

SCANNED

PENDING PETITION MEMO

Date: 7/29/2008

TO : OT  
OGC  
OEEE

FROM: CENTRAL OPERATIONS

UTILITY: VERIZON NEW YORK INC.

SUBJECT: 08-V-0875

Petition of Verizon New York Inc. for a Certificate of Confirmation  
for its Franchise with the Town of Kent, Putnam County.

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27<sup>th</sup> Floor  
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**Joseph A. Post**  
Assistant General Counsel



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July 29, 2008

**BY HAND**

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

**Re: Case 08-V-\_\_\_\_\_**

Dear Secretary Brilling:

Enclosed please find an original and three (3) copies of the Petition of Verizon New York Inc. ("Verizon") for confirmation, pursuant to § 221 of the Public Service Law, of a cable franchise awarded to Verizon by the Town of Kent, New York.

The cable service that Verizon proposes to offer in Kent is a key component of the suite of advanced services (known as "Verizon FiOS<sup>SM</sup>") that will be provided through the use of innovative Fiber-to-the-Premises ("FTTP") technology. Verizon FiOS will provide the residents of Kent with a robust array of high-quality video services, as well as a new competitive alternative to the video services currently offered by incumbent cable and satellite providers.

Honorable Jaelyn A. Brillling  
July 29, 2008

Verizon's proposed offering of FiOS video service in Kent complies in all respects with the requirements of New York and federal law, and will provide valuable benefits to consumers in the franchise area. Accordingly, Verizon respectfully requests that the Commission review and approve this Petition on an expedited basis.

Respectfully submitted,

Joseph A. Post

cc: Town of Kent  
Ms. Yolanda D. Cappelli  
Town Clerk  
Town of Kent  
25 Sybil's Crossing  
Kent Lakes, New York 10512

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**In the Matter of the Petition of Verizon  
New York Inc. Pursuant to Section 221  
of the Public Service Law for  
Confirmation of a Cable Television  
Franchise Awarded by the Town of  
Kent, New York (Putnam County)**

Case 08-V-\_\_\_\_\_

**PETITION FOR CONFIRMATION**

**JOSEPH A. POST  
140 West Street — 27<sup>th</sup> Floor  
New York, NY 10007-2109  
(212) 321-8126**

**Counsel for Verizon New York Inc.**

**July 29, 2008**

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**STATE OF NEW YORK  
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**In the Matter of the Petition of Verizon  
New York Inc. Pursuant to Section 221  
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Kent, New York (Putnam County)**

Case 08-V-\_\_\_\_\_

**PETITION FOR CONFIRMATION**

Verizon New York Inc. ("Verizon") respectfully requests that the Commission confirm, pursuant to § 221 of the Public Service Law, a non-exclusive cable franchise (the "Franchise") that has been awarded to Verizon by the Town of Kent, a municipality located in Putnam County (the "Franchisor").

The Franchise, and Verizon's proposed offering of cable service in Kent pursuant to the Franchise, comply with all applicable requirements of federal and state law. Moreover, prompt approval of the Franchise would be in the public interest and would provide important benefits to the people of this State.

*First*, cable service is a key component of the suite of services (known as "Verizon FiOS<sup>SM</sup>") that Verizon intends to offer over its Fiber-to-the-Premises ("FTTP") platform. FTTP is an innovative new technology that uses fiber-optic cable and optical electronics to link homes and businesses directly to Verizon's network. Aside from making advanced services — including a robust array of video services — available to Verizon's customers, FTTP exemplifies the substantial investments that Verizon has been making in new network technologies. By approving and confirming the Franchise, the Commission will thus be demonstrating its own commitment to policies that encourage innovation and network investment.

*Second*, the offering of FiOS video services by Verizon will provide a competitive alternative to conventional cable and satellite services, thus promoting the emergence in the video market of the same sort of healthy competition that already exists in the telecommunications voice market — with the price and service discipline that is associated with such competition.

Accordingly, Verizon respectfully requests that the Commission review this Petition and confirm the Franchise on an expedited basis.

## **I. INFORMATION SUBMITTED IN SUPPORT OF THE PETITION**

In support of this Petition, Verizon states as follows:<sup>1</sup>

1. The applicant for confirmation and approval of the Franchise is Verizon. Verizon's contact for purposes of this application is Thomas McCarroll, Vice President — Regulatory Affairs, 158 State Street, Albany, New York 12207, (518) 396-1001. The municipality that will be served pursuant to the Franchise is the Franchisor. Verizon anticipates that it will begin offering service to the public for hire pursuant to the Franchise as soon as is practicable after the Commission confirms the Franchise. (16 NYCRR § 897.2(a))
2. True copies of the Franchise and the resolution authorizing the Franchise are provided as Attachments A and B, respectively, to this Petition. A public hearing on Verizon's application for a franchise was held by the Franchisor on June 16, 2008, at Town Hall, 25 Sybil's Crossing, Kent Lakes, New York, starting at approximately 7:00 P.M. The hearing continued on July 7 and July 21, 2008, and was concluded on July 21, 2008. A true copy of the affidavit of

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<sup>1</sup> Each of the numbered paragraphs in this section of the Petition identifies the statute or regulation that requires Verizon to provide the information set forth in the paragraph

publication of the notice of public hearing is provided as Attachment C to this petition. (16

NYCRR § 897.2(b))

3. True copies of the documents submitted by Verizon to the Franchisor as part of, or in support of, its application for the Franchise are included in Attachment D to this petition.

(16 NYCRR § 897.2(c))

4. The facilities in New York State that will be used to provide cable television service pursuant to the Franchise are owned by Verizon. (16 NYCRR § 897.2(d))

5. The technical specifications and design of the cable system are described in Attachment E to this Petition.

Verizon is considering alternatives for origination cablecasting, but at this point it is not clear when or if the company will offer origination cablecasting in this franchise area. Verizon meets all of the Commission's regulations regarding the provision of P1-G access channels. With respect to access cablecasting, *see* section 5.1.3 of the Franchise included as Attachment A to this Petition. (16 NYCRR § 897.2(e))

6. Verizon's proposed operation of the cable system at issue in this Petition would not be in violation of, or in any way inconsistent with, any applicable federal or State law or regulation. (16 NYCRR § 897.2(f))

7. A copy of this Petition is being served upon the Clerk for the Franchisor, and proof of such service is provided as Attachment F to this Petition. (Publ. Serv. L. § 221(1); 16 NYCRR § 897.2(g))

8. A notice of this Petition will be published on August 1, 2008 in *The Journal News*. *The Journal News* is a newspaper of general circulation in the Town of Kent. Verizon has submitted the notice to that newspaper, has arranged for payment of the necessary charges, and



has been assured that the notice will be published on the specified date. Proof of these facts is provided as Attachment G to this Petition. Verizon will file a supplemental affidavit confirming the actual publication of the notice following publication. (16 NYCRR § 897.2(g))

## **II. ISSUES RELATING TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT**

A Department of Environmental Conservation “Full Environmental Assessment Form” (“EAF”) for Verizon’s offering of cable service in Kent, together with certain supplemental materials, is provided as Attachment H to this Petition. Verizon has completed Part 1 of the form, which calls for information to be provided by the “Project Sponsor”; Parts 2 and 3 are to be filled out by the Commission.

It is Verizon’s position that submission of an EAF is not required for the activities at issue in this Petition, and that even if such a submission were required, a short-form EAF would suffice.<sup>2</sup> Attachment H is submitted without prejudice to that position, at Staff’s request, and in recognition of the fact that the Commission has concluded in previous orders that the offering of cable service by Verizon is an “unlisted” action — rather than a Type II action or a non-action — under the State Environmental Quality Review Act (“SEQRA”). Even if the Commission concludes that submission of an EAF is required, it should determine on the basis of Attachment H that the actions at issue here will not have a significant effect on the environment — *i.e.*, the Commission should issue a “negative declaration” under SEQRA — as it has done in prior Verizon confirmation proceedings.

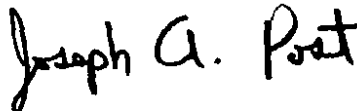
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<sup>2</sup> For an explanation of the basis of this position, *see* Section II of Verizon’s October 6, 2005 petition for confirmation of a franchise granted by the Village of Massapequa Park, New York (Case 05-V-1263).

### **III. CONCLUSION**

The Franchise, and Verizon's proposed offering of FiOS video services in Kent pursuant to the Franchise, comply in all respects with applicable laws. Moreover, the proposed offering of a new alternative to the video services provided by incumbent cable and satellite providers, utilizing Verizon's FTTP platform, is in the public interest. Accordingly, the Commission should promptly review this Petition and based on such review should confirm and approve the Franchise. Further, if the Commission concludes that review under SEQRA is required in connection with its confirmation and approval of the Franchise, it should determine that Verizon's proposed offering of cable service pursuant to the Franchise will not have a significant adverse environmental impact, and it should accordingly include a negative declaration under SEQRA in its confirmation order.

Respectfully submitted,



**JOSEPH A. POST**  
**140 West Street — 27<sup>th</sup> Floor**  
**New York, New York 10007-2109**  
**(212) 321-8126**

**Counsel for Verizon New York Inc.**

**July 29, 2008**

**In the Matter of the Petition of Verizon  
New York Inc. Pursuant to Section 221  
of the Public Service Law for  
Confirmation of a Cable Television  
Franchise Awarded by the Town of  
Kent, New York (Putnam County)**

**JoAnne Ardlesone**  
**Notary Public, State of New Jersey**  
**My Commission Expires**  
**July 13, 2011**

## LIST OF ATTACHMENTS TO THE PETITION

- A. True copy of the Franchise
  - B. True copy of the resolution authorizing the Franchise
  - C. True copy of the affidavit of publication of notice of public hearing
  - D. True copies of documents submitted by Verizon to the Franchisor
  - E. Technical specifications and design of the cable system
  - F. Proof of service of the Petition upon the Franchisor
  - G. Proof of publication of notice of the Petition
  - H. Environmental Assessment Form, with supplemental materials
-

# **ATTACHMENT A**

**CABLE FRANCHISE AGREEMENT**  
**BY AND BETWEEN**  
**THE TOWN OF KENT, NEW YORK**  
**AND**  
**VERIZON NEW YORK, INC.**

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### **EXHIBITS**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: PEG Content Origination Points

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Town of Kent, a validly organized and existing political subdivision of the State of New York (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 is in the process of completing the upgrading of its existing telecommunications and information services network through the installation of a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area which transmits the 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/Service 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.

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

1.12. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, 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.

1.13. *Franchise Area:* The entire existing territorial limits of the LFA, and such additional areas as may be annexed or acquired, but not including any portion of an incorporated village located wholly or partially within the territorial limits of the LFA.

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

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

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

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

1.16.1.1 Basic Service;

1.16.1.2 all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; 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;

1.16.1.3 video on demand and pay per view;

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

1.16.1.5 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;

1.16.1.6 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 Service 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 Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

1.16.2 Gross Revenue shall not include:

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

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

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

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

1.16.2.5 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;

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

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

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

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

- 1.16.2.10 sales of capital assets or sales of surplus equipment;
- 1.16.2.11 program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming;
- 1.16.2.12 directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing;
- 1.16.2.13 any fees or charges collected from Subscribers or other third parties for any PEG Grant or Franchise Grant payments;
- 1.16.2.14 except as otherwise provided in Subsection 1.16.1, 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.

1.17. *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.

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

1.19. *Local Franchise Authority (LFA)*: The Town of Kent, New York, or the lawful successor, transferee, or assignee thereof.

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

1.21. *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.

1.22. *NYPSC*: The New York Public Service Commission.

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

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

1.25. *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.

1.26. *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.

1.27. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, as described in **Exhibit B** attached hereto.

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.

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.

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 fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise.

2.4. *Grant Not Exclusive:* The Franchise and the 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 shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

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

2.6. *No Waiver:*

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

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 or federal law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or a waiver of performance of this Agreement, nor shall it excuse the 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.

2.7.3. Should any change to state law, rules or regulations have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. 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 Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.8. *Police Powers:* The LFA shall not enact any local laws that are inconsistent with this Franchise, provided, however, that nothing in this Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of the police powers of the LFA in a manner not materially in conflict with the privileges granted in this Franchise and consistent with all federal and state laws, 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 serviceable condition.

### **3. PROVISION OF CABLE SERVICE**

3.1. *Service Area:* Subject to the issuance of all necessary permits by the LFA, Franchisee shall offer Cable Service to significant numbers of Subscribers within residential areas of the Service Area and may make Cable Service available to businesses in the Service Area, within twelve (12) months and shall offer Cable Service to all residential areas of the Service 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 Service 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; (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; and (G) in areas where the occupied residential household density does not meet the density and other requirements set forth in Subsection 3.1.1 and Section 3.2.

3.1.1 *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than thirty-five (35) occupied residential dwelling units per mile as

measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1, Franchisee shall provide Cable Service to such area within twelve (12) months of receiving notice from the LFA that the density requirements have been met.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service 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 one hundred fifty (150) 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 one hundred fifty (150) feet or are in an area with a density of less than thirty-five (35) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than thirty-five (35) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility.

3.3. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as may be designated by the LFA as provided in **Exhibit A** attached hereto; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred fifty (150) 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 one hundred fifty (150) 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 one hundred fifty (150) 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.

3.4. *Contribution in Aid:* Notwithstanding the foregoing, Franchisee shall comply at all times, with the requirements of Section 895.5 of NY PSC rules and regulations.

#### 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:* During the term hereof Franchisee's Cable System shall meet or exceed the following requirements:

4.2.1. The System shall be designed and operated with an initial analog and 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.

4.2.2. 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.

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").

5.1.2. The programming to be carried on each of the PEG Channels set aside by Franchisee is reflected in **Exhibit C** attached hereto. The LFA hereby authorizes Franchisee to transmit such 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.

### 5.2. *PEG Grant:*

5.2.1. Franchisee shall provide a grant to the LFA to be used in support of the production of local PEG programming (the "PEG Grant"). Such grant shall be used solely by the LFA 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.

5.2.2. The PEG Grant provided by Franchisee hereunder shall be the sum of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00) to be paid as follows:

5.2.2.1 Franchisee shall pay the LFA the sum of FIVE THOUSAND DOLLARS (\$5,000.00) within thirty (30) days of the Effective Date;

5.2.2.2 Franchisee shall pay the LFA the sum of FIVE THOUSAND DOLLARS (\$5,000.00) within thirty (30) days of the three year anniversary of the Effective Date;

5.2.2.3 Franchisee shall pay the LFA the sum of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) within thirty (30) days of the five year anniversary of the Effective Date

5.2.3. The LFA shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 5.2.

5.3. *Franchise Grant:* In lieu of free internet service for the term of this Agreement, the Franchisee shall pay the LFA a Franchise Grant in the sum of THIRTEEN THOUSAND FIVE HUNDRED DOLLARS (\$13,500.00) in fifteen equal installments of NINE HUNDRED DOLLARS (\$900.00) each, with the first payment to be made within thirty days of the Effective Date and the remaining fourteen payments made annually thereafter for fourteen years on the first through fourteenth anniversary dates of the Effective Date.

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 a 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 forgoing, if allowed under state and federal laws,

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

5.6. *PEG Access Interconnection:* The LFA may designate in its sole discretion not more than one (1) LFA municipal site within the Franchise Area for the interconnection of the Public, Educational and Governmental Access facilities with the Cable System ("PEG Access Interconnection Sites"), which PEG Access Interconnection Site is identified in **Exhibit D**. The PEG Access Interconnection Site shall be fully accessible by Franchisee without any further legal obligation.

5.6.1. Upon one hundred eighty (180) days written notice from the LFA notifying Franchisee that the PEG Access Interconnection Site is fully functional for transmitting programming; and subject to the successful completion of all required municipal site preparation work by the LFA and provision of access to Franchisee for equipment, installation and provisioning, Franchisee shall, without charge to the LFA, provide a single upstream Public, Educational and Governmental Access Channel transmission connection between its video channel aggregation point and the PEG Access Interconnection Site in order to permit the signals to be correctly routed from the PEG Access Interconnection Site for distribution to Subscribers. The LFA shall pay the cost of any facilities required in order to deliver the signals from the program origination points to the PEG Access Interconnection Site.

5.6.2. The LFA shall provide to Franchisee at the PEG Access Interconnection Site a suitable video signal and a suitable audio signal(s) for the Public, Educational and Governmental Channel. Franchisee, upon receipt of the suitable video signal and suitable audio signal(s), shall provide, install and maintain in good working order the equipment necessary for transmitting the Public, Educational and Governmental Access 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 LFA as is reasonably necessary for Franchisee to fulfill such obligations.

## 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.

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 *Audit:* Subject to the confidentiality requirements set forth in Section 7.1 of this Franchise and the LFA's imposition of identical obligations to those contained in this Section 6.3 on all cable service providers in the Service Area, 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, whether the records are held by the Franchisee, an Affiliate, or any other 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, including, by way of illustration and not limitation, 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 an aggregate of five thousand dollars (\$5,000). 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."

6.4 *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, but cannot exceed the date of records retention reflected in Section 7.

6.5 *Section 626 Set-Off:* Franchisee agrees that it will cease to apply the Franchise Fee as an offset against the special franchise tax provided for in N.Y. Real Property Tax Law Section 626 for each tax period that the Franchisee receives a letter from the LFA within forty-five (45) days of the end of each current tax period confirming that each existing provider of Cable Service or cable service (as such term may be defined by other providers) in the Service Area did not use its special franchise tax offset right in such prior tax year. Further, Franchisee agrees that it will cease to use its special franchise tax offset right in the next full calendar month following the issuance by the NY PSC of an order confirming an amended or renewal agreement of each of the existing providers of Cable Service or cable service (as such term may be defined by other providers) in the Service Area if such agreements contain a full and complete waiver of the special franchise tax offset. In addition, 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 the franchise agreement of each new cable provider. 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.

6.6 *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.

## **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 nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than 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 Service Area. The LFA shall treat any information disclosed by Franchisee as confidential 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. 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 five (5) 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 five (5) 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 five (5) 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 five (5) 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.

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

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

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 three million dollars (\$3,000,000).

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 designated as an additional insured under each of the insurance policies required in this Article 8 except Worker's Compensation Insurance, Employer's Liability Insurance, and excess liability or umbrella coverage.

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 sureties qualified 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 claim 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 written notice of the LFA's request for indemnification within ten (10) days of receipt of a claim or action pursuant to this Subsection. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, 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. 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 hold harmless and defend Franchisee from and against and shall be responsible for damages, liability or claims resulting from or arising out of the willful misconduct or negligence of the LFA.

8.2.4. 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 1.34 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. 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 cured or will be 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. *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.

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.

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

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:

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

12.5.2. Notices to the LFA shall be mailed to:

Town Supervisor  
25 Sybil's Crossing  
Kent Lakes, NY 10512

12.5.3. with a copy to:

Town Attorney  
25 Sybil's Crossing  
Kent Lakes, NY 10512

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. *Publishing Information:* LFA hereby requests that Franchisee omit publishing information specified in 47 C.F.R. § 76.952 from Subscriber bills.

12.15. *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.

12.16. *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.

12.17. *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.

12.18. *LFA Official:* The Town Supervisor of the LFA is the LFA official that is responsible for the continuing administration of this Agreement.

12.19. *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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

AGREED TO THIS 28 DAY OF July, 2008.

LFA: Town of Kent

By: [Signature]  
Town Supervisor

Verizon New York Inc.

By: [Signature]  
Tracey Edwards – Vice President

FORM APPROVED  
Attorney  
Date 7/15/08

**EXHIBITS**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: PEG Content Origination Points

## **EXHIBIT A**

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

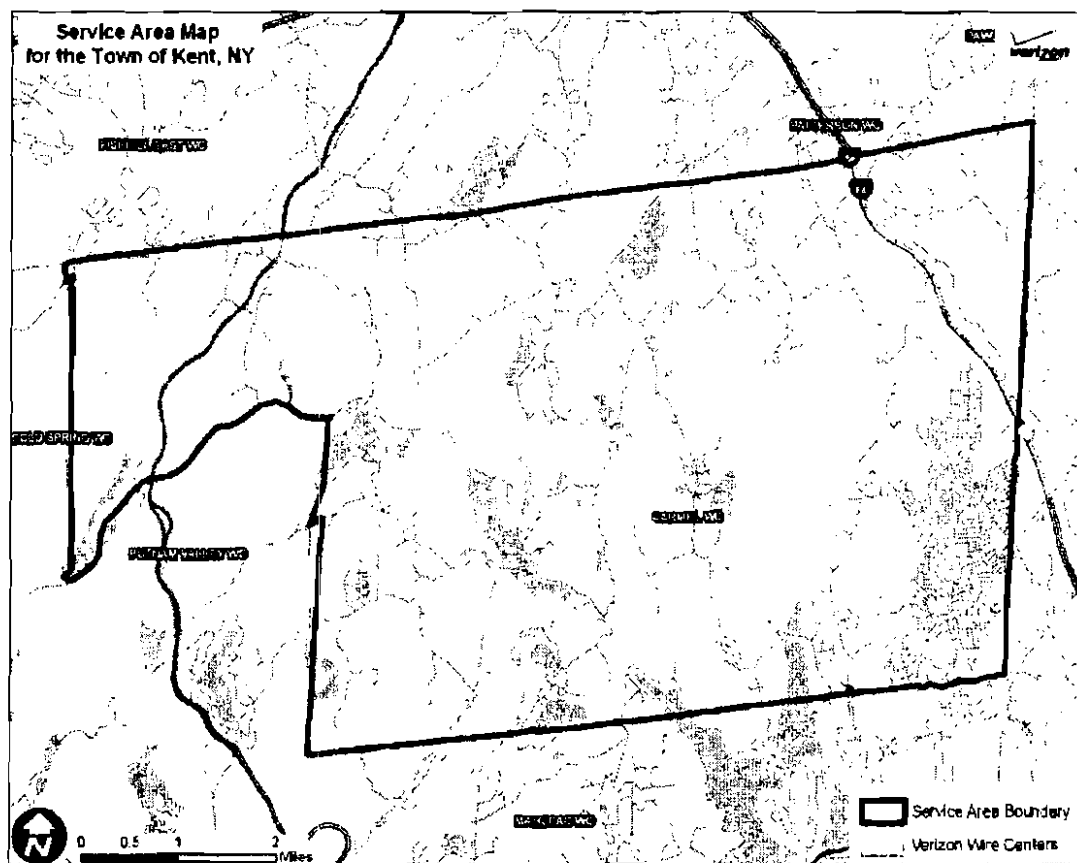
- |                                  |                     |
|----------------------------------|---------------------|
| 1. Town Hall                     | 25 Sybil's Crossing |
| 2. Kent Police Department        | 40 Sybil's Crossing |
| 3. Fire House                    | 2490 Route 301      |
| 4. Highway Department            | 62 Ludington Court  |
| 5. Kent Recreation Department    | 770 Route 52        |
| 6. Kent Elementary School        | 1091 Route 52       |
| 7. Kent Primary School           | 1065 Route 52       |
| 8. Town Library                  | 17 Sybil's Crossing |
| 9. Lake Carmel Fire Department   | 851 Route 52        |
| 10. Lake Carmel Cultural Center  | 640 Route 52        |
| 11. Lake Carmel Community Center | 10 Huguenot Road    |
| 12. 301 Highway Department       | Smokey Hollow Road  |

**EXHIBIT B**

## SERVICE AREA

The Service Area shall be the Franchise Area. A map of the Service Area is attached hereto.

The construction of the Franchisee's FTTP Network has been completed to approximately 55% of the current households in the Franchise Area. At present, Franchisee's anticipated schedule (with schedule dates measured from the month that the NY PSC issues the confirmation order approving this Franchise) calls for 58% deployment at 6 months, 61% deployment at 12 months, 63% deployment at 18 months, 80% deployment at 24 months, 82% deployment at 30 months, 85% deployment at 36 months, 90% deployment at 42 months, 93% deployment at 48 months, 97% deployment at 54 months, and 100% deployment 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 C**  
**PEG CHANNELS**

The Franchisee shall furnish PEG Access Channels to the LFA in accordance with the Cable Law.

## **EXHIBIT D**

### **PEG CONTENT ORIGINATION POINTS**

Subject to the requirements set forth in Section 5.6 of the Agreement, the following one (1) PEG Access Interconnection Site originating a channel shall be operable within one hundred eighty (180) days of written notice by the LFA:

Town Hall  
25 Sybil's Crossing  
Kent, NY

At the above PEG Access Interconnection Sites, the LFAs will provide Franchisee, without restriction, with a suitable video signal and suitable audio signal(s) for the PEG Channel, and the LFA is responsible for all content and equipment necessary to deliver such signal at the point of connection.

# **ATTACHMENT B**

**TOWN OF KENT**  
25 Sybil's Crossing  
Kent Lakes, New York 10512

Yolanda D. Cappelli  
*Town Clerk*

Administrative Office  
Tel. (845) 225 - 2067  
Fax (845) 225 - 5130



**RESOLUTION**  
**Approving Cable Franchise to Verizon, Inc.**

WHEREAS, on or about June 3, 2008, Verizon New York, Inc. ("Verizon") applied to the Town of Kent for a franchise to provide cable television service within the Town of Kent, and

WHEREAS, notice has duly been given to both companies currently providing cable television service to customers within the Town of Kent, and

WHEREAS, the Town Board finds that Verizon is technically capable, has sufficient financial condition, and possesses the character to operate a cable television system within the Town, and

WHEREAS, the Town Board finds that it will be in the public interest of the residents of the Town of Kent to have competition in the provision of cable television services within the Town, and

WHEREAS, special counsel has informed the Town Board that the proposed Franchise Agreement submitted by Verizon is substantially equivalent to the franchise held by incumbent cable operator Comcast, Inc., subject to clarification of issues identified during the public hearing, and

WHEREAS, the Town Board properly noticed and conducted a public hearing to consider the application, at which all persons interested in commenting on the application were heard, on June 23, 2008 and July 7, 2008 at 7:00 p.m. at the Town Hall, 25 Sybil's Crossing, Kent Lakes, New York, now therefore be it

RESOLVED, the Town Board hereby approves a new franchise agreement with Verizon, and authorizes the Supervisor to sign such an Agreement in a final form to be approved by Special Counsel to the Town, and further authorizes the Supervisor to file this resolution and any other reasonably necessary papers with the New York State Public Service Commission.

On a motion by Councilman Tartaro  
Seconded by Councilwoman Osborn

The board took a poll vote as follows:

Councilman Rohde – abstained as a former engineer with Verizon

Councilwoman Osborn – aye


Councilman Tartaro – aye

Councilman Tierney – aye

Supervisor Doherty – aye

Motion carried

I, Yolanda D. Cappelli, Town Clerk of the Town of Kent do hereby certify that this a true excerpt from the Kent Town Board Meeting of July 21, 2008.

  
Yolanda D. Cappelli  
Town Clerk

# **ATTACHMENT C**

State of New York

County of Putnam

**L. DON HALL**

being duly sworn, says that the attached legal notice was published in the PUTNAM COUNTY PRESS, newspaper in the Town of

Carmel, in said County of Putnam for ONE

weeks commencing on 6-4-08

and ending None

Sworn to before me, this 4th

day of June 2008

[Signature]  
Notary Public

JOYCE A. MORIN  
NOTARY PUBLIC, STATE OF NEW YORK  
REGISTRATION NUMBER 46201  
EXPIRES IN PUTNAM COUNTY

COMMISSION EXPIRES NOV. 22, 2010

# PUBLIC NOTICE

## Legal Notice

### TOWN OF KENT NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that a public hearing will be held by the Town Board of the Town of Kent on June 16, 2008 at 7:00 P.M. at Town Hall, 25 Sybil's Crossing, Kent, New York, for the purpose of considering a proposed initial franchise agreement for cable television service in the Town of Kent with Verizon New York, Inc. Copies of the franchise application and proposed franchise agreement are on file at Town Hall and may be viewed during normal business hours, between 9 a.m. and 5 p.m., Monday-Friday. All interested persons will have the opportunity to be heard during the Public Hearing in regard to the proposed franchise agreement.

BY ORDER OF  
THE TOWN  
BOARD of the Town  
of Kent  
Yolanda D. Cappelli,  
Town Clerk  
Dated: 5/30/08

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# **ATTACHMENT D**



**DOCUMENTS SUBMITTED BY VERIZON AS PART OF,  
OR IN SUPPORT OF, ITS APPLICATION**

1. 6/3/08 Correspondence from Verizon's outside counsel, Steven Zahn, to Town Clerk, Lana Cappelli, enclosing Verizon's application for a cable television franchise and proposed franchise agreement
2. 6/3/08 Correspondence from Verizon's outside counsel, Steven Zahn, to Town Clerk, Lana Cappelli, enclosing copies of letters transmitting Verizon's application to Comcast and Cablevision
3. 6/6/08 Correspondence from Verizon's outside counsel, Steven Zahn, to Town Attorney, Tim Curtiss, and Town Councilman, Karl Rhodes, enclosing Verizon's application for a cable television franchise and proposed franchise agreement
4. 6/10/08 Correspondence from Verizon's Senior Vice President, Monica Azare, to Town Supervisor, Katherine Doherty, regarding the June 16 public hearing and enclosing information outlining the benefits of Verizon FiOS TV service
5. 6/12/08 Correspondence from Verizon's outside counsel, Steven Zahn, to Town's outside counsel, David Wright, enclosing copies of letters transmitting Verizon's application to Comcast and Cablevision
6. 6/23/08 Correspondence from Verizon's outside counsel, Steven Zahn, to Town Supervisor, Katherine Doherty, regarding Section 626 of the New York Real Property Tax Law
7. 7/11/08 Correspondence from Verizon's outside counsel, Steven Zahn, to Town Supervisor, Katherine Doherty, regarding proposed Section 626 set-off provision
8. 7/16/08 Correspondence from Verizon's outside counsel, Steven Zahn, to Town Supervisor, Katherine Doherty, enclosing revised Exhibit A to the franchise agreement
9. 7/21/08 Revised franchise agreement hand delivered by Verizon's outside counsel, Steven Zahn, to Town Supervisor, Katherine Doherty
10. 7/25/08 Correspondence from Verizon's outside counsel, Steven Zahn, to Town Supervisor, Katherine Doherty, enclosing revised franchise agreement
11. 7/25/08 Correspondence from Verizon's outside counsel, Steven Zahn, to Town Supervisor, Katherine Doherty, regarding Verizon's Network Review Plan

# Tab 1

**From:** Steve Zahn [mailto:srzahn@verizon.net]  
**Sent:** Tuesday, June 03, 2008 5:10 PM  
**To:** lcappelli@townofkentny.gov  
**Cc:** kdoherty@townofkentny.gov; ytdave@aol.com  
**Subject:** Application for Cable Television Franchise  
**Importance:** High

Lana,

Verizon is pleased to forward this application for a cable television franchise in the Town of Kent. Attached please find (1) a cover letter; (2) the application; and (3) the proposed cable franchise agreement that has been negotiated over the past several months.

I will also be transmitting by Federal Express a clean set of these documents with color exhibits and maps.

By separate email, I will also provide you with a carbon copy of letters sent to the incumbent cable providers, Comcast and Cablevision, informing them of our application, as required under NY law.

Please do not hesitate to contact me if I may be of any assistance.

Steve

**Steven R. Zahn**  
Attorney at Law  
1340 N. Great Neck Rd.  
Ste. 1272-136  
Virginia Beach, VA 23454  
757.496.2679 (Direct Line)  
757.287.0459 (Mobile)  
srzahn@verizon.net

*This e-mail may contain confidential or privileged information. If you are not the intended recipient, please advise by return email and delete immediately without reading, printing, or forwarding to others.*

*Circular 230 Disclosure: In accordance with IRS Circular 230, any discussion of a federal tax issue in this e-mail, or in any attachment thereto, is not intended to be used and cannot be used for the purpose of (a) avoiding penalties under United States tax laws or (b) promoting, marketing, or recommending to another party any tax-related matters advised herein.*

Steven R. Zahn  
1340 N. Great Neck Rd. Ste. 1272-136  
Virginia Beach, VA 23454

Tel 757 496 2679

srzahn@verizon.net

June 3 2008

VIA ELECTRONIC MAIL ([lcappelli@townofkentny.gov](mailto:lcappelli@townofkentny.gov))  
and FEDEX

Lana Cappelli  
Town Clerk  
Town of Kent  
25 Sybil's Crossing  
Kent Lakes, NY 10512

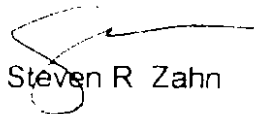
Application of Verizon New York, Inc. for a Cable Television Franchise

Dear Ms. Capelli:

Pursuant to the requirements of 16 N.Y.C R.R. Section 894.5, enclosed please find the Application of Verizon New York, Inc. to the Town of Kent for a cable television franchise

Thanking you, I remain

Sincerely,



Steven R. Zahn

CC Katherine Doherty ([kdoherty@townofkentny.gov](mailto:kdoherty@townofkentny.gov))  
David Wright ([ytdave@aol.com](mailto:ytdave@aol.com))  
Verizon New York, Inc.

**APPLICATION FOR A CABLE TELEVISION FRANCHISE**  
**BY VERIZON NEW YORK INC.**

Verizon New York Inc. ("Verizon NY") respectfully submits this application form ("Application") and requests the award of a cable television franchise from the Town of Kent ("Municipality"). In this application, Verizon NY answers the questions set forth in Title 16, Chapter VIII, Part 894, Section 894.5, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended.

- (1) A description of the cable television system proposed to be constructed including information regarding (a) channel capacity, including both the total capability of the proposed system and the number of channels to be energized immediately; (b) television and radio broadcast signals which Verizon NY intends to carry on its system initially; (c) the extent and type of any origination cable casting to be undertaken, and the facilities, equipment and staff to be employed therein; and (d) the system layout or design, including where applicable: (i) location of antennae and headends, (ii) plans for a two-way capability including a proposed schedule indication when two-way capability will become available from particular points; (iii) location or origination points and origination facilities; (iv) extent and type of automated services to be provided; and (v) number of channels to be utilized for access cablecasting and the facilities, equipment, staff and other support to be available to access users including access utilization or production costs.

**In response to the information requested in subsections 1(a) and (d)(i-ii), please see attached Exhibit 1, "Proposed Service Overview, Product Offers and Architecture." In response to question 1(b), please see the sample channel line up set forth in Exhibit 2, "Verizon FiOS TV – New York Area Channel Lineup."**

**In response to the information requested in subsection 1(c) and 1(d)(iii), Verizon is considering alternatives for origination cablecasting, but at this point it is not clear when or if the company will offer origination cablecasting in this franchise area.**

**In response to the information sought in subsection 1(d)(v), upon request of the Municipality, Verizon NY intends to 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.**

- (2) The terms and conditions under which service is to be provided to educational and governmental entities.

**Verizon NY will provide channel capacity to educational and governmental entities under terms and conditions consistent with applicable law, and as may be required by the Municipality.**

- (3) The terms concerning rates and construction schedules

Verizon NY's cable television service rates and available packages are attached as Exhibit 3.

Verizon NY has completed the construction of its fiber to the premises ("FTTP") network to approximately 64% of the households in the Municipality. A full discussion of the construction requirements and central office conversion requirements to bring FTTP and cable television service to the Municipality is contained in Exhibit 1.

On June 15, 2005, the New York Public Service Commission ("NY PSC") "declared that Verizon NY's FTTP upgrade is authorized under its existing state telephone rights because the upgrade furthers the deployment of telecommunications and broadband services, and is consistent with state and federal law and in the public interest." The NY PSC determined that, unlike a company seeking to build an unfranchised cable television system, Verizon NY already has the necessary authority to use the rights-of-way to provide telecommunications service over its existing network. See Declaratory Ruling on Verizon Communication, Inc.'s Built-Out of its Fiber to the Premises Network, NY Public Service Commission, Case 05-M-0520/05-M-0247, June 15, 2005 at 4.

Verizon NY will continue to adhere to applicable lawful customary time, place and manner permitting requirements of the Municipality.

- (4) An indication of whether Verizon NY will provide service on the same terms and conditions as contained in the existing franchise in effect.

Verizon NY will provide service on terms and conditions consistent with the needs and interests of the Municipality and the level playing field requirement set forth in Title 16, Chapter VIII, Part 895, Section 895.3, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, in that the Verizon NY proposed franchise is comparable in its totality with the incumbent cable television provider's agreement. Verizon NY is applying for a cable television franchise in the Municipality in order to provide the residents of the Municipality with competitive choice.

As more fully described in Exhibit 1, Verizon NY is constructing its FTTP network pursuant to its authority as a common carrier under Title II of the Communications Act of 1934, as amended, and Section 27 of the New York Transportation Corporations Law. For this reason and others, certain terms and conditions may differ between the incumbent cable provider's franchise and Verizon NY's franchise.

- (5) A statement of Verizon NY's experience in the cable television field including, if applicable, the names and professional experience of the persons or organizations who

will be responsible for the construction, installation and operation of the proposed system.

Verizon NY and its predecessor entities have provided telecommunications services in the State of New York for over one hundred years. Consequently, Verizon NY has extensive experience and expertise in the telecommunications field. Generally, the current cable service operation of Verizon NY is similarly based on an extensive history. Specifically, Verizon NY has applied the comprehensive knowledge of current Verizon NY employees in the provision of telecommunications service, including in-depth knowledge and experience of employees who were involved in affiliated enterprises.

Verizon NY was awarded cable television franchise by the following municipalities: (1) Village of Massapequa Park (Nassau County); (2) Village of Nyack (Rockland County); (3) Village of South Nyack (Rockland County); (4) Village of Upper Nyack (Rockland County); (5) Town of Hempstead (Nassau County); (6) Village of Cedarhurst (Nassau County); (7) Town of Oyster Bay (Nassau County); (8) Village of Laurel Hollow (Nassau County); (9) Village of Grand View-on-Hudson (Rockland County); (10) Village of Lynbrook (Nassau County); (11) Town of Clarkstown (Rockland County); (12) Village of Mineola (Nassau County); (13) Village of East Rockaway (Nassau County); (14) Town of Greenburgh (Westchester County); (15) Town of Smithtown (Suffolk County); (16) Village of Irvington (Westchester County); (17) Village of Valley Stream (Nassau County); (18) Town of Huntington (Suffolk County); (19) Village of Farmingdale (Nassau County); (20) Village of Ardsley (Westchester County); (21) Village of Freeport (Nassau County); (22) Village of Dobbs Ferry (Westchester County); (23) Village of Tarrytown (Westchester County); (24) Town of Eastchester (Westchester County); (25) Town of Mount Kisco (Westchester County); (26) Village of Elmsford (Westchester County); (27) Village of Port Chester (Westchester County); (28) Village of Tuckahoe (Westchester County); (29) Town of Orangetown (Rockland County); (30) Village of Piermont (Rockland County); (31) Village of White Plains (Westchester County); (32) Village of Airmont (Rockland County); (33) Village of Williston Park (Nassau County); (34) Town of North Hempstead (Nassau County); (35) Village of Rye Brook (Westchester County); (36) Town of Haverstraw (Rockland County); (37) Village of New Hyde Park (Nassau County); (38) Village of West Haverstraw (Rockland County); (39) Town of North Castle (Westchester County); (40) Village of Chestnut Ridge (Rockland County); (41) Village of Bayville (Nassau County); (42) Village of Sands Point (Nassau County); (43) Town of Mount Pleasant (Westchester County); (44) Village of Old Field (Suffolk County); (45) Village of Mount Vernon (Westchester County); (46) Village of Spring Valley (Rockland County); (47) Village of Suffern (Rockland County); (48) Village of Scarsdale (Westchester County); (49) Village of Bronxville (Westchester County); (50) Village of Yonkers (Westchester County); (51) Village of Floral Park (Nassau County); (52) Town of Islip (Suffolk County); (53) Village of South Floral Park (Nassau County); (54) City of New Rochelle (Westchester County); (55) Town of Cortlandt (Westchester County); (56) Village of Haverstraw (Rockland County); (57) Village of Garden City (Nassau County); (58) Village of Nissequogue (Suffolk County); (59) Village of Poquott (Suffolk County); (60) City of Peekskill (Westchester County); (61) Village of East Williston (Nassau County); (62) Village of Head of the Harbor (Suffolk County); (63) Village of Hillburn (Rockland County); (64) Village of Mill Neck (Nassau County); (65) Village of Buchanan (Westchester County); (66) Town of Newburgh (Orange