

# **ATTACHMENT A**

**Cable Franchise Agreement**  
**by and between**  
**the Town/Village of Harrison**  
**and**  
**Verizon New York Inc.**

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## **EXHIBITS**

Exhibit A: Franchise Area

Exhibit B: Municipal Buildings to be Provided Free Cable Service

Exhibit C: Form of Performance Bond

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the Town/Village of Harrison, a validly organized and existing political subdivision of the State of New York (collectively, the “Local Franchising Authority” or “LFA”) and Verizon New York Inc., a corporation duly organized under the applicable laws of the State of New York (the “Franchisee”).

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

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

WHEREAS, Franchisee has a Fiber to the Premise Telecommunications Network (“FTTP Network”) in the Franchise Area which transmits Non-Cable Services pursuant to authority 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 or Title VI of the Communications Act;

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

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee’s plans for its Cable System are adequate and feasible in a full public proceeding affording due process to all parties;

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

WHEREAS, the LFA has determined that in accordance with the provisions of the Cable Law, this Franchise complies with NY PSC’s franchise standards and the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

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

NOW, THEREFORE, in consideration of the LFA’s grant of a franchise to Franchisee, Franchisee’s promise to provide Cable Service to residents of the Franchise Area of the LFA pursuant to and consistent with the Cable Law (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

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

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

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

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

1.4. *Cable Law*: 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.

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

1.6. *Cable System* or *System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), as amended.

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

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

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

1.10. *Educational Access Channel*: An Access Channel available for noncommercial use solely 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.

1.11. *EG*: Educational and Governmental.

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

1.13. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control that directly or indirectly results in Franchisee's non-compliance with, or delay in the performance of, any obligation hereunder. 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 resulting from unaffiliated utility providers' failure 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.

1.14. *Franchise Area*: Shall be those premises within the jurisdictional area of the LFA, or within such additional areas as may be annexed or acquired, that Franchisee shall have passed with its FTTP Network facilities, as generally illustrated in Exhibit A.

1.15. *Franchisee*: Verizon New York Inc. and its lawful and permitted successors, assigns and transferees.

1.16. *Government Access Channel*: An Access Channel available for the sole noncommercial use of the LFA.

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

1.17.1. Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for:

1.17.1.1. Basic Service;

1.17.1.2. 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, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee;

1.17.1.3. pay-per-view and video on demand Cable Services over the Cable System;

1.17.1.4. revenues from the sale or lease of access channel(s) or channel capacity;

1.17.1.5. compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any

products or services on the Cable System, such as “home shopping” or a similar channel, subject to the exceptions below;

1.17.1.6. a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising derived from the operation of Franchisee’s Cable System to provide Cable Service within the Franchise Area, subject to the exceptions below. The allocation of the revenue specified in this subsection 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; and

1.17.1.7. Franchise Fees imposed on Franchisee by the LFA that are passed through from Franchisee as a line item paid by Subscribers.

1.17.2. Gross Revenue shall not include:

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

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

1.17.2.3. refunds, rebates or discounts made to Subscribers or other third parties;

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

1.17.2.5. the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser’s customer;

1.17.2.6. the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA;

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

1.17.2.8. 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 (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue);

1.17.2.9. sales of capital assets or sales of surplus equipment;

1.17.2.10. program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming;

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

1.17.2.12. any fees or charges collected from Subscribers or other third parties for any PEG Grant payments.

1.17.2.13. Except as otherwise provided in Subsection 1.17.1, any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders.

1.18. *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.

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

1.20. *Local Franchise Authority (LFA)*: The Town/Village of Harrison, New York, or the lawful successor, transferee, or assignee thereof.

1.21. *Non-Cable Service or Non-Cable Services*: Any service that does not constitute the provision of Cable Service over the Cable System pursuant to this Agreement and that is not otherwise included in the definition of Cable Service under Section 602(6) of the Communications Act (47 U.S.C. § 622(6)), including, but not limited to, Information Services and Telecommunications Services.

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

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



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

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

1.26. *Public Access Channel*: An Access Channel available for noncommercial use solely by the residents in the Franchise Area on a first-come, first-served, nondiscriminatory basis.

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

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

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

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

1.31. *Transfer of the Franchise*:

1.31.1. Any transaction in which:

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

1.31.1.2. the rights held by Franchisee under the Franchise and the certificate of confirmation issued therefor by the NY PSC are transferred or assigned to another Person or group of Persons.

1.31.2. However, notwithstanding Sub-subsections 1.31.1.1 and 1.31.1.2 above, a *Transfer of the Franchise* shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee. Franchisee shall notify LFA in writing within sixty (60) business days of any such change in ownership or other interest. The new Franchisee shall not use such change in ownership or other interest as a basis for challenging the validity of any past non-performance.

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

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

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

2.2. *The FTTP Network:* Upon delivery of Cable Service, by subjecting Franchisee's mixed-use facilities to the NY PSC's minimum franchise standards and the LFA's police power, the LFA has not been granted broad new authority over the construction, placement and operation of Franchisee's mixed-use facilities; provided, however, that nothing herein shall be construed to limit the LFA's existing authority with respect to the Franchisee's mixed use facilities pursuant to Title II of the Communications Act, Section 27 of the Transportation Corporations Law, and lawful and applicable local laws, including any lawful right to compel relocation of such facilities in the event of road-widenings and other similar adjustments to the Public-Rights-of-Way, consistent with the NY PSC rules and regulations and orders.

2.3. *Effective Date and Term:* This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be six (6) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise.

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

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

2.6. *No Waiver:*

2.6.1. The failure of the LFA on one or more occasions to exercise a right under this Franchise, the Cable Law or other applicable state, federal, or local law, or to require

compliance or performance under this Franchise, shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance of this Agreement, nor shall it excuse Franchisee from compliance or performance, unless such right or such compliance or performance has been specifically waived in writing.

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

2.7. *Construction of Agreement:*

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

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

2.8. *Local Authority:* All rights and privileges granted herein are subject to the police powers of the LFA and its rights under applicable laws and regulations to exercise its governmental powers to their full extent; provided, however, that such laws and regulations are reasonable, not materially in conflict with the privileges granted in this Franchise and consistent with all federal and state laws, rules, regulations and orders.

2.9. *Restoration of Municipal Property:* Any municipal property damaged or destroyed shall be promptly repaired or replaced by the Franchisee and restored to pre-existing condition.

3. **PROVISION OF CABLE SERVICE**

3.1. *Franchise Area:* Franchisee shall offer Cable Service to significant numbers of Subscribers within residential areas of the Franchise Area and may make Cable Service available to businesses in the Franchise Area within twelve (12) months and shall offer Cable Service to all residential areas of the Franchise Area within five (5) years of the Effective Date of this Franchise, or, in both instances, such longer period as may be permitted by the Cable Law, except, in accordance with NY PSC rules and regulations: (A) for periods of Force Majeure; (B) for periods of delay caused by the LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Franchise Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in areas, developments or buildings where Franchisee cannot gain access after good faith efforts; and (F) in areas, developments or buildings where the provision of Cable Service is economically infeasible because such provision requires nonstandard facilities which are not available on a commercially reasonable basis.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses

within the Franchise Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within two hundred fifty (250) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed two hundred fifty (250) feet and the actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings:* Subject to Section 3.1, and upon written request of the LFA, Franchisee shall provide without charge one service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as designated by the LFA in Exhibit B, provided that the incumbent cable operator is also required to provide free service to each such building and that such free service outlet is located within the Franchise Area. Franchisee shall also provide without charge one service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as designated by the LFA for up to five (5) additional buildings over the life of the Agreement, so long as: LFA provides Franchisee sixty (60) days prior written notice; the incumbent cable operator is also required to provide free service to each such additional building; and that such free service outlet is located within the Franchise Area. Notwithstanding the foregoing, however, if it is necessary to extend Franchisee's trunk or feeder lines more than two hundred fifty (250) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of two hundred fifty (250) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than two hundred fifty (250) feet of drop cable; provided, however, that Franchisee may charge current rates for any equipment associated with the provision of Basic Service to any additional service outlets. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged.

#### 4. **SYSTEM FACILITIES**

4.1. *Quality of Materials and Work:* Franchisee shall construct and maintain its System using materials of good and durable quality, 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.

4.2. *System Characteristics:* The System shall provide for a minimum channel capacity of not less than seventy-seven (77) Channels on the Effective Date.

4.3. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of

systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

4.4. *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.

## 5. **PEG SERVICES**

### 5.1. *PEG Set Aside:*

5.1.1. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide capacity on its Basic Service tier for up to one (1) dedicated Public Access Channel, one (1) dedicated Educational Access Channel, and up to one (1) dedicated Government Access Channel (collectively, “PEG Channels”). The LFA may request that the Franchisee provide one (1) additional Government Access Channel or Educational Access Channel, for a total of up to four (4) PEG Access Channels, if the LFA sufficiently demonstrates: (i) that the existing Government Access Channel or Educational Access Channel carries 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 six (6) consecutive months; and (ii) that the LFA has the necessary equipment to provide a suitable video signal and suitable audio signal in baseband format for such additional Government Access Channel or Educational Access Channel. Upon receipt of such request and once a suitable video signal and suitable audio signal in baseband format are made available, the Franchisee shall make such additional Government Access Channel or Educational Access Channel available within one hundred (100) days. If the additional Government Access Channel or Educational Access Channel provided to the LFA fails to carry 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. (i) within one (1) year of being provided to the LFA, or (ii) at any time thereafter for eight (8) consecutive weeks, such additional Government Access Channel or Educational Access Channel shall revert to the Franchisee for its sole and exclusive use after Franchisee provides the LFA ninety (90) days advance notice of such reversion.

5.1.2. The LFA hereby authorizes Franchisee to transmit PEG Channel programming within and without LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose in accordance with Section 895.4 of the NY PSC rules and regulations.

5.1.3. Franchisee shall provide the technical ability to play back pre-recorded programming provided to Franchisee consistent with this Section. Franchisee shall transmit programming consistent with the dedicated uses of PEG Access Channels. Franchisee shall comply at all times with the requirements of Section 895.4 of the NY PSC rules and regulations.

5.1.4. Franchisee shall monitor the PEG Channels for technical quality and shall ensure that they are maintained at standards the same or better than those which apply to the Cable System's standard definition commercial Channels; provided, however, that Franchisee is not responsible for the production quality of PEG Channel programming productions, nor for any deficiencies in the source signal it receives from any party over which Franchisee has no control, nor for any PEG access equipment not owned by Franchisee.

5.2. *EG Access Interconnection:*

5.2.1. The LFA has designated two (2) sites within the Franchise Area for the interconnection of the EG Access Channels with the Cable System: (1) Harrison High School, 255 Union Avenue, Harrison, NY 10528; and (2) Harrison Town Hall, One Heineman Place, Harrison, NY 10528 (the "EG Access Interconnection Sites"). The LFA may designate (1) Harrison Public Library, 2 Bruce Avenue, Harrison, NY 10528 and (2) Louis M. Klein Middle School, 50 Union Avenue, Harrison, NY 10528 as future additional sites for the interconnection of EG Access Channels with the Cable System (the "Future EG Access Interconnection Sites"). The EG Access Interconnection Sites and the Future EG Access Interconnection Sites shall be fully accessible by Franchisee without any further legal obligation.

5.2.2. Within two hundred forty (240) days of the date that Franchisee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Franchise Area for the EG Access Interconnection Sites and within two hundred forty (240) days of the date that the LFA provides written notice to Franchisee that each Future EG Access Interconnection Site is ready to be connected including the availability of programming content, and subject to the successful completion of all required municipal site preparation work by the LFA and the provision of access to Franchisee for equipment, installation and provisioning, the Franchisee shall, without charge to the LFA, provide upstream EG Access Channel transmission connections between its video channel aggregation point and said locations in order to permit the signals to be correctly routed from said locations for distribution to Subscribers; provided, however, that once the initial installations are complete, the LFA shall be required to pay Franchisee for all costs associated with replacing or relocating said connections. The LFA shall pay the cost of any facilities required in order to deliver the signals from the program origination points to the EG Access Interconnection Sites and the Future EG Access Interconnection Sites and secure any third-party consents that may be necessary to acquire and transmit the EG Access Channel signals (including, without limitation, any consent that may be required with respect to third-party facilities, and/or equipment).

5.2.3. The LFA shall provide to Franchisee at the EG Access Interconnection Sites and the Future EG Access Interconnection Sites suitable video signals and suitable audio signals in baseband format for the EG Access Channels. Franchisee, upon receipt of the suitable video and audio signals, shall provide, install and maintain in good working order the equipment necessary for transmitting the EG Access Channel signals to the Franchisee's 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 LFA and its designated access administrator as is reasonably necessary for Franchisee to fulfill

such obligations. Notwithstanding the foregoing, the Franchisee shall not be obligated to provide the LFA or any designated access administrator with any other cablecast equipment or facilities or personnel responsible for maintaining and operating such equipment and facilities or generating any such EG Access Channel programming, except as necessary to implement the Franchisee's responsibilities specified herein.

### 5.3. *PEG Grant:*

5.3.1. Franchisee shall provide the LFA an annual grant for use in support of the production of local PEG programming (the "PEG Grant") in the following amounts: (i) ONE DOLLAR FIFTY CENTS (\$1.50) per month, per Subscriber during years one (1) and two (2) of the term of the Agreement; (ii) ONE DOLLAR (\$1.00) per month, per Subscriber during year three (3) of the term of the Agreement; and (iii) EIGHTY-FOUR CENTS (\$.84) per month, per Subscriber during years four (4) through six (6) of the term of the Agreement. The PEG Grant shall be payable in a total of six (6) installments within forty-five (45) days after April 30th of each of 2014, 2015, 2016, 2017, 2018, and 2019; provided, however, that the PEG Grant payment installment for 2014 shall be payable within forty-five (45) days after the Effective Date.

5.3.1.1. The amount to be paid to the LFA for each PEG Grant installment shall be calculated by multiplying the number of Subscribers in the Franchise Area per calendar month by the applicable PEG Grant rate and adding the monthly totals for the installment period; however, in no case shall Franchisee provide a PEG Grant installment that is less than TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500) for so long as Franchisee is one of two cable service providers in the Franchise Area. If the LFA enters into any new or renewed cable franchise agreement with any other cable service provider who serves a significant portion of the Franchise Area and contains obligations that are lesser in amount or aggregate value than the obligations imposed in this Section 5.3, Franchisee's obligations under this Section 5.3 shall be reduced, on an annual basis and upon the effective date of said agreement, to an amount equal to the lowest total payment made by any other cable service provider to the LFA. The relief available in the event of the foregoing is equitable relief going forward, and the Franchisee shall not recover amounts already paid to the LFA. Notwithstanding the foregoing, if at any time during the term of this Agreement, any other cable service provider ceases to provide cash grants to the LFA in support of the production of local PEG programming in accordance with the terms of its respective franchise agreement, then Franchisee's PEG Grant obligation shall also cease. The LFA shall provide notification to Franchisee within thirty (30) days of such other provider's failure to provide a cash grant in accordance with the schedule set forth in such provider's franchise agreement with the LFA. Equipment, services and other in-kind, non-monetary contributions to the LFA by such existing incumbent cable service provider shall not count towards the cash grants referenced in this paragraph.

5.3.2. The PEG Grant shall be used by the LFA solely for PEG access equipment, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities.

5.3.3. Upon request of the Franchisee, but not more than three (3) times over the term of this Agreement, the LFA shall provide Franchisee with a report setting forth a summary of all expenditures for PEG access equipment and facilities from the PEG Grant paid to the LFA pursuant to this Section 5.3 and the amounts, if any, reserved for future capital expenditures for such purposes.

5.4. *Indemnity for PEG:* The LFA shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the LFA from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. The LFA shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. §531.

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

## 6. **FRANCHISE FEES**

6.1. *Payment to LFA:* Franchisee shall pay to the LFA 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. 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. Late payments for Franchise Fees shall be subject to interest charges computed from the due date, at the then-current rate set forth in Section 5004 of Article 50 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) during the period such unpaid amount is owed.

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

6.3. *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, but cannot exceed the date of records retention reflected in Section 7. Unless agreed to in writing by the parties, the acceptance of any Franchise Fee payment shall not be construed as an accord and satisfaction that such payment is in fact the correct amount, nor shall such acceptance of payment be construed as a release or satisfaction of any claim the LFA may have for further or additional Franchise Fee sums payable under the provisions of this Franchise.

6.4. *Bundled Services*: If Cable Services subject to the Franchise Fee required under this Article 6 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise Fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders.

6.5. *Section 626 Treatment*: Franchisee agrees that it will not apply the Franchise Fee as an offset against the special franchise tax payable to the LFA pursuant to N.Y. Real Property Tax Law Section 626 beginning in the next full calendar month following the issuance by the NY PSC of an order confirming this Agreement. The LFA agrees that it shall impose the same full and complete waiver of the special franchise tax offset upon all new providers of Cable Service or cable service (as such term may be defined by other providers) in the Service Area to be expressed in writing in all future initial franchise agreements. Notwithstanding the above, if an existing or new cable provider uses its offset right against the special franchise tax during the term of this Agreement or any extension thereof, then Franchisee may also use its offset right and the above waiver is no longer in effect. The operation of this Section 6.5 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.

## **7. REPORTS AND RECORDS**

7.1. *Open Books and Records*: Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the LFA shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a non-disruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Franchise Area. Subject to the requirements of the New York Freedom of Information Law ("FOIL"), the LFA shall treat any information disclosed by Franchisee as proprietary and confidential under Section 87(2)(d) of the New York Public Officers Law and shall only disclose it to employees, representatives and agents thereof who have a need to know, or in order to enforce the provisions hereof. For purposes of this Section, "proprietary and confidential" information includes, but is not limited to: information related to the Cable System design; trade secrets; Subscriber lists;

marketing plans; financial information; or other information that is reasonably determined by Franchisee to be competitively sensitive. If the LFA 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 LFA shall promptly notify Franchisee of such request. If the LFA determines in good faith that public disclosure of the requested information is required under FOIL, the LFA shall so notify Franchisee as soon as practicable before making the disclosure, to allow Franchisee to seek to obtain judicial redress to preclude disclosure. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. § 551.

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

7.2.1. 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;

7.2.2. 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;

7.2.3. 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;

7.2.4. 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; and

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

7.3. *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.

7.4. *Audit:* Subject to the confidentiality requirements set forth in Section 7.1 of this Franchise, Franchisee shall be responsible for making available to the LFA for inspection and audit, all records necessary to confirm the accurate payment of Franchise Fees and the PEG Grant, whether the records are held by the Franchisee or an Affiliate, including records received in the ordinary course of business from any entity that collects or receives funds related to the Franchisee’s Cable Services operation in the LFA subject to the payment of Franchise Fees under this Agreement (e.g., any entity that sells advertising on the Franchisee’s behalf). Franchisee shall maintain such records for six (6) years, provided that, if the LFA

commences an audit within that six (6) year period, Franchisee shall continue to maintain such records for the duration of any audit in progress at the end of that six (6) year period. The LFA shall conduct all audits expeditiously, and neither the LFA nor Franchisee shall unreasonably delay the completion of an audit. The LFA's audit expenses shall be borne by the LFA unless the audit determines that the payment to the LFA should be increased by five percent (5%) or more in the audited period, in which case the reasonable, documented out of pocket costs of the audit, together with any additional amounts due to the LFA as a result of such audit, shall be paid by Franchisee to the LFA within sixty (60) days following written notice to Franchisee by the LFA of the underpayment, which notice shall include a copy of the audit report; provided, however, that Franchisee's obligation to pay or reimburse the LFA's audit expenses shall not exceed SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500). If re-computation results in additional revenue to be paid to the LFA, such amount shall be subject to interest charges computed from the due date, at the then-current rate set forth in Section 5004 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) per annum during the period such unpaid amount is owed. If the audit determines that there has been an overpayment by Franchisee, the Franchisee may credit any overpayment against its next quarterly payment. Said audit shall be conducted by an independent third party and no auditor so employed by the LFA shall be compensated on a success based formula, e.g., payment based on a percentage of an underpayment, if any. The LFA shall not conduct an audit more frequently than once every three (3) years.

## 8. **INSURANCE AND INDEMNIFICATION**

### 8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA.

8.1.1.2. Automobile Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit for bodily injury and property damage coverage.

8.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of New York.

8.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$500,000 policy limit.

8.1.1.5. Excess liability or umbrella coverage of not less than ten million dollars (\$10,000,000).

8.1.1.6. The limits required above may be satisfied with a combination of primary and excess coverage.

8.1.2. The LFA shall be included as an additional insured under the General Liability and Automobile Liability policies as their interests may appear.

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

8.1.4. Each of the required insurance policies shall be with insurers authorized or permitted to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

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

## 8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA and its officers, boards, elected officials and employees for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claims for royalties, programming license fees, or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels, provided that the LFA shall give Franchisee timely written notice of the LFA's request for indemnification, but in any event, the LFA shall provide such notice to Franchisee within a sufficient period of time from receipt of a claim or action pursuant to this Subsection to enable Franchisee to timely answer complaints, raise defenses and defend all claims. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

8.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 8.2.1, Franchisee shall provide the defense of any claims brought against the LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the LFA, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement if Franchisee shall bear the entire cost of the settlement. In the event that the terms of any such proposed settlement includes the release of the LFA and the LFA does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim

or action but its obligation to indemnify the LFA shall in no event exceed the amount of such settlement.

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

## **9. TRANSFER OF FRANCHISE**

9.1. *Transfer:* Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, as amended, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the LFA may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.31 above.

## **10. RENEWAL OF FRANCHISE**

10.1. *Governing Law:* The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 12.11 below, the Cable Law and Section 626 of the Communications Act, 47 U.S.C. § 546, as amended.

10.2. *Needs Assessment:* In addition to the procedures set forth in Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Such assessments shall be provided to Franchisee by the LFA promptly so that Franchisee will have adequate time to submit a proposal under Section 626 of the Communications Act and complete renewal of the Franchise prior to expiration of its term.

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

10.4. *Consistent Terms:* Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of Section 626 of the Communications Act and the Cable Law.

## 11. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

11.1. *Notice of Violation:* If at any time the LFA believes that Franchisee has not complied with the terms of the Franchise, the LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem in a reasonable time, the LFA shall then notify Franchisee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article, the “Noncompliance Notice”).

11.2. *Franchisee’s Right to Cure or Respond:* Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to remedy such noncompliance and notify the LFA of the steps being taken and the date by which Franchisee projects that it will complete cure of such noncompliance. Upon cure of any noncompliance, the LFA shall provide written confirmation that such cure has been effected.

11.3. *Public Hearing:* The LFA shall schedule a public hearing if the LFA seeks to continue its investigation into the alleged noncompliance (i) if Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (ii) if Franchisee has not remedied the alleged noncompliance within sixty (60) days or the date projected pursuant to Section 11.2(iii) above. The LFA shall provide Franchisee at least sixty (60) business days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

11.4. *Enforcement:* Subject to Section 12.11 below and applicable federal and state law, in the event the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

11.4.3. Exercise its rights under the security described in Section 11.6;  
or

11.4.4. In the case of a substantial noncompliance with a material provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.

11.5. *Revocation:* Should the LFA seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, the LFA shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the LFA has not received a satisfactory response from Franchisee, it may then seek termination of the

Franchise at a second public hearing. The LFA shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

11.5.1. At the designated public 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 LFA, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

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

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

#### 11.6. *Security:*

11.6.1. Within thirty (30) days after the Effective Date, the Franchisee shall provide to the LFA security for the performance of its obligations under this Agreement in the amount of Thirty Thousand and 00/100 Dollars (\$30,000.00). The form of this security may, at Franchisee's option, be a performance bond, letter of credit, cash deposit, cashier's check or any other security acceptable to the LFA. If the Franchisee posts a performance bond, it shall be substantially in the form of Exhibit C attached hereto.

11.6.2. In the event that a performance bond provided pursuant to the Agreement is not renewed or is canceled, Franchisee shall provide new security pursuant to this Article within thirty (30) days of such cancellation or failure to renew.

11.6.3. Neither cancellation, nor termination, nor refusal by surety to extend the performance bond, nor inability of the Franchisee, as principal, to file a replacement performance bond or replacement security for its obligations, shall constitute a loss to the LFA, as obligee, recoverable under the performance bond.

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

## 12. **MISCELLANEOUS PROVISIONS**

12.1. *Actions of Parties:* In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned. The LFA shall, without further consideration, execute and deliver such further instruments and documents and do such other acts and things as Franchisee may reasonably request in order to effect and confirm this Agreement and the rights and obligations contemplated herein.

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

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

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

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

12.5.1. Notices to Franchisee shall be mailed to:

Monica Azare  
Vice President and Deputy General Counsel  
Verizon  
140 West Street, 6<sup>th</sup> Floor  
New York, New York 10007



12.5.2. Notices to the LFA shall be mailed to:

Supervisor/Mayor  
Town/Village of Harrison  
One Heineman Place  
Harrison, New York 10528

12.5.3. with a copy to:

Town/Village Attorney  
Town/Village of Harrison  
One Heineman Place  
Harrison, New York 10528

12.6. *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the LFA and they supersede 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.

12.7. *Amendments and Modifications*: Amendments and/or modifications to this Franchise shall be mutually agreed to in writing by the parties and subject to the approval of the NY PSC, pursuant to the Cable Law.

12.8. *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.

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

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

12.11. *FTTP Network Transfer Prohibition*: Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the LFA or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid

or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

12.12. *NY PSC Approval:* This Franchise is subject to the approval of the NY PSC. Franchisee shall file an application for such approval with the NY PSC within sixty (60) days after the date hereof. Franchisee shall also file any necessary notices with the FCC.

12.13. *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.

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

12.15. *Customer Service:* Franchisee shall comply with the consumer protection and customer service standards set forth in Parts 890 and 896 of the NY PSC rules and regulations.

12.16. *Franchise Service Manager:* Franchisee shall designate and provide the LFA with the title, address, telephone number and e-mail address of its Franchise service manager for the LFA, who will be responsible for facilitating the resolution of issues, questions, or comments related to this Agreement.

12.17. *Identification of Franchisee's Employees and Subcontractors:* Franchisee will require each employee of Franchisee who routinely comes into contact with members of the public at their places of residence to wear a picture identification card clearly indicating his or her employment with 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. Franchisee will require each employee of any contractor or subcontractor of Franchisee who routinely comes into contact with members of the public at their places of residence to wear a picture identification card clearly indicating his or her name, the name of such contractor or subcontractor and the name of Franchisee.

12.18. *No Third Party Beneficiaries:* Except as expressly provided in this Agreement, 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.

12.19. *LFA Official:* The Mayor/Supervisor of the LFA is the LFA official that is responsible for the continuing administration of this Agreement.

12.20. *No Waiver of LFA's Rights:* Notwithstanding anything to the contrary in this Agreement, no provision of this Agreement shall be construed as a waiver of the LFA's rights under applicable federal and state law.

*[SIGNATURE PAGE FOLLOWS]*

AGREED TO THIS 19 DAY OF June, 2014.

LFA:

TOWN/VILLAGE OF HARRISON

By Ron Belmont

Name: Ron Belmont

Title: Supervisor/Mayor

FRANCHISEE:

VERIZON NEW YORK INC.

By Walter Jones

Name: Walter Jones

Title: Region President/NYSE

Approved as to form:

Pamela N. Goldstein

Pamela N. Goldstein

Assistant General Counsel, Verizon

Date 6/12/14

## EXHIBITS

Exhibit A: Franchise Area

Exhibit B: Municipal Buildings to be Provided Free Cable Service

Exhibit C: Form of Performance Bond

## **EXHIBIT A**

### **FRANCHISE AREA**

A map of the Franchise Area is attached hereto for the sole purpose of illustration. For the avoidance of doubt, the Franchise Area does not include any islands or areas occupied by bodies of water.

Franchisee's FTTP Network currently passes 100% of the current households in the Franchise Area.

At present, Franchisee's anticipated schedule for making Cable Service available (with schedule dates measured from the month that the NY PSC issues the confirmation order approving this Franchise) calls for 93% availability at 6 months, 94% availability at 12 months, 94% availability at 18 months, 95% availability at 24 months, 95% availability at 30 months, 96% availability at 36 months, 97% availability at 42 months, 98% availability at 48 months, 99% availability at 54 months, and 100% availability at 60 months. This schedule is subject to further review and modification by the Franchisee consistent with Section 895.5(b)(1) of the NY PSC rules and regulations; provided, however, that Franchisee shall provide notice to the LFA and the NY PSC of any material change in this schedule.

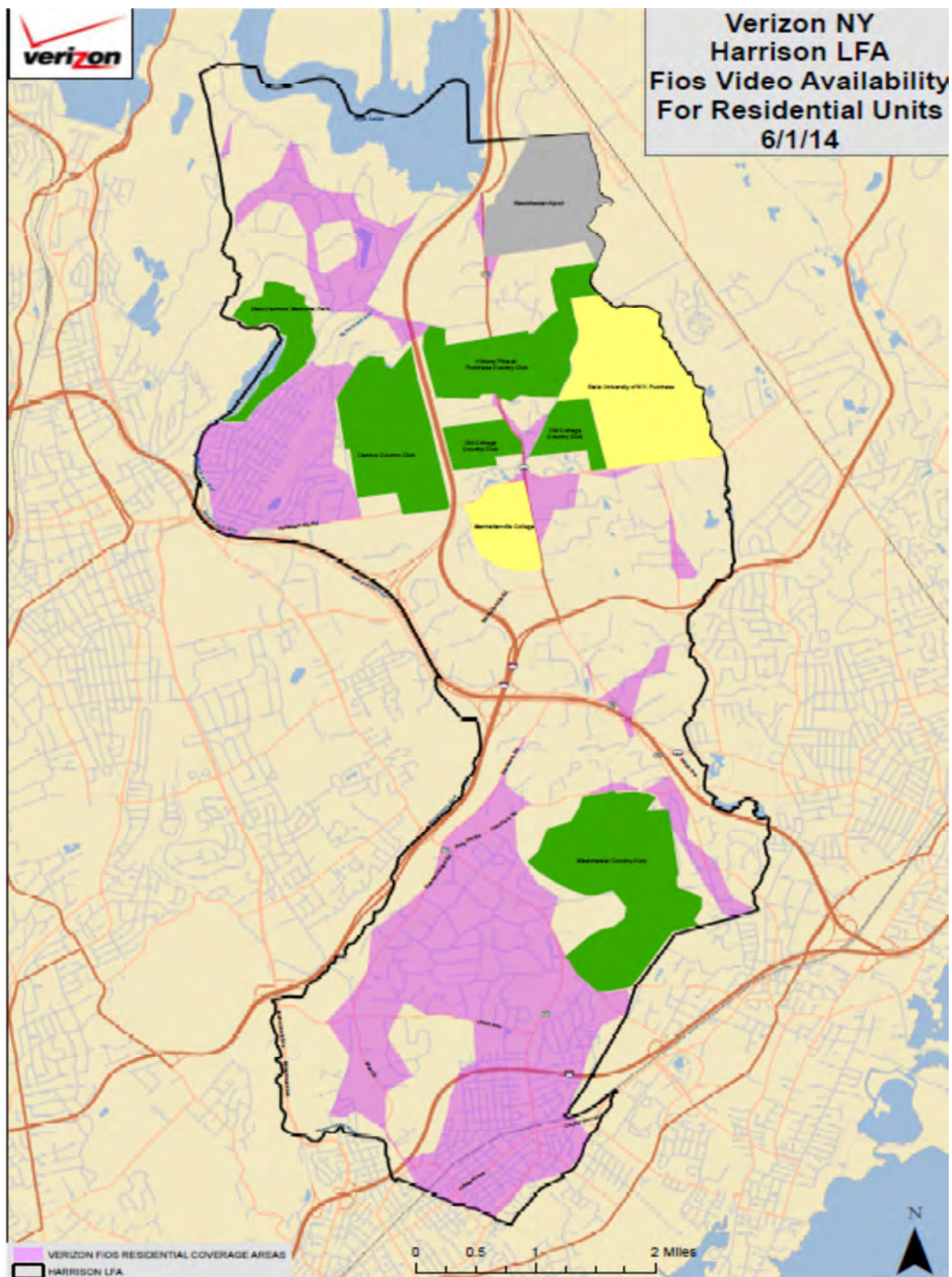


Exhibit A – 2

## **EXHIBIT B**

### **MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE**

1. West Harrison Library, 2 Madison Avenue, West Harrison, NY 10604
2. Harrison Public Library, 1 Bruce Avenue, Harrison, NY 10528
3. Purchase Free Library, 3039 Purchase Street, Purchase, NY 10577
4. Harrison Historical Society, (Dawson History Center), 1 Park Lane, West Harrison, NY 10604
5. Harrison Fire Department, 206 Harrison Avenue, Harrison, NY 10528
6. Purchase Fire Department, 2 New Street, Purchase, NY 10577
7. West Harrison Fire Department, 95 Lake Street, West Harrison, NY 10604
8. Harrison Town Hall, 1 Heineman Place, Harrison, NY 10528
9. Harrison Police Department, 650 North Street, Harrison, NY 10528
10. Harrison Volunteer Ambulance Corps (EMS), 2 Pleasant Ridge Road, Harrison, NY 10528
11. Harrison Utility Garage, Gleason Place, Harrison, NY 10528
12. Harrison Highway Garage, Park Lane (Nike Base), West Harrison, NY 10604
13. Leo Mintzer Center, 251 Underhill Avenue, West Harrison, NY 10604
14. Senior Building, 251 Underhill Avenue, West Harrison, NY 10604
15. Solazzo Center, 270 Harrison Avenue, Harrison, NY 10528
16. Harrison Community Center, 216 Halstead Avenue, Harrison, NY 10528
17. Harrison Youth Forum, 216 Halstead Avenue, Harrison, NY 10528
18. Municipal Building-VFW, 210 Halstead Avenue, Harrison, NY 10528
19. Passidomo Veterans Memorial Park, 1 Casarella Way, West Harrison, NY 10604
20. Passidomo Recreation Center & Pool, 1 Casarella Way, West Harrison, NY 10604
21. Bernie Guagnini Brentwood Park, Webster Avenue, Harrison, NY 10528
22. Purchase Community House, 3095 Purchase Street, Purchase, NY 10577
23. Girl Scout House, Crotona Avenue & Bradford Avenue, Harrison, NY 10528
24. Harrison Central School Administration Offices, 50 Union Avenue, Harrison, NY 10528
25. Harrison High School, 255 Union Avenue, Harrison, NY 10528
26. Louis M. Klein Middle School, 50 Union Avenue, Harrison, NY 10528
27. Parsons Memorial School, 200 Halstead Avenue, Harrison, NY 10528
28. Harrison Avenue School, 480 Harrison Avenue, Harrison, NY 10528
29. Purchase Elementary School, 2995 Purchase Street, Purchase, NY 10577
30. Samuel J. Preston School, 50 Taylor Avenue, West Harrison, NY 10604
31. Holy Child School, Westchester Avenue, Rye, NY
32. St. Anthony's School, 45 E. Gainborg Avenue, West Harrison, NY 10604
33. Keio Academy, 3 College Road, Purchase, NY 10577
34. Windward School, Red Oak Lane Harrison, NY



## **EXHIBIT C**

### **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 \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal and Obligee have entered into a License Agreement dated \_\_\_\_\_ which is hereby referred to and made a part hereof.

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

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

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

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

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

3. 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 Obligees recoverable under this bond.

4. 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.

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

6. 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.

7. 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.

**This bond shall not bind the Surety unless it is accepted by the Obligees by signing below.**

**IN WITNESS WHEREOF**, the above bounded Principal and Surety have hereunto signed and sealed this bond effective this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**Principal**

**Surety**

By: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Attorney-in-Fact

Accepted by Obligees: \_\_\_\_\_  
(Signature & date above - Print Name, Title below)