parties in writing.

6.6 *Remediation/Removal of Hazardous Materials:* To the extent the installation of any Franchise Fibers at any Connection Points requires the removal or remediation of hazardous materials, such removal or remediation shall be the sole responsibility of the City and the Franchisee shall have no obligation to perform such installation until all appropriate removal and remediation of hazardous materials has been completed by the City to the reasonable satisfaction of the Franchisee.

Section 7 OPERATIONS

7.1 *No Interference by the City:* The City shall not interfere with, or adversely affect the use by any other Person of the Verizon Network and/or any electronic or optronic equipment used by such Person in connection therewith.

7.2 *No Interference by Franchisee:* Franchisee shall not interfere with, or materially or adversely affect (or permit another Person under the direct control of Franchisee to materially interfere with, or materially or adversely affect) the City's use of the Franchise Fibers and/or the City Equipment. Franchisee further agrees that it shall use best efforts to avoid interfering with, or materially or adversely affecting, any fiber facilities, directly connected to points of entry to City buildings, owned or operated by any other entity providing similar fiber facilities to the City as Franchisee has agreed to provide pursuant to this Appendix D (the "Third Party Facilities"); provided however, that the parties hereto agree that Franchisee shall rely solely on information provided by the City and thus presumed accurate regarding the location and nature of any such Third Party Facilities and that the Franchisee shall not incur any liability pursuant to this Section 7.2 which arises due to the City's failure to provide Franchisee with accurate information with respect to the location or nature of such Third Party Facilities.

7.3 *No Obligation to Supply Electronics:* The City acknowledges and agrees that Franchisee is not supplying, nor is Franchisee obligated to supply to the City, any of the City Equipment, optronics or electronics or optical or electrical equipment, electrical power, any related facilities, or any space for the placement thereof (except as expressly agreed by the Parties pursuant to another agreement or agreements executed by the Parties), all of which are the sole responsibility of the City.

7.4 *Compliance with Applicable Authority:* The City represents, warrants and covenants that it will use and operate the Franchise Fibers and use, operate, maintain, repair and replace the City Equipment consistent with and subject to the terms of the Franchise, the Underlying Rights Requirements and all applicable codes, ordinances, laws, rules and regulations.

7.5 *Process for Response to Complaints:* Franchisee shall respond to City complaints and/or requests in accordance with the practices described on Exhibit 2 hereto.

Section 8

RELOCATION, REPLACEMENT AND CONDEMNATION OF CUSTOMER FIBERS

8.1 *Relocation Request:* If Franchisee receives notice of any request, intent or plan by any third Person (“Relocation Request”), including, but not limited to, any Governmental Authority, to relocate or require the relocation of any segment of Verizon’s supporting facilities affecting the Franchise Fibers, Franchisee shall notify the City of such Relocation Request and shall keep the City advised of the status of any such proceedings and negotiations related thereto. If relocation is required as a result of any such Relocation Request, Franchisee shall, to the extent possible, give the City at least sixty (60) days’ prior written notice of any such required relocation (“Relocation Notice”) including an estimate of the cost of such relocation. Franchisee shall have the right to relocate the Franchise Fibers and to the extent Franchisee is not reimbursed for the costs of such relocation by a third party or Governmental Authority, the City shall pay any costs associated with the relocation of the Franchise Fibers.

8.2 *Replacement:* In the event all or any part of the Franchise Fibers shall require replacement during the Term, such replacement shall be made as soon as reasonably practicable at Franchisee’s sole cost and expense; provided, however, that if the replacement of the Franchise Fibers is required as a result of the negligence or willful misconduct of the City, then Franchisee shall replace the Franchise Fibers and the City shall pay all costs associated therewith.

8.3 *Condemnation:* In the event any portion of Verizon’s supporting facilities affecting the Franchise Fibers, and/or the Underlying Rights, become the subject of a condemnation proceeding which is not dismissed within one hundred eighty (180) days of the date of filing of such proceeding and which could reasonably be expected to result in a taking by any Governmental Authority or other party cloaked with the power of

eminent domain for public purpose or use, both Parties shall be entitled, to the extent permitted under applicable law, to participate in any condemnation proceedings to seek to obtain compensation by separate awards for the economic value of their respective interests in the portion of Verizon's supporting facilities and/or the Franchise Fibers subject to such condemnation. Franchisee shall notify the City as soon as practicable of receipt of any notice of any condemnation proceeding filed against Verizon's supporting facilities, the Franchise Fibers or the Underlying Rights.

Section 9 CONFIDENTIALITY

9.1 *Proprietary and Confidential Information:* The City agrees that it shall treat any information provided to the City by Verizon pursuant this Appendix D as "proprietary and confidential" in accordance with the provisions of Section 11.1 of the Franchise.

Section 10 INDEMNIFICATION

10.1 *Indemnification:* Franchisee hereby agrees to indemnify, defend, protect and hold harmless the City, and its employees, officers, directors and agents (the "the City Indemnified Persons"), from and against, and assumes liability for all suits, actions, damages, claims, losses, fines, judgments, costs and expenses (including reasonable attorneys', accountants' and experts' fees and disbursements) of any character ("Claims"): (a) suffered or incurred by the City Indemnified Persons or any of them because of the death of any Person, or any injuries or damage received or sustained by any Persons or property which in whole or in part arise on account of the negligent acts or omissions, of Franchisee in the construction of the Franchise Fibers and/or in the performance or non-performance of its repair and maintenance obligations or exercise of its rights under this Right of Use, including any material violation by Franchisee of any Governmental Authority; or (b) under the workers compensation laws asserted by any employee of Franchisee or its agents, contractors, customers or any other Person providing goods or services for or on behalf of any of the foregoing in connection with this Right of Use suffered or incurred by the City Indemnified Persons or any of them. Franchisee's indemnification obligations hereunder shall not be applicable to any Claims to the extent caused by, arising out of or in connection with the negligence, intentional acts or omissions or misconduct of the City Indemnified Persons or any of them.

10.2 The City hereby agrees to indemnify, defend, protect and hold harmless Franchisee and its Affiliates, and their employees, officers, directors and agents (the "Franchisee Indemnified Persons"), from and against, and assumes liability for all Claims (as defined in Section 10.1, above): (a) suffered or incurred by the Franchisee Indemnified Persons or any of them because of the death of any Person, or any injuries or damage received or sustained by any Persons or property (including, without limitation, the Verizon Network) which in whole or in part arise as a result of the negligent acts or omissions, of the City in the performance or non-performance of its obligations or

exercise of its rights under this Right of Use, including any violation by the City of any Underlying Right Requirements or any Governmental Authority; (b) under the workers compensation laws asserted by any employee of the City, or its agents, contractors, customers or any other Person providing goods or services to any of the foregoing in connection with this Right of Use, and suffered or incurred by the Franchisee Indemnified Persons or any of them; (c) suffered or incurred by the Franchisee Indemnified Persons or any of them and arising out of or resulting from the City's: (i) use or operation of the Franchise Fibers, or the ownership, use, operation, installation, repair, maintenance or replacement of the City Equipment (if any); (ii) the conduct of the City's business, including, without limitation, the provision of any services or the content of any video, voice or data carried through the Franchise Fibers; or (iii) the violation of any Underlying Rights Requirements applicable to the City; or (d) suffered or incurred by Franchisee Indemnified Persons or any of them and arising out of, caused by, related to or based upon a contractual or other relationship between such claiming Party and the City as it relates to the Franchise Fibers, the City Equipment, the Underlying Rights Requirements or this Right of Use, including any claim for interruption of service or in respect of service quality. The City's indemnification obligations hereunder shall not be applicable to any claims to the extent caused by the negligence, intentional acts or omissions or misconduct of Franchisee Indemnified Persons or any of them.

10.3 Either Party seeking indemnification hereunder ("Indemnitee") shall promptly notify the City or Franchisee, as appropriate, of the nature and amount of such claim and the method and means proposed by the Indemnitee for defending or satisfying such claim. The Parties shall consult and cooperate with each other respecting the defense and satisfaction of such claim, including the selection of and direction to legal counsel. Neither Party shall pay or settle any such claim without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

10.4 Subject to Section 10.5, below, nothing contained herein shall operate as a limitation on the right of either Party to bring an action for damages against any third Person, including indirect, special or consequential damages, based on any acts or omissions of such third Person as such acts or omissions may affect the construction, operation or use of the Franchise Fibers or the Verizon Network, except as may be limited by Underlying Rights Requirements; provided, however, that each Party hereto shall assign such rights or claims, execute such documents and do whatever else may be reasonably necessary to enable the other Party to pursue any such action against such third Person.

10.5 Notwithstanding the foregoing provisions of this Section 10, to the extent Franchisee is required under the terms and provisions of any Underlying Rights to indemnify the grantor or provider thereof from and against any and all claims, demands, suits, judgments, liabilities, losses or expenses arising out of or related to such Underlying Rights, regardless of the cause and regardless of whether such claims, demands, suits, judgments, liabilities, losses or expenses arise from the sole or partial negligence, actions or inaction of such grantor or provider and its employees, servants,

agents, contractors, subcontractors or other Persons using the property covered by such Underlying Right, the City hereby releases such grantor or provider from the same, regardless of whether such claims, suits, judgments, liabilities, losses or expenses arise from the sole or partial negligence, willful misconduct or other action or inaction, of such grantor or provider or its employees, servants, agents, contractors, subcontractors or other Persons using the property covered by such Underlying Right.

Section 11 ASSIGNMENT

11.1 *Assignment:* The City shall not have the right to assign any rights to use of the Franchise Fibers without the written consent of Franchisee, which consent may be withheld in its absolute discretion.

11.2 *Binding On Permitted Assigns:* Subject to the provisions of this Section, this Right of Use and each of the Parties' respective rights and obligations hereunder, shall be binding upon and shall inure to the benefit of the Parties hereto and each of their respective permitted successors and assigns.

EXHIBIT 1 TO APPENDIX D
FRANCHISE FIBER ROUTES AND SPANS

This Exhibit is filed under separate cover as it contains information that is proprietary and confidential and is exempt from disclosure pursuant to New York Public Officer's Law 87(2)(c),(d), (f) & (i).

EXHIBIT 2 TO APPENDIX D

A. Lines and Circuit Trouble/Outages:

1. For any line or circuit trouble/outage, DoITT may call in a trouble ticket to Verizon Business services at the following number: 1-800 444-1111.
2. Lines and circuits shall be identified pursuant to the designations set forth in Exhibit 1

B. Ticket Escalation

1. Trouble tickets initiated pursuant to Section A.1. above which require escalation or unique review by Franchisee, shall be addressed by the Verizon Business Service Management Team, which will make all the necessary calls and keep the customer updated as to the status of such trouble ticket in accordance with the following management review order:

1st level – Service Manager

2nd level – Manager, Service Management

3rd level – Director, Customer Service, NorthEast

2. Verizon Business is also the interface for DoITT on issues which require internal intervention with other departments (i.e. billing, provisioning, construction, engineering, maintenance, etc.).

APPENDIX E
FORM OF SECURITY

SAMPLE

EXHIBIT E-1

FORM OF PERFORMANCE BOND

Franchise Bond

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS: That (name & address) (hereinafter called the “Principal”), and (name and address) (hereinafter called the “Surety”), a corporation duly organized under the laws of the State of (state), are held and firmly bound unto (name & address) (hereinafter called the “Obligee”), in the full and just sum of Fifty Million Dollars (\$50,000,000), the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

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

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

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

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

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

1. In the event of a potential default by the Principal, Obligee shall deliver to Surety a written statement of the details of such default within 30 days after the Obligee

shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein; provided, however, that to the extent the Obligee provides the Principal with any written notice of such potential default prior to such 30-day period, the Obligee shall provide the Surety with a copy of such written notice simultaneous with transmission of same to the Principal.

2. In the event of default by the Principal, Obligee shall deliver to Surety a valid court order demonstrating a final judgment not subject to appeal or further judicial relief, together with a written statement of the details of the default resulting in such judgment within thirty (30) days after the entry of such judgment, such notice to be delivered by certified mail to address of said Surety as stated herein.

3. This Bond shall be effective _____, 20____, and shall remain in full force and effect thereafter for a period of one year and will automatically extend for additional one year periods from the expiry date hereof, or any future expiration date, unless the Surety provides to the Obligee not less than sixty (60) days advance written notice of its intent not to renew this Bond or unless the Bond is earlier canceled pursuant to the following. This Bond may be canceled at any time upon sixty (60) days advance written notice from the Surety to the Obligee. Such termination or cancellation shall not affect any liability incurred or accrued under this bond prior to the effective date of such cancellation.

4. Neither cancellation, termination nor refusal by Surety to extend this bond, nor inability of Principal to file a replacement bond or replacement security for its

obligations under said Agreement, shall constitute a loss to the Obligee recoverable under this bond.

5. No claim, action, suit or proceeding shall be instituted against this bond unless same be brought or instituted and process served within one year after termination or cancellation of this bond.

6. No right of action shall accrue on this bond for the use of any person, corporation or entity other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.

7. The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond remains in force or the amount or number of claims brought against this bond.

8. This bond is and shall be construed to be strictly one of suretyship only. If any conflict or inconsistency exists between the Surety's obligations as described in this bond and as may be described in any underlying agreement, permit, document or contract to which this bond is related, then the terms of this bond shall supersede and prevail in all respects.

IN WITNESS WHEREOF, the above bounded Principal and Surety have
hereunto signed and sealed this bond effective this _____ day of _____, 2008.

Principal

Surety

By: _____

By: _____

Attorney-in-Fact

SAMPLE

EXHIBIT E-2

FORM OF LETTER OF CREDIT

This is an EXAMPLE of a letter of credit. In no way does this guarantee that the JPMorgan Chase Letter of Credit will read exactly as stated below:

Dated

OUR L/C NO.: XXXX-123456

APPLICANT REF. NO.: VZ12

TO:

CITY OF NEW YORK, NY

ATTN: CITY CLERK OFFICE

TBD STREET

NEW YORK, NY XXXXX

APPLICANT:

VERIZON COMMUNICATIONS INC.

O/B/O VERIZON NEW YORK INC.

140 WEST STREET

NEW YORK, NY 10007

ATTN:

EXECUTIVE VICE PRESIDENT

AND

GENERAL MANAGER

WE HAVE ESTABLISHED OUR IRREVOCABLE STANDBY LETTER OF CREDIT
IN YOUR FAVOR AS DETAILED HEREIN SUBJECT TO 600

DOCUMENTARY CREDIT NUMBER: XXXX-123456

DATE OF ISSUE: JUNE XX, 2008

BENEFICIARY: CITY OF NEW YORK, NY

ATTN: CITY CLERK OFFICE

TBDNEW YORK, NY XXXXX

APPLICANT:

VERIZON COMMUNICATIONS INC

O/B/O VERIZON NEW YORK INC.

140 WEST STREET

NEW YORK, NY 10007

DATE AND PLACE OF EXPIRY:

JUNE XX, 2009

AT OUR COUNTER
DOCUMENTARY CREDIT AMOUNT: USD \$20,000,000.00
AVAILABLE WITH: JPMORGAN CHASE BANK, N.A.
BY PAYMENT

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ADDITIONAL 12 MONTH PERIODS FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE, UNLESS AT LEAST 60 DAYS PRIOR TO THE CURRENT EXPIRY DATE WE SEND NOTICE IN WRITING TO THE CITY OF NEW YORK VIA SWIFT, TELEX, OR HAND DELIVERY AT THE ABOVE ADDRESS, THAT WE ELECT NOT TO AUTOMATICALLY EXTEND THIS LETTER OF CREDIT FOR ANY ADDITIONAL PERIOD. HOWEVER IN NO EVENT SHALL THIS LETTER OF CREDIT BE AUTOMATICALLY EXTENDED BEYOND THE FINAL EXPIRY DATE OF JUNE XX, 2009. UPON SUCH NOTICE TO THE CITY OF NEW YORK, THE CITY OF NEW YORK MAY DRAW ON US AT SIGHT FOR AN AMOUNT NOT TO EXCEED THE BALANCE REMAINING IN THIS LETTER OF CREDIT WITHIN THE THEN-APPLICABLE EXPIRY DATE, BY YOUR SWIFT OR PRESENTATION OF YOUR DRAFT AND DATED STATEMENT PURPORTEDLY SIGNED BY ONE OF YOUR OFFICIALS READING EXACTLY AS FOLLOWS:

THE AMOUNT OF THIS DRAWING USD UNDER JPMORGAN CHASE BANK, N.A. LETTER OF CREDIT NUMBER XXX REPRESENTS FUNDS DUE US AS WE HAVE RECEIVED NOTICE FROM JPMORGAN CHASE BANK, N.A. OF THEIR DECISION NOT TO AUTOMATICALLY EXTEND LETTER OF CREDIT NUMBER TPTS-XXX AND THE UNDERLYING OBLIGATION REMAINS OUTSTANDING.

IN THE EVENT THIS LETTER OF CREDIT IS SUBSEQUENTLY AMENDED BY US TO EITHER:

- I) RESCIND A NOTICE OF NON-EXTENSION AND TO EXTEND THE EXPIRY DATE HEREOF TO A FUTURE DATE, OR
- II) EXTEND THE EXPIRY DATE TO A DATE THAT IS AFTER THE STATED FINAL EXPIRY DATE HEREOF, SUCH EXTENSION SHALL BE FOR THAT SINGLE PERIOD ONLY AND THIS LETTER OF CREDIT WILL NOT BE SUBJECT TO ANY FUTURE AUTOMATIC EXTENSIONS UNLESS AN AUTOMATIC EXTENSION PROVISION IS EXPRESSLY INCORPORATED INTO SUCH AMENDMENT.

ADDITIONAL DETAILS:

THIS LETTER OF CREDIT IS AVAILABLE WITH JPMORGAN CHASE BANK, N.A., AGAINST PRESENTATION OF YOUR DRAFT AT SIGHT MENTIONING THEREON DRAWN ON JPMORGAN CHASE BANK, N.A., LETTER OF CREDIT NUMBER XXX WHEN ACCOMPANIED BY THE DOCUMENTS INDICATED HEREIN.

BENEFICIARY'S DATED STATEMENT PURPORTEDLY SIGNED BY ONE OF ITS OFFICIALS READING AS FOLLOWS:

“THE AMOUNT OF THIS DRAWING LIMITED TO THE AMOUNT REFLECTED ON THE ACCOMPANYING COURT ORDER USD....., UNDER JPMORGAN CHASE BANK, N.A. LETTER OF CREDIT NO. XXXX-123456 REPRESENTS FUNDS DUE THE CITY OF NEW YORK, NY AS:” THE APPLICANT, VERIZON NEW YORK INC., FAILED TO PERFORM UNDER MATERIAL PROVISIONS OF AGREEMENT (DATED) BETWEEN CITY OF NEW YORK, NY AND VERIZON NEW YORK INC. UNDER A COURT ORDER DEMONSTRATING A FINAL JUDGMENT IN FAVOR OF THE CITY OF NEW YORK NOT SUBJECT TO APPEAL OR FURTHER JUDICIAL RELIEF’.

ALL CORRESPONDENCE AND ANY DRAWINGS HEREUNDER ARE TO BE DIRECTED TO JPMORGAN CHASE BANK, N.A., C/O JPMORGAN TREASURY SERVICES, STANDBY LETTER OF CREDIT DEPT. 4TH FL. 10420 HIGHLAND MANOR DRIVE, TAMPA, FLORIDA 33610.

CUSTOMER INQUIRY NUMBER IS 1-800-634-1969 CHOOSE OPTION 1. E-MAIL ADDRESS IS: GTS.CLIENT.SERVICES@JPMCHASE.COM. PLEASE HAVE OUR REFERENCE NUMBER AVAILABLE WHEN YOU CONTACT US.

WE HEREBY AGREE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED.

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600.

THIS LETTER OF CREDIT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

THE NUMBER AND THE DATE OF OUR CREDIT AND THE NAME OF OUR BANK MUST BE QUOTED ON ALL DRAFTS REQUIRED.

AUTHORIZED SIGNATURE

APPENDIX F

FTTP UPGRADE SCHEDULE

All dates in this schedule refer to December 31 of the year indicated, except for the year 2014, which refers to June 30.

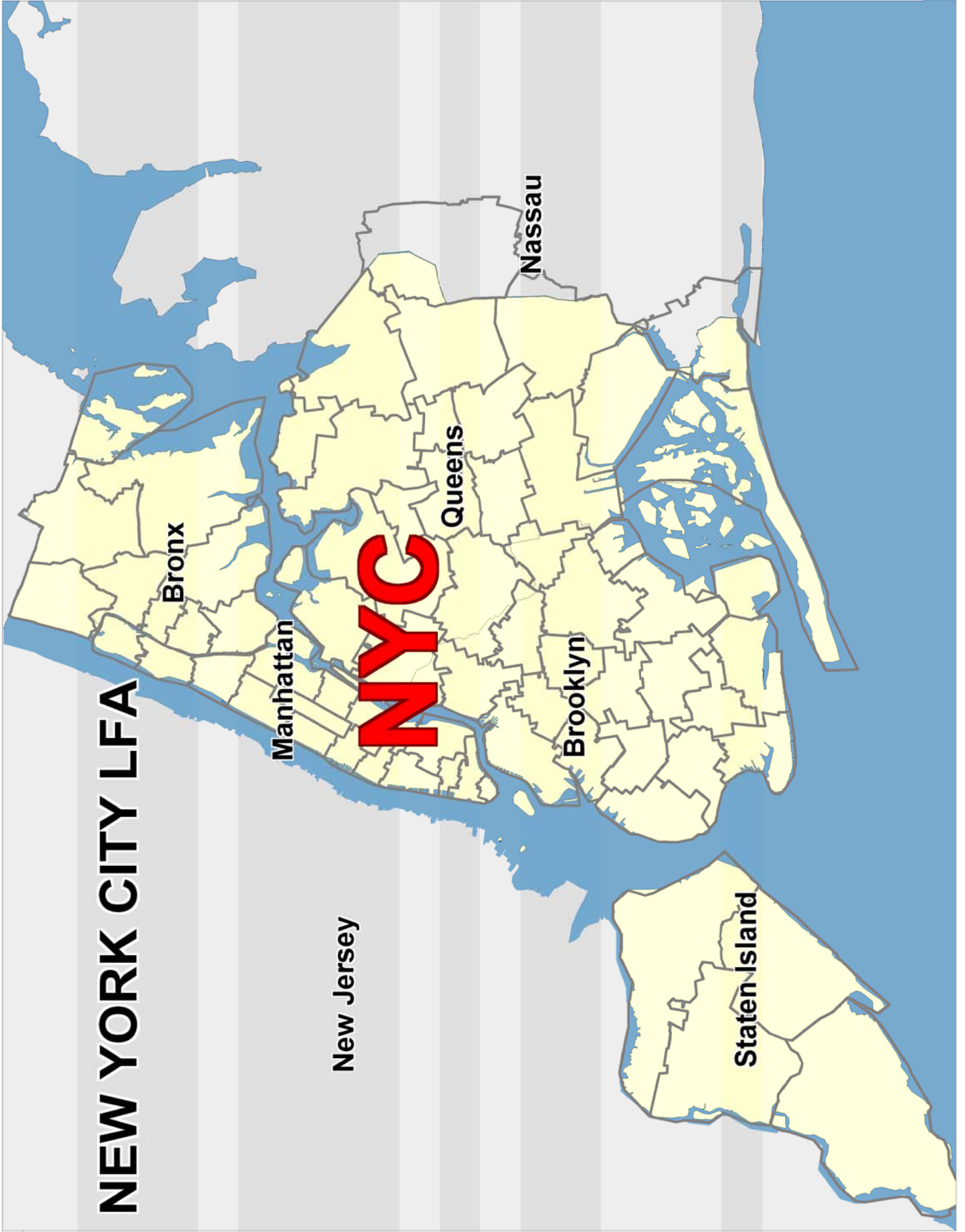
Cumulative Prems Passed (k) - % Complete								
Boro	Type	2008	2009	2010	2011	2012	2013	2014
Manhattan	SFU	98%	100%	100%	100%	100%	100%	100%
	MDU	57%	62%	66%	73%	82%	91%	100%
	Total	57%	62%	67%	73%	82%	91%	100%
Bronx	SFU	30%	46%	59%	69%	84%	96%	100%
	MDU	6%	23%	39%	58%	75%	92%	100%
	Total	13%	29%	45%	61%	77%	93%	100%
Queens	SFU	23%	39%	55%	69%	82%	95%	100%
	MDU	7%	21%	37%	54%	72%	93%	100%
	Total	15%	30%	46%	61%	77%	94%	100%
Staten Island	SFU	98%	100%	100%	100%	100%	100%	100%
	MDU	100%	100%	100%	100%	100%	100%	100%
	Total	98%	100%	100%	100%	100%	100%	100%
Brooklyn	SFU	17%	33%	47%	63%	77%	92%	100%
	MDU	8%	27%	42%	57%	76%	93%	100%
	Total	12%	30%	45%	60%	76%	93%	100%
NYC	SFU	32%	46%	59%	71%	83%	95%	100%
	MDU	27%	40%	51%	63%	78%	92%	100%
	Total	29%	42%	54%	66%	79%	93%	100%

APPENDIX G

FRANCHISE AREA

[See Attached Map]

NEW YORK CITY LFA



New Jersey

NYC

Bronx

Manhattan

Queens

Brooklyn

Nassau

Staten Island

APPENDIX H

FORM OF GUARANTY

In consideration of the award of the Cable Franchise Agreement by and between the City of New York and Verizon New York Inc., dated _____2008, we, Verizon Communications Inc., hereby unconditionally and irrevocably agree to provide all the financial resources necessary for the satisfactory performance of the obligations of the Franchisee under the Cable Franchise Agreement and also to be legally liable for performance of the obligations of the Franchisee in case of default or revocation of the Cable Franchise Agreement.

Signature

Corporate Seal

Type or Print Name

Title & Official Name of Guarantor

Date

APPENDIX I

INVESTIGATION CLAUSE

1.1 The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

1.1 (a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City.

1.2 (a) The commission or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(b) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 1.3 below without the City incurring any penalty or damages for delay or otherwise.

1.3 The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a

member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

1.4 The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:

(a) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 1.3 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in 1.2(a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

1.5 (a) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(c) The term “entity” as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

(d) The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

APPENDIX J

SYSTEM ARCHITECTURE

FTTP System Architecture

End-to-End Architecture

Figure 1 shows the architecture topology for supporting service across multiple market areas. A brief summary of the end-to-end architecture follows. Subsequent sections provide more information on each major component within the planned Verizon FTTP overlay architecture.

Figure 2 shows full build and overlay architecture. FTTP will be built instead of copper facilities in new communities. In existing communities, the existing copper network will continue to serve those customers who have not migrated to the FTTP network. The fiber is deployed from a Central Office location within a wire center area.

Figure 1-High Level End to End Architecture

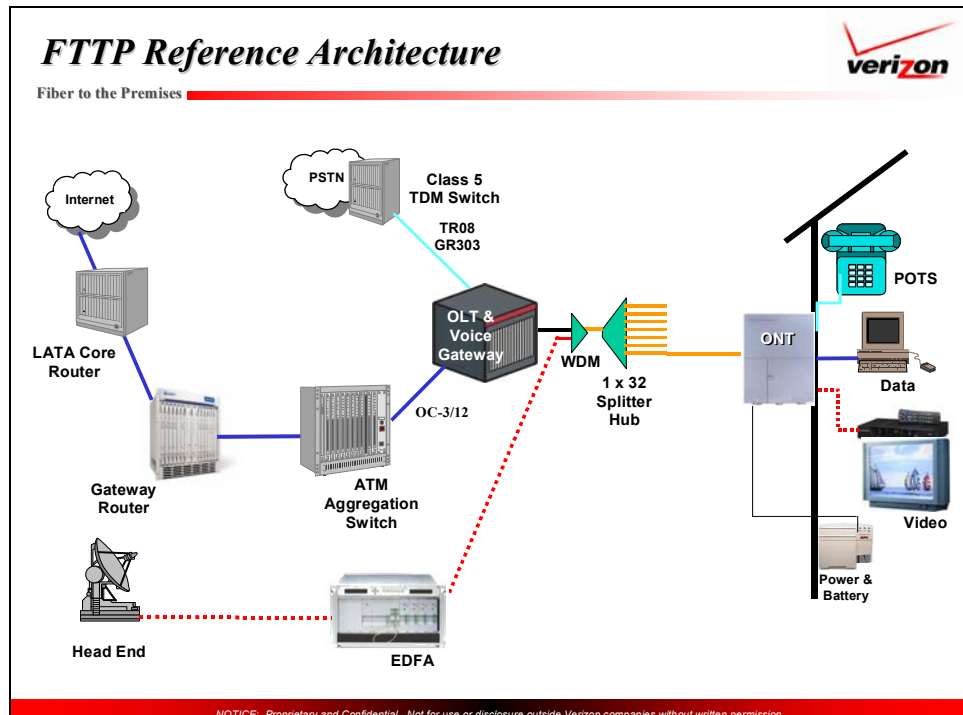


Figure 2-FTTP Full Build and Overlay Architectures

At the national or regional level, a “super” headend (SHE) shall serve as the single point of national content aggregation (see Figure 1). All content shall be encoded into MPEG2 streams and transported over nationwide SONET and/or ROADM services. In each market where Verizon seeks to offer service, the broadcast cable television traffic is off loaded from the long haul network and terminated at a Video Hub Office (VHO). Network redundancy and route diversity shall extend from the SHE to the VHO.

The VHO serves as the metro or local point of aggregation. It is here that off-air and public, education, and government (PEG) channels (where appropriate) are combined with the broadcast cable television coming from the SHE. Interactive Program Guides (IPG) shall be controlled from this site, also. The service that exits the VHO shall look like the final product viewed by the end user subscriber.

Cable television traffic is converted to optical signals at the VHO and transported over Verizon’s metro area, inter-office facilities (IOF) to Video Serving Offices (VSOs). Voice and high-speed data signals are combined with the cable television at this location for final transport to the subscriber premises over Verizon’s FTTP Passive Optical Network (PON).

At the premise, the optical cable television signal is de-multiplexed and converted to an electrical signal, which meets cable television industry standards for cable services. Standard home wiring practices, using coaxial cables, as well as alternative media, shall distribute the signal to cable ready TVs and standard set top boxes (STB).

There will be 24x7 control and surveillance of the cable television platform from a remote location. This Network Operations Center (NOC) will be centrally located and shall be responsible for the operation and maintenance of the Conditional Access System (CAS), which directs the encryption functions performed back at the VHO.

Super Headend (SHE)

A “super” headend (SHE) shall serve as the single point of national content aggregation. At general service availability, Verizon shall deploy a primary SHE and an additional SHE for redundancy.

Both the primary and redundant SHEs will be strategically located to ensure technical and environmental requirements are met.

The key functions of the SHE include:

Content Reception

Signal Processing

Encoding

Network Interface

The majority of cable television sources shall be individual content provider programming. A mix of standard and high definition formats shall be supported. All content shall be encoded into MPEG2 streams, formatted for SONET and/or ROADM, and transported via a SONET and/or ROADM transport facilities to a local point-of-presence (POP) for wide area (national) transport.

Wide Area Transport

In support of the cable television service, Verizon will use SONET and/or ROADM network facilities in the POPs serving target cable markets. Where multiple POPs exist within a market, redundancy options shall dictate if a single or multiple POPs shall be designated for supporting the cable television traffic.

In most cases, it is expected that the cable television traffic shall traverse multiple interconnected rings between the SHE and the destination market. Once the cable traffic reaches a POP located in a target market, it will be forwarded to a SONET and/or ROADM interface connected to metro/local SONET and/or ROADM facilities. These facilities shall connect the POP to a Video Hub Office (VHO). VHOs are capable of serving multiple communities within a target market. If more than one VHO is required, the metro SONET and/or ROADM ring(s) would be deployed to cover multiple sites.

Video Hub Office (VHO)

The VHO serves as the metro or local point of aggregation. The VHO location is based on a combination of technical factors, metro fiber/IOF availability, local channel reception characteristics, and municipal regulations (e.g., zoning ordinances).

Under current network design plans, the anticipated functions of the VHO include:

WAN Interface for Cable television Transport

Ad Insertion

PEG Content

Signal Grooming and Multiplexing

Emergency Alert Service

Interactive Program Guide

Conditional Access

Local Content

The VHO shall aggregate three basic sources of content: national broadcast channels, local broadcast channels, and public, education, & government (PEG) channels. The national content is the traffic sent from the SHE and is delivered via a SONET interface from the SONET POP. The local broadcast channels shall be received off-air via antennas or terrestrial fiber transport located at the VHO site. The PEG channels shall be collected via terrestrial connections from each local franchising area (LFA) served by the VHO.

The final collection of content is placed into the RF spectrum between 50 – 870 MHz as either an analog AM-VSB signal or, as part of a digital multiplex, into a 256-QAM modulated carrier. Digital content requiring encryption by the CAS shall also be multiplexed into QAM modulators and combined with other analog and digital carriers. In addition, an out-of-band downstream channel is generated which carries the Interactive Program Guide (IPG), provisioning, and management messages to STBs. The combined RF signal is converted to optics and fed into EDFAs at egress from the VHO. These optical cable television signals are transported on the 1550 nm wavelength of the G.983-specified Enhancement band to Verizon Video Serving Offices (VSOs).

As noted previously, it is intended that the broadcast cable television traffic/service that exits the VHO shall look like the final product viewed by the end user subscriber.

Metro Area Transport

The optical cable television signals coming from the VHO are transported on the 1550 nm wavelength over fiber available within Verizon's inter-office facilities (IOF).

Video Serving Office (VSO) & Passive Optical Network (PON)

The VSO is a location within the central office containing FTTP equipment. If technically feasible or otherwise appropriate, PEG insertion may occur at this location in the network.

The key function of the VSO is to combine Broadcast Cable television into the Voice and High Speed Data FTTP Network

Once in the VSO, the optical cable television signal is sent through an EDFA and then to a Wave Division Multiplexer (WDM) combiner and splitter, which is used to add the cable signal to the voice and high-speed data signals' wavelength (1490nm) – coming from the Optical Line Terminal (OLT) – together with the cable wavelength onto a single optical source. This optical signal is then sent towards the subscriber premises via a PON. The VSO will also play a role in supporting upstream signals from the customer premises for pay-per-view services. Pay-per-view usage data uses the data service's 1310nm upstream wavelength. The upstream data communications shall be sent back to a subscriber database located in the Operations Center located in the VHO.

Customer Premises

At the premise, an Optical Network Terminal (ONT) de-multiplexes the 1550nm optical signal and simply converts it to a voice, data and cable television electrical signal, which meets cable television industry standards for cable services.

It is expected that, in many cases, standard home wiring practices, using coaxial cables, will distribute the signal to cable ready televisions and to STBs for digital subscribers.

APPENDIX K
FORM OF FRANCHISE FEE REPORT

Franchise Fee Schedule/Report XX Quarter 2008

City of New York

Verizon - fBA

New York

Franchise Fee Rate: 5.00%

	October	November	December	Quarter Total
Monthly Recurring Cable Service Charges (e.g. Basic, Enhanced Basic, Premium and Equipment Rental)				
Usage Based Charges (e.g. PayPerView, Installation)				
Advertising				
Home Shopping				
Late Payment				
Other Misc. (Leased Access & Other Misc.)				
Franchise Fee Billed				
PEG Fee Billed				
Less:				
Bad Debt				
Total Receipts Subject to Franchise Fee Calculation				
Franchise Fee Due				

Verizon is hereby requesting that this information be treated by the Franchise Authority as confidential business information.

The calculations set forth herein were conducted in accordance with the applicable provisions of the cable franchise agreement by and between Verizon NY Inc. and the City of New York and Verizon's applicable internal financial policies and are true and accurate to the best of my knowledge.

Signature:

Manager, Verizon Settlement Administration

ATTACHMENT 2A TO PETITION FOR LIMITED WAIVERS

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**In the Matter of the Petition of Verizon
New York Inc. for Limited Waivers of
Certain Rules in Connection with a
Proposed Cable Television Franchise
Agreement with the City of New York
(New York, Bronx, Queens, Kings, and
Richmond Counties)**

Case 08-V-_____

STATEMENT OF BASIS AND RATIONALE FOR LIMITED WAIVERS

**BRUCE P. BEAUSEJOUR
KEEFE B. CLEMONS
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140 West Street — 27th Floor
New York, NY 10007-2109
(212) 321-8126**

Counsel for Verizon New York Inc.

May 2, 2008

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LIST OF EXHIBITS (in Attachment 2B)

- Exhibit 1** **Map of Current Franchise Areas of Incumbent Cable Providers in the City**
- Exhibit 2** **Discussion of the Incumbent Cable Providers' Build-Out in the City**
- Exhibit 3** **"Family Tree" Showing Acquisitions and Other Transactions Through Which the Current Time Warner Network in the City was Assembled**
- Exhibit 4** **Extracts from the Incumbent Cable Providers' Franchise Agreements**
- Exhibit 5** **Table of Lengths of Fiber-Optic Cable in Place and Ultimately Required for Passage of All Residences in the City**
- Exhibit 6** **Living Units and Buildings in the City (by Category)**
- Exhibit 7** **Percentage of New York City Living Units in Single-Family Units ("SFUs") and Multiple Dwelling Units ("MDUs") (by Borough)**
- Exhibit 8** **Table of Time Required for Issuance of Orders of Entry Under Publ. Serv. L. § 228**
- Exhibit 9** **Neighborhoods in Which FTTP Facilities Have Already Been Deployed by Verizon**
- Exhibit 10** **Declaration of Christopher Levandos**
- Exhibit 11** **Declaration of Robert Wheatley II**
- Exhibit 12** **Declaration of Isaac A. Madera**
- Exhibit 13** **Text of Rules for Which Waivers are Requested**
- Exhibit 14** **New York City's Solicitation of Proposals for Cable Television Franchise**

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**In the Matter of the Petition of Verizon
New York Inc. for Limited Waiver of
Certain Rules in Connection with a
Proposed Cable Television Franchise
Agreement with the City of New York
(New York, Bronx, Queens, Kings, and
Richmond Counties)**

Case 08-V-_____

STATEMENT OF BASIS AND RATIONALE FOR LIMITED WAIVERS

Verizon New York Inc. (“Verizon”) has negotiated the terms of a groundbreaking agreement with the City of New York (“City”) under which it will undertake one of the largest and most complex network development projects of recent years. Verizon respectfully requests certain limited waivers of the Commission’s rules, as detailed below, that are necessary to implement that agreement.

I. INTRODUCTION AND SUMMARY

After more than a year of intensive negotiations, Verizon and the City have finalized the terms of a unique cable television franchise agreement (the “Agreement”)¹ under which Verizon will invest in the future of the City on an unprecedented scale by deploying, on an extraordinarily compressed schedule, an advanced network infrastructure utilizing Verizon’s Fiber to the Premises (“FTTP”) technology. This infrastructure will enable Verizon to provide residents of the

¹ A copy of the Agreement is provided as Attachment 1 to Verizon’s waiver petition (the “Petition”). The Agreement will be voted on by the City’s Franchise and Concession Review Committee (“FCRC”) on May 27, 2008.

City with the most advanced broadband Internet access services as well as superior and competitively priced video services.²

Under the terms of the Agreement, this advanced network infrastructure will pass the homes of all residents of the City — covering all five boroughs and multiple incumbent franchise areas³ — by June 2014, with rational success-based benchmarks along the way. That six-year period is a mere fraction of the time that it took Time Warner and Cablevision to assemble their own cable networks in the City — even though those networks each cover only a portion of the City, and were assembled in large part through the acquisition of smaller individual cable systems rather than through a uniform build-out process like the one Verizon will be undertaking across the entire City.⁴

The Agreement sets forth explicit requirements for extending this advanced network into individual buildings, requirements that were carefully framed to take into account the many challenges and risks that Verizon will face in carrying out such a massive construction effort in the unique environment of the City, with its enormous and highly concentrated population, its crowded underground facilities, and its predominance of Multiple Dwelling Units (“MDUs”).⁵ It also addresses other issues of great importance to the City, such as the carriage and support of

² The suite of voice, broadband Internet access, and video services that Verizon provides over its FTTP platform are referred to as “Verizon FiOSSM” services (“FiOS”).

³ The incumbent cable companies — Time Warner and Cablevision — provide service in nine non-overlapping franchise areas in the City. Time Warner and its affiliates serve seven of those areas; Cablevision serves two. See http://www.nyc.gov/html/doitt/html/business/business_cable.shtml.

⁴ See Exhibits 1 and 2 to this Statement. The Exhibits to this Statement are provided in a separate volume (Attachment 2B to Verizon’s Petition for Limited Waivers).

⁵ As discussed in greater detail below, obtaining access to MDUs can require lengthy periods of negotiation with building owners and managers, even before any construction begins.

over fifty Public, Educational, and Governmental (“PEG”) channels, the implementation of customer service standards, and the enhancement of the City’s own fiber-optic institutional network. The Agreement will result in enormous consumer welfare gains for the residents of the City and will create new, City-wide economic development opportunities.

In order to implement this watershed agreement, the parties need certain limited waivers of the Commission’s rules, as detailed below. Those rules never contemplated a massive deployment effort on the scale called for by this Agreement, nor did they envision the complications of undertaking such an effort in the unique environment of the City. Absent such waivers, a City-wide construction program would impose financial burdens and disproportionate investment risks that would effectively prevent the very competitive entry that the City has long sought.⁶

Accordingly, the Commission should expeditiously grant the waivers requested herein.⁷ Verizon respectfully requests that the Commission grant these waivers at its July 16 Public Session, so that the Agreement can be confirmed at that Session, consumers in the parts of the City where the FTTP network has already been deployed can immediately begin to receive the benefits of competitive choice, and the parties can press ahead with the knowledge that their Agreement is firmly in place.

⁶ For example, as discussed below, the capital expenditures that would be required for a build-out in the absence of waivers **[[BEGIN PROPRIETARY]]**

PROPRIETARY]].

[[END

⁷ A list of the rules for which a waiver is sought is provided in Exhibit 13 to this Statement.

II. THE AGREEMENT IS A LANDMARK DOCUMENT THAT WILL PROVIDE ENORMOUS BENEFITS TO THE CITY AND ITS RESIDENTS

The requested waivers are necessary to enable the parties to implement an Agreement that:

- provides for City-wide deployment of a state-of-the-art fiber-optic network,
- offers the first significant competitive challenge to the incumbent cable providers, and
- creates numerous additional benefits for the City and its residents.

A. CITY-WIDE COVERAGE

The “Franchise Area” in which Verizon undertakes to provide service under the Agreement is “[t]he incorporated area (entire existing territorial limits) of the City, and such additional areas as may be annexed or acquired.”⁸ In contrast, neither Time Warner nor Cablevision has been willing to accept the challenge of providing City-wide service, or indeed of entering into the other’s territory at all.⁹ Time Warner is the sole franchised cable-service provider in Manhattan, Queens, and Staten Island; Cablevision is the sole provider in the Bronx; and each company has a service area in Brooklyn that does not overlap with the other provider’s service area in that borough.¹⁰ When the City authorized a new round of franchise negotiations in

⁸ Agreement § 1.22. *See also id.*, Recitals Section (“the City wishes to grant Franchisee a nonexclusive franchise to operate a Cable System . . . throughout the entire territorial boundaries of the Franchise Area”).

⁹ *See id.*, Recitals Section (“no cable franchisee has ever agreed to provide Cable Service throughout the entire territorial boundaries of the Franchise Area”). The current franchise territories of the two companies are shown in Exhibit 1 to this Statement. *See also* http://www.nyc.gov/html/doitt/images/charts/franchise_territories.jpg.

¹⁰ This is the case in Brooklyn even though *both* providers are franchised to provide service throughout the entire Borough, and thus could, if they wished, immediately enter each other’s service areas in the Borough. (The relevant franchise agreements limit the providers’ build-out obligations to the more limited territories in which they currently provide service, but do not prohibit them from extending their service outside of those areas.) *See* the discussion of the incumbents’ build-out in Brooklyn in Exhibit 2 to this Statement.

2006, neither Cablevision nor Time Warner took any steps to negotiate a City-wide franchise — only Verizon did so. Indeed, both incumbent providers specifically indicated, at the public hearing held by the City Council prior to issuing the authorizing resolution, that they had no current plans to provide service outside of their existing franchise areas in the City.¹¹

A City-wide cable franchise means that Verizon will be posing a competitive challenge to the incumbents — and creating the service and price discipline that competition begets — over their entire service area in the City, not just a portion of it.

B. A STATE-OF-THE-ART NETWORK UTILIZING LEADING TECHNOLOGY

Appendix J to the Agreement describes Verizon’s system architecture, which is based on the company’s FTTP technology. The advanced capabilities of that technology are reflected in high levels of consumer satisfaction; on September 11, 2007, BRANDWEEK reported that “[i]n a recent survey of major video providers, Verizon FiOS TV received the highest customer satisfaction rating.”

In Agreement § 7.1, the parties “acknowledge and agree that the FTTP Network, and the Cable Services provided thereby . . . will when built constitute a ‘Leading Technology’ that includes more extensive fiber facilities, in lieu of coaxial cable facilities, than is currently, or ever has been, provided by any other Cable Service provider within the City as of the Effective

¹¹ Hearing on Resolution Before the Subcomm. on Zoning and Franchises of the Comm. On Land Use, New York City Council (“*City Council Hearing*”) (September 7, 2006), at 73-74 (statement of Howard Szarfarc, President of New York City Division, Time Warner Cable) (stating Time Warner does not intend to provide service to the entire City, but rather that it “currently contemplate[s] seeking renewal of the areas in which [it] currently do[es] business”); *id.* at 43 (statement of John Bickham, President, Cable and Communications Division, Cablevision) (“Right now, we’re only contemplating providing service in that part of the City where we have an existing franchise.”).

Date.”¹² “Leading Technology” is defined in the Agreement as “[t]he highest level of performance and capability (including, but not limited to, with respect to plant or other equipment; transmission capacity to subscribers’ premises; channel offerings; video-on-demand services; construction techniques; consumer service; facilities, equipment, systems and operations; and performance standards), that has been commonly accepted, developed and commercially deployed in the wireline cable television industry and is economically reasonable and technically feasible.”¹³

Verizon’s FTTP network will be used not only to provide video service, but also ultra-high-speed Internet access services. Verizon’s Internet offerings have also gained considerable consumer approval; in July 2007, COMPUTERWORLD reported that “Verizon FiOS is the top-rated broadband service in America.” Obtaining authority for offering video services is key to Verizon’s plans for the widespread deployment of the FTTP network, and thus to the widespread availability of *all* of the services that are made possible by that network. Thus, by authorizing Verizon to provide video programming in the City, the Commission will also be enabling Verizon to make a truly substantial investment in the broadband infrastructure of the City. As FCC Chairman Martin has noted:

[W]e are seeing wired competitors to cable trying to enter the market. The [FCC] should facilitate this entry, not only because it furthers video competition, but also because it promotes the deployment of the broadband networks over which the video services are provided. The widespread deployment of these networks is critical to the United States’ international

¹² Agreement § 7.1.

¹³ *Id.* § 1.30.

competitiveness. Further, it will help improve Americans' lives through applications such as distance learning and remote medical diagnostics.¹⁴

A fiber distribution network has other important advantages as well, including the fact it is not susceptible to the type of electromagnetic interference that can impair the performance of copper distribution facilities, or to corrosion due to moisture. As a result, consumer decisions to purchase FiOS services and thus to connect to the FTTP network can reduce the frequency and duration of voice service quality problems arising in the loop distribution plant, as well as the time and cost associated with detecting and remedying those problems.

The Commission recognized the benefits of fiber deployment over ten years ago, when it stated that “fiber offers numerous operational advantages in comparison with copper.”¹⁵ It reaffirmed these views in 2005, concluding that “it is in the public interest to encourage the deployment of Verizon’s FTTP network.”¹⁶

¹⁴ Statement of Chairman Kevin J. Martin, attached to *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-225, 21 FCC Rcd 2503 (rel. March 3, 2006). Similarly, the FCC has recognized the benefits of “encourag[ing] BOCs to further invest in, and deploy broadband technologies,” and the fact that “these investments will [in turn] promote increased competition in the market for broadband services.” *Petition for Forbearance of the Verizon Telephone Companies Under 47 U.S.C. § 160(c)*, WC Docket No. 01-338, Memorandum Opinion and Order, 19 FCC Rcd 21496 (rel. October 27, 2004), ¶ 33.

See also City Council Hearing (September 7, 2006), at 217-18 (testimony of Partnership for New York City) (“Access to broadband services is a key indicator in rating the preparedness of international cities for the 21st century. Cities that rate highly in the availability of this technology are more competitive in the global economy. . . . New York City should be leading the world in the availability of cable and Internet services for its residents.”).

¹⁵ Cases 95-C-0657, *et al.*, *Joint Complaint of AT&T, et al. Against New York Telephone Company Concerning Wholesale Provisioning of Local Exchange Service*, Opinion and Order Concerning Petitions for Rehearing of Opinion No. 97-2 (Opinion No. 97-14) (issued and effective September 22, 1997), at 25-26.

¹⁶ Cases 05-M-0250 and 05-M-0247, *Joint Petition of the Town of Babylon, et al. for a Declaratory Ruling Concerning Unfranchised Construction of Cable Systems in New York By Verizon Communications, Inc.*, Declaratory Ruling on Verizon Communications, Inc.’s Build-Out of its Fiber to the Premises Network (issued and effective June 15, 2005), at 3.

In all of these respects, the Agreement, by encouraging and enabling the mass deployment of fiber by Verizon in the City, will create significant public benefits.

C. A COMPETITIVE ALTERNATIVE

Encouraging competition in the provision of video programming to consumers has long been an explicit public policy goal both of the federal government and of this State.¹⁷ Thus, it is not surprising that creating wireline cable competition throughout the entire City was one of the City Council's primary goals in authorizing the negotiation of a new round of cable television franchises in 2006.¹⁸

¹⁷ Promoting such competition was one of the central purposes of the Cable Television Consumer Protection and Competition Act of 1992, which was enacted by Congress after it found that cable competition was not developing as it intended, which was resulting in increased costs for many subscribers to basic tier cable television, and “undue market power for the cable operator as compared to that of consumers and video programmers.” Congress also found that there was a substantial governmental and First Amendment interest in promoting a diversity of views and programming through intermodal video competition, particularly given the largest cable companies’ substantial interests in artificially promoting programming produced by cable operators or their affiliates. Pub. L. No. 102-385, § 2(a)-(b), 106 Stat. 1460, 1460-63 (1992) (codified as amended note to 47 U.S.C. § 521); *see also* S. Rep. No. 102-92, at 8-9 (1991), reprinted in 1992 U.S.C.C.A.N. 1133, 1140-41 (noting that “[a] cable system serving a local community, with rare exceptions, enjoys a monopoly” and that “the cable industry itself recognizes that it holds monopoly power”). This pro-competitive national policy was reaffirmed in the Telecommunications Act of 1996, which repealed the cable/telco cross-ownership ban and thus authorized telephone companies such as Verizon to provide video services in their local exchange service areas.

This policy goal has also been recognized in the Commission’s orders confirming Verizon franchises, which have found that allowing Verizon to offer cable service “will promote consumer choice and enhance competition in the cable market,” and therefore will “further[] the public interest.” *See, e.g.*, Case 08-V-0117, Order and Certificate of Confirmation (issued and effective March 21, 2008), at 1-2.

¹⁸ *See City Council Hearing* (September 7, 2006) at 83 (“COUNCIL MEMBER KATZ: . . . [T]he whole point of DoITT’s testimony was to create competition. That’s the whole point. That’s why we’re all here.”); *id.* at 84 (“[I]f everybody goes for renewals, then I guess the only way we have competition is to make you know, one company overall a Citywide company.”). *See also* City of New York, Department of Information Technology and Telecommunications, “Open-Ended, Non-Exclusive Solicitation of Proposals for Cable Television Franchises Pursuant to Which Cable Television Services will be Made Available to Households Throughout the City of New York” (April 11, 2008) (“*Solicitation*”) (Exhibit 14 to this Statement), at 4 (“The City has long been interested in finding a cable TV service provider who would be willing to commit to offering competitive franchised cable TV service, in competition with existing franchisees, to all households in the City.”).

In its order restricting the use of exclusive service contracts for the provision of video services, the FCC noted that “Congress and the [FCC] have repeatedly found, and few parties dispute here, that entry by LECs and other providers of wire-based video service into various segments of the multichannel video marketplace will produce major benefits for consumers.”¹⁹ Aside from competitive price and service discipline,²⁰ those benefits include “more channels, and a greater diversity of information and entertainment from more sources.”²¹ Competition also provides a powerful incentive for companies to invest in the development of new and advanced services.

The Agreement will bring the benefits of video competition — consumer choice, competitive pricing, and continued innovation — to the residents of the City by offering, for the first time,²² a formidable competitive challenge, City-wide in scope, to the current cable monopolies. Verizon will be able to offer best-in-class video service that will also (through joint marketing arrangements with Verizon affiliates) be the cornerstone of competitive double-, triple-,

¹⁹ *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235 (rel. November 13, 2007), ¶ 17 (some footnotes omitted) (“*Exclusive Contracts Order*”).

²⁰ *See id.* (“Notably, our most recent Cable Price Survey Reports show that the presence of a second wire-based MVPD competitor clearly holds prices down more effectively than is the case where DBS [Direct Broadcast Satellite] is the only alternative.”); U.S. GAO, *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8, at 3 (Oct. 2003), available at www.gao.gov/new/items/d048.pdf; D. Barden, *et al.*, Bank of America, *Battle for the Bundle: Consumer Wireline Services Pricing* (January 23, 2006), at 9 (“The rollout of Verizon’s FiOS service in select markets has elicited thinly advertised, yet highly competitive pricing responses for incumbent cable providers In each of these markets the respective cable provider . . . has responded with competitive pricing, well below the national average We discovered that incumbent cable customer sales reps were willing to offer more competitive pricing after mentioning FiOS, and significantly more competitive than Web pricing and out-of-region pricing.”).

²¹ *Exclusive Contracts Order*, ¶ 17.

²² “Sustained head-to-head competition [in] the provision of land line cable television service has to date been rare.” *City Council Hearing* (August 14, 2006) at 184.

and quadruple-play service bundles. No other provider is ready, willing, and able to provide the competitive challenge to the incumbents that Verizon poses. Certainly the incumbents themselves — isolated in their non-overlapping services areas — pose no such challenge to each other.

That fact that Verizon's offering of cable service will benefit the City by introducing competition into a market that badly needs it was widely recognized following Verizon's submission of its cable service proposal and the acceptance of the proposal by the City's Department of Information Technology & Telecommunications ("DoITT") for consideration by the FCRC. On the day following the City press conference announcing the acceptance, AM NEW YORK observed:

A decades-old stranglehold by cable behemoths in New York City households is coming to an end as city officials announced yesterday an agreement with Verizon to offer television service throughout the five boroughs.

City officials and media specialists predicted that the agreement will lead to lower prices, faster connections and better service throughout the city. . . .

"As the financial capital of the world and home to the savviest consumers, New Yorkers must have a choice among world-class cable-television services," said deputy mayor Robert Lieber in announcing the Verizon deal.

Most New Yorkers can now only choose Time Warner, while those in the Bronx and eastern Brooklyn can only subscribe to Cablevision. Those companies have for years maintained a tight grip on cable service, using a combination of political muscle and technical know-how to keep competition at bay, industry observers say.

"This is a major improvement to media life in New York City," said Siva Vaidhyanathan, a professor of media at the University of Virginia Law School. "New Yorkers are blessed every day to have their choice of newspapers, and now they are going to have their choice of television

providers. Cable companies have been fat and lazy for a long time, and New Yorkers have been the victim of this.”²³

The NEW YORK TIMES reported that “[c]able television viewers in New York who are frustrated with Cablevision or Time Warner Cable may soon have another option for service”:

On Tuesday, Verizon moved a step closer to becoming a realistic choice when the city’s Department of Information, Technology and Telecommunications signed off on its application to sell television over its new fiber network. The service, FiOS TV, is already available in towns on Long Island, and in Westchester, New Jersey and other suburbs.

The effect of the competition in those areas has been immediate. Cablevision, Time Warner and Comcast have been selling rival bundles that include discounted television, phone and broadband services. Some say customer service has improved.

And the companies have been offering faster Internet connections and more high-definition channels at no extra cost. Customers threatening to switch providers have also been given several months of free Cinemax and other pay television channels.²⁴

As Deputy Mayor for Economic Development Robert C. Lieber observed, “[w]ith the introduction of direct competition among cable companies, prices and service levels would reflect real market forces, and New York City customers would be the beneficiaries.”²⁵ City Comptroller William C. Thompson, Jr. reached a similar conclusion. His April 29 press release noted that

²³ David Freedlander, *Verizon gets with the program: Will compete for cable TV subscribers*, AM NEW YORK (April 30, 2008), at 3.

²⁴ Ken Belson, *Verizon May Soon Join Local TV Market, Adding a Cable Option* (April 30, 2008). Other accounts reached similar conclusions. The NEW YORK POST, for example, reported that “[t]he cable guy is about to get some competition. For the first time in city history, New Yorkers will have a choice in how they get cable TV, under a proposed agreement announced yesterday” Tom Topousis, *Pay-TV Competition Finally on the Verizon*, NEW YORK POST (April 30, 2008). The DAILY NEWS observed that “New Yorkers frustrated with their cable TV providers may soon have something they never had before: a choice.” Rich Schapiro, *Battle for your TV remote*, DAILY NEWS (April 30, 2008). See also Editorial, *Competition can fix cable TV; Letting Verizon into the market would cut prices, improve service*, CRAIN’S NEW YORK BUSINESS (April 19, 2008).

²⁵ http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2008a%2Fpr156-08.html&cc=unused1978&re=1194&ndi=1.

“[f]or far too long, the people of New York have had little to choose from when searching for a cable service provider. By introducing Verizon as a major provider to [the City], we are creating a competitive market for cable customers and more importantly, allowing our residents freedom of choice.”²⁶

D. OTHER BENEFITS PROVIDED BY THE AGREEMENT

The Agreement also addresses a number of other needs and priorities of the City and its residents.

- Verizon undertakes to provide a total of up to 53 PEG channels — over 15 times the number required by the Commission’s regulations.²⁷ The Public Access Channels will be under the jurisdiction of five Community Access Organizations (“CAOs”), one for each borough, designated by the City’s Borough Presidents.²⁸
- Under § 8.2 of the Agreement, Verizon will provide a \$10 million grant to the City over the twelve-year term of the franchise, to “be used solely by the City for Educational Governmental Access, capital costs.” It will also provide a \$4,000,000 “Technology, Educational & Municipal Facilities Grant” that will be used to support the provision of technology services to City government locations in each of the five boroughs, and separate funding to the CAOs.²⁹
- The Agreement incorporates a “Franchise Fiber Right of Use” under which Verizon will provide to the City the exclusive right to use six fiber optic strands running between 110 “Connection Points” in all five boroughs.³⁰ These facilities will enhance the City’s existing institutional network (“INET”), which is utilized by the City to support vital public safety services such as 311 and emergency broadcasts, as well as in the administration of various City services, including agency financial systems, distance learning programs, and video arraignments.

²⁶ <http://www.r8ny.com/node/16757>.

²⁷ Agreement §§ 8.1.1, 8.1.2, 8.1.3.

²⁸ *Id.* § 8.1.7.

²⁹ *Id.* §§ 5.7, 5.7.1, 8.3 & App. C.

³⁰ *Id.* § 9 & App. D.

- Verizon agreed to implement detailed consumer protection standards that go well beyond the minimum requirements of the Commission’s regulations.³¹
- The Agreement includes extensive performance assurance provisions which secure, for the City’s benefit, Verizon’s performance of its obligations under the Agreement. Those performance assurance provisions far exceed the scope of similar provisions in the incumbent agreements, and include a \$50,000,000 Performance Bond, a \$20,000,000 Letter of Credit, a \$1,000,000 Cash Security Fund, and a Guaranty executed by Verizon Communications Inc., Verizon’s ultimate corporate parent corporation.³²

III. THE AGREEMENT WAS THE PRODUCT OF A LENGTHY NEGOTIATION PROCESS

The Agreement was the result of lengthy and hard-fought negotiations between Verizon and expert City agencies. It was authorized and negotiated through a careful and deliberate process that ensured that the needs of the City and its residents would be met and that their interests would be fully protected.

DoITT, the principal City agency involved in the negotiations, is responsible for administering “all [of the City’s] franchises . . . relating to telecommunications.”³³ As such, it has

³¹ *Id.*, § 16.1 & App. A. These very detailed standards cover some thirty single-spaced pages in the Agreement. *Id.* App. A. Verizon is required to comply with those standards *as well as* “the consumer protection standards set forth in Parts 890 and 896 of the NY PSC rules and regulations.” *Id.* § 16.1.

³² *See* Agreement, §§ 2.10, 15.9, 15.10, 15.11; *id.* Appendices E, H. On the performance assurance provisions of the incumbent agreements, *see, e.g.*, Paragon Communications, d/b/a Time Warner Cable, N. Manhattan Franchise, §§ 6.10.2, 14.2.2 (1998) (\$400,000 performance bond, \$2.215 M letter of credit, and \$85,000 cash security fund); Time Warner Cable S. Manhattan Franchise, §§ 6.10.2, 14.2.2 (1998) (\$400,000 performance bond, \$3.37 M letter of credit, and \$130,000 cash security fund); Time Warner Cable Western Queens Franchise, §§ 6.10.2, 14.2.2 (1998) (\$400,000 performance bond, \$1.815 M letter of credit, and \$75,000 cash security fund); Time Warner Cable Eastern Queens Franchise, §§ 6.10.2, 14.2.2 (1998) (\$400,000 performance bond, \$1.92 M letter of credit, and \$75,000 cash security fund); Time Warner Cable Western Brooklyn Franchise, §§ 6.10.2, 14.2.2 (1998) (\$400,000 performance bond, \$1.475 M letter of credit, and \$100,000 cash security fund); TWC Cable Partners, d/b/a Staten Island Cable, Staten Island Franchise, §§ 6.10.2, 14.2.2 (1998) (\$400,000 performance bond, \$610,000 letter of credit, and \$100,000 cash security fund). (All of these franchise provisions can be found in Exhibit 4 to this Statement.)

³³ City Charter § 1072. “Telecommunications” is defined broadly in § 1074 of the Charter to include “the transmission of writings, signals, pictures, numbers and sounds or intelligence of all kinds by aid of wire, cable, optical fiber, radio, satellite, electromagnetic wave, microwave or other like connection”

considerable experience in the negotiation of franchise agreements as well as expertise in the issues (such as build-out parameters) that are addressed in such negotiations. DoITT, of course, administers these franchising responsibilities with a view towards advancing the interests of the City and its residents. DoITT's web site emphasizes that the agency's "Office of Franchise Administration and Planning/General Counsel works to ensure that New York City's voice, data, and video infrastructures are diverse, competitive, reliable, accessible, and meet the demands of New York City residents, businesses, and government."³⁴ In addition to negotiating franchises, DoITT also monitors cable company compliance with technical and safety standards, monitors franchisee fee payments, protects "consumer interests and public safety," and helps "consumers resolve issues with cable companies."³⁵ These additional functions enhance DoITT's understanding of the impact of cable service on the public interest.

On September 27, 2006, the City Council approved a resolution authorizing DoITT to grant a new round of non-exclusive cable franchises.³⁶ All such franchises would require the approval of the FCRC and the "separate and additional approval of the Mayor."³⁷ The Resolution required that "[p]rior to the grant of any such franchise . . . a request for proposal or other

³⁴ http://www.nyc.gov/html/doitt/html/about/about_franchise.shtml.

³⁵ http://www.nyc.gov/html/business/business_cable.shtml.

³⁶ The Council of the City of New York, Resolution No. 538 (L.U. No. 197A) (September 27, 2006) (the "Resolution"), ¶ A. A copy of the Resolution is attached to the City's Solicitation (Exhibit 14 to this Statement).

³⁷ *Id.* ¶ E. The FCRC consists of the Mayor, the Director of the City's Office of Management and Budget, the Corporation Counsel (*i.e.*, the chief City attorney), the Comptroller, and one additional appointee of the Mayor. City Charter § 373(a). Further, whenever the FCRC reviews a proposed franchise, the Borough President of the Borough in which the franchise is located also serves as a member of the committee. Where, as here, the franchise relates to more than one Borough, the Borough Presidents of all the affected Boroughs designate an individual to serve as a member of the Committee. *Id.*

solicitation . . . shall be issued by [DoITT].”³⁸ The criteria to be used for evaluating responses to the solicitation included “the degree to which the public interest will be served by the service proposed to be provided.”³⁹ The Resolution identified some 21 specific requirements that a franchise agreement would have to meet.⁴⁰

So far as we are aware, Verizon was the only provider that elected to initiate negotiations looking towards a City-wide franchise pursuant to the Resolution. Those negotiations involved some 44 meetings between representatives of Verizon, DoITT, and the Corporation Counsel’s Office (*i.e.*, the City’s Legal Department) — and, in some cases, other City agencies as well — that took place over a period of almost two years. The negotiations were hard-fought, and involved discussion of a wide variety of issues, and considerable give-and-take on both sides.⁴¹

Negotiations were concluded in early 2008. On April 11, 2008, the City issued a formal solicitation for a City-wide franchise,⁴² and Verizon responded to that solicitation with the proposed Agreement terms that it had negotiated with DoITT. As required by § 371 of the City Charter, the FCRC will hold a public hearing to consider Verizon’s proposal following publication of a notice of the hearing and a summary of the provisions of the Agreement.⁴³ Following the

³⁸ Resolution ¶ G.

³⁹ *Id.*

⁴⁰ *Id.* ¶ H.

⁴¹ Separately, Verizon negotiated with the five CAOs over the terms of CAO Grant and Use Agreements. *See* Agreement § 8.3 & App. C.

⁴² A copy of the solicitation is provided in Exhibit 14 to this Statement.

⁴³ The public hearing is expected to take place on May 20, 2008.

hearing, the FCRC will vote on the Agreement; if it is approved, it will be submitted for signature to Deputy Mayor for Economic Development Robert C. Lieber.⁴⁴

The City brought to this process the enormous resources and expertise of DoITT, the Corporation Counsel's Office, and other City agencies. Moreover, the City had immense bargaining leverage, since it held the power to grant or withhold permission for Verizon to offer video services to over three million households. The provisions of the Agreement, and the trade-offs implicit in those provisions, were the subject of detailed and lengthy bargaining. Through the bargaining and approval process, the City "identified [its] future cable-related community needs and interests," and ultimately concluded that "the availability of such competitive [cable] service to all households in the City on a timely basis pursuant to the terms of this Agreement will significantly benefit the City."⁴⁵ The expertise of the City agencies involved in the negotiation and approval process, their obligations to advance the interests of the people of the City, and the careful and deliberate nature of the process that was followed in negotiating the Agreement (and that will be followed hereafter in approving it), all require that the Commission accord considerable deference to that conclusion.

IV. THE AGREEMENT APPROPRIATELY ADDRESSES THE CHALLENGES OF A CITY-WIDE BUILD-OUT

A key City objective in the negotiating process was to have Verizon's competing cable service deployed as widely and as rapidly as economically feasible. However, the City also

⁴⁴ Under § 372(a) of the City Charter, "[t]he separate and additional approval of the mayor shall be necessary to the validity of every franchise agreement and revocable consent agreement." In this case, the Mayor recused himself from the process, and authority to issue the requisite approval was delegated to Deputy Mayor Lieber. See *City Council Hearing* (August 14, 2006) at 181; *Solicitation* at 11 n.3.

⁴⁵ Agreement, Recitals Section.

recognized that the unique environment and scale of the City posed significant challenges for a City-wide build-out.⁴⁶ Accordingly, the City agreed to a number of provisions that would ensure that Verizon would be able to build out its network in the City in a prudent and feasible manner.

In part, the City's recognition of the challenges that Verizon would face grew out of the City's prior experience with the incumbent cable providers' build-out, which was plagued by delays, financial problems, and by the incumbents' failure to meet their schedule commitments.⁴⁷ It took some 25 years, measured from the start of construction in Manhattan, for cable service to finally become available to all of the residents of the City — *despite* the fact that neither incumbent was required to build out to the entire City, and that Time Warner (which covers seven of the nine City franchise areas) grew more through acquisition than through the creation of its own networks from scratch. (*See* the discussion of the incumbents' build-out in Exhibit 2 to this Statement.)⁴⁸ As a recent press report noted, "it took the city's outer boroughs more than two

⁴⁶ The fact that a complete City-wide build-out by Verizon would take considerable time, and that the build-out schedule would need to be negotiated by the parties, was recognized from the earliest stage of the franchising process — the City Council's 2006 consideration of a resolution authorizing a new round of franchise negotiations. *See City Council Hearing* (September 7, 2006), at 153 ("COUNCIL MEMBER JACKSON: . . . What is your estimated timeframe on how long it would take to build out New York City? . . . MR. TRANE [Verizon consultant]: I don't think that we've looked at it at that level of detail. It is certainly a multi-year, multi-billion dollar effort. . . . MR. TRANE: . . . [W]e anticipate, *over a negotiated period of time*, upgrading those facilities so that they would be video capable. COUNCIL MEMBER JACKSON: In order to service, if you get the contract for the entire City, that would be servicing the entire City. Is that correct? MR. TRANE: Correct. *Over a negotiated time.*") (emphasis supplied).

⁴⁷ The FCC has noted that it would "seem unreasonable, absent other factors, to require more of a new entrant than an incumbent cable operator by, for instance, requiring the new entrant to build out its facilities in a shorter period of time than that originally afforded to the incumbent cable operator" *Section 621 Order*, ¶ 89.

⁴⁸ Additional time was required for subsequent upgrades to the incumbents' networks in which coaxial cable outside plant facilities were partially replaced by fiber optic cable. However, this upgrade was in no way equivalent to the fiber build-out that Verizon now faces in the City. *First*, neither of the incumbents implemented a City-wide upgrade. *Second*, the incumbents were upgrading existing video networks, not implementing a video capability for the first time in a network designed for telephony. *Third*, because the incumbents' did not run their fiber all the way to their customers' premises, as Verizon will do, their upgrade largely bypassed the most difficult part of the build-out process. *See City Council Hearing* (September 7, 2006),

(continued ...)

decades to catch up [to Manhattan in the availability of cable service], leaving them lagging far behind most of the country. . . . Cable had finally made its way to at least parts of all five boroughs by 1988, but it wasn't available to every New Yorker until the early 1990s."⁴⁹

The daunting challenges that were faced by the incumbents, and that resulted in lengthy delays in their build-outs, are faced to an even greater extent by Verizon, which is proposing a single build-out to the entire City. Moreover, the costs of the incumbent build-outs were ameliorated to some extent by the revenues that could be generated by introducing a new product into a virgin market with a *de facto* monopoly — a market, moreover, that could be expected to take up cable television enthusiastically given the difficult conditions for broadcast TV reception in many parts of the City.⁵⁰ Verizon faces a much greater market-penetration challenge — rather

(...continued)

at 46-47 (testimony of Cablevision representative) (“We use fiber extensively. We take fiber very close to the home. We do not take it to the site of the home. At some point, there’s a conversion from fiber to coaxial cable. Whether that occurs on the site of the home or whether that occurs down the street, at the end of the block is of little consequence, we believe, in terms of providing high-quality technological superiority. So we do have lots and lots of fiber.”).

⁴⁹ Ryan Chatelain, *Not plugged in*, AM NEW YORK (April 30, 2008), at 3.

⁵⁰ See, e.g., Elizabeth Sanger, *City Plugs In To Cable TV*, NEWSDAY (October 31, 1988), at 1 (“Manhattan residents received cable relatively early, in the 1960’s, when it was primarily considered a way to improve reception.”); Josh Barbanel, *Cable TV Comes to Queens In A Test Two Decades After Manhattan Got It*, N.Y. TIMES (December 10, 1985), at B1 (noting cable service in Manhattan “was introduced as an experiment to get around television interference caused by tall buildings”); *City Council Hearing* (September 7, 2006) at 62 (“At that time [*i.e.*, in 1967], local residents only sought clear reception, a problem in a City filled with skyscrapers.”). By 1981, despite the fact that the build-out in Manhattan would not be completed for another nine years, the Manhattan cable franchisees collectively had 185,000 subscribers, or about 25% of the 700,000 households in Manhattan. See Mitchell Moss, *Can Cable Keep Its Promise?* (1981) (available at <http://www.mitchellmoss.com/articles/promise.html>). By June 1991, the cable penetration rate across New York City as a whole reached 42.6%; in Manhattan, the rate was 50.7%. See Linda Moss, *Bronx, Brooklyn Lag In Cable Coverage: N.Y. Last In Nation To Connect Cable*, CRAIN’S NEW YORK BUSINESS (September 9, 1991), at 13.

than persuading broadcast customers to switch to cable, it must attract customers who already have cable service to switch to an alternative provider.⁵¹

Section IV(A), below, discusses the challenges that Verizon would face if it had to complete its build-out within the five-year period normally required by the Commission's rules.⁵² The Agreement was carefully crafted by the parties to achieve the City's objective of prompt deployment throughout the City, while taking those challenges into account. These provisions, and the need for waivers to support them, are discussed in Sections IV(B) and IV(C). Sections IV(D), IV(E), and IV(F) show that the Commission has the authority to grant, and should grant, the requested waivers.

A. THE PHYSICAL, FINANCIAL, AND TECHNICAL CHALLENGES POSED BY A CABLE BUILD-OUT IN THE CITY

1. Construction, Access, and "Network Creation" Issues

At a total population of over eight million people, the City is the most populous metropolis in the United States, having more than double the population of the second largest city — Los Angeles. Moreover, with an area of approximately 303 square miles, it is also one of the

⁵¹ The FCC has recognized that "a new entrant generally must take customers from the incumbent cable operator, and thus must focus its efforts in areas where the take-rate will be sufficiently high to make economic sense. Because the second provider realistically cannot count on acquiring a share of the market similar to the incumbent's share, the second entrant cannot justify a large initial deployment." *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 (rel. March 5, 2007) ("*621 Order*"), ¶ 35 (footnotes omitted). The FCC also concluded in that order that "[d]ue to the risk associated with entering the video market, forcing new entrants to agree up front to build out an entire franchise area too quickly may be tantamount to forcing them out of — or precluding their entry into — the business"; and that therefore, "[i]n many cases, build-out requirements also adversely affect consumer welfare. DOJ noted that imposing uneconomical build-out requirements results in less efficient competition and the potential for higher prices." *Id.* ¶¶ 35, 36 (footnotes omitted).

⁵² The discussion in Section IV(A) is largely based on the accompanying declarations of Christopher Levandos and Robert Wheatley II (Exhibits 10 and 11 to this Statement).

most densely populated cities in the United States. Both the sheer number of potential customers, and the density with which they are clustered in the City, pose considerable challenges for an FTTP build-out.

The City's 8 million people live in over three million households. Deputy Mayor Lieber observed, in the press conference following DoITT's acceptance of Verizon's franchise proposal for submission to the FCRC, that wiring the City (*i.e.*, passing all of its living units) in six years would be equivalent to wiring Boston once every six months. Indeed, the Census Bureau's 2006 American Communities Survey database confirms that the City has over 13 times as many occupied housing units as Boston. In order to be able to offer service to those households over an FTTP network, Verizon will have to take the following steps:

Wire center conversion. Video server equipment will have to be installed in each of the 66 Verizon wire centers that currently provide telephone service in the City in order to convert them into Video Serving Offices ("VSOs").

Deployment of fiber-optic cable. Fiber-optic distribution facilities will have to be run past all of the residence locations in the City. A total of 6,602 fiber *miles* of distribution cable will be installed, of which slightly under 700 miles have already been placed to support non-video FiOS applications.⁵³ Much of this distribution plant — approximately 35% — will have to be installed underground. (In Manhattan, of course, *all* of the outside plant facilities in the public right-of-way will be underground.) The installation of underground cable is in general far more time-consuming and expensive than installation on poles, and this is particularly the case in the

⁵³ See Exhibit 5 to this Statement.

crowded underground environment of Manhattan and other parts of the City.⁵⁴ In many locations, sufficient space is not available in existing conduit systems, and new conduit will have to be installed to support FTTP deployment. In some cases, particularly in the outer boroughs, cable has to be installed on private property (e.g., back yards shared by a number of homes) rather than over or under public streets, which can create difficult access issues. Construction work in the City that involves the opening of streets requires a permit from the City's Department of Transportation ("DOT"),⁵⁵ and DOT permits typically contain a variety of "stipulations" that restrict the time, place, or manner of the construction activity that may be carried on in particular locations.⁵⁶

Network creation. In order to make service available, each residence unit must not only be passed by FTTP cable, but also must be "network created." In other words, outside plant facilities must be extended into the building from the street (or backyard) in which those facilities are located, in-building wiring and terminating electronics must be installed, and the outside plant must be connected to the in-building facilities. The technical and administrative work involved in what the parties generically refer to as "network creation" varies widely because of the diversity of types of living units that are found in the City.

⁵⁴ As the discussion in Exhibit 2 to this Statement shows, the need for underground construction was one of the factors that delayed the incumbents' build-out and substantially increased its costs.

⁵⁵ See NYC Admin. Code § 19-102 ("Except as otherwise provided by law, no person shall remove, open or otherwise disturb the pavement of, or excavate in, a public street, or use any part of a public street so as to obstruct travel therein (i) without a permit from the commissioner [of transportation], and (ii) unless such removal, opening or other disturbance of the pavement or such excavation or use is carried out in accordance with the provisions of this subchapter and of section 24-521 of the [City Administrative Code], the rules of the department [of transportation] in relation thereto, and the terms and conditions of such permit.").

⁵⁶ A list of over 100 stipulations that may be included on DOT construction permits is available at <http://www.nyc.gov/html/dot/downloads/pdf/trafstip.pdf>.

The over-eight million residents of the City live in a variety of different types of structures, ranging from single-family units (“SFUs”) to multiple dwelling units (“MDUs”) with 100 or more apartments, amounting in total to almost a million individual buildings. Over 130,000 of those buildings are MDUs, and they contain some 63% of the households in the City.⁵⁷ That figure is over twice the national average.⁵⁸

Merely obtaining access to an MDU for the purpose of network creation can be a time-consuming process. Historically, cable service in MDUs has been subject to exclusivity clauses imposed by incumbent providers. Although the FCC has now prohibited cable operators from “enforc[ing] or execut[ing] any provision in a contract that grants it the exclusive right to provide any video programming service . . . to a MDU,”⁵⁹ it has not affirmatively required building owners to provide access to competitive providers,⁶⁰ and has, for the present, left in place “exclusive

⁵⁷ See Exhibits 6 and 7 to this Statement. For purposes of those Exhibits, SFUs are defined as buildings with one or two living units; all other buildings are listed as MDUs. (That is the same definition as is used in the Agreement; see Agreement § 1.32, New York Multiple Dwelling Law § 4(7).) Exhibit 7 is based on the detailed data provided in Exhibit 6.

⁵⁸ “The record in this proceeding indicates that approximately 30 percent of Americans live in MDUs” *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MD Docket No. 07-51, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235 (rel. November 13, 2007) (“*Exclusive Contracts Order*”), ¶ 8 (footnote omitted).

These MDUs vary widely by age, layout, construction type, the availability of space and power to support various types of installations, and in various physical factors that may affect the placement of cable and electronics in the buildings. For these reasons, the network creation architectures and techniques cannot be fully standardized. In some buildings, an “SFU-like” architecture is employed, and the fiber is terminated at Optical Network Terminals (“ONTs”) located in each apartment. In other buildings, the fiber optic facilities run to a passive fiber terminating hub in the building’s basement, and from there to terminating electronics located in utility closets on every floor or every other floor. In still other buildings, the terminating electronics are in the basement and signals are carried to individual apartments over existing copper riser cable. The impossibility of utilizing a single, standardized in-building service architecture increases the difficulties of providing service to MDUs.

⁵⁹ 47 C.F.R. § 76.2000; see generally *Exclusive Contracts Order*, *supra*.

⁶⁰ *Exclusive Contracts Order* ¶ 60.

marketing” and “bulk billing” arrangements that — notwithstanding their countervailing benefits — may in some cases nonetheless give building owners considerable incentive to try to exclude overbuilders such as Verizon.⁶¹ Owners and managers of MDUs may also be concerned about the disruption caused by in-building construction activities, and about the aesthetic impacts of placing new cable and facilities in a building’s common areas. Whatever their motivations, owners and managers have considerable power to impede negotiations — for example, by failing to return phone calls or answer letters — without overtly abandoning them.

Section 228 of the Public Service Law prohibits New York landlords from “interfer[ing] with the installation of cable television facilities upon his property or premises.” However, the statute explicitly permits landlords to require:

(1) that the installation of cable television facilities conform to such reasonable conditions as are necessary to protect the safety, functioning and appearance of the premises, and the convenience and well being of other tenants; (2) that the cable television company or the tenant or a combination thereof bear the entire cost of the installation, operation or removal of such facilities; and (3) that the cable television company agree to indemnify the landlord for any damage caused by the installation, operation or removal of such facilities.

As a practical matter, the need to negotiate such issues with a non-cooperative landlord prior to obtaining an order of entry under § 228 can considerably delay Verizon’s ability to provide service in an MDU. Moreover, the § 228 process, even once it is invoked, is not necessarily a rapid one. In one recent Commission order, an Order of Entry was issued some thirteen months

⁶¹ *Id.* ¶¶ 63-65. Because of their potential countervailing consumer and competitive benefits, Verizon has urged the FCC not to restrict the use and enforcement of exclusive marketing and bulk billing arrangements. *See Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Comments of Verizon (February 6, 2008). Nevertheless, the fact remains that the existence of such arrangements would as a practical matter likely delay Verizon’s entry into many MDUs in the City.

after the petition for the order was filed.⁶² Other recent cases have resulted in delays running from over four to over 15 months.⁶³ The number of § 228 petitions on the Commission's docket — and therefore the delays in obtaining Orders of Entry — would, of course, increase as Verizon pursues its City-wide build-out.

Even ignoring the delays that may be entailed in the formal § 228 process, considerable time may be required in order to negotiate with the building owner/manager and to perform the construction activities that are necessary for network creation in an MDU. The process involves the following steps, each of which can be considerably delayed by lack of cooperation from the owner or manager:

- A Verizon MDU Specialist contacts the owner or manager, in person or over the phone, in order to introduce FiOS, explain what Verizon seeks to do, and to set up an appointment for a site survey.
- If access can be obtained for a site survey, a Verizon engineer reviews the property to evaluate deployment obstacles. This review entails identifying a pathway into the building from facilities in the public right-of-way; determining whether and how much space is available in common equipment rooms; surveying available conduits and risers in the building; determining whether any hazardous materials are present in construction areas; identifying potential pathways from equipment closets to individual units; evaluating the type, condition, and location of existing wiring in the building; determining whether and where space and power are available; and taking into account the proximity of other buildings on the same underlying parcel of real estate.
- Based on this information, a high-level design is created and reviewed with the owner/manager. If the owner/manager objects to the design, Verizon may have to develop alternative designs.
- If Verizon and the landlord are able to agree on a high-level design, a proposed agreement is sent to the landlord. Negotiations may be required over the details of the agreement. If an agreement can be reached, however, Verizon will proceed to

⁶² Case 06-V-0354, Order of Entry (issued and effective April 20, 2007).

⁶³ See Exhibit 8 to this Statement.

develop a detailed design. Finally, a walk-through is scheduled and carried out and, if the owner/manager agrees to the plans, Verizon obtains approval to proceed.

- It is only *after* this process is completed that construction work is scheduled, permits are requested, entry facilities are secured, common area equipment is placed, and path creation is completed. Fiber is then pulled to each unit (assuming that the SFU-like architecture is to be utilized), final connections are made, and testing is completed. During this process, owner/managers may stop work for a variety of reasons.

Verizon's experience has been that this process — from the initial contact with the owner/manager to the signing of an agreement— takes an average of **[[BEGIN PROPRIETARY]]** **[[END PROPRIETARY]]**. An additional **[[BEGIN PROPRIETARY]]** **[[END PROPRIETARY]]** may be required before the building is network-created and Verizon is ready to accept orders.

Because of the difficulties and delays involved in obtaining access to MDUs, it would simply be impossible for Verizon to be unconditionally obligated to network-create *all* MDUs in the City within a five-year period. Because of the negotiation process described above, the timing of the network creation process is in large part outside of Verizon's control.

2. Financial Considerations

The feasibility of completing a City-wide build-out (including network creation) within five years is also affected by the capital investments that such a build-out would require. As is shown in the Wheatley Declaration (Exhibit 11 to this Statement), the total non-success-related capital expenditures that would be required for a hypothetical five-year build-out in the City (as described above) **[[BEGIN PROPRIETARY]]**

[[END PROPRIETARY]]. Diversion of such large amounts of capital to one project would unacceptably compromise other capital expenditure priorities in New York;

acquisition of the necessary amount of additional capital from external sources would require an assumption of additional debt that would — in view of the risks associated with a complete, unconditional five-year build-out, be economically imprudent.

Finally, the financial feasibility of a complete five-year build-out must be evaluated in terms of the risk that such a build-out imposes. Verizon will be investing in a video-capable network in the City with the expectation of earning incremental revenues that will, over an appropriate period, pay off the costs of the investment and earn a level of net return that will be consistent with the expectations of the market. Verizon believes that it can achieve that objective pursuant to the terms and conditions of the Agreement. However, every investment entails risk. Verizon's market penetration and revenue expectations may not be realized — either because customers are more strongly wedded to their current providers than Verizon believes, or because the challenges of MDU access are greater than anticipated, or because macroeconomic conditions over the next several years depress consumer demand generally, or because new and unforeseen technological options displace consumer demand for conventional cable service.

A complete and unconditional City-wide build-out — vastly exceeding anything undertaken by the incumbents — within a five-year period would create an inordinately large risk because it would require Verizon to commit to enormous levels of capital investment before it can know whether its expectations will be fully realized — or even realized to an extent that will permit a reasonable return to be earned within a reasonable period of time.⁶⁴

As is described in greater detail in Section IV(B), below, the Agreement as written addresses that problem by holding Verizon to an obligation to “make Cable Service available to all

⁶⁴ As already noted, that risk is far greater for Verizon than it was for the incumbents.

residential dwelling units” (subject to certain reasonable exceptions),⁶⁵ but linking, to some extent, the scheduling its build-out to the emergence of demand. For example, the scheduled dates for passing specified numbers of customer premises may be extended based on the extent of market penetration that Verizon has achieved. Specific provisions of the Agreement also tie Verizon’s obligation to network-create an MDU to the existence of requests for service from residents of that MDU. Under these provisions, no customer who desires Verizon service will be denied such service (unless one of a limited number of situations makes the provision of such service impracticable), but the Agreement does not require Verizon to wire up every MDU in the City *in advance*, in the hopes that demand may emerge in that building. (That does not mean that Verizon will simply wait for demand to emerge. It intends to engage in an aggressive and proactive deployment and marketing campaign in the MDU “space,” as well as responding to demand when and where it appears. However, even an aggressively proactive MDU deployment program will not — and cannot — result in 100% MDU network creation within a five-year period.)

The FCC has endorsed the reasonableness of such success-based triggers in franchise agreements.⁶⁶ Moreover, absent such risk-mitigating provisions, Verizon simply would not (and *could not*) have entered into the Agreement.

⁶⁵ Agreement §§ 5.3.1, 5.4, 5.5.

⁶⁶ *See Section 621 Order*, ¶ 89 (“[It] would seem reasonable for an LFA [*i.e.*, a Local Franchising Authority] in establishing build-out requirements to consider the new entrant’s market penetration. It would also seem reasonable for an LFA to consider benchmarks requiring the new entrant to increase its build-out after a reasonable period of time had passed after initiating service and taking into account its market success.”).

B. PROVISIONS OF THE AGREEMENT RELATED TO THE CONVERSION OF WIRE CENTERS TO VSOs AND PASSAGE OF RESIDENTIAL PREMISES BY FIBER-OPTIC OUTSIDE PLANT FACILITIES

1. In General

In general, Verizon is required under the Agreement to complete the upgrade of its wire centers in the City to VSOs, and Verizon's FTTP Network is required to "pass all households served by [Verizon's] wire centers within the Franchise Area," by not later than June 30, 2014.⁶⁷ A detailed schedule of cumulative premises that Verizon's FTTP Network will be required to pass, broken down by year, Borough, and type of building (SFU and MDU), is set forth in Appendix F to the Agreement.⁶⁸

The Agreement provides for two principal exceptions to the "passage" and VSO conversion obligations.⁶⁹ *First*, both obligations are subject to Force Majeure.⁷⁰ *Second*, both

⁶⁷ Agreement §§ 5.1, 5.2. "[P]ass' or 'passage' of a household shall mean MDU's whether or not network created and single family units whether or not a drop is installed." *Id.* § 5.1.

⁶⁸ Reporting obligations relating to compliance with the Appendix F schedule are imposed by Agreement § 11.3.5. *See also id.* § 11.3.6 (reports of wire center upgrades to VSOs).

⁶⁹ Aside from the two exceptions mentioned below, which apply to both VSO conversion and passage of premises, the passage schedule set forth in Appendix F to the Agreement is also subject to exceptions "for periods of delay beyond the normal permitting or approval time period, or due to issuance of a stop work order issued by the City, where such stop work order is not caused by action on the part of Franchisee; and . . . for periods of delay resulting from Franchisee's inability to obtain authority to access private rights-of-way." *Id.* § 5.1.1(B), (C).

⁷⁰ *Id.* §§ 5.1.1(A), 5.2. Force Majeure is defined for purposes of the Agreement as: "An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary." *Id.* § 1.21.

If Force Majeure "affects only part of Franchisee's capability to perform, Franchisee shall perform to the extent it is able to do so and shall take all steps, reasonably within its ability, to minimize the length and effect of such Force Majeure delay." Verizon is generally required to formally notify the City of Force Majeure events within twenty business days. *Id.* § 18.5.

obligations are subject to so-called “Checkpoint Extensions.”⁷¹ These are specified extensions of the deployment schedule that are triggered if Verizon’s “video penetration rate” in the City fails to achieve specified thresholds. (The video penetration rate is the ratio of FiOS TV billable lines in service to the sum of passed SFUs and living units in network-created MDUs.) The obvious purpose and effect of this exception is to ensure that the rate at which Verizon is required to build out its network is in reasonable proportion to Verizon’s ability to collect revenues to help fund that build-out.

The Agreement requires that the build-out be carried out in an even-handed way that will prevent redlining or discrimination based on income. First, although Verizon is currently further ahead in FTTP deployment in some boroughs as compared with others,⁷² the negotiated, Borough-by-Borough schedule set forth in Appendix F to the Agreement ensures that the roll out will proceed simultaneously, and in a relatively proportionate manner, in each Borough and in each type of housing (MDUs vs. SFUs). Moreover, at each of three checkpoints, “the estimated median household income of all homes passed shall not be greater than the average household income of all households in New York City”⁷³ The Agreement also explicitly prohibits Verizon from “discriminat[ing] between or among any individuals in the availability of Cable

⁷¹ *Id.* §§ 5.1, 5.1.2, 5.1.3, 5.2.

⁷² For example, Verizon’s FTTP deployment is almost complete in Staten Island, as shown in Appendix F to the Agreement. The obvious reason for the more rapid deployment in Staten Island is that, as Exhibit 7 to this Statement shows, almost 85% of Staten Island households are in SFUs rather than MDUs — a far higher percentage than in any other borough. Thus, Staten Island posed far fewer roll-out problems than the other four boroughs.

⁷³ *Id.* § 5.1.4; *see also id.* § 11.2.4.

Service or based upon the income in a local area.”⁷⁴ In fact, Verizon has to date rolled out FTTP facilities to a diverse range of neighborhoods with widely varying incomes and ethnic compositions.⁷⁵

2. Waivers Required

Commission Rules 895.5(b)(1) and 895.5(c) require that cable service be offered and made available to all requesting subscribers within five years. A waiver of these rules will be necessary to implement the VSO conversion and residence “passage” provisions of the Agreement because: (a) these activities are scheduled over roughly a six-year period (assuming approval of the Agreement in mid-2008) rather than a five-year period; and (b) as described above, the Agreement provides for various exceptions to and extensions of that period. Such a waiver is warranted because a complete five-year build-out would be economically infeasible within the meaning of Rule 895.5(d), and requiring such a build-out would therefore be contrary to the public interest. (*See* discussion in Section IV(E), below.)

Verizon also requests a waiver of Rule 895.1(b), which would otherwise require the Agreement to “indicate anticipated stages of completion of construction at six-month intervals for the entire franchise area.” Appendix F shows the Agreement’s FTTP Upgrade Schedule at intervals of a year (except for the final interval, which covers the period from December 31, 2013 to June 30, 2014). Nevertheless, the Appendix provides far more build-out detail along other dimensions — for example, it breaks the schedule down by borough and by building type (MDU and SFU). This information is ultimately far more useful than a six-month schedule merely listing

⁷⁴ *Id.* § 5.4.

⁷⁵ *See* Exhibit 9 to this Statement.

overall percent completion, which the Commission has repeatedly accepted as sufficient compliance with Rule 895.1(b). The Commission should defer to the City’s determination that this manner of presentation of the build-out schedule is appropriate.⁷⁶

C. PROVISIONS OF THE AGREEMENT RELATED TO VIDEO NETWORK CREATION AND SERVICE AVAILABILITY

1. In General

Verizon’s basic service-availability obligation under the Agreement is to make cable service available to all residential dwelling units in the City.⁷⁷ That obligation is subject to three exceptions:⁷⁸

- “[W]here the FTTP Network has not been deployed or a VSO is not yet opened for sales.” Since the deployment of the FTTP Network, and the conversion of VSOs, are governed by the roughly six-year build-out schedule already discussed, this exception does not create any new limitation on the availability of cable service.
- “[F]or periods of Force Majeure.” The Force Majeure build-out exception has already been discussed.
- For “periods of delay caused by Franchisee’s inability, after good faith efforts, to obtain valid legal authority to access any MDU in the Franchise Area for the purpose of providing Cable Service to units within such MDU on other than commercially unreasonable terms and conditions with respect to each such MDU.”

⁷⁶ The Agreement satisfies the separate requirement of Rule 895.1(b) that the franchise provide “a specific schedule showing that significant construction will be accomplished and cable television service will be available to a significant number of subscribers within one year after the effective date of the certificate of confirmation of the franchise.” Appendix F to the Agreement clearly shows that almost 30% of the households in the City will be passed by FTTP facilities as of the end of 2008, and the Levandos Declaration (Exhibit 10) shows that Verizon expects that service will actually be available to some **[[BEGIN PROPRIETARY]]** **[[END PROPRIETARY]]** households (*i.e.*, roughly **[[BEGIN PROPRIETARY]]** **[[END PROPRIETARY]]** percent of households in the City), under standard installation intervals, within one year.

⁷⁷ Agreement §§ 5.3.1, 5.4.

⁷⁸ *Id.* § 5.5.

The third exception is made necessary by the problems that Verizon typically experiences in obtaining access to MDUs, as described in Section IV(A), above. That exception is subject to very detailed requirements that prevent it from being used as a “catch-all” provision that would excuse Verizon from providing service in an MDU whenever access is associated with some delay or increased costs. “Commercially unreasonable terms” are defined in terms of a specific financial metric looking to the Return on Invested Capital in providing service to the building.⁷⁹ Further, Verizon’s “inability, after good faith efforts, to obtain valid legal authority to access” an MDU “shall be understood in the context, where applicable, of the legal obligations of landlords under [Publ. Serv. L.] Section 228.” Thus, if Verizon believes that the landlord is in violation of § 228, it must provide the landlord with notice of the obligations imposed by the section and “pursue remedies available thereunder as appropriate in Franchisee’s judgment, acting reasonably.”⁸⁰

The installation intervals for Verizon’s cable service depend upon the type of installation involved. “Standard Installations” are situations in which the residence requesting service is Video Network Created; all other installations are “Non-Standard Installations.”⁸¹ A residence is Video Network Created if:

Video transport connections and equipment have been established and are operational to the fiber distribution terminal serving the residence requesting

⁷⁹ *Id.* §§ 5.5.1.1, 5.5.1.4. Outside of the financial metric, this exception can apply if the landlord “is requiring removal or other remediation of hazardous materials,” or “despite the legal requirements of Public Service Law Section 228, is demanding payment above the compensation contemplated by Section 228.” *Id.* §§ 5.5.1.2, 5.5.1.3. Reporting obligations relating to the § 5.5.1 exceptions are imposed by Agreement § 11.3.8.

⁸⁰ *Id.* § 5.5.2. Additional, more specific procedures are required beginning on July 1, 2012. *Id.* § 5.5.2.1. Further, if service availability to an MDU is delayed under § 5.5, Verizon must “conduct periodic reevaluations of each such MDU to determine whether circumstances have changed in a manner that would enable Franchisee to obtain valid legal authority to access such MDU on commercially reasonable terms and conditions.” *Id.* § 5.6.

⁸¹ *Id.* §§ 1.45, 1.35.

Cable Service. Additionally, for MDUs, Verizon has obtained building access and prepositioned its video facilities in the MDU which are necessary for serving requesting residences within the MDU.⁸²

A standard installation must generally be made within seven business days, although the Agreement allows Verizon, with appropriate notice to the subscriber, to extend the period for an additional seven business days.⁸³ Non-standard installations must be performed within six months of a request (extendible, with due notice, for a like additional period). The longer period for non-standard installations is required to enable Verizon to obtain access to and Video Network Create the MDU, in accordance with the negotiation and construction process already discussed, or to complete the process at the MDU, if it has already begun. It is obviously in Verizon's interests to Video Network Create as many MDUs in which customers want service as rapidly as possible, since MDUs offer Verizon a concentrated customer base together with certain economies of scale in marketing and installation, provided that reasonable arrangements can be made for access.⁸⁴ As noted above, the company intends to engage in an aggressive, proactive deployment and marketing program in the MDU space. Moreover, once a request for service is received from an MDU, Verizon is required to begin (or continue) the Video Network Creation process in order to meet the six-month interval, which in turn will ensure that other residents in the same building will ultimately be subject to standard installation intervals. More generally, the process established by

⁸² *Id.* § 1.49. A “fiber distribution terminal” is a node from which fiber connections are made to one or a small group of residential buildings. Reporting obligations relating to Video Network Creation are imposed by Agreement § 11.3.7. *See also id.* § 11.4 (meetings between Verizon and the City “to discuss information on the status of Franchisee’s deployment of Cable Services in the City and Franchisee’s compliance with the requirements of Article 5 of the Franchise”).

⁸³ *Id.* § 5.4.1.

the Agreement ensures that Verizon will Video Network Create a building before or when any customer demand emerges in that building.

2. Waivers Required

Commission Rules 895.5(b)(3) and 890.91(b) generally require installation of service within seven business days of a request from a customer located within 150 feet of aerial feeder cable.

Waivers of these rules are required for two reasons. First, the installation schedule may in some cases technically be longer than the Commission's seven-business-day installation requirement for standard installations (since the Agreement permits the seven-business-day period to be extended for an additional seven business days). Second, in non-network-created buildings, a non-standard installation interval will apply. Like the five-year build-out waivers previously discussed, such waivers are justified by the economic infeasibility standard of Rule 895.5(d), and by public interest considerations. (See discussion in Section IV(E), below.) Verizon cannot meet a seven-business-day installation interval in a residence that is not network-created, and it would be infeasible for Verizon to network-create all MDUs in the City within a five-year interval.⁸⁵ It

(...continued)

⁸⁴ See *City Council Hearing* (September 7, 2006), at 140 (testimony of Verizon representative Thomas Dunne) (“The action is in apartment buildings. . . . That’s where the people are, that’s where the customers are, that’s where we want to be. And we’re going to get there.”).

⁸⁵ The analysis is the same whether this problem is analyzed under the five-year build-out rules or the installation interval rules. In either case, a waiver is necessary and appropriate.

A waiver is also appropriate to accommodate the Agreement's allowance of a second-seven day period for a standard installation. (Agreement § 5.4.1.1.) The Commission's seven-day rule was imposed in the context of traditional cable companies, and requires only the installation of the cable service. However, a substantial proportion of the orders that Verizon will receive once it is authorized to provide video programming will be for “triple play” combinations of voice, broadband, and video service, all of which will be installed at the same time. Moreover, even where a building is network-created, thus making the standard installation interval applicable,

(continued ...)

should be noted, however, that the Commission’s installation rules require a seven-business-day installation interval only in residences “located within 150 feet of aerial feeder cable.” Given the amount of underground outside plant in the City (particularly in those areas in which MDUs are prevalent), many installations (standard or non-standard) would not fall within the scope of the rule in any event.

D. THE COMMISSION HAS AUTHORITY TO WAIVE PROVISIONS OF ITS CABLE RULES

The requirements that Verizon asks the Commission to waive are all embodied in Commission rules, and are not required by any provision of the Public Service Law itself. It is clear that as a state agency, the Commission has inherent authority to waive the provisions of its own rules, and has frequently exercised that power.⁸⁶ In particular, it has granted a number of waivers of various cable rules based on a general public interest standard,⁸⁷ and has concluded that authority to do so is conferred by Publ. Serv. L. § 216.⁸⁸

(...continued)

Verizon will still face unique challenges in the City — including particularly the very high initial demand for triple-play installations that Verizon expects to receive. Allowing additional installation time will help to avoid installation problems and thus ensure superior customer service. Of course, Verizon has no incentive to delay installation if it can be accomplished within the standard seven-day interval; indeed, its incentive is to initiate service as early as it possibly can.

LFAs in many other states allow a fourteen-day interval where an Optical Network Terminal (“ONT”) has not yet been installed at the customer’s premises.

⁸⁶ See, e.g., Case 95-C-0152, Order Issuing Certificate of Public Convenience and Necessity (issued and effective July 19, 1995) (waiving “parts 600, 601, 602, 603, 604, 631, 632, 640, 642 and Section 644.3 of 16 NYCRR”). The Commission’s power to waive substantive rules in appropriate cases is recognized by 16 NYCRR § 3.3(c).

⁸⁷ See, e.g., Case 07-V-0532, Order Granting Petition for Waiver (issued and effective October 10, 2007) (waiving Rule 891.2(b)(2) on petition of the City of New York); Case 07-V-0504, Order Granting Waiver (issued and effective December 13, 2007) (waiving various provisions of Rule 894 on petition of the Town of French Creek, finding those requirements “not necessary to protect the public interest”); Case 07-V-0541, Order Granting Waiver (issued and effective October 22, 2007) (waiving various provisions of Rule 894 on petition of the Town of Decatur, finding the requirements “not necessary to protect the public interest”); Case 04-V-0089, Order

(continued ...)

Beyond these general powers, Rule 895.5(d) specifically provides that “[t]he provisions of this section [*i.e.*, Rule 895.5] may be waived by the commission if the commission determines that compliance with the section would not be possible within the limitations of economic feasibility.” However, Rule 895.5(d) does not limit the Commission’s inherent power to grant build-out waivers based on a general showing of good cause and consistency with the public interest rather than a specific showing of economic infeasibility.

E. A NARROW WAIVER OF THE RELEVANT RULES IS WARRANTED

As we show below, the Agreement as written will create considerable benefits for the City and its residents. However, the Agreement would not exist, and the benefits that it will create therefore could not be made available, if the only alternative open to Verizon were to agree to an economically infeasible, strict five-year build-out. Indeed, the FCC has recognized that strict application of build-out requirements may prevent entry by competitors such as Verizon, thus limiting competition and adversely affecting consumer welfare.⁸⁹ It is especially important for the

(...continued)

Granting Waiver (issued and effective June 10, 2004) (waiving Rule 595.4(c)(11) on petition of Time Warner Cable of New York City).

⁸⁸ *See, e.g.*, Case 05-V-1493, Order Granting Waiver (issued and effective May 31, 2007) (waiver of various subsections of Rule 894 approved; “[t]he authority for this action is Public Service Law, Sections 216(1) and 216(5)”). Publ. Serv. L. § 216(1) provides that “[t]he commission may promulgate, issue, amend and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the purposes of this article. Such orders, rules and regulations may classify persons and matters within the jurisdiction of the commission and prescribe different requirements for different classes of persons or matters. A copy of any order, rule or regulations promulgated hereunder shall be subject to public inspection during reasonable business hours.” *Id.* § 216(5) provides that “[t]he commission shall have and may exercise all other powers necessary or appropriate to carry out the purposes of this article.”

⁸⁹ In its recent order preempting certain local franchising requirements pursuant to § 621(a)(1) of the Cable Act, the FCC noted that “[t]he record contains numerous examples of build-out requirements at the local level that resulted in delayed entry, no entry, or failed entry,” and that “[d]ue to the risk associated with entering the video market, forcing new entrants to agree up front to build out an entire franchise area too quickly may be tantamount to forcing them out of — or precluding their entry into — the business.” *621 Order, supra*, ¶¶ 33,

(continued ...)

Commission to consider this potential for unanticipated anti-competitive and anti-consumer impacts in applying its rules in the unique context of a build-out in the City.

Whether the analysis proceeds under the “economic feasibility” standard of Rule 895.5(d), or the more general public interest standard that the Commission has applied under Publ. Serv. L. § 216, a waiver of the Commission’s build-out, service availability, and installation rules is warranted in this case.

1. The Economic Infeasibility Standard

The standard under Rule 895.5(d) is a flexible one.

First, “infeasibility” is not synonymous with physical impossibility. Standard dictionary definitions of the term “feasibility” encompass the notions of practicality, practicability, reasonableness, suitability, and appropriateness, as well as that of “possibility.”⁹⁰ For example, a “feasibility study,” as the term is usually understood in the business world, is “a preliminary study undertaken to determine and document a project’s *viability*,” and must encompass an analysis of

(...continued)

35, 36 (footnotes omitted). Indeed, build-out requirements that are excessively stringent, or unreasonable refusals to grant waivers of build-out requirements, may themselves violate § 621(a) of the Cable Act.

⁹⁰ See, e.g., WEBSTER’S THIRD INTERNATIONAL DICTIONARY 831 (1981) (defining “feasibility” as “the quality of being feasible: practicability”); *id.* (defining “feasible” as “capable of being done, executed, or effected: possible of realization,” as well as “suitable” and “reasonable, [or] likely”); OXFORD ENGLISH DICTIONARY (on-line edition, available at <http://oed.dictionaries.com>) (including as one definition of feasible “[c]apable of being dealt with *successfully* in any way, either in a material or immaterial sense” (emphasis supplied)). See also *City of Los Angeles v. U.S. Dep’t of Commerce*, 307 F.3d 859, 872 (9th Cir. 2002) (“‘[F]easible’ must mean more than sheer physical or financial possibility. Indeed, the plain meaning of ‘feasible’ incorporates whether a particular action is ‘capable of being *successfully* done or accomplished.’ Whether a task can be done ‘successfully’ necessarily derives its meaning from the objective at hand.”) (interpreting the Census Act, 13 U.S.C. § 195); *Anderson v. Malloy*, 700 F.2d 1208, 1213 (8th Cir. 1983) (“Whether something is feasible relates not only to actual possibility of operation, and its costs and convenience, but also to its ultimate utility and success in its intended performance. That is to say, ‘feasible’ means not only ‘possible,’ but also means ‘capable of being . . . utilized, or dealt with successfully.’”) (citations omitted) (interpreting “feasibility” as used in Federal Rule of Evidence 407).

the project’s “[e]conomic feasibility” in order to “[e]stablish[] the *cost-effectiveness* of the proposed system.”⁹¹ Thus, the use of the term “feasibility” in Rule 895.5(d) licenses consideration of a wide variety of factors beyond the simple question of whether it would be physically possible to accomplish the project at any cost.

Second, the term “economic,” as used in Rule 895.5(d), places the focus on factors that may affect the costs, revenues, economic burdens, and financial risks associated with a project. “Economic feasibility” is not synonymous with *physical* possibility or feasibility.

Third, the term feasibility is contextual. Thus, an investment that may be feasible in one context will not necessarily be feasible in another. A five-year build-out cannot be considered in the abstract — it must be considered in the context of Verizon’s status as an overbuilder, its need to win customers away from an established incumbent, the unprecedented and unique nature of the City-wide build-out it is proposing, the other benefits that it is providing as part of an integrated package under the Agreement, and a host of other factors.

Fourth, the Commission’s rules do not prescribe a laundry list of factors or calculations that must be presented in support of an economic infeasibility showing. Instead, a waiver decision must be based on the unique circumstances of each particular request.⁹²

⁹¹ http://en.wikipedia.org/wiki/Feasibility_study.

⁹² In Case 02-V-0224, Order Approving Certificate of Confirmation and Denying Request for Waiver of Line Extension Rules (issued and effective June 28, 2002), the Commission denied a waiver request to Hometown Online Inc. under Rule 895.5(d) on the grounds that “[t]he petitioner has not offered any analysis of construction and operations costs; any analysis of projected revenues; any statement of expenses for construction of plant in the primary service area; any delineation of costs and projected revenues between regulated and unregulated entities (CAMs). Without this information, it is impossible to assess the degree or even existence of economic burdens projected and claimed by the petitioner.” *Id.* at 7-8. However, it is clear that the Commission did not intend in that order to limit the analysis that could be submitted in support of a Rule 895.5(d) waiver request or to require the submission of the specific information listed therein. (For example, it would be pointless to require Verizon to provide CAMs when it is no longer regulated on a rate-of-return basis and in view of the fact that CAMs are irrelevant to its assessment of the feasibility of a City-wide roll-out.) Instead, the Hometown decision

(continued ...)

2. Application of the Standard

Under this broad standard, it is clear that a complete five-year build-out in strict compliance with the Commission's rules would be "economically infeasible," and that a waiver is warranted to the extent necessary to sustain the build-out-related trade-offs set forth in the Agreement. The circumstances that bear on — and support — Verizon's request for a waiver of the specified build-out, service availability, and installation regulations include the following:

- *No other cable provider* (including particularly the two incumbents, each of which already has a substantial market presence and a substantial, established revenue flow within the City) has chosen to seek a City-wide franchise that would require it to offer cable service in competition with another landline provider. In fact, the incumbents have not been willing to negotiate to provide City-wide service on *any* terms, much less under terms calling for the completion of build-out within five years. If a five-year, City-wide overbuild were in fact "economically feasible," surely the incumbents — or other new entrants — would have undertaken the project in order to be able to earn a larger share of the City's three-million-household market. Moreover, the incumbents achieved their current, partial service areas in the City under circumstances far more favorable than Verizon's — they built out to a virgin market, and grew in large part by acquisition rather than construction — and even so were not able to complete those build-outs in anywhere near five years.
- In order to complete the entire build-out within five years, Verizon would be required to invest a disproportionate share of its capital budget to one portion of the State, and either to deprive other projects of needed funding or to incur a financially imprudent debt burden.

(...continued)

as a whole makes it clear that the waiver was rejected because of the petitioner's failure to provide *any* specific data bearing on feasibility, and to rely wholly on conclusory assertions such as the following: (a) "VDSL technology and the costs associated with utilizing it are not consistent with traditional and current cable system technology and its associated costs. According to Hometown, this renders Commission policies governing construction of primary service and line extension areas irrelevant for VDSL service." (b) "[L]ine extension policies should be seen as a means of promoting universal service," and are therefore unnecessary where other service providers are already offering service. (c) "[A] line extension requirement placed on a competitive cable television provider is an undue and unwise financial burden to impose because the competitive situation of the third provider [after the incumbent and satellite providers] is, at least initially, inferior to the first two." The showing offered by Verizon here is far more detailed and specific than that discussed in the Hometown order.

- A complete, City-wide build-out within a fixed period of time would create considerable financial risk for Verizon by requiring the company to incur enormous capital costs prior to, and independent of, any opportunity to assess the long-term success of its efforts.
- Because of the necessity of negotiating with building owners and managers, and because of the long timelines typically involved in obtaining orders of entry under § 228 of the Public Service Law, obtaining access to an MDU may take anywhere from six months to over a year. The need to negotiate access arrangements and to develop and implement Network Creation plans for the over-130,000 MDUs in the City makes it virtually *physically* impossible to complete network creation within a five-year period.

Additionally, a number of public interest factors militate in favor of a waiver. These include the following:

- The Agreement as a whole creates very substantial benefits for the City and its residents, including an unprecedented City-wide deployment; an unprecedented competitive challenge to the incumbents by a landline provider utilizing a leading technology for the delivery of voice, broadband, and video services; substantial grants; and the enhancement of the City's INET. The build-out provisions of the Agreement must be considered in the context of these benefits, since the Agreement as a whole is an integrated package; not a bundle of independent provisions that Verizon would be willing to offer individually or in just any combination.
- The City, after a lengthy and deliberate bargaining process in which it brought to bear its considerable resources, expertise, and bargaining power, concluded that the integrated package of benefits embodied in the Agreement "will significantly benefit the City." That judgment is entitled to great deference from the Commission.
- Verizon would not be willing to accept a City-wide franchise if the Commission were to strictly apply its five-year build-out rule. Thus, the result of such strict enforcement would be to unravel an agreement that, in the judgment of the City, would "significantly benefit" it.

The build-out provisions of the Agreement as written are reasonable and appropriate in the context of the unique nature of Verizon's undertaking, and the unique challenges and risks that the undertaking imposes on the company. They mitigate, in a reasonable manner, the burdens and investment risks that an all-City build-out places on Verizon. The exceptions and extensions

to the Agreement’s build-out schedule are narrow and specific, and set forth circumstances that fully justify relief from the schedule that would otherwise apply. More importantly, the Agreement’s “Checkpoint Extensions” and the provisions tying installation intervals to network creation give Verizon the means of reducing its investment risks to reasonable levels by tying its build-out schedule to the success it achieves in penetrating the market.

F. THE COMMISSION SHOULD GRANT THE WAIVERS NOW RATHER THAN CONSIDERING THEM PIECEMEAL DURING THE TERM OF THE FRANCHISE

The Commission should consider — and grant — the requested waivers as part of its confirmation process, rather than requiring Verizon to request “mini-waivers” (for example, for particular MDUs) as construction proceeds. Unless waivers are granted in advance that will enable the parties to implement the Agreement as written, Verizon would not be able to determine what build-out schedule it will be held to, and would thus face the same risks as it would under an Agreement that simply required a strict five-year build-out. In either case, the result would be the same — Verizon would be unwilling to enter into the Agreement, and the City and its residents would be deprived of the benefits that the Agreement, as written, would bring. Moreover, investment risk aside, it would impose an unreasonable administrative burden on Verizon if, in addition to the time required to negotiate with building owners and potentially seek relief under Publ. Serv. L. § 228, it were required to seek MDU build-out waivers on a building-by-building basis. Finally, the circumstances that justify the waivers relate to the Agreement and build-out effort as a whole.

V. THE AGREEMENT’S DEFERRAL OF THE PEG-CHANNEL AVAILABILITY DATE IS REASONABLE, AND THE COMMISSION THEREFORE SHOULD WAIVE ITS “FIRST DAY” RULE

As noted previously, the Agreement goes substantially beyond the requirements of the Commission’s regulations in making a total of 25 PEG channels available initially, and up to 28

additional channels available at various times during the term of the Agreement.⁹³ However, it also provides that the initial group of channels will be made available “not later than one hundred eighty (180) days from the Effective Date (or, with respect to any Governmental/Educational Access Channels, such later date as may be agreed upon by the City and Franchisee in the event Franchisee reasonably requests an extension in order to complete necessary work)”⁹⁴ The 180-day deferral of Verizon’s obligation to provide initial access to PEG channel capacity is needed because of technical issues affecting the provisioning of the channels in a way that will best meet the City’s needs — *i.e.*, through a direct feed from City production facilities.⁹⁵

Verizon requests a waiver of Commission Rules 895.1(f) and 895.4, to the extent that those Rules require that PEG channel capacity be made available by the franchisee as of the effective date of the franchise agreement.⁹⁶ Such waivers are warranted because the direct-feed arrangement that the City has requested, and that Verizon has agreed to provide, goes beyond the

⁹³ Agreement §§ 8.1.1, 8.1.2, 8.1.3.

⁹⁴ *Id.* § 8.1.1. This provision is consistent with the terms of the Solicitation, which requires that franchisees agree “to carry in each borough of the City, beginning no later than six months after such franchise becomes effective, the [PEG] programming currently being cablecast . . . on existing franchised cable television systems in such borough.” *Solicitation* at 14.

⁹⁵ *See, e.g.*, Agreement §§ 8.1.6 (requirements for “Governmental/Educational Interconnection”); 8.1.8.1 (“Public Access Interconnection”).

⁹⁶ Although neither § 895.1(f), nor any provision of the Public Service Law, nor the Commission’s PEG rule (895.4), imposes a specific “first day” requirement for PEG channel capacity, the Commission has nevertheless required franchisees to provide PEG access consistent with the Commission’s minimum PEG standards starting on the effective date of the franchise agreement. *See, e.g.*, Case 05-V-1263, Order and Certificate of Confirmation [Massapequa Park] (issued and effective December 15, 2005), at 21 (“. . . Verizon is required to provide PEG access capability at the same time it offers cable television service to the Village”); Case 07-V-1017, Order and Certificate of Confirmation [Poquott] (issued and effective September 21, 2007, at 4 (“the franchisee is required to provide PEG access channels on the effective date of the franchise”). Beyond its power to waive this “common law” first-day rule, the Commission, of course, also has the power to reconsider whether it is a necessary and appropriate requirement as a general matter, or whether it, like other details of PEG access, should be determined by negotiations between the cable provider and the franchising authority rather than by Commission fiat.

Commission's minimum requirements (which can be satisfied by "the provision by the cable television franchisee of the technical ability to play back prerecorded programming and to transmit programming information consistent with the designated uses of PEG access channels"⁹⁷). As the accompanying Declaration of Isaac A. Madera (Exhibit 12 to this Statement) shows, additional time will be required to implement such direct access. The Commission should defer to the City's judgment that direct access after a reasonable delay is more beneficial to the residents of the City than immediate access meeting the Commission's minimum standards.

The waivers are further justified by the fact that Verizon does not yet have all of the information necessary to begin the design and construction of direct-connect PEG channels. To date, Verizon has only received a partial list of the numbers and locations of City production facilities — *i.e.*, the origination points for the direct-feed to the City's initial 25 PEG channels. The City continues to work with Verizon at this time in a collaborative effort as it gathers the information necessary to accurately disclose the number and location of City production facilities. Yet, this process requires time. Given the many complexities of negotiating and implementing a City-wide franchise to best serve the City's interests, this collaborative process is simply not complete. Until the City and Verizon are able to ascertain the number and location of the City's production facilities, Verizon cannot reasonably begin to provision direct-connect PEG channels.

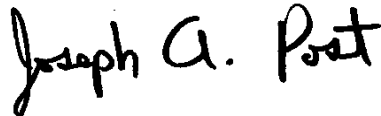
VI. SUMMARY AND CONCLUSIONS

For the reasons set forth above, the Commission should grant the specific waivers requested above, together with any other waivers that may be necessary or appropriate in order to

⁹⁷ 16 NYCRR § 895.4(c)(7); *see* Case 05-V-1571, Order and Certificate of Confirmation (issued and effective February 8, 2006), at 10.

enable Verizon to implement the Agreement as written, and thus to ensure that the substantial benefits of the Agreement will be available to the City and its residents.

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph A. Post". The signature is written in a cursive, slightly slanted style.

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May 2, 2008

ATTACHMENT 2B TO PETITION FOR LIMITED WAIVERS

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**In the Matter of the Petition of Verizon
New York Inc. for Limited Waivers of
Certain Rules in Connection with a
Proposed Cable Television Franchise
Agreement with the City of New York
(New York, Bronx, Queens, Kings, and
Richmond Counties)**

Case 08-V- _____

**EXHIBITS TO STATEMENT OF
BASIS AND RATIONALE FOR LIMITED WAIVERS**

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May 2, 2008

[Exhibit Number and Title hyperlinked to first page of Exhibit.](#)
[Click on Item to link to Exhibit.](#)

LIST OF EXHIBITS

- Exhibit 1** **Map of Current Franchise Areas of Incumbent Cable Providers in the City**
- Exhibit 2** **Discussion of the Incumbent Cable Providers' Build-Out in the City**
- Exhibit 3** **"Family Tree" Showing Acquisitions and Other Transactions Through Which the Current Time Warner Network in the City was Assembled**
- Exhibit 4** **Extracts from the Incumbent Cable Providers' Franchise Agreements**
- Exhibit 5** **Table of Lengths of Fiber-Optic Cable in Place and Ultimately Required for Passage of All Residences in the City**
- Exhibit 6** **Living Units and Buildings in the City (by Category)**
- Exhibit 7** **Percentage of New York City Living Units in Single-Family Units ("SFUs") and Multiple Dwelling Units ("MDUs") (by Borough)**
- Exhibit 8** **Table of Time Required for Issuance of Orders of Entry Under Publ. Serv. L. § 228**
- Exhibit 9** **Neighborhoods in Which FTTP Facilities Have Already Been Deployed by Verizon**
- Exhibit 10** **Declaration of Christopher Levandos**
- Exhibit 11** **Declaration of Robert Wheatley II**
- Exhibit 12** **Declaration of Isaac A. Madera**
- Exhibit 13** **Text of Rules for Which Waivers are Requested**
- Exhibit 14** **New York City's Solicitation of Proposals for Cable Television Franchise**

EXHIBIT 1 (MAP OF INCUMBENT FRANCHISE AREAS)

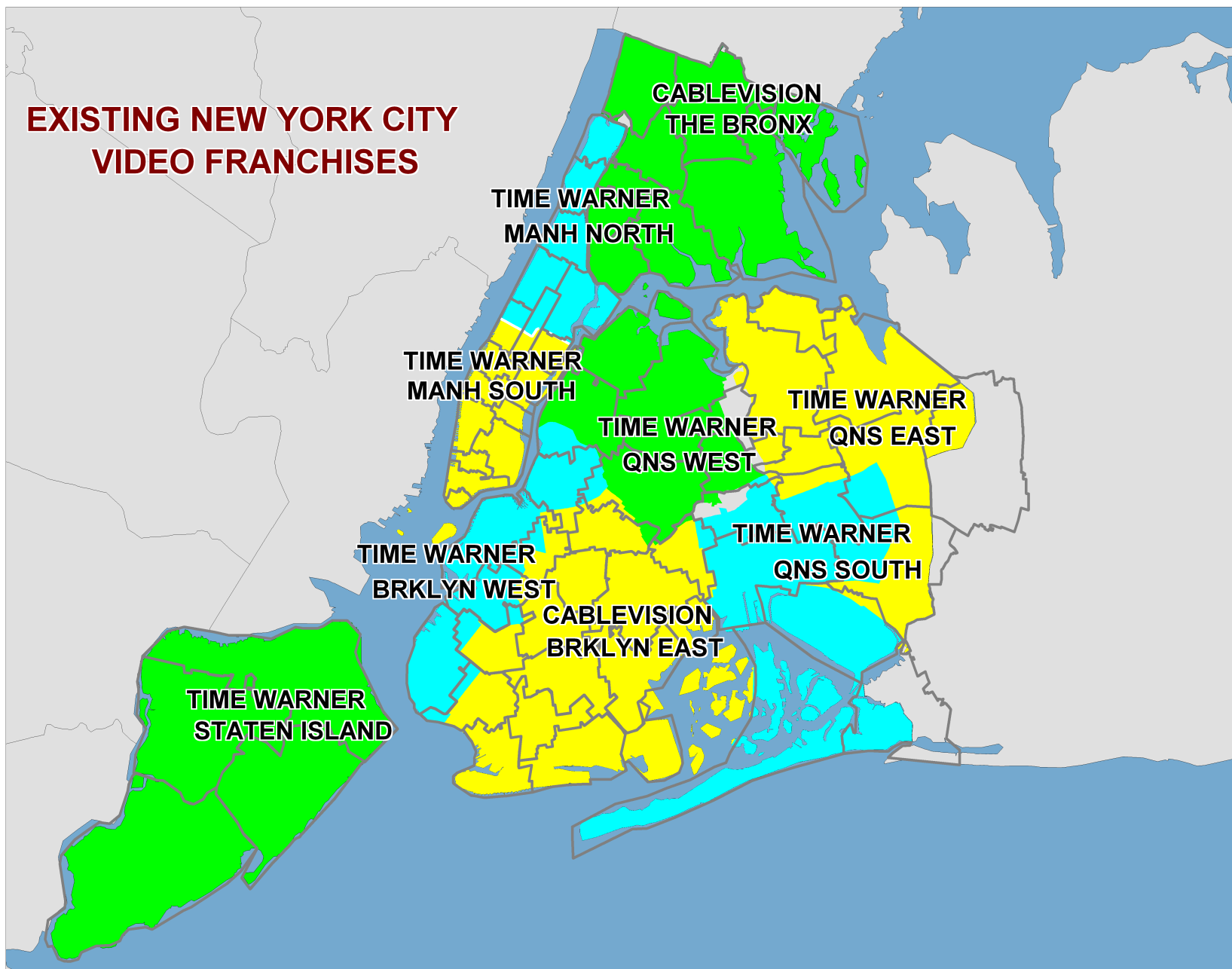


EXHIBIT 2

DISCUSSION OF THE INCUMBENTS' BUILD-OUT IN NEW YORK CITY¹

To a significant extent, the incumbents created their cable networks through acquisition of initially unrelated companies, or pursuant to separate cable franchises, rather than through a build-out undertaken pursuant to a single cable franchise covering its entire existing service area. For example, Time Inc., one of Time Warner's predecessors, acquired its network by purchasing the assets of the incumbent franchisees Paragon Cable² and Manhattan Cable Television, Inc.³ Warner Amex Cable Communications Company of Brooklyn and Warner Amex Cable Communications Company of Queens, collectively known as "Brooklyn Queens Cable," became a part of Time Warner through their parent Warner Communications Inc. Queens Inner Unity Cable System ("QUICS") also became a part of Time Warner through Warner Cable Communications.⁴ A "family tree" showing the changes in ownership through which the Time Warner cable networks were assembled is provided in Exhibit 3 to this Statement.

Although Cablevision has long been the incumbent cable franchisee in the Bronx, Cablevision also grew parts of its network by acquisition. For example, Cablevision purchased

¹ As far as Verizon is aware, the complex history of the evolution of the cable networks that currently serve the City's five boroughs is not summarized in any single resource. Accordingly, Verizon has done its best to reconstruct this history through public documents and media reports.

² Paragon Cable, a joint venture of Time Inc. and Houston Industries Inc., bought the Manhattan cable franchise in 1986 from Westinghouse Broadcasting Company. Elizabeth Sanger, *City Plugs In To Cable TV*, *NEWSDAY*, (October 31, 1988), at 1. Westinghouse, in turn, had purchased the franchise in 1981 from Teleprompter Corp.

³ Manhattan Cable Television was formerly known as Sterling Information Services, Ltd. When Time Inc. acquired Sterling in 1973, it renamed the entity "Manhattan Cable Television, Inc." See Mitchell Moss, *Can Cable Keep Its Promise?* (1981) (available at <http://www.mitchellmoss.com/articles/promise.html>).

⁴ QUICS initially formed a joint venture with Warner Cable Communications in 1987 as a result of financial obstacles to completing its network build-out. In 2000, QUICS became wholly owned by Time Warner. See Audit Report on the Compliance of Time Warner Cable of New York City, Queens Inner Unity Cable System, With Its Franchise Agreement October 1, 1998, to December 31, 2000, No. FN02-107A (City of New York, Office of the Comptroller, Bureau of Financial Audit) (June 28, 2002).

EXHIBIT 2

CATV Enterprises, the historical provider of CATV service in the Riverdale section of the Bronx.⁵ More recently, Cablevision acquired Co-Op City's in-house cable operation from Community Home Entertainment, a subsidiary of Satellite Television of New York, the entity that originally installed Co-Op City's SMATV system in the mid-1980's.⁶

This piecemeal strategy enabled the incumbents to attain greater geographic scope without the challenges associated with a simultaneous build-out of their entire service area — precisely the challenge that Verizon now faces. For example, Time Warner's predecessors received franchises in Manhattan in 1970, while the franchise for Time Warner's current Western Brooklyn territory was not granted until 1983.

Notwithstanding the advantages of a non-City-wide service area and a strategy of growth-through-acquisition, the build-out of the incumbents' cable networks required far longer than the five years now mandated for a primary service area under the Commission's rules. Indeed, as shown below, some areas of the City remained without *any* cable service until the mid- to late-1990's.⁷

⁵ See Elizabeth Sanger, *Manhattan's Access Channels A Bugaboo For Cable Contracts*, N.Y. TIMES (January 29, 1990), at 3.

⁶ See Bill Egbert, *Cablevision Complaints In Co-Op City*, N.Y. DAILY NEWS (January 15, 2008); Cable Compulsory Licenses: Definition of Cable Systems, 67 Fed. Reg. 18,705, 18,706 (April 17, 1997) (summarizing entities who submitted direct comments in the rulemaking proceeding); Peter Kerr, '84 *Start on Cable T.V. In Boroughs Seen*, N.Y. Times (March 22, 1984), at C22; William G. Blair, *As Cable Lags, New Yorkers Try Dish Antennas*, N.Y. TIMES (December 19, 1982).

⁷ Copies of all extracts from current and past incumbent agreements that are cited in this Exhibit are provided in Exhibit 4 to Verizon's Statement of Basis and Rationale for Limited Waivers.

EXHIBIT 2

Manhattan

Sterling Information Services, Ltd. was granted a franchise to provide cable television service in southern Manhattan⁸ on August 18, 1970. The Sterling franchise agreement directed Sterling to build-out its network “as rapidly as practicable” and required that the network be built and providing basic service within four (4) years.⁹ Teleprompter Manhattan CATV Corp. was granted a franchise to provide cable television service in northern Manhattan on August 18, 1970.¹⁰ By 1988 — eighteen years after these initial franchises were granted, approximately ten percent of the Manhattan South service area remained without cable wiring. This prompted the Director of Franchises to order Paragon — which by then had acquired the Manhattan South franchise — to build-out to those areas by 1990.¹¹ By 1989, build-out had still not occurred in parts of Harlem and the Lower East Side.¹² Thus, the incumbent cable franchise holders in Manhattan required over 19 years to build-out in Manhattan alone.

The Bronx

Cablevision Systems New York City Corporation was granted a franchise to provide cable service to the Bronx on June 30, 1983. The agreement directed Cablevision to build-out its network “substantially . . . within six (6) years after” receiving any required operating

⁸ The service area was defined in the franchise as running from the Battery to 86th Street on the East Side, and to 79th Street on the West Side, and from the Hudson to the East River (including Welfare Island). Exhibit 4, Sterling Franchise, § 1(f).

⁹ *Id.* § 3(c).

¹⁰ See Mitchell Moss, *supra* note 3 (noting that in 1970, “the Board of Estimate granted identical twenty-year franchises to Teleprompter and Sterling Information Services”). Teleprompter was to provide service in the area North of Sterling’s service area. *Id.*

¹¹ See Sanger, *supra* note 2.

¹² See David W. Dunlap, *Panel Questions Time-Warner Plan*, N.Y. TIMES (May 28, 1989), at 31.

EXHIBIT 2

authorizations.¹³ Unable to obtain sufficient financing to commence construction and satisfy contractual timeframes under its franchise, Cablevision petitioned the City in 1984 to allow additional time to build out its network in the Bronx.¹⁴ By late 1988, Cablevision had just begun to lay wire for many areas.¹⁵ In late 1991, the City set a new timetable under which build-out in the Bronx would not be complete until April 1995 — almost twelve years after the grant of the franchise.¹⁶ Notwithstanding that deadline, at the beginning of 1993 approximately forty-five percent (45%) of the Bronx remained without cable service.¹⁷

Brooklyn¹⁸

Warner Amex Cable Communications Company of Brooklyn (a predecessor of Time Warner) was granted a franchise to provide cable service in Brooklyn on July 19, 1983. Under

¹³ Exhibit 4, Cablevision Bronx Franchise, § 6.2; *see also id.* App. B.

¹⁴ *See* Josh Barbanel, *Cable TV Delayed to '86 For The Outer Boroughs*, N.Y. TIMES (December 6, 1984), at B1.

¹⁵ *See* Sam Howe Verhovek, *For Many New York Areas, Wait For Cable TV Ends*, N.Y. TIMES (November 9, 1988), at B1.

¹⁶ *See* Linda Moss, *Bronx, Brooklyn Lag In Cable Coverage: N.Y. Last In Nation To Connect Cable*, CRAIN'S NEW YORK BUSINESS (September 9, 1991), at 13.

¹⁷ *See* Karen Freifeld, *The Cable Blues: Those Who Wait Don't Watch*, NEWSDAY (February 2, 1993), at 21.

¹⁸ The original Warner Amex and Cablevision Brooklyn Franchise Agreements each defined the “district” for the franchise as the “Borough of Brooklyn.” Exhibit 4, Warner Amex Brooklyn Franchise, § 1.19; Exhibit 4, Cablevision Brooklyn Franchise, § 1.19. However, in Appendix B to those Agreements, the “Initial Construction Area” — *i.e.*, the part of the district in which the franchisee was required to complete build-out first — was divided according to Community Board Districts (“CBDs”), thereby partitioning Brooklyn between East and West. Cablevision’s Initial Construction Area included “the entire geographic area comprising [CBDs] 3, 4, 5, 8, 9 and 11 through 18” as designated on the Agreement’s effective date, or Eastern Brooklyn. Exhibit 4, Cablevision Brooklyn Franchise, App. B, § II.A.1. In contrast, Warner Amex’s Initial Construction Area consisted of CBDs 1, 2, 6, 7 and 10, or Western Brooklyn. Exhibit 4, Warner Amex Brooklyn Franchise, App. B, § II.A.1.

This remains the case under Cablevision and Time Warner’s current (1998) franchises in Brooklyn. *See*, in Exhibit 4, the following provisions: Time Warner Western Brooklyn Franchise, §§ 1.22, 3.2.1, 4.1.1, 15.4.1; Cablevision Eastern Brooklyn Franchise, §§ 1.22, 3.2.1, 4.1.1, 15.4.1.

EXHIBIT 2

the franchise agreement, the company was required to build-out “substantially throughout the Initial Construction Area within seven (7) years after” receiving any operating authorizations needed.¹⁹ Cablevision’s franchise to provide cable service in Brooklyn was also granted in 1983, and also required a seven-year build-out.²⁰ In 1984, Cablevision petitioned the City to allow additional time to wire households in its Brooklyn service area.²¹ In late 1988, Cablevision had just begun to lay wire for many areas in Eastern Brooklyn.²² Ultimately, in 1991, the City set a new timetable for build-out in Brooklyn, with a completion date of April 1995 — twelve years after the grant of the Brooklyn franchises.²³ As of 1993, approximately forty percent (40%) of Brooklyn remained without cable.²⁴

¹⁹ Exhibit 4, Warner Amex Brooklyn Franchise, § 6.2; *see also id.* App. B.

²⁰ Exhibit 4, Cablevision Brooklyn Franchise, § 6.2; *see also id.* App. B.

²¹ *See* Barbanel, *supra* note 14.

²² *See* Verhovek, *supra* note 15.

²³ *See* Linda Moss, *supra* note 16.

²⁴ *See* Freifeld, *supra* note 17.

EXHIBIT 2

Queens²⁵

American Cablevision of Queens²⁶ (“American”) was granted a franchise to provide cable television service in Queens on July 19, 1983. This franchise agreement required American to build-out its network and “offer Services substantially throughout the Initial Construction Area within seven (7) years” after receiving necessary operating authorizations.²⁷ Queens Inner Unity Cable Systems (“QUICS”)²⁸ received a franchise to provide cable television service on July 19, 1983. QUICS was contractually required to build-out its network “substantially within five (5) years after” receiving any necessary operating authorizations.²⁹ Warner Amex Cable Communications Company of Queens was granted a franchise to provide cable television service to the Borough of Queens on July 19, 1983. The franchise agreement required the company to “substantially” build-out its network “within seven (7) years after” receiving any necessary

²⁵ As with Brooklyn, the incumbent franchise agreements in Queens defined an “Initial Construction Area” that is smaller than the specified franchise area. The American, Queens Inner Unity and Warner Amex Queens Franchise Agreements defined the “district” for each franchise as the “Borough of Queens.” Exhibit 4, American Franchise, § 1.19; Exhibit 4, Queens Inner Unity Franchise, § 1.19; Exhibit 4, Warner Amex Queens Franchise, § 1.19. However, in Appendix B to those Agreements, the “Initial Construction Area” – *i.e.*, the part of the district in which the franchisee was required to complete build-out first – was divided according to CBDs, thereby partitioning Queens. American’s Initial Construction Area included CBDs 1, 2, 3, 4 and 5, and LaGuardia Airport, or the Northwestern part of Queens. Exhibit 4, American Franchise, App. B, § II.A.1. Queens Inner Unity’s Initial Construction Area extended throughout CBDs 9, 10, 12 and 14, as well as the J.F.K. International Airport, or the Southeastern part of Queens. Exhibit 4, Queens Inner Unity Franchise, App. B, § II.A.1. Finally, Warner Amex’s Initial Construction Area consisted of CBDs 6, 7, 8, 11 and 13, or the Northeastern part of Queens. Exhibit 4, Warner Amex Queens Franchise, App. B, § II.A.1.

²⁶ At the time the 1983 cable franchise agreements were approved, American had become a subsidiary of the American Television and Communications Corporation, which in turn was a subsidiary of Time Inc. *See* Joyce Purnick, “City Tentatively Picks Six Applicants for Cable TV Franchises”, N.Y. TIMES (December 11, 1981), at B1; Time Warner Cable Timeline, <http://www.timewarnercable.com/Corporate/AboutUs/timeline2.html>.

²⁷ *See* Exhibit 4, American Franchise, § 6.2 & App. B.

²⁸ QUICS is currently managed by Time Warner Cable. (http://www.nyc.gov/html/business/business_cable.shtml)

²⁹ *See* Exhibit 4, Queens Inner Unity Franchise, § 6.2 & App. B.

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operating authorizations.³⁰ As of late 1985, QUICS had failed to file its financial and construction plans, much less begin construction, and the Director of Franchises reportedly contemplated terminating its franchise agreement.³¹ As of early 1990, American, Queens Inner Unity, and Warner Amex all anticipated completion of build-out in Queens by December 1990.³² Thus, each incumbent cable franchise in Queens took approximately seven years to build-out to one-third of the Borough.

Staten Island

Cox Cable New York³³ was granted a franchise to provide cable service in Staten Island on July 19, 1983. The franchise agreement required Cox to build-out its network “substantially” on Staten Island “within three (3) years after” receiving any necessary operating authorizations.³⁴ In early 1987, Cox Cable, which had apparently refused to build its network below ground, was enmeshed in a dispute with the City. In fact, the Director of Franchises reportedly considered soliciting new bids for a cable franchise on Staten Island.³⁵ At one point, Cox Cable planned to finish construction by 1988,³⁶ but in fact it did not complete its build-out until late 1990.³⁷

³⁰ See Exhibit 4, Warner Amex Queens Franchise, § 6.2 & App. B.

³¹ See Josh Barbanel, *Cable TV Comes to Queens In A Test Two Decades After Manhattan Got It*, N.Y. TIMES (December 10, 1985), at B1.

³² See Sanger, *supra* note 5.

³³ Time Warner took over operation of Staten Island’s cable franchise in 1991 through a partnership with Cox Cable Communications. See *S.I. Cable Deal Is Set*, N.Y. TIMES (December 13, 1991), at D5.

³⁴ See Exhibit 4, Cox Staten Island Franchise, § 6.2 & App. B.

³⁵ See Bruce Lambert, *Koch To Ask New Bids On Cable TV*, N.Y. TIMES (February 26, 1987), at B1.

³⁶ See Jesus Rangel, *At Long Last, Cable Comes To Brooklyn*, N.Y. TIMES (May 13, 1986).

³⁷ See Sanger, *supra* note 5.

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The history of the incumbents' build-out in the City illustrates the challenges that the City poses for a cable company seeking to serve even a fraction of its residents; these challenges are of course even more formidable for a single company seeking to serve the entire City through an integrated simultaneous build-out. The average build-out period in the five boroughs of the City has been over 10 years. Moreover, the overall build-out period for the City as a whole (from the initiation of construction in Manhattan to substantial completion in all boroughs) ran from 1970 to at least 1995 — a period of some 25 years.

Media reports document at least some of the obstacles to the incumbents' network deployment. In the aggregate, the City's cable systems "constitute the biggest cable-television project ever undertaken in the United States."³⁸ Crain's reported that a general reluctance to build-out in urban areas was one obstacle to timely construction of cable networks.³⁹ At least in part, this was likely attributable to the difficulty and increased cost of network build-out underground. For example, it was reported that Warner Amex in Queens and Brooklyn planned "at first to limit itself to neighborhoods served by above-ground telephone poles because this will be faster and less expensive."⁴⁰ Newsday noted that "[o]n average, it costs \$15,000 to build a mile-long stretch of cable, but in urban areas, where cable wires have to be laid under the streets,

³⁸ See Kerr, *supra* note 5.

³⁹ See Linda Moss, *supra* note 16.

⁴⁰ See Barbanel, *supra* note 31.

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the tab can run as much as \$25,000 a mile”⁴¹ As already noted, Cox Cable apparently refused to build its network below ground.

The financial challenges posed by a build-out in the City are also illustrated by the repeated finance-related interruptions of Cablevision’s build-out,⁴² and by the fact that at least some incumbent franchisees sought to accelerate the return on their investment by building-out to wealthier neighborhoods first. Cablevision, for example, initially refused to build out in the Bronx unless it was also given a portion of a more lucrative service area in another borough.⁴³ Cablevision also proposed a plan to build out its networks first in “stable, middle-class sections” of its Brooklyn and Bronx service areas. The Board of Estimate contemplated terminating Cablevision’s cable franchise agreements as a result.⁴⁴ On July 18, 1986, the Board of Estimate

⁴¹ Sanger, *supra* note 11.

⁴² See, e.g., Verhovek, *supra* note 15 (noting that Cablevision had just begun to lay wires, and stating “[t]he delays can be traced to politics, scandals and financial problems”); Bruce Lambert, *Cable TV: A Long History of Delays and Scandals*, N.Y. TIMES (September 27, 1987) (noting that “discussions about financing prolonged negotiations [with Cablevision] four more years”); Barbanel, *supra* note 31 (“Two other franchise holders, however, have had difficulty obtaining financing. The city’s Board of Estimate has set a Jan. 1 deadline for Cablevision Systems . . . to obtain financing for its franchise in the Bronx and much of Brooklyn. . . . Earlier this year, the company was given a six month extension to obtain financing.”); Barbanel, *supra* note 14 (observing that “cable companies said the delay in adopting the contract change had created uncertainty among investors that had so far made it difficult to obtain financing to build cable facilities”).

⁴³ See, e.g., Lambert, *supra* note 42 (“The city was prepared to award Cablevision the Bronx in 1981, but Cablevision insisted on receiving some more affluent territory as well. Eastern Brooklyn was added in 1983; discussions about financing prolonged negotiations four more years.”); Maurice Carroll, *Delayed Years, Cable TV To Expand To All Of City*, N.Y. TIMES (December 24, 1982) (“A citywide arrangement had been close a week ago, but Cablevision had demanded the addition of some middle-class neighborhoods to its Brooklyn territory.”); Joyce Purnick, *Cablevision Rejects Proposal By City To Swap Some Areas*, N.Y. TIMES (December 10, 1982) (“[Cablevision], unhappy that it was assigned the Bronx and the northern and central parts of Brooklyn, threatened to drop out of the process at one point and was invited to do so by the city at another. As the only company to bid for the financially troubled Bronx, Cablevision has maintained that, in return, it deserved to be assigned more lucrative parts of the other boroughs.”); Tony Schwartz, *Cable Video Battle*, N.Y. TIMES (November 19, 1981) (“Cablevision is the only bidder in [the Bronx], and has said that its proposal in the Bronx is contingent on being given a more attractive franchise area in another borough.”).

⁴⁴ See Joyce Purnick, *Board May Change Company Bringing Cable TV To Bronx*, N.Y. TIMES (July 17, 1986), at D21; see also Freifeld, *supra* note 17.

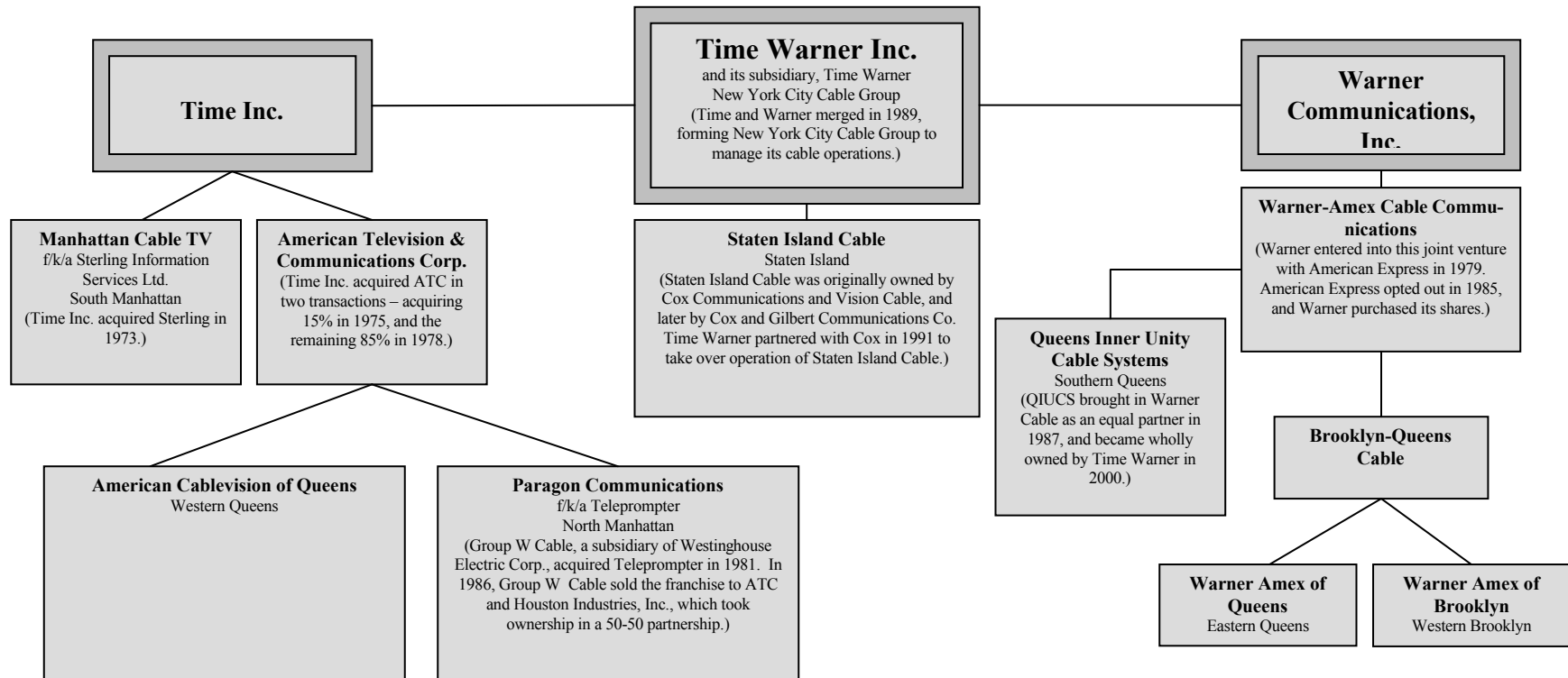
EXHIBIT 2

tentatively agreed to permit Cablevision to build-out in the more affluent neighborhoods first, saving network build-out in South Bronx, Coney Island, and East New York for last.⁴⁵

⁴⁵ See Joyce Purnick, *Pact on Cable TV Is Reached*, N.Y. TIMES (July 19, 1986), at 31.

EXHIBIT 3

“Family Tree” Showing Acquisitions and Other Transactions Through Which The Current Time Warner Incumbent Network Was Assembled*



* Sources include: Time Warner Cable Timeline, <http://www.timewarnercable.com/Corporate/AboutUs/timeline2.html> (April 1, 2008); Audit Report on the Compliance of Time Warner Cable of New York City, Queens Inner Unity Cable System, With Its Franchise Agreement October 1, 1998, to December 31, 2000, No. FN02-107A (City of New York, Office of the Comptroller, Bureau of Financial Audit) (June 28, 2002); *S.I. Cable Deal Is Set*, N.Y. TIMES (December 13, 1991), at D5; Linda Moss, *Bronx, Brooklyn Lag In Cable Coverage: N.Y. Last In Nation To Connect Cable*, CRAIN'S NEW YORK BUSINESS (September 9, 1991), at 13; James Barron, *Cable TV Rates Likely to Rise in Manhattan With New Pact*, N.Y. TIMES (June 28, 1990); Drew Fetherston, *City Renews Manhattan Cable Contracts*, NEWSDAY (June 28, 1990); Steven V. Holmes, *Inner City Media Empire, Born of Politics, Grows to Profit*, N.Y. TIMES (October 23, 1989), at B1; Elizabeth Sanger, *City and Cable Operator Doing A High-Wire Dance Paragon's Service Record May Prove Troublesome For Renewal Of Franchise*, NEWSDAY (April 10, 1989), at City Business; Sam Howe Verhovek, *For Many New York Areas, Wait For Cable TV Ends*, N.Y. TIMES (November 9, 1988), at B1; Elizabeth Sanger, *City Plugs In To Cable TV*, NEWSDAY (October 31, 1988), at 1; Josh Barbanel, *Cable TV Comes to Queens In A Test Two Decades After Manhattan Got It*, N.Y. TIMES (December 10, 1985), at B1; Josh Barbanel, *Cable TV Delayed to '86 For The Outer Boroughs*, N.Y. TIMES (December 6, 1984), at B1; Sandra Salmans, *Cable Operators Take A Bruising*, N.Y. TIMES (March 4, 1984), 3-1; Ernest Holsendolph, *Tougher Times for Cable TV*, N.Y. TIMES (July 11, 1982), at 3-1; Joyce Purnick, *City Tentatively Picks Six Applicants for Cable TV Franchises*, N.Y. TIMES (December 11, 1981), at B1; Mitchell Moss, *Can Cable Keep Its Promise?* (1981) (available at <http://www.mitchellmoss.com/articles/promise.html>).

EXHIBIT 4

**EXTRACTS FROM THE INCUMBENT CABLE PROVIDERS'
FRANCHISE AGREEMENTS**

EXHIBIT 4

**Sterling Information Services, Ltd.
Southern Manhattan
August 18, 1970**

(“Sterling Franchise”)

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(b) "Director of Communications" means the Director of Communications Service of the City.

(c) "Director of Franchises" means the Director of the Bureau of Franchises of the Board.

(d) "Streets" means streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, and public grounds or waters within or belonging to the City.

(e) "Person" means person, firm, corporation, or association, and any other legally recognized entity.

(f) "District" means that area within the Borough of Manhattan from the Battery to the South side of East 86th Street and the South side of West 79th Street (Fifth Avenue dividing East from West) and between the Hudson River and the East River including Welfare Island.

(g) "Gross Receipts" means all revenue derived directly or indirectly by the Company, its affiliates, subsidiaries, parents, and any person in which the Company has a financial interest, from or in connection with the operation of the System pursuant to this contract, excluding, however, revenues derived from provision of a separate service which uses the System for transmission but including an amount equivalent to what an outside party would have paid for such transmission.

(h) "Residential Subscriber" means a purchaser of any service delivered over the System to an individual dwelling unit, where the service is not to be utilized in connection with a business, trade, or profession.

(i) "System" means the broadband communications facility which is to be constructed, operated and maintained by the Company pursuant to this contract.

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(e) Nothing in this contract shall be construed as a waiver of the City's right to require any person utilizing the System to secure a franchise, consent or other appropriate permission authorizing such use.

SECTION 3

CONSTRUCTION AND INSTALLATION OF SYSTEM

(a) The Company shall immediately make arrangements so that its System transmits at least seventeen (17) channels for delivery to Residential Subscribers as soon as possible but no later than July 1, 1971. Within three (3) years from the effective date of this contract, the System shall be capable of transmitting at least twenty-four (24) channels for delivery to Residential Subscribers.

(b) The Company shall provide all new Residential Subscribers to Basic Service with a converter for each outlet having a capacity of at least twenty-four (24) channels, and, no later than December 31, 1971, shall have provided such a converter for all outlets of Residential Subscribers to Basic Service who have no converter or a converter of lesser capacity. If the Company should fail to comply with this subdivision, the Director of Franchises and the Director of Communications, as soon as is practical after December 31, 1971, shall recommend to the Board such action as they deem appropriate to secure rapid and complete compliance. The Board may thereupon impose whatever rate reductions for Residential Subscribers and/or whatever other measures it determines, in its sole judgment, will assure such rapid and complete compliance. In any presentation the Company may address to the Board in mitigation of its non-compliance, the Company shall have the burden of establishing that non-compliance resulted from factors beyond its control.

(c) The Company shall extend the installation of cables, amplifiers and related equipment throughout the District as rapidly as is practicable. Within four (4) years from

the effective date of this contract, the Company's trunk line installations of cable, amplifiers and related equipment shall be capable of providing Basic Service to every block within the District. Thereafter, the Board may impose such further construction obligations as are necessary to bring Basic Service to any building within the District.

(d) For the purpose of permitting the transmission of signals throughout the City the Company shall interconnect its System with any other broadband communications facility authorized by the Board to operate in an adjacent district. Such interconnection shall be made within sixty (60) days from the effective date of this contract with the System presently operated in the northern portion of Manhattan by Teleprompter Corporation. Within four (4) years the Company's System shall be capable of interconnection with any broadband communications facility authorized by the Board in an adjacent district and with any adjacent community antenna television system (as defined by the F.C.C.) outside the City; actual interconnection may be ordered by the Director of Franchises upon reasonable terms and conditions.

(e) For the purpose of permitting the simultaneous transmission into any one or more subdistricts of isolated, discrete signals of City Channels, Public Channels, and the Company Channel, the Company shall within four (4) years from the effective date of this contract have arranged the System so that it is capable of such transmission to no less than ten (10) subdistricts, each containing approximately the same number of dwelling units. Furthermore, the Company shall immediately undertake the development of a plan to divide the District into the greatest number of subdistricts possible, which subdistricts may be variously combined so as to constitute neighborhood communities, school districts, Congressional districts, State Senate and Assembly districts, and the like, for the simultaneous

EXHIBIT 4

**American Cablevision of Queens, Inc.
Queens
July 19, 1983**

(“American Franchise”)

1.19 "District" means the Borough of Queens.

1.20 "Enhanced Service" means any Service distributed over the Subscriber System for which there is a per Channel(s) or per unit(s) charge and each Interactive Service, as provided in Appendices D and J2 to this Agreement.

1.21 "FCC" means the Federal Communications Commission, its designee, or any successor thereto.

1.22 "Gross Revenue" means all revenue, as determined in accordance with generally accepted accounting principles, which is received, directly or indirectly, by the Company and by each Affiliated Person from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity in connection with the System, including, without limitation, the value of any free services provided by the Company other than those authorized or required by this Agreement. Gross Revenue shall also include the gross revenue of any other Person which is received directly or indirectly from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity to the extent that said revenue is received, as determined from time to time by the Comptroller, through any means which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the City for the franchise granted herein. Gross Revenue, for purposes of Section 10.1 hereof and Appendix M to this Agreement, shall not include: (i) the revenue of any Person, including, without limitation, a supplier of programming to the Company, to the extent that said revenue is also included in Gross Revenue of the Company; (ii) the revenue of the Company or any other Person which is received directly from the sale of any merchandise through any Service distributed over the System; (iii) taxes imposed by law on Subscribers which the Company is obligated to collect; (iv) amounts collected by the Company from Subscribers on behalf of Leased or Access Channel programmers, other than Affiliated Persons, to the extent that said amounts are passed on by the Company to said programmers; (v) the revenue of any Affiliated Person which represents standard and reasonable amounts paid by the Company to said Affiliated Person for ordinary and necessary business expenses of the Company, including, without limitation, professional service fees and insurance or bond premiums; (vi) any investment income earned

SECTION 6 -- CONSTRUCTION AND
TECHNICAL REQUIREMENTS

6.1 The Company shall diligently pursue the receipt of all necessary operating authorizations and permits and, thereafter, shall diligently and continuously construct the System throughout the Initial Construction Area in an orderly manner in accordance with the terms, schedule, and sequence for construction, as provided in Appendix B to this Agreement.

6.2 In accordance with Appendix B to this Agreement, the Company shall: (i) accomplish significant construction in the Initial Construction Area within one year after the Company receives all necessary operating authorizations; (ii) offer Services substantially throughout the Initial Construction Area within seven (7) years after receipt of said authorizations; and (iii) complete all construction of the System and offer Services in the Initial Construction Area no later than December 31, 1990. The Company may construct, operate, and maintain the System in other parts of the District, provided that such construction, operation, and maintenance shall be undertaken in accordance with the provisions of Appendix B to this Agreement.

6.3 All work involved in the construction, operation, maintenance, repair, and removal of the System shall be performed in a workmanlike manner using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any Person, then the Company shall, at its own cost and expense, promptly correct all such conditions.

6.4 To the extent that construction of the System cannot be accomplished expeditiously, in accordance with the schedule for construction as provided in Appendix B to this Agreement, using existing public utility facilities, or the facilities of Empire City Subway Company, Ltd., if applicable, the Company may, on such conditions as the applicable permit authorities may specify, construct or install its own poles, conduits, or other facilities for the construction of the System. The Company agrees to exercise this right if it is

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of the System;¹ and

- such other conditions as the Director of Franchises and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Director of Franchises shall, in any determination, limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any segment of the District.

II. CONSTRUCTION IN THE INITIAL CONSTRUCTION AREA

A. Designation of Area

1. The Initial Construction Area ("ICA") shall consist of the entire geographic area comprising Community Board Districts ("CBDs") 1, 2, 3, 4 and 5 within the District, as said CBDs are demarcated as of the effective date of this Agreement, as well as the area comprising LaGuardia Airport. In the event that the City subsequently modifies any boundary of any of said CBDs, the City may agree to redefine the ICA on petition of the Company.

B. Construction Schedule

1. For purposes of this Appendix B, commencement of construction shall be deemed to have occurred on the first business day following the latest to occur of: (a) confirmation of this Agreement by the CCT; (b) execution of appropriate pole attachment and conduit agreements with the applicable utility companies with respect to the initial section of the ICA to be constructed by the Company; or (c) the date upon which the Director of Franchises accepts the initial version

¹ The factors to be considered in assessing said economic viability shall include, without limitation, return on investment, cost per mile, alternate delivery systems, negative impact of subscriber churn, and abuse of System service or property.

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of the Company's Engineering Analysis and System Architecture, or, as provided in Appendix A to this Agreement, the date on which the Director of Franchises authorizes the Company to commence construction pending acceptance of said Engineering Analysis and System Architecture.

2. Completion of construction of the System in each unit within the ICA shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to that unit, the Company has: (i) installed all cables and associated equipment and devices necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced the offering and distribution of Services to Subscribers. Completion of all construction of the System shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to the entire System, the Company has accomplished the foregoing items (i) through (iii) and, in addition, has commenced the offering and distribution of the full range of Services, as provided in Appendices C and D, throughout the ICA. The temporary or other abatement of the Company's Service obligation pursuant to Section I.B.3 of this Appendix B shall not prevent the issuance by the Director of Franchises of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements.

3. The Company shall complete construction of the headend and such other parts of the Subscriber System, so as to pass, within the years indicated below, the following percentages of occupied households, as determined by the 1980 U.S. Census, in the Initial Construction Area:

- (a) Within one (1) year after
commencement of construction: 5% of occupied
households

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- | | | |
|-----|--|-----------------------------|
| (b) | Within two (2) years after commencement of construction: | 20% of occupied households |
| (c) | Within three (3) years after commencement of construction: | 40% of occupied households |
| (d) | Within four (4) years after commencement of construction: | 60% of occupied households |
| (e) | Within five (5) years after commencement of construction: | 80% of occupied households |
| (f) | Within six (6) years after commencement of construction: | 90% of occupied households |
| (g) | Within seven (7) years after commencement of construction: | 100% of occupied households |

4. The Company shall construct the principal trunk line of the Institutional Cable according to a schedule which corresponds to the foregoing schedule for the Subscriber System, provided that the specific schedule and sequence for the construction of that portion of the Institutional Cable available for use by the City shall be established in accordance with Appendix G to this Agreement.

5. Not later than December 31, 1990, the Company shall complete all construction of the entire System throughout the Initial Construction Area.²

6. Completion of construction as required by item (a) of the foregoing Section II.B.3. shall constitute "significant construction" for purposes of Section 595.1(b)(1) of the CCT Regulations.

² It is acknowledged that subsequent construction of the System may occur in order to provide Service to any structure built after said date.

EXHIBIT 4

**Cablevision Systems New York City Corp.
The Bronx
June 30, 1983**

(“Cablevision Bronx Franchise”)

affected Subscriber and other Person utilizing the affected Service.

5.6 The Company may change any fee or charge or alter any term or condition set forth in Appendices J2 or J3 to this Agreement without the prior consent of the Board unless the City assumes regulatory authority over said fees, charges, or terms and conditions in accordance with applicable law. Such regulatory authority by the City shall be exercised in a manner that does not impair the Company's ability to offer any Service and to derive a reasonable profit therefrom.

SECTION 6 -- CONSTRUCTION AND
TECHNICAL REQUIREMENTS

6.1 The Company shall diligently pursue the receipt of all necessary operating authorizations and permits and, thereafter, shall diligently and continuously construct the System throughout the Initial Construction Area in an orderly manner in accordance with the terms, schedule, and sequence for construction, as provided in Appendix B to this Agreement.

6.2 In accordance with Appendix B to this Agreement, the Company shall: (i) accomplish significant construction in the Initial Construction Area within one year after the Company receives all necessary operating authorizations; (ii) offer Services substantially throughout the Initial Construction Area within six (6) years after receipt of said authorizations; and (iii) complete all construction of the System and offer Services in the Initial Construction Area no later than December 31, 1989. The Company may construct, operate, and maintain the System in other parts of the District, provided that such construction, operation, and maintenance shall be undertaken in accordance with the provisions of Appendix B to this Agreement.

6.3 All work involved in the construction, operation, maintenance, repair, and removal of the System shall be performed in a workmanlike manner using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any Person, then the Company shall, at its own cost and expense, promptly correct all such conditions.

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of the System;¹ and

-- such other conditions as the Director of Franchises and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Director of Franchises shall, in any determination, limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any segment of the District.

II. CONSTRUCTION IN THE INITIAL CONSTRUCTION AREA

A. Designation of Area

1. The Initial Construction Area ("ICA") shall consist of the entire geographic area comprising the District.

B. Construction Schedule

1. For purposes of this Appendix B, commencement of construction shall be deemed to have occurred on the first business day following the latest to occur of: (a) confirmation of this Agreement by the CCT; (b) execution of appropriate pole attachment and conduit agreements with the applicable utility companies with respect to the initial section of the ICA to be constructed by the Company; or (c) the date upon which the Director of Franchises accepts the initial version of the Company's Engineering Analysis and System Architecture, or, as provided in Appendix A to this Agreement, the date on which the Director of Franchises authorizes the Company to commence construction pending acceptance of said Engineering Analysis and System Architecture.

¹ The factors to be considered in assessing said economic viability shall include, without limitation, return on investment, cost per mile, alternate delivery systems, negative impact of subscriber churn, and abuse of System service or property.

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2. Completion of construction of the System in each unit within the ICA shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to that unit, the Company has: (i) installed all cables and associated equipment and devices necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced the offering and distribution of Services to Subscribers. Completion of all construction of the System shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to the entire System, the Company has accomplished the foregoing items (i) through (iii) and, in addition, has commenced the offering and distribution of the full range of Services, as provided in Appendices C and D, throughout the ICA. The temporary or other abatement of the Company's Service obligation pursuant to Section I.B.3 of this Appendix B shall not prevent the issuance by the Director of Franchises of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements.

3. The Company shall complete construction of the headend and such other parts of the Subscriber System, so as to pass, within the years indicated below, the following percentages of occupied households, as determined by the 1980 U.S. Census, in the Initial Construction Area:

- | | | |
|-----|--|----------------------------|
| (a) | Within one (1) year after commencement of construction: | 18% of occupied households |
| (b) | Within two (2) years after commencement of construction: | 36% of occupied households |
| (c) | Within three (3) years after commencement of construction: | 53% of occupied households |

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- (d) Within four (4) years after commencement of construction: 69% of occupied households
- (e) Within five (5) years after commencement of construction: 85% of occupied households
- (f) Within six (6) years after commencement of construction: 100% of occupied households

Notwithstanding the foregoing or Section 6.2 of this Agreement, (i) if the Company has satisfied its construction obligations pursuant to this Agreement through the four (4) years after commencement of construction, then the Company shall have one additional year to complete its construction obligations pursuant to paragraphs (e) and (f) above, provided that the Company will use its best efforts to complete construction in years 5 and 6 in accordance with the schedule above, and (ii) if the Company determines to construct the Subscriber System in Coop City after the first two (2) years after commencement of construction, the percentages set forth in paragraphs (a) through (f) above shall be adjusted to reflect that determination, with the Coop City households being reflected in the final year of construction.

4. The Company shall construct the principal trunk line of the Institutional Cable according to a schedule which corresponds to the foregoing schedule for the Subscriber System, provided that the specific schedule and sequence for the construction of that portion of the Institutional Cable available for use by the City shall be established in accordance with Appendix G to this Agreement.

5. Not later than December 31, 1989, the Company shall complete all construction of the entire System throughout the Initial Construction Area, provided, however, that if the provisions of the final paragraph of Section II.B.3 of this Appendix B apply, then, notwithstanding Section 6.2 of this Agreement, the Company

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shall complete all construction of the System not later than December 31, 1990.²

6. Completion of construction as required by item (a) of the foregoing Section II.B.3. shall constitute "significant construction" for purposes of Section 595.1(b)(1) of the CCT Regulations.

7. Completion of construction as required by item (f) of the foregoing Section II.B.3. shall constitute the "offer[ing of service] substantially throughout the authorized area" for purposes of Section 595.1(b)(2) of the CCT Regulations.

C. Construction Sequence

1. Prior to the adoption of a resolution by the Board approving this Agreement, the Company shall have: (a) submitted to the Director of Franchises for approval the initial plan for the sequence of construction within the Initial Construction Area, said plan to be consistent with the requirements of Section II.B. of this Appendix B; and (b) obtained the approval of the Director of Franchises with respect to said initial plan.

2. The Company shall not materially deviate from the initial plan for the sequence of construction without the prior approval of the Director of Franchises, in consultation with the Borough President, provided that the Company shall provide to the Director of Franchises a written explanation and justification for deviations from the approved initial sequence plan.

3. The initial version of, and any modification to, said initial plan shall, upon its approval by the Director of Franchises, be set forth as Exhibit 1 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.

² It is acknowledged that subsequent construction of the System may occur in order to provide Service to any structure built after said date.

EXHIBIT 4

**Cablevision Systems New York City Corp.
Brooklyn Agreement
July 19, 1983**

(“Cablevision Brooklyn Franchise”)

1.16 "Data Channel" means, with respect to each data Service distributed over the System, the amount of frequency bandwidth created by assigning selective data interface adapters or other devices to the cable(s) in order to provide said Service.

1.17 "Dial Location" means the position on a television receiver, converter, or other device which is selected to receive a specific Channel.

1.18 "Director of Franchises" means the Director of the Bureau of Franchises of the Board, his designee, or any successor thereto.

1.19 "District" means the Borough of Brooklyn.

1.20 "Enhanced Service" means any Service distributed over the Subscriber System for which there is a per Channel(s) or per unit(s) charge and each Interactive Service, as provided in Appendices D and J2 to this Agreement.

1.21 "FCC" means the Federal Communications Commission, its designee, or any successor thereto.

1.22 "Gross Revenue" means all revenue, as determined in accordance with generally accepted accounting principles, which is received, directly or indirectly, by the Company and by each Affiliated Person from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity in connection with the System, including, without limitation, the value of any free services provided by the Company other than those authorized or required by this Agreement. Gross Revenue shall also include the gross revenue of any other Person which is received directly or indirectly from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity to the extent that said revenue is received, as determined from time to time by the Comptroller, through any means which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the City for the franchise granted herein. Gross Revenue, for purposes of Section 10.1 hereof and Appendix M to this Agreement, shall not include: (i) the revenue of any Person, including, without limitation, a supplier of programming to the Company, to the extent that said revenue is also included in Gross Revenue of the Company;

affected Subscriber and other Person utilizing the affected Service.

5.6 The Company may change any fee or charge or alter any term or condition set forth in Appendices J2 or J3 to this Agreement without the prior consent of the Board unless the City assumes regulatory authority over said fees, charges, or terms and conditions in accordance with applicable law. Such regulatory authority by the City shall be exercised in a manner that does not impair the Company's ability to offer any Service and to derive a reasonable profit therefrom.

SECTION 6 -- CONSTRUCTION AND
TECHNICAL REQUIREMENTS

6.1 The Company shall diligently pursue the receipt of all necessary operating authorizations and permits and, thereafter, shall diligently and continuously construct the System throughout the Initial Construction Area in an orderly manner in accordance with the terms, schedule, and sequence for construction, as provided in Appendix B to this Agreement.

6.2 In accordance with Appendix B to this Agreement, the Company shall: (i) accomplish significant construction in the Initial Construction Area within one year after the Company receives all necessary operating authorizations; (ii) offer Services substantially throughout the Initial Construction Area within seven (7) years after receipt of said authorizations; and (iii) complete all construction of the System and offer Services in the Initial Construction Area no later than December 31, 1990. The Company may construct, operate, and maintain the System in other parts of the District, provided that such construction, operation, and maintenance shall be undertaken in accordance with the provisions of Appendix B to this Agreement.

6.3 All work involved in the construction, operation, maintenance, repair, and removal of the System shall be performed in a workmanlike manner using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any Person, then the Company shall, at its own cost and expense, promptly correct all such conditions.

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of the System;¹ and

- such other conditions as the Director of Franchises and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Director of Franchises shall, in any determination, limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any segment of the District.

II. CONSTRUCTION IN THE INITIAL CONSTRUCTION AREA

A. Designation of Area

1. The Initial Construction Area ("ICA") shall consist of the entire geographic area comprising Community Board Districts ("CBDs") 3, 4, 5, 8, 9 and 11 through 18 within the District, as said CBDs are demarcated as of the effective date of this Agreement. In the event that the City subsequently modifies any boundary of any of said CBDs, the City may agree to redefine the ICA on petition of the Company.

B. Construction Schedule

1. For purposes of this Appendix B, commencement of construction shall be deemed to have occurred on the first business day following the latest to occur of: (a) confirmation of this Agreement by the CCT; (b) execution of appropriate pole attachment and conduit agreements with the applicable utility companies with respect to the initial section of the ICA to be constructed by the Company; or (c) the date upon which the Director of Franchises accepts the initial version of the Company's Engineering Analysis and System

¹ The factors to be considered in assessing said economic viability shall include, without limitation, return on investment, cost per mile, alternate delivery systems, negative impact of subscriber churn, and abuse of System service or property.

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Architecture, or, as provided in Appendix A to this Agreement, the date on which the Director of Franchises authorizes the Company to commence construction pending acceptance of said Engineering Analysis and System Architecture.

2. Completion of construction of the System in each unit within the ICA shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to that unit, the Company has: (i) installed all cables and associated equipment and devices necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced the offering and distribution of Services to Subscribers. Completion of all construction of the System shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to the entire System, the Company has accomplished the foregoing items (i) through (iii) and, in addition, has commenced the offering and distribution of the full range of Services, as provided in Appendices C and D, throughout the ICA. The temporary or other abatement of the Company's Service obligation pursuant to Section I.B.3 of this Appendix B shall not prevent the issuance by the Director of Franchises of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements.

3. The Company shall complete construction of the headend and such other parts of the Subscriber System, so as to pass, within the years indicated below, the following percentages of occupied households, as determined by the 1980 U.S. Census, in the Initial Construction Area:

- | | | |
|-----|---|-------------------------------|
| (a) | Within one (1) year after
commencement of construction: | 8% of occupied
households |
| (b) | Within two (2) years after
commencement of construction: | 21% of occupied
households |

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- (c) Within three (3) years after commencement of construction: 40% of occupied households
- (d) Within four (4) years after commencement of construction: 57% of occupied households
- (e) Within five (5) years after commencement of construction: 75% of occupied households
- (f) Within six (6) years after commencement of construction: 90% of occupied households
- (g) Within seven (7) years after commencement of construction: 100% of occupied households

Notwithstanding the foregoing or Section 6.2 of this Agreement, if the Company has satisfied its construction obligations pursuant to this Agreement through the five (5) years after commencement of construction, then the Company shall have one additional year to complete its construction obligations pursuant to paragraphs (f) and (g) above, provided that the Company will use its best efforts to complete construction in years 6 and 7 in accordance with the schedule above.

4. The Company shall construct the principal trunk line of the Institutional Cable according to a schedule which corresponds to the foregoing schedule for the Subscriber System, provided that the specific schedule and sequence for the construction of that portion of the Institutional Cable available for use by the City shall be established in accordance with Appendix G to this Agreement.

5. Not later than December 31, 1990, the Company shall complete all construction of the entire System throughout the Initial Construction Area, provided, however, that if the provisions of the final paragraph of Section II.B.3 of this Appendix B apply, then, notwithstanding Section 6.2 of this Agreement, the Company shall complete all construction of the System not later

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than December 31, 1991.²

6. Completion of construction as required by item (a) of the foregoing Section II.B.3. shall constitute "significant construction" for purposes of Section 595.1(b)(1) of the CCT Regulations.

7. Completion of construction as required by item (g) of the foregoing Section II.B.3. shall constitute the "offer[ing of service] substantially throughout the authorized area" for purposes of Section 595.1(b)(2) of the CCT Regulations.

C. Construction Sequence

1. Prior to the adoption of a resolution by the Board approving this Agreement, the Company shall have: (a) submitted to the Director of Franchises for approval the initial plan for the sequence of construction within the Initial Construction Area, said plan to be consistent with the requirements of Section II.B. of this Appendix B; and (b) obtained the approval of the Director of Franchises with respect to said initial plan.

2. The Company shall not materially deviate from the initial plan for the sequence of construction without the prior approval of the Director of Franchises, in consultation with the Borough President, provided that the Company shall provide to the Director of Franchises a written explanation and justification for deviations from the approved initial sequence plan.

3. The initial version of, and any modification to, said initial plan shall, upon its approval by the Director of Franchises, be set forth as Exhibit 1 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.

4. Following the effective date of this Agreement, as part of the Engineering Analysis and System

² It is acknowledged that subsequent construction of the System may occur in order to provide Service to any structure built after said date.

EXHIBIT 4

**Cox Cable New York
Staten Island
July 19, 1983**

(“Cox Staten Island Franchise”)

SECTION 6 -- CONSTRUCTION AND
TECHNICAL REQUIREMENTS

6.1 The Company shall diligently pursue the receipt of all necessary operating authorizations and permits and, thereafter, shall diligently and continuously construct the System throughout the Initial Construction Area in an orderly manner in accordance with the terms, schedule, and sequence for construction, as provided in Appendix B to this Agreement.

6.2 In accordance with Appendix B to this Agreement, the Company shall: (i) accomplish significant construction in the Initial Construction Area within one year after the Company receives all necessary operating authorizations; (ii) offer Services substantially throughout the Initial Construction Area within three (3) years after receipt of said authorizations; and (iii) complete all construction of the System and offer Services in the Initial Construction Area no later than June 30, 1987. The Company may construct, operate, and maintain the System in other parts of the District, provided that such construction, operation, and maintenance shall be undertaken in accordance with the provisions of Appendix B to this Agreement.

6.3 All work involved in the construction, operation, maintenance, repair, and removal of the System shall be performed in a workmanlike manner using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any Person, then the Company shall, at its own cost and expense, promptly correct all such conditions.

6.4 To the extent that construction of the System cannot be accomplished expeditiously, in accordance with the schedule for construction as provided in Appendix B to this Agreement, using existing public utility facilities, or the facilities of Empire City Subway Company, Ltd., if applicable, the Company may, on such conditions as the applicable permit authorities may specify, construct or install its own poles, conduits, or other facilities for the construction of the System. The Company agrees to exercise this right if it is

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of the System;¹ and

- such other conditions as the Director of Franchises and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Director of Franchises shall, in any determination, limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any segment of the District.

II. CONSTRUCTION IN THE INITIAL CONSTRUCTION AREA

A. Designation of Area

1. The Initial Construction Area ("ICA") shall consist of the entire geographic area comprising all of the Census Tracts included in the north/western half of the District as shown on the map dividing the District which was adopted by the Board of Estimate on December 16, 1982, as said Census Tracts are demarcated as of the effective date of this Agreement. In the event of any subsequent modification to any boundary of any of said Tracts, the City may agree to redefine the ICA on petition of the Company.

B. Construction Schedule

1. For purposes of this Appendix B, commencement of construction shall be deemed to have occurred on the first business day following the latest to occur of: (a) confirmation of this Agreement by the CCT; (b) execution of appropriate pole attachment and conduit agreements with the applicable utility companies with respect to the initial section of the ICA to be constructed by the Company; or (c) the date upon which

¹ The factors to be considered in assessing said economic viability shall include, without limitation, return on investment, cost per mile, alternate delivery systems, negative impact of subscriber churn, and abuse of System service or property.

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the Director of Franchises accepts the initial version of the Company's Engineering Analysis and System Architecture, or, as provided in Appendix A to this Agreement, the date on which the Director of Franchises authorizes the Company to commence construction pending acceptance of said Engineering Analysis and System Architecture.

2. Completion of construction of the System in each unit within the ICA shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to that unit, the Company has: (i) installed all cables and associated equipment and devices necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced the offering and distribution of Services to Subscribers. Completion of all construction of the System shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to the entire System, the Company has accomplished the foregoing items (i) through (iii) and, in addition, has commenced the offering and distribution of the full range of Services, as provided in Appendices C and D, throughout the ICA. The temporary or other abatement of the Company's Service obligation pursuant to Section I.B.3 of this Appendix B shall not prevent the issuance by the Director of Franchises of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements.

3. The Company shall complete construction of the headend and such other parts of the Subscriber System, so as to pass, within the years indicated below, the following percentages of occupied households, as determined by the 1980 U.S. Census, in the Initial Construction Area:

- (a) Within one (1) year after
commencement of construction: 25% of occupied
households

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- | |
|--|
| <p>(b) Within two (2) years after commencement of construction: 50% of occupied households</p> <p>(c) Within three (3) years after commencement of construction: 100% of occupied households</p> |
|--|

4. The Company shall construct the principal trunk line of the Institutional Cable according to a schedule which corresponds to the foregoing schedule for the Subscriber System, provided that the specific schedule and sequence for the construction of that portion of the Institutional Cable available for use by the City shall be established in accordance with Appendix G to this Agreement.

5. Not later than June 30, 1987, the Company shall complete all construction of the entire System throughout the Initial Construction Area.²

6. Completion of construction as required by item (a) of the foregoing Section II.B.3. shall constitute "significant construction" for purposes of Section 595.1(b)(1) of the CCT Regulations.

7. Completion of construction as required by item (c) of the foregoing Section II.B.3. shall constitute the "offer[ing of service] substantially throughout the authorized area" for purposes of Section 595.1(b)(2) of the CCT Regulations.

C. Construction Sequence

1. Prior to the adoption of a resolution by the Board approving this Agreement, the Company shall have: (a) submitted to the Director of Franchises for approval the initial plan for the sequence of construction within the Initial Construction Area, said plan to be consistent with the requirements of Section II.B. of this Appendix B; and (b) obtained the approval of the

² It is acknowledged that subsequent construction of the System may occur in order to provide Service to any structure built after said date.

EXHIBIT 4

**Queens Inner Unity Cable Systems
Queens
July 19, 1983**

(“Queens Inner Unity Franchise”)

1.19 "District" means the Borough of Queens.

1.20 "Enhanced Service" means any Service distributed over the Subscriber System for which there is a per Channel(s) or per unit(s) charge and each Interactive Service, as provided in Appendices D and J2 to this Agreement.

1.21 "FCC" means the Federal Communications Commission, its designee, or any successor thereto.

1.22 "Gross Revenue" means all revenue, as determined in accordance with generally accepted accounting principles, which is received, directly or indirectly, by the Company and by each Affiliated Person from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity in connection with the System, including, without limitation, the value of any free services provided by the Company other than those authorized or required by this Agreement. Gross Revenue shall also include the gross revenue of any other Person which is received directly or indirectly from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity to the extent that said revenue is received, as determined from time to time by the Comptroller, through any means which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the City for the franchise granted herein. Gross Revenue, for purposes of Section 10.1 hereof and Appendix M to this Agreement, shall not include: (i) the revenue of any Person, including, without limitation, a supplier of programming to the Company, to the extent that said revenue is also included in Gross Revenue of the Company; (ii) the revenue of the Company or any other Person which is received directly from the sale of any merchandise through any Service distributed over the System; (iii) taxes imposed by law on Subscribers which the Company is obligated to collect; (iv) amounts collected by the Company from Subscribers on behalf of Leased or Access Channel programmers, other than Affiliated Persons, to the extent that said amounts are passed on by the Company to said programmers; (v) the revenue of any Affiliated Person which represents standard and reasonable amounts paid by the Company to said Affiliated Person for ordinary and necessary business expenses of the Company, including, without limitation, professional service fees and insurance or bond premiums; (vi) any investment income earned

SECTION 6 -- CONSTRUCTION AND
TECHNICAL REQUIREMENTS

6.1 The Company shall diligently pursue the receipt of all necessary operating authorizations and permits and, thereafter, shall diligently and continuously construct the System throughout the Initial Construction Area in an orderly manner in accordance with the terms, schedule, and sequence for construction, as provided in Appendix B to this Agreement.

6.2 In accordance with Appendix B to this Agreement, the Company shall: (i) accomplish significant construction in the Initial Construction Area within one year after the Company receives all necessary operating authorizations; (ii) offer Services substantially throughout the Initial Construction Area within five (5) years after receipt of said authorizations; and (iii) complete all construction of the System and offer Services in the Initial Construction Area no later than December 31, 1988. The Company may construct, operate, and maintain the System in other parts of the District, provided that such construction, operation, and maintenance shall be undertaken in accordance with the provisions of Appendix B to this Agreement.

6.3 All work involved in the construction, operation, maintenance, repair, and removal of the System shall be performed in a workmanlike manner using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any Person, then the Company shall, at its own cost and expense, promptly correct all such conditions.

6.4 To the extent that construction of the System cannot be accomplished expeditiously, in accordance with the schedule for construction as provided in Appendix B to this Agreement, using existing public utility facilities, or the facilities of Empire City Subway Company, Ltd., if applicable, the Company may, on such conditions as the applicable permit authorities may specify, construct or install its own poles, conduits, or other facilities for the construction of the System. The Company agrees to exercise this right if it is

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of the System;¹ and

- such other conditions as the Director of Franchises and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Director of Franchises shall, in any determination, limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any segment of the District.

II. CONSTRUCTION IN THE INITIAL CONSTRUCTION AREA

A. Designation of Area

1. The Initial Construction Area ("ICA") shall consist of the entire geographic area comprising Community Board Districts ("CBDs") 9, 10, 12 and 14 within the District, as said CBDs are demarcated as of the effective date of this Agreement, as well as the area comprising J.F.K. International Airport. In the event that the City subsequently modifies any boundary of any of said CBDs, the City may agree to redefine the ICA on petition of the Company.

B. Construction Schedule

1. For purposes of this Appendix B, commencement of construction shall be deemed to have occurred on the first business day following the latest to occur of: (a) confirmation of this Agreement by the CCT; (b) execution of appropriate pole attachment and conduit agreements with the applicable utility companies with respect to the initial section of the ICA to be constructed by the Company; or (c) the date upon which the Director of Franchises accepts the initial version

¹ The factors to be considered in assessing said economic viability shall include, without limitation, return on investment, cost per mile, alternate delivery systems, negative impact of subscriber churn, and abuse of System service or property.

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of the Company's Engineering Analysis and System Architecture, or, as provided in Appendix A to this Agreement, the date on which the Director of Franchises authorizes the Company to commence construction pending acceptance of said Engineering Analysis and System Architecture.

2. Completion of construction of the System in each unit within the ICA shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to that unit, the Company has: (i) installed all cables and associated equipment and devices necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced the offering and distribution of Services to Subscribers. Completion of all construction of the System shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to the entire System, the Company has accomplished the foregoing items (i) through (iii) and, in addition, has commenced the offering and distribution of the full range of Services, as provided in Appendices C and D, throughout the ICA. The temporary or other abatement of the Company's Service obligation pursuant to Section I.B.3 of this Appendix B shall not prevent the issuance by the Director of Franchises of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements.

3. The Company shall complete construction of the headend and such other parts of the Subscriber System, so as to pass, within the years indicated below, the following percentages of occupied households, as determined by the 1980 U.S. Census, in the Initial Construction Area:

- (a) Within one (1) year after commencement of construction: 10% of occupied households
- (b) Within two (2) years after commencement of construction: 35% of occupied households

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- | | | |
|-----|--|-----------------------------|
| (c) | Within three (3) years after commencement of construction: | 60% of occupied households |
| (d) | Within four (4) years after commencement of construction: | 75% of occupied households |
| (e) | Within five (5) years after commencement of construction: | 100% of occupied households |

4. The Company shall construct the principal trunk line of the Institutional Cable according to a schedule which corresponds to the foregoing schedule for the Subscriber System, provided that the specific schedule and sequence for the construction of that portion of the Institutional Cable available for use by the City shall be established in accordance with Appendix G to this Agreement.

5. Not later than December 31, 1988, the Company shall complete all construction of the entire System throughout the Initial Construction Area.²

6. Completion of construction as required by item (a) of the foregoing Section II.B.3. shall constitute "significant construction" for purposes of Section 595.1(b)(1) of the CCT Regulations.

7. Completion of construction as required by item (e) of the foregoing Section II.B.3. shall constitute the "offer[ing of service] substantially throughout the authorized area" for purposes of Section 595.1(b)(2) of the CCT Regulations.

C. Construction Sequence

1. Prior to the adoption of a resolution by the Board approving this Agreement, the Company shall have: (a) submitted to the Director of Franchises for

² It is acknowledged that subsequent construction of the System may occur in order to provide Service to any structure built after said date.

EXHIBIT 4

**Warner Amex Cable Communications Company
Brooklyn
July 19, 1983**

(“Warner Amex Brooklyn Franchise”)

1.19 "District" means the Borough of Brooklyn.

1.20 "Enhanced Service" means any Service distributed over the Subscriber System for which there is a per Channel(s) or per unit(s) charge and each Interactive Service, as provided in Appendices D and J2 to this Agreement.

1.21 "FCC" means the Federal Communications Commission, its designee, or any successor thereto.

1.22 "Gross Revenue" means all revenue, as determined in accordance with generally accepted accounting principles, which is received, directly or indirectly, by the Company and by each Affiliated Person from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity in connection with the System, including, without limitation, the value of any free services provided by the Company other than those authorized or required by this Agreement. Gross Revenue shall also include the gross revenue of any other Person which is received directly or indirectly from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity to the extent that said revenue is received, as determined from time to time by the Comptroller, through any means which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the City for the franchise granted herein. Gross Revenue, for purposes of Section 10.1 hereof and Appendix M to this Agreement, shall not include: (i) the revenue of any Person, including, without limitation, a supplier of programming to the Company, to the extent that said revenue is also included in Gross Revenue of the Company; (ii) the revenue of the Company or any other Person which is received directly from the sale of any merchandise through any Service distributed over the System; (iii) taxes imposed by law on Subscribers which the Company is obligated to collect; (iv) amounts collected by the Company from Subscribers on behalf of Leased or Access Channel programmers, other than Affiliated Persons, to the extent that said amounts are passed on by the Company to said programmers; (v) the revenue of any Affiliated Person which represents standard and reasonable amounts paid by the Company to said Affiliated Person for ordinary and necessary business expenses of the Company, including, without limitation, professional service fees and insurance or bond premiums; (vi) any investment income earned

SECTION 6 -- CONSTRUCTION AND
TECHNICAL REQUIREMENTS

6.1 The Company shall diligently pursue the receipt of all necessary operating authorizations and permits and, thereafter, shall diligently and continuously construct the System throughout the Initial Construction Area in an orderly manner in accordance with the terms, schedule, and sequence for construction, as provided in Appendix B to this Agreement.

6.2 In accordance with Appendix B to this Agreement, the Company shall: (i) accomplish significant construction in the Initial Construction Area within one year after the Company receives all necessary operating authorizations; (ii) offer Services substantially throughout the Initial Construction Area within seven (7) years after receipt of said authorizations; and (iii) complete all construction of the System and offer Services in the Initial Construction Area no later than December 31, 1990. The Company may construct, operate, and maintain the System in other parts of the District, provided that such construction, operation, and maintenance shall be undertaken in accordance with the provisions of Appendix B to this Agreement.

6.3 All work involved in the construction, operation, maintenance, repair, and removal of the System shall be performed in a workmanlike manner using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any Person, then the Company shall, at its own cost and expense, promptly correct all such conditions.

6.4 To the extent that construction of the System cannot be accomplished expeditiously, in accordance with the schedule for construction as provided in Appendix B to this Agreement, using existing public utility facilities, or the facilities of Empire City Subway Company, Ltd., if applicable, the Company may, on such conditions as the applicable permit authorities may specify, construct or install its own poles, conduits, or other facilities for the construction of the System. The Company agrees to exercise this right if it is

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of the System;¹ and

-- such other conditions as the Director of Franchises and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Director of Franchises shall, in any determination, limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any segment of the District.

II. CONSTRUCTION IN THE INITIAL CONSTRUCTION AREA

A. Designation of Area

1. The Initial Construction Area ("ICA") shall consist of the entire geographic area comprising Community Board Districts ("CBDs") 1, 2, 6, 7 and 10 within the District, as said CBDs are demarcated as of the effective date of this Agreement. In the event that the City subsequently modifies any boundary of any of said CBDs, the City may agree to redefine the ICA on petition of the Company.

B. Construction Schedule

1. For purposes of this Appendix B, commencement of construction shall be deemed to have occurred on the first business day following the latest to occur of: (a) confirmation of this Agreement by the CCT; (b) execution of appropriate pole attachment and conduit agreements with the applicable utility companies with respect to the initial section of the ICA to be constructed by the Company; or (c) the date upon which the Director of Franchises accepts the initial version of the Company's Engineering Analysis and System

¹ The factors to be considered in assessing said economic viability shall include, without limitation, return on investment, cost per mile, alternate delivery systems, negative impact of subscriber churn, and abuse of System service or property.

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Architecture, or, as provided in Appendix A to this Agreement, the date on which the Director of Franchises authorizes the Company to commence construction pending acceptance of said Engineering Analysis and System Architecture.

2. Completion of construction of the System in each unit within the ICA shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to that unit, the Company has: (i) installed all cables and associated equipment and devices necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced the offering and distribution of Services to Subscribers. Completion of all construction of the System shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to the entire System, the Company has accomplished the foregoing items (i) through (iii) and, in addition, has commenced the offering and distribution of the full range of Services, as provided in Appendices C and D, throughout the ICA. The temporary or other abatement of the Company's Service obligation pursuant to Section I.B.3 of this Appendix B shall not prevent the issuance by the Director of Franchises of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements.

3. The Company shall complete construction of the headend and such other parts of the Subscriber System, so as to pass, within the years indicated below, the following percentages of occupied households, as determined by the 1980 U.S. Census, in the Initial Construction Area:

- (a) Within one (1) year after commencement of construction: 2% of occupied households
- (b) Within two (2) years after commencement of construction: 19% of occupied households

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| (c) | Within three (3) years after commencement of construction: | 38% of occupied households |
| (d) | Within four (4) years after commencement of construction: | 56% of occupied households |
| (e) | Within five (5) years after commencement of construction: | 75% of occupied households |
| (f) | Within six (6) years after commencement of construction: | 92% of occupied households |
| (g) | Within seven (7) years after commencement of construction: | 100% of occupied households |

4. The Company shall construct the principal trunk line of the Institutional Cable according to a schedule which corresponds to the foregoing schedule for the Subscriber System, provided that the specific schedule and sequence for the construction of that portion of the Institutional Cable available for use by the City shall be established in accordance with Appendix G to this Agreement.

5. Not later than December 31, 1990, the Company shall complete all construction of the entire System throughout the Initial Construction Area.²

6. Completion of construction as required by item (a) of the foregoing Section II.B.3. shall constitute "significant construction" for purposes of Section 595.1(b)(1) of the CCT Regulations.

7. Completion of construction as required by item (g) of the foregoing Section II.B.3. shall constitute the "offer[ing of service] substantially throughout the authorized area" for purposes of Section 595.1(b)(2) of the CCT Regulations.

² It is acknowledged that subsequent construction of the System may occur in order to provide Service to any structure built after said date.

EXHIBIT 4

**Warner Amex Cable Communications Co.
Queens
July 19, 1983**

(“Warner Amex Queens Franchise”)

1.19 "District" means the Borough of Queens.

1.20 "Enhanced Service" means any Service distributed over the Subscriber System for which there is a per Channel(s) or per unit(s) charge and each Interactive Service, as provided in Appendices D and J2 to this Agreement.

1.21 "FCC" means the Federal Communications Commission, its designee, or any successor thereto.

1.22 "Gross Revenue" means all revenue, as determined in accordance with generally accepted accounting principles, which is received, directly or indirectly, by the Company and by each Affiliated Person from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity in connection with the System, including, without limitation, the value of any free services provided by the Company other than those authorized or required by this Agreement. Gross Revenue shall also include the gross revenue of any other Person which is received directly or indirectly from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity to the extent that said revenue is received, as determined from time to time by the Comptroller, through any means which is intended to have the effect of avoiding the payment of compensation that would otherwise be paid to the City for the franchise granted herein. Gross Revenue, for purposes of Section 10.1 hereof and Appendix M to this Agreement, shall not include: (i) the revenue of any Person, including, without limitation, a supplier of programming to the Company, to the extent that said revenue is also included in Gross Revenue of the Company; (ii) the revenue of the Company or any other Person which is received directly from the sale of any merchandise through any Service distributed over the System; (iii) taxes imposed by law on Subscribers which the Company is obligated to collect; (iv) amounts collected by the Company from Subscribers on behalf of Leased or Access Channel programmers, other than Affiliated Persons, to the extent that said amounts are passed on by the Company to said programmers; (v) the revenue of any Affiliated Person which represents standard and reasonable amounts paid by the Company to said Affiliated Person for ordinary and necessary business expenses of the Company, including, without limitation, professional service fees and insurance or bond premiums; (vi) any investment income earned

SECTION 6 -- CONSTRUCTION AND
TECHNICAL REQUIREMENTS

6.1 The Company shall diligently pursue the receipt of all necessary operating authorizations and permits and, thereafter, shall diligently and continuously construct the System throughout the Initial Construction Area in an orderly manner in accordance with the terms, schedule, and sequence for construction, as provided in Appendix B to this Agreement.

6.2 In accordance with Appendix B to this Agreement, the Company shall: (i) accomplish significant construction in the Initial Construction Area within one year after the Company receives all necessary operating authorizations; (ii) offer Services substantially throughout the Initial Construction Area within seven (7) years after receipt of said authorizations; and (iii) complete all construction of the System and offer Services in the Initial Construction Area no later than December 31, 1990. The Company may construct, operate, and maintain the System in other parts of the District, provided that such construction, operation, and maintenance shall be undertaken in accordance with the provisions of Appendix B to this Agreement.

6.3 All work involved in the construction, operation, maintenance, repair, and removal of the System shall be performed in a workmanlike manner using materials of good and durable quality. If, at any time, it is determined by the City or any other agency or authority of competent jurisdiction that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any Person, then the Company shall, at its own cost and expense, promptly correct all such conditions.

6.4 To the extent that construction of the System cannot be accomplished expeditiously, in accordance with the schedule for construction as provided in Appendix B to this Agreement, using existing public utility facilities, or the facilities of Empire City Subway Company, Ltd., if applicable, the Company may, on such conditions as the applicable permit authorities may specify, construct or install its own poles, conduits, or other facilities for the construction of the System. The Company agrees to exercise this right if it is

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of the System;¹ and

-- such other conditions as the Director of Franchises and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Director of Franchises shall, in any determination, limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any segment of the District.

II. CONSTRUCTION IN THE INITIAL CONSTRUCTION AREA

A. Designation of Area

1. The Initial Construction Area ("ICA") shall consist of the entire geographic area comprising Community Board Districts ("CBDs") 6, 7, 8, 11 and 13 within the District, as said CBDs are demarcated as of the effective date of this Agreement. In the event that the City subsequently modifies any boundary of any of said CBDs, the City may agree to redefine the ICA on petition of the Company.

B. Construction Schedule

1. For purposes of this Appendix B, commencement of construction shall be deemed to have occurred on the first business day following the latest to occur of: (a) confirmation of this Agreement by the CCT; (b) execution of appropriate pole attachment and conduit agreements with the applicable utility companies with respect to the initial section of the ICA to be constructed by the Company; or (c) the date upon which the Director of Franchises accepts the initial version of the Company's Engineering Analysis and System

¹ The factors to be considered in assessing said economic viability shall include, without limitation, return on investment, cost per mile, alternate delivery systems, negative impact of subscriber churn, and abuse of System service or property.

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Architecture, or, as provided in Appendix A to this Agreement, the date on which the Director of Franchises authorizes the Company to commence construction pending acceptance of said Engineering Analysis and System Architecture.

2. Completion of construction of the System in each unit within the ICA shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to that unit, the Company has: (i) installed all cables and associated equipment and devices necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced the offering and distribution of Services to Subscribers. Completion of all construction of the System shall occur when the Director of Franchises has acknowledged, in writing, that, with respect to the entire System, the Company has accomplished the foregoing items (i) through (iii) and, in addition, has commenced the offering and distribution of the full range of Services, as provided in Appendices C and D, throughout the ICA. The temporary or other abatement of the Company's Service obligation pursuant to Section I.B.3 of this Appendix B shall not prevent the issuance by the Director of Franchises of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements.

3. The Company shall complete construction of the headend and such other parts of the Subscriber System, so as to pass, within the years indicated below, the following percentages of occupied households, as determined by the 1980 U.S. Census, in the Initial Construction Area:

- (a) Within one (1) year after commencement of construction: 2% of occupied households
- (b) Within two (2) years after commencement of construction: 19% of occupied households

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| (c) | Within three (3) years after commencement of construction: | 38% of occupied households |
| (d) | Within four (4) years after commencement of construction: | 56% of occupied households |
| (e) | Within five (5) years after commencement of construction: | 75% of occupied households |
| (f) | Within six (6) years after commencement of construction: | 92% of occupied households |
| (g) | Within seven (7) years after commencement of construction: | 100% of occupied households |

4. The Company shall construct the principal trunk line of the Institutional Cable according to a schedule which corresponds to the foregoing schedule for the Subscriber System, provided that the specific schedule and sequence for the construction of that portion of the Institutional Cable available for use by the City shall be established in accordance with Appendix G to this Agreement.

5. Not later than December 31, 1990, the Company shall complete all construction of the entire System throughout the Initial Construction Area.²

6. Completion of construction as required by item (a) of the foregoing Section II.B.3. shall constitute "significant construction" for purposes of Section 595.1(b)(1) of the CCT Regulations.

7. Completion of construction as required by item (g) of the foregoing Section II.B.3. shall constitute the "offer[ing of service] substantially throughout the authorized area" for purposes of Section 595.1(b)(2) of the CCT Regulations.

² It is acknowledged that subsequent construction of the System may occur in order to provide Service to any structure built after said date.

EXHIBIT 4

**Paragon Communications *d/b/a*
Time Warner Cable of New York City
Northern Manhattan
September 16, 1998**

**(“Paragon Communications *d/b/a* Time Warner Cable
N. Manhattan Franchise”)**

6.10.2 Amount. The amount of the performance bond shall be in a face amount of not less than Four Hundred Thousand Dollars (\$400,000). Such bond shall remain in effect during the term of this Agreement and such later date as provided in Section 2.2.04 hereof.

6.10.3 Indemnification. The performance bond shall indemnify the City, up to the full face amount of the bond, for: (i) the cost to continue any upgrade of the System in the District and to maintain operation of the System following a termination of this Agreement up to the date upon which the face amount of the bond, plus all net revenue actually received through the continued operation of the System during said period, have been exhausted; (ii) any loss or damage to any municipal structure during the course of any construction of the System; (iii) any other costs, or loss or damage actually incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Agreement; and (iv) the removal of all or any part of the System from the Streets; provided, however, that the City may not seek recourse against such bond for any costs or damages for which the City has previously been compensated through a withdrawal from the Security Fund or otherwise by the Company or its Guarantor.

6.10.4 Form. The initial performance bond shall be in a form approved by the Comptroller and shall be furnished to the Comptroller on or before the Closing. Such initial bond and the replacement bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until at least ninety (90) days' written notice to the City of surety's intention to cancel or not renew this bond."

6.10.5 Not a Limit on Liability. The faithful performance by and the Liability of the Company pursuant to this Agreement shall not be limited by the acceptance of the bond required by this Section 6.10.

6.11 Technical Requirements

6.11.1 Testing Procedures; Technical Performance. Throughout the term of this Agreement, the Company shall operate and maintain the System in accordance with the FCC's technical performance standards and testing requirements to be determined by the City after consultation with the Company. Without limiting the foregoing, the City shall have the right, after consultation with the Company, to determine reasonable testing standards for portions of the System using digital technology or providing Services other than the analog Channels to be provided pursuant to this Agreement, which testing standards shall be in accordance with any applicable FCC standards (if the FCC has not adopted any such standards, the City shall consider whether the FCC expressly intended that municipalities not adopt such testing standards). The Company shall give prior written (or oral, if the Commissioner approves) notice to the Commissioner or his designee of any scheduled System test performed in accordance

14.1 Not Exclusive. The Company agrees that the City shall have the specific rights and remedies set forth in this Section 14. These rights and remedies are in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the City at law or in equity in order to enforce the provisions of this Agreement. Such rights and remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by the City shall not release the Company from its obligations or any Liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by the Company or its Guarantor. In addition to the remedies available for material breaches of this Agreement, the City shall have the rights and remedies set forth in this Agreement and all other rights and remedies available to it under applicable law with respect to breaches which do not constitute material breaches of this Agreement.

14.2 Security Fund

14.2.1 Obligation to Maintain. Throughout the term of this Agreement, or for as long as the Company operates the System, whichever period is longer, and for at least ninety (90) days thereafter, the Company shall maintain the Security Fund in the amount specified in Section 14.2.02 hereof or such other amount as may from time to time be reasonably specified by the City in accordance with Section 14.2.02 hereof.

14.2.2 Amount. On or before the Closing, and as a condition precedent to the Closing, the Company shall deposit (to the extent such is not already on deposit) with the Comptroller the amount of Two Million Three Hundred Thousand Dollars (\$2,300,000.00), Eighty-five Thousand Dollars (\$85,000.00) of which shall be provided in cash or City bonds, with the balance in the form of an irrevocable, unconditional letter of credit or other instrument in a form acceptable to the Comptroller and the Corporation Counsel of the City, which letter of credit or other instrument shall in no event require the consent of the Company prior to the collection by the City of any amounts covered by such letter of credit or other instrument. The amount of such cash or City bonds and such letter of credit to be provided to the Comptroller shall constitute the Company's Security Fund. The Company shall be entitled to interest on the cash portion of the Security Fund and to the interest or dividends on any City bonds deposited in lieu of cash at a rate equal to whatever rate the City is actually earning on such cash and/or bonds. At any time during the term of this Agreement, the City may, in its reasonable discretion, require the Company to increase the amount of the Security Fund to an amount it deems appropriate if it finds that additional risk factors exist which necessitate an increase in the amount of the Security Fund, such as an increase in the amount of compensation payments to be made pursuant to Section 9.1 hereof or the failure of the Company to perform any of its obligations pursuant to this Agreement.

EXHIBIT 4

**Cablevision Systems New York City Corp.
Eastern Brooklyn
October 8, 1998**

(“Cablevision Eastern Brooklyn Franchise”)

1.22 "District" means the Borough of Brooklyn.

1.23 "DoITT" means the Department of Information Technology and Telecommunications, or any successor thereto.

1.24 "Downstream" means the direction of Signals originating from the headend or hubs of the System and going toward a Subscriber.

1.25 "Economically and Technically Feasible and Viable" means capable of being provided: (i) through technology which has been demonstrated to be feasible for its intended purpose; (ii) in an operationally workable manner; and (iii) in a manner which ensures that the System has a reasonable likelihood of being operated on reasonably profitable basis over the term of the franchise.

1.26 "Effective Date" means the date on which this Agreement shall take effect, as further defined in Section 2.1 herein.

1.27 "Enhanced Service" means any Cable Service other than Basic Service distributed over the System.

1.28 "FCC" means the Federal Communications Commission, its designee, or any successor thereto.

1.29 "FCRC" means the Franchise and Concession Review Committee of the City of New York.

1.30 "Governmental Channel" means an Access Channel on the Subscriber Network which the Company shall make available to the City, at no charge, as provided in Section 4.1 hereof and in Appendix E to this Agreement.

1.31 "Gross Revenue" means all revenue, as determined in accordance with generally accepted accounting principles, which is received, directly or indirectly, by the Company and by each Affiliated Person from or in connection with the distribution of any Service on the System or the provision of any Service Related Activity in connection with the System, including, without limitation, the value of any free services provided by the Company (other than those authorized or required by this Agreement or provided at the discretion of the Company as a contribution to a charitable or other organization exempt from taxation as an entity described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended) which value of free services shall include, in the case of free Cable Services, the retail value of all tiers of service actually provided. Gross Revenue shall also include all revenue of any other Person, including, without limitation, Leased or Access Channel programmers, which is received directly or indirectly, from or in connection with the distribution of any Service over the System or the provision of any Service Related Activity in connection with the System. Gross Revenue, for purposes of Section 9.1 hereof, shall also specifically include: (i) the fair market value of any nonmonetary (i.e., barter) transactions between the Company and any Person, other than an Affiliated Person, but not less than the customary prices paid in connection with

2.4.04 No Release. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Streets. In the event that all or part of the Streets within the District are eliminated, discontinued or closed, all rights and privileges granted pursuant to this Agreement with respect to such Streets, or any part thereof so eliminated, discontinued or closed, shall cease upon the effective date of such elimination, discontinuance or closing, provided that, if such elimination, discontinuance or closing of any Street is undertaken for the benefit of any private Person, the City shall, as appropriate, condition its consent to such elimination, discontinuance or closing of such Street on the agreement of such private Person to (i) grant the Company the right to continue to occupy and use such Street or (ii) reimburse the Company for the reasonable costs to relocate the affected part of the System.

2.4.05 Not Transferable. As provided in Section 11 hereof, the franchise granted herein to the Company shall not be transferred, assigned or encumbered, in whole or in part, in any manner, directly or indirectly, nor shall title therein, either legal or equitable, or any right, interest or property or assets relating to the franchise or the System (other than conveyances of real or personal property in the ordinary course of the operation of the System), pass to or vest in any Person without the express approval of the City, except as provided in Section 11 hereof and Appendix G to this Agreement. The completion of any such action without the approval of the City shall constitute an Abandonment of the System.

Section 3 SERVICE OBLIGATIONS

3.1 Provision of Service. The Company has offered to and shall continuously construct, operate, maintain, and, if required pursuant to Section 3.9 hereof, upgrade the System in accordance with the State of the Art, so as to provide, at a minimum, the full range of Services, facilities and equipment required by this Agreement (including the Appendices to this Agreement). The Company currently believes that the provision of all such Services, facilities and equipment as delineated herein is Economically and Technically Feasible and Viable. In addition, the Company, after thoroughly considering all foreseeable economic and business risks, currently believes that such Services, facilities and equipment as delineated herein in such Appendices will remain Economically and Technically Feasible and Viable during the term of the franchise, and will not become, during the term of the franchise, Commercially Impracticable.

3.2 Service to All Persons

3.2.01 Obligation. Throughout the term of this Agreement, the Company covenants and agrees to construct, operate, maintain and upgrade the System so as to make all Services distributed over the System available to any Person within the Initial Construction Area in the Existing Franchise that submits a request for Service to the Company within the time periods and pursuant to the procedures described in Section 3.2.02. In offering Services on the Subscriber Network, neither the Company nor any Affiliated Person shall discriminate, nor permit discrimination between or among any Persons, in the availability of Services or in the rates, terms and conditions thereof,

except to the extent that such discrimination is expressly permitted pursuant to (a) Federal law which preempts local regulation of such discrimination or (b) Sections 5.3 and 5.4 hereof. It shall be the right of all Subscribers to receive continuously all available Services insofar as their financial and other obligations to the Company are honored. The obligations set forth in the preceding three sentences shall include, without limitation, the obligation to ensure that access to any Service is not denied to any group of potential Residential Subscribers because of the income of the residents of the area in which such group resides, geographic location or any other criteria, except as expressly permitted pursuant to (a) or (b) above. The Company shall not enter into or maintain any "bulk rate" agreements, except as may be permitted under applicable law, pursuant to Section 5.4 hereof. The Company shall continuously monitor the implementation of the commitments set forth in this Section 3.2.01.

3.2.02 Requests for Service. The Company shall fulfill all requests for Service within the time periods set forth in Section 2.3.03 of Appendix I. If the Company is unable to fulfill any such request within ninety (90) days, it shall promptly notify the Person requesting Service, in writing, and shall provide monthly updates to that Person. The Company shall, within 90 days, aggressively pursue access to all blocks and buildings which are not currently wired for Service, but the Company shall have the right to petition the Commissioner for an exception from such requirement on a temporary basis when there is no pending or reasonably expected likelihood of a request for Service from any such block or building and the Commissioner is satisfied that the Company has thoroughly advertised the availability of Service to each such block or building in a manner consistent with the advertising plan described in Section 3.2.04 hereof. In each case in which the Company needs to obtain access to property for providing or upgrading its Service, the Company shall undertake (and document in written form) the following steps within the following time periods: (i) send promptly (but in no event later than thirty (30) days after receipt of a request for Service) to the property owner or managing agent notice of its intention to wire for Service; (ii) attempt to negotiate a survey date and wiring method with the property owner or agent; (iii) if not yet successful in obtaining access, send a second notice of intent to wire and a letter from counsel regarding the Company's access rights, and attempt to wire; (iv) if the property owner or agent prevents wiring, request assistance from the Commissioner and/or the PSC; and (v) institute and reasonably and diligently pursue legal action if the requested Service(s) is (are) not provided within one hundred eighty (180) days of first notice to the property owner or agent of intention to wire. In each case where it is having difficulty obtaining access to a block or part of a block, the Company shall, within ninety (90) days, aggressively pursue an alternate point of entry so as to ensure that it complies with this Section 3.2.02 and shall redesign its wiring plans to permit it to utilize such alternate point of entry to the maximum extent feasible consistent with sound design and construction practices. The Commissioner may waive, or extend the dates for complying with, the requirements of this Section upon a showing of good cause by the Company.

3.2.03 Continuous Service. In the event the Company, with the consent of the City, sells or otherwise transfers the System or Control thereof, or in the event the franchise terminates, the Company shall ensure that all Subscribers receive

may issue such a reasonable directive not more frequently than two (2) times during the term of the franchise, provided that no such directive may issue during the last three (3) years of the franchise term. Absent a judicial challenge to the directive, the Company shall have ninety (90) days after receipt of such a directive within which to submit plans, as specified by the Commissioner, describing how it intends to complete such upgrade. In the event of a judicial challenge to the directive issued by the Commissioner, the Company will have ninety (90) days after any final determination upholding the directive not subject to further appeal within which to submit plans. Upon approval of such plans by the Commissioner, the Company shall commence and diligently pursue implementation of the required upgrade.

Section 4 PUBLIC SERVICES

4.1 Access Channels

4.1.01 Minimum Channel Capacity. The Company shall supply to the City, without charge, five (5) activated Video Channels (and access to Upstream capacity as specified in Appendix A to this Agreement) as Government Channels. The Company shall supply to the Community Access Organization, without charge, four (4) activated Video Channels (and access to Upstream capacity as specified in Appendix A to this Agreement) as Public Channels. Except with the written consent of the Commissioner (acting in his or her sole discretion), all such Government Channels and Public Channels shall be provided on the Basic Service tier of channels, provided, however, that so long as the Company or Affiliated Persons holding cable television franchises in the City is offering to at least 10,000 subscribers in the City at least ninety (90) analog and/or digital channels of service, the Company may offer one of the above-referenced five (5) Governmental Channels on an enhanced Service tier of channels so long as such Enhanced Service tier includes at least ten (10) other analog and/or digital channels offered on a twenty-four (24) hour (i.e., not pay-per-view) basis. Upon the later of (i) the first day the Company is offering at least ninety (90) channels (analog and/or digital) of service to fifty percent (50%) of homes passed by the Company in the Initial Construction Area in the Existing Franchise or (ii) January 1, 2001, then the Company shall supply an additional channel (to be allocated by the Commissioner, in consultation with the Comptroller and the Borough President(s), as a Governmental Channel or a Public Channel), which shall be available on the same service tier as the tier on which the Government Channel referred to in the proviso in the preceding sentence is provided. The parties recognize that in the event the System uses primarily or entirely digital technology, traditional concepts of Basic Service tiers or Enhanced Service tiers may no longer be applicable, and the foregoing shall be interpreted to apply in such a situation to most closely approximate the agreement of the parties as set forth above. In any event, the foregoing nine (9) or ten (10) analog Access Channels may be converted to digital technology upon the approval of the Commission not to be unreasonably withheld, and in the event of such conversion the City shall be entitled to the full digital capacity (and not simply nine (9) digital Channels) into which the foregoing nine (9) or ten (10) analog Access Channels are converted.

The Company shall retain current Channel assignments for Access Channels, unless the Commissioner in the Commissioner's reasonable discretion approves other Dial Locations upon a written request by the Company (with supporting documentation) and after consultation with the CAO in the case of Public Channels.

All additional Access Channels supplied pursuant to Section 4.1.02 hereof, shall be distributed at frequency allocations, Channel assignments and Dial Locations to be set by mutual agreement of the Commissioner and the Company, provided that the location of the Access Channels shall, to the extent feasible, take into account the Company's existing and proposed Channel lineup, and provided further that the parties shall take into consideration the Dial Locations of such channels in the other Boroughs and shall use reasonable efforts to assign the Access Channels to contiguous Dial Locations within available Channels or bandwidth, and provided further that, if the Company's System uses digital technology or other technology in which concepts of "Channels" are not applicable, the Access Channels shall be placed in locations contiguous to the locations of the Company's regular, traditional cable programming. To the extent applicable technology allows allocation to the Basic tier without interfering with or affecting in any way an existing Channel, the Commissioner shall have the right to allocate such additional Access Channels between Basic and Enhanced Services or tiers of such Services, including pay-per-view Services, from time to time, provided, however, that to the extent Subscriber access to additional Channel or other capacity described in Section 4.1.02 requires for technological reasons Subscriber premises equipment which is required for receipt of the separate service option from Basic Service, then the availability of additional Access Channels (or additional capacity for Access Channel-type use) required pursuant to Section 4.1.02 as the result of such additional Channel or other capacity may at the Company's option be limited to those Subscribers who choose to subscribe to or purchase such service option.

4.1.02 Expansion of Channel Capacity. In addition to the Access Channel requirements described in Section 4.1.01, when the Upgrade has been completed (assuming the upgraded portion of the System operates entirely or primarily through digital technology) and digital programming services (excluding straight pass through of broadcast digital programming) are made available on the System, whether or not all digital Channels or Services are activated, then an additional nine (9) MHz of the upgraded portion of the upgraded System shall be Access Channels. The Commissioner, in consultation with the Comptroller and the Borough President(s), shall have the authority to allocate each such additional Access Channel or capacity between, Public Channels and Governmental Channels. If the System is upgraded such that total activated bandwidth is greater than 860 MHz, then the City and the Company shall engage in good faith negotiations to determine the extent to which such additional capacity should be made available as Public, Educational and/or Governmental Access Channels.

4.1.03 (a) Interconnection of Access Channels. All Access Channels shall be capable of being interconnected throughout the City (i.e., capable of sending one transmission from each Community Access Organization to the Community

15.2 Waiver. In addition to complying with Section 15.1 hereof, in the event that, after the Effective Date, any court, agency, commission, legislative body, or other authority of competent jurisdiction: (i) declares this Agreement invalid, in whole or in part, or (ii) requires the Company either to: (a) perform any act which is inconsistent with any provision of this Agreement or (b) cease performing any act required by any provision of this Agreement, then the Company expressly agrees nevertheless to comply with the terms of this Agreement to the maximum extent permitted by law and expressly waives, to the maximum extent permitted by law, any claim it may then or thereafter have as to the validity or enforceability of the terms of this Agreement. To the fullest extent it may effectively do so under applicable law, the Company waives any provision of law which renders any provision hereof invalid, illegal or unenforceable in any respect.

15.3 Reservation of Rights. To the extent that any statute, rule, regulation, ordinance or any other law is enacted, adopted, repealed, amended, modified, changed or interpreted in any way during the term of this Agreement so as to enhance the City's ability to meet the cable-related needs and interests of the community, the Company and the City shall enter into good faith negotiations so as to modify this Agreement and/or regulate the System, as applicable, to reflect such enactment, adoption, repeal, amendment, modification, change or interpretation and the Company agrees to comply with any such modifications or regulations arising out of such negotiations. If the Company fails to negotiate in good faith to produce such modifications and/or such regulations which are reasonably acceptable to both the City and the Company, then the City may accelerate the term of this Agreement so that the term shall expire on a date determined by the City not less than thirty-six (36) months after such determination. Any substantial failure of the Company to comply with the material terms of any such modifications or regulations shall be deemed to be a material breach of this Agreement pursuant to Section 14.4.02 hereof. This Section 15.3 shall not apply to laws that substantially increase the franchise fees the City is authorized to charge, which as of the Effective Date under the Cable Act are limited to five percent (5%) of gross revenues or which similarly increase the compensation which the City, in its proprietary capacity, is authorized to charge in connection with this franchise.

15.4 Matching.

15.4.01 Matching Provision. If the City grants, renews or renegotiates one or more franchises for the operation of a Cable Communications System in the Initial Construction Area in the Existing Franchise pursuant to the Cable Act ("Other Cable Franchise") and the Company believes the agreement (hereinafter the "Other Cable Franchise Agreement") pursuant to which such Other Cable Franchise is granted bestows benefits and imposes burdens on the franchisee which, on balance, are materially more advantageous to such third party than the benefits bestowed and burdens imposed on the Company by this Agreement are to the Company, then, at any one time after each such grant, renewal or negotiation but not sooner than six (6) months after the effective date of such event, the Company may request that the City make a determination to such effect

and, in the event of such a determination, renegotiate the terms and conditions of this Agreement as provided below.

15.4.02 Procedure. In the event of such a request, the City shall reasonably determine, under its standard procedures, whether the Other Cable Franchise Agreement bestows benefits and imposes burdens on the third party which, on balance, are materially more advantageous to the third party than the benefits and burdens imposed by this Agreement are to the Company.

In making a determination under this subsection, the City may consider factors such as, but not limited to: (i) the term of each franchise; (ii) the franchise fee to be paid by each franchisee, including the Company; (iii) the number and density of dwelling units to be served; (iv) differences in construction, operational and maintenance costs; (v) differences in required system characteristics, including state-of-the-art requirements; (vi) differences in service obligations, including Access Channel and institutional service requirements; (vii) differences in permitted Company fees and charges; and (viii) such other factors and considerations as it considers to be relevant to an inquiry into the overall economic comparability of the agreements.

If the City determines that the Other Cable Franchise Agreement bestows benefits and imposes burdens on the third party which, on balance, are materially more advantageous to the third party than the benefits bestowed and burdens imposed by this Agreement are to the Company, then upon the Company's request, the City and the Company shall enter into good faith negotiations to modify this Agreement to bestow benefits and impose burdens which, on balance, create overall economic comparability between this Agreement and the Other Cable Franchise Agreement. In the negotiations, the parties may also consider whether the Company is in substantial compliance with the material provisions of this Agreement.

The term "Other Cable Franchise" as used in this Section 15 shall not include open video systems, video dialtone systems, or similar systems, or agreements in connection therewith.

In the event that another provider(s) of multichannel video programming operates in the District and is not required to be franchised by the City, and the Company believes it has suffered severe economic harm from such competition because such other operator operates on terms that, on balance, are materially more advantageous to the competitor than the benefits bestowed and burdens imposed by this Agreement are to the Company, the Company may submit a report and petition to the responsible staff person at DoITT designated by the Commissioner, which report and petition shall describe the nature and extent of the competition and economic harm suffered and any amendment to this Agreement that the Company proposes to address such harm. Such staff person shall review the petition and may request additional information from the Company, and shall report such staff person's findings and recommendations to the Commissioner. The Commissioner shall make a determination with respect to the petition and forward such determination to the appropriate City authorities, who shall determine what further

EXHIBIT 4

**TWC Cable Partners *d/b/a* Staten Island Cable
Staten Island
September 16, 1998**

**(“TWC Cable Partners *d/b/a* Staten Island Cable
Staten Island Franchise”)**

or repair and restore to serviceable condition, in a manner as may be specified by the City, any Street or any municipal structure involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to this Agreement.

6.7 No Obstruction. In connection with the construction, operation, maintenance, repair, upgrade, or removal of the System, the Company shall not obstruct the Streets, subways, railways, passenger travel, river navigation, or other traffic to, from, or within the District without the prior consent of the appropriate authorities.

6.8 Movement of Wires. The Company shall, upon prior written notice by the City or any Person holding a permit to move any structure, temporarily move its wires to permit the moving of said structure. The Company may impose a charge on any Person other than the City for any such movement of its wires.

6.9 Safety Precautions. The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, watchmen, and suitable and sufficient lighting.

6.10 Performance Bond

6.10.1 Establishment. To guarantee the timely construction of any upgrade required by this Agreement, to ensure that the operation of the System continues in an orderly and uninterrupted manner in the event of a default by the Company, and for the other purposes specified in Section 6.10.03 hereof, the Company shall arrange for, and shall maintain throughout the term of this Agreement, a performance bond solely for the protection of the City, with a corporate surety and trust company acceptable to the Comptroller, as provided in Sections 6.10.02 through 6.10.05 hereof.

6.10.2 Amount. The amount of the performance bond shall be in a face amount of not less than Four Hundred Thousand Dollars (\$400,000). Such bond shall remain in effect during the term of this Agreement and such later date as provided in Section 2.2.04 hereof.

6.10.3 Indemnification. The performance bond shall indemnify the City, up to the full face amount of the bond, for: (i) the cost to continue any upgrade of the System in the District and to maintain operation of the System following a termination of this Agreement up to the date upon which the face amount of the bond, plus all net revenue actually received through the continued operation of the System during said period, have been exhausted; (ii) any loss or damage to any municipal structure during the course of any construction of the System; (iii) any other costs, or loss or damage actually incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Agreement; and (iv) the removal of all or any part of the System from the Streets; provided, however, that the City may not seek recourse against

14.2.1 Obligation to Maintain. Throughout the term of this Agreement, or for as long as the Company operates the System, whichever period is longer, and for at least ninety (90) days thereafter, the Company shall maintain the Security Fund in the amount specified in Section 14.2.02 hereof or such other amount as may from time to time be reasonably specified by the City in accordance with Section 14.2.02 hereof.

14.2.2 Amount. On or before the Closing, and as a condition precedent to the Closing, the Company shall deposit (to the extent such is not already on deposit) with the Comptroller the amount of Seven Hundred and Ten Thousand Dollars (\$710,000.00), One Hundred Thousand Dollars (\$100,000.00) of which shall be provided in cash or City bonds, with the balance in the form of an irrevocable, unconditional letter of credit or other instrument in a form acceptable to the Comptroller and the Corporation Counsel of the City, which letter of credit or other instrument shall in no event require the consent of the Company prior to the collection by the City of any amounts covered by such letter of credit or other instrument. The amount of such cash or City bonds and such letter of credit to be provided to the Comptroller shall constitute the Company's Security Fund. The Company shall be entitled to interest on the cash portion of the Security Fund and to the interest or dividends on any City bonds deposited in lieu of cash at a rate equal to whatever rate the City is actually earning on such cash and/or bonds. At any time during the term of this Agreement, the City may, in its reasonable discretion, require the Company to increase the amount of the Security Fund to an amount it deems appropriate if it finds that additional risk factors exist which necessitate an increase in the amount of the Security Fund, such as an increase in the amount of compensation payments to be made pursuant to Section 9.1 hereof or the failure of the Company to perform any of its obligations pursuant to this Agreement.

14.2.3 Purpose. The Security Fund shall serve as security for: (i) the faithful performance by the Company of all terms and conditions of this Agreement; (ii) any expenditure, damage, or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits, and other directives of the City and the Commissioner issued pursuant to this Agreement; (iii) the payment by the Company of all Liabilities which the City has been compelled to pay or incur by reason of any act or default of the Company, and all other payments due the City from the Company pursuant to this Agreement; (iv) the loss of any payments required to be made by the Company to the City which would have been received by the City but for the Company's failure to perform its obligations pursuant to this Agreement, during the period of time between the Company's unexcused or uncured failure to perform and the date on which the City takes over, or authorizes any other Person to take over, the construction, operation, or maintenance of a Cable Communications System in the District necessitated by such failure; (v) any costs incurred by the City in connection with the award of any franchise for, or other authorization to, construct, operate, maintain or upgrade, a Cable Communications System in the District necessitated by such failure; (vi) any costs, losses or damages incurred by the City or any other Person as a consequence of the Company's performance or nonperformance pursuant to the terms and conditions of this Agreement; and (vii) costs, losses or damages incurred by the City as a

EXHIBIT 4

**Time Warner Cable of New York City
Western Brooklyn
September 16, 1998**

(“Time Warner Cable Western Brooklyn Franchise”)

System or the franchise granted herein. "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

1.20 "Corporation Counsel" means the Corporation Counsel of the City, the Corporation Counsel's designee, or any successor thereto.

1.21 "Dial Location" means the position on a television receiver, tuner, converter, or other device which is selected to receive a specific Channel or Service.

1.22 "District" means the Borough of Brooklyn.

1.23 "DoITT" means the Department of Information Technology and Telecommunications, or any successor thereto.

1.24 "Downstream" means the direction of Signals originating from the headend or hubs of the System and going toward a Subscriber.

1.25 "Economically and Technically Feasible and Viable" means capable of being provided: (i) through technology which has been demonstrated to be feasible for its intended purpose; (ii) in an operationally workable manner; and (iii) in a manner which ensures that the System has a reasonable likelihood of being operated on a reasonably profitable basis over the term of the franchise.

1.26 "Effective Date" means the date on which this Agreement shall take effect, as further defined in Section 2.1 herein.

1.27 "Enhanced Service" means any Cable Service other than Basic Service distributed over the System.

1.28 "FCC" means the Federal Communications Commission, its designee, or any successor thereto.

1.29 "FCRC" means the Franchise and Concession Review Committee of the City of New York.

1.30 "Governmental Channel" means an Access Channel on the Subscriber Network which the Company shall make available to the City, at no charge, as provided in Section 4.1 hereof and in Appendix E to this Agreement.

1.31 "Gross Revenue" means all revenue as determined in accordance with generally accepted accounting principles which is received, directly or indirectly, by the Company and by each Affiliated Person from or in connection with the distribution of any Service on the System or the provision of any Service Related Activity in connection with the System, including, without limitation, the value of any free services provided by the Company (other than those authorized or required by this Agreement or provided at the discretion of the Company as a contribution to a charitable or other organization

2.4.4 No Release. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Streets. In the event that all or part of the Streets within the District are eliminated, discontinued or closed, all rights and privileges granted pursuant to this Agreement with respect to such Streets, or any part thereof so eliminated, discontinued or closed, shall cease upon the effective date of such elimination, discontinuance or closing, provided that, if such elimination, discontinuance or closing of any Street is undertaken for the benefit of any private Person, the City shall, as appropriate, condition its consent to such elimination, discontinuance or closing of such Street on the agreement of such private Person to (i) grant the Company the right to continue to occupy and use such Street or (ii) reimburse the Company for the reasonable costs to relocate the affected part of the System.

2.4.5 Not Transferable. As provided in Section 11 hereof, the franchise granted herein to the Company shall not be transferred, assigned or encumbered, in whole or in part, in any manner, directly or indirectly, nor shall title therein, either legal or equitable, or any right, interest or property or assets relating to the franchise or the System (other than conveyances of real or personal property in the ordinary course of the operation of the System), pass to or vest in any Person without the express approval of the City, except as provided in Section 11 hereof and Appendix G to this Agreement. The completion of any such action without the approval of the City shall constitute an Abandonment of the System.

Section 3

SERVICE OBLIGATIONS

3.1 Provision of Service. The Company has offered to and shall continuously construct, operate, maintain, and, if required pursuant to Section 3.9 hereof, upgrade the System in accordance with the State of the Art, so as to provide, at a minimum, the full range of Services, facilities and equipment required by this Agreement (including the Appendices to this Agreement). The Company currently believes that the provision of all such Services, facilities and equipment as delineated herein is Economically and Technically Feasible and Viable. In addition, the Company, after thoroughly considering all foreseeable economic and business risks, currently believes that such Services, facilities and equipment as delineated herein in such Appendices will remain Economically and Technically Feasible and Viable during the term of the franchise, and will not become, during the term of the franchise, Commercially Impracticable.

3.2 Service to All Persons

3.2.1 Obligation. Throughout the term of this Agreement, the Company covenants and agrees to construct, operate, maintain and upgrade the System so as to make all Services distributed over the System available to any Person within the Initial Construction Area in the Existing Franchise that submits a request for Service to the Company within the time periods and pursuant to the procedures described in Section 3.2.02. In offering Services on the Subscriber Network, neither the Company nor any

Affiliated Person shall discriminate, nor permit discrimination between or among any Persons, in the availability of Services or in the rates, terms and conditions thereof, except to the extent that such discrimination is expressly permitted pursuant to (a) Federal law which preempts local regulation of such discrimination or (b) Sections 5.3 and 5.4 hereof. It shall be the right of all Subscribers to receive continuously all available Services insofar as their financial and other obligations to the Company are honored. The obligations set forth in the preceding three sentences shall include, without limitation, the obligation to ensure that access to any Service is not denied to any group of potential Residential Subscribers because of the income of the residents of the area in which such group resides, geographic location or any other criteria, except as expressly permitted pursuant to (a) or (b) above. The Company shall not enter into or maintain any "bulk rate" agreements, except as may be permitted under applicable law, pursuant to Section 5.4 hereof. The Company shall continuously monitor the implementation of the commitments set forth in this Section 3.2.01.

3.2.2 Requests for Service. The Company shall fulfill all requests for Service within the time periods set forth in Section 2.3.03 of Appendix I. If the Company is unable to fulfill any such request within ninety (90) days, it shall promptly notify the Person requesting Service, in writing, and shall provide monthly updates to that Person. The Company shall aggressively pursue access to all blocks and buildings which are not currently wired for Service, but the Company shall have the right to petition the Commissioner for an exception from such requirement on a temporary basis when there is no pending or reasonably expected likelihood of a request for Service from any such block or building and the Commissioner is satisfied that the Company has thoroughly advertised the availability of Service to each such block or building in a manner consistent with the advertising plan described in Section 3.2.04 hereof. In each case in which the Company needs to obtain access to property for providing or upgrading its Service, the Company shall undertake (and document in written form) the following steps within the following time periods: (i) send promptly (but in no event later than thirty (30) days after receipt of a request for Service) to the property owner or managing agent notice of its intention to wire for Service; (ii) attempt to negotiate a survey date and wiring method with the property owner or agent; (iii) if not yet successful in obtaining access, send a second notice of intent to wire and a letter from counsel regarding the Company's access rights, and attempt to wire; (iv) if the property owner or agent prevents wiring, request assistance from the Commissioner and/or the PSC; and (v) institute and reasonably and diligently pursue legal action if the requested Service(s) is (are) not provided within one hundred eighty (180) days of first notice to the property owner or agent of intention to wire. In each case where it is having difficulty obtaining access to a block or part of a block, the Company shall, within ninety (90) days, aggressively pursue an alternate point of entry so as to ensure that it complies with this Section 3.2.02 and shall redesign its wiring plans to permit it to utilize such alternate point of entry to the maximum extent feasible consistent with sound design and construction practices. The Commissioner may waive, or extend the dates for complying with, the requirements of this Section upon a showing of good cause by the Company.

report and assemble any additional data necessary to ascertain whether the System or any aspect thereof needs to be upgraded under the provisions of Section 3.9.01.

3.9.4 Directive. Upon completing the evaluation contemplated by Section 3.9.03 hereof, and after providing notice to the Company and an opportunity for the Company to comment, the Commissioner may issue a reasonable directive to the Company to upgrade the System in accordance with Section 3.9.01. The Commissioner may issue such a reasonable directive not more frequently than two (2) times during the term of the franchise, provided that no such directive may issue during the last three (3) years of the franchise term. Absent a judicial challenge to the directive, the Company shall have ninety (90) days after receipt of such a directive within which to submit plans, as specified by the Commissioner, describing how it intends to complete such upgrade. In the event of a judicial challenge to the directive issued by the Commissioner, the Company will have ninety (90) days after any final determination upholding the directive not subject to further appeal within which to submit plans. Upon approval of such plans by the Commissioner, the Company shall commence and diligently pursue implementation of the required upgrade.

Section 4 **PUBLIC SERVICES**

4.1 Access Channels

4.1.1 Minimum Channel Capacity. The Company shall supply to the City, without charge, five (5) activated Video Channels (and access to Upstream capacity as specified in Appendix A to this Agreement) as Government Channels. The Company shall supply to the Community Access Organization, without charge, four (4) activated Video Channels (and access to Upstream capacity as specified in Appendix A to this Agreement) as Public Channels. Except with the written consent of the Commissioner (acting in his or her sole discretion), all such Government Channels and Public Channels shall be provided on the Basic Service tier of channels, provided, however, that so long as the Company or Affiliated Persons holding cable television franchises in the City is offering to at least 10,000 subscribers in the City at least ninety (90) analog and/or digital channels of service, the Company may offer one of the above-referenced five (5) Governmental Channels on an Enhanced Service tier of channels so long as such Enhanced Service tier includes at least ten (10) other analog and/or digital channels offered on a twenty-four (24) hour (i.e., not pay-per-view) basis and the conditions set forth in Section 3(b)(i), (ii) and (iii) of an agreement between the Company (and certain Affiliated Persons) and the City dated July 22, 1997 are being met. Upon the later of (i) the first day the Company is offering at least ninety (90) channels (analog and/or digital) of service to fifty percent (50%) of homes passed by the Company in the Initial Construction Area in the Existing Franchise or (ii) January 1, 2001, then the Company shall supply an additional channel (to be allocated by the Commissioner, in consultation with the Comptroller and the Borough President(s), as a Governmental Channel or a Public Channel), which shall be available on the same service tier as the tier on which the Government Channel referred to in the proviso in the preceding sentence is provided. The parties recognize that in the event the System uses primarily or entirely digital

technology, traditional concepts of Basic Service tiers or Enhanced Service tiers may no longer be applicable, and the foregoing shall be interpreted to apply in such a situation to most closely approximate the agreement of the parties as set forth above. In any event, the foregoing nine (9) or ten (10) analog Access Channels may be converted to digital technology upon the approval of the Commissioner not to be unreasonably withheld, and in the event of such conversion the City shall be entitled to the full digital capacity (and not simply nine (9) digital Channels) into which the foregoing nine (9) or ten (10) analog Access Channels are converted.

The Company shall retain current Channel assignments for Access Channels, unless the Commissioner in the Commissioner's reasonable discretion approves other Dial Locations upon a written request by the Company (with supporting documentation) and after consultation with the CAO in the case of Public Channels.

All additional Access Channels supplied pursuant to Section 4.1.02 hereof, shall be distributed at frequency allocations, Channel assignments and Dial Locations to be set by mutual agreement of the Commissioner and the Company, provided that the location of the Access Channels shall, to the extent feasible, take into account the Company's existing and proposed Channel lineup, and provided further that the parties shall take into consideration the Dial Locations of such channels in the other Boroughs and shall use reasonable efforts to assign the Access Channels to contiguous Dial Locations within available Channels or bandwidth, and provided further that, if the Company's System uses digital technology or other technology in which concepts of "Channels" are not applicable, the Access Channels shall be placed in locations contiguous to the locations of the Company's regular, traditional cable programming. To the extent applicable technology allows allocation to the Basic tier without interfering with or affecting in any way an existing Channel, the Commissioner shall have the right to allocate such additional Access Channels between Basic and Enhanced Services or tiers of such Services, including pay-per-view Services, from time to time, provided, however, that to the extent Subscriber access to additional Channel or other capacity described in Section 4.1.02 requires for technological reasons Subscriber premises equipment which is required for receipt of the separate service option from Basic Service, then the availability of additional Access Channels (or additional capacity for Access Channel-type use) required pursuant to Section 4.1.02 as the result of such additional Channel or other capacity may at the Company's option be limited to those Subscribers who choose to subscribe to or purchase such service option.

4.1.2 Expansion of Channel Capacity. In addition to the Access Channel requirements described in Section 4.1.01, when the Upgrade has been completed (assuming the upgraded portion of the System operates entirely or primarily through digital technology) and digital programming services (excluding straight pass through of broadcast digital programming) are made available on the System, whether or not all digital Channels or Services are activated, then an additional nine (9) MHz of the upgraded portion of the upgraded System shall be Access Channels. The Commissioner, in consultation with the Comptroller and the Borough President(s), shall have the authority to allocate each such additional Access Channel or capacity between Public

be made by the Company, at its sole cost and expense, and in a manner prescribed by the City. The Company agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition, in a manner as may be specified by the City, any Street or any municipal structure involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to this Agreement.

6.7 No Obstruction. In connection with the construction, operation, maintenance, repair, upgrade, or removal of the System, the Company shall not obstruct the Streets, subways, railways, passenger travel, river navigation, or other traffic to, from, or within the District without the prior consent of the appropriate authorities.

6.8 Movement of Wires. The Company shall, upon prior written notice by the City or any Person holding a permit to move any structure, temporarily move its wires to permit the moving of said structure. The Company may impose a charge on any Person other than the City for any such movement of its wires.

6.9 Safety Precautions. The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, watchmen, and suitable and sufficient lighting.

6.10 Performance Bond

6.10.1 Establishment. To guarantee the timely construction of any upgrade required by this Agreement, to ensure that the operation of the System continues in an orderly and uninterrupted manner in the event of a default by the Company, and for the other purposes specified in Section 6.10.03 hereof, the Company shall arrange for, and shall maintain throughout the term of this Agreement, a performance bond solely for the protection of the City, with a corporate surety and trust company acceptable to the Comptroller, as provided in Sections 6.10.02 through 6.10.05 hereof.

6.10.2 Amount. The amount of the performance bond shall be in a face amount of not less than Four Hundred Thousand Dollars (\$400,000). Such bond shall remain in effect during the term of this Agreement and such later date as provided in Section 2.2.04 hereof.

6.10.3 Indemnification. The performance bond shall indemnify the City, up to the full face amount of the bond, for: (i) the cost to continue any upgrade of the System in the District and to maintain operation of the System following a termination of this Agreement up to the date upon which the face amount of the bond, plus all net revenue actually received through the continued operation of the System during said period, have been exhausted; (ii) any loss or damage to any municipal structure during the course of any construction of the System; (iii) any other costs, or loss or damage actually incurred by the City as a result of the Company's failure to perform its

14.2 Security Fund

14.2.1 Obligation to Maintain. Throughout the term of this Agreement, or for as long as the Company operates the System, whichever period is longer, and for at least ninety (90) days thereafter, the Company shall maintain the Security Fund in the amount specified in Section 14.2.02 hereof or such other amount as may from time to time be reasonably specified by the City in accordance with Section 14.2.02 hereof.

14.2.2 Amount. On or before the Closing, and as a condition precedent to the Closing, the Company shall deposit (to the extent such is not already on deposit) with the Comptroller the amount of One Million Five Hundred Seventy-five Thousand Dollars (\$1,575,000.00), One Hundred Thousand Dollars (\$100,000.00) of which shall be provided in cash or City bonds, with the balance in the form of an irrevocable, unconditional letter of credit or other instrument in a form acceptable to the Comptroller and the Corporation Counsel of the City, which letter of credit or other instrument shall in no event require the consent of the Company prior to the collection by the City of any amounts covered by such letter of credit or other instrument. The amount of such cash or City bonds and such letter of credit to be provided to the Comptroller shall constitute the Company's Security Fund. The Company shall be entitled to interest on the cash portion of the Security Fund and to the interest or dividends on any City bonds deposited in lieu of cash at a rate equal to whatever rate the City is actually earning on such cash and/or bonds. At any time during the term of this Agreement, the City may, in its reasonable discretion, require the Company to increase the amount of the Security Fund to an amount it deems appropriate if it finds that additional risk factors exist which necessitate an increase in the amount of the Security Fund, such as an increase in the amount of compensation payments to be made pursuant to Section 9.1 hereof or the failure of the Company to perform any of its obligations pursuant to this Agreement.

14.2.3 Purpose. The Security Fund shall serve as security for: (i) the faithful performance by the Company of all terms and conditions of this Agreement; (ii) any expenditure, damage, or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits, and other directives of the City and the Commissioner issued pursuant to this Agreement; (iii) the payment by the Company of all Liabilities which the City has been compelled to pay or incur by reason of any act or default of the Company, and all other payments due the City from the Company pursuant to this Agreement; (iv) the loss of any payments required to be made by the Company to the City which would have been received by the City but for the Company's failure to perform its obligations pursuant to this Agreement, during the period of time between the Company's unexcused or uncured failure to perform and the date on which the City takes over, or authorizes any other Person to take over, the construction, operation, or maintenance of a Cable Communications System in the District necessitated by such failure; (v) any costs incurred by the City in connection with the award of any franchise for, or other authorization to, construct, operate, maintain or upgrade, a Cable Communications System in the District necessitated by such failure; (vi) any costs, losses or damages incurred by the City or any other Person as a consequence of the Company's performance or nonperformance pursuant to the terms and

of law which renders any provision hereof invalid, illegal or unenforceable in any respect.

15.3 Reservation of Rights. To the extent that any statute, rule, regulation, ordinance or any other law is enacted, adopted, repealed, amended, modified, changed or interpreted in any way during the term of this Agreement so as to enhance the City's ability to meet the cable-related needs and interests of the community, the Company and the City shall enter into good faith negotiations so as to modify this Agreement and/or regulate the System, as applicable, to reflect such enactment, adoption, repeal, amendment, modification, change or interpretation and the Company agrees to comply with any such modifications or regulations arising out of such negotiations. If the Company fails to negotiate in good faith to produce such modifications and/or such regulations which are reasonably acceptable to both the City and the Company, then the City may accelerate the term of this Agreement so that the term shall expire on a date determined by the City not less than thirty-six (36) months after such determination. Any substantial failure of the Company to comply with the material terms of any such modifications or regulations shall be deemed to be a material breach of this Agreement pursuant to Section 14.4.02 hereof. This Section 15.3 shall not apply to laws that substantially increase the franchise fees the City is authorized to charge, which as of the Effective Date under the Cable Act are limited to five percent (5%) of gross revenues or which similarly increase the compensation which the City, in its proprietary capacity, is authorized to charge in connection with this franchise.

15.4 Matching.

15.4.1 Matching Provision. If the City grants, renews or renegotiates one or more franchises for the operation of a Cable Communications System in the Initial Construction Area in the Existing Franchise pursuant to the Cable Act ("Other Cable Franchise") and the Company believes the agreement (hereinafter the "Other Cable Franchise Agreement") pursuant to which such Other Cable Franchise is granted bestows benefits and imposes burdens on the franchisee which, on balance, are materially more advantageous to such third party than the benefits bestowed and burdens imposed on the Company by this Agreement are to the Company, then, at any one time after each such grant, renewal or negotiation but not sooner than six (6) months after the effective date of such event, the Company may request that the City make a determination to such effect and, in the event of such a determination, renegotiate the terms and conditions of this Agreement as provided below.

15.4.2 Procedure. In the event of such a request, the City shall reasonably determine, under its standard procedures, whether the Other Cable Franchise Agreement bestows benefits and imposes burdens on the third party which, on balance, are materially more advantageous to the third party than the benefits and burdens imposed by this Agreement are to the Company.

In making a determination under this subsection, the City may consider factors such as, but not limited to: (i) the term of each franchise; (ii) the franchise fee to

EXHIBIT 4

**Time Warner Cable of New York City
Southern Manhattan
September 16, 1998**

(“Time Warner Cable S. Manhattan Franchise”)

6.10.1 Establishment. To guarantee the timely construction of any upgrade required by this Agreement, to ensure that the operation of the System continues in an orderly and uninterrupted manner in the event of a default by the Company, and for the other purposes specified in Section 6.10.03 hereof, the Company shall arrange for, and shall maintain throughout the term of this Agreement, a performance bond solely for the protection of the City, with a corporate surety and trust company acceptable to the Comptroller, as provided in Sections 6.10.02 through 6.10.05 hereof.

6.10.2 Amount. The amount of the performance bond shall be in a face amount of not less than Four Hundred Thousand Dollars (\$400,000). Such bond shall remain in effect during the term of this Agreement and such later date as provided in Section 2.2.04 hereof.

6.10.3 Indemnification. The performance bond shall indemnify the City, up to the full face amount of the bond, for: (i) the cost to continue any upgrade of the System in the District and to maintain operation of the System following a termination of this Agreement up to the date upon which the face amount of the bond, plus all net revenue actually received through the continued operation of the System during said period, have been exhausted; (ii) any loss or damage to any municipal structure during the course of any construction of the System; (iii) any other costs, or loss or damage actually incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Agreement; and (iv) the removal of all or any part of the System from the Streets; provided, however, that the City may not seek recourse against such bond for any costs or damages for which the City has previously been compensated through a withdrawal from the Security Fund or otherwise by the Company or its Guarantor.

6.10.4 Form. The initial performance bond shall be in a form approved by the Comptroller and shall be furnished to the Comptroller on or before the Closing. Such initial bond and the replacement bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until at least ninety (90) days' written notice to the City of surety's intention to cancel or not renew this bond."

6.10.5 Not a Limit on Liability. The faithful performance by and the Liability of the Company pursuant to this Agreement shall not be limited by the acceptance of the bond required by this Section 6.10.

6.11 Technical Requirements

13.2.4 Liability Not Limited. The legal Liability of the Company and any Affiliated Person to the City and any Person for any of the matters which are the subject of the liability insurance policies required by this Section 13.2, including, without limitation, the Company's indemnification obligation set forth in Section 13.1.06 hereof, shall not be limited by such insurance policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by the Company or its Guarantor.

Section 14

SPECIFIC RIGHTS AND REMEDIES

14.1 Not Exclusive. The Company agrees that the City shall have the specific rights and remedies set forth in this Section 14. These rights and remedies are in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the City at law or in equity in order to enforce the provisions of this Agreement. Such rights and remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by the City shall not release the Company from its obligations or any Liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by the Company or its Guarantor. In addition to the remedies available for material breaches of this Agreement, the City shall have the rights and remedies set forth in this Agreement and all other rights and remedies available to it under applicable law with respect to breaches which do not constitute material breaches of this Agreement.

14.2 Security Fund

14.2.1 Obligation to Maintain. Throughout the term of this Agreement, or for as long as the Company operates the System, whichever period is longer, and for at least ninety (90) days thereafter, the Company shall maintain the Security Fund in the amount specified in Section 14.2.02 hereof or such other amount as may from time to time be reasonably specified by the City in accordance with Section 14.2.02 hereof.

14.2.2 Amount. On or before the Closing, and as a condition precedent to the Closing, the Company shall deposit (to the extent such is not already on deposit) with the Comptroller the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000.00), One Hundred Thirty Thousand Dollars (\$130,000.00) of which shall be provided in cash or City bonds, with the balance in the form of an irrevocable,

EXHIBIT 4

**Time Warner Cable of New York City
Eastern Queens
September 16, 1998**

(“Time Warner Cable Eastern Queens Franchise”)

6.6 Protect Structures. In connection with the construction, operation, maintenance, repair, upgrade, or removal of the System, the Company shall, at its own cost and expense, protect any and all existing structures belonging to the City and all designated landmarks, as well as all other structures within any designated landmark district. The Company shall obtain the prior approval of the City before altering any water main, sewerage or drainage system, or any other municipal structure in the Streets required because of the presence of the System in the Streets. Any such alteration shall be made by the Company, at its sole cost and expense, and in a manner prescribed by the City. The Company agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition, in a manner as may be specified by the City, any Street or any municipal structure involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to this Agreement.

6.7 No Obstruction. In connection with the construction, operation, maintenance, repair, upgrade, or removal of the System, the Company shall not obstruct the Streets, subways, railways, passenger travel, river navigation, or other traffic to, from, or within the District without the prior consent of the appropriate authorities.

6.8 Movement of Wires. The Company shall, upon prior written notice by the City or any Person holding a permit to move any structure, temporarily move its wires to permit the moving of said structure. The Company may impose a charge on any Person other than the City for any such movement of its wires.

6.9 Safety Precautions. The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, watchmen, and suitable and sufficient lighting.

6.10 Performance Bond

6.10.1 Establishment. To guarantee the timely construction of any upgrade required by this Agreement, to ensure that the operation of the System continues in an orderly and uninterrupted manner in the event of a default by the Company, and for the other purposes specified in Section 6.10.03 hereof, the Company shall arrange for, and shall maintain throughout the term of this Agreement, a performance bond solely for the protection of the City, with a corporate surety and trust company acceptable to the Comptroller, as provided in Sections 6.10.02 through 6.10.05 hereof.

6.10.2 Amount. The amount of the performance bond shall be in a face amount of not less than Four Hundred Thousand Dollars (\$400,000). Such bond shall remain in effect during the term of this Agreement and such later date as provided in Section 2.2.04 hereof.

and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by the City shall not release the Company from its obligations or any Liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by the Company or its Guarantor. In addition to the remedies available for material breaches of this Agreement, the City shall have the rights and remedies set forth in this Agreement and all other rights and remedies available to it under applicable law with respect to breaches which do not constitute material breaches of this Agreement.

14.2 Security Fund

14.2.1 Obligation to Maintain. Throughout the term of this Agreement, or for as long as the Company operates the System, whichever period is longer, and for at least ninety (90) days thereafter, the Company shall maintain the Security Fund in the amount specified in Section 14.2.02 hereof or such other amount as may from time to time be reasonably specified by the City in accordance with Section 14.2.02 hereof.

14.2.2 Amount. On or before the Closing, and as a condition precedent to the Closing, the Company shall deposit (to the extent such is not already on deposit) with the Comptroller the amount of One Million Nine Hundred Ninety-five Thousand Dollars (\$1,995,000.00), Seventy-five Thousand Dollars (\$75,000.00) of which shall be provided in cash or City bonds, with the balance in the form of an irrevocable, unconditional letter of credit or other instrument in a form acceptable to the Comptroller and the Corporation Counsel of the City, which letter of credit or other instrument shall in no event require the consent of the Company prior to the collection by the City of any amounts covered by such letter of credit or other instrument. The amount of such cash or City bonds and such letter of credit to be provided to the Comptroller shall constitute the Company's Security Fund. The Company shall be entitled to interest on the cash portion of the Security Fund and to the interest or dividends on any City bonds deposited in lieu of cash at a rate equal to whatever rate the City is actually earning on such cash and/or bonds. At any time during the term of this Agreement, the City may, in its reasonable discretion, require the Company to increase the amount of the Security Fund to an amount it deems appropriate if it finds that additional risk factors exist which necessitate an increase in the amount of the Security Fund, such as an increase in the amount of compensation payments to be made pursuant to Section 9.1 hereof or the failure of the Company to perform any of its obligations pursuant to this Agreement.

14.2.3 Purpose. The Security Fund shall serve as security for: (i) the faithful performance by the Company of all terms and conditions of this Agreement; (ii) any expenditure, damage, or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits, and other directives of the City and the Commissioner issued pursuant to this Agreement; (iii) the payment by the

EXHIBIT 4

**Time Warner Cable of New York City
Western Queens
September 16, 1998**

(“Time Warner Cable Western Queens Franchise”)

required because of the presence of the System in the Streets. Any such alteration shall be made by the Company, at its sole cost and expense, and in a manner prescribed by the City. The Company agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition, in a manner as may be specified by the City, any Street or any municipal structure involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to this Agreement.

6.7 No Obstruction. In connection with the construction, operation, maintenance, repair, upgrade, or removal of the System, the Company shall not obstruct the Streets, subways, railways, passenger travel, river navigation, or other traffic to, from, or within the District without the prior consent of the appropriate authorities.

6.8 Movement of Wires. The Company shall, upon prior written notice by the City or any Person holding a permit to move any structure, temporarily move its wires to permit the moving of said structure. The Company may impose a charge on any Person other than the City for any such movement of its wires.

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6.10.2 Amount. The amount of the performance bond shall be in a face amount of not less than Four Hundred Thousand Dollars (\$400,000). Such bond shall remain in effect during the term of this Agreement and such later date as provided in Section 2.2.04 hereof.

6.10.3 Indemnification. The performance bond shall indemnify the City, up to the full face amount of the bond, for: (i) the cost to continue any upgrade of the System in the District and to maintain operation of the System following a termination of this Agreement up to the date upon which the face amount of the bond, plus all net revenue actually received through the continued operation of the System during said period, have been exhausted; (ii) any loss or damage to any municipal structure during the course of any construction of the System; (iii) any other costs, or loss or damage

Company or its Guarantor. In addition to the remedies available for material breaches of this Agreement, the City shall have the rights and remedies set forth in this Agreement and all other rights and remedies available to it under applicable law with respect to breaches which do not constitute material breaches of this Agreement.

14.2 Security Fund

14.2.1 Obligation to Maintain. Throughout the term of this Agreement, or for as long as the Company operates the System, whichever period is longer, and for at least ninety (90) days thereafter, the Company shall maintain the Security Fund in the amount specified in Section 14.2.02 hereof or such other amount as may from time to time be reasonably specified by the City in accordance with Section 14.2.02 hereof.

14.2.2 Amount. On or before the Closing, and as a condition precedent to the Closing, the Company shall deposit (to the extent such is not already on deposit) with the Comptroller the amount of One Million Eight Hundred Ninety Thousand Dollars (\$1,890,000.00), Seventy-five Thousand Dollars (\$75,000.00) of which shall be provided in cash or City bonds, with the balance in the form of an irrevocable, unconditional letter of credit or other instrument in a form acceptable to the Comptroller and the Corporation Counsel of the City, which letter of credit or other instrument shall in no event require the consent of the Company prior to the collection by the City of any amounts covered by such letter of credit or other instrument. The amount of such cash or City bonds and such letter of credit to be provided to the Comptroller shall constitute the Company's Security Fund. The Company shall be entitled to interest on the cash portion of the Security Fund and to the interest or dividends on any City bonds deposited in lieu of cash at a rate equal to whatever rate the City is actually earning on such cash and/or bonds. At any time during the term of this Agreement, the City may, in its reasonable discretion, require the Company to increase the amount of the Security Fund to an amount it deems appropriate if it finds that additional risk factors exist which necessitate an increase in the amount of the Security Fund, such as an increase in the amount of compensation payments to be made pursuant to Section 9.1 hereof or the failure of the Company to perform any of its obligations pursuant to this Agreement.

14.2.3 Purpose. The Security Fund shall serve as security for: (i) the faithful performance by the Company of all terms and conditions of this Agreement; (ii) any expenditure, damage, or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits, and other directives of the City and the Commissioner issued pursuant to this Agreement; (iii) the payment by the Company of all Liabilities which the City has been compelled to pay or incur by reason of any act or default of the Company, and all other payments due the City from the Company pursuant to this Agreement; (iv) the loss of any payments required to be made by the Company to the City which would have been received by the City but for the Company's failure to perform its obligations pursuant to this Agreement, during the period of time between the Company's unexcused or uncured failure to perform and the date on which the City takes over, or authorizes any other Person to take over, the construction, operation, or maintenance of a Cable Communications System in the District necessitated by such failure; (v) any costs incurred by the City in connection with

EXHIBIT 5

**LENGTHS OF FIBER-OPTIC CABLE IN PLACE AND ULTIMATELY REQUIRED
FOR PASSAGE OF ALL RESIDENCES IN NEW YORK CITY**

[[BEGIN PROPRIETARY]]

BOROUGH	EXISTING FIBER FEET PLACED	EXISTING FIBER MILES PLACED	ULTIMATE FIBER FEET	ULTIMATE FIBER MILES
Bronx				
Brooklyn				
Manhattan				
Queens				
Staten Island				
TOTAL				

[[END PROPRIETARY]]

EXHIBIT 6

LIVING UNITS AND BUILDINGS IN CITY (BY CATEGORY)

of Living Units Per Building *

BOROUGH	1	2	3	4	5 to 12	13 to 49	50 to 99	100 +
Bronx	52217	86957	23863	597	17447	86906	94852	111808
Brooklyn	161773	289183	87882	26437	112572	77759	52567	119037
Manhattan	805	1495	5140	5835	76272	220341	106425	350544
Queens	195374	211630	65201	13626	39984	41071	60846	165784
Staten Island	88233	67401	3325	2300	2295	3666	3366	14228
TOTAL	498402	656666	185409	48793	248570	429743	318056	761401

of Buildings *

BOROUGH	1	2	3	4	5 to 12	13 to 49	50 to 99	100 +
Bronx	52217	43478	7954	149	2319	3509	1695	473
Brooklyn	161773	144592	29294	6609	16629	4709	1433	637
Manhattan	805	748	1713	1459	9124	9461	1678	1354
Queens	195374	105815	21734	3406	6239	1944	994	787
Staten Island	88233	33700	1108	575	323	121	37	59
TOTAL	498402	328333	61803	12198	34634	19744	5837	3310

* 2007 Lot Info Data - aggregated from the NYC Department of City Planning

EXHIBIT 7

**PERCENTAGE OF NEW YORK CITY LIVING UNITS IN
SINGLE-FAMILY UNITS (“SFUs”) AND MULTIPLE DWELLING UNITS (“MDUs”)
(BY BOROUGH)**

BOROUGH	PERCENTAGE	
	SFU	MDU
Bronx	29.32%	70.68%
Brooklyn	48.64%	51.36%
Manhattan	0.30%	99.70%
Queens	51.29%	48.71%
Staten Island	84.21%	15.79%
TOTAL	36.70%	63.30%

EXHIBIT 8

**TIME REQUIRED FOR ISSUANCE OF
ORDERS OF ENTRY UNDER PUBL. SERV. L. § 228**

CASE NO.	DATE OF PETITION	DATE OF ORDER	TIME ELAPSED
06-V-0084	01/19/06	05/30/06	4+ months
04-V-0736	06/14/04	09/26/05	15+ months
04-V-0010	01/12/04	02/15/05	13 months
04-V-0047	01/16/04	09/02/04	7+ months
04-V-0048	01/16/04	09/02/04	7+ months
04-V-0049	01/16/04	09/02/04	7+ months
03-V-1784	12/23/03	09/02/04	8+ months

EXHIBIT 9

**NEW YORK CITY NEIGHBORHOODS IN WHICH FTTP FACILITIES
HAVE ALREADY BEEN DEPLOYED BY VERIZON (AS OF MARCH 2008)**

BRONX
Williamsbridge Olinville Woodlawn Wakefield Eastchester Edenwald Norwood Bronxdale Laconia Baychester
BROOKLYN
Canarsie Clinton Hill Bensonhurst East Crown Heights North Brooklyn Heights - Cobble Hill Homecrest Williamsburg Fort Greene DUMBO-Vinegar Hill-Downtown Brooklyn-Boerum Hill Crown Heights South Bedford Gravesend North Side - South Side Flatlands Georgetown-Marine Park-Bergen Beach-Mill Basin Prospect Heights Madison
MANHATTAN
Battery Park City-Lower Manhattan Chinatown East Harlem North East Harlem South East Village Hudson Yards Chelsea Flatiron-Union Square Lenox Hill - Roosevelt Island Lower East Side Midtown - Midtown South Upper East Side - Carnegie Hill Yorkville

EXHIBIT 9

QUEENS
Fresh Meadows – Utopia Glen Oaks-Floral Park-New Hyde Park Laurelton Rosedale Springfield Gardens S-Brookville Douglaston Manor-Douglaston-Little Neck Auburndale Bayside - Bayside Hills Breezy Point-Belle Harbor-Rockaway Park-Broad Channel Ft. Totten-Bay Terrace-Clearview Oakland Gardens
STATEN ISLAND
Stapleton – Rosebank Port Richmond Charleston-Richmond Valley-Tottenville New Brighton - Silver Lake Grymes Hill-Clifton-Fox Hills Old Town-Dongan Hills-South Beach Westerleigh Oakwood - Oakwood Beach Grasmere-Arrochar-Fort Wadsworth New Springville-Bloomfield-Travis Todt Hill-Emerson Hill-Heartland Village-Lighthouse Hill New Dorp - Midland Beach Arden Heights Rossville - Woodrow Great Kills Mariners Harbor-Arlington-Pt. Ivory-Granitville Annadale-Huguenot-Prince's Bay-Eltingville West New Brighton-New Brighton-St. George

EXHIBIT 10

DECLARATION OF CHRISTOPHER D. LEVENDOS

1. My name is Christopher D. Levendos. I am the Executive Director of New York City FiOS Franchise Management for Verizon New York Inc. (“Verizon”). My organization, which includes over 2,000 managers and associates, is responsible for the maintenance, repair, augmentation, and expansion of, and upgrades to, Verizon’s outside plant network in New York City (the “City”). In particular, we are responsible for building the Fiber to the Premises (“FTTP”) network that is now being deployed by Verizon in the City. That network is currently being used to deliver high-speed Internet service to residents of the City, and will also be used to deliver video programming to subscribers following the confirmation of Verizon’s cable television franchise agreement (“Agreement”) with the City. I submit this Declaration in support of Verizon’s petition for limited waivers of certain Commission rules.

2. The City’s 8 million people live in some 3.15 million households. A number of steps will be required in order to enable Verizon to offer service to those households over an FTTP network. *First*, video server equipment will have to be installed in each of the 66 Verizon wire centers that currently provide telephone service in the City in order to convert them into Video Serving Offices (“VSOs”).

3. *Second*, fiber-optic distribution facilities will have to be run past all of the residence locations in the City. A total of 6,602 fiber miles of distribution cable will have to be installed, of which slightly under 700 miles have already been placed to support non-video FiOS applications. *See* Exhibit 5 to Verizon Statement of Basis and Rationale for Limited Waivers (the “Statement”).

EXHIBIT 10

4. Much of this distribution plant — approximately 35% — will be installed underground. (In Manhattan, of course, *all* of the outside plant facilities in the public right-of-way will be underground.) The installation of underground cable is in general far more time-consuming and expensive than installation on poles, and this is particularly the case in the crowded underground environment of Manhattan and other parts of the City. In many locations, sufficient space is not available in existing conduit systems, and new conduit will have to be installed to support FTTP deployment. In some cases, particularly in the outer boroughs, cable has to be installed on private property (*e.g.*, back yards shared by a number of homes) rather than over or under public streets, which can create difficult access issues.

5. Construction work in the City that involves opening of streets requires a permit from the City's Department of Transportation ("DOT"), and DOT permits typically contain a variety of "stipulations" that restrict the time, place, or manner of the construction activity that may be carried on in particular locations, thus slowing construction.

6. *Third*, in order to make service available, each residence unit must not only be passed by FTTP cable, but must be "network created." In other words, outside plant facilities must be extended into the building from the street (or backyard) in which those facilities are located, in-building wiring and terminating electronics must be installed, and the outside plant must be connected to the in-building facilities. The technical and administrative work involved in network creation varies widely because of the diversity of types of living units that are found in the City.

7. The over-eight million residents of the City live in a variety of different types of structures, ranging from single-family units ("SFUs") to multiple dwelling units ("MDUs") with 100 or more apartments, amounting in total to almost a million individual buildings. Over

EXHIBIT 10

130,000 of those buildings are MDUs, and they contain some 63% of the households in the City. *See Exhibits 6 and 7 to this Statement.* (For purposes of Exhibit 7, SFUs are defined as buildings with one or two living units; all other buildings are listed as MDUs. This is the same definition as is used in the Agreement.)

8. These MDUs vary widely by age, layout, construction type, the availability of space and power to support various types of installations, and in various physical factors that may affect the placement of cable and electronics in the buildings. For these reasons, the network creation architectures and techniques cannot be fully standardized. In some buildings, an “SFU-like” architecture is employed, and the fiber is terminated at Optical Network Terminals (“ONTs”) located in each apartment. In other buildings, the fiber optic facilities run to a passive fiber terminating hub in the building’s basement, and from there to terminating electronics located in utility closets on every floor or every other floor. In still other buildings, the terminating electronics are in the basement and signals are carried to individual apartments over existing copper riser cable. The impossibility of utilizing a single, standardized in-building service architecture increases the difficulties of providing service to MDUs.

9. Merely obtaining access to an MDU for the purpose of network creation can be a time-consuming process. For example, many building owners have entered into “exclusive marketing” or “bulk billing” arrangements with cable providers that may give them considerable incentive to try to exclude overbuilders such as Verizon. Owners and managers of MDUs may also be concerned about the disruption caused by in-building construction activities, and about the aesthetic impacts of placing new cable and facilities in a building’s common areas.

10. Considerable time may be required in order to negotiate with the building owner/manager and to perform the construction activities that are necessary for network creation

EXHIBIT 10

in an MDU. The process involves the following steps, each of which can be considerably delayed by lack of cooperation from the owner or manager:

- A Verizon MDU Specialist contacts the owner or manager, in person or over the phone, in order to introduce FiOS, explain what Verizon seeks to do, and to set up an appointment for a site survey.
- If access can be obtained for a site survey, a Verizon engineer reviews the property to evaluate deployment obstacles. This review entails identifying a pathway into the building from facilities in the public right-of-way; determining whether and how much space is available in common equipment rooms; surveying available conduits and risers in the building; determining whether any hazardous materials are present in construction areas; identifying potential pathways from equipment closets to individual units; evaluating the type, condition, and location of existing wiring in the building; determining whether and where space and power are available; and taking into account the proximity of other buildings on the same underlying parcel of real estate.
- Based on this information, a high-level design is created and reviewed with the owner/manager. If the owner/manager objects to the design, Verizon may have to develop alternative designs.
- If Verizon and the landlord are able to agree on a high-level design, a proposed agreement is sent to the landlord. Negotiations may be required over the details of the agreement. If an agreement can be reached, however, Verizon will proceed to develop a detailed design. Finally, a walk-through is scheduled and carried out and, if the owner/manager agrees to the plans, Verizon obtains approval to proceed.
- It is only *after* this process is completed that construction work is scheduled, permits are requested, entry facilities are secured, common area equipment is placed, and path creation is completed. Fiber is then pulled to each unit (assuming that the SFU-like architecture is to be utilized), final connections are made, and testing is completed. During this process, owner/managers may stop work for a variety of reasons.

11. Verizon's experience has been that this process — from the initial contact with the owner/manager to the signing of an agreement— takes an average of **[[BEGIN PROPRIETARY]]** **[[END PROPRIETARY]]**. An additional **[[BEGIN PROPRIETARY]]** **[[END PROPRIETARY]]** may be required before the building is network-created and Verizon is ready to accept orders.

EXHIBIT 10

12. Because of the difficulties and delays involved in obtaining access to MDUs, it would simply be impossible for Verizon to accept an unconditional obligation to network-create *all* MDUs in the City within a five-year period for a complete standard installation inventory. Because of the negotiation process described above, the timing of the network creation process is in large part outside of Verizon's control.

13. Verizon expects to be able to offer service to approximately **[[BEGIN PROPRIETARY]]** **[[END PROPRIETARY]]** of the living units in the City, within standard installation intervals, by mid-2009. (An even larger number would be able to obtain service within non-standard intervals.)

EXHIBIT 10

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

/s/
CHRISTOPHER LEVENDOS

May 2, 2008

EXHIBIT 11

DECLARATION OF ROBERT WHEATLEY II

1. I am an Executive Director — Financial Planning & Analysis for Verizon Services Corporation. My specific responsibilities relate to the FiOSsm services offered by Verizon operating companies, including Verizon New York Inc. (“Verizon”), and include internal reporting of FiOS data and the financial evaluation of “business cases” relating to proposed FiOS initiatives. In particular, I was responsible for developing the financial analysis that contributed to Verizon’s decision to seek a cable television franchise in the City of New York (“City”). I submit this declaration in support of Verizon’s petition for limited waivers of certain regulations of the New York Public Service Commission (the “Commission”).

2. I was asked for purposes of this Declaration to analyze the capital requirements for a complete five-year build out, encompassing the extension of Verizon’s FTTP network so that it passes all living units in the City, and “network creation” of all such units (including both single-family units (“SFUs”) and multiple dwelling units (“MDUs”)). Such a build-out would enable Verizon, by the end of the five-year period, to provide cable television service to any resident of New York within the Standard Installation Interval defined by Verizon’s Franchise Agreement with the City (the “Agreement”). This five-year scenario is purely hypothetical, and does not correspond to any build-out that Verizon would undertake pursuant to the Agreement if the Agreement is approved by the Commission.

3. The analysis took into account all of the categories of capital costs that would be incurred in completing such a hypothetical build-out, including but not limited to the capital costs associated with placing fiber and network-creating MDUs. However, it was intentionally limited to “non-success-related” costs; in other words, to costs that Verizon would incur whether or not

EXHIBIT 11

it signed up any customers for its video services. Thus, the analysis developed the minimum “baseline” capital expenditures that Verizon would incur in building out its network. For example, capital costs associated with functions such as installing service for a new customer were excluded from the analysis. The result was a highly conservative assessment of the capital requirements of a complete five-year build-out.

4. The inputs to the analysis were developed by Verizon’s Network Engineering organizations and other organizations with responsibility for functions relevant to the build-out. These were the same inputs that were used for Verizon’s internal financial analyses of various build-out scenarios.

5. After determining the capital costs associated with the hypothetical build-out scenario, I compared them, year by year, with Verizon’s capital budget for the entire state of New York, making the conservative assumption that such budget would remain constant over the entire five-year period.

6. The capital costs associated with the build-out, the State capital budget, and the percentage of the former as a percentage of the latter, for each of the five years of the hypothetical build-out, are shown in the table below. **[[BEGIN PROPRIETARY]]**

	2008	2009	2010	2011	2012
Req’d Cap Ex					
NY Cap. Budget					
Percentage					

[[END PROPRIETARY]] The analysis shows that the hypothetical build-out costs are

[[BEGIN PROPRIETARY]]

[[END PROPRIETARY]].

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7. Diversion of such large amounts of capital to one project would unacceptably compromise other capital expenditure priorities in New York; acquisition of the necessary amount of additional capital from external sources would require an assumption of additional debt by Verizon that would be highly imprudent in view of the risks of a compressed (five-year), unconditional build-out that takes no account of the risks of lower-than-expected demand.

8. The financial feasibility of a complete five-year build-out must also be evaluated in terms of the risk that such a build-out imposes. Verizon will be investing in a video-capable network in the City with the expectation of earning incremental revenues that will, over an appropriate period, pay off the costs of the investment and earn a level of net return that will be consistent with the expectations of the market. Verizon believes that it can achieve that objective pursuant to the terms and conditions of the Agreement. However, every investment entails risk. Verizon's market penetration and revenue expectations may not be realized — either because customers are more strongly wedded to their current providers than Verizon believes, or because the challenges of MDU access are greater than anticipated, or because macroeconomic conditions over the next several years depress consumer demand generally, or because new and unforeseen technological options displace consumer demand for conventional cable service.

9. A complete and unconditional build-out within a five-year period would create an inordinately large risk because it would require Verizon to commit to enormous levels of capital investment before it can know whether its expectations will be fully realized — or even realized to an extent that will permit a reasonable return to be earned within a reasonable period of time. Assuming such a risk simply would not be consistent with the reasonable expectations of Verizon's investors.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.


ROBERT WHEATLEY II

May 2, 2008

EXHIBIT 12

DECLARATION OF ISAAC A. MADERA

1. My name is Isaac A. Madera. I am the Director of National PEG Implementation for Verizon Communications, Inc. I supervise a team that is responsible for the project management of the timely acquisition and broadcast of required Public, Educational and Government (“PEG”) channels for all local franchises secured for Verizon video services.

2. Under the cable television franchise agreement (the “Agreement”) between Verizon New York Inc. (“Verizon”) and the City of New York (the “City”), Verizon will initially provide 25 PEG Access channels, and will ultimately provide up to 53 PEG Access channels in total. The Agreement contemplates that these PEG channels will be delivered over a direct connection. Direct connection will enable the transmission of live as well as prerecorded programming, exceeding the minimum New York regulatory requirement of “tape playback” PEG programming.

3. Direct connect PEG programming requires the design and construction of a physical network connection between the PEG content origination facility (the “local build site” or “origination point”), where the PEG programming is produced, and Verizon’s Video Hub Office (“VHO”), where all of the video programming for Verizon’s network is configured and combined for transmission to Verizon subscribers. More specifically, the Agreement contemplates that Verizon will build facilities from the LFA PEG studio to the VHO in order to permit the real-time transmission of PEG program content to viewers. In this case, the Local Franchising Authority (“LFA”) studio has full discretion and control of the programming provided to the customer.

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4. In contrast, “tape playback” programming does not require a physical connection between the PEG content origination facility and Verizon’s VHO. Instead, PEG programming is pre-recorded at a PEG content origination facility and recorded material is delivered to the Verizon VHO for scheduling, playback and broadcast of the PEG programming over the FiOS Video network.

5. In order to build and activate a direct connection PEG channel within Verizon’s video network, three major tasks must be accomplished: (a) detailed network design, (b) physical network construction, and (c) video provisioning and end-to-end verification of the PEG signal. As the Agreement reflects, it is Verizon’s best estimate that, in total, this process will take approximately 180 days to complete for the first 25 PEG channels.

Detailed Network Design (Estimated 21 Days to Completion)

6. Verizon has estimated that completion of the detailed network design step will require approximately 21 days.

7. As part of the network design process, Verizon engineers must conduct an engineering site survey at each local PEG origination point. The site survey will enable Verizon engineers to identify all of the facilities needed (end-to-end) to provision the services. For example, the engineers will assess whether connecting the origination point to the VHO will require the extension of Verizon’s feeder or backbone fiber, or augmentation of the equipment at the VHO.

8. For each local PEG origination point, the engineers will then evaluate the resources needed to construct the network, create material lists, and issue work orders. The engineers will also generate and record detailed engineering drawing and design documents for each local PEG origination point.

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9. The network design must be completed before construction begins, because Verizon's engineers rely on the information compiled in the network design phase to construct the network necessary for direct connection.

Network Construction (Estimated 145 Days to Completion)

10. Verizon has estimated that network construction will require approximately 145 days. Network construction proceeds on two parallel tracks: the physical construction necessary to connect the PEG origination point to the VHO ("local build") and the engineering, equipment procurement and configuration within the VHO ("internal build").

11. The time required to complete the local build to each PEG origination point may vary depending on the existing infrastructure at the site. For all sites, completion of the local build has several components. In the first phase, network creation, Verizon engineers must complete facility construction from the content origination site (*i.e.*, the "studio") to the appropriate point of connection on the Verizon network. This point of connection may be an existing wirecenter, a newly enabled VSO or the VHO, where Verizon configures channels for broadcast to its customers. At some sites, this may include installation of fiber backbone where none currently exists or augmentation of existing routes. This local build also involves extensive cross-functional activities requiring work by Outside Plant Engineering, Construction, and possibly external vendors both to prepare the content origination site and to ensure the proper connection of the content origination site to the VHO.

In the second phase, circuit provisioning, engineers must install any equipment and complete any additional work needed to prepare the PEG origination point to accept, process and transmit the video signal from the direct connect facility.

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12. The internal build within the VHO will proceed in parallel to the local build in order to establish the ability to broadcast direct connect PEG Programming to the Verizon customers for the first 25 PEG Access channels.

13. In order to broadcast a single PEG Access channel, Verizon must design and groom the PEG channel through the VHO equipment for transmission to the customer. This is a substantial undertaking wherein Verizon must ensure the integrity of existing services to Verizon's current FiOS subscribers in other parts of the State while configuring new channels for the City of New York.

14. In order to implement the PEG provisions in the Agreement, the local build will proceed simultaneously at up to 25 different local PEG origination points. Concurrently, Verizon and its vendors will work to complete internal build for 25 separate channels simultaneously at the VHO.

Video Mapping and End-to-End Verification (Estimated Completion 14 Days)

15. Verizon has estimated that completion of video mapping and end-to-end testing — the third and final step necessary in the process to implement direct connection PEG programming — will take approximately 14 days.

16. Once network construction is complete, Verizon must map all of the content from each origination point (PEG station) to the specific Video Serving Offices ("VSO"), or wire center(s), serving the LFA in which the origination point is located. Extensive engineering and "mapping" is required because the content initially flows from the origination points to the VHO, where it is then transmitted to the VSOs for broadcast to the subscriber. At the VHO, local PEG channels are inserted among national and local broadcast channels, advertisements, emergency alert messages, and other programming, yielding the final channel lineup received by each

EXHIBIT 12

subscriber. Verizon maintains a single VHO for the entire Downstate region of New York State. The final video content leaving the VHO will vary according to the locality served and must therefore be properly engineered and provisioned through the VHO for transmission back to each individual locality. This is accomplished by routing the transmission through the VSOs serving each of the municipalities

17. At the VSOs, Verizon combines its cable television signals with its voice and high-speed internet services before sending the signals effectively as one package to Verizon's subscribers.

18. In New York City, Verizon will have to provision the initial 20 Public Access channels and 5 City channels to over 60 VSOs providing service in New York City.

19. Finally, Verizon must validate end-to-end channel integrity and assignment to ensure, among other things, that subscribers who wish to access PEG programming can do so easily and accurately.

20. In short, the delivery of PEG Access programming over a direct connection requires substantially greater preparation than "tape playback" programming. While "tape playback" programming might be accomplished on the effective date of the Agreement, the establishment of direct connect PEG programming pursuant to the Agreement will require all of the steps outlined above, and will require approximately 180 days of preparation and construction, measured either from the effective date of the Agreement or from the date the City identifies to Verizon the location of each PEG channel origination site and enables performance of a technical site survey.

21. To date, Verizon has only received a partial list of the numbers and locations of City production facilities — *i.e.*, the origination points for the direct-feed to the City's initial 25

EXHIBIT 12

PEG channels. The City continues to work with Verizon at this time in a collaborative effort as it gathers the information necessary to accurately disclose the number and location of City production facilities. Yet, this process requires time. Given the many complexities of negotiating and implementing a City-wide franchise to best serve the City's interests, this collaborative process is simply not complete. Until the City and Verizon are able to ascertain the number and location of the City's production facilities, Verizon cannot reasonably begin to provision direct-connect PEG channels.

22. For the reasons set forth above, it is technically infeasible for Verizon to make direct connect PEG Access programming available on the effective date of the Agreement for the first 25 PEG Access channels that Verizon will be providing to the City.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



ISAAC A. MADERA

May 1, 2008

EXHIBIT 13

RULES FOR WHICH WAIVERS ARE REQUESTED

Five-Year Build-Out

16 NYCRR § 895.5(b)(1): “Where a cable television franchise is awarded, renewed or amended after October 1, 1982, the franchise will be confirmed or the amendment will be approved by the commission only if the franchise contains the following additional minimum franchise standards: (1) That, within five years after receipt of all necessary operating authorizations, cable television service will be offered throughout the authorized area to all subscribers requesting service in any primary service area.”

16 NYCRR § 895.5(c): “All cable television companies operating in the State of New York shall make cable television service available to all potential subscribers requesting service . . . within the following schedule of compliance: . . . within five years from the date the certificate of confirmation was granted by this commission”

Description of Anticipated Stages of Completion

16 NYCRR § 895.1(b): “A franchise will be confirmed or approved by the commission only if it contains provisions in substantial compliance with the following: . . . For an initial franchise, a full description of the system proposed for construction, which shall indicate the specific geographical areas to be wired, and the location of all trunk and feeder plant. The description shall indicate anticipated stages of completion of construction at six-month intervals for the entire franchise area”

Installation Intervals

16 NYCRR § 895.5(b)(3): “Where a cable television franchise is awarded, renewed or amended after October 1, 1982, the franchise will be confirmed or the amendment will be

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approved by the commission only if the franchise contains the following additional minimum franchise standards: . . . That cable television service will be provided to any subscriber who demands service within seven business days of the request for service and who is located within 150 feet of aerial feeder cable, and that the charge for the installation for any subscriber so situated will not be in excess of the standard installation charge.”

16 NYCRR § 890.91(b)(1): “All cable television systems under normal operating conditions, shall meet no less than 95 percent of the time, measured on a quarterly basis, the following service standards: standard installations of up to 150 feet from existing aerial distribution plant shall be performed within seven business days after an order is placed unless a subscriber requests a particular date beyond seven business days . . .”

“First Day” PEG-channel availability

16 NYCRR § 895.1(f): A franchise must contain a “provision describing the channel capacity and facilities, equipment and support for public, educational and governmental (PEG) access which requirement may be fulfilled by reference to the minimum standards set forth in section 895.4 of this Part.”¹

¹ Although neither § 895.1(f), nor any provision of the Public Service Law, nor the Commission’s PEG rule (895.4) impose a specific “first day” requirement for PEG channel capacity, the Commission has interpreted its rules to require franchisees to make service consistent with the Commission’s minimum PEG standards available as of the effective date of the franchise agreement. *See, e.g.*, Case 05-V-1263, Order and Certificate of Confirmation [Massapequa Park] (issued and effective December 15, 2005), at 21 (“ . . . Verizon is required to provide PEG access capability at the same time it offers cable television service to the Village”); Case 07-V-1017, Order and Certificate of Confirmation [Poquott] (issued and effective September 21, 2007, at 4 (“the franchisee is required to provide PEG access channels on the effective date of the franchise”). Accordingly, Verizon is seeking a waiver of §§ 895.1(f) and 895.4 *to the extent that* such rules require PEG channels to be made available on the effective date of the franchise agreement.

EXHIBIT 14

**NEW YORK CITY'S SOLICITATION OF PROPOSALS
FOR CABLE TELEVISION FRANCHISES**

THE CITY OF NEW YORK
DEPARTMENT OF INFORMATION TECHNOLOGY
AND TELECOMMUNICATIONS

OPEN-ENDED, NON-EXCLUSIVE SOLICITATION OF PROPOSALS FOR
CABLE TELEVISION FRANCHISES PURSUANT TO WHICH CABLE
TELEVISION SERVICES WILL BE MADE AVAILABLE TO HOUSEHOLDS
THROUGHOUT THE CITY OF NEW YORK

AGENCY CONTACT:

JEAN BLANC, DEPUTY AGENCY CHIEF CONTRACTING OFFICER
75 PARK PLACE, 9TH FLOOR
NEW YORK, NEW YORK 10007
TELEPHONE: (212) 788-6236
E-MAIL: acco@doitt.nyc.gov

RELEASE DATE: APRIL 11, 2008

2008-013856

SECTION 1. INTRODUCTION.

(a) Legal and Procedural Background. Sections 894.5 through 894.8 of Title 16 of the New York State Codes, Rules and Regulations set forth procedures for the solicitation, submission and consideration of applications for franchises for the provision of cable television service in the State of New York (the “State Rules”). Consistent with said State Rules and pursuant to Section 363 of the New York City Charter (“the Charter”), the Council of the City of New York (“the Council”) adopted, on September 27, 2006, an authorizing resolution (Resolution No. 538, attached hereto as “Appendix A”, referred to hereinafter as the “Authorizing Resolution”) authorizing the Department of Information Technology and Telecommunications (“DoITT”) of the City of New York (“the City”) to grant non-exclusive franchises for the provision of cable television services. Section 1072 of the Charter grants DoITT the power to, among other things, develop and issue solicitations of proposals for franchises such as those for cable television services, consistent with the Authorizing Resolution. Pursuant to said Charter Section 1072 and the Authorizing Resolution, and in conformance with the State Rules, DoITT hereby issues this solicitation (this “Solicitation”) seeking proposals for franchises for the provision of cable television services to be made available throughout the City. For the purposes of this Solicitation, “cable television services” shall have the meaning set forth therefor in the Authorizing Resolution.

(b) Generally. In 1970, the City of New York (the “City”) granted two franchises pursuant to which cable television service was offered in, respectively,

the northern and southern halves of the borough of Manhattan. These franchises were renewed on revised terms in 1990 and again in 1998, and cable television service continues to be offered pursuant to these agreements as they have been revised, and the franchisee interest therein transferred, from time to time. In 1983, the City granted several franchises pursuant to which cable television service was offered in the Bronx, Brooklyn, Queens and Staten Island. These franchises were renewed on revised terms in 1998, and cable television service continues to be offered pursuant to these agreements, as they have been revised, and, in some cases, the franchisee interest therein transferred, from time to time.

The required geographical service areas of these franchises were originally designated by the City such that for every such service area in the City there would be one provider who would be required to offer cable TV service to all households in the service area. From their commencement, these franchises have been non-exclusive, so that each franchisee could have, in its discretion, provided, or asked the City for permission to provide, service not only in the areas of the City to which such franchisee was required to offer service but also to other areas of the City in competition with the franchisee who was required to build that area. However, each of the existing cable television service franchisees in the City has, to date, chosen to provide service only within the geographical area in which it was required by the terms of the franchise to provide service and not to pursue competition with competing franchisees in other areas in the City. A result has been that competition in the provision of

multi-channel video service in the City has been limited to providers who do not hold cable television franchises, such as direct broadcast satellite providers (for example, Direct TV and Dish Network) who, because they do not run cables through City streets, do not need a franchise. Such non-franchised systems and technologies often have some disadvantages for consumers (for example, direct broadcast satellite service requires the placement at the premises of an external satellite dish with an applicable line of site to a geo-synchronous earth-orbiting satellite, which placement is not always practicable for New York City households).

The City has long been interested in finding a cable TV service provider who would be willing to commit to offering competitive franchised cable TV service, in competition with existing franchisees, to all households in the City. In recent months, Verizon New York Inc. has indicated to DoITT that it is interested in offering competitive cable television service around the City, and in discussions regarding this concept, Verizon has indicated its preparedness to commit to offer such competitive service to all households in the City, within a specified time frame, subject only to certain limited exceptions for matters beyond its control and similar matters. In order to allow Verizon and DoITT to present, to the City's Franchise and Concession Review Committee and the New York State Public Service Commission, a proposal for a franchise that would reflect these concepts, as well as to allow others who may be interested, or from time to time become interested, in similarly committing to offer competitive cable television service to all households in the City, DoITT is issuing this Solicitation.

(c) Open-ended, Non-Competitive Solicitation. Because cable television services franchises are by law and contract non-exclusive, and because City streets can accommodate cabling by multiple potential providers, this Solicitation is being structured in a *non-competitive* and *open-ended* format. That is, DoITT is *not* seeking to choose a best single proposal from among a group of competing proposals submitted by a specified deadline. To the contrary, any entity who, at any time during the period this Solicitation is outstanding (see Section 3 hereinafter), is ready, willing and able to come forward to meet the conditions described in this Solicitation will be given the opportunity (regardless of whether previous franchises have been granted pursuant to this Solicitation) by DoITT to negotiate or complete a proposed form of franchise that will then be subject to review and approval, pursuant to the City Charter, by the City's Franchise and Concession Review Committee (and, if thus approved, by the New York State Public Service Commission). Based on discussions to date with Verizon, DoITT anticipates that Verizon will be responding to this Solicitation very shortly with a proposal consistent with the conditions described herein. However, one or more cable TV franchises consistent with the terms of this Solicitation may also be granted to one or more others as and when proposals consistent with this Solicitation are submitted by proposers as they wish from time to time (and subject to FCRC and PSC approval), whether before or after Verizon submits its anticipated response. In any event, the grant of one or more franchises pursuant to this Solicitation, to

Verizon and/or others, shall not preclude the City's simultaneous or subsequent grant of additional franchises pursuant to this Solicitation.

(d) Other Solicitations May Be Issued. This particular Solicitation is intended to solicit proposals from entities ready, willing and able to commit to offer cable television service to all households in the City within a specified time period (a proposal for such time period shall be included in any proposal submitted in response to this Solicitation, as further set forth in Section 5(a) hereof), subject only to certain limited exceptions for matters beyond its control and similar matters. DoITT recognizes that such a commitment is one that will require very substantial levels of investment, and thus very substantial financial wherewithal. The issuance of this Solicitation does not however preclude DoITT from issuing in the future one or more additional solicitations for proposals for cable television service franchises, which may include a different combination of terms and conditions which may thus be of more interest to entities that are not in a position to seek or obtain a franchise consistent with this particular Solicitation. For example, some entities in the City have been certified by the Federal Communications Commission as "open video system" providers, a method of providing multichannel video service which incorporates elements of both common carrier and cable television systems and which requires a provider to make available when sought up to two-thirds of its system's channel capacity to unaffiliated programmers. DoITT is currently considering the issuance of a further solicitation, in addition to this one, that would include appropriate terms and conditions for certified open video system providers to be recommended for

a franchise for provision of cable television service, consistent with federal and state law. DoITT may also consider yet other forms of cable television service franchise for solicitation as well. In addition, the existing franchises for provision of cable TV service in the City, all of which were renewed on revised terms for 10-year periods in 1998, are scheduled to expire later this calendar year. The franchisees under such existing franchises have, as has become standard practice, invoked the procedures set forth in federal law for review by the City of possible renewal of such existing franchises.¹ In accordance with City, state and federal law, the City may be issuing a further solicitation for provision of cable television services which solicitation would be applicable to the holders of the 1998 franchises and would if issued reflect terms and conditions appropriate for renewal franchises consistent with City, state and federal law.

SECTION 2. NON-EXCLUSIVITY; NATURE OF FRANCHISE.

Any franchise award or awards issued pursuant to this Solicitation will be non-exclusive. As noted above, DoITT also reserves the right to issue additional solicitations of the same or similar effect in the future. As provided under Section A. of the Authorizing Resolution, any franchise or franchises granted pursuant to this Solicitation shall be for the provision of cable television services in the City and may include reference to any one or more of the following activities: construction, installation, use, operation and/or maintenance of cable, wire, and/or optical fiber and associated equipment on, over and under the inalienable

¹ See 47 USC Section 546.

property of the City (including through pipes, conduits and similar improvements thereto) for said provision of cable television services in the City.

SECTION 3. SOLICITATION TIMETABLE AND SUBMISSION PROCEDURE

The release date of this Solicitation is set forth on the cover page of this Solicitation. Proposals² in response to this Solicitation may be submitted at any time during the period this Solicitation remains open. Each proposal received will be reviewed on its own merits in accordance with the evaluation criteria described in Section 6, and the fact that one or more other franchises have previously been granted pursuant to this Solicitation will not be a factor in such evaluation. Proposals are to be submitted in hard copy form (and as further detailed in Section 6(b) below) to the contact person identified on the cover page of this Solicitation at the address specified on the cover page. It is anticipated (as of the release date of this Solicitation) that this Solicitation will remain open at least until a date one hundred twenty days prior to the scheduled expiration of the Authorizing Resolution (the Authorizing Resolution is currently scheduled to expire on September 27, 2011), although DoITT reserves the right to amend or withdraw this Solicitation prior to such date if circumstances warrant and so long as such amendment or withdrawal would be consistent with state and federal law. Recipients of this Solicitation who have registered, electronically or in writing, their e-mail address or mailing address with DoITT pursuant to Section 8

² Uses of the terms “proposals”, “responses”, “submissions” and “applications” to describe submissions in response to this Solicitation are intended to be interchangeable, that is, no distinction in meaning is intended. Similarly, the terms “proposer”, “respondent” and “applicant” are intended to be interchangeable.

below will receive, at the registering entity's option, e-mail notice at such e-mail address or written notice by mail at such mailing address, of any such amendment or withdrawal.

SECTION 4. GENERAL INFORMATION.

(a) Costs Incurred by Proposers. DoITT shall not be liable for any costs incurred by proposers in the preparation of proposals or for any work performed in connection therewith.

(b) Oral Presentation; Interviews; Additional Information; No Pre-Proposal Conference. Addenda. DoITT may require proposers to give oral or visual presentations in support of their proposals, or to exhibit or otherwise demonstrate the information contained therein. DoITT reserves the right to require the submission of additional information from any proposer. DoITT does not anticipate holding any pre-proposal conference with respect to this Solicitation. Changes to the express terms of this Solicitation will be issued in the form of written Addenda to this Solicitation.

(c) VENDEX; Investigation Provisions; Local Law 34 of 2007; Affirmation.

(i) Proposers are instructed that any grant of a franchise pursuant to this Solicitation will be subject to completion and submission of questionnaires in connection with the City's Vendor Information Exchange System ("VENDEX"), review of the information contained therein by the City's Department of Investigation, and completion of such process in a manner satisfactory to DoITT. DoITT reserves the right, to the extent consistent with applicable law, to decline

to recommend any entity for a franchise if VENDEX produces information which DoITT determines, in its discretion, makes it inappropriate for the City to grant a franchise to such entity pursuant to this Solicitation. Entities that have previously and recently submitted Vendex forms to the City may, per applicable Vendex rules, be subject to more limited filing requirements than those who have not recently submitted Vendex forms.

(ii) Any franchise granted pursuant to this Solicitation will include provisions regarding cooperation with investigations as contemplated by Section 4(b) of Mayoral Executive Order 16 of 1978.

(iii) Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in such Local Law. In order for the City to obtain necessary information to establish the required database, proposers responding to this Solicitation should complete the Doing Business Data Form (see Attachment #1) and return it with this proposal in a separate, sealed inner envelope labeled "Doing Business Data Form." The submission of a Doing Business Data Form that is not accurate and complete may result in appropriate sanctions.

(iv) No franchise shall be granted pursuant to this Solicitation unless the entity entering into such a franchise has executed an affirmation substantially in the form attached hereto as Attachment #2.

(d) Approval Process. Proposers are instructed that DoITT's decision to recommend any proposer for a franchise pursuant to this Solicitation shall not constitute the award of a franchise, and that under New York State Law and the City Charter a cable television service franchise can only become effective after approval by the City's Franchise and Concession Review Committee (the "FCRC") and Mayor³ and certification by the New York State Public Service Commission, and may only be implemented after registration with the City Comptroller. DoITT offers no assurance that any proposal which it chooses to accept as the basis for a recommendation for a franchise will successfully complete any or all of the steps in such approval process.

(e) Proprietary Information. In the event a proposer believes that specific information it must submit to respond fully and completely to this Solicitation is proprietary information that is appropriate to be treated confidentially by DoITT, it may so advise DoITT in writing. DoITT will attempt to treat as confidential any proprietary information that is identified as such by the proposer, consistent with legal requirements. Any information contained in a proposal for which the proposer seeks such confidential treatment must be clearly designated by separately binding such material and labeling the separately bound volumes with the words "Proprietary Information". Proposers should be aware, in any event, that DoITT may be required, pursuant to the New York State Freedom of Information Law ("FOIL") (New York Public Officers Law Section 87 *et seq.*), to disclose a written proposal or portion thereof submitted in

³ If a Mayor is recused from involvement in cable television franchise matters (as is the case with Mayor Bloomberg) such Mayoral approval can be undertaken by an authorized Deputy Mayor.

connection with this Solicitation, even if labeled as proprietary in accordance with this paragraph. In the event that such disclosure of information labeled proprietary is requested by a third party, DoITT will provide notice to the proposer as far in advance as practicable of any deadline for responding to such request and shall consult with the proposer to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL. In the event that DoITT determines that information may not be withheld, DoITT will attempt to provide the proposer with timely notice of its intent to disclose in order that the proposer may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law. The proposer expressly acknowledges and agrees that neither DoITT nor the City of New York will have any liability to the proposer in the event of disclosure of materials designated by the proposer as "Proprietary Information".

SECTION 5. CERTAIN FRANCHISE TERMS.

A proposer shall only be eligible to be recommended by DoITT for a franchise pursuant to this Solicitation if in its submission it demonstrates, to the satisfaction of DoITT, that it is ready and willing to, and has the managerial, financial, legal and technical ability to, comply with a franchise agreement consistent with the following subsections (a) through (e).⁴ Submissions shall also include the specific proposals described in subsection (a) below, the second sentence of

⁴ As noted in Section 1 above, DoITT reserves the right to issue, and indeed fully anticipates issuing, one or more additional solicitations for franchises for provision of cable television services which may have a different combination of minimum obligations than those described in this Section 5, and which may enable entities that might not be prepared to respond to this Solicitation to respond to such other solicitation or solicitations.

subsection (b) below, the second sentence of subsection (c) below and the second sentence of subsection (d) below. DoITT reserves the right (to the extent consistent with state and federal law) to require (as a condition to DoITT's recommendation that a franchise be awarded) terms more favorable to the interests of the City than the minimum terms listed in this Section 5, and/or terms more specific or detailed than those listed in this Section 5.

(a) Deployment and Service Availability. Franchises granted pursuant to this Solicitation will require that cable television service will be offered to all households in the City, within a specified time frame (a proposal for which shall be included in any proposal submitted in response to this Solicitation, including details as described in the next sentence), subject only to certain limited exceptions for matters beyond its control and similar matters, which specified time frame shall in no event exceed the full length of the term of the franchise (a proposal for which full term length is to be included in the proposal package pursuant to subsection (d) below). Proposals in response to this Solicitation shall include a proposed year by year schedule showing the percentage of households passed that the proposer proposes to achieve in each borough of the City up to and including the year by which it proposes to achieve 100% of households passed⁵ Citywide (in any event such schedule to be subject

⁵ The concept of "households passed" (or "homes passed") is a term of art in the cable television industry referring to the dwellings in front of which a cable television provider has installed its distribution facilities (generally in the form of cables and related facilities installed in the public streets). Thus, for example, 50% of households passed Citywide would generally mean, with respect to a particular cable television provider, that such provider's distribution facilities have been installed in the streets in front of buildings occupied by 50% of all households in the City.

to extension for circumstances beyond the franchisee's control, as further described in an ultimately agreed upon franchise agreement).

(b) Franchise Compensation. Any franchise granted pursuant to this Solicitation will require payment to the City of 5% of the franchisee's gross revenues (as that term will be defined in the franchise agreement) generated from its provision of cable television services, in addition to and not in lieu of other obligations to the City to be specified in an ultimately agreed upon franchise agreement. Any proposal submitted in response to this Solicitation shall include a proposal for franchise compensation to the City that is at least consistent with the preceding sentence.

(c) Carriage of Public, Educational and Governmental Programming. Any franchise granted pursuant to this Solicitation will require the franchisee to carry in each borough of the City, beginning no later than six months after such franchise becomes effective, the public, educational and governmental ("PEG") programming currently being cablecast (as of the issuance of this Solicitation) on existing franchised cable television systems in such borough. In addition, any proposal submitted in response to this Solicitation shall include a proposal for additional capacity for PEG programming that would allow for expansion of PEG programming beyond that currently (as of the issuance of this Solicitation) being cablecast.

(d) Length of Franchise Term. No franchise granted pursuant to this Solicitation shall be granted for a term that exceeds fifteen years in length. Any

proposal submitted in response to this Solicitation shall include a proposal for a franchise term length, not to exceed fifteen years.

(e) Consumer Protection Provisions. Any franchise granted pursuant to this Solicitation shall include a set of consumer protection provisions regarding the franchisee's interactions with its subscribers.

(f) Conformity with the Authorizing Resolution. Any franchise granted pursuant to this Solicitation shall comply with the requirements of Section H. of the Authorizing Resolution.

SECTION 6. PROPOSAL EVALUATION PROCEDURES.

(a) Evaluation Committee. Proposals will be reviewed by an Evaluation Committee consisting of not fewer than three (3) people with knowledge, expertise and experience sufficient to make a fair and reasonable evaluation of the proposals. Written evaluation forms (which may be in the form of rating sheets or other form of evaluation) shall be used to evaluate proposals and shall be signed and dated by all members of the Evaluation Committee. Initial evaluations may be amended, and the amended evaluations shall be recorded on amended evaluation forms. Copies of all initial and amended evaluation forms shall be maintained as part of DoITT's files. In evaluating each proposal as it is submitted, the Evaluation Committee may (i) find that such proposal provides a sufficient basis for DoITT to recommend to the FCRC that a franchise be granted based on such proposal, or (ii) find that such proposal provides a sufficient basis for DoITT to conduct additional discussions with the proposer

toward a complete proposed franchise agreement document that could provide a sufficient basis for DoITT to recommend to the FCRC that a franchise be granted based on such document, or (iii) find that such proposal neither provides a sufficient basis to recommend to the FCRC a franchise be granted nor a sufficient basis to believe that further discussions toward a recommendable franchise would be fruitful. In no event shall any Evaluation Committee determination be construed as having the effect of granting any entity a franchise, as grants of franchises pursuant to this Solicitation are subject to the approval process described in Section 4(d) above, and Evaluation Committee evaluations are thus limited in scope to determinations regarding DoITT's potential recommendations to the FCRC.

(b) Proposal Package. At a minimum, a proposal package submitted in response to this Solicitation shall be comprised of the following:

(1) The material required to be included in an application for a cable television franchise described in Sections 894.5 (a) through (h) of Title 16 of the New York State Codes, Rules and Regulations (NYCRR), including, without limitation, the material thus required that is relevant to an evaluation of the managerial, legal, technical and financial ability of the proposer as described in clause 2 of Section 6(c) of this Solicitation.

(2) To the extent not already included in the material submitted pursuant to the preceding subsection (1), material articulating proposals as described in subsection (a) of Section 5 above, the second sentence of subsection (b) of Section 5 above, the second sentence of subsection

(c) of Section 5 above and the second sentence of subsection (d) of Section 5 above.

(3) A statement acknowledging that the proposer is ready and willing to comply with a franchise agreement that will include provisions consistent with the terms described in Section 5 hereof, including, without limitation, the proposer's own proposals in response to the preceding subsection (b)(2).

(4) A form, which when completed and submitted with the proposal package, serves to confirm the release date of the Solicitation to which the proposer is responding and as the proposer's acknowledgement of the receipt of any addenda to this Solicitation which may have been issued prior to the submission of the proposal. (See Attachment #3 attached hereto).

Each proposer may also include any additional material in a submission package that it believes would be helpful to the evaluation of its proposal, including, without limitation any additional material the proposer believes would be useful in an evaluation of the managerial, legal, technical and financial experience and capabilities of the proposer as described in clause (2) of Section 6(c) below.

(c) Proposal Evaluation Criteria. The criteria to be used by the Evaluation Committee in evaluating each proposal shall be (1) the adequacy of the proposed compensation to be paid to the City; (2) the financial, legal, technical and managerial experience and capabilities of the proposer, including the ability of the proposer to maintain the property of the City in good condition

throughout the term of the franchise, and including the ability of the proposer to abide by the terms of a franchise agreement consistent with proposer's proposal and this Solicitation; and (3) the degree to which the public interest will be served by the service the proposer is proposing to provide.

(d) Proposal Submission Requirements. Proposers are required to submit one (1) signed original and five (5) copies of each proposal package to the contact person listed on the cover page of this Solicitation. There is no page limit for proposals, although conciseness is encouraged. The proposal package shall constitute the "application" for purposes of Title 16 NYCRR Section 894.5(i), unless New York State Public Service Commission practice is otherwise, and proposers are responsible for compliance with the notice provisions of said Section 894.5(i) in addition to the submission requirements described in the preceding sentence.

(e) Communications Limited During Evaluation Period. During the period from a proposer's submission of a proposal in response to this Solicitation until such proposer is notified by DoITT that the evaluation of such proposal by the Evaluation Committee has been completed, such proposer shall not initiate any communication with any employee in any City agency (or in the Economic Development Corporation) regarding this Solicitation or its proposal except in a writing directed to the Agency Contact listed on the cover page of this Solicitation.

SECTION 7. FACILITIES.

No franchise granted pursuant to this Solicitation will authorize installation of facilities on City property unless:

(1) such facilities have no land use impacts or implications because they are to be placed underground, and/or take the form of cables running parallel to existing cables on existing utility poles, or

(2) a new solicitation is first issued, reflecting such contemplated installation, which new solicitation shall be compliant with (without limitation) clause (2) of Section 363.e. of the Charter, and a new or amended franchise reflecting such contemplated installation is granted (after all legally required approvals) pursuant to such solicitation, or

(3) such facilities are ancillary to facilities installed consistent with the preceding subsections (1) and/or (2) and have no land use impacts or implications as determined by the Department of City Planning.

SECTION 8. RECEIPT OF AMENDMENTS.

DoITT will deliver, by e-mail or hard copy, any amendments to and any withdrawal of this Solicitation, to those who either register for receipt of such at the web address specified in Attachment #4 attached to this Solicitation or submit the written registration form set forth at said Attachment #4. Anyone who has obtained a copy of this Solicitation but has not thus registered by e-mail or written submission runs the risk of not receiving notice of such amendments or withdrawal.

APPENDIX A: CITY COUNCIL AUTHORIZING RESOLUTION

THE COUNCIL OF THE CITY OF NEW YORK

RESOLUTION NO. 538

L.U. No. 197A

CITYWIDE

20075011 GFY

Resolution authorizing franchises for cable television services.

By Council Members Katz and Avella (at the request of the Mayor).

WHEREAS, by Executive Order 25, dated August 23, 1995, the Mayor has designated the Department of Information Technology and Telecommunications as the responsible agency for the granting of telecommunications franchises; and

WHEREAS, the Commissioner of the Department of Information Technology and Telecommunications has made an initial determination, pursuant to Section 363 of the Charter (the "Charter") of the City of New York (the "City"), of the need for franchises for cable television services (as that term is defined hereinafter); and

WHEREAS, the Mayor has submitted to the Council a proposed authorizing resolution for such franchises pursuant to Section 363 of the Charter; and

WHEREAS, use of the inalienable property of the City (as defined hereinafter) helps to facilitate the availability of cable television service;

The Council hereby resolves that:

A. The Council authorizes the Department of Information Technology and Telecommunications to grant non-exclusive franchises for the construction, installation, use, operation and/or maintenance of cable, wire and/or optical fiber and associated equipment on, over and under the inalienable property of the City (including through pipes, conduits and similar improvements thereto) for provision of cable television services in the City.

B. The public services to be provided under such franchises shall be cable television services, as defined hereinafter.

C. For purposes of this resolution, "inalienable property of the City" shall mean the property designated as inalienable in Section 383 of the Charter. References herein to facilities "in the inalienable property" shall mean facilities located in, on, over or under the surface of such inalienable property of the City.

D. For purposes of this resolution, "cable television services" shall mean "cable service" as defined in the Cable Communications Policy Act of 1984, as amended (47 U.S.C. Sections 521 et seq.).

E. All franchises granted pursuant to this resolution shall require, as provided in Charter Sections 363 and 372, the approval of the Franchise and Concession Review Committee and the separate and additional approval of the Mayor.

F. The authorization to grant franchises pursuant to this resolution shall expire on the fifth anniversary of the date on which this resolution is adopted by the Council.

G. Prior to the grant of any such franchise, and to the extent consistent with New York State and federal law, a request for proposals or other solicitation ("solicitation") shall be issued by the Department of Information Technology and Telecommunications. Prior to issuing any such solicitation, all legally required environmental and land use review shall be conducted in accordance with City Environmental Quality Review ("CEQR") and Section 197-c of the Charter. The criteria to be used by the Department of Information Technology and Telecommunications to

evaluate responses to such solicitation shall include, but not be limited to, the following, if and to the extent permitted by law:

- (1) the adequacy of the proposed compensation to be paid to the City;
- (2) the financial, legal, technical and managerial experience and capabilities of the applicant(s), including (without limitation, except as limited by law) the ability of the applicant(s) to maintain the property of the City in good condition throughout the term of the franchise; and
- (3) the degree to which the public interest will be served by the service proposed to be provided.

H. Any franchise granted pursuant to this authorizing resolution shall be by written agreement which shall include, but not be limited to, terms and conditions consistent with the following to the extent permitted by law (and shall not include any provision which is prohibited by law from inclusion in such franchise agreement):

- (1) no franchise granted pursuant hereto shall have a term that exceeds fifteen (15) years, including options to renew if any;
- (2) the compensation for the franchise to be paid to the City shall be adequate and may include monetary compensation, the provision of facilities and/or services to the City, or both;
- (3) the franchise may be terminated or cancelled in the event of the franchisee's failure to comply with the material terms and conditions of the agreement;
- (4) the franchisee shall be required to provide security to ensure the performance of the franchisee's obligations under the agreement;
- (5) there shall be remedies to protect the City's interest in the event of the franchisee's failure to comply with the terms and conditions of the franchise agreement;
- (6) there shall be adequate insurance and indemnification requirements to protect the interests of the public and the City;
- (7) all franchisees shall be required to maintain complete and accurate books of account and records sufficient to assure franchisee's compliance with the franchise agreement, which books of account and records shall be made available on demand to the City for inspection;
- (8) there shall be provisions to ensure quality workmanship and construction methods with respect to those facilities constructed, installed, used, operated and/or maintained pursuant to the franchise and located in the inalienable property;
- (9) there shall be provisions containing the agreements required pursuant to paragraph 6 of subdivision (h) of Section 363 of the Charter relating to collective bargaining and other matters;
- (10) there shall be provisions requiring the franchisee to comply with applicable City laws and regulations related to, but not limited to, employment and investigations;
- (11) there shall be provisions to ensure adequate oversight by the City of franchisee's performance of its franchise obligations;
- (12) there shall be provisions requiring the consent of the City prior to an assignment or other transfer of, or change in control of, the franchise;
- (13) there shall be provisions regarding City rights to inspect facilities constructed, installed, used, operated and/or maintained pursuant to the franchise and located in the inalienable property, and regarding City rights to direct relocation of such facilities;
- (14) all franchisees shall have been subject, prior to commencement of the franchise term, to review under the City's Vendor Information Exchange System ("VENDEX") or any successor system;
- (15) all franchises shall include provisions incorporating the MacBride Principles;

(16) there shall be provisions preserving the right of the City to perform public works or public improvements in and around those areas subject to the franchise;

(17) there shall be provisions requiring the franchisee to protect the property of the City from damage, and the delivery of public services from interruption, resulting from the construction, installation, use, operation, maintenance and/or removal of franchisee's facilities in the inalienable property;

(18) there shall be provisions designed to minimize the extent to which the public use of the streets of the City are disrupted in connection with the construction, installation, use, operation, maintenance and/or removal of franchisee's facilities in the inalienable property; [and]

(19) no franchise granted hereunder shall contain economic or regulatory burdens on the franchisee which when taken as a whole are greater or lesser than those burdens placed upon another cable television franchisee operating in the same area[.];

(20) all franchises shall be subject to comparable obligations and requirements provided that where the imposition of such obligations and requirements would be duplicative, then alternative but comparable obligations or requirements shall be imposed; and

(21) there shall be provisions requiring capacity and support for public, educational and governmental access.

I. The Department of Information Technology and Telecommunications shall file with the Council the following documents:

(1) within fifteen (15) days of issuance, a copy of each solicitation issued pursuant to this resolution;

(2) within fifteen (15) days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this resolution; and

(3) on or before July 1 of each year, a report detailing the revenues received by the City from each franchise granted pursuant to this resolution during the preceding calendar year.

J. If any clause, sentence, paragraph, section or part of this resolution shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this resolution or the application thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Adopted.

Office of the City Clerk, }
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on September 27, 2006, on file in this office.

.....
City Clerk, Clerk of The Council

ATTACHMENT #1: DOING BUSINESS DATA FORM

[The Doing Business Data Form and Questions and Answers about the Doing Business Data Form are available as separate PDF files]

ATTACHMENT #2: FORM OF AFFIRMATION

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts except

Full name of Proposer or Bidder -----

Address-----

City -----State----- Zip Code-----

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

[] A - Individual or Sole Proprietorship*
SOCIAL SECURITY NUMBER - - - - -

[] B - Partnership, Joint Venture or Other Unincorporated organization
Employer Identification Number- - - - -

[] C - Corporation
Employer Identification Number - - - - -

BY:

Signature -----

Title -----

If a corporation place seal here

Must be signed by an officer or duly authorized representative. Please Affix notary on next page.

*Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws as well as to provide the City a means of identifying of businesses which seek City contracts.

ATTACHMENT #3: ACKNOWLEDGMENT OF
RELEASE DATE AND ADDENDUM

ACKNOWLEDGMENT OF
RELEASE DATE AND ADDENDUM

PROPOSER'S NAME: _____

SOLICITATION RELEASE DATE: _____

NUMBER OF ADDENDA RECEIVED: _____

ISSUE DATE(S) OF ADDENDA: _____

ATTACHMENT #4: REGISTRATION FORM FOR RECEIPT OF SOLICITATION
AMENDMENTS AND WITHDRAWALS

This Solicitation document can be accessed electronically by logging on to the following web address:

<http://www.nyc.gov/html/doitt/html/miscs/cabletv.shtml>

Those who complete the log-in procedure at this web site will be treated as registered for the purposes of receiving amendments and withdrawals of this Solicitation by e-mail, which will be sent to the e-mail address provided as part of the log-in process. If you wish to receive this Solicitation and/or any addenda and withdrawals of this Solicitation by hard copy through the mail, you must register for such receipt by providing, by mail or e-mail, the following information to the Agency Contact listed on the cover page of this Solicitation:

Contact Person's Name: _____

Contact Person's Title: _____

Company Name: _____

Company Address (street, city, state, zip code):

Telephone Number: _____

Please State Below The Information Requested By Hard Copy (Solicitation, Amendments/Withdrawals, or Both):

ATTACHMENT 3 TO PETITION FOR LIMITED WAIVERS

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**In the Matter of the Petition of Verizon
New York Inc. for Limited Waivers of
Certain Rules in Connection with a
Proposed Cable Television Franchise
Agreement with the City of New York
(New York, Bronx, Queens, Kings, and
Richmond Counties)**

Case 08-V-_____

**REQUEST FOR CONFIDENTIAL TREATMENT
AND FOR ISSUANCE OF PROTECTIVE ORDER**

**BRUCE P. BEAUSEJOUR
KEEFE B. CLEMONS
JOSEPH A. POST
140 West Street — 27th Floor
New York, NY 10007-2109
(212) 321-8126**

Counsel for Verizon New York Inc.

May 2, 2008

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**In the Matter of the Petition of Verizon
New York Inc. for Limited Waivers of
Certain Rules in Connection with a
Proposed Cable Television Franchise
Agreement with the City of New York
(New York, Bronx, Queens, Kings, and
Richmond Counties)**

Case 08-V- _____

**REQUEST FOR CONFIDENTIAL TREATMENT
AND FOR ISSUANCE OF PROTECTIVE ORDER**

Verizon New York Inc. (“Verizon”) respectfully submits this request in order to ensure that reasonable and appropriate measures are put in place to protect the confidentiality of certain information that Verizon is providing to Staff and the Commission with its petition for limited waivers of certain Commission rules in connection with its proposed cable television franchise agreement with the City of New York (the “City”). The information is set forth: (a) on pages 3, 25, and 31 of the Statement of Basis and Rationale for Limited Waivers that Verizon is submitting today as part of its petition, (b) in Exhibits 5, 10 and 11 to that Statement, and (c) in the list of fiber routes and spans in Exhibit 1 to Appendix D to the proposed franchise agreement between Verizon and the City which is provided as Attachment 1 to the petition (together, the “Confidential Materials”).¹ Specifically, Verizon requests that the Confidential Materials be classified as trade secrets and confidential commercial information — or, in the case of the list of fiber routes and spans, as critical infrastructure information — under Public Officers Law

¹ The copies of the petition for limited waivers that Verizon has filed in the Secretary’s Office or has otherwise made publicly available have been redacted to delete the Confidential Materials. Unredacted copies of the Confidential Materials are attached only to the copy of this Request that is being provided to the Records Access Officer.

§§ 87(2) and 89(5) and 16 NYCRR § 6-1.3(a), in order to ensure that copies of the Confidential Materials that are provided to Staff and the Commission are protected from disclosure. Further, in order to enable Verizon to provide the Confidential Materials to other parties to the extent necessary to the conduct of this proceeding, without sacrificing its own interests in the confidentiality of this highly-sensitive competitive information, Verizon request that the Commission or the Records Access Officer (“RAO”) issue a Protective Order in the form of the proposed order attached to this Request.

I. THE SPECIFIED INFORMATION IN VERIZON’S STATEMENT OF BASIS AND RATIONALE FOR LIMITED WAIVERS IS ENTITLED TO PROTECTION UNDER FOIL AS CONFIDENTIAL COMMERCIAL INFORMATION

Verizon’s Statement of Basis and Rationale for Limited Waivers explains the basis of Verizon’s request for a waiver of, among other Commission rules, 16 NYCRR §§ 895.5(b)(1) and (c), which generally require that cable service be made available to requesting subscribers in a primary service area within a period of five years. 16 NYCRR § 895.5(d) provides that such a waiver may be granted “if the commission determines that compliance with the section would not be possible within the limitations of economic feasibility.” In order to address the “economic feasibility” issue, Verizon’s Statement includes detailed information on the progress of, and certain costs of, Verizon’s build-out of its Fiber to the Premises (“FTTP”) network, which Verizon will use to provide cable television service in the City, as well as voice and high-speed data services.² Such information is entitled to protection under FOIL.

² Although the cost information in question relates to a hypothetical five-year build-out, the total cost level provides significant information on the costs that would be incurred even for a longer build-out.

Section 87(2) of the New York Public Officers Law requires state agencies such as the Commission and the Department of Public Service to “make available for public inspection and copying all [of their] records,” with certain specified exceptions. The specific exception at issue here is set forth in Public Officers Law § 87(2)(d), which authorizes agencies to deny access to records that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” Section 89(5) permits parties providing information within this FOIL exemption to request confidential treatment and establishes procedures for protecting the confidentiality of such information.

The Commission implemented the § 87(2)(d) standard and the § 89(5) procedures in § 6-1.3 of its Rules of Procedure.³ Part (a) of that section defines a “trade secret” as including “*any . . . compilation of information which is used in one’s business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it.*” (Emphasis supplied.) It should be noted that the term “trade secret” is not limited here to its technical sense in intellectual property law. Part (b)(2) of the rule requires the person submitting trade secret information to “show the reasons why the information, if disclosed, would cause substantial injury to the competitive position of the person or of the trade secret owner.” The factors to be considered in making a determination of trade secret and confidential commercial information status “include, but are not necessarily limited to,” the following: (i) the extent to which the disclosure would cause unfair economic or competitive damage; (ii) the extent to which the information is known by others and can involve similar activities; (iii) the worth or value of the information to the

³ 16 NYCRR § 6-1.3.

person and the person's competitors; (iv) the degree of difficulty and cost of developing the information; (v) the ease or difficulty associated with obtaining or duplicating the information by others without the person's consent; and (vi) other statute(s) or regulations specifically exempting the information from disclosure.

These factors address two principal issues. Factors (ii), (iv), and (v) relate to the difficulty of generating or obtaining the information independently — *i.e.*, other than from records produced to the Commission, while factors (i) and (iii) relate to the value of the information — *i.e.*, to the extent to which the providing party will be harmed, and the receiving party will be benefited, by the disclosure of the information in question.

These criteria are satisfied for the Confidential Materials at issue here. Those materials include information of great competitive value that could not be generated or obtained independently by Verizon's competitors. Accordingly, they should be treated as trade-secret information and confidential commercial information under the Commission's rules.

Verizon's cable build-out in the City represents a significant and unprecedented competitive threat to the two incumbent cable television providers in the City — Cablevision and Time Warner. Once Verizon's agreement with the City is confirmed by the Commission, Verizon will begin competing with the incumbents in the provision of video programming and of "triple-play" service packages that bundle video programming together with high-speed Internet access and voice services. Because many of Verizon's customers will purchase video programming through such packages, Verizon's entry into the video programming market in the City also represents a competitive threat to any providers that offer or are authorized to offer voice or data services in the City, as well as providers that offer alternative, non-franchised forms of video programming (such as satellite service providers). The information in the Confidential Materials

would obviously be highly relevant and useful to Verizon's competitors in the development of their competitive strategies.

Competitive intelligence — information about a competitor's plans, strategies, strengths, and weaknesses — is an important tool that competitors use to develop and implement their own strategies in the marketplace. A company that knows its competitors' strengths and weaknesses can develop strategies to exploit the weaknesses and avoid confrontation in areas of strength. In particular, if it knows the level of costs its competitors are incurring in particular areas, it will know whether and to what extent it has a cost advantage or disadvantage, and can deduce how its competitors will behave in response to price changes.

Verizon's competitors would not have access to this competitive information unless it were made available through the regulatory process. It might be possible for competitors to develop related surrogate information, but only at significant expense and effort, and, in any event, the information would not be as detailed, accurate, and immediately relevant as the actual information included in the Confidential Materials.

Moreover, competitors do not make comparable information available to Verizon. Giving them access to Verizon's confidential information would thus create a competitive disparity that would magnify the anticompetitive impact of the existing disparity between the regulatory schemes applicable to Verizon on the one hand, and its cable and CLEC competitors on the other.

The importance of limiting competitor access to such information has been recognized in Commission proceedings. Former Administrative Law Judge Joel A. Linsider observed that “[p]ublic disclosure of information by government agencies is an extremely important policy; but we would frustrate our own efforts to promote competition if those very efforts, which require us to obtain competitively sensitive information, led to the release of that information to competitors

of the firm providing it and, in consequence, to market distortions.”⁴ A similar point was made by the State Court of Appeals in a case involving the application of the confidentiality provisions of the Public Officers Law. In the *Encore College Bookstores* case,⁵ the Court found that Public Officers Law § 87(2)(d) should be interpreted in a manner consistent with the standards applied under the federal Freedom of Information Act (“FOIA”). In discussing the federal FOIA standard, which it adopted for purposes of applying New York’s § 87(2)(d), the Court stated in part that:

Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA’s principal aim of promoting openness in government. . . .

The reasoning underlying these considerations is consistent with the policy behind subdivision [Public Officers Law § 87](2)(d) — to protect businesses from the deleterious consequences of disclosing confidential commercial information, so as to further the State’s economic development efforts and attract business to New York⁶

Under this standard, the competitively sensitive information for which Verizon seeks confidential treatment falls squarely within § 87(2)(d). Material which would allow “competitors and customers to [gain] *insight into the company’s competitive strengths and weaknesses*,” is

⁴ Case 99-C-0529, Ruling Concerning Proprietary Material (issued December 13, 1999), at 2. *See also* Case 00-C-2051, Ruling Concerning Trade Secret Status (issued October 29, 2001), at 3.

⁵ *Encore College Bookstores v. Auxiliary Service Corp.*, 87 N.Y.2d 410, 663 N.E.2d 302, 639 N.Y.S.2d 990 (1995).

⁶ *Id.*, 87 N.Y.2d at 420, 663 N.E.2d at 307, 639 N.Y.S.2d at 995, *quoting* *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981).

precisely the information protected because, if disclosed, such information may cause “substantial competitive injury.”⁷ Thus, “sales and profit data, . . . business sales statistics including . . . total costs and expenses [and] operating costs” are squarely “within the exemption.”⁸

In light of these considerations, the information at issue here should be accorded trade-secret protection under the Commission’s rules, and should be made available to other parties only pursuant to a suitable protective order.

II. THE LIST OF FIBER ROUTES AND SPANS IN APPENDIX D TO THE FRANCHISE AGREEMENT IS ENTITLED TO PROTECTION UNDER FOIL AS CRITICAL INFRASTRUCTURE INFORMATION

Exhibit 1 to Appendix D to the Agreement identifies the locations of over 100 City offices or facilities to which Verizon is required to connect dark fiber in order to enhance the City’s Institutional Network (“INET”). The City has requested that the list of sites be kept confidential. The dark fiber strands that Verizon will be providing to the City pursuant to Appendix D are intended to enhance the security and survivability of the INET by providing redundancy with respect to existing fiber spans. Accordingly, disclosure of Exhibit 1 would amount to disclosure of the location of much of the City’s fiber backbone (a critical information technology asset of the City). Many of the sites to which Verizon will extend dark fiber are essential public safety-related facilities, such as police stations, fire houses, and jails. It is the judgment of the City that

⁷ *Timkin v. U.S. Customs Service*, 491 F. Supp. 557, 559 (D.D.C. 1980) (emphasis supplied); *see also Markowitz v. Serio*, 39 A.D.3d 247, 833 N.Y.S.2d 444 (1st Dep’t 2007), *motion for leave to appeal granted*, 9 N.Y.3d 813, 878 N.E.2d 608, 848 N.Y.S.2d 24 (2007) (affirming a denial of disclosure pursuant to § 87(2)(d) of an insurance company’s annual reports showing sales data on a ZIP code by ZIP code basis because they would disclose competitive strengths and weaknesses); *N.Y. State Electric & Gas Corp. v. N.Y. State Energy Planning Bd.*, 221 A.D. 2d 121, 124, 645 N.Y.S.2d 145 (3d Dep’t 1996) (the New York State Energy Planning Board “overwhelmingly met its burden” to deny disclosure of certain data furnished to it by an energy supplier which would enable competitors to assess its competitive strengths).

⁸ *Burke Energy Corp. v. Dep’t of Energy* 583 F. Supp. 507, 511 (D. Kansas 1984).

disclosure of the list of sites in Exhibit 1 to Appendix D could compromise the security of the INET and thus the security of such public safety facilities.

Protection of this information is warranted by various provisions of the Public Officers Law and the Commission's rules. Publ. Off. L. § 87(2)(f) creates an exemption from disclosure for records or portions thereof that "if disclosed could endanger the life or safety of any person." Section 87(2)(i) creates an additional exemption for information that "if disclosed, would jeopardize an agency's capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures."⁹ Section 89(5)(a)(1-a) establishes a procedure by which a person submitting records to a State agency (such as the copy of Exhibit 1 to Appendix D that is being provided to the Commission as part of Verizon's petition for limited waivers) can "identify those records or portions thereof that may contain critical infrastructure information, and request that the agency that maintains such records exempt such information from disclosure under [Publ. Off. L. § 87(2).]" Finally, Commission Rule 6-1.3 specifically provides for the protection of "critical infrastructure information."¹⁰ The information at issue here is clearly "critical infrastructure information" within the meaning of the Public Officers Law and the Commission's rules, as well as information that "if disclosed could endanger the life or safety of any person."

⁹ The City's Department of Information Technology and Telecommunications is an "agency" as the term is used in the Public Officers Law. *See* Publ. Off. L. § 86(3).

¹⁰ *See, e.g.*, 16 NYCRR §§ 6-1.3(b), (b)(1), (b)(3); Case 05-M-0603, Notice of Proposed Consensus Rulemaking (issued June 21, 2005) (pages 4-5 of Proposed Resolution attached to the Notice); *id.*, Memorandum and Resolution Adopting Amendments to 16 NYCRR Section 5.8(e) and Part 6 (issued and effective September 29, 2005). "Critical infrastructure" is defined in Publ. Off. L. § 86(5) as "systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy."

III. REQUEST FOR ISSUANCE OF A PROTECTIVE ORDER

Verizon asks the Commission or the RAO to issue a Protective Order in the form of the proposed order that is attached to this Request, in order to enable Verizon to provide copies of the Confidential Materials to other parties to this proceeding (to the extent that it is necessary and appropriate to do so), while preventing the inappropriate use of those materials by Verizon's competitors.¹¹

The proposed Protective Order is virtually identical to the protective orders issued by the Commission in a number of recent proceedings involving Verizon.¹² Such orders provide certain basic protections for all information that qualifies as "Protected Information" under the provisions of the order. For example, such information must be identified and provided pursuant to certain specified procedures, and it may not be used or disclosed "for any purpose other than for the purposes of preparation for and conduct of this proceeding"¹³ The orders also include a provision (¶ 12) that establishes a process that can be invoked where the Providing Party (*i.e.*, Verizon) alleges "that any Protected Information requested by another party is of such a highly

¹¹ Verizon requests this order solely in order to permit other parties to view, to the extent necessary and appropriate, the Confidential Materials that are included in Verizon's filing. The proposed order (like the prior Commission orders on which it is based) refers to and governs not only information submitted to the Commission or Staff by Verizon, but also information requested by and provided to parties in discovery. It is Verizon's position that no discovery would be necessary or appropriate in this proceeding, and in submitting the "standard" form of protective order for approval by the Commission, with only minimal changes to the provisions related to Highly Sensitive Protected Information, Verizon is not waiving that position. Indeed, paragraph 16 of the proposed order specifically states that "[n]othing in this Order shall limit or expand in any way the applicable law concerning the permissible scope of discovery."

¹² *See, e.g.*, Case 03-C-0971, Notice on Protective Order (issued January 24, 2007); Case 08-C-0166, Notice on Protective Order (issued February 27, 2008). Although Verizon does not believe that there are any material differences between those two orders, or between them and other protective orders issued in recent proceedings involving Verizon, it should be noted that the proposed order is based specifically on the order issued in Case 08-C-0166.

¹³ *See* Proposed Protective Order ¶ 14.

sensitive nature that access to and copying of such Protected Information as set forth above would expose the Providing Party or any of its affiliates to an unreasonable risk of harm” In such cases, the Providing Party may file a “written motion requesting that the items of Protected Information in question be declared to be Highly Sensitive Protected Information [HSPI].”¹⁴

The proposed order differs from other recent orders in the provisions related to HSPI.¹⁵ Specifically, the proposed order re-labels the standard language of paragraph 12 as paragraph 12(a), and adds a new paragraph 12(b) that provides as follows:

Notwithstanding the provisions of paragraph 12(a), above, any information concerning: (i) any category of costs incurred by Verizon New York Inc. (“Verizon”) to build out its network in New York City or any part thereof, or (ii) the amount of resources, time, or equipment required for such build-out, or (iii) the revenues that Verizon expects to derive from that network, or (iv) Verizon’s marketing plans, or (v) details concerning Verizon’s plans for, or the progress of, its build-out in the City that are not set forth in its franchise agreement with the City, shall be treated as Highly Sensitive Protected Information under this order, and the disclosure of such information shall be limited to Outside Experts and outside counsel for the Requesting Party only.

This added provision allows the Confidential Materials to be treated as HSPI without the necessity of a motion, and thus avoids the delay that would be created by the necessity to litigate such a motion under the standard version of ¶ 12. This in turn will accelerate the Commission’s review of Verizon’s filing, and will therefore ensure that the substantial benefits of Verizon’s agreement can be made available to the City and its residents at the earliest possible date.

The Confidential Materials clearly qualify for HSPI treatment. First, as discussed above, the information in question has great competitive value, and would not otherwise be available to

¹⁴ *Id.* ¶ 12.

competitors. Its disclosure to and use by competitors could cause Verizon significant competitive harm. Moreover, Verizon is concerned that the normal Protective Order provisions prohibiting use or disclosure of confidential information would not provide sufficient protection here. This is not because we suspect that parties would intentionally or negligently violate the Protective Order (although this has occurred on occasion in other states). Rather, the premise of a protective order — which is that all potential for harm can be eliminated by providing information to a party under appropriate use restrictions — ignores the fact that information cannot be erased from a competitor’s memory when a proceeding is over, and such information will inevitably affect a party’s strategies, plans, and market actions — even absent any improper intent or any violation of a specific provision of such an order.

Another factor that is relevant under ¶ 12 is whether the requesting party “needs to have access to such Protected Information and why such a need cannot be satisfied with other information, whether Protected Information or otherwise” The provision allowing for review of the information by outside counsel and consultants ensures that any legitimate need of any party to review the information will be satisfied.

The Commission has recognized in some proceedings that the special needs of a particular case may warrant making certain information available to some parties but not others.¹⁶ Indeed, in

(...continued)

¹⁵ Language was also added to § 1 of the proposed Order clarifying the Order’s applicability to critical infrastructure and public safety information. All of the proposed additions are indicated by underlining.

¹⁶ *See, e.g.*, Case 0-E-0894, Further Ruling on Procedure (issued December 5, 2006) (Staff request that its draft report on power outages be made available to parties but not to Con Edison). Indeed, the normal outcome of a request for trade secret protection, absent a protective order, is that no parties outside of Staff are allowed access to the documents at all (assuming that the Commission’s criteria for trade-secret protection are met).

Case 03-C-0971, the RAO ruled that Verizon’s competitors could not obtain any access at all to a broad range of documents, many of which contained information similar to that contained in the Confidential Materials at issue here.¹⁷ The RAO concluded that preclusion of competitive access was “required to avoid the exposure of Verizon to an unreasonable risk of competitive harm,” and that the parties requesting access had not shown that the information they sought was “indispensable to support their case.”¹⁸ *A fortiori*, it is reasonable to make the Confidential Materials here available only pursuant to the special protections set forth in ¶ 12(b) of the proposed order.

IV. CONCLUSION

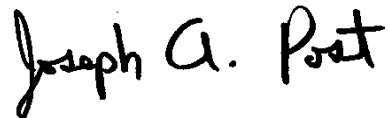
For all of these reasons, the Confidential Materials should be treated as trade secrets, confidential commercial information, critical infrastructure information, and information that “if disclosed could endanger the life or safety of any person” under the Public Officers Law and the

¹⁷ Case 03-C-0971, Ruling on Protective Order and Access by Competitors to Allegedly Confidential Information (issued February 23, 2007) (the “Ruling”). The Ruling was upheld by the Commission on appeal. Case 03-C-0971, Determination on Appeal of Ruling on Access by Competitors to Allegedly Confidential Information (issued March 20, 2007).

¹⁸ Ruling at 10 (footnote omitted).

Commission's rules, and the Commission or the Records Access Officer should issue a protective order in the form attached to this Request.

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph A. Post". The signature is written in a cursive, slightly slanted style.

**BRUCE P. BEAUSEJOUR
KEEFE B. CLEMONS
JOSEPH A. POST
140 West Street — 27th Floor
New York, NY 10007-2109
(212) 321-8126**

Counsel for Verizon New York Inc.

May 2, 2008

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

**In the Matter of the Petition of Verizon
New York Inc. for Limited Waivers of
Certain Rules in Connection with a
Proposed Cable Television Franchise
Agreement with the City of New York
(New York, Bronx, Queens, Kings, and
Richmond Counties)**

Case 08-V- _____

[PROPOSED] PROTECTIVE ORDER

(Dated [REDACTED], 2008)

1. This Protective Order is adopted in order: (a) to provide an appropriate and expeditious process by which an entity, other than the staff of the New York State Department of Public Service (“Staff”), requesting Protected Information (the “Requesting Party”), may obtain access to such Information; and (b) to provide an appropriate degree of protection for the legitimate interests of the entity providing such Protected Information (the “Providing Party”). For purposes of this Order, Protected Information shall mean documents, materials, or other information that is claimed by a Providing Party to constitute trade secrets or confidential commercial information as defined in the Public Officers Law and 16 NYCRR §6-1.3(a), critical infrastructure information under the Public Officers Law and 16 NYCRR §6-1.3(b), or information that “if disclosed could endanger the life or safety of any person” under Publ. Off. L. § 87(2)(f), or that is otherwise entitled to confidential treatment under prevailing law.

2. All information produced formally or informally in this proceeding that is claimed by the Providing Party to be Protected Information shall be furnished pursuant to the terms of this Order and shall be treated in accordance with the terms of this Order by all persons who are given access to such Information.

3. No person may have access to Protected Information pursuant to this Order until he or she has agreed in writing to comply with and be bound by the terms of this Order by executing a copy of Exhibit 1 attached hereto (“Exhibit 1 Agreement”).

4. Except as otherwise provided herein, all Protected Information produced pursuant to this Order shall be provided in the first instance to counsel for the Requesting Party (or to a representative in lieu of counsel, or to another person designated by the Requesting Party's counsel or representative, provided that such individual has executed a copy of the Exhibit 1 Agreement). Said counsel, representative, or other person may, on a need-to-know basis and solely for the purposes of this proceeding, provide access to such materials to the following persons, subject to the conditions set forth in this Order:

- a) persons not employed by the Requesting Party or its affiliates, who are identified by that Party as Outside Experts in this matter, provided that any such person executes and causes to be delivered to the Providing Party the Exhibit 1 Agreement; and
- b) employees of the Requesting Party or its affiliates, provided that such person executes and causes to be delivered to the Providing Party the Exhibit 1 Agreement and provided further that such employee is not directly involved in any of the following: (i) developing, planning, marketing, or selling retail services or other retail offerings; (ii) strategic or business planning; or (iii) competitive assessment on behalf of the Receiving Party. (The classes of individuals described in subparagraphs (i), (ii) and (iii) are hereinafter referred to as "Excluded Employees.") Excluded Employees may obtain access to Protected Information only in accordance with paragraphs 5 and 6 below.

5. Before an Excluded Employee may receive access to any Protected Information, the Requesting Party's counsel or representative shall deliver to the counsel or representative for the Providing Party a copy of the Exhibit 1 Agreement executed by such person. With the executed copy of the Exhibit 1 Agreement, counsel shall also submit the specific reason(s) for which the signatory needs the information and why such needs cannot be satisfied with other information. Upon receipt of the executed Exhibit 1 Agreement and the specific reason(s) just described, the counsel or representative for the Providing Party shall have two business days to object to such person's receiving Protected Information. The objection shall be in writing and shall be served upon the Records Access Officer, the Receiving Party, and all third parties who may have a proprietary interest in the Protected Information. Failure of the Providing Party to object

within the two-business day period shall be deemed consent of the Providing Party to the disclosure of such Protected Information to such person pursuant to the terms of this Order, provided, however, that a Providing Party that fails to object within the two-business day period may submit an objection at a later time. Where an objection is filed after the initial two-business day period, it shall not affect the signatory's right to retain documents that have been properly provided to the signatory prior to the filing of the objection.

6. If an objection is made pursuant to the preceding paragraph, the Records Access Officer will determine the matter as expeditiously as possible. Failure to object in any instance, or the overruling of such an objection by the Records Access Officer, shall not affect the status of the information to which access is sought as Protected Information, nor be construed as a waiver of the Providing Party's right to object to providing such Protected Information to a different person. In any case in which there is a dispute about whether Protected Information can be provided to a person, and the dispute is brought to the Records Access Officer for resolution, the Protected Information shall be withheld from that person until such time as a ruling is made that the information may properly be provided to the person in question.

7. No duplication or reproduction of the Protected Information shall be made beyond that which is necessary to give access to the persons authorized by the provisions of this Order. Persons who are provided with access to Protected Information pursuant to this Order may take limited notes regarding such Information to the extent necessary in connection with this proceeding. Such notes shall be treated in the same manner as the Protected Information from which the notes were taken.

8. Whenever documents or other materials containing Protected Information are to be provided to a Requesting Party, the Providing Party shall designate such documents as containing Protected Information by placing the following designation on each page of any document or report covered by this Order: CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER IN NY PSC CASE 08-V- . Any document produced

with such a notation shall be deemed to be subject to the terms of this Order. Where it would be unreasonably difficult to place this notation on each page of the document, because it is voluminous or for other reasons, the notation need be placed only on the first page of each document.

9. A Requesting Party may challenge the designation of particular documents or other materials as Protected Information in accordance with the procedure described in paragraph 10 below, or the Records Access Officer may *sua sponte* require parties who have designated information as Protected Information to justify such designation.

10. When a challenge is made by the Requesting Party, such party must notify the Providing Party and all third parties who may have a proprietary interest in the requested information that the Requesting Party intends to challenge the Providing Party's claim that the documents or materials in question are eligible for treatment as Protected Information under the terms of this Order. The Providing Party will be obliged to submit the materials in question to the Records Access Officer for in camera review pursuant to 16 NYCRR §§ 6-1.3 and 6-1.4. Determination of the status of the materials in question as Protected Information will be made by the Records Access Officer in accordance with the standards set forth in 16 NYCRR §§ 6-1.3 and 6-1.4 and Public Officers Law (POL) §§ 87(2) and 89(5), or in accordance with any other source of substantive law relied on by the Providing Party as the basis for that party's claim for confidential treatment.

11. To facilitate the review and inspection of Protected Information produced pursuant to this Order, the Receiving Party will be provided with such Information promptly by electronic means where it is reasonably practical to do so. Where production cannot be made by electronic means, it shall be made by overnight mail. Where materials are provided by electronic means, the Receiving Party may also request paper versions of the Requested Information. The provisions of this paragraph shall not limit or change in any way the provisions of the Commission's rules relating to the time within which interrogatories or other discovery requests must be answered.

12. (a) Should the Providing Party allege that any Protected Information requested by another party is of such a highly sensitive nature that access to and copying of such Protected Information as set forth above would expose the Providing Party or any of its affiliates to an unreasonable risk of harm, the following procedure shall apply, subject to the provisions of paragraph 12(b), below. The Providing Party shall file, within two business days of the request, with the Records Access Officer, the Requesting Party, and all third parties who may have a proprietary interest in the provided information, a written motion requesting that the items of Protected Information in question be declared to be Highly Sensitive Protected Information. The motion must set forth the basis for the claim that special protection is required and must describe the special protection and treatment desired, which may include, without limitation, a request that the Protected Information be disclosed only to the Commission, or be disclosed to the Commission for purposes of aggregation with like information from other parties, or be disclosed only to Outside Experts and outside counsel for the Requesting Party. Such motion must also include a detailed list of the items of Protected Information alleged to be too highly sensitive to be accessed or copied under the preceding provisions of this Order. The Requesting Party and all third parties who may have a proprietary interest in the provided information shall have three business days to respond in writing to the motion, which response must include an explanation of why such party needs to have access to such Protected Information and why such a need cannot be satisfied with other information, whether Protected Information or otherwise, or with access pursuant to the restrictions requested by the Providing Party. A copy of the response, if any, must be served on the Records Access Officer and the Providing Party. The Records Access Officer shall determine the status of the Protected Information sought and the treatment that should be afforded to it as expeditiously as possible.

(b) Notwithstanding the provisions of paragraph 12(a), above, any information concerning: (i) any category of costs incurred by Verizon New York Inc. (“Verizon”) to build out its network in New York City or any part thereof, or (ii) the amount of

resources, time, or equipment required for such build-out, or (iii) the revenues that Verizon expects to derive from that network, or (iv) Verizon's marketing plans, or (v) details concerning Verizon's plans for, or the progress of, its build-out in the City that are not set forth in its franchise agreement with the City, shall be treated as Highly Sensitive Protected Information under this order, without the necessity of a motion, and the disclosure of such information shall be limited to Outside Experts and outside counsel for the Requesting Party only.

13. Subject to any special protection granted pursuant to paragraph 12, Protected Information may be referred to in briefs, motions, testimony, or other materials filed in the proceeding (collectively, "Pleadings"), provided that separate versions of such Pleadings are prepared that include and omit the Protected Information (the "Proprietary Version" and "Public Version," respectively), and that the Proprietary Version of any Pleading be provided solely to the Records Access Officer, Staff, and parties who are entitled to have access to Protected Information pursuant to the terms of this Order. Under no circumstances shall Protected Information be included in copies of Pleadings that are lodged with the Secretary's Office for inclusion in the Commission's public files. The Proprietary Version of a Pleading must bear a conspicuous notation on the cover page and on each page bearing Protected Information, indicating, in substance, that the Pleading is a Proprietary Version and is subject to the terms of this Order. The Proprietary Version of any Pleading shall be treated as Protected Information pursuant to this Order.

14. All persons who may be entitled to receive, or who are afforded access to, any Protected Information by reason of this Protective Order, shall neither use nor disclose the Protected Information for any purpose other than for the purposes of preparation for and conduct of this proceeding and then solely as contemplated herein; they shall use their best efforts to keep the Protected Information secure in accordance with the purposes and intent of this Protective Order. To this end, persons having custody of any Protected Information shall keep copies and/or notes thereof segregated

and properly secured when they are not being reviewed and shall not disclose Protected Information except as permitted pursuant to the provisions of this Order, unless and until such Protected Information is released from the restrictions of this Order either through agreement of the parties or pursuant to a ruling of the Records Access Officer.

15. Nothing in this Order shall limit in any way the right of any party to question, challenge, and object to the admissibility of any and all Protected Information furnished under the terms of this Protective Order on any grounds available by law, including relevancy and materiality.

16. Nothing in this Order shall limit or expand in any way the applicable law concerning the permissible scope of discovery.

17. This Order shall in no way constitute any waiver of the rights of any party hereto to contest any assertion, or to appeal any finding, that specific information is or is not Protected Information or that such information should or should not be subject to the protective requirements of this Order. This Order shall in no way constitute any waiver of the rights of a party to appeal, in accordance with POL §89(5)(c)(1) and the Commission's implementing regulations, a ruling of the Records Access Officer or to seek judicial review, in accordance with POL §89(5)(d), of a final ruling of the Secretary as to the status of any Information sought in connection with this proceeding as Protected Information.

18. Upon completion of this and all related follow-on proceedings at the Commission, or, if this proceeding is continued, after a final ruling has been rendered on the issue for which the Protected Information was obtained by the Requesting Party, including administrative or judicial review thereof, all Protected Information, including any notes taken with regard thereto, furnished under the terms of the Protective Order shall be treated as follows. Because questions may arise concerning the meaning or scope of any order that the Commission issues in this docket, the Requesting Party may retain a single, non-electronic copy of Protected Information it receives, as well as an electronic copy, provided that such copies are maintained in a secure location and that such copies

continue to be treated in accordance with the terms, conditions, and restrictions of this Order. (If the Requesting Party exercises its right to retain a copy of the Protected Information, it must notify the Providing Party of this fact.) Only counsel and clerical or paralegal staff assisting counsel shall have access to such Protected Information. With the exception of these copies, all Protected Information shall be returned to the Providing Party or its counsel unless the Providing Party receives certification that all such Protected Information has been destroyed.

19. Any response to an information request that requires the production of Protected Information will be supplied initially only to the party that has specifically requested that Information.

20. Nothing in this Order shall impose any obligations upon a Providing Party with respect to the handling of its own Protected Information.

Dated: _____, 2008

So Ordered:

(Signed)

Steven Blow
Records Access Officer

EXHIBIT 1

I acknowledge receipt of a copy of, and have read, the Protective Order dated [REDACTED], 2008, in Case 08-V-[REDACTED]. I understand that certain information to which I am to be given access is claimed by the Providing Party to be Protected Information within the meaning of that Order and that the use or disclosure of that information, other than as permitted by the Protective Order, may cause substantial commercial harm to the Providing Party. I agree to comply with and be bound by the terms and conditions of the Protective Order and to use the information only for this proceeding.

NAME (PRINTED):

EMPLOYER:

TITLE:

JOB RESPONSIBILITY:

PARTY WITH WHICH I AM ASSOCIATED:

NATURE OF THE ASSOCIATION (EMPLOYEE, CONSULTANT, ETC.):

SIGNATURE: _____

DATE:

___ CHECK HERE if you are an employee who is involved in (i) directly developing, planning, marketing, or selling retail services or other retail offerings, (ii) strategic or business planning, or (iii) competitive assessment on behalf of the Receiving Party, as set forth in paragraph 4 of the Protective Order.

ATTACHMENT 4 TO PETITION FOR LIMITED WAIVERS

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**In the Matter of the Petition of Verizon
New York Inc. for Limited Waivers of
Certain Rules in Connection with a
Proposed Cable Television Franchise
Agreement with the City of New York
(New York, Bronx, Queens, Kings, and
Richmond Counties)**

Case 08-V- _____

**DRAFT NOTICE OF PROPOSED RULE MAKING UNDER
STATE ADMINISTRATIVE PROCEDURE ACT**

**BRUCE P. BEAUSEJOUR
KEEFE B. CLEMONS
JOSEPH A. POST
140 West Street — 27th Floor
New York, NY 10007-2109
(212) 321-8126**

Counsel for Verizon New York Inc.

May 2, 2008

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Waiver of Certain Public Service Commission Rules in Connection with Proposed Cable Television Franchise Agreement Between Verizon New York Inc. and the City of New York

I.D. No. PSC- _____

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition from Verizon New York Inc. (“Verizon”) for waivers of certain requirements of the following sections of the commission’s rules in connection with a proposed cable television franchise agreement between Verizon and the City of New York (New York, Queens, Kings, Bronx, and Richmond Counties) (the “City”): 895.5(b)(1) and 895.5(c) (relating to availability and offering of cable television service throughout primary service area within five years), 895.1(b) (relating to description of anticipated stages of completion of construction), 895.5(b)(3) and 890.91(b)(1) (relating to installation intervals), and 895.1(f) and 895.4 (to the extent that they require “first-day” availability of Public, Educational, and Governmental channel capacity).

Statutory authority: Public Service Law, §§ 216(1) and 216(5), and 16 NYCRR § 895.5(d).

Subject: Waiver of certain requirements of sections 895.5(b)(1), 895.5(c), 895.1(b), 895.5(b)(3), 890.91(b)(1), 895.1(f), and 895.4 of the commission’s rules, as requested by Verizon.

Purpose: To allow Verizon and the City to implement the provisions of a proposed cable television franchise agreement as written, subject to approval of such agreement by the City’s Franchise and Concession Review Committee, signature and registration of such agreement, and confirmation of such agreement by the commission.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition of Verizon to waive certain requirements of the following sections of the commission’s rules in connection with a proposed cable television franchise agreement between Verizon and the City: 895.5(b)(1) and 895.5(c) (relating to availability and offering of cable television service throughout primary service area within five years), 895.1(b) (relating to description of anticipated stages of completion of construction), 895.5(b)(3) and 890.91(b)(1) (relating to installation intervals), and 895.1(f) and 895.4 (to the extent that they require “first-day” availability of Public, Educational, and Governmental channel capacity).

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>.

For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

[[ID NUMBER]]