

# Verizon FiOS TV

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

Refer to the Channel Lineup for a complete listing of the channels included in each package.

Service	Number of Channels	Monthly Price
FiOS TV Local <sup>1</sup>	15–35	\$12.99
Digital Service (Requires Set Top Box [STB] and Router <sup>2</sup> )		
FiOS TV Premier <sup>3</sup>	228 + FiOS TV Local	\$42.99
La Conexión <sup>4</sup>	162 + FiOS TV Local	\$32.99

Now, add more channels for just a few dollars more.

Packages <sup>5</sup> (Requires STB)	Number of Channels	Monthly Price
Sports	13	\$7.99
Movies	45	\$12.99
Sports/Movies Combination	58	\$15.99
Spanish Language	25	\$11.99

Premiums <sup>6</sup> (Requires STB)	Number of Channels	Monthly Price
HBO <sup>6</sup>	14	\$15.99
Cinemax <sup>6</sup>	12	\$15.99
HBO/Cinemax Combination	26	\$25.99
Playboy TV/Playboy TV en Español	2	\$15.99
here!	1	\$7.99

International Premiums <sup>6</sup> (Requires STB)	Number of Channels	Monthly Price
International Premium Channels	14	Individually Priced

Video On Demand (VOD) and Pay Per View (PPV) (Requires STB)	Price
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## On Demand Movies

New Releases	\$3.99
Library	\$2.99

## On Demand Subscriptions

WWE	\$7.99/mo.
Karaoke	\$7.99/mo.
On Demand Adult	\$14.99/each
PPV Events	Varies
PPV Sports	Varies
ESPN GamePlan — NCAA Football	\$21.99/daily, \$129.99 season*
ESPN FullCourt — NCAA Basketball	\$14.99/daily, \$109.99 season*

Set Top Box (STB)	Monthly Price
Digital Adapter**	\$3.99
Standard Definition (SD)	\$4.99
High Definition (includes HD channels)	\$9.99
Standard Definition Digital Video Recorder**	\$12.99
High Definition Digital Video Recorder (includes HD channels)	\$15.99
SD Home Media DVR (features Multi-Room DVR & Media Manager)**	\$17.99
HD Home Media DVR (features Multi-Room DVR & Media Manager)	\$19.99

Initial Installation	One-Time Charges
Existing Outlet Hookup (up to 3)	No Charge
Additional Outlet/Set Top Box Hookup (existing outlet)	\$19.99
New Outlet Install/Existing Outlet Rewire (per outlet)	\$54.99
Outlet Relocation	\$54.99
FiOS TV Activation Fee with FiOS TV/Internet/Voice Bundle	Free
FiOS TV Activation Fee with FiOS Internet	\$19.99
FiOS TV Activation Fee without FiOS Internet	\$29.99

Subsequent Installations/Charges	One-Time Charges
Premise Visit <sup>7</sup>	\$49.99
New Outlet Installation (per outlet)	\$54.99
Outlet Relocation (per outlet)	\$54.99
Setup of TV Equipment (new TV with existing STB)	\$49.99
Downgrade of Service from Digital to Analog	\$49.99
Set Top Box Addition or Upgrade (requiring Technician visit)	\$24.99
Set Top Box Return or Downgrade with equipment drop off at Verizon authorized locations	Free
Set Top Box Return or Downgrade (requiring Technician visit)	\$29.99
FiOS TV Full Service Disconnect with equipment drop off at Verizon authorized locations	Free
FiOS TV Full Service Disconnect with Technician visit for equipment retrieval	\$74.99

Other Services and Charges	One-Time Charges
Seasonal Service Suspension (charged at initiation, 1–6 months) <sup>8</sup>	\$24.99
Replacement Remote — Verizon FiOS TV RC144	\$6.99 + Shipping & Handling
Replacement Remote — Motorola DRC800	\$5.00 + Shipping & Handling
Unreturned/Damaged STB — Digital Adapter	\$175.00
Unreturned/Damaged STB — Standard Definition	\$240.00
Unreturned/Damaged STB — High Definition	\$350.00
Unreturned/Damaged STB — SD Digital Video Recorder (DVR)	\$475.00
Unreturned/Damaged STB — HD Digital Video Recorder (DVR)	\$550.00

\*In addition, early subscription and half season prices are available.

\*\*Available Fall 2007.



<sup>1</sup> The Spanish Language package may be added to FiOS TV Local service, but requires a Set Top Box for access. The addition of a Set Top Box with FiOS TV Local service provides access to Video On Demand (VOD) and Pay Per View (PPV), as well as the ability to order Premiums and International Premiums.

<sup>2</sup> If service is cancelled within the first 12 months, router must be returned or \$99.99 equipment fee applies.

<sup>3</sup> FiOS TV Premier includes all FiOS TV Local channels, additional all-digital programming, digital music channels and access to Pay Per View and Video On Demand.

<sup>4</sup> La Conexión includes all FiOS TV Local channels, digital programming including popular English-language networks and Spanish-language networks, digital music channels, and access to PPV and VOD. La Conexión cannot be combined with the Spanish Language package.

<sup>5</sup> In order to be eligible for Movies or Sports, FiOS TV Premier or La Conexión is required. 30-day minimum billing period required for all digital packages.

<sup>6</sup> Subscription VOD is included with all Premiums at no extra charge (where applicable). 30-day minimum billing period required for all Premiums.

<sup>7</sup> A premise visit charge is assessed when a technician installation is required to set up a new or additional TV with an existing FiOS TV Set Top Box. A premise visit charge is not assessed when adding new, upgrading/downgrading existing, or disconnecting Set Top Box receivers.

<sup>8</sup> Seasonal service suspension requires a minimum suspension of one month and a maximum suspension of six months.

## Tab 2

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**From:** Johnson, Brian [mailto:BJohnson@wileyrein.com]  
**Sent:** Thursday, August 30, 2007 3:53 PM  
**To:** pbeach@cityofpeekskill.com  
**Cc:** jstargiotti@verizon.net; jstargiotti@cityofpeekskill.com; jharrington@telecominsightgroup.com; pngoldstein@mcguirewoods.com  
**Subject:** Transmittal of Verizon Application for a Peekskill Cable Franchise to Cablevision

Pamela:

Attached is a copy of a letter from Verizon transmitting a copy of Verizon's application for a Peekskill cable franchise to Cablevision. The application was sent to the City this afternoon by overnight courier and should arrive in your office tomorrow morning. If you should any questions, please let us know.

Brian A. Johnson  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
Voice: 202.719.3480  
Fax: 202.719.7049  
Cell: 240.475.2087  
Email: [bjohnson@wileyrein.com](mailto:bjohnson@wileyrein.com)

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**PLEASE NOTE: New Firm Name**

Effective February 1, 2007, Wiley Rein & Fielding LLP became Wiley Rein LLP. The firm's website address became <http://www.wileyrein.com> and all firm email addresses reflect the new Internet domain name. Please take a moment to update your records with our new information.

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**Maria Silveira**  
Assistant General Counsel  
Video Franchising  
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maria.d.silveira@verizon.com



1515 N. Courthouse Road  
Suite 500  
Arlington, VA 22201

VIA OVERNIGHT COURIER

August 30, 2007

Mr. David Ellen  
SVP- General Counsel Cable, Telecommunications and Programming  
Cablevision  
1111 Stewart Avenue  
Bethpage, New York 11714

Re: Verizon New York. Application for an initial Cable Television Franchise-  
Peekskill, NY

Dear Mr. Ellen:

Pursuant to the requirements of 16 N.Y.C.R.R. Section 894.5(i), please find enclosed a copy of the application for an initial cable television franchise that Verizon New York Inc. submitted to the City of Peekskill, Westchester County, New York.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Silveira".

Maria Silveira

Enclosures: Application

cc (w/o enclosure): Daniel W. Fitzpatrick, City Manager



## Tab 3

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**From:** Johnson, Brian [mailto:BJohnson@wileyrein.com]  
**Sent:** Friday, August 31, 2007 4:20 PM  
**To:** jstargiotti@cityofpeekskill.com; jstargiotti@verizon.net; mserrano@cityofpeekskill.com  
**Cc:** John Harrington; Goldstein, Pamela N.  
**Subject:** Peekskill Cable Franchise Agreement

Gentlemen:

Attached are clean and comparison versions of a revised Peekskill cable franchise agreement incorporating the changes we have discussed over the past two days. The new language in bold font in Section 5.2 and Subsection 5.3.3 has not been reviewed by Verizon and is therefore subject to its comments and approval. Thus, this draft is not for public viewing. We expect to have the final draft for posting for public viewing ready after the Common Council work session on Tuesday night. John and I will both see you on Tuesday evening. If you have any questions before then, please let us know.

Brian A. Johnson  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
Voice: 202.719.3480  
Fax: 202.719.7049  
Cell: 240.475.2087  
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**Cable Franchise Agreement**

**by and between**

**the City of Peekskill**

**and**

**Verizon New York Inc.**

**PEEKSKILL, NY FRANCHISE AGREEMENT**

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

**TABLE OF CONTENTS**

<b><u>ARTICLE</u></b>	<b><u>PAGE</u></b>
1. DEFINITIONS.....	2
2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS .....	6
3. PROVISION OF CABLE SERVICE .....	8
4. SYSTEM FACILITIES .....	10
5. PEG SERVICES .....	11
6. FRANCHISE FEES .....	13
7. REPORTS AND RECORDS.....	15
8. INSURANCE AND INDEMNIFICATION .....	16
9. TRANSFER OF FRANCHISE.....	17
10. RENEWAL OF FRANCHISE.....	17
11. ENFORCEMENT AND TERMINATION OF FRANCHISE .....	18
12. MISCELLANEOUS PROVISIONS.....	20

**EXHIBITS**

EXHIBIT A: MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

EXHIBIT B: SERVICE AREA

EXHIBIT C: PEG CHANNELS

EXHIBIT D: PEG ACCESS INTERCONNECTION

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THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the City of Peekskill, 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.

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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



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Area and other not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents in the Franchise Area as specified by the LFA in Exhibit C to this Agreement.

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 incorporated area (entire existing territorial limits) of the LFA, and such additional areas as may be annexed or acquired.

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: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the 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; (iii) video on demand, including pay-per-view; (iv) revenues from the sale or lease of access channel(s) or channel capacity; and (v) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising

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derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, subject to the exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

**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; revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; 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 and remit such franchise fees to the LFA; 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 pursuant to Section 3.3; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; any fees or charges collected from Subscribers or other third parties for any PEG Grant and Franchise Grant payments; and

1.16.2.2. 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 use of the Cable System for two-way communication that is not

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classified as Cable Service; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders. Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment.

1.17. *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 City of Peekskill, 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. *NY PSC*: 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.

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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

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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.

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

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 pre-existing condition.

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

**3. PROVISION OF CABLE SERVICE**

**3.1. *Service Area:***

3.1.1. *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



**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

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 Sub-Subsection 3.1.1.1. and Section 3.2.

3.1.1.1. *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 twenty-five (25) 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 3.1.1 respectively, 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 aerial 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 twenty-five (25) 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 twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such cost shall be submitted to said Subscriber, in writing, before installation is begun.

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 aerial trunk or feeder lines more than five hundred (500) 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 aerial extension in excess of five hundred (500) 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

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

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 five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such cost shall be submitted to said recipient, in writing, before installation is begun. 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 the 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.

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

**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 the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with 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 Access Interconnection:* [The LFA has designated two (2) sites within the Franchise Area for the interconnection of Education and Governmental Access facilities with the Cable System in Exhibit D attached hereto (each, a "PEG Access Interconnection Site").**

**5.2.1. Subject to the successful completion of all required 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 upstream Educational and Governmental Access Channel transmission connections between its video channel aggregation point and each of the two (2) PEG Access Interconnection Sites in order to permit the signals to be correctly routed from the PEG Access Interconnection Site for the 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 PEG Access Interconnection Sites.**

**5.2.2. The LFA shall provide to Franchisee at the PEG Access Interconnection Sites a suitable video signal and a suitable audio signal for each Education and Governmental Access Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for**

**transmitting the Educational and Governmental Access signals 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.**

**5.2.3. Such upstream transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of Educational and Governmental Access signals to Subscribers. If Franchisee makes changes to the Cable System that require improvements to Educational and Governmental Access facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.1 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.]**

**5.3. *PEG Grant and Franchise Grant:***

**5.3.1. Franchisee shall provide to the LFA for use in support of the production of local PEG programming a PEG Grant (the "PEG Grant") in the amount of SIXTY SEVEN THOUSAND DOLLARS (\$67,000.00). Franchisee shall pay the PEG Grant in TEN (10) installments, as follows: (1) the first installment, in the amount of FORTY THOUSAND DOLLARS (\$40,000.00) shall be payable within sixty (60) days of the Effective Date; (2) the second installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the SECOND anniversary of the Effective Date; (3) the third installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the THIRD anniversary of the Effective Date; (4) the fourth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the FOURTH anniversary of the Effective Date; (5) the fifth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the FIFTH anniversary of the Effective Date; (6) the sixth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the SIXTH anniversary of the Effective Date; (7) the seventh installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the SEVENTH anniversary of the Effective Date; (8) the eighth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the EIGHTH anniversary of the Effective Date; (9) the ninth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the NINTH anniversary of the Effective Date; and (10) the tenth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the TENTH anniversary of the Effective Date. Such PEG 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.**

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

5.3.2. The LFA shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 5.3.

5.3.3. In lieu of free internet service for two sites for the term of this Agreement, Franchisee shall pay the LFA a Franchise Grant in the total amount of NINE THOUSAND DOLLARS (\$9,000) payable in installments of SIX HUNDRED DOLLARS (\$600) each within ninety (90) days of the Effective Date and within ninety (90) days of each anniversary of the Effective Date thereafter. **[In the event that during the term of this Agreement the incumbent cable operator provides additional free internet service to the LFA as required by its franchise agreement, the LFA may notify Franchisee in writing of such additional free internet service, and the amount of the Franchise Grant shall be increased as may be mutually agreed to by the LFA and Franchisee, any such increase shall be payable in the manner also mutually agreed to by the LFA and Franchisee.]**

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 an Annual PEG Grant and any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection and any franchise-related costs to Subscribers.

**6. FRANCHISE FEES**

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of four percent (4%) of annual Gross Revenue (the "Franchise Fee"); provided, however, that at such time as the LFA requires all cable service providers in the Service Area to pay a franchise fee of five percent (5%), the LFA shall be entitled, after notification to Franchisee, to amend this Franchise in the manner prescribed under applicable state law or this Franchise to require Franchisee to pay such higher amount and Franchisee agrees to pay such higher amount on going forward basis, following the issuance of an order from the NY PSC approving such amendment. In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. Late payments for Franchise Fees shall be subject to interest at the then-current rate set forth in Section 5004 of Article 50 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) from the due date to the date that such payment is made.

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

6.3. *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due, but cannot exceed the date of records retention reflected in Section 7.

6.4. *Bundled Services:* If Cable Services subject to the Franchise Fee required under this Article 6 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise Fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or by regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

6.5. *Section 626 Treatment:* Franchisee agrees that it will not apply the Franchise Fee as an offset against the special franchise tax payable to the LFA pursuant to N.Y. Real Property Tax Law Section 626 beginning in the next full calendar month following the issuance by the NY PSC of an order confirming this Agreement. The LFA agrees that it shall impose the same full and complete waiver of the special franchise tax offset upon all existing and 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 or the renewal of any existing franchise agreement of each respective 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.



**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

**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 six (6) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesies. Complaints recorded will not be limited to complaints requiring an employee service call;

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

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

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

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

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

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 five hundred thousand dollars (\$500,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA.

8.1.1.2. Automobile Liability Insurance in the amount of five hundred thousand dollars (\$500,000) combined single limit for bodily injury and property damage coverage.

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

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

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

8.1.2. 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.

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

**8.2. *Indemnification:***

8.2.1. Franchisee agrees to indemnify the LFA 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 timely written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. 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,

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the LFA may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.31 above.

**10. RENEWAL OF FRANCHISE**

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

10.2. *Needs Assessment:* In addition to the procedures set forth in Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Such assessments shall be provided to Franchisee by the LFA promptly so that Franchisee will have adequate time to submit a proposal under 47 U.S.C. § 546 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 47 U.S.C. § 546 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

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

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.

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

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



**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

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, New Jersey 07920-1097

12.5.2. Notices to the LFA shall be mailed to:

City Manager  
Peekskill City Hall  
840 Main Street  
Peekskill, New York 10566

with a copy to:

Corporation Counsel  
Peekskill City Hall  
840 Main Street  
Peekskill, NY 10566

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.

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

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,

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

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. *Performance Review:* The LFA may, at its discretion but not more than once per twelve (12) month period, hold an informal performance evaluation session (the "Performance Review") that is not open to the public to review Franchisee's compliance with the terms and conditions of this Franchise. The information disclosed to the LFA by the Franchisee at the Performance Review shall be treated by the LFA as confidential. The LFA shall provide Franchisee with at least thirty (30) days prior written notice of the Performance Review to be held at a mutually agreeable time. Franchisee shall have the opportunity to participate in and be heard at the Performance Review. Within thirty (30) days after the conclusion of the Performance Review, the LFA shall provide Franchisee written documentation (the "Performance Review Report") setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise. The Performance Review Report shall not contain any confidential information disclosed by the Franchisee during the Performance Review.

12.18. *No Third Party Beneficiaries:* Except as expressly provided in this Agreement, this Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

12.19. *LFA Official:* The City Manager of the LFA is the LFA official that is responsible for the continuing administration of this Agreement.

*[balance of page intentionally left blank]*

**PEEKSKILL, NY FRANCHISE AGREEMENT**

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

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

AGREED TO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

LFA:

CITY OF PEEKSKILL

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

Title:

FRANCHISEE:

VERIZON NEW YORK INC.

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

Title:

**PEEKSKILL, NY FRANCHISE AGREEMENT**

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**

**EXHIBITS**

EXHIBIT A: Municipal Buildings to be Provided Free Cable Service

EXHIBIT B: Service Area

EXHIBIT C: PEG Channels

EXHIBIT D: PEG Access Interconnection

Exhibit List

Peekskill/Verizon New York Inc.  
Franchise Agreement/\_\_\_\_\_ 2007

**EXHIBIT A**

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

City Hall, 840 Main Street, Peekskill, New York  
Police Station, 2 Nelson Avenue, Peekskill, New York  
Peekskill Library, 4 Nelson Avenue, Peekskill, New York  
Fire House, 748 Washington Street, Peekskill, New York  
Fire House, 425 Highland Avenue, Peekskill, New York  
Fire Houses (Note: 2 buildings), 1850 Crompound Road, Peekskill, New York  
Fire House, Academy Street, Peekskill, New York  
Fire House, Main Street, Peekskill, New York  
Recreation Office, Depew Park, Peekskill, New York  
Pool, Depew Park, Peekskill, New York  
Water Filtration Office, Limburg Place, Peekskill, New York  
Mechanic Garage, 1003 Lower South Street, Peekskill, New York  
Kiley Youth Center, 709 Main Street, Peekskill, New York  
Department of Public Works Garage, 100 South Street, Peekskill, New York  
Peekskill City School District Administration, 1031 Elm Street, Peekskill, New York  
Peekskill City School District Maintenance Building, 1020 Elm Street, Peekskill, New York  
ECC- Uriah Hill, Jr. School, 980 Pemart Avenue, Peekskill, New York  
Hillcrest Elementary School, 4 Horton Drive, Peekskill, New York  
Oakside Elementary School, 200 Decatur Avenue, Peekskill, New York  
Woodside Elementary School, Depew Street, Peekskill, New York  
Peekskill Middle School, 212 Ringgold Street, Peekskill, New York  
Peekskill High School, 1072 Elm Street, Peekskill, New York  
EOC Office, 4 Nelson Avenue, Peekskill, NY  
Senior Center, 4 Nelson Avenue, Peekskill, NY

**EXHIBIT B**

**SERVICE AREA**

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

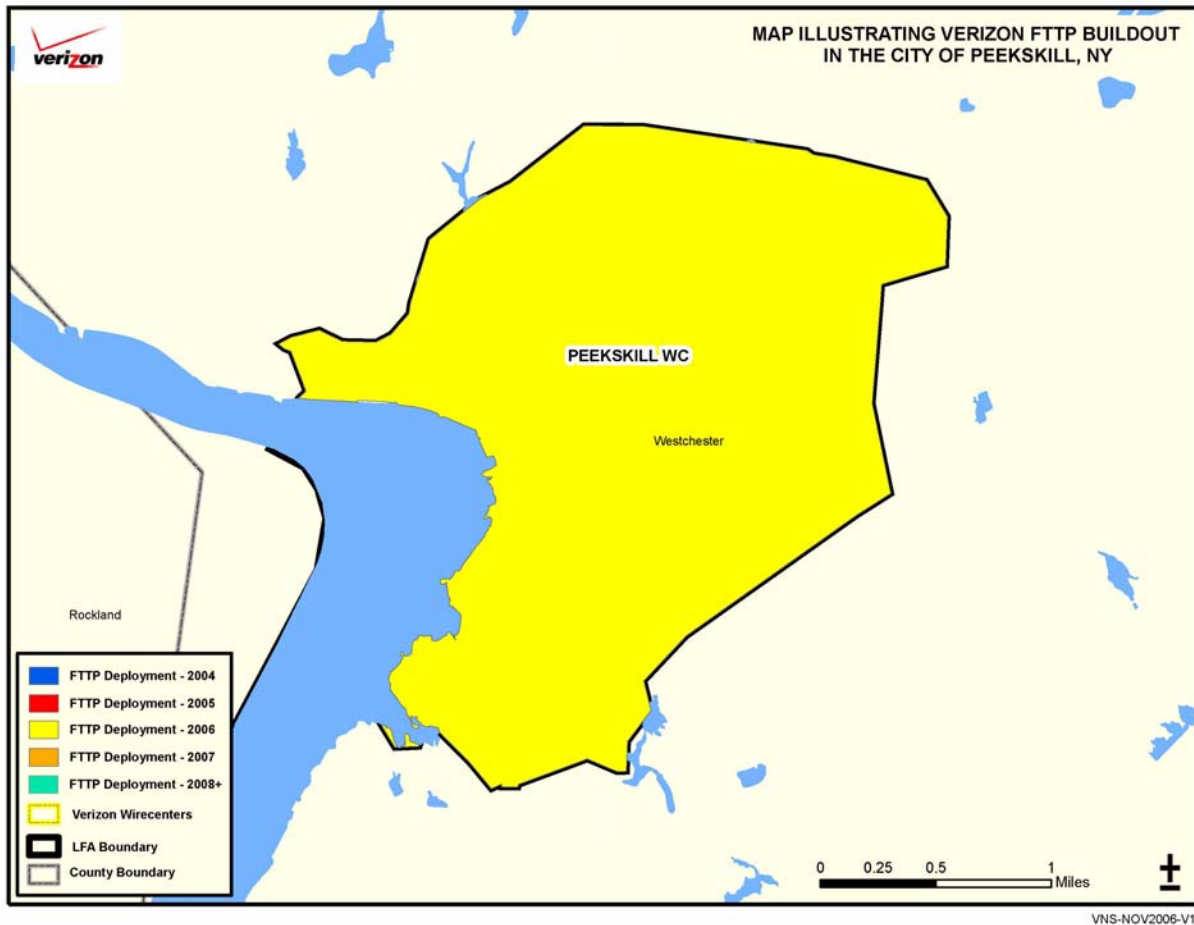
The construction of the Franchisee's FTTP Network has been completed to approximately 50% of the current households in the Franchise Area. At present, Franchisee's anticipated schedule (with schedule dates measured from the month that the NY PSC issues the confirmation order approving this Franchise) calls for 52% deployment at 6 months, 58% deployment at 12 months, 65% deployment at 18 months, 70% deployment at 24 months, 78% deployment at 30 months, 82% deployment at 36 months, 88% deployment at 42 months, 93% deployment at 48 months, 98% 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.

**PEEKSKILL, NY FRANCHISE AGREEMENT**

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/31/07**





**EXHIBIT C**

**PEG CHANNELS**

One Public Access Channel, one Educational Access Channel, and one Government Access Channel.

**EXHIBIT D**

**PEG ACCESS INTERCONNECTION SITES**

City Hall, 840 Main Street, and Peekskill High School, 1072 Elm Street, both Peekskill, NY.

12693427.2

**Cable Franchise Agreement**

**by and between**

**the City of Peekskill**

**and**

**Verizon New York Inc.**

**PEEKSKILL, NY FRANCHISE AGREEMENT**  
**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**  
**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**  
**MCGUIREWOODS LLP DRAFT 8/931/07**

**TABLE OF CONTENTS**

<b><u>ARTICLE</u></b>	<b><u>PAGE</u></b>
1. DEFINITIONS.....	2
2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS .....	6
3. PROVISION OF CABLE SERVICE .....	8
4. SYSTEM FACILITIES .....	10
5. PEG SERVICES .....	11
6. FRANCHISE FEES .....	13
7. REPORTS AND RECORDS.....	<del>14</del> <u>15</u>
8. INSURANCE AND INDEMNIFICATION .....	<del>15</del> <u>16</u>
9. TRANSFER OF FRANCHISE.....	17
10. RENEWAL OF FRANCHISE.....	17
11. ENFORCEMENT AND TERMINATION OF FRANCHISE .....	18
12. MISCELLANEOUS PROVISIONS.....	20

**EXHIBITS**

EXHIBIT A: MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE  
EXHIBIT B: SERVICE AREA  
EXHIBIT C: PEG CHANNELS  
EXHIBIT D: PEG ACCESS INTERCONNECTION

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/931/07**

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the City of Peekskill, 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.

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 8/931/07

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

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 8/931/07

Area and other not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents in the Franchise Area as specified by the LFA in Exhibit C to this Agreement.

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 incorporated area (entire existing territorial limits) of the LFA, and such additional areas as may be annexed or acquired.

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: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the 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; (iii) video on demand, including pay-per-view; (iv) revenues from the sale or lease of access channel(s) or channel capacity; and (v) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 8/931/07

derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, subject to the exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

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; revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; 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 and remit such franchise fees to the LFA; 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 pursuant to Section 3.3; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; any fees or charges collected from Subscribers or other third parties for any PEG Grant and Franchise Grant payments; and

1.16.2.2. 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 use of the Cable System for two-way communication that is not



VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 8/931/07

classified as Cable Service; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders. Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment.

1.17. *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 City of Peekskill, 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. *NY PSC*: 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.

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 8/931/07

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.

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 8/931/07

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 pre-existing condition.

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

3. **PROVISION OF CABLE SERVICE**

3.1. *Service Area:*

3.1.1. *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

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 8/9/31/07

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 Sub-Subsection 3.1.1.1. and Section 3.2.

3.1.1.1. *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 twenty-five (25) 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 3.1.1 respectively, 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 aerial 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 twenty-five (25) 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 twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such cost shall be submitted to said Subscriber, in writing, before installation is begun.

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 aerial trunk or feeder lines more than five hundred (500) 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 aerial extension in excess of five hundred (500) 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

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 8/931/07

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 five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such cost shall be submitted to said recipient, in writing, before installation is begun. 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 the 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 the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with 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 Access Interconnection* ~~—(UNDER DISCUSSION)—~~: [The LFA has designated two (2) sites within the Franchise Area for the interconnection of Education and Governmental Access facilities with the Cable System in Exhibit D attached hereto (each, a “PEG Access Interconnection Site”).]

5.2.1. Subject to the successful completion of all required 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 upstream Educational and Governmental Access Channel transmission connections between its video channel aggregation point and each of the two (2) PEG Access Interconnection Sites in order to permit the signals to be correctly routed from the PEG Access Interconnection Site for the 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 PEG Access Interconnection Sites.

5.2.2. The LFA shall provide to Franchisee at the PEG Access Interconnection Sites a suitable video signal and a suitable audio signal for each Education and Governmental Access Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for

**transmitting the Educational and Governmental Access signals 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.**

**5.2.3. Such upstream transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of Educational and Governmental Access signals to Subscribers. If Franchisee makes changes to the Cable System that require improvements to Educational and Governmental Access facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.1 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.]**

5.3. *PEG Grant and Franchise Grant:*

5.3.1. Franchisee shall provide to the LFA for use in support of the production of local PEG programming a PEG Grant (the "PEG Grant") in the amount of SIXTY SEVEN THOUSAND DOLLARS (\$67,000.00). Franchisee shall pay the PEG Grant in TEN (10) installments, as follows: (1) the first installment, in the amount of FORTY THOUSAND DOLLARS (\$40,000.00) shall be payable within sixty (60) days of the Effective Date; (2) the second installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the SECOND anniversary of the Effective Date; (3) the third installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the THIRD anniversary of the Effective Date; (4) the fourth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the FOURTH anniversary of the Effective Date; (5) the fifth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the FIFTH anniversary of the Effective Date; (6) the sixth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the SIXTH anniversary of the Effective Date; (7) the seventh installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the SEVENTH anniversary of the Effective Date; (8) the eighth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the EIGHTH anniversary of the Effective Date; (9) the ninth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the NINTH anniversary of the Effective Date; and (10) the tenth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the TENTH anniversary of the Effective Date. Such PEG 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.



5.3.2. The LFA shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 5.3.

5.3.3. In lieu of free internet service for two sites for the term of this Agreement, Franchisee shall pay the LFA a Franchise Grant in the total amount of NINE THOUSAND DOLLARS (\$9,000) payable in installments of SIX HUNDRED DOLLARS (\$600) each within ninety (90) days of the Effective Date and within ninety (90) days of each anniversary of the Effective Date thereafter. [In the event that during the term of this Agreement the incumbent cable operator provides additional free internet service to the LFA as required by its franchise agreement, the LFA may notify Franchisee in writing of such additional free internet service, and the amount of the Franchise Grant shall be increased as may be mutually agreed to by the LFA and Franchise, any such increase shall be payable in the manner also mutually agreed to by the LFA and Franchise.]

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 an Annual PEG Grant and any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection and any franchise-related costs to Subscribers.

## 6. FRANCHISE FEES

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of four percent (4%) of annual Gross Revenue (the "Franchise Fee"); provided, however, that at such time as the LFA requires all cable service providers in the Service Area to pay a franchise fee of five percent (5%), the LFA shall be entitled, after notification to Franchisee, to amend this Franchise in the manner prescribed under applicable state law or this Franchise to require Franchisee to pay such higher amount and Franchisee agrees to pay such higher amount on going forward basis, following the issuance of an order from the NY PSC approving such amendment.

In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. Late payments for Franchise Fees shall be subject to interest at the then-current rate set forth in Section 5004 of Article 50 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) from the due date to the date that such payment is made.

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

6.3. *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due, but cannot exceed the date of records retention reflected in Section 7.

6.4. *Bundled Services:* If Cable Services subject to the Franchise Fee required under this Article 6 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise Fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or by regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

6.5. *Section 626 Treatment:* Franchisee agrees that it will not apply the Franchise Fee as an offset against the special franchise tax payable to the LFA pursuant to N.Y. Real Property Tax Law Section 626 beginning in the next full calendar month following the issuance by the NY PSC of an order confirming this Agreement. The LFA agrees that it shall impose the same full and complete waiver of the special franchise tax offset upon all existing and 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 or the renewal of any existing franchise agreement of each respective 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.

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 six (6) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesies. Complaints recorded will not be limited to complaints requiring an employee service call;

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

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

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

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

7.3. *System-Wide Statistics:* Any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. **INSURANCE AND INDEMNIFICATION**

8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of five hundred thousand dollars (\$500,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA.

8.1.1.2. Automobile Liability Insurance in the amount of five hundred thousand dollars (\$500,000) combined single limit for bodily injury and property damage coverage.

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

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

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

8.1.2. 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 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 timely written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. 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,

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provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the LFA may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.31 above.

**10. RENEWAL OF FRANCHISE**

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

10.2. *Needs Assessment:* In addition to the procedures set forth in Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Such assessments shall be provided to Franchisee by the LFA promptly so that Franchisee will have adequate time to submit a proposal under 47 U.S.C. § 546 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 47 U.S.C. § 546 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



VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 8/931/07

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, New Jersey 07920-1097

12.5.2. Notices to the LFA shall be mailed to:

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City Manager  
Peekskill City Hall  
840 Main Street  
Peekskill, New York 10566

with a copy to:

Corporation Counsel  
Peekskill City Hall  
840 Main Street  
Peekskill, NY 10566

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. *Performance Review:* The LFA may, at its discretion but not more than once per twelve (12) month period, hold an informal performance evaluation session (the “Performance Review”) that is not open to the public to review Franchisee’s compliance with the terms and conditions of this Franchise. The information disclosed to the LFA by the Franchisee at the Performance Review shall be treated by the LFA as confidential. The LFA shall provide Franchisee with at least thirty (30) days prior written notice of the Performance Review to be held at a mutually agreeable time. Franchisee shall have the opportunity to participate in and be heard at the Performance Review. Within thirty (30) days after the conclusion of the Performance Review, the LFA shall provide Franchisee written documentation (the “Performance Review Report”) setting forth its determinations regarding Franchisee’s compliance with the terms and conditions of this Franchise. The Performance Review Report shall not contain any confidential information disclosed by the Franchisee during the Performance Review.

12.18. *No Third Party Beneficiaries:* Except as expressly provided in this Agreement, this Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

12.19. *LFA Official:* The                      City Manager of the LFA is the LFA official that is responsible for the continuing administration of this Agreement.

*[balance of page intentionally left blank]*

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

AGREED TO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

LFA:

CITY OF PEEKSKILL

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

Title:

FRANCHISEE:

VERIZON NEW YORK INC.

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

Title:

**PEEKSKILL, NY FRANCHISE AGREEMENT**

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 8/931/07**

**EXHIBITS**

EXHIBIT A: Municipal Buildings to be Provided Free Cable Service

EXHIBIT B: Service Area

EXHIBIT C: PEG Channels

EXHIBIT D: PEG Access Interconnection

Exhibit List

Peekskill/Verizon New York Inc.  
Franchise Agreement/\_\_\_\_\_ 2007

**EXHIBIT A**

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

City Hall, 840 Main Street, Peekskill, New York

Police Station, 2 Nelson Avenue, Peekskill, New York

Peekskill Library, 4 Nelson Avenue, Peekskill, New York

Fire House, 748 Washington Street, Peekskill, New York

Fire House, 425 Highland Avenue, Peekskill, New York

Fire Houses (Note: 2 buildings), 1850 Crompound Road, Peekskill, New York

Fire House, Academy Street, Peekskill, New York

Fire House, Main Street, Peekskill, New York

Recreation Office, Depew Park, Peekskill, New York

Pool, Depew Park, Peekskill, New York

Water Filtration Office, Limburg Place, Peekskill, New York

Mechanic Garage, 1003 Lower South Street, Peekskill, New York

Kiley Youth Center, 709 Main Street, Peekskill, New York

Department of Public Works Garage, 100 South Street, Peekskill, New York

Peekskill City School District Administration, 1031 Elm Street, Peekskill, New York

Peekskill City School District Maintenance Building, 1020 Elm Street, Peekskill, New York

ECC- Uriah Hill, Jr. School, 980 Pemart Avenue, Peekskill, New York

Hillcrest Elementary School, 4 Horton Drive, Peekskill, New York

Oakside Elementary School, 200 Decatur Avenue, Peekskill, New York

Woodside Elementary School, Depew Street, Peekskill, New York

Peekskill Middle School, 212 Ringgold Street, Peekskill, New York

Peekskill High School, 1072 Elm Street, Peekskill, New York

EOC Office, 4 Nelson Avenue, Peekskill, NY

Senior Center, 4 Nelson Avenue, Peekskill, NY

**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 50% of the current households in the Franchise Area. At present, Franchisee's anticipated schedule ~~calls for 53% deployment by July 2007, 63%~~ (with schedule dates measured from the month that the NY PSC issues the confirmation order approving this Franchise) calls for 52% deployment at 6 months, 58% deployment by January 2008, at 12 months, 65% deployment by July 2008, 75% at 18 months, 70% deployment by January 2009, at 24 months, 78% deployment by July 2009, 85% at 30 months, 82% deployment by January 2010, at 36 months, 88% deployment by July 2010, at 42 months, 93% deployment by January 2011, 95% at 48 months, 98% deployment by July 2011, at 54 months, and 100% deployment by January 2012, 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.

PEEKSKILL, NY FRANCHISE AGREEMENT

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EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)  
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**EXHIBIT C**

**PEG CHANNELS**

One Public Access Channel, one Educational Access Channel, and one Government Access Channel.

**PEEKSKILL, NY FRANCHISE AGREEMENT**

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

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**EXHIBIT D**

**PEG ACCESS INTERCONNECTION SITES**

City Hall, 840 Main Street, and Peekskill High School, 1072 Elm Street, both Peekskill, NY.

~~12693427.1~~  
12693427.2

## Tab 4

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**From:** Johnson, Brian [mailto:BJohnson@wileyrein.com]  
**Sent:** Wednesday, September 05, 2007 3:29 PM  
**To:** mserrano@cityofpeekskill.com  
**Cc:** jstargiotti@verizon.net; jstargiotti@cityofpeekskill.com; John Harrington  
**Subject:** FW: City of Peekskill Resolution and Public Notice of Cable Franchise Hearing

Marcus: John requested that I forward to you the attached draft resolution which we sent to Joe in August.

Brian A. Johnson  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
Voice: 202.719.3480  
Fax: 202.719.7049  
Cell: 240.475.2087  
Email: [bjohnson@wileyrein.com](mailto:bjohnson@wileyrein.com)

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**From:** Johnson, Brian  
**Sent:** Thursday, August 09, 2007 1:57 PM  
**To:** 'jstargiotti@cityofpeekskill.com'  
**Cc:** 'John Harrington'; Pamela N. Goldstein  
**Subject:** City of Peekskill Resolution and Public Notice of Cable Franchise Hearing

Joe:

I am outside counsel to Verizon and member of its NY video franchising team. Pamela Goldstein and John Harrington have asked me to assist them with the Peekskill cable franchise while Pamela is on maternity leave. John advises that you would like a form of a resolution for use by the Peekskill Common Council to set a date for a hearing on the cable franchise agreement, and a suggested form for such purpose is attached. I also thought you might like to have the attached public notice form for publication in a local newspaper. It is typical of what has been used by other NY municipalities.

We are also working on a revised cable franchise agreement and that should be on the way to you shortly. Please let me know if you have any questions.

Brian A. Johnson

Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
Voice: 202.719.3480  
Fax: 202.719.7049  
Cell: 240.475.2087  
Email: [bjohnson@wileyrein.com](mailto:bjohnson@wileyrein.com)

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Common Council  
City of Peekskill  
Regular Meeting  
August\_\_\_\_, 2007

**PRESENT:** Mayor John G. Testa presiding; Donald Bennett; Melvin Bolden, Drew Claxton, Milagros Martinez, Catherine Pisani and Mary Foster.

\*\*\*\*\*

RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF PEEKSKILL SETTING A  
HEARING DATE FOR THE AWARDING A CABLE TELEVISION FRANCHISE TO  
VERIZON NEW YORK INC. TO PROVIDE CABLE SERVICE TO THE CITY OF  
PEEKSKILL AND APPROVING A CABLE FRANCHISE AGREEMENT WITH VERIZON  
NEW YORK, INC.

On a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_, the following resolution was adopted by those Common Council Members present:

**WHEREAS,** the City of Peekskill (the “City”) is a franchising authority in accordance with Title VI of the Communications Act of 1934 (the “Communications Act”), and is authorized to grant one or more cable television franchises pursuant to Article 11 of the New York State Public Service Law, and Title 16, Chapter VIII, Parts 890.60 through 890.6 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York (the “Cable Laws”);

**WHEREAS,** VERIZON NEW YORK INC. (“Verizon”) is upgrading its existing telecommunications and information services network through the installation of what Verizon refers to as “Fiber to the Premises Telecommunication Network (the “FTTP Network”) within the City and elsewhere, which existing network transmits Non-Cable Services (as defined in the proposed Verizon Franchise Agreement) pursuant to the authority granted by Section 27 of the New York Transportation Corporations Law, and Title II of the Telecommunications Act, which Non-Cable Services are not subject to the Cable Law or to Title VI of the Communications Act;

**WHEREAS,** the FTTP Network occupies public rights-of-way (as defined in the proposed Verizon Franchise Agreement) within the City and Verizon desires to use portions of the FTTP Network now or hereinafter installed within the City to provide cable service (as defined in the proposed Verizon Franchise Agreement);

**WHEREAS,** under the Cable Laws the City is required to hold a public hearing on the proposed Verizon Franchise Agreement and its application for a cable franchise;

**WHEREAS,** the City is required to publish public notice of the hearing at least ten days in advance; and

**WHEREAS,** the City therefore desires to establish a date and time for such public hearing;

**NOW, THEREFORE, BE IT RESOLVED,** that the City's Common Council hold a public hearing at its regularly scheduled meeting on \_\_\_\_\_, 2007 at \_\_\_\_\_ P.M. for the purpose of considering the grant of a non-exclusive cable franchise to Verizon to own, construct, operate and maintain a cable system along the public rights-of-way within the City in order to provide cable service, which authorization is made in accordance with the applicable provisions of Title VI of the Communications Act and the Cable Laws, and to authorize the City to enter into a cable franchise agreement with VERIZON NEW YORK INC.

\*\*\*\*\*

---

Pamela Beach  
City Clerk

SEAL

Dated: August \_\_, 2007  
12692912.1

## Tab 5



**From:** Johnson, Brian [mailto:BJohnson@wileyrein.com]  
**Sent:** Wednesday, September 05, 2007 6:00 PM  
**To:** mserrano@cityofpeekskill.com; Joe Stargiotti; jstargiotti@cityofpeekskill.com  
**Cc:** John Harrington  
**Subject:** City of Peekskill Common Council Resolution

Gentlemen:

Attached for your use is a draft of a Common Council Resolution granting Verizon a cable franchise and approving the form of the cable franchise agreement. The blank on the last page is for the insertion of the person who will be signing the agreement on behalf of the City. I did not know whether it would be the Mayor or the City Manager.

Brian A. Johnson  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
Voice: 202.719.3480  
Fax: 202.719.7049  
Cell: 240.475.2087  
Email: [bjohnson@wileyrein.com](mailto:bjohnson@wileyrein.com)

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Common Council  
City of Peekskill  
Regular Meeting  
September 10, 2007

**PRESENT:** Mayor John G. Testa presiding; Councilpersons Donald Bennett, Melvin Bolden; Drew Claxton, Mary Foster, Milagros Martinez and Catherine Pisani in attendance.

\*\*\*\*\*

**RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF PEEKSKILL AWARDDING  
A CABLE TELEVISION FRANCHISE AGREEMENT TO VERIZON NEW YORK INC. TO  
PROVIDE CABLE SERVICE TO THE CITY OF PEEKSKILL AND APPROVING A CABLE  
FRANCHISE AGREEMENT WITH VERIZON, NEW YORK, INC.**

On a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_, the following resolution was adopted by those Common Council Members present:

**WHEREAS,** the City of Peekskill (the “City”) is a franchising authority in accordance with Title VI of the Communications Act of 1934 (the “Communications Act”), and is authorized to grant one or more cable television franchises pursuant to Article 11 of the New York State Public Service Law, and Title 16, Chapter VIII, Parts 890.60 through 890.6 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York (the “Cable Laws”);

**WHEREAS,** VERIZON NEW YORK INC. (“Verizon”) is upgrading its existing telecommunications and information services network through the installation of what Verizon refers to as “Fiber to the Premises Telecommunication Network (the “FTTP Network”) within the City and elsewhere, which existing network transmits Non-Cable Services (as defined in the proposed Verizon Franchise Agreement) pursuant to the authority granted by Section 27 of the New York Transportation Corporations Law, and Title II of the Telecommunications Act, which Non-Cable Services are not subject to the Cable Law or to Title VI of the Communications Act;

**WHEREAS,** the FTTP Network occupies public rights-of-way (as defined in the proposed Verizon Franchise Agreement) within the City, and Verizon desires to use portions of the FTTP Network now or hereinafter installed within the City to provide cable service (as defined in the proposed Verizon Franchise Agreement);

**WHEREAS,** Verizon has submitted a written application for a cable television franchise to the City on August 31, 2007 (the “Verizon Application”), which the City has had an opportunity to review;

**WHEREAS,** due negotiations between the City and Verizon have resulted in a proposed agreement entitled “Cable Franchise Agreement between the City of Peekskill and

Verizon New York Inc.,” which proposed agreement was filed with the City on September \_\_\_\_, 2007 (“Verizon Franchise Agreement”);

**WHEREAS,** on September 10, 2007 at a regularly scheduled Common Council meeting the City held a public hearing on the proposed Verizon Franchise Agreement at which Verizon made a presentation to the Common Council in favor of the proposed Verizon Franchise Agreement, including an outline of the cable television services proposed to be provided to the City pursuant thereto, and members of the Common Council and the public were given notice and opportunity to comment on Verizon’s presentations and ask questions to be addressed by Verizon’s representatives; and

**WHEREAS,** the City has identified the cable-related needs and interests of the residents of the City and has exercised due diligence in considering the technical ability, financial conditions, character and legal qualifications of Verizon to meet such needs and interests; and

**NOW, THEREFORE, BE IT RESOLVED,** that the City of Peekskill Common Council finds that it approves the character of Verizon; and be it

**FURTHER RESOLVED,** that the Common Council finds that Verizon is legally (pursuant to NY Public Service Commission Rules and other statutory requirements), technically, and financially and otherwise qualified to meet the cable-related needs and interests of the City and that Verizon will meet all statutory and regulatory non-discrimination requirements; and be it

**FURTHER RESOLVED,** that the Common Council finds, based on the presentation by Verizon, that the cable service offered by Verizon will include competitive offerings with its existing competition; and be it

**FURTHER RESOLVED,** that the Common Council finds that although the terms of the proposed Verizon Franchise Agreement are not identical to those of the franchise agreement with Cablevision, that the terms of both agreements are reasonably comparable in their totality and contain no economic or regulatory burdens which when taken as a whole are greater or lesser than those burdens placed upon another cable television franchisee operating in the same franchise area, therefore, neither agreement provides either franchisee with any unfair competitive advantage, or subject either franchisee to any unfair competitive disadvantage; and be it

**FURTHER RESOLVED,** that the Common Council determines that it serves the public interest to award Verizon a franchise to own, construct, operate and maintain a cable system along the public rights-of-way within the City, in order to provide cable service; and be it

**FURTHER RESOLVED,** that the Common Council authorizes the award of a non-exclusive franchise to Verizon to own, construct, operate and maintain a cable system along the public rights-of-way within the City, in order to provide cable service, which authorization is made in

accordance with the applicable provisions of Title VI of the Communications Act and the Cable Laws; and be it

**FURTHER RESOLVED**, that The Common Council of the City of Peekskill authorizes \_\_\_\_\_ of the City to enter into a franchise agreement with VERIZON NEW YORK INC., in a form approved by the City Attorney, and to execute any other documents necessary to effectuate the granting of the franchise on behalf of the City of Peekskill.

\*\*\*\*\*

\_\_\_\_\_  
Pamela Beach  
City Clerk

SEAL

Dated: September 10, 2007  
12704114.1

## Tab 6



**Monica F. Azare**  
Senior Vice President  
State Public Policy and Government Affairs – NY/CT

140 West Street, 30<sup>th</sup> Floor  
New York, NY 10007

Phone 212 321-8140  
Fax 212 791-0526  
monica.f.azare@verizon.com

September 5, 2007

The Honorable John G. Testa  
City Hall  
840 Main Street  
Peekskill, NY 10566

Dear Mayor Testa:

Verizon is looking forward to the public hearing on September 10 in the City of Peekskill to consider approval of Verizon's video franchise application. It is a step in a comprehensive review process that will open the door to cable choice and advanced video technology for the residents of Peekskill.

I respect and thank you and those who negotiated on behalf of the City of Peekskill for your determined efforts in reaching this high point in the franchise process. The results are commendable. Together, we have crafted a franchise agreement that is fair and equitable, competitively neutral, and consistent with Public Service Commission rulings as well as all state and federal laws and regulations.

As you prepare for the upcoming hearing, please know that Verizon is committed to meeting the needs of the community and, more importantly, to delivering a competitive, next-generation cable technology and entertainment platform to the residents of Peekskill. I trust that the franchising team has answered all of your questions. Please feel free to contact me at the number above if there is additional information that you need.

I have enclosed information outlining the extraordinary benefits of Verizon FiOS TV - the service that awaits the approval of you and your council.

Again, thank you for your commitment to bringing cable choice and a new video technology to the City of Peekskill.

Sincerely,

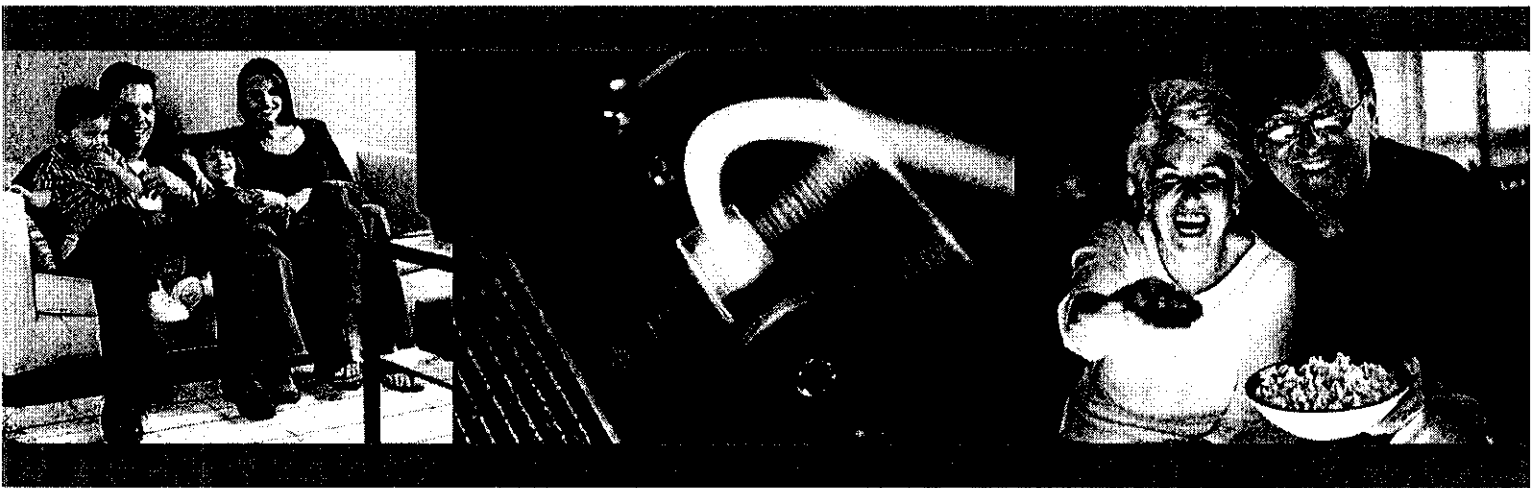


Monica Azare

cc: The Honorable Donald Bennett  
The Honorable Melvin Bolden  
The Honorable Drew Claxton  
The Honorable Milagros Martinez  
The Honorable Catherine Pisani  
The Honorable Mary Foster

# Verizon FiOS TV

City of Peekskill, NY



## **The City of Peekskill Can Advance New York's Broadband Revolution.**

**Favorable action on Verizon's proposed cable franchise agreement positions Peekskill to be among the first group of communities in New York to open the doors to the robust competition underway in New York's television and video marketplace.**

**A win for the community -- *and* its residents.**

**Benefits to the community:** The competitive cable TV franchise agreement under consideration will deliver:

- **Homebuyers who actively seek out Peekskill** – Fiber to the home has become an important criterion to customers in the housing market. In communities where Verizon has deployed its fiber optic network, homebuyers favor properties served by it.
- **Competitive Consumer Prices** – Cable rates increase less in places where cable operators face real wireline competition.
  - According to the FCC, rates for basic and expanded basic cable TV service rose by about 5% in 2005, to \$43. Those rates are up 93% over the past decade.
  - The remedy? Competition! The FCC's December 2006 report shows that in areas where there is land-based competition like Verizon FiOS TV, prices are 17% below average.
  - And in areas where Verizon is offering FiOS TV, Cablevision has offered freebies, like free DVR service or free HBO, and steep discounts to keep customers from disconnecting. And they're offering new customers the triple play bundle for \$89.95 monthly with a one year contract. It's amazing what a little competition can do for consumers!

**The City of Peekskill is among the first.**

**Deployment Commitment:** Peekskill is among the first communities in New York to benefit from Verizon's fiber-to-the-premises (FTTP) initiative. Today, this network offers Peekskill the largest ever voice, data, and video pipeline into the home, resulting in clearer, more reliable voice connections and lightning-fast Internet connections - far faster than the most powerful cable modem connections.

**Personnel and Resource Commitment:** Verizon has hired new full-time employees and contractors to deliver fiber to the home in the area.

**Quality Commitment:** Verizon is delivering the best video offering on the market to downstate New York – and intends to do the same for the residents of Peekskill.

**Broadband. The City of Peekskill has a lot riding on it.**





# More Choices. Right Before Your Eyes.

## Top 10 Reasons Why New Yorkers Want FiOS TV

- 10 **It's affordable.** FiOS TV is priced to compete. And that's important. The FCC has found that cable television rates have increased 93 percent over the last decade.
- 9 **It's state-of-the-art.** Verizon's programming rides over an all-digital fiber-optic network to the home – with the fastest connections available in the industry.
- 8 **It's in demand.** FiOS TV was available to about 2.4 million homes at the end of 2006, and the company expects to attract 3-4 million customers by 2010.
- 7 **It comes with other great services.** Customers in parts of our service territory are surfing the web at up to 50 Mbps using FiOS Internet Service. Customers also tell us that phone calls placed over our FiOS fiber optic network are clearer than ever.
- 6 **It's future proof.** The network has enough capacity for the most demanding consumers today and plenty more for applications still on the drawing board.
- 5 **Lots of HDTV.** There's nearly unlimited high-definition channel capacity on the FiOS TV network. FiOS TV customers today have access to twice as many HD channels as many cable providers.
- 4 **It's diverse.** FiOS TV offers one of the most diverse and exciting multicultural channel lineups in the industry.
- 3 **Lots of channels.** Verizon's channel lineup offers more than 400 total channels, with more on the way.
- 2 **It's better.** Our analog and digital television signals travel over a pipeline far more robust than cable's. Cablevision and other providers must add voice and data service to their pipeline too, leading to a tradeoff between Internet speeds or enhancing cable TV service.
- 1 **It's from Verizon.** We offer the most advanced and reliable network in the country along with a legacy of providing outstanding service in New York for more than a century.

## Competition Works!

You get to choose which company to use for your wireline or wireless phone service. You get to choose your Internet Service Provider. You should have the same freedom of choice for cable TV. It's choice and competition that benefit you the most.

When a true wireline television competitor challenges cable, prices for basic and expanded basic cable TV service are 17% below average. (Source: FCC Report on Cable Industry Prices, Dec 2006)

Delaying video entry by one year would cost New Yorkers \$458 million in lost consumer savings from video services alone, and these losses increase with each year of delay. (Source: Phoenix Center Policy Bulletin No. 13, Jan 2006)

Incumbent cable companies have responded with service price cuts of 28 - 42% in some areas where FiOS TV is available. (Source: Bank of America Equity Research: Consumer Wireline Services Pricing, Jan 2006)

---

**Support change. Let's bring true cable TV competition to New York now – not years from now. Let your voice be heard. Urge your local elected officials to vote "YES" in favor of TV choice and competition!**

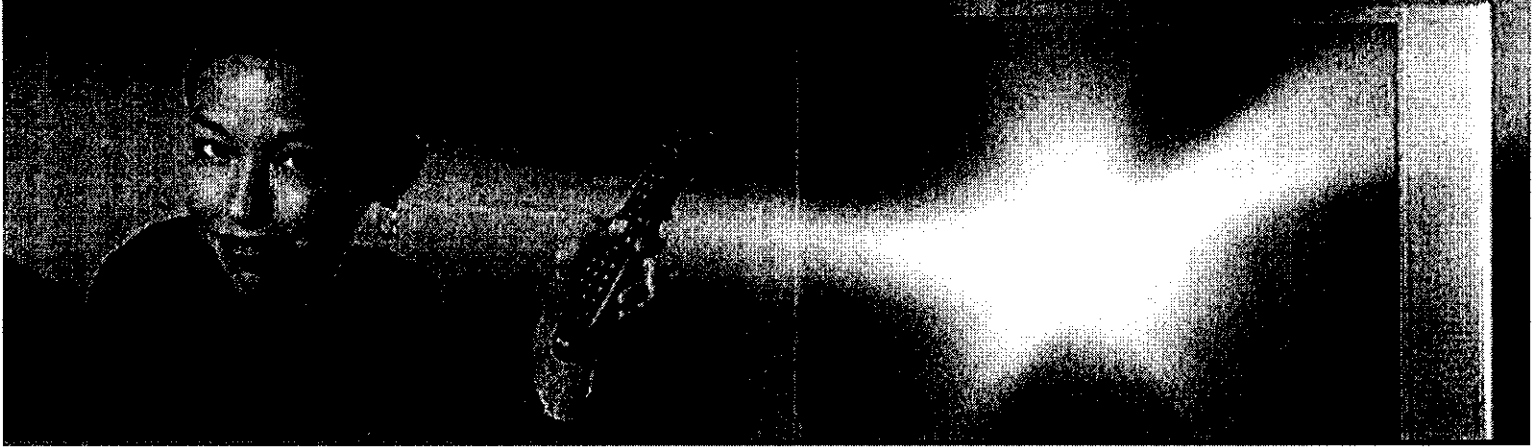
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For more information, visit:  
[www.verizon.com/ny](http://www.verizon.com/ny)



**verizon**

# Power to the people who have fiber-optic TV!



***Verizon FiOS TV takes entertainment to a level you never imagined.***

## **More Value**

FiOS TV is all about simple packages and competitive prices. FiOS TV Premier delivers an unmatched lineup with more than 200 channels of television and music entertainment. It's an even better value when bundled with our FiOS Internet Service.\*

## **A Superior Network**

Our 100% fiber optic network delivers an all digital experience with better picture and sound quality, more choices and more control. The FiOS network has far more capacity than cable's and is less vulnerable to weather outages and electrical interference - advantages that add up to a vast new dimension of bandwidth, speed and power.

## **On Demand**

With FiOS TV, you have instant access to a library of approximately 8,600 of the latest titles; blockbuster movies, kids' shows, sporting events and much more, all at a touch of a button.

## **HDTV**

FiOS TV offers more than two dozen high definition channels, with all of your favorite channels like ESPN, Discovery, HD Net and more!

## **More Control**

Parental Controls allow you to block access to shows either by channel, rating or category. You can also selectively block Pay Per View and On Demand purchases, and choose to show or hide programs from the TV Listings. And these easy to use features come at no additional charge to digital service customers.

## **Dual-tuner, Home Media DVRs, and FiOS TV Widgets**

FiOS TV gives you the freedom to pause and rewind live TV, record one show while watching another - and fast forward to your favorite part - all without a VCR, tapes or DVDs. And our Home Media DVR allows you to view recorded programs from any room in the house with a television and set-top box and easily access photos and music from your personal computer and play them on your entertainment center. FiOS TV Widgets gives you local weather and traffic on your TV screen at the touch of a button, without interrupting what you're watching.

## **Global Reach**

FiOS TV's multicultural lineup is unmatched in the industry. Whether you choose our Spanish language tier, La Conexión, or any of the popular international premium channels, you stay connected to the world.

---

***More channels. More choices. Verizon FiOS TV.***

---

\* Programming and prices are subject to change. Applicable franchise fees, regulatory fees and taxes apply. Other terms and conditions apply.

**PAY PER VIEW**  
701 Events  
702-707 ESPN-NCAA Sports/ GamePlan/Full Court

**HD**

**HD Broadcast**  
801 CW — WPX HD  
802 CBS — WBS HD  
803 PBS — WNET HD  
804 NBC — WNBC HD  
805 FOX — WYVW HD  
807 ABC — WABC HD  
809 My WJDR HD

**HD National**

825 TNT HD  
826 ESPN HD  
827 ESPN 2 HD  
828 NFL Network HD  
830 YES HD  
831 SportsNet New York HD  
833 HD Net  
834 HD Net Movies  
835 Universal HD  
836 Discovery HD  
837 Weather TV HD  
838 National Geographic Channel HD  
839 MTV HD  
840 Food Network HD  
841 HGTV HD  
845 Lifetime Movie Network HD

**HD Premium**

851 HBO HD  
852 Showtime HD  
853 Showtime HD  
854 TMC HD  
855 Starz HD

**LOCAL PLUS**

860 NBC Weather Plus  
861 The Tube Music Network  
864 WNBC 4.4  
866 WRNN-Risa  
870 WLW 21  
871 WLW Create  
872 13 Kids  
873 WLW World

**VIDEO ON DEMAND\*\***

900 FIOS On Demand  
ALL FREE

**Home & Leisure**

Info & Education  
Kids  
Marketplace  
Music  
News  
People & Culture  
Pop Culture  
Sports  
Women  
En Español

**Movies**

International Films  
Library  
Movie Trailers  
New Releases  
En Español

**Subscriptions**

Cinemax  
HBO  
Showtime  
Starz  
Sundance  
The Movie Channel  
Playboy  
hnet  
Karaoke Channel  
WWE 24-7

**Events**

Sports  
Uncensored  
En Español

**Adult**

**FIOS TV Help**

**PUBLIC/EDUCATION/GOVERNMENT\*\*\***

Ardsley/Greenburgh/Livingston/Tarrytown

32 Government Access Channel  
34 Public Access Channel 1  
35 Government Access Channel 2

Dobbs Ferry

46 Government Access Channel  
47 Educational Access Channel

Eastchester

40 Eastchester Town Gov. Access 1  
Elmsford  
30 Public Access

Lyndbrook

32 Lyndbrook Education  
33 Lyndbrook Government 1  
34 Lyndbrook Government 2

Mineola

40 Mineola Education & Government Access  
Port Chester  
42 Public Access/Local Programming  
43 Government Access  
44 Educational Access

Smithtown

27 Smithtown Government

\*\*Subscription to corresponding premium channels and packages required.  
\*\*\*Not all local public, educational and governmental (PEG) channels may be available at the time of installation.  
Programming services offered within each package are subject to change, and not all programming services will be available at all times. Blackout restrictions also apply.

**Verizon FiOS TV**  
**New York Channel Lineup**  
EFFECTIVE JULY 2007

**FIOS TV LOCAL**

2 CBS — WBS-TV 2  
4 NBC — WNBC-TV 4  
5 FOX — WYVW-TV 5  
6 WRNN-TV 62  
7 ABC — WABC-TV 7  
8 Superstation — WGN-TV  
9 My WJDR-TV 9  
10 WLNY-TV 55  
11 CW — WPX-TV 11  
12 Telemundo — WNUJ-TV 47  
13 PBS — WNET-TV 13  
17 WFTV-TV 87  
18 WNBC-TV 83  
21 PBS — WLW-TV 21  
23 PBS — WJDR-TV 50  
25 NYC-TV  
27 Local Programming  
29 PBS — WYVW-TV 66  
30 Local Programming  
31 ION-TV 31  
32-35 Local Programming  
37 Public Access  
38 Public Access  
40 Local Programming  
41 Univision — WXTV-TV 41  
42-44 Local Programming  
46 Local Programming  
47 Local Programming  
48 TV Guide  
49 Weatherman Local

**FIOS TV PREMIER**

50 USA Network  
51 TNT  
52 TBS  
53 FX  
54 Spike TV  
60 ESPN  
61 ESPN Classic Sports  
62 ESPN News  
63 ESPN  
64 ESPN 2  
66 YES  
67 SportsNet NY  
68 MSG  
69 Fox Sports Net NY  
71 Speed Channel  
72 NFL Network  
75 VERSUS  
76 Fox Soccer Channel

80 CNN  
81 CNN Headline News  
82 Fox News  
83 CNBC  
85 Bloomberg TV  
86 CNN International  
87 CNBC World  
88 ABC News Now  
89 C-SPAN  
90 C-SPAN 2  
91 C-SPAN 3  
92 BBC World  
99 The Weather Channel  
100 Discovery Channel  
101 National Geographic Channel  
102 Science Channel  
103 Discovery Times  
104 Pentagon Channel  
105 Military Channel  
106 Military History Channel  
107 History Channel International  
108 History Channel  
109 Biography Channel  
110 Animal Planet  
111 TV Info  
119 TLC (The Learning Channel)  
120 Lifetime  
121 Lifetime Movie Network  
122 Lifetime Real Women  
123 SoapNet  
124 Oxygen  
129 Women's Entertainment  
130 QVC  
131 HSN  
135 Jewelry  
137 Shop NBC

140 Style  
141 Discovery Health  
143 Fit TV  
144 Food Network  
145 HGTV (Home & Garden Television)  
146 Fine Living  
147 DIY (Do It Yourself)  
148 Discovery Home  
149 Wealth TV  
150 Travel Channel  
200 Turner Classic Movies  
201 AMC  
202 Fox Movie Channel  
210 Hallmark Channel (East)  
212 Family Net  
213 AmericanLife TV  
214 TV Land  
220 Disney  
221 Toon Disney  
222 Nickelodeon  
223 Nick Too  
224 Nick Toons  
225 GAN  
226 Noggin  
227 Cartoon Network (ESP)\*  
228 Boomerang (ESP)\*  
229 Discovery Kids  
230 Varsity  
231 FUNimation  
232 PBS KIDS Sprout

160 Sci-Fi Channel  
161 A&E  
162 Crime & Investigation Network  
163 Court TV  
164 GSN  
165 Bravo  
166 Sleuth  
167 Logo  
168 Ovation  
169 BBC America  
170 Comedy Central  
171 G4  
176 E! Entertainment Television  
177 Fox Reality  
178 Fuel  
179 ABC Family  
180 MTV  
181 MTV2  
183 MTV Jams  
184 MTV Hits  
185 IMF (International Music Feed)  
186 FUSE  
187 VH1  
188 VH1 Classic  
189 VH1 Soul  
190 BET Jazz  
191 CMT  
192 CMT Pure Country  
193 Great American Country  
194 Gospel Music Channel  
195 BET Gospel  
199 Soundtrack Channel

FIOS TV is frequently changing its channel offerings. To view our latest published channel lineup, please visit [verizonfiostv.com/tv](http://verizonfiostv.com/tv).



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Pay Per View HD Local Plus  
VOD Local Public/Education/Government

## FIOS TV PREMIER

(continued)

- 240 BET
- 241 TV One
- 243 MTV Tr3s
- 244 Galavisión
- 245 Mun2
- 246 SiTV
- 247 AZN Television
- 248 Bridge TV

- 260 EWTN
- 261 INSP
- 262 Lile
- 263 Church
- 264 JCTV
- 265 BYU
- 266 Three Angels
- 267 The Word Network
- 268 Daystar
- 269 Smile of a Child
- 270 Trinity Broadcast Network

## SPORTS\*\*

- 300 Fox College Sports — Atlantic
- 301 Fox College Sports — Central
- 302 Fox College Sports — Pacific
- 303 Tennis Channel
- 305 Golf Channel
- 307 Outdoor Channel
- 308 The Sportsman Channel
- 311 Fox Sports en Español
- 313 GoTV
- 315 TVG (Horse Racing)
- 316 Horse Racing TV
- 318 Max TV
- 319 Blackbelt TV
- 321 MSG 2
- 322 Fox Sports Net NY 2

## MOVIES\*\*

- 340 Starz
- 341 Starz West
- 342 Starz Edge
- 343 Starz Edge West
- 344 Starz in Black
- 345 Starz Kids & Family
- 346 Starz Cinema
- 347 Starz Comedy
- 348 Encore
- 349 Encore West
- 350 Encore Love
- 351 Encore Love West
- 352 Encore Westerns

- 353 Encore Westerns West
- 354 Encore Mystery
- 355 Encore Mystery West
- 356 Encore Drama West
- 357 Encore Drama West
- 358 Encore Action
- 359 Encore Action West
- 360 Encore WAMI
- 361 Showtime
- 362 Showtime West
- 363 Showtime Showcase
- 364 Showtime Showcase West
- 365 Showtime Too
- 366 Showtime Too West
- 367 Showtime Beyond
- 368 Showtime Beyond West
- 369 Showtime Extreme
- 370 Showtime Extreme West
- 371 Showtime Women
- 372 Showtime Women West
- 373 Showtime Next
- 374 Showtime Next West
- 375 Showtime Family Zone
- 376 Showtime Family Zone West
- 377 The Movie Channel
- 378 The Movie Channel West
- 379 The Movie Channel Xtra
- 380 The Movie Channel Xtra West
- 381 Flix
- 382 Flix West
- 384 Sundance
- 385 Independent Film Channel

## PREMIUMS\*\*

- 400 HBO
- 401 HBO West
- 402 HBO 2
- 403 HBO 2 West
- 404 HBO Signature
- 405 HBO Signature West
- 406 HBO Family
- 407 HBO Family West
- 408 HBO Comedy
- 409 HBO Comedy West
- 410 HBO Zone
- 411 HBO Zone West
- 412 HBO Latino
- 413 HBO Latino
- 414 HBO Latino West

- 415 Cinemax
- 416 Cinemax West
- 417 More Max
- 418 More Max West
- 419 Action Max
- 420 Action Max West
- 421 Thriller Max
- 422 Thriller Max West
- 423 Women's Max
- 424 At Max
- 425 Five Star Max
- 426 OutMax

- 430 Playboy TV
- 431 Playboy TV en Español
- 435 here!

## SPANISH LANGUAGE\*\*

- 440 Galavisión
- 442 ESPN Deportes
- 443 Fox Sports en Español
- 444 GoTV
- 446 CNN en Español
- 447 Canal SUR
- 448 TVE Internacional
- 452 History Español
- 453 Discovery en Español
- 454 Viajar y Vivir
- 456 Infinito
- 457 MTV Tr3s
- 458 VH Uno
- 459 Telehit
- 462 De Película
- 463 De Película Clásico
- 464 Cine Latino
- 465 Cine Mexicano
- 466 La Familia
- 469 TV Chile
- 470 TV Colombia
- 472 Sorpresa
- 473 Toon Disney Español
- 474 Boomerang (ESP)\*
- 475 Discovery Kids en Español
- 477 TBN Enlace
- 478 EWTN Español

## INTERNATIONAL PREMIUMS\*\*

- 480 BBTN (Vietnamese)
- 481 CCTV-4 (Mandarin Chinese)
- 482 CTI — Zhong Tian Channel (Chinese)
- 483 TV Japan
- 484 MBC (Korean)
- 485 The Filipino Channel
- 486 TV Asia
- 487 ART (Arabic)
- 488 RAI (Italian)
- 489 TV 5 (French)
- 490 TVP Polonia (Polish)
- 491 Rang A Rang (Farsi)
- 492 RTN Russian
- 493 Channel 1 Russian

## LA CONEXIÓN

- 500 USA Network
- 501 TNT
- 502 TBS
- 503 Galavisión
- 504 FX
- 505 Spike TV
- 508 ESPN Deportes
- 511 YES
- 512 SportsNet NY
- 513 Fox Sports en Español
- 514 Fox Soccer Channel
- 515 MSG
- 516 GoTV
- 517 Fox Sports Net NY

- 518 CNN en Español
- 519 CNN
- 520 CNN Headline News
- 521 Fox News
- 522 CNBC
- 524 C-SPAN
- 525 Canal SUR
- 529 TVE Internacional
- 530 History Español
- 531 Discovery Channel
- 532 Discovery en Español
- 534 Animal Planet
- 535 TLC (The Learning Channel)

- 537 Lifetime
- 538 Lifetime Movie Network
- 540 QVC
- 541 HSN
- 543 Shop NBC
- 545 Discovery Health
- 546 Viajar y Vivir
- 549 Infinito
- 550 Food Network
- 551 HGTV (Home & Garden Television)
- 552 Travel Channel
- 555 E! Entertainment Television
- 556 A&E
- 557 SiTV
- 558 Mun2
- 559 Comedy Central
- 560 Sci-Fi Channel

- 562 MTV Tr3s
- 563 MTV2
- 564 Telehit
- 565 VH Uno
- 566 CMT
- 569 De Película
- 570 De Película Clásico
- 571 Cine Latino
- 572 Cine Mexicano
- 573 Cine Latino
- 574 ABC Family
- 575 La Familia
- 576 TV Chile
- 577 TV Colombia
- 578 TBN Enlace
- 579 EWTN Español
- 580 Nickelodeon
- 581 Disney en Español
- 582 Toon Disney Español
- 583 Boomerang (ESP)\*
- 584 Cartoon Network (ESP)\*
- 585 Sorpresa
- 586 Discovery Kids en Español
- 588 TBN Enlace
- 589 EWTN Español

## MUSIC CHOICE

- 600 Showcase
- 601 Today's Country
- 602 Classic Country
- 603 Bluegrass
- 604 R&B and Hip-Hop
- 605 Classic R&B
- 606 Smooth R&B
- 607 R&B Hits
- 608 Rap
- 609 Metal
- 610 Rock
- 611 Arena Rock
- 612 Classic Rock
- 613 Alternative
- 614 Retro-Active
- 615 Electronica
- 616 Dance
- 617 Adult Alternative
- 618 Soft Rock
- 619 Hit List
- 620 Party Favorites
- 621 90s
- 622 80s
- 623 70s
- 624 Solid Gold Oldies
- 625 Singers & Standards
- 626 Big Band & Swing
- 627 Easy Listening
- 628 Smooth Jazz
- 629 Jazz
- 630 Blues
- 631 Reggae
- 632 Soundscapes
- 633 Classical Masterpieces
- 634 Opera
- 635 Light Classical
- 636 Show Tunes

- 637 Contemporary Christian
- 638 Gospel
- 639 Radio Disney
- 640 Sounds of the Seasons
- 641 Música Urbana
- 642 Salsa y Merengue
- 643 Rock en Español
- 644 Pop Latino
- 645 Mexicana
- 646 Americana

## URGE RADIO

- 647 Crunch
- 648 MTV2
- 649 Blues Part 2
- 650 Cover 2 Cover
- 651 CMT Radio
- 652 Diner
- 653 Wide Open Country
- 654 Voice Box
- 655 Vinyl
- 656 Dope
- 657 Hip-hop-ics
- 658 Celebration
- 659 Unforgettable
- 660 Manteca
- 661 TRL
- 662 Pego
- 663 I Love the 80s
- 664 I Love the 90s
- 665 I Love the 70s
- 666 Neon
- 667 Reunion
- 668 Rocks
- 669 Axis
- 670 Opera Babylon
- 671 Dream Sequence
- 672 Crescendo
- 673 Bluegrass Radio
- 674 Push
- 675 Zen
- 676 Discotech
- 677 Ultrasound
- 678 Praise
- 679 Smoke
- 680 Oasis
- 681 Swing
- 682 Radio Alterna
- 683 MTV2 Headbangers Ball
- 684 Blast
- 685 Gold
- 686 MTV Tr3s
- 687 NuGroove
- 688 Soul City
- 689 VHT Soul
- 690 Cinema
- 691 Jazzup Broadway
- 692 Big World
- 693 Rugga
- 694 Comedy

\*A Spanish-language Secondary Audio Program (SAP) is available for selection.  
 \*\*Subscription to corresponding premium channels and packages required.  
 Programming services offered within each package are subject to change, and not all programming services will be available at all times. Blackout restrictions also apply.

Why stroll through a video store when you can scroll through one?

Scroll through a library of approximately 8,600 movies and shows that are waiting for you to watch. Use your remote and the Interactive Programming Guide to browse, then make your selection - it's that easy. Need to pause to get more popcorn? Fast forward to skip the scary part or rewind to see it again? No problem! You can do it all from your remote any time you want, day or night.

<b>Free On Demand</b>	Choose from a selection of free programming -- sports, home & leisure, music, pop culture and more -- from our FiOS TV library. Channels include Disney, Discovery, ESPN, Home & Garden, MTV and many others.
<b>Movies On Demand</b>	Find the blockbuster movies and your old favorites at the press of a button for a fraction of the cost of a movie ticket.
<b>Premium On Demand</b>	When you subscribe to HBO, Cinemax or the Movie Package, you automatically have access to original programming and shows. Not to mention, the hottest movie releases - anytime you want.
<b>Pay Per View</b>	Get a front row seat (your couch) to the most anticipated sporting events, concerts, movies and much more in entertainment with our Pay Per View listings.

You got the killer high def TV. Now get the killer high def channels to go with it.

Brilliant picture. Room-shaking sound. Abundance of HD choices. The stunning capacity of fiber optic cable delivers more of the high def programming you love, with spectacular picture, hyper-real color, and amazing clear sound. Watch your favorite sports, movies, and TV shows come alive on your screen.

**FiOS TV with HDTV programming offers:**

- Images up to 5x sharper than regular TV
- Unparalleled picture/sound quality and a wide-screen format
- An expansive and growing list of HDTV channels
- Easy installation from the FiOS TV HD Set Top Box
- Dolby 5.1 digital surround sound

To get started with HDTV, you'll need a HD ready television and a FiOS TV HD Set Top Box.

Finally, regularly scheduled programs for your irregularly scheduled life.

FiOS TV brings you so many choices, you'll probably find yourself wanting to watch more than one show at a time. Or you might have seen something so incredible, you just have to hit instant replay to see it again. (Sports fans take note.) No tapes. No discs. No hassle. The days of waiting for a commercial break to get a snack are long gone with the FiOS TV DVR.

**With a FiOS TV DVR you can:**

- Rewind, pause or record live TV
- Record up to 85 hours of standard definition programming
- Record one show while watching another or record two shows at the same time while watching a third recorded show



**Home Media DVR with Media Manager**

- Lets customers view recorded programs from any room in the house with a television and set-top box
- Supports up to six additional televisions, with simultaneous viewing of up to three recorded shows
- Easily access photos and music from your personal computer and play them on your entertainment center where they look and sound the best

**Verizon FiOS TV**

# Verizon FiOS TV

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

Refer to the Channel Lineup for a complete listing of the channels included in each package.

Service	Number of Channels	Monthly Price
FiOS TV Local <sup>1</sup>	15-35	\$12.99
Digital Service (Requires Set Top Box (STB) and Router <sup>2</sup> )		
FiOS TV Premier <sup>3</sup>	228 + FiOS TV Local	\$42.99
La Conexión <sup>4</sup>	162 + FiOS TV Local	\$32.99

Now, add more channels for just a few dollars more.

Packages <sup>5</sup> (Requires STB)	Number of Channels	Monthly Price
Sports	13	\$7.99
Movies	45	\$12.99
Sports/Movies Combination	58	\$15.99
Spanish Language	25	\$11.99

Premium Channels (Requires STB)	Number of Channels	Monthly Price
HBO <sup>6</sup>	14	\$15.99
Cinemax <sup>6</sup>	12	\$15.99
HBO/Cinemax Combination	26	\$25.99
Playboy TV <sup>7</sup> /Playboy TV en Español	2	\$15.99
here!	1	\$7.99

International Premiums <sup>8</sup> (Requires STB)	Number of Channels	Monthly Price
International Premium Channels	14	Individually Priced

Video On Demand (VOD) and Pay Per View (PPV) (Requires STB)	Price
<b>On Demand Movies</b>	
New Releases	\$3.99
Library	\$2.99
<b>On Demand Subscriptions</b>	
WWE	\$7.99/mo.
Karaoke	\$7.99/mo.
On Demand Adult	\$14.99/each
PPV Events	Varies
PPV Sports	Varies
ESPN GamePlan — NCAA Football	\$21.99/daily, \$129.99 season*
ESPN FullCourt — NCAA Basketball	\$14.99/daily, \$109.99 season*

Set Top Box (STB)	Monthly Price
Digital Adapter <sup>**</sup>	\$3.99
Standard Definition (SD)	\$4.99
High Definition (includes HD channels)	\$9.99
Standard Definition Digital Video Recorder <sup>**</sup>	\$12.99
High Definition Digital Video Recorder (includes HD channels)	\$15.99
SD Home Media DVR (features Multi-Room DVR & Media Manager) <sup>**</sup>	\$17.99
HD Home Media DVR (features Multi-Room DVR & Media Manager)	\$19.99

Initial Installation	One-Time Charges
Existing Outlet Hookup (up to 3)	No Charge
Additional Outlet/Set Top Box Hookup (existing outlet)	\$19.99
New Outlet Install/Existing Outlet Rewire (per outlet)	\$54.99
Outlet Relocation	\$54.99
FiOS TV Activation Fee with FiOS TV/Internet/Voice Bundle	Free
FiOS TV Activation Fee with FiOS Internet	\$19.99
FiOS TV Activation Fee without FiOS Internet	\$29.99

Subsequent Installations/Charges	One-Time Charges
Premise Visit <sup>†</sup>	\$49.99
New Outlet Installation (per outlet)	\$54.99
Outlet Relocation (per outlet)	\$54.99
Setup of TV Equipment (new TV with existing STB)	\$49.99
Downgrade of Service from Digital to Analog	\$49.99
Set Top Box Addition or Upgrade (requiring Technician visit)	\$24.99
Set Top Box Return or Downgrade with equipment drop off at Verizon authorized locations	Free
Set Top Box Return or Downgrade (requiring Technician visit)	\$29.99
FiOS TV Full Service Disconnect with equipment drop off at Verizon authorized locations	Free
FiOS TV Full Service Disconnect with Technician visit for equipment retrieval	\$74.99

Other Services and Charges	One-Time Charges
Seasonal Service Suspension (charged at initiation, 1-6 months) <sup>8</sup>	\$24.99
Replacement Remote — Verizon FiOS TV RC144	\$6.99 + Shipping & Handling
Replacement Remote — Motorola DRC800	\$5.00 + Shipping & Handling
Unreturned/Damaged STB — Digital Adapter	\$175.00
Unreturned/Damaged STB — Standard Definition	\$240.00
Unreturned/Damaged STB — High Definition	\$350.00
Unreturned/Damaged STB — SD Digital Video Recorder (DVR)	\$475.00
Unreturned/Damaged STB — HD Digital Video Recorder (DVR)	\$550.00

<sup>†</sup>In addition, early subscription and half season prices are available.

<sup>\*\*</sup>Available Fall 2007.



<sup>1</sup> The Spanish Language package may be added to FiOS TV Local service, but requires a Set Top Box for access. The addition of a Set Top Box with FiOS TV Local service provides access to Video On Demand (VOD) and Pay Per View (PPV), as well as the ability to order Premiums and International Premiums.

<sup>2</sup> If service is cancelled within the first 12 months, router must be returned or \$99.99 equipment fee applies.

<sup>3</sup> FiOS TV Premier includes all FiOS TV Local channels, additional all-digital programming, digital music channels and access to Pay Per View and Video On Demand.

<sup>4</sup> La Conexión includes all FiOS TV Local channels, digital programming including popular English-language networks and Spanish-language networks, digital music channels, and access to PPV and VOD. La Conexión cannot be combined with the Spanish Language package.

<sup>5</sup> In order to be eligible for Movies or Sports, FiOS TV Premier or La Conexión is required. 30-day minimum billing period required for all digital packages.

<sup>6</sup> Subscription VOD is included with all Premiums at no extra charge (where applicable). 30-day minimum billing period required for all Premiums.

<sup>7</sup> A premise visit charge is assessed when a technician installation is required to set up a new or additional TV with an existing FiOS TV Set Top Box. A premise visit charge is not assessed when adding new, upgrading/downgrading existing, or disconnecting Set Top Box receivers.

<sup>8</sup> Seasonal service suspension requires a minimum suspension of one month and a maximum suspension of six months.

Service/program availability varies by location and the number of channels within each package are approximations. Pricing applies to residential use only within the United States and is subject to change. Taxes, franchise fees and other terms apply.

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# Tab 7

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**From:** Johnson, Brian [mailto:BJohnson@wileyrein.com]  
**Sent:** Thursday, September 06, 2007 11:19 AM  
**To:** mserrano@cityofpeekskill.com; jstargiotti@cityofpeekskill.com; Joe Stargiotti  
**Cc:** John Harrington  
**Subject:** City of Peekskill Cable Franchise Agreement

Gentlemen:

Attached is the final draft of the Peekskill Cable Franchise Agreement with a 10 year term together with a comparison to the prior draft. The other changes are to the language in Subsection 5.3.3 regarding the Franchise Grant and in Exhibit D with respect to the timing of the two PEG Interconnection Sites. If you find all in order, please let me know, and I will send a version without the headers and footers to the City Clerk for posting for public inspection. It would also be helpful if you could let us know who will be signing the agreement on behalf of the City.

Brian A. Johnson  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
Voice: 202.719.3480  
Fax: 202.719.7049  
Cell: 240.475.2087  
Email: [bjohnson@wileyrein.com](mailto:bjohnson@wileyrein.com)

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**Cable Franchise Agreement**

**by and between**

**the City of Peekskill**

**and**

**Verizon New York Inc.**

**PEEKSKILL, NY FRANCHISE AGREEMENT**

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**TABLE OF CONTENTS**

<b><u>ARTICLE</u></b>	<b><u>PAGE</u></b>
1. DEFINITIONS.....	2
2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS .....	6
3. PROVISION OF CABLE SERVICE .....	8
4. SYSTEM FACILITIES .....	10
5. PEG SERVICES .....	11
6. FRANCHISE FEES .....	13
7. REPORTS AND RECORDS.....	15
8. INSURANCE AND INDEMNIFICATION .....	16
9. TRANSFER OF FRANCHISE.....	17
10. RENEWAL OF FRANCHISE.....	17
11. ENFORCEMENT AND TERMINATION OF FRANCHISE .....	18
12. MISCELLANEOUS PROVISIONS.....	20

**EXHIBITS**

EXHIBIT A: MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

EXHIBIT B: SERVICE AREA

EXHIBIT C: PEG CHANNELS

EXHIBIT D: PEG ACCESS INTERCONNECTION

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THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the City of Peekskill, 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.

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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

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Area and other not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents in the Franchise Area as specified by the LFA in Exhibit C to this Agreement.

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 incorporated area (entire existing territorial limits) of the LFA, and such additional areas as may be annexed or acquired.

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: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the 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; (iii) video on demand, including pay-per-view; (iv) revenues from the sale or lease of access channel(s) or channel capacity; and (v) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising

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derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, subject to the exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

**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; revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; 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 and remit such franchise fees to the LFA; 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 pursuant to Section 3.3; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; any fees or charges collected from Subscribers or other third parties for any PEG Grant and Franchise Grant payments; and

1.16.2.2. 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 use of the Cable System for two-way communication that is not

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

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classified as Cable Service; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders. Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment.

1.17. *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 City of Peekskill, 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. *NY PSC*: 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.

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**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

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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



**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

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 ten (10) 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.

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

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 pre-existing condition.

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

**3. PROVISION OF CABLE SERVICE**

**3.1. *Service Area:***

3.1.1. *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

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

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 Sub-Subsection 3.1.1.1. and Section 3.2.

3.1.1.1. *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 twenty-five (25) 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 3.1.1 respectively, 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 aerial 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 twenty-five (25) 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 twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such cost shall be submitted to said Subscriber, in writing, before installation is begun.

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 aerial trunk or feeder lines more than five hundred (500) 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 aerial extension in excess of five hundred (500) 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

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

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 five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such cost shall be submitted to said recipient, in writing, before installation is begun. 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 the 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.

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

**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 the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with 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 Access Interconnection:*** The LFA has designated two (2) sites within the Franchise Area for the interconnection of Education and Governmental Access facilities with the Cable System in Exhibit D attached hereto (each, a "PEG Access Interconnection Site").

5.2.1. Subject to the successful completion of all required 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 upstream Educational and Governmental Access Channel transmission connections between its video channel aggregation point and each of the two (2) PEG Access Interconnection Sites in order to permit the signals to be correctly routed from the PEG Access Interconnection Site for the 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 PEG Access Interconnection Sites.

5.2.2. The LFA shall provide to Franchisee at the PEG Access Interconnection Sites a suitable video signal and a suitable audio signal for each Education and Governmental Access Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the Educational and Governmental Access signals to the channel aggregation site for further

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

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.

5.2.3. Such upstream transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of Educational and Governmental Access signals to Subscribers. If Franchisee makes changes to the Cable System that require improvements to Educational and Governmental Access facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.1 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

**5.3. *PEG Grant and Franchise Grant:***

5.3.1. Franchisee shall provide to the LFA for use in support of the production of local PEG programming a PEG Grant (the "PEG Grant") in the amount of SIXTY SEVEN THOUSAND DOLLARS (\$67,000.00). Franchisee shall pay the PEG Grant in TEN (10) installments, as follows: (1) the first installment, in the amount of FORTY THOUSAND DOLLARS (\$40,000.00) shall be payable within sixty (60) days of the Effective Date; (2) the second installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the SECOND anniversary of the Effective Date; (3) the third installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the THIRD anniversary of the Effective Date; (4) the fourth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the FOURTH anniversary of the Effective Date; (5) the fifth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the FIFTH anniversary of the Effective Date; (6) the sixth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the SIXTH anniversary of the Effective Date; (7) the seventh installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the SEVENTH anniversary of the Effective Date; (8) the eighth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the EIGHTH anniversary of the Effective Date; (9) the ninth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the NINTH anniversary of the Effective Date; and (10) the tenth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the TENTH anniversary of the Effective Date. Such PEG 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.

5.3.2. The LFA shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 5.3.

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

5.3.3. In lieu of free internet service for two sites for the term of this Agreement, Franchisee shall pay the LFA a Franchise Grant in the total amount of SIX THOUSAND DOLLARS (\$6,000) payable in installments of SIX HUNDRED DOLLARS (\$600) each within ninety (90) days of the Effective Date and within ninety (90) days of each anniversary of the Effective Date thereafter. In the event that during the term of this Agreement the incumbent cable operator provides additional free internet service to additional sites belonging to the LFA as required by its franchise agreement, the LFA may notify Franchisee in writing of the commencement of such additional free internet service to such sites, and the amount of the Franchise Grant shall be increased as each such new internet service site is activated by the incumbent cable operator. The amount of the Franchise Grant payable by Franchisee to the LFA for each such new internet service site shall be at the same rate as the existing two sites and shall be prorated and payable over the remainder of the term of this Agreement at the same times as provided above in this Subsection 5.3.3.

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 an Annual PEG Grant and any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection and any franchise-related costs to Subscribers.

**6. FRANCHISE FEES**

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of four percent (4%) of annual Gross Revenue (the "Franchise Fee"); provided, however, that at such time as the LFA requires all cable service providers in the Service Area to pay a franchise fee of five percent (5%), the LFA shall be entitled, after notification to Franchisee, to amend this Franchise in the manner prescribed under applicable state law or this Franchise to require Franchisee to pay such higher amount and Franchisee agrees to pay such higher amount on going forward basis, following the issuance of an order from the NY PSC approving such amendment. In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. Late payments for Franchise Fees shall be subject to interest at the then-current rate set forth in Section 5004 of Article 50 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) from the due date to the date that such payment is made.

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

6.3. *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due, but cannot exceed the date of records retention reflected in Section 7.

6.4. *Bundled Services:* If Cable Services subject to the Franchise Fee required under this Article 6 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise Fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or by regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

6.5. *Section 626 Treatment:* Franchisee agrees that it will not apply the Franchise Fee as an offset against the special franchise tax payable to the LFA pursuant to N.Y. Real Property Tax Law Section 626 beginning in the next full calendar month following the issuance by the NY PSC of an order confirming this Agreement. The LFA agrees that it shall impose the same full and complete waiver of the special franchise tax offset upon all existing and 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 or the renewal of any existing franchise agreement of each respective 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.



**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

**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 six (6) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesies. Complaints recorded will not be limited to complaints requiring an employee service call;

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

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

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

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

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

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 five hundred thousand dollars (\$500,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA.

8.1.1.2. Automobile Liability Insurance in the amount of five hundred thousand dollars (\$500,000) combined single limit for bodily injury and property damage coverage.

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

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

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

8.1.2. 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.

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

**8.2. *Indemnification:***

8.2.1. Franchisee agrees to indemnify the LFA 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 timely written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. 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,

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the LFA may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.31 above.

**10. RENEWAL OF FRANCHISE**

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

10.2. *Needs Assessment:* In addition to the procedures set forth in Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Such assessments shall be provided to Franchisee by the LFA promptly so that Franchisee will have adequate time to submit a proposal under 47 U.S.C. § 546 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 47 U.S.C. § 546 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

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

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.

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

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

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

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, New Jersey 07920-1097

12.5.2. Notices to the LFA shall be mailed to:

City Manager  
Peekskill City Hall  
840 Main Street  
Peekskill, New York 10566

with a copy to:

Corporation Counsel  
Peekskill City Hall  
840 Main Street  
Peekskill, NY 10566

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.

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

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,



**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

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. *Performance Review:* The LFA may, at its discretion but not more than once per twelve (12) month period, hold an informal performance evaluation session (the "Performance Review") that is not open to the public to review Franchisee's compliance with the terms and conditions of this Franchise. The information disclosed to the LFA by the Franchisee at the Performance Review shall be treated by the LFA as confidential. The LFA shall provide Franchisee with at least thirty (30) days prior written notice of the Performance Review to be held at a mutually agreeable time. Franchisee shall have the opportunity to participate in and be heard at the Performance Review. Within thirty (30) days after the conclusion of the Performance Review, the LFA shall provide Franchisee written documentation (the "Performance Review Report") setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise. The Performance Review Report shall not contain any confidential information disclosed by the Franchisee during the Performance Review.

12.18. *No Third Party Beneficiaries:* Except as expressly provided in this Agreement, this Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

12.19. *LFA Official:* The City Manager of the LFA is the LFA official that is responsible for the continuing administration of this Agreement.

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**PEEKSKILL, NY FRANCHISE AGREEMENT**

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

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

AGREED TO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

LFA:

CITY OF PEEKSKILL

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

Title:

FRANCHISEE:

VERIZON NEW YORK INC.

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

Title:

**PEEKSKILL, NY FRANCHISE AGREEMENT**

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**

**EXHIBITS**

EXHIBIT A: Municipal Buildings to be Provided Free Cable Service

EXHIBIT B: Service Area

EXHIBIT C: PEG Channels

EXHIBIT D: PEG Access Interconnection

Exhibit List

Peekskill/Verizon New York Inc.  
Franchise Agreement/\_\_\_\_\_ 2007

**EXHIBIT A**

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

City Hall, 840 Main Street, Peekskill, New York  
Police Station, 2 Nelson Avenue, Peekskill, New York  
Peekskill Library, 4 Nelson Avenue, Peekskill, New York  
Fire House, 748 Washington Street, Peekskill, New York  
Fire House, 425 Highland Avenue, Peekskill, New York  
Fire Houses (Note: 2 buildings), 1850 Crompound Road, Peekskill, New York  
Fire House, Academy Street, Peekskill, New York  
Fire House, Main Street, Peekskill, New York  
Recreation Office, Depew Park, Peekskill, New York  
Pool, Depew Park, Peekskill, New York  
Water Filtration Office, Limburg Place, Peekskill, New York  
Mechanic Garage, 1003 Lower South Street, Peekskill, New York  
Kiley Youth Center, 709 Main Street, Peekskill, New York  
Department of Public Works Garage, 100 South Street, Peekskill, New York  
Peekskill City School District Administration, 1031 Elm Street, Peekskill, New York  
Peekskill City School District Maintenance Building, 1020 Elm Street, Peekskill, New York  
ECC- Uriah Hill, Jr. School, 980 Pemart Avenue, Peekskill, New York  
Hillcrest Elementary School, 4 Horton Drive, Peekskill, New York  
Oakside Elementary School, 200 Decatur Avenue, Peekskill, New York  
Woodside Elementary School, Depew Street, Peekskill, New York  
Peekskill Middle School, 212 Ringgold Street, Peekskill, New York  
Peekskill High School, 1072 Elm Street, Peekskill, New York  
EOC Office, 4 Nelson Avenue, Peekskill, NY  
Senior Center, 4 Nelson Avenue, Peekskill, NY

**EXHIBIT B**

**SERVICE AREA**

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

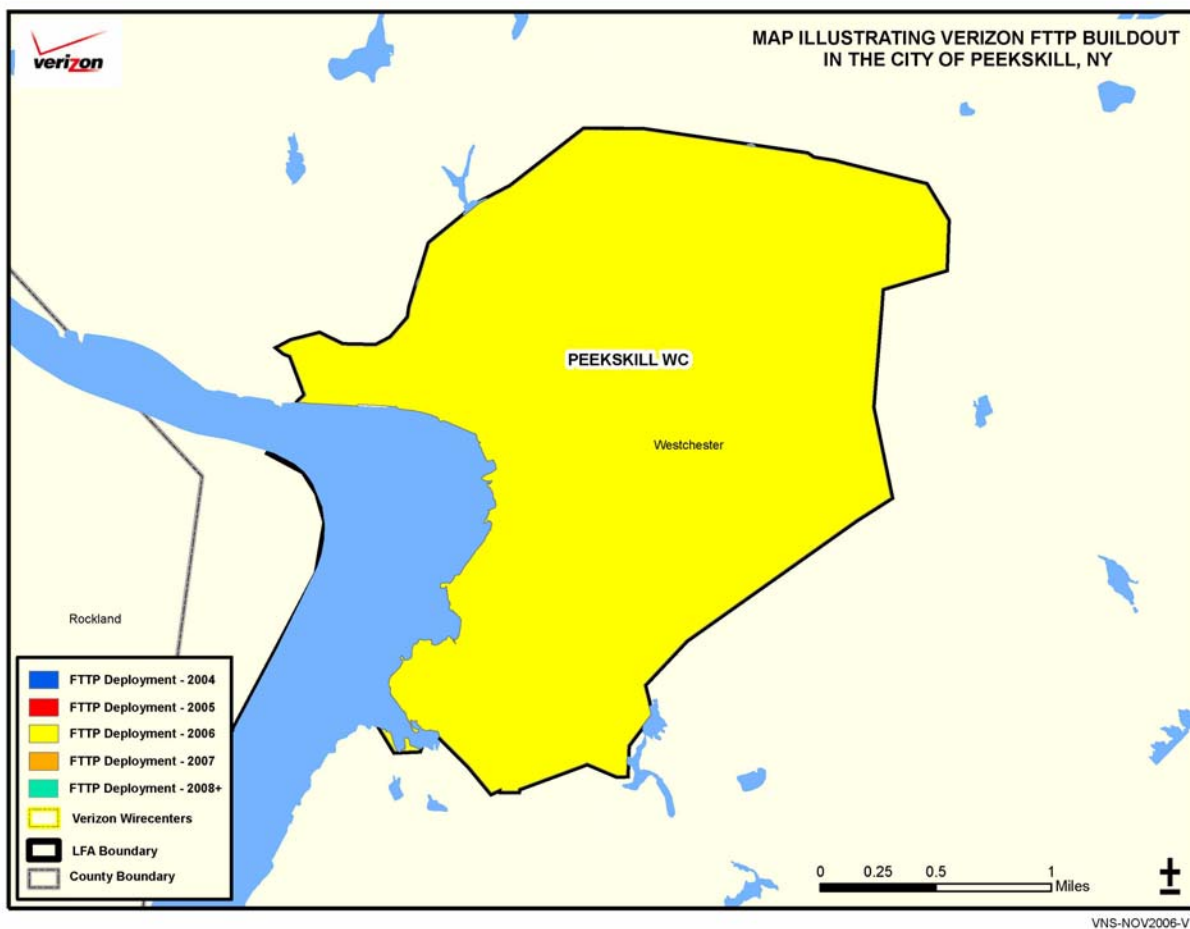
The construction of the Franchisee's FTTP Network has been completed to approximately 50% of the current households in the Franchise Area. At present, Franchisee's anticipated schedule (with schedule dates measured from the month that the NY PSC issues the confirmation order approving this Franchise) calls for 52% deployment at 6 months, 58% deployment at 12 months, 65% deployment at 18 months, 70% deployment at 24 months, 78% deployment at 30 months, 82% deployment at 36 months, 88% deployment at 42 months, 93% deployment at 48 months, 98% 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.

**PEEKSKILL, NY FRANCHISE AGREEMENT**

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 9/6/07**



**EXHIBIT C**

**PEG CHANNELS**

One Public Access Channel, one Educational Access Channel, and one Government Access Channel.

**EXHIBIT D**

**PEG ACCESS INTERCONNECTION SITES**

Subject to the requirements set forth in Subsections 5.2.1 and 5.2.2 of the Agreement, the following Government Access Channel PEG Access Interconnection Site ("PEG Access Interconnection Site No. 1") shall be operable within one hundred twenty (120) days of the Effective Date:

City Hall, 840 Main St., Peekskill, NY 10566

Subject to the requirements set forth in Subsections 5.2.1 and 5.2.2 of the Agreement, the following Educational Access Channel PEG Access Interconnection Site ("PEG Access Interconnection Site No. 2") shall be operable within one hundred twenty (120) days of the Effective Date:

Peekskill High School, 1072 Elm Street, Peekskill, NY 10566

12693427.3



**Cable Franchise Agreement**

**by and between**

**the City of Peekskill**

**and**

**Verizon New York Inc.**

**PEEKSKILL, NY FRANCHISE AGREEMENT**  
**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**  
**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**  
**MCGUIREWOODS LLP DRAFT 89/316/07**

**TABLE OF CONTENTS**

<b><u>ARTICLE</u></b>	<b><u>PAGE</u></b>
1. DEFINITIONS.....	2
2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS .....	6
3. PROVISION OF CABLE SERVICE .....	8
4. SYSTEM FACILITIES .....	10
5. PEG SERVICES .....	11
6. FRANCHISE FEES .....	13
7. REPORTS AND RECORDS.....	15
8. INSURANCE AND INDEMNIFICATION .....	16
9. TRANSFER OF FRANCHISE.....	17
10. RENEWAL OF FRANCHISE.....	17
11. ENFORCEMENT AND TERMINATION OF FRANCHISE .....	18
12. MISCELLANEOUS PROVISIONS.....	20

**EXHIBITS**

EXHIBIT A: MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE  
EXHIBIT B: SERVICE AREA  
EXHIBIT C: PEG CHANNELS  
EXHIBIT D: PEG ACCESS INTERCONNECTION

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

**MCGUIREWOODS LLP DRAFT 89/316/07**

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the City of Peekskill, 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.

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 89/346/07

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 as specified by the LFA in Exhibit C to this Agreement.

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 incorporated area (entire existing territorial limits) of the LFA, and such additional areas as may be annexed or acquired.

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: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the 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; (iii) video on demand, including pay-per-view; (iv) revenues from the sale or lease of access channel(s) or channel capacity; and (v) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 8/31/07

derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, subject to the exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

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; revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; 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 and remit such franchise fees to the LFA; 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 pursuant to Section 3.3; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; any fees or charges collected from Subscribers or other third parties for any PEG Grant and Franchise Grant payments; and

1.16.2.2. 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 use of the Cable System for two-way communication that is not

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 89/346/07

classified as Cable Service; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders. Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment.

1.17. *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 City of Peekskill, 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. *NY PSC*: 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.



VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION  
EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)  
MCGUIREWOODS LLP DRAFT 8/31/07

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 pre-existing condition.

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

### 3. PROVISION OF CABLE SERVICE

#### 3.1. *Service Area:*

3.1.1. *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

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT ~~89/34~~6/07

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 Sub-Subsection 3.1.1.1. and Section 3.2.

3.1.1.1. *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 twenty-five (25) 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 3.1.1 respectively, 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 aerial 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 twenty-five (25) 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 twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such cost shall be submitted to said Subscriber, in writing, before installation is begun.

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 aerial trunk or feeder lines more than five hundred (500) 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 aerial extension in excess of five hundred (500) 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

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

MCGUIREWOODS LLP DRAFT 89/346/07

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 five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such cost shall be submitted to said recipient, in writing, before installation is begun. 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 the 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 the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with 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 Access Interconnection:* ¶The LFA has designated two (2) sites within the Franchise Area for the interconnection of Education and Governmental Access facilities with the Cable System in Exhibit D attached hereto (each, a "PEG Access Interconnection Site").

5.2.1. Subject to the successful completion of all required 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 upstream Educational and Governmental Access Channel transmission connections between its video channel aggregation point and each of the two (2) PEG Access Interconnection Sites in order to permit the signals to be correctly routed from the PEG Access Interconnection Site for the 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 PEG Access Interconnection Sites.

5.2.2. The LFA shall provide to Franchisee at the PEG Access Interconnection Sites a suitable video signal and a suitable audio signal for each Education and Governmental Access Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the Educational and Governmental Access signals 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.

5.2.3. Such upstream transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of Educational and Governmental Access signals to Subscribers. If Franchisee makes changes to the Cable System that require improvements to Educational and Governmental Access facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.1 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.†

5.3. *PEG Grant and Franchise Grant:*

5.3.1. Franchisee shall provide to the LFA for use in support of the production of local PEG programming a PEG Grant (the "PEG Grant") in the amount of SIXTY SEVEN THOUSAND DOLLARS (\$67,000.00). Franchisee shall pay the PEG Grant in TEN (10) installments, as follows: (1) the first installment, in the amount of FORTY THOUSAND DOLLARS (\$40,000.00) shall be payable within sixty (60) days of the Effective Date; (2) the second installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the SECOND anniversary of the Effective Date; (3) the third installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the THIRD anniversary of the Effective Date; (4) the fourth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the FOURTH anniversary of the Effective Date; (5) the fifth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the FIFTH anniversary of the Effective Date; (6) the sixth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the SIXTH anniversary of the Effective Date; (7) the seventh installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the SEVENTH anniversary of the Effective Date; (8) the eighth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the EIGHTH anniversary of the Effective Date; (9) the ninth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the NINTH anniversary of the Effective Date; and (10) the tenth installment, in the amount of THREE THOUSAND DOLLARS (\$3,000.00), shall be payable on the TENTH anniversary of the Effective Date. Such PEG 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.

5.3.2. The LFA shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 5.3.

5.3.3. In lieu of free internet service for two sites for the term of this Agreement, Franchisee shall pay the LFA a Franchise Grant in the total amount of ~~NINESIX~~ THOUSAND DOLLARS (~~\$9,000~~6,000) payable in installments of SIX HUNDRED DOLLARS (\$600) each within ninety (90) days of the Effective Date and within ninety (90) days of each anniversary of the Effective Date thereafter. ~~In the event that during the term of this Agreement the incumbent cable operator provides additional free internet service to additional sites belonging to the LFA as required by its franchise agreement, the LFA may notify Franchisee in writing of the commencement of such additional free internet service to such sites, and the amount of the Franchise Grant shall be increased as may be mutually agreed to by the LFA and Franchisee, any such increase shall be payable in the manner also mutually agreed to by the LFA and Franchisee.~~ Each such new internet service site is activated by the incumbent cable operator. The amount of the Franchise Grant payable by Franchisee to the LFA for each such new internet service site shall be at the same rate as the existing two sites and shall be prorated and payable over the remainder of the term of this Agreement at the same times as provided above in this Subsection 5.3.3.

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 an Annual PEG Grant and any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection and any franchise-related costs to Subscribers.

## 6. **FRANCHISE FEES**

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of four percent (4%) of annual Gross Revenue (the "Franchise Fee"); provided, however, that at such time as the LFA requires all cable service providers in the Service Area to pay a franchise fee of five percent (5%), the LFA shall be entitled, after notification to Franchisee, to amend this Franchise in the manner prescribed under applicable state law or this Franchise to require Franchisee to pay such higher amount and Franchisee agrees to pay such higher amount on going

forward basis, following the issuance of an order from the NY PSC approving such amendment. In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. Late payments for Franchise Fees shall be subject to interest at the then-current rate set forth in Section 5004 of Article 50 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) from the due date to the date that such payment is made.

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

6.3. *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due, but cannot exceed the date of records retention reflected in Section 7.

6.4. *Bundled Services:* If Cable Services subject to the Franchise Fee required under this Article 6 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise Fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or by regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

6.5. *Section 626 Treatment:* Franchisee agrees that it will not apply the Franchise Fee as an offset against the special franchise tax payable to the LFA pursuant to N.Y. Real Property Tax Law Section 626 beginning in the next full calendar month following the issuance by the NY PSC of an order confirming this Agreement. The LFA agrees that it shall impose the same full and complete waiver of the special franchise tax offset upon all existing and 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 or the renewal of any existing franchise agreement of each respective 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.



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 six (6) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

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

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

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

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

7.3. *System-Wide Statistics:* Any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. **INSURANCE AND INDEMNIFICATION**

8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of five hundred thousand dollars (\$500,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA.

8.1.1.2. Automobile Liability Insurance in the amount of five hundred thousand dollars (\$500,000) combined single limit for bodily injury and property damage coverage.

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

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

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

8.1.2. 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 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 timely written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. 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 1.31 above.

## 10. **RENEWAL OF FRANCHISE**

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

10.2. *Needs Assessment:* In addition to the procedures set forth in Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Such assessments shall be provided to Franchisee by the LFA promptly so that Franchisee will have adequate time to submit a proposal under 47 U.S.C. § 546 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 47 U.S.C. § 546 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



VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

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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, New Jersey 07920-1097

12.5.2. Notices to the LFA shall be mailed to:

City Manager  
Peekskill City Hall  
840 Main Street  
Peekskill, New York 10566

with a copy to:

Corporation Counsel  
Peekskill City Hall  
840 Main Street  
Peekskill, NY 10566

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. *Performance Review:* The LFA may, at its discretion but not more than once per twelve (12) month period, hold an informal performance evaluation session (the “Performance Review”) that is not open to the public to review Franchisee’s compliance with the terms and conditions of this Franchise. The information disclosed to the LFA by the Franchisee at the Performance Review shall be treated by the LFA as confidential. The LFA shall provide Franchisee with at least thirty (30) days prior written notice of the Performance Review to be held at a mutually agreeable time. Franchisee shall have the opportunity to participate in and be heard at the Performance Review. Within thirty (30) days after the conclusion of the Performance Review, the LFA shall provide Franchisee written documentation (the “Performance Review Report”) setting forth its determinations regarding Franchisee’s compliance with the terms and conditions of this Franchise. The Performance Review Report shall not contain any confidential information disclosed by the Franchisee during the Performance Review.

12.18. *No Third Party Beneficiaries:* Except as expressly provided in this Agreement, this Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

12.19. *LFA Official:* The City Manager of the LFA is the LFA official that is responsible for the continuing administration of this Agreement.

*[balance of page intentionally left blank]*

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

AGREED TO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

LFA:

CITY OF PEEKSKILL

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

Title:

FRANCHISEE:

VERIZON NEW YORK INC.

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

Title:

**PEEKSKILL, NY FRANCHISE AGREEMENT**

**VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION**

**EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)**

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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 Access Interconnection

Exhibit List

Peekskill/Verizon New York Inc.  
Franchise Agreement/\_\_\_\_\_ 2007

**EXHIBIT A**

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

City Hall, 840 Main Street, Peekskill, New York  
Police Station, 2 Nelson Avenue, Peekskill, New York  
Peekskill Library, 4 Nelson Avenue, Peekskill, New York  
Fire House, 748 Washington Street, Peekskill, New York  
Fire House, 425 Highland Avenue, Peekskill, New York  
Fire Houses (Note: 2 buildings), 1850 Crompound Road, Peekskill, New York  
Fire House, Academy Street, Peekskill, New York  
Fire House, Main Street, Peekskill, New York  
Recreation Office, Depew Park, Peekskill, New York  
Pool, Depew Park, Peekskill, New York  
Water Filtration Office, Limburg Place, Peekskill, New York  
Mechanic Garage, 1003 Lower South Street, Peekskill, New York  
Kiley Youth Center, 709 Main Street, Peekskill, New York  
Department of Public Works Garage, 100 South Street, Peekskill, New York  
Peekskill City School District Administration, 1031 Elm Street, Peekskill, New York  
Peekskill City School District Maintenance Building, 1020 Elm Street, Peekskill, New York  
ECC- Uriah Hill, Jr. School, 980 Pemart Avenue, Peekskill, New York  
Hillcrest Elementary School, 4 Horton Drive, Peekskill, New York  
Oakside Elementary School, 200 Decatur Avenue, Peekskill, New York  
Woodside Elementary School, Depew Street, Peekskill, New York  
Peekskill Middle School, 212 Ringgold Street, Peekskill, New York  
Peekskill High School, 1072 Elm Street, Peekskill, New York  
EOC Office, 4 Nelson Avenue, Peekskill, NY  
Senior Center, 4 Nelson Avenue, Peekskill, NY

**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 50% 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 52% deployment at 6 months, 58% deployment at 12 months, 65% deployment at 18 months, 70% deployment at 24 months, 78% deployment at 30 months, 82% deployment at 36 months, 88% deployment at 42 months, 93% deployment at 48 months, 98% 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.

PEEKSKILL, NY FRANCHISE AGREEMENT

VERIZON PROPRIETARY AND CONFIDENTIAL INFORMATION

EXEMPT FROM DISCLOSURE PURSUANT TO N.Y. PUB. OFF. LAW §§87(2)(c) & (d)

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**EXHIBIT C**

**PEG CHANNELS**

One Public Access Channel, one Educational Access Channel, and one Government Access Channel.

**EXHIBIT D**

**PEG ACCESS INTERCONNECTION SITES**

Subject to the requirements set forth in Subsections 5.2.1 and 5.2.2 of the Agreement, the following Government Access Channel PEG Access Interconnection Site ("PEG Access Interconnection Site No. 1") shall be operable within one hundred twenty (120) days of the Effective Date:

City Hall, 840 Main ~~Street, and~~ St., Peekskill, NY 10566

Subject to the requirements set forth in Subsections 5.2.1 and 5.2.2 of the Agreement, the following Educational Access Channel PEG Access Interconnection Site ("PEG Access Interconnection Site No. 2") shall be operable within one hundred twenty (120) days of the Effective Date:

Peekskill High School, 1072 Elm Street, ~~both~~ Peekskill, NY: 10566

~~12693427.2-~~  
12693427.3



# Tab 8

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**From:** Johnson, Brian [mailto:BJohnson@wileyrein.com]

**Sent:** Thursday, September 06, 2007 5:26 PM

**To:** pbeach@cityofpeekskill.com

**Cc:** mserrano@cityofpeekskill.com; Joe Stargiotti; jstargiotti@cityofpeekskill.com; John Harrington; Butler, John F.

**Subject:** Verizon Advocacy Letter in Support of Its Application for a Peekskill Cable Franchise and Approval of the Proposed Cable Franchise Agreement

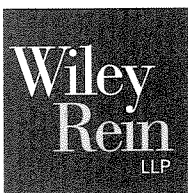
Dear Clerk Beach:

Attached for delivery to the Mayor and members of the Common Council is a letter submitted on behalf of Verizon in support of its application for a Peekskill cable franchise and of its request for approval of the proposed Cable Franchise Agreement with the City. Originals of the letter are being sent in care of you by overnight courier as well. If you should have any questions, please let us know.

Brian A. Johnson  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
Voice: 202.719.3480  
Fax: 202.719.7049  
Cell: 240.475.2087  
Email: [bjohnson@wileyrein.com](mailto:bjohnson@wileyrein.com)

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September 6, 2007

**BY HAND**

The Honorable John G. Testa, Mayor  
The Honorable Donald Bennett, Councilperson  
The Honorable Melvin Bolden, Councilperson  
The Honorable Drew Claxton, Councilperson  
The Honorable Milagros Martinez, Councilperson  
The Honorable Catherine Pisani, Councilperson  
The Honorable Mary Foster, Councilperson  
c/o Pamela Beach, City Clerk  
City of Peekskill  
City Hall  
840 Main Street  
Peekskill, New York 10566

Re: Cable Franchise Agreement by and between the City of Peekskill  
("Peekskill" or the "City") and Verizon New York Inc. (the "Verizon  
Franchise")

Dear Mayor Testa and Members of the Common Council:

On behalf of Verizon New York Inc. ("Verizon"), thank you for affording Verizon the opportunity to appear before you at the upcoming September 10, 2007 public hearing (the "Public Hearing") regarding the Verizon Franchise.

**EXECUTIVE SUMMARY**

- The City and Verizon have worked diligently to introduce to Peekskill residents the benefits of cable competition through an all fiber network that will result in more choice, competition, greater reliability and technical superiority. The incumbent cable service provider has lobbied and will continue to lobby to protect its pecuniary interest by asking the City to delay Peekskill residents' ability to choose an alternate cable provider.*
- Cablevision's latest diversionary tactic has been to make last minute inappropriate and often irrelevant comparisons with agreements for different municipalities whose needs, interests, desires and existing*

September 6, 2007

Page 2

*Cablevision agreements are typically different from one another as well as the City's in an attempt to delay the approval process.*

- *Verizon's service commitment to the City is essentially ubiquitous and is rapid and non-discriminatory.*
- *Other issues often raised by Cablevision include:*
  - *A level playing field analysis requires a review of competitive franchises "taken as a whole." Cablevision continues to raise level playing field objections despite the NY PSC's consistent repudiation of Cablevision's level playing field objections.*
  - *Verizon has decades of independent authority to conduct activities in the public rights-of-way. Cablevision's sole authority to conduct activities in the public rights-of-way derives exclusively through its cable franchise.*
  - *Verizon's "Force Majeure" definition is substantially narrower than Cablevision's description of "force majeure" events.*
  - *Verizon's "Gross Revenue" definition is comprehensive, unambiguous and significantly broader than Cablevision's "Gross Receipts" definition.*
  - *Verizon is required to comply with the stringent customer service regulations that the NY PSC imposes on cable service providers just like Cablevision. Further, as a competitive provider, Verizon will be held to a higher standard by consumers seeking improved customer service.*

### **INTRODUCTION AND BACKGROUND**

*The City and Verizon have worked diligently to introduce to Peekskill residents the benefits of cable competition through an all fiber network that will result in more choice, competition, greater reliability and technical superiority. The incumbent cable service provider has lobbied and will continue to lobby to protect its pecuniary interest by asking the City to delay Peekskill residents' ability to choose an alternate cable provider.*

September 6, 2007

Page 3

The Public Hearing represents the culmination of a substantial effort on the part of the City and Verizon to introduce cable competition and its attendant benefits to City. Verizon has made the significant capital investments necessary to upgrade its telecommunications network to enable it to deliver a new generation of ultra-high-speed broadband services, including video service, to City residents over a "fiber to the premises" network (the "FTTP Network"). The FTTP Network is an innovative new technology that uses fiber-optic cable and optical electronics to link homes and businesses *directly* to Verizon's network. The FTTP Network enables Verizon to provide City residents with lightning-fast internet access and superior telephone service. Additionally, the FTTP Network provides next-generation technology that has virtually limitless capacity to deliver *state-of-the art* cable television service to City residents, which will open the market to unprecedented competition.

The City has demonstrated a strong commitment to benefit its residents through the introduction of cable competition. The City's negotiators have labored industriously with Verizon to reach an agreement that is legally sound, fulfills the City's cable-related needs and interests, and will enable Verizon to compete with the incumbent on a competitively-neutral basis.

While the City and Verizon have worked closely to advance the public interest by introducing the benefits of cable competition, the incumbent cable service provider Cablevision has unfortunately engaged in a vigorous campaign designed to thwart the creation of a competitive market throughout Suffolk, Nassau, Westchester and Rockland counties. This campaign will be designed to intimidate the City in order to prevent, or at least delay, the introduction of cable competition and to deprive your constituents of the opportunity to choose a real alternative video service provider. This is a self-serving effort *designed solely* to protect Cablevision's pecuniary interest and market dominance. Cablevision's objections are not offered in the spirit of championing the City's interests but rather to preclude Peekskill residents from having the opportunity to switch providers. It is essential that the City evaluate the merits of any complaints and objections that Cablevision may raise against this backdrop.

### **DISCUSSION**

Cablevision has and Verizon anticipates that it will continue to propound the same arguments to the City that it has repeatedly propounded throughout the process in each New York municipality where Verizon jeopardizes Cablevision's monopoly position. Cablevision insinuates, notwithstanding fifty-two NY PSC

September 6, 2007

Page 4

confirmation orders to the contrary, that the Verizon Franchise violates the level playing field requirement due to perceived deficiencies in the following primary areas – rights of way management and local authority, build out, force majeure, indemnification, enforceability, and customer service. A total of fifty-nine New York municipalities have shown they are in accord with the NY PSC by granting Verizon comparable cable franchises. Cablevision further intimates that the definition of “gross revenue” contained in the Verizon Franchise is deficient. Although Verizon maintains the position that Cablevision’s arguments are wholly without merit, to assist in your analysis, Verizon respectfully provides the following information in support of the City’s commitment to deliver competition to its residents. This information also includes discussion to address any level playing field concerns that the City may have.

### **COMPARING FRANCHISES**

*Cablevision’s latest diversionary tactic has been to make last minute inappropriate and often irrelevant comparisons with agreements for different municipalities whose needs, interests, desires and existing Cablevision agreements are frequently different from one another as well as the City’s in an attempt to delay, the approval process.*

Having failed at creating meaningful delays before local franchising authorities with the meritless and now tired and worn out objections discussed below, and having had those objections repeatedly rejected by the NY PSC, Cablevision has embarked upon a new delaying campaign by advocating the comparison of perhaps numerous other existing Verizon New York (and other) cable franchises while a given municipality’s franchise is in the process of being negotiated. This is typically done at the last minute just prior to or at the public hearing, *solely* for the purpose of delaying the process and eventual cable service competition in the City.

Moreover, it is highly inappropriate for several reasons. First, it can likely be said that all of Verizon’s cable franchises in New York vary from one another and properly so. One of Verizon’s primary goals in structuring an agreement for a given community is to “match up” to that community’s agreement with Cablevision in relevant respects in order that Verizon’s agreement will be competitively neutral and satisfy the NY PSC’s level playing field rule. Thus, in order to compare Verizon agreements, one would have to also compare the relevant Cablevision agreements for the same communities, and, in fact, Cablevision’s agreements

September 6, 2007

Page 5

throughout the New York metropolitan area often vary significantly from one another. Thus, quite often Verizon's agreements will vary as do the incumbents' agreements.

This is entirely appropriate. Different communities have different needs, interests and desires. What is of importance or concern to one municipality may be irrelevant or of no concern to another municipality, whether this relates to a PEG grant, municipal building free service or simply legal language.

Just as important is the concept of improper "cherry picking," i.e., trying to take only the good without the less desirable. All of Verizon's (and for that matter, Cablevision's) agreements are a product of negotiation. These negotiations are frequently quite lengthy and very intense with a lot of "give and take." It simply is not appropriate for Cablevision to engage in a process of trying to take a seat at the negotiating table and promoting cherry picking in order to slow down or delay the process. It is unscrupulous and should not be countenanced. Verizon has negotiated the Verizon Franchise with the City, and it will not engage in any process that permits Cablevision to, in effect, become a negotiating party. Verizon has not interfered with Cablevision's franchise renewal negotiation process. The important thing is for the City to stay focused on its needs, interests and concerns.

### **DEPLOYMENT**

*Verizon's service commitment to the City is essentially ubiquitous and is rapid and non-discriminatory.*

Consistent with its practice in other municipalities, Cablevision has frequently challenged Verizon's commitment to serve every City resident in the Service Area in a non-discriminatory manner with false allegations that the Verizon Franchise does not require Verizon to provide ubiquitous service in the Service Area in a fair and timely manner. This argument has no basis in fact. Section 3.1.1 of the Verizon Franchise requires the deployment of cable service throughout the Service Area, and a complete Service Deployment schedule is included in Exhibit B of the Verizon Franchise providing detailed deployment percentages in six month intervals. This is consistent with the NYPSC's deployment rules which mandate that service be deployed within specified time frames. Once the franchise is approved by the City and confirmed by the NY PSC, Verizon will offer cable television service to each City resident within the built out areas. Any additional construction in those areas consists of feeder lines to individual properties that may

September 6, 2007

Page 6

require permits or are the ongoing subject of property access negotiations with third parties (such as multiple dwelling unit owners).

Verizon complies with the law and does not engage in redlining or other illegal discriminatory practices. Verizon makes this unequivocal commitment to the City in Section 3.2 of the Verizon Franchise. Discriminatory conduct violates Verizon's practices. Moreover, it, makes financial sense for Verizon to serve every City resident as soon as possible. Once property access negotiations are successfully concluded and all required permits and easements have been granted, subject to the conditions set forth in the Verizon Franchise, Verizon will be able to offer service to each City resident in the Service Area. Verizon is committed to ensuring that the benefits of cable competition will be made available to City residents as fast as reasonably possible.

#### **PERFORMANCE OBLIGATION**

It has come to our attention that Cablevision has been making nonsensical allegations that based upon the size of the current percentage of households covered by Verizon's FTTP Network upgrade in the City to date, the City is somehow at risk of Verizon not meeting its performance obligations. We are not sure just what risk Cablevision thinks is relevant to a situation where a new cable service provider begins providing cable service in the City. But, we point out that when incumbent cable providers first sought franchises from municipalities they had not constructed *anything*. Nor could they have since to do so without a cable franchise would have been unlawful under Title VI of the Federal Communications Act.

As a telecommunications common carrier granted authority pursuant to Section 27 of the New York Transportation Corporations Law and Title II of the Federal Communications Act, Verizon does not need a cable franchise to construct its FTTP Network upgrade, and construction has been underway in the City for some time, as was the case in many New York municipalities that have granted Verizon cable franchises, and in which applications for franchises are pending. As a result, the size of the initial percentage of the FTTP Network build completed at the time a cable franchise is granted is a favorable and advantageous situation for City residents since a traditional cable service provider would have zero percent of the City built at the beginning of an initial franchise term. Verizon chose to invest in the City and undertake its network upgrade in advance of completing the cable franchising process in order to deliver even better broadband services to its customers. This network upgrade gives Verizon a fortuitous benefit with regard to the provision of cable service that aligns perfectly with an advantageous outcome



September 6, 2007

Page 7

for the City's residents.-i.e., an accelerated introduction of cable competition into the market. It is a win-win situation for Verizon and Peekskill residents.

Verizon has every economic incentive to construct the FTTP Network upgrade as quickly as possible, and once a cable franchise is granted, Verizon has an even stronger incentive to do so. Thus, the only "risk" is for Cablevision, namely that it will be subject to competition sooner than the minimum time frames set out in the Verizon Franchise. And that is why it is pulling out all stops to delay this process. There is absolutely no rational reason to delay the availability of true, robust cable competition for those residents of the City who are currently in a position to be able to receive FiOS TV Cable Service upon the grant and confirmation of the Verizon Franchise.

## **OTHER OBJECTIONS OFTEN ADVANCED BY CABLEVISION**

### **LEVEL PLAYING FIELD**

*A level playing field analysis requires a review of competitive franchises "taken as a whole." Cablevision continues to raise level playing field objections despite the NY PSC's consistent repudiation of Cablevision's level playing field objections.*

The NY PSC renumbered and amended its cable television rules two years ago, intending to "reflect a more competitive environment and changes in federal law that occurred in 1984 and 1996."<sup>1</sup> The amended rules include a "level playing field" provision codified in 16 NYCRR § 895.3. This provision provides that "[n]o municipality may award or renew a franchise for cable television service which contains economic or regulatory burdens, which *when taken as a whole*, are greater or lesser than those burdens placed on another cable franchise operating in the same area." 16 NYCRR § 895.3 (emphasis added). The central question in a level playing field analysis is not whether there is a perceived disparity between the burdens imposed by specific franchise provisions considered in isolation, but whether the burdens on the two franchises, *when taken as a whole*, are so materially disproportionate as to preclude fair competition between providers. The regulation does not propose a side-by-side comparison of discrete provisions that are immaterial and/or inconsequential to the day-to-day operations of a business that

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<sup>1</sup> Case 01-V-0381, "Memorandum and Resolution Adopting 16 NYCRR Parts 890 Through 899" (Issued and Effective April 4, 2005) at 1.

September 6, 2007

Page 8

delivers video and other services to subscribers. As the NY PSC observed in adopting the regulation:

[t]he level playing field provision does not preclude different franchise terms for different companies. Rather, it requires that economic and regulatory burdens *taken as a whole*, shall not be greater for one company than another. The language is intended to maintain flexibility for municipalities in attracting competitive companies while ensuring fairness to all companies competing in an area.<sup>2</sup>

Cablevision will likely assert that NY PSC regulations contemplate a role for the incumbent cable operator because it is entitled to a level playing field and that the Verizon Franchise violates the level playing field requirement. Most significantly, however, the NY PSC has overruled Cablevision's identical claim by holding consistently that Verizon's proposed franchise agreement for various municipalities "does not violate the Commission's level playing field rule."<sup>3</sup> The NY PSC stated further that a level playing field analysis:

does not compel us to undertake a term for term comparison of the respective franchise agreements. Nor will we review the franchise agreements in isolation. Our rule does not preclude the existence of different franchise terms for different companies as they roll out their cable service in various municipalities, should events and circumstances so warrant.<sup>4</sup>

In each case in which the NY PSC addressed Cablevision's level playing field claim, the NY PSC modified the Verizon franchises by imposing certain conditions

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<sup>2</sup> *Id.* at 4 (emphasis added).

<sup>3</sup> Case 05-V-1263, "Order and Certificate of Confirmation" (Issued and Effective December 15, 2005) (the "*Massapequa Park Order*") at 23, Case 05-V-1570, "Order and Certificate of Confirmation" (Issued and Effective February 8, 2006) (the "*Nyack Order*") at 13, Case 05-V-1571, "Order and Certificate of Confirmation" (Issued and Effective February 8, 2006) (the "*South Nyack Order*") at 13, and Case No. 06-V-0875, "Order and Certificate of Confirmation" (Issued and Effective September 21, 2006) (the "*Lynbrook Order*") at 7.

<sup>4</sup> *Id.*

September 6, 2007

Page 9

and found that, with respect to a comparison between the Cablevision and Verizon franchises:

the remaining discrepancies do not, when taken as a whole, substantiate a level-playing field violation. The differences are immaterial, speculative, ill-defined in terms of economic impact and counterbalanced by other obligations (e.g., other telephone related oversight obligations) and the fact that Verizon is a new entrant in the cable market.<sup>5</sup>

Notwithstanding the foregoing, Cablevision attempts to muddy the waters by conveniently ignoring the NY PSC's level playing field analyses and conclusions. Cablevision merely tries to couch its objections in a different light so as not to implicate the NY PSC's dispositive determinations on this issue.

Finally, Cablevision will claim that its contractual "most favored nation" or "MFN" provision grants it unilateral authority to remove provisions from its existing franchise with the City or opt for comparable Verizon Franchise provisions. First, Cablevision does not have unilateral authority to make any changes to its agreement with the City. The MFN provision itself requires Cablevision to petition the City for any desired MFN changes. Second, Section 222 of the New York Public Service Law and 16 NYCRR 892.1 require the NY PSC's approval of any amendments to Cablevision's franchise. Third, the NY PSC has repeatedly ordered that Cablevision's contractual attempts to mirror the NY PSC's level playing field requirement must be construed in a manner consistent with the 16 NYCRR 895.<sup>6</sup>

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<sup>5</sup> *Nyack Order* at 13 and *South Nyack Order* at 13. See also *Massapequa Park Order* at 23 and *Lynbrook Order* at 7-8.

<sup>6</sup> See, e.g., Case 05-V-0171 – Application of Cablevision of Southern Westchester, Inc. d/b/a Cablevision for Approval of the Renewal of its Cable Television Franchise for the Town of Eastchester (Westchester County) (Issued and Effective October 30, 2006), Case No. 05-V-0413 – Application of Cablevision Systems Long Island Corporation d/b/a Cablevision for Approval of the Renewal of its Cable Television Franchise in the Village of Floral Park (Nassau County) (Issued and Effective June 1, 2006), Case 06-V-0028 – Application of Cablevision of Wappingers Falls, Inc. d/b/a Cablevision for Approval of the Renewal of its Cable Television Franchise in the Village of Fishkill (Dutchess County) (Issued and Effective June 1, 2006), Case 05-V-1144 – Application of Cablevision of Rockland/Ramapo, LLC d/b/a Cablevision for Approval of the Renewal of its Cable Television Franchise for the Village of Airmont (Rockland County) (Issued and Effective January 17, 2006), Case 04-V-1583 – Application of Cablevision of Rockland/Ramapo, Inc. d/b/a

and be looked at on an overall basis taken as a whole and *not* on a provision by provision basis. Thus, Cablevision's MFN provision has been superseded by the NY PSC's level playing field rule, and there are no longer any Cablevision MFN requirements. Fourth, since the Verizon Franchise is competitively neutral under the NY PSC's level playing field rule, Cablevision is not entitled to any LPF revisions to its existing franchise agreement whatsoever.

### **LOCAL RIGHT OF WAY AUTHORITY; INDEMNIFICATION**

*Verizon has decades of independent authority to conduct activities in the public rights-of-way. Cablevision's sole authority to conduct activities in the public rights-of-way derives exclusively through its "communications system" franchise.*

In an attempt to create an appearance of inequality between the Verizon Franchise and its current franchise<sup>7</sup>, Cablevision will likely insinuate that the Verizon Franchise somehow shields Verizon's facilities from the type of local oversight and control that is required by law and in the Cablevision franchise. This argument is plainly wrong and ignores the numerous telecommunications regulations applicable to Verizon's facilities. Verizon's activities are governed by a substantial body of federal, state and local law. For more than 100 years, Verizon has been constructing, accessing and maintaining facilities in the public rights of way throughout New York State pursuant to a comprehensive regulatory regime.

Unlike Cablevision, which has authority to utilize the public rights of way *exclusively through its cable franchise*, Verizon's construction and maintenance of the FTTP Network is undertaken pursuant to its decades of independent authority as a common carrier under Title II of the Communications Act of 1934, as amended, and pursuant to Section 27 of the New York State Transportation Corporations Law. The NY PSC explicitly acknowledged this fact in its February 8, 2006 orders conditionally confirming the Nyack and South Nyack franchises:

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Cablevision for Approval of the Renewal of its Cable Television Franchise for the Village of Piermont (Rockland County) (Issued and Effective February 22, 2007).

<sup>7</sup> A Franchise Renewal Agreement between the [Village] of Airmont, Rockland County, State of New York and Cablevision of Rockland/Ramapo, LLC.

September 6, 2007

Page 11

Local governments have presumably been able to manage the telephone facilities that have utilized the public rights-of-way and need not attempt to exercise additional authority in the cable franchise to govern the construction, placement, and operation of mixed-use facilities that will be used to provide video services.<sup>8</sup>

In these confirmation orders, the Commission cited its Declaratory Ruling<sup>9</sup> in which it recognized that local governments have oversight authority for facilities in the public rights-of-way, even if they are used exclusively for telephone services. Therefore, the NY PSC concluded, “[b]y subjecting Verizon’s mixed-use facilities to the Commission’s minimum franchise standards and local government’s police power, we do not believe that local governments have been granted broad new authority over the construction, placement and operation of Verizon’s mixed-use facilities.”<sup>10</sup> Consistent with this regulatory guidance, Section 2.2 of the Verizon Franchise provides:

*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.

Cablevision will doubtlessly object to this language, as it has objected to nearly identical language in other municipalities (without success).<sup>11</sup> For example,

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<sup>8</sup> *Nyack Order* at 8 and *South Nyack Order* at 8.

<sup>9</sup> Cases 05-M-0250 and 05-M-0247, “Declaratory Ruling on Verizon Communications, Inc.’s Build-Out of its Fiber to the Premises Network, NY Public Service Commission” (issued and effective June 15, 2005) (“*Declaratory Ruling*”).

<sup>10</sup> *Nyack Order* at 7-8, *South Nyack Order* at 7-8.

<sup>11</sup> See, e.g., Section 2.2 of Verizon’s franchise with the Town of Hempstead, which provides: “2.2 *The FTTP Network:* Upon delivery of Cable Service, by subjecting the Franchisee’s mixed-use facilities to the NY PSC’s minimum franchise standards and the LFA’s police power local governments have not been granted broad new authority over the construction, placement and operation of the Franchisee’s mixed-use facilities.”

September 6, 2007

Page 12

in the case of the Town of Hempstead, the NY PSC emphatically rejected Cablevision's position with respect to Section 2.2 as a non-issue:

as it relates to the right-of-way management provision in 2.2 of the proposed agreement, we *do not agree* with Cablevision that the language limits local police powers and violates our prior orders. *Provision 2.2 is merely the parties' effort to incorporate our prior rulings in the Nyack and South Nyack confirmations. The language does not create a significant limitation and will be construed consistent with our prior rulings.*<sup>12</sup>

Therefore, Cablevision's suggestions that the Verizon Franchise imposes significant limitations on a municipality's management of right-of-way authority are improper and misleading.

In a similar vein, Cablevision may recommend to the City that it should demand that Verizon add to the indemnification provisions of the Verizon Franchise an acknowledgement that "construction and maintenance of its FTTP Network is conduct undertaken pursuant to this Franchise." This recommendation flies in the face of the Commission's *Declaratory Ruling* and its subsequent orders confirming Verizon's franchises:

Verizon has already obtained the legal right to use the rights-of-way to upgrade and maintain its existing telephone system. Verizon has maintained its telecommunications network for years under its existing authorizations and consents. The record here suggests that Verizon has the requisite authority from local governments to use the public rights-of-way and that municipalities have sufficient legal authority over Verizon's upgrade activities as a telephone company to properly manage their rights-of-way. Verizon has represented in its pleadings that it is subject to municipal oversight. Municipal governance over

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<sup>12</sup> Case 06-V-0427, "Order and Certificate of Confirmation" (Issued and Effective May 18, 2006) (the "*Hempstead Order*") at 6-7 (emphasis added).

September 6, 2007

Page 13

rights-of-way is still in effect and Verizon must adhere to those requirements.<sup>13</sup>

Further, the NY PSC established in the *Nyack* and *South Nyack Orders* that “[a]ttempts by municipal governments to impose construction or operating requirements in cable franchises that would apply to mixed-use facilities that go beyond its traditional police powers or minimum cable requirements could unduly inhibit competition and may well be deemed unreasonable under the Public Service Law and federal law.”<sup>14</sup>

The NY PSC affirmed Verizon’s independent authority to upgrade and maintain its existing telecommunications network in the *Declaratory Ruling*. As indicated in the Verizon Franchise, construction of the FTTP Network in the City is substantial. Verizon maintains the network routinely. Cablevision’s anticipated proposal represents an unseemly and deceitful attempt to ensnare the full range of activities related to the FTTP Network in the Verizon Franchise. Cablevision’s suggestion will likely be artfully designed to imply that Verizon’s indemnification obligation is deficient by failing to adequately protect the City; a transparent objective to create a level playing field violation where none exists.<sup>15</sup> Verizon’s indemnification obligations exceed the NY PSC’s minimum indemnification requirements and fully protect the City. Any argument by Cablevision to the contrary is disingenuous.

### **FORCE MAJEURE**

*Verizon’s “force majeure” definition is substantially narrower than Cablevision’s description of “force majeure” events.*

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<sup>13</sup> *Declaratory Ruling* at 20-21.

<sup>14</sup> *Nyack Order* at 8, *South Nyack Order* at 8.

<sup>15</sup> We note further that, unlike the Verizon Franchise, which defines the Cable System using the federal definition, the Cablevision franchise does not contain a “cable system” definition. Instead, the Cablevision franchise defines a “communications system” or “system” as “a facility, consisting of antennae, wire, coaxial cable, amplifiers, towers, microwave links, wave guide, optical fibers, optical transmitters and receivers, satellite receive/transmit antennae, and/or other equipment designed and constructed for the purpose of producing, receiving, amplifying, storing, processing, or distributing analog and/or digital audio, video, or other forms of electronic, electromechanical optical, or electrical signals.” *Cablevision franchise* § 1.2.

Verizon's "Force Majeure" definition is narrower than Cablevision's description of "force majeure" events in its franchise. Section 8.4 of the Cablevision franchise provides:

In no event, and notwithstanding any contrary provision in this section or elsewhere in this Agreement, shall this Agreement be subject to revocation or termination, or Franchisee be liable for non-compliance with or delay in the performance of any obligation hereunder, where its failure to cure or to take reasonable steps to cure is directly attributable to formal U.S. declaration of war, government ban on the affected obligation, U.S. government sponsored or supported embargo, civil commotion, strikes or work stoppages (except those against Franchisee and its affiliates), fires, any acts of God or of nature or *other events beyond the immediate control of Franchisee*. (emphasis added)

By contrast, Section 1.12 of the Verizon Franchise narrowly defines "Force Majeure" as:

*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. (emphasis added)



September 6, 2007

Page 15

As noted above, Verizon's definition is narrower because it contemplates Verizon's ability to "*anticipate and control*" a situation, while Cablevision's description contains the broader catch all "*or other events beyond the immediate control of Franchisee.*"

Cablevision may urge the City to revise the "Force Majeure" definition by deleting the phrase "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." Nevertheless, such descriptive circumstances are highly appropriate.

First, utility poles in Westchester County are shared by Verizon and the power company Con Edison, with maintenance responsibilities allocated among the parties. If Con Edison fails to service, monitor or maintain one or more poles for which it bears responsibility, there is a possibility that Verizon may face work delays as a result.

Second, Verizon is a telecommunications company, not an equipment manufacturer. Second, as last year's merger announcement regarding Nokia Corp. and Siemens AG suggests, there is a wave of consolidation in the electronics equipment manufacturing industry. As a result of changes in the industry, it may be possible that materials become unavailable from time to time. Additionally, the FTTP Network is cutting-edge technology, so there is likelihood that, as the technology evolves, the industry may experience temporary shortages of materials.

Moreover, unlike Cablevision's employees, Verizon's employees are represented by organized labor unions, and work is allocated pursuant to Verizon's obligations under collective bargaining agreements. Therefore, even absent the events of strike, labor disturbance or dispute, there may be situations where Verizon faces an unavailability of qualified labor to perform the work necessary.

### **GROSS REVENUE**

*Verizon's "Gross Revenue" definition is comprehensive, unambiguous and significantly broader than Cablevision's "Gross Receipts" definition.*

September 6, 2007

Page 16

Cablevision will likely try to manufacture an objection by claiming that the definition of “Gross Revenue” in the Verizon Franchise is not as broad as the “Gross Receipts” definition contained in the Cablevision franchise or is otherwise somehow deficient. This argument is incorrect and the reverse is true.

Consistent with federal law, Verizon defines “Gross Revenue” as “[a]ll 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.” *Verizon Franchise* §1.16. Cablevision’s very narrow definition, by way of contrast, is limited to “total annual subscription payments including payments made for pay television, pay-per view services) . . . for video programming services. . .” (emphasis added) *Cablevision franchise* §1.9. Significantly, Cablevision defines “cable service” using the federal definition just as Verizon does. However, Cablevision limits the range of receipts contained in “Gross Receipts” to those obtained for “video programming” service rather than the much broader litany of services described in Verizon’s definition, such as home shopping commissions, advertising revenues and franchise fee pass throughs.

Additionally, unlike the Cablevision franchise, the Verizon Franchise unequivocally provides that:

[s]hould revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee’s provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment. *Verizon Franchise* §1.16.

September 6, 2007

Page 17

This provision provides the City with significant revenue protections in the event of future changes in law. *There are no equivalent protections offered to the City in the Cablevision franchise.*

In other New York municipalities Cablevision has asserted that Verizon's definition of Non-Cable Services is not consistent with federal law and would somehow adversely impact the definition of Gross Revenue. This is also false. The Non-Cable Service definition is predicated on the federal use of the term "video programming" (the very same term Cablevision uses in its Gross Receipts definition as noted above); whereas Verizon's Gross Revenue definition includes Cable Service related revenues that go well beyond those received just for programming. In addition, as cited above, if the definition of Cable Service is changed by law, the Verizon Franchise will be amended accordingly.

Verizon's definition of "Gross Revenue" is comprehensive and unambiguous. Rather, it is Cablevision's "Gross Receipts" definition that is clearly deficient.

### **CUSTOMER SERVICE**

*Verizon is required to comply with the stringent customer service regulations that the NY PSC imposes on cable service providers. Further, as a competitive provider, Verizon will be held to a higher standard by consumers seeking improved customer service.*

Cablevision may well recommend that the City seek to include a provision stating that "[t]he LFA shall have the right to promulgate new, revised or additional consumer protection standards, and penalties for Franchisee's failure to comply therewith, consistent with the authority granted under Section 632 of the Cable Act (47 U.S.C Sec. 552)." This additional provision is entirely unnecessary. First, Section 2.5 of the Verizon Franchise clearly states that the 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." Second, the City already has the rights under 47 U.S.C § 552 to establish and enforce customer service requirements and to enact and enforce consumer protection laws. Third, Section 12.17 of the Verizon Franchise obligates it to comply with the NY PSC's very extensive and comprehensive customer service standards, which are the same standards that Cablevision must abide by as well.

September 6, 2007

Page 18

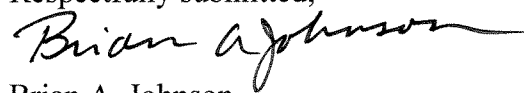
Finally, as a competitive market entrant, Verizon will be held to a higher standard by consumers seeking improved customer service. If Verizon's customer service is not exemplary, subscribers will return to the incumbent. At the present time, City residents are left with no choice. As a result of competition, customer service will improve across the City, and all City consumers will benefit.

### **CONCLUSION**

Verizon is eager to introduce cable competition to the City of Peekskill and to offer Peekskill residents the opportunity to choose among cable providers. To fulfill their commitment to bring choice to City residents, the City and Verizon have worked diligently to negotiate an agreement that is fair and that complies with all applicable laws and level playing field requirements. As explained in greater detail above, Cablevision's anticompetitive tactics are designed solely to protect its market dominance by denying City residents the benefits of a competitive alternative. The incumbent's self-serving assertions relate not to the inherent fairness of permitting Verizon to compete head-to-head for video subscribers in the City of Peekskill, but instead solely to promote Cablevision's pecuniary interest in forestalling Verizon's entry into the market at all costs. It is imperative that the City review Cablevision's delaying tactics in this very narrow context.

Verizon anticipates the City's award of a cable franchise at the public hearing and is excited to benefit Peekskill residents through the introduction of cable competition. In the meantime, we remain available at any time to answer any questions that you may have. John Harrington is available at (617) 628-5068 and I am available at (202) 719-3480

Respectfully submitted,



Brian A. Johnson

cc: Daniel W. Fitzpatrick, City Manager  
Marcus Serrano, Deputy City Manager  
Pamela Beach, City Clerk  
Joseph Stargiotti, City Attorney  
Verizon New York Inc.

## Tab 9

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**From:** Johnson, Brian [mailto:BJohnson@wileyrein.com]  
**Sent:** Thursday, September 13, 2007 5:14 PM  
**To:** williamflorence@mac.com; jstargiotti@cityofpeekskill.com  
**Cc:** Joe Stargiotti; mserrano@cityofpeekskill.com; pbeach@cityofpeekskill.com; gzonghet@cityofpeekskill.com; jharrington@telecominsightgroup.com; pngoldstein@mcguirewoods.com  
**Subject:** Final City of Peekskill Cable Franchise Agreement

Gentlemen:

This is to confirm our discussions with the City just prior to the Common Council meeting this past Monday night, September 10, regarding changes requested by the City to the proposed cable franchise agreement that would be presented to the Council for consideration that evening. The Common Council approved the basic form of the agreement subject to the approval by the Corporation Counsel of the changes requested by the City to be agreed upon after the hearing. As a result of the City's requests, Verizon agreed to increase the PEG Grant in Subsection 5.3.1 by \$9,000 to a total of \$76,000 with the additional \$9,000 being payable at the rate of \$1,000 per year as a part of the annual installments due on the anniversaries of years 2 through 10 of the term of the agreement. Verizon also agreed to add the Peekskill Stadium to Exhibit A. The parties further determined that the legend of the Service Area map in Exhibit B needed to be corrected to eliminate confusing references that were inconsistent with the detailed deployment described in Exhibit B. We also set up the signature page for execution by the City Manager on behalf of the City and added a space for the approval of the Corporation Counsel's office.

Attached are clean and comparison versions of the final agreement for your review and approval. If you find it in order, two original copies should be signed and approved on behalf of the City and transmitted to me by overnight courier for execution on behalf of Verizon. We will return one fully executed and dated original to the City after the agreement is signed by Verizon.

If you should have any questions, please give me a call.

Brian A. Johnson  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
Voice: 202.719.3480  
Fax: 202.719.7049  
Cell: 240.475.2087  
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**Cable Franchise Agreement**

**by and between**

**the City of Peekskill**

**and**

**Verizon New York Inc.**

## TABLE OF CONTENTS

<b><u>ARTICLE</u></b>	<b><u>PAGE</u></b>
1. DEFINITIONS.....	2
2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS .....	6
3. PROVISION OF CABLE SERVICE .....	8
4. SYSTEM FACILITIES .....	9
5. PEG SERVICES .....	10
6. FRANCHISE FEES .....	12
7. REPORTS AND RECORDS.....	14
8. INSURANCE AND INDEMNIFICATION .....	15
9. TRANSFER OF FRANCHISE.....	16
10. RENEWAL OF FRANCHISE.....	17
11. ENFORCEMENT AND TERMINATION OF FRANCHISE .....	17
12. MISCELLANEOUS PROVISIONS.....	19

## **EXHIBITS**

EXHIBIT A: MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE  
EXHIBIT B: SERVICE AREA  
EXHIBIT C: PEG CHANNELS  
EXHIBIT D: PEG ACCESS INTERCONNECTION



THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the City of Peekskill, 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 as specified by the LFA in Exhibit C to this Agreement.

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 incorporated area (entire existing territorial limits) of the LFA, and such additional areas as may be annexed or acquired.

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: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the 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; (iii) video on demand, including pay-per-view; (iv) revenues from the sale or lease of access channel(s) or channel capacity; and (v) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, subject to the exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

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

course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; 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 and remit such franchise fees to the LFA; 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 pursuant to Section 3.3; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; any fees or charges collected from Subscribers or other third parties for any PEG Grant and Franchise Grant payments; and

1.16.2.2. 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 use of the Cable System for two-way communication that is not classified as Cable Service; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders. Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment.

1.17. *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 City of Peekskill, 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. *NY PSC*: 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 ten (10) 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 pre-existing condition.

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

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

#### 3.1. *Service Area:*

3.1.1. *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 Sub-Subsection 3.1.1.1. and Section 3.2.

3.1.1.1. *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 twenty-five (25) 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 3.1.1 respectively, 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 aerial 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 twenty-five (25) 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 twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such cost shall be submitted to said Subscriber, in writing, before installation is begun.

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 aerial trunk or feeder lines more than five hundred (500) 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 aerial extension in excess of five hundred (500) 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 five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such cost shall be submitted to said recipient, in writing, before installation is begun. 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 the 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 the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with 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 Access Interconnection:* The LFA has designated two (2) sites within the Franchise Area for the interconnection of Education and Governmental Access facilities with the Cable System in Exhibit D attached hereto (each, a “PEG Access Interconnection Site”).

5.2.1. Subject to the successful completion of all required 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 upstream Educational and Governmental Access Channel transmission connections between its video channel aggregation point and each of the two (2) PEG Access Interconnection Sites in order to permit the signals to

be correctly routed from the PEG Access Interconnection Site for the 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 PEG Access Interconnection Sites.

5.2.2. The LFA shall provide to Franchisee at the PEG Access Interconnection Sites a suitable video signal and a suitable audio signal for each Education and Governmental Access Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the Educational and Governmental Access signals 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.

5.2.3. Such upstream transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of Educational and Governmental Access signals to Subscribers. If Franchisee makes changes to the Cable System that require improvements to Educational and Governmental Access facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.1 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

### 5.3. *PEG Grant and Franchise Grant:*

5.3.1. Franchisee shall provide to the LFA for use in support of the production of local PEG programming a PEG Grant (the "PEG Grant") in the amount of SEVENTY SIX THOUSAND DOLLARS (\$76,000.00). Franchisee shall pay the PEG Grant in TEN (10) installments, as follows: (1) the first installment, in the amount of FORTY THOUSAND DOLLARS (\$40,000.00) shall be payable within sixty (60) days of the Effective Date; (2) the second installment, in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), shall be payable on the SECOND anniversary of the Effective Date; (3) the third installment, in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), shall be payable on the THIRD anniversary of the Effective Date; (4) the fourth installment, in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), shall be payable on the FOURTH anniversary of the Effective Date; (5) the fifth installment, in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), shall be payable on the FIFTH anniversary of the Effective Date; (6) the sixth installment, in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), shall be payable on the SIXTH anniversary of the Effective Date; (7) the seventh installment, in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), shall be payable on the SEVENTH anniversary of the Effective Date; (8) the eighth installment, in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), shall be payable on the EIGHTH anniversary of the Effective Date; (9) the ninth installment, in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), shall be payable on the NINTH anniversary of the Effective Date; and (10) the tenth installment, in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), shall be payable on the TENTH anniversary of the Effective Date. Such PEG 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.

5.3.2. The LFA shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 5.3.

5.3.3. In lieu of free internet service for two sites for the term of this Agreement, Franchisee shall pay the LFA a Franchise Grant in the total amount of SIX THOUSAND DOLLARS (\$6,000) payable in installments of SIX HUNDRED DOLLARS (\$600) each within ninety (90) days of the Effective Date and within ninety (90) days of each anniversary of the Effective Date thereafter. In the event that during the term of this Agreement the incumbent cable operator provides additional free internet service to additional sites belonging to the LFA as required by its franchise agreement, the LFA may notify Franchisee in writing of the commencement of such additional free internet service to such sites, and the amount of the Franchise Grant shall be increased as each such new internet service site is activated by the incumbent cable operator. The amount of the Franchise Grant payable by Franchisee to the LFA for each such new internet service site shall be at the same rate as the existing two sites and shall be prorated and payable over the remainder of the term of this Agreement at the same times as provided above in this Subsection 5.3.3.

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 an Annual PEG Grant and any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection and any franchise-related costs to Subscribers.

## **6. FRANCHISE FEES**

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of four percent (4%) of annual Gross Revenue (the "Franchise Fee"); provided, however, that at such time as the LFA requires all cable service providers in the Service Area to pay a franchise fee of five percent (5%), the LFA shall be entitled, after notification to Franchisee, to amend this Franchise in the manner prescribed under applicable state law or this Franchise to require

Franchisee to pay such higher amount and Franchisee agrees to pay such higher amount on going forward basis, following the issuance of an order from the NY PSC approving such amendment. In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. Late payments for Franchise Fees shall be subject to interest at the then-current rate set forth in Section 5004 of Article 50 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) from the due date to the date that such payment is made.

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

6.3. *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due, but cannot exceed the date of records retention reflected in Section 7.

6.4. *Bundled Services:* If Cable Services subject to the Franchise Fee required under this Article 6 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise Fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or by regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

6.5. *Section 626 Treatment:* Franchisee agrees that it will not apply the Franchise Fee as an offset against the special franchise tax payable to the LFA pursuant to N.Y. Real Property Tax Law Section 626 beginning in the next full calendar month following the issuance by the NY PSC of an order confirming this Agreement. The LFA agrees that it shall impose the same full and complete waiver of the special franchise tax offset upon all existing and 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 or the renewal of any existing franchise agreement of each respective 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.

## 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 six (6) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

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

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

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

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

7.3. *System-Wide Statistics:* Any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

## 8. **INSURANCE AND INDEMNIFICATION**

### 8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of five hundred thousand dollars (\$500,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA.

8.1.1.2. Automobile Liability Insurance in the amount of five hundred thousand dollars (\$500,000) combined single limit for bodily injury and property damage coverage.

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

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

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

8.1.2. 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 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 timely written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. 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 1.31 above.



## 10. **RENEWAL OF FRANCHISE**

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

10.2. *Needs Assessment:* In addition to the procedures set forth in Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Such assessments shall be provided to Franchisee by the LFA promptly so that Franchisee will have adequate time to submit a proposal under 47 U.S.C. § 546 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 47 U.S.C. § 546 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, New Jersey 07920-1097

12.5.2. Notices to the LFA shall be mailed to:

City Manager  
Peekskill City Hall  
840 Main Street  
Peekskill, New York 10566

with a copy to:

Corporation Counsel  
Peekskill City Hall  
840 Main Street  
Peekskill, NY 10566

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. *Performance Review:* The LFA may, at its discretion but not more than once per twelve (12) month period, hold an informal performance evaluation session (the "Performance Review") that is not open to the public to review Franchisee's compliance with the terms and conditions of this Franchise. The information disclosed to the LFA by the Franchisee at the Performance Review shall be treated by the LFA as confidential. The LFA shall provide Franchisee with at least thirty (30) days prior written notice of the Performance Review to be held at a mutually agreeable time. Franchisee shall have the opportunity to participate in and be heard at the Performance Review. Within thirty (30) days after the conclusion of the Performance Review, the LFA shall provide Franchisee written documentation (the "Performance Review Report") setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise. The Performance Review Report shall not contain any confidential information disclosed by the Franchisee during the Performance Review.

12.18. *No Third Party Beneficiaries:* Except as expressly provided in this Agreement, this Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

12.19. *LFA Official:* The City Manager of the LFA is the LFA official that is responsible for the continuing administration of this Agreement.

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

AGREED TO THIS \_\_\_\_ DAY OF SEPTEMBER 2007.

LFA:  
CITY OF PEEKSKILL

APPROVED:

By: \_\_\_\_\_  
Daniel W. Fitzpatrick  
City Manager

By: \_\_\_\_\_  
Corporation Counsel's Office

FRANCHISEE:  
VERIZON NEW YORK INC.

By: \_\_\_\_\_  
Tracey Edwards  
Vice President

## **EXHIBITS**

EXHIBIT A: Municipal Buildings to be Provided Free Cable Service

EXHIBIT B: Service Area

EXHIBIT C: PEG Channels

EXHIBIT D: PEG Access Interconnection

## **EXHIBIT A**

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

City Hall, 840 Main Street, Peekskill, New York  
Police Station, 2 Nelson Avenue, Peekskill, New York  
Peekskill Library, 4 Nelson Avenue, Peekskill, New York  
Fire House, 748 Washington Street, Peekskill, New York  
Fire House, 425 Highland Avenue, Peekskill, New York  
Fire Houses (Note: 2 buildings), 1850 Crompound Road, Peekskill, New York  
Fire House, Academy Street, Peekskill, New York  
Fire House, Main Street, Peekskill, New York  
Recreation Office, Depew Park, Peekskill, New York  
Pool, Depew Park, Peekskill, New York  
Water Filtration Office, Lindberg Place, Peekskill, New York  
Mechanic Garage, 1003 Lower South Street, Peekskill, New York  
Kiley Youth Center, 709 Main Street, Peekskill, New York  
Department of Public Works Garage, 100 South Street, Peekskill, New York  
Peekskill City School District Administration, 1031 Elm Street, Peekskill, New York  
Peekskill City School District Maintenance Building, 1020 Elm Street, Peekskill, New York  
ECC- Uriah Hill, Jr. School, 980 Pemart Avenue, Peekskill, New York  
Hillcrest Elementary School, 4 Horton Drive, Peekskill, New York  
Oakside Elementary School, 200 Decatur Avenue, Peekskill, New York  
Woodside Elementary School, Depew Street, Peekskill, New York  
Peekskill Middle School, 212 Ringgold Street, Peekskill, New York  
Peekskill High School, 1072 Elm Street, Peekskill, New York  
EOC Office, 4 Nelson Avenue, Peekskill, NY  
Senior Center, 4 Nelson Avenue, Peekskill, NY  
Peekskill Stadium, Louisa Street, Peekskill, NY

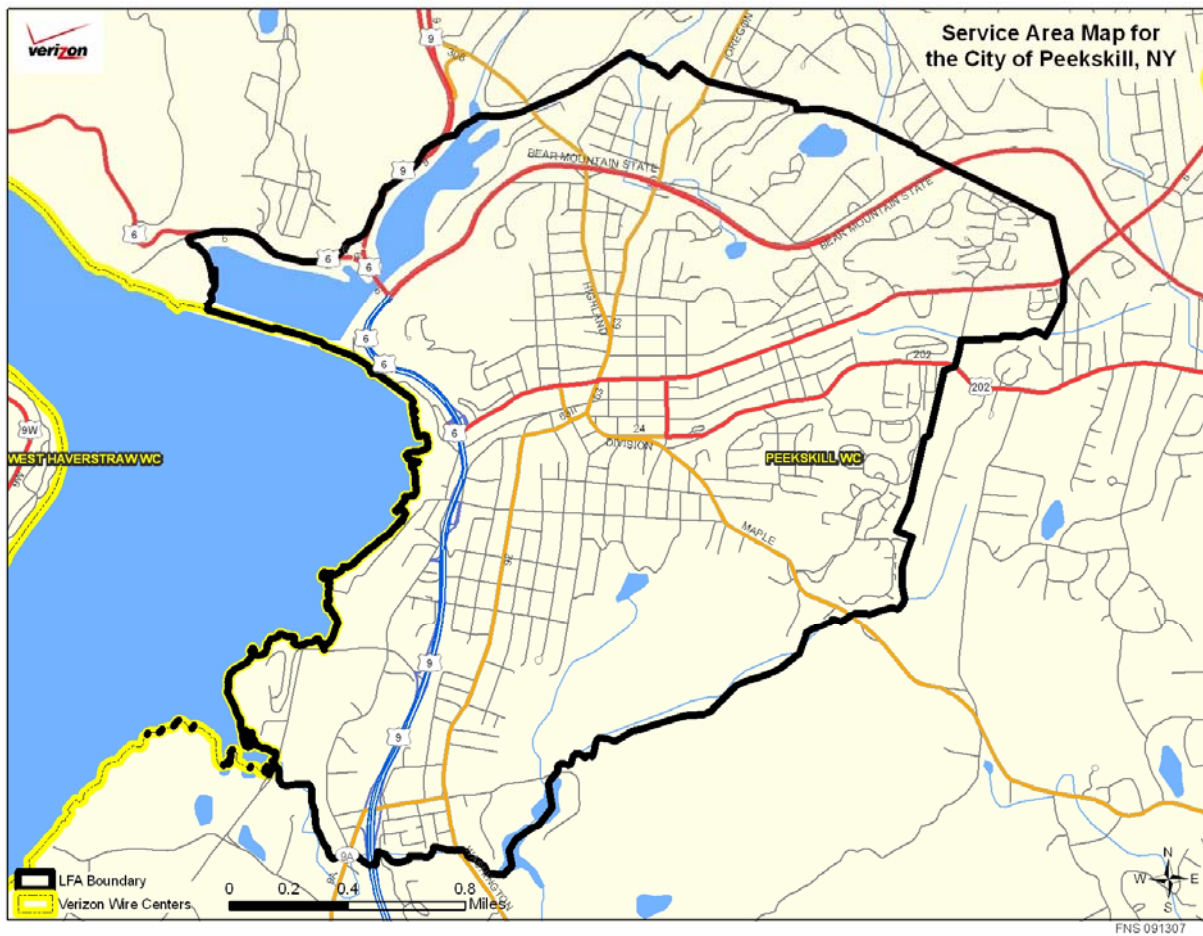


## **EXHIBIT B**

### **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 50% 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 52% deployment at 6 months, 58% deployment at 12 months, 65% deployment at 18 months, 70% deployment at 24 months, 78% deployment at 30 months, 82% deployment at 36 months, 88% deployment at 42 months, 93% deployment at 48 months, 98% 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**

One Public Access Channel, one Educational Access Channel, and one Government Access Channel.

## **EXHIBIT D**

### **PEG ACCESS INTERCONNECTION SITES**

Subject to the requirements set forth in Subsections 5.2.1 and 5.2.2 of the Agreement, the following Government Access Channel PEG Access Interconnection Site ("PEG Access Interconnection Site No. 1") shall be operable within one hundred twenty (120) days of the Effective Date:

City Hall, 840 Main St., Peekskill, NY 10566

Subject to the requirements set forth in Subsections 5.2.1 and 5.2.2 of the Agreement, the following Educational Access Channel PEG Access Interconnection Site ("PEG Access Interconnection Site No. 2") shall be operable within one hundred twenty (120) days of the Effective Date:

Peekskill High School, 1072 Elm Street, Peekskill, NY 10566

12693427.5

**Cable Franchise Agreement**

**by and between**

**the City of Peekskill**

**and**

**Verizon New York Inc.**

## **TABLE OF CONTENTS**

<b><u>ARTICLE</u></b>	<b><u>PAGE</u></b>
1. DEFINITIONS.....	2
2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS .....	6
3. PROVISION OF CABLE SERVICE .....	8
4. SYSTEM FACILITIES .....	9
5. PEG SERVICES .....	10
6. FRANCHISE FEES .....	12
7. REPORTS AND RECORDS.....	14
8. INSURANCE AND INDEMNIFICATION .....	15
9. TRANSFER OF FRANCHISE.....	16
10. RENEWAL OF FRANCHISE.....	17
11. ENFORCEMENT AND TERMINATION OF FRANCHISE .....	17
12. MISCELLANEOUS PROVISIONS.....	19

### **EXHIBITS**

EXHIBIT A: MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE  
EXHIBIT B: SERVICE AREA  
EXHIBIT C: PEG CHANNELS  
EXHIBIT D: PEG ACCESS INTERCONNECTION

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the City of Peekskill, 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 as specified by the LFA in Exhibit C to this Agreement.

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 incorporated area (entire existing territorial limits) of the LFA, and such additional areas as may be annexed or acquired.

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: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the 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; (iii) video on demand, including pay-per-view; (iv) revenues from the sale or lease of access channel(s) or channel capacity; and (v) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, subject to the exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

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

course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; 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 and remit such franchise fees to the LFA; 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 pursuant to Section 3.3; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; any fees or charges collected from Subscribers or other third parties for any PEG Grant and Franchise Grant payments; and

1.16.2.2. 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 use of the Cable System for two-way communication that is not classified as Cable Service; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders. Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment.

1.17. *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 City of Peekskill, 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. *NY PSC*: 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 ten (10) 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 pre-existing condition.

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

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

#### 3.1. *Service Area:*

3.1.1. *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 Sub-Subsection 3.1.1.1. and Section 3.2.

3.1.1.1. *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 twenty-five (25) 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 3.1.1 respectively, 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 aerial 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 twenty-five (25) 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 twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such cost shall be submitted to said Subscriber, in writing, before installation is begun.

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 aerial trunk or feeder lines more than five hundred (500) 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 aerial extension in excess of five hundred (500) 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 five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such cost shall be submitted to said recipient, in writing, before installation is begun. 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 the 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 the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with 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 Access Interconnection:* The LFA has designated two (2) sites within the Franchise Area for the interconnection of Education and Governmental Access facilities with the Cable System in Exhibit D attached hereto (each, a “PEG Access Interconnection Site”).

5.2.1. Subject to the successful completion of all required 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 upstream Educational and Governmental Access Channel transmission connections between its video channel aggregation point and each of the two (2) PEG Access Interconnection Sites in order to permit the signals to



be correctly routed from the PEG Access Interconnection Site for the 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 PEG Access Interconnection Sites.

5.2.2. The LFA shall provide to Franchisee at the PEG Access Interconnection Sites a suitable video signal and a suitable audio signal for each Education and Governmental Access Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the Educational and Governmental Access signals 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.

5.2.3. Such upstream transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of Educational and Governmental Access signals to Subscribers. If Franchisee makes changes to the Cable System that require improvements to Educational and Governmental Access facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.1 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

### 5.3. *PEG Grant and Franchise Grant:*

5.3.1. Franchisee shall provide to the LFA for use in support of the production of local PEG programming a PEG Grant (the "PEG Grant") in the amount of ~~SIXTY SEVEN SEVENTY SIX~~ THOUSAND DOLLARS (~~\$67,000.00~~76,000.00). Franchisee shall pay the PEG Grant in TEN (10) installments, as follows: (1) the first installment, in the amount of FORTY THOUSAND DOLLARS (\$40,000.00) shall be payable within sixty (60) days of the Effective Date; (2) the second installment, in the amount of ~~THREE~~FOUR THOUSAND DOLLARS (~~\$3,000.00~~4,000.00), shall be payable on the SECOND anniversary of the Effective Date; (3) the third installment, in the amount of ~~THREE~~FOUR THOUSAND DOLLARS (~~\$3,000.00~~4,000.00), shall be payable on the THIRD anniversary of the Effective Date; (4) the fourth installment, in the amount of ~~THREE~~FOUR THOUSAND DOLLARS (~~\$3,000.00~~4,000.00), shall be payable on the FOURTH anniversary of the Effective Date; (5) the fifth installment, in the amount of ~~THREE~~FOUR THOUSAND DOLLARS (~~\$3,000.00~~4,000.00), shall be payable on the FIFTH anniversary of the Effective Date; (6) the sixth installment, in the amount of ~~THREE~~FOUR THOUSAND DOLLARS (~~\$3,000.00~~4,000.00), shall be payable on the SIXTH anniversary of the Effective Date; (7) the seventh installment, in the amount of ~~THREE~~FOUR THOUSAND DOLLARS (~~\$3,000.00~~4,000.00), shall be payable on the SEVENTH anniversary of the Effective Date; (8) the eighth installment, in the amount of ~~THREE~~FOUR THOUSAND DOLLARS (~~\$3,000.00~~4,000.00), shall be payable on the EIGHTH anniversary of the Effective Date; (9) the ninth installment, in the amount of ~~THREE~~FOUR THOUSAND DOLLARS (~~\$3,000.00~~4,000.00), shall be payable on the NINTH anniversary of the Effective Date; and (10) the tenth installment, in the amount of ~~THREE~~FOUR THOUSAND

DOLLARS (\$~~3,000.00~~4,000.00), shall be payable on the TENTH anniversary of the Effective Date. Such PEG 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.

5.3.2. The LFA shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 5.3.

5.3.3. In lieu of free internet service for two sites for the term of this Agreement, Franchisee shall pay the LFA a Franchise Grant in the total amount of SIX THOUSAND DOLLARS (\$6,000) payable in installments of SIX HUNDRED DOLLARS (\$600) each within ninety (90) days of the Effective Date and within ninety (90) days of each anniversary of the Effective Date thereafter. In the event that during the term of this Agreement the incumbent cable operator provides additional free internet service to additional sites belonging to the LFA as required by its franchise agreement, the LFA may notify Franchisee in writing of the commencement of such additional free internet service to such sites, and the amount of the Franchise Grant shall be increased as each such new internet service site is activated by the incumbent cable operator. The amount of the Franchise Grant payable by Franchisee to the LFA for each such new internet service site shall be at the same rate as the existing two sites and shall be prorated and payable over the remainder of the term of this Agreement at the same times as provided above in this Subsection 5.3.3.

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 an Annual PEG Grant and 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.

## 6. **FRANCHISE FEES**

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of four percent (4%) of annual Gross Revenue (the "Franchise Fee"); provided, however, that at such time as the LFA requires all cable service providers in the Service Area to pay a franchise fee of

five percent (5%), the LFA shall be entitled, after notification to Franchisee, to amend this Franchise in the manner prescribed under applicable state law or this Franchise to require Franchisee to pay such higher amount and Franchisee agrees to pay such higher amount on going forward basis, following the issuance of an order from the NY PSC approving such amendment. In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. Late payments for Franchise Fees shall be subject to interest at the then-current rate set forth in Section 5004 of Article 50 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) from the due date to the date that such payment is made.

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

6.3. *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due, but cannot exceed the date of records retention reflected in Section 7.

6.4. *Bundled Services:* If Cable Services subject to the Franchise Fee required under this Article 6 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise Fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or by regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

6.5. *Section 626 Treatment:* Franchisee agrees that it will not apply the Franchise Fee as an offset against the special franchise tax payable to the LFA pursuant to N.Y. Real Property Tax Law Section 626 beginning in the next full calendar month following the issuance by the NY PSC of an order confirming this Agreement. The LFA agrees that it shall impose the same full and complete waiver of the special franchise tax offset upon all existing and 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 or the renewal of any existing franchise agreement of each respective 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.

## 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 six (6) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

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

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

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

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

7.3. *System-Wide Statistics:* Any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

## 8. **INSURANCE AND INDEMNIFICATION**

### 8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of five hundred thousand dollars (\$500,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA.

8.1.1.2. Automobile Liability Insurance in the amount of five hundred thousand dollars (\$500,000) combined single limit for bodily injury and property damage coverage.

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

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

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

8.1.2. 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 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 timely written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. 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 1.31 above.

## 10. **RENEWAL OF FRANCHISE**

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

10.2. *Needs Assessment:* In addition to the procedures set forth in Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Such assessments shall be provided to Franchisee by the LFA promptly so that Franchisee will have adequate time to submit a proposal under 47 U.S.C. § 546 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 47 U.S.C. § 546 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, New Jersey 07920-1097

12.5.2. Notices to the LFA shall be mailed to:

City Manager  
Peekskill City Hall  
840 Main Street  
Peekskill, New York 10566

with a copy to:

Corporation Counsel  
Peekskill City Hall  
840 Main Street  
Peekskill, NY 10566

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. *Performance Review:* The LFA may, at its discretion but not more than once per twelve (12) month period, hold an informal performance evaluation session (the "Performance Review") that is not open to the public to review Franchisee's compliance with the terms and conditions of this Franchise. The information disclosed to the LFA by the Franchisee at the Performance Review shall be treated by the LFA as confidential. The LFA shall provide Franchisee with at least thirty (30) days prior written notice of the Performance Review to be held at a mutually agreeable time. Franchisee shall have the opportunity to participate in and be heard at the Performance Review. Within thirty (30) days after the conclusion of the Performance Review, the LFA shall provide Franchisee written documentation (the "Performance Review Report") setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise. The Performance Review Report shall not contain any confidential information disclosed by the Franchisee during the Performance Review.

12.18. *No Third Party Beneficiaries:* Except as expressly provided in this Agreement, this Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

12.19. *LFA Official:* The City Manager of the LFA is the LFA official that is responsible for the continuing administration of this Agreement.

~~*balance of page intentionally left blank*~~

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

AGREED TO THIS \_\_\_\_ DAY OF \_\_\_\_\_, SEPTEMBER 2007.

~~LFA:~~

~~—CITY OF PEEKSKILL~~

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

LFA:

CITY OF PEEKSKILL

APPROVED:

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

Daniel W. Fitzpatrick  
City Manager

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

Corporation Counsel's Office

FRANCHISEE:

VERIZON NEW YORK INC.

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

Tracey Edwards  
Vice President

~~—Daniel W. Fitzpatrick—~~  
~~—City Manager~~

~~FRANCHISEE:~~

~~—VERIZON NEW YORK INC.~~

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

~~—Tracey Edwards~~  
~~—Vice President~~



## **EXHIBITS**

EXHIBIT A: Municipal Buildings to be Provided Free Cable Service

EXHIBIT B: Service Area

EXHIBIT C: PEG Channels

EXHIBIT D: PEG Access Interconnection

## **EXHIBIT A**

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

City Hall, 840 Main Street, Peekskill, New York  
Police Station, 2 Nelson Avenue, Peekskill, New York  
Peekskill Library, 4 Nelson Avenue, Peekskill, New York  
Fire House, 748 Washington Street, Peekskill, New York  
Fire House, 425 Highland Avenue, Peekskill, New York  
Fire Houses (Note: 2 buildings), 1850 Crompound Road, Peekskill, New York  
Fire House, Academy Street, Peekskill, New York  
Fire House, Main Street, Peekskill, New York  
Recreation Office, Depew Park, Peekskill, New York  
Pool, Depew Park, Peekskill, New York  
Water Filtration Office, Lindberg Place, Peekskill, New York  
Mechanic Garage, 1003 Lower South Street, Peekskill, New York  
Kiley Youth Center, 709 Main Street, Peekskill, New York  
Department of Public Works Garage, 100 South Street, Peekskill, New York  
Peekskill City School District Administration, 1031 Elm Street, Peekskill, New York  
Peekskill City School District Maintenance Building, 1020 Elm Street, Peekskill, New York  
ECC- Uriah Hill, Jr. School, 980 Pemart Avenue, Peekskill, New York  
Hillcrest Elementary School, 4 Horton Drive, Peekskill, New York  
Oakside Elementary School, 200 Decatur Avenue, Peekskill, New York  
Woodside Elementary School, Depew Street, Peekskill, New York  
Peekskill Middle School, 212 Ringgold Street, Peekskill, New York  
Peekskill High School, 1072 Elm Street, Peekskill, New York  
EOC Office, 4 Nelson Avenue, Peekskill, NY  
Senior Center, 4 Nelson Avenue, Peekskill, NY  
Peekskill Stadium, Louisa Street, Peekskill, NY



## **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 50% 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 52% deployment at 6 months, 58% deployment at 12 months, 65% deployment at 18 months, 70% deployment at 24 months, 78% deployment at 30 months, 82% deployment at 36 months, 88% deployment at 42 months, 93% deployment at 48 months, 98% 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**

One Public Access Channel, one Educational Access Channel, and one Government Access Channel.

## **EXHIBIT D**

### **PEG ACCESS INTERCONNECTION SITES**

Subject to the requirements set forth in Subsections 5.2.1 and 5.2.2 of the Agreement, the following Government Access Channel PEG Access Interconnection Site ("PEG Access Interconnection Site No. 1") shall be operable within one hundred twenty (120) days of the Effective Date:

City Hall, 840 Main St., Peekskill, NY 10566

Subject to the requirements set forth in Subsections 5.2.1 and 5.2.2 of the Agreement, the following Educational Access Channel PEG Access Interconnection Site ("PEG Access Interconnection Site No. 2") shall be operable within one hundred twenty (120) days of the Effective Date:

Peekskill High School, 1072 Elm Street, Peekskill, NY 10566

~~12693427.4-~~  
12693427.5

# **ATTACHMENT E**

## **FTTP System Architecture**

### **End-to-End Architecture**

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

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

Figure 1-High Level End to End Architecture

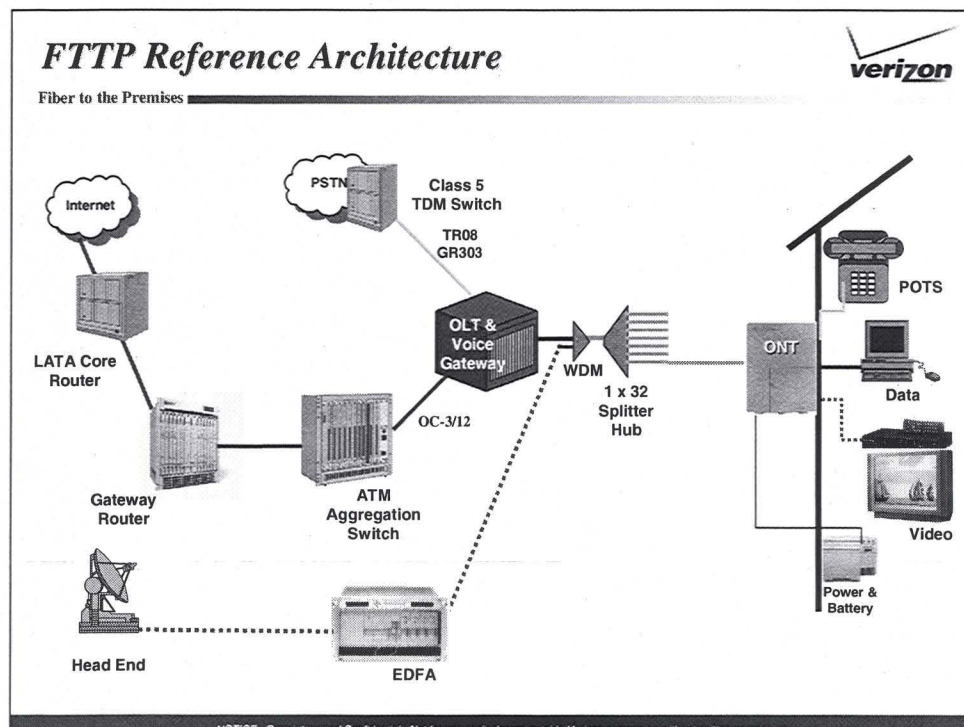
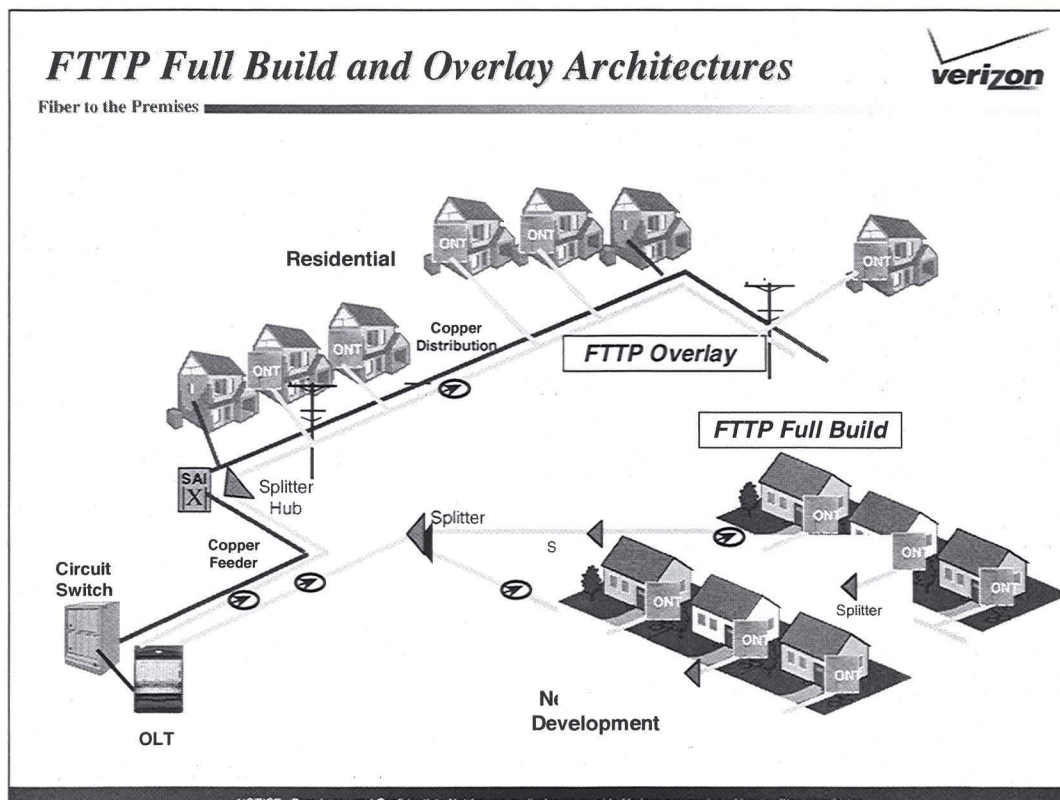


Figure 2-FTTP Full Build and Overlay Architectures



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

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

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



**EXHIBIT 1**  
**APPLICATION FOR A CABLE TELEVISION FRANCHISE**  
**CITY OF PEEKSKILL/VERIZON NEW YORK INC.**

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

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

**Super Headend (SHE)**

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

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

The key functions of the SHE include:

Content Reception

Signal Processing

Encoding

Network Interface

The majority of cable television sources shall be individual content provider programming. A mix of standard and high definition formats shall be supported. All content shall be encoded into MPEG2 streams, formatted for SONET, and transported via an OC48c to a local point-of-presence (POP) for wide area (national) transport.

**Wide Area Transport**

In support of the cable television service, Verizon will use OC48c SONET facilities in the POPs serving target cable markets. Where multiple POPs exist within a market, redundancy options shall dictate if a single or multiple POPs shall be designated for supporting the cable television traffic.

In most cases, it is expected that the cable television traffic shall traverse multiple interconnected rings between the SHE and the destination market. Once the cable traffic reaches a POP located in a target market, it will be forwarded to an OC48c SONET interface connected to metro/local SONET facilities. These facilities shall connect the POP to a Video Hub Office (VHO). VHOs are capable of serving multiple communities within a target market. If more than one VHO is required, the metro SONET ring(s) would be deployed to cover multiple sites.



**EXHIBIT 1**  
**APPLICATION FOR A CABLE TELEVISION FRANCHISE**  
**CITY OF PEEKSKILL/VERIZON NEW YORK INC.**

Video Hub Office (VHO)

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

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

WAN Interface for Cable television Transport

Ad Insertion

PEG Content

Signal Grooming and Multiplexing

Emergency Alert Service

Interactive Program Guide

Conditional Access

Local Content

The VHO shall aggregate three basic sources of content: national broadcast channels, local broadcast channels, and public, educational, & government (PEG) channels. The national content is the traffic sent from the SHE and is delivered via an OC48c SONET interface from the SONETPOP. The local broadcast channels shall be received off-air via antennas or terrestrial fiber transport located at the VHO site. The PEG channels shall be collected via terrestrial connections from each local franchising area (LFA) served by the VHO.

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

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

Metro Area Transport

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

**EXHIBIT 1**  
**APPLICATION FOR A CABLE TELEVISION FRANCHISE**  
**CITY OF PEEKSKILL/VERIZON NEW YORK INC.**

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

The Video Serving Office (VSO) is a location within the central office containing FTTP equipment. The VSO that will serve the City of Peekskill is located in Peekskill, New York. If technically feasible or otherwise appropriate, PEG insertion may occur at these locations in the network.

The key function of the VSO is to combine Broadcast Cable television into the Voice and High Speed Data FTTP Network.

Once in the VSO, the optical cable television signal is sent through an EDFA and then to a Wave Division Multiplexer (WDM) combiner and splitter, which is used to add the cable signal to the voice and high-speed data signals' wavelength (1490nm) – coming from the Optical Line Terminal (OLT) – together with the cable wavelength onto a single optical source. This optical signal is then sent towards the subscriber premises via a PON. The VSO will also play a role in supporting upstream signals from the customer premises for pay-per-view services. Pay-per-view usage data uses the data service's 1310nm upstream wavelength. The upstream data communications shall be sent back to a subscriber database located in the Operations Center located in the VHO.

**Customer Premises**

At the premise, an Optical Network Terminal (ONT) de-multiplexes the 1550nm optical signal and simply converts it to a voice, data and cable television electrical signal, which meets cable television industry standards for cable services.

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# **ATTACHMENT F**

**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 City of  
Peekskill, New York (Westchester  
County)**

**Case 07-V-\_\_\_\_\_**

**AFFIDAVIT OF SERVICE**

**STATE OF NEW YORK    )  
                                      )  
COUNTY OF NEW YORK)   ss.:**

**JOHN LACY CLARK**, being duly sworn, deposes and says:

I certify that a complete copy of Verizon New York Inc.'s Petition for Confirmation will be sent to Pamela Beach, City Clerk, on September 28, 2007, by overnight mail addressed to her at City of Peekskill, 840 Main Street, Peekskill, New York 10901.

  
\_\_\_\_\_  
**JOHN LACY CLARK**

Sworn to before me  
this 28<sup>th</sup> day of September, 2007.

  
\_\_\_\_\_  
**Notary Public**

**MIGUEL A. ROSA**  
Notary Public, State of New York  
No. 43-4771951, Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires Nov. 30, 2012

# **ATTACHMENT G**

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 City of  
Peekskill, New York (Westchester  
County)

Case 07-V-\_\_\_\_\_

AFFIDAVIT OF PUBLICATION

STATE OF NEW YORK            )  
  )  
COUNTY OF NEW YORK        )       ss.:

**JOHN LACY CLARK**, being duly sworn, deposes and says:

I certify that a notice with the following text will be published on October 1, 2007 in The Journal News. The Journal News is a newspaper of general circulation in the City of Peekskill. Verizon has submitted the notice to that newspaper, has arranged for payment for such publication, and has been assured that the notice will appear in the newspaper on the specified date.

**PLEASE TAKE NOTICE** that Verizon New York Inc. ("Verizon") has filed a Petition with the New York State Public Service Commission ("Commission") seeking confirmation and approval of a cable television franchise awarded to Verizon by the City of Peekskill, New York. Copies of the Petition are available from the Commission or from Verizon. Interested parties may file comments on the Petition with the Commission within ten days of the date of publication of this notice. Comments should be addressed to Hon. Jaclyn A. Brillling, Secretary, New York State Public Service Commission, Three Empire State Plaza, Albany, New York 12223.

  
\_\_\_\_\_  
**JOHN LACY CLARK**

Sworn to before me  
this 28<sup>th</sup> day of September, 2007

  
\_\_\_\_\_  
**Notary Public**

MIGUEL A. ROSA  
Notary Public, State of New York  
No. 43-4771951, Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires Nov. 30, 2012

# **ATTACHMENT H**

## EXPLANATORY NOTES TO ATTACHMENT H

1. This Attachment H consists of: (a) a Department of Environmental Conservation “Full Environmental Assessment Form” (“EAF”) for Verizon’s offering of cable service in Peekskill, New York, with Part 1 filled in; (b) an EAF Addendum providing certain additional background information; and (c) exhibits to the Addendum, including maps showing environmentally relevant features of the franchise area and a list of sites included in the SPHINX database of historic sites, as described below.

2. The Attachment is submitted without prejudice to Verizon’s positions that: (a) the activities for which it seeks approval in this proceeding are not “actions” under the State Environmental Quality Review Act (“SEQRA”), and that therefore no EAF is required; and (b) if an EAF is required in this case, a short-form EAF will suffice.

3. The EAF and the EAF Addendum are based on information in Verizon’s possession or available to us through research in readily available sources. Beyond such sources, we have not undertaken any “new studies, research or investigation.”<sup>1</sup>

4. Historic site information was derived from the SPHINX database of the New York State Historic Preservation Office (*see* <http://www.nysparks.state.ny.us/shpo/resources/index.htm>). Coastal area information was obtained from the New York State Geographic Information Systems Clearinghouse website (*see* <http://www.nysgis.state.ny.us/gisdata/inventories/details.cfm?DSID=317>), as was flood plain data (*see* <http://www.nysgis.state.ny.us/gisdata/inventories/details.cfm?DSID=246>). Information on wetlands locations was obtained from the U.S. Fish & Wildlife Service National Wetlands Inventory (*see* <http://www.fws.gov/nwi/>) and the Cornell University Geospatial Information Repository (*see* <http://cugir.mannlib.cornell.edu/mapbrowse.jsp?series=counties>). Information on agricultural districts was obtained from the Cornell University Geospatial Information Repository (*see* <http://cugir.mannlib.cornell.edu/mapbrowse.jsp?series=counties>). Information on “critical environmental areas” was obtained from the website of the State Department of Environmental Conservation (<http://www.dec.state.ny.us/website/dcs/seqr/cea/index.html>). Information on National Natural Landmarks was obtained from the website of the National Park Service (*see* [http://www.nature.nps.gov/nml/Registry/USA\\_Map/States/NewYork/new\\_york.cfm](http://www.nature.nps.gov/nml/Registry/USA_Map/States/NewYork/new_york.cfm)).

5. In response to several questions in Part 1, Verizon has indicated that the question is “Not Applicable” (“N/A”) to the confirmation that is the subject of the Petition. The activities to be undertaken pursuant to the franchise for which confirmation is sought involve the delivery of video programming and, thus, do not have a definite location or “area.” To the extent any construction — including line extensions, placement of drop wires, extensions, and repairs — takes place after the franchise becomes effective, all of the locations within the franchise area at which such activity will occur cannot be known in advance.

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<sup>1</sup> See Full Environmental Assessment Form at 2.



The information provided for contiguity to historic sites, etc., has been provided with respect to Verizon's FTTP facilities in the franchise area, even though it is Verizon's position that such facilities have been constructed pursuant to independent permissions and authorities.

**617.20**  
**Appendix A**  
**State Environmental Quality Review**  
**FULL ENVIRONMENTAL ASSESSMENT FORM**

**Purpose:** The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

**Full EAF Components:** The full EAF is comprised of three parts:

- Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3:** If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

---

**THIS AREA FOR LEAD AGENCY USE ONLY**

**DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions**

Identify the Portions of EAF completed for this project:

☐

Part 1

☐

Part 2

☐

Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- ☐ A. The project will not result in any large and important impact(s) and, therefore, is one which **will not** have a significant impact on the environment, therefore a **negative declaration will be prepared**.
- ☐ B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore a **CONDITIONED negative declaration will be prepared.\***
- ☐ C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore a **positive declaration will be prepared**.

\*A Conditioned Negative Declaration is only valid for Unlisted Actions

---

Name of Action

---

Name of Lead Agency

---

Print or Type Name of Responsible Officer in Lead Agency

---

Title of Responsible Officer

---

Signature of Responsible Officer in Lead Agency

---

Signature of Preparer (If different from responsible officer)

**PART 1--PROJECT INFORMATION**  
**Prepared by Project Sponsor**

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action Award of Cable Television Franchise to Verizon

Location of Action (include Street Address, Municipality and County)

Discrete Areas within the City of Peekskill, NY

Name of Applicant/Sponsor Verizon New York Inc. ("Verizon")

Address c/o Thomas McCarroll, 158 State Street

City / PO Albany State NY Zip Code 12207

Business Telephone (518) 396-1001

Name of Owner (if different) N/A

Address \_\_\_\_\_

City / PO \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Business Telephone \_\_\_\_\_

Description of Action:

Activities undertaken by Verizon pursuant to the authority awarded by the franchise.

Please Complete Each Question--Indicate N.A. if not applicable

## A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: ☐ Urban ☒ Industrial ☒ Commercial ☒ Residential (suburban) ☐ Rural (non-farm)  
☐ Forest ☐ Agriculture ☐ Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Total acreage of project area: \_\_\_\_\_ acres.\*

\* Although Verizon does not believe that this question applies to the activities at issue here, it has determined at Staff's request that its FTTP facilities constructed in the franchise area to date have an approximate length of 40 miles. The width of the right-of-way varies by location, and Verizon cannot readily determine at this time the average width (and therefore the area) of the right-of-way used by Verizon.

### APPROXIMATE ACREAGE

Meadow or Brushland (Non-agricultural)	_____ acres	_____ acres
Forested	_____ acres	_____ acres
Agricultural (Includes orchards, cropland, pasture, etc.)	_____ acres	_____ acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	_____ acres	_____ acres
Water Surface Area	_____ acres	_____ acres
Unvegetated (Rock, earth or fill)	_____ acres	_____ acres
Roads, buildings and other paved surfaces	_____ acres	_____ acres
Other (Indicate type) _____	_____ acres	_____ acres

3. What is predominant soil type(s) on project site? N/A

- a. Soil drainage: ☐ Well drained \_\_\_\_\_% of site ☐ Moderately well drained \_\_\_\_\_% of site.  
☐ Poorly drained \_\_\_\_\_% of site

- b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? \_\_\_\_\_ acres (see 1 NYCRR 370).

4. Are there bedrock outcroppings on project site? ☐ Yes ☐ No N/A

- a. What is depth to bedrock \_\_\_\_\_ (in feet)

\*\* Parts of Verizon's FTTP network in the franchise area pass historic sites. See Addendum.

5. Approximate percentage of proposed project site with slopes: N/A

☐ 0-10% \_\_\_\_\_% ☐ 10- 15% \_\_\_\_\_% ☐ 15% or greater \_\_\_\_\_%

6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? ☒ Yes \*\* ☐ No

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? ☐ Yes ☒ No

8. What is the depth of the water table? \_\_\_\_\_ (in feet) N/A

9. Is site located over a primary, principal, or sole source aquifer? ☒ Yes ☐ No

10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? ☐ Yes ☐ No N/A

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? ☐ Yes ☐ No N/A

According to:

Identify each species:

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

☐ Yes ☐ No N/A

Describe:

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

☐ Yes ☐ No N/A

If yes, explain:

14. Does the present site include scenic views known to be important to the community? ☐ Yes ☐ No N/A

15. Streams within or contiguous to project area: N/A

a. Name of Stream and name of River to which it is tributary

16. Lakes, ponds, wetland areas within or contiguous to project area: See Addendum.

b. Size (in acres):

17. Is the site served by existing public utilities? ☒ Yes ☐ No
- a. If YES, does sufficient capacity exist to allow connection? ☒ Yes ☐ No
- b. If YES, will improvements be necessary to allow connection? ☐ Yes ☒ No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐ Yes ☒ No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? ☐ Yes ☐ No \* See Addendum
20. Has the site ever been used for the disposal of solid or hazardous wastes? ☐ Yes ☐ No N/A

## B. Project Description

### 1. Physical dimensions and scale of project (fill in dimensions as appropriate).

- a. Total contiguous acreage owned or controlled by project sponsor: N/A acres.
- b. Project acreage to be developed: N/A acres initially; N/A acres ultimately.
- c. Project acreage to remain undeveloped: N/A acres.
- d. Length of project, in miles:        \* (if appropriate) \* See response to Item 2 on Page 3.
- e. If the project is an expansion, indicate percent of expansion proposed. N/A %
- f. Number of off-street parking spaces existing N/A ; proposed N/A
- g. Maximum vehicular trips generated per hour: N/A (upon completion of project)?
- h. If residential: Number and type of housing units: N/A

	One Family	Two Family	Multiple Family	Condominium
Initially	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
Ultimately	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

- i. Dimensions (in feet) of largest proposed structure: N/A height; N/A width; N/A length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? N/A ft.
2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? N/A tons/cubic yards.
3. Will disturbed areas be reclaimed ☐ Yes ☐ No ☒ N/A

- a. If yes, for what intended purpose is the site being reclaimed?

- b. Will topsoil be stockpiled for reclamation? ☐ Yes ☐ No
- c. Will upper subsoil be stockpiled for reclamation? ☐ Yes ☐ No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site?            acres. N/A

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

☐ Yes ☒ No

6. If single phase project: Anticipated period of construction: \_\_\_\_\_ months, (including demolition) \*

7. If multi-phased: N/A

a. Total number of phases anticipated \_\_\_\_\_ (number)

b. Anticipated date of commencement phase 1: \_\_\_\_\_ month \_\_\_\_\_ year, (including demolition)

c. Approximate completion date of final phase: \_\_\_\_\_ month \_\_\_\_\_ year.

d. Is phase 1 functionally dependent on subsequent phases? ☐ Yes ☒ No

8. Will blasting occur during construction? ☐ Yes ☒ No

9. Number of jobs generated: during construction N/A ; after project is complete N/A

10. Number of jobs eliminated by this project N/A .

11. Will project require relocation of any projects or facilities? ☐ Yes ☒ No

If yes, explain:

12. Is surface liquid waste disposal involved? ☐ Yes ☒ No

a. If yes, indicate type of waste (sewage, industrial, etc) and amount \_\_\_\_\_

b. Name of water body into which effluent will be discharged \_\_\_\_\_

13. Is subsurface liquid waste disposal involved? ☐ Yes ☒ No Type \_\_\_\_\_

14. Will surface area of an existing water body increase or decrease by proposal? ☐ Yes ☒ No

If yes, explain:

15. Is project or any portion of project located in a 100 year flood plain? ☒ Yes ☐ No

16. Will the project generate solid waste? ☐ Yes ☒ No

a. If yes, what is the amount per month? \_\_\_\_\_ tons

b. If yes, will an existing solid waste facility be used? ☐ Yes ☐ No

c. If yes, give name \_\_\_\_\_ ; location \_\_\_\_\_

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? ☐ Yes ☐ No

\* Although it is Verizon's position that any further FTTP construction activity in the franchise area is being undertaken pursuant to independent authority, rather than pursuant to the franchise, Verizon expects to complete its build out as required by the franchise.

e. If yes, explain:

17. Will the project involve the disposal of solid waste? ☐ Yes ☒ No

a. If yes, what is the anticipated rate of disposal? \_\_\_\_\_ tons/month.

b. If yes, what is the anticipated site life? \_\_\_\_\_ years.

18. Will project use herbicides or pesticides? ☐ Yes ☒ No

19. Will project routinely produce odors (more than one hour per day)? ☐ Yes ☒ No

20. Will project produce operating noise exceeding the local ambient noise levels? ☐ Yes ☒ No

21. Will project result in an increase in energy use? ☐ Yes ☒ No

If yes, indicate type(s)

22. If water supply is from wells, indicate pumping capacity N/A gallons/minute.

23. Total anticipated water usage per day N/A gallons/day.

24. Does project involve Local, State or Federal funding? ☐ Yes ☒ No

If yes, explain:



**25. Approvals Required:**

		Type	Submittal Date
City, Town, Village Board	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>City of Peekskill</u>	<u>                    </u>
		<u>Award Franchise</u>	<u>9/10/07*</u>
		<u>                    </u>	<u>                    </u>
		* Franchise was awarded on this date.	
City, Town, Village Planning Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<u>                    </u>	<u>                    </u>
		<u>                    </u>	<u>                    </u>
		<u>                    </u>	<u>                    </u>
City, Town Zoning Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<u>                    </u>	<u>                    </u>
		<u>                    </u>	<u>                    </u>
		<u>                    </u>	<u>                    </u>
City, County Health Department	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<u>                    </u>	<u>                    </u>
		<u>                    </u>	<u>                    </u>
		<u>                    </u>	<u>                    </u>
Other Local Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<u>                    </u>	<u>                    </u>
		<u>                    </u>	<u>                    </u>
		<u>                    </u>	<u>                    </u>
Other Regional Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<u>                    </u>	<u>                    </u>
		<u>                    </u>	<u>                    </u>
		<u>                    </u>	<u>                    </u>
State Agencies	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>Public Service Commission</u>	<u>                    </u>
		<u>Confirmation</u>	<u>9/28/07</u>
		<u>                    </u>	<u>                    </u>
Federal Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<u>                    </u>	<u>                    </u>
		<u>                    </u>	<u>                    </u>
		<u>                    </u>	<u>                    </u>

**C. Zoning and Planning Information**

1. Does proposed action involve a planning or zoning decision? ☐ Yes ☒ No

If Yes, indicate decision required:

- |   |   |  |                                      |
|---|---|--|--------------------------------------|
| <input type="checkbox"/> Zoning amendment | <input type="checkbox"/> Zoning variance    | <input type="checkbox"/> New/revision of master plan | <input type="checkbox"/> Subdivision |
| <input type="checkbox"/> Site plan        | <input type="checkbox"/> Special use permit | <input type="checkbox"/> Resource management plan    | <input type="checkbox"/> Other       |

2. What is the zoning classification(s) of the site? N/A

3. What is the maximum potential development of the site if developed as permitted by the present zoning? N/A

4. What is the proposed zoning of the site? N/A

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning? N/A

6. Is the proposed action consistent with the recommended uses in adopted local land use plans? ☐ Yes ☐ No N/A

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action? N/A

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? ☐ Yes ☐ No N/A

9. If the proposed action is the subdivision of land, how many lots are proposed? N/A

a. What is the minimum lot size proposed?

10. Will proposed action require any authorization(s) for the formation of sewer or water districts? ☐ Yes ☒ No

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?

☐ Yes ☒ No

a. If yes, is existing capacity sufficient to handle projected demand? ☐ Yes ☐ No

12. Will the proposed action result in the generation of traffic significantly above present levels? ☐ Yes ☒ No

a. If yes, is the existing road network adequate to handle the additional traffic. ☐ Yes ☐ No

**D. Informational Details**

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

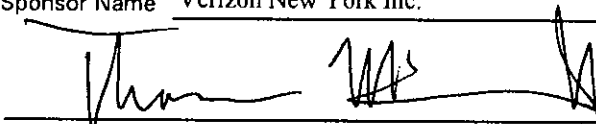
**E. Verification**

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name Verizon New York Inc.

Date 09/28/07

Signature



Title Vice President Regulatory Affairs, NY & CT

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

## PART 2 - PROJECT IMPACTS AND THEIR MAGNITUDE

### Responsibility of Lead Agency

#### General Information (Read Carefully)

- ! In completing the form the reviewer should be guided by the question: Have my responses and determinations been **reasonable**? The reviewer is not expected to be an expert environmental analyst.
- ! The **Examples** provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.
- ! The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.
- ! The number of examples per question does not indicate the importance of each question.
- ! In identifying impacts, consider long term, short term and cumulative effects.

#### Instructions (Read carefully)

- a. Answer each of the 20 questions in PART 2. Answer **Yes** if there will be **any** impact.
- b. **Maybe** answers should be considered as **Yes** answers.
- c. If answering **Yes** to a question then check the appropriate box(column 1 or 2)to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. Identifying that an Impact will be potentially large (column 2) does not mean that it is also necessarily **significant**. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- e. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- f. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the **Yes** box in column 3. A **No** response indicates that such a reduction is not possible. This must be explained in Part 3.

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

#### Impact on Land

1. Will the Proposed Action result in a physical change to the project site?

NO ☐ YES ☐

#### Examples that would apply to column 2

- |  |                          |                          |                              |                             |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction on land where the depth to the water table is less than 3 feet.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction of paved parking area for 1,000 or more vehicles.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction that will continue for more than 1 year or involve more than one phase or stage.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year.                         | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
--	-------------------------------------	-----------------------------------	--

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| • Construction or expansion of a sanitary landfill. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Construction in a designated floodway.            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:                                    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

2. Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.)

☐ NO ☐ YES

- |                        |                          |                          |  |
|------------------------|--------------------------|--------------------------|--|
| • Specific land forms: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|------------------------|--------------------------|--------------------------|--|

#### Impact on Water

3. Will Proposed Action affect any water body designated as protected? (Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)

☐ NO ☐ YES

#### Examples that would apply to column 2

- |  |                          |                          |  |
|--|--------------------------|--------------------------|--|
| • Developable area of site contains a protected water body.                          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Dredging more than 100 cubic yards of material from channel of a protected stream. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Extension of utility distribution facilities through a protected water body.       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Construction in a designated freshwater or tidal wetland.                          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

4. Will Proposed Action affect any non-protected existing or new body of water?

☐ NO ☐ YES

#### Examples that would apply to column 2

- |  |                          |                          |  |
|--|--------------------------|--------------------------|--|
| • A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Construction of a body of water that exceeds 10 acres of surface area.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

5. Will Proposed Action affect surface or groundwater quality or quantity?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |  |                          |                          |  |
|--|--------------------------|--------------------------|--|
| • Proposed Action will require a discharge permit.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action requires use of a source of water that does not have approval to serve proposed (project) action.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action requires water supply from wells with greater than 45 gallons per minute pumping capacity.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Construction or operation causing any contamination of a water supply system.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will adversely affect groundwater.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action would use water in excess of 20,000 gallons per day.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will require the storage of petroleum or chemical products greater than 1,100 gallons.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will allow residential uses in areas without water and/or sewer services.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities.                              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

6. Will Proposed Action alter drainage flow or patterns, or surface water runoff?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |  |                          |                          |                              |                             |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action would change flood water flows                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action may cause substantial erosion.                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action is incompatible with existing drainage patterns. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow development in a designated floodway. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

#### IMPACT ON AIR

7. Will Proposed Action affect air quality?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |   |                          |                          |                              |                             |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action will induce 1,000 or more vehicle trips in any given hour.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in the incineration of more than 1 ton of refuse per hour.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the amount of land committed to industrial use.                                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the density of industrial development within existing industrial areas.               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

#### IMPACT ON PLANTS AND ANIMALS

8. Will Proposed Action affect any threatened or endangered species?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |   |                          |                          |                              |                             |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site, or found on the site. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Removal of any portion of a critical or significant wildlife habitat.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

9. Will Proposed Action substantially affect non-threatened or non-endangered species?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |  | 1<br>Small to<br>Moderate<br>Impact | 2<br>Potential<br>Large<br>Impact | 3<br>Can Impact Be<br>Mitigated by<br>Project Change     |
|--|-------------------------------------|-----------------------------------|--|
| • Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.                          | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation. | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:   | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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#### IMPACT ON AGRICULTURAL LAND RESOURCES

10. Will Proposed Action affect agricultural land resources?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |  | 1<br>Small to<br>Moderate<br>Impact | 2<br>Potential<br>Large<br>Impact | 3<br>Can Impact Be<br>Mitigated by<br>Project Change     |
|--|-------------------------------------|-----------------------------------|--|
| • The Proposed Action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)                                 | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Construction activity would excavate or compact the soil profile of agricultural land.   | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • The Proposed Action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land. | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |



- |   | 1<br>Small to<br>Moderate<br>Impact | 2<br>Potential<br>Large<br>Impact | 3<br>Can Impact Be<br>Mitigated by<br>Project Change     |
|---|-------------------------------------|-----------------------------------|--|
| • The Proposed Action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff). | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |

#### IMPACT ON AESTHETIC RESOURCES

11. Will Proposed Action affect aesthetic resources? (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)

☐ NO ☐ YES

##### Examples that would apply to column 2

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| • Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.                              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Project components that will result in the elimination or significant screening of scenic views known to be important to the area.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

#### IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES

12. Will Proposed Action impact any site or structure of historic, prehistoric or paleontological importance?

☐ NO ☐ YES

##### Examples that would apply to column 2

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| • Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of historic places. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Any impact to an archaeological site or fossil bed located within the project site.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

#### IMPACT ON OPEN SPACE AND RECREATION

13. Will proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| • The permanent foreclosure of a future recreational opportunity. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • A major reduction of an open space important to the community.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

#### IMPACT ON CRITICAL ENVIRONMENTAL AREAS

14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6NYCRR 617.14(g)?

☐ NO ☐ YES

List the environmental characteristics that caused the designation of the CEA.

**Examples** that would apply to column 2

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| • Proposed Action to locate within the CEA?                                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will result in a reduction in the quantity of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will result in a reduction in the quality of the resource?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will impact the use, function or enjoyment of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

1  
Small to  
Moderate  
Impact

2  
Potential  
Large  
Impact

3  
Can Impact Be  
Mitigated by  
Project Change

### IMPACT ON TRANSPORTATION

15. Will there be an effect to existing transportation systems?

☐ NO ☐ YES

**Examples** that would apply to column 2

- Alteration of present patterns of movement of people and/or goods.
- Proposed Action will result in major traffic problems.
- Other impacts:

☐
☐

☐ Yes ☐ No

☐
☐

☐ Yes ☐ No

☐
☐

☐ Yes ☐ No

### IMPACT ON ENERGY

16. Will Proposed Action affect the community's sources of fuel or energy supply?

☐ NO ☐ YES

**Examples** that would apply to column 2

- Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality.
- Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use.
- Other impacts:

☐
☐

☐ Yes ☐ No

☐
☐

☐ Yes ☐ No

☐
☐

☐ Yes ☐ No

### NOISE AND ODOR IMPACT

17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action?

☐ NO ☐ YES

**Examples** that would apply to column 2

- Blasting within 1,500 feet of a hospital, school or other sensitive facility.
- Odors will occur routinely (more than one hour per day).
- Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures.
- Proposed Action will remove natural barriers that would act as a noise screen.
- Other impacts:

☐
☐

☐ Yes ☐ No

☐
☐

☐ Yes ☐ No

☐
☐

☐ Yes ☐ No

☐
☐

☐ Yes ☐ No

☐
☐

☐ Yes ☐ No

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

### IMPACT ON PUBLIC HEALTH

18. Will Proposed Action affect public health and safety?

☐ NO ☐ YES

- |  |                          |                          |  |
|--|--------------------------|--------------------------|--|
| • Proposed Action may cause a risk of explosion or release of hazardous substances (i.e. oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action may result in the burial of "hazardous wastes" in any form (i.e. toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.)   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Storage facilities for one million or more gallons of liquefied natural gas or other flammable liquids.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

### IMPACT ON GROWTH AND CHARACTER OF COMMUNITY OR NEIGHBORHOOD

19. Will Proposed Action affect the character of the existing community?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| • The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%.                | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • The municipal budget for capital expenditures or operating services will increase by more than 5% per year as a result of this project. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will conflict with officially adopted plans or goals.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will cause a change in the density of land use.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will replace or eliminate existing facilities, structures or areas of historic importance to the community.             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Development will create a demand for additional community services (e.g. schools, police and fire, etc.)                                | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Proposed Action will set an important precedent for future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action will create or eliminate employment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other Impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

20. Is there, or is there likely to be, public controversy related to potential adverse environment impacts?

☐ NO ☐ YES

**If Any Action in Part 2 Is Identified as a Potential Large Impact or If you Cannot Determine the Magnitude of Impact, Proceed to Part 3**

## Part 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS

### Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

**Instructions** (If you need more space, attach additional sheets)

Discuss the following for each impact identified in Column 2 of Part 2:

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is **important**.

To answer the question of importance, consider:

- ! The probability of the impact occurring
- ! The duration of the impact
- ! Its irreversibility, including permanently lost resources of value
- ! Whether the impact can or will be controlled
- ! The regional consequence of the impact
- ! Its potential divergence from local needs and goals
- ! Whether known objections to the project relate to this impact.

**ADDENDUM TO ENVIRONMENTAL ASSESSMENT FORM RELATING TO  
CONFIRMATION OF A CABLE TELEVISION FRANCHISE FOR THE  
CITY OF PEEKSKILL (WESTCHESTER COUNTY), NEW YORK**

***Setting***

The City of Peekskill is located in the northwestern portion of Westchester County. As of the 2000 Census, the City had a population of 22,441 within a total area of 5.48 square miles.

The City is not within an agricultural district, nor is it substantially contiguous to a National Natural Landmark. The City may contain or be substantially contiguous to critical environmental areas.<sup>1</sup> A list of sites included in the SPHINX database of historic sites is attached. It is Verizon's policy to conform to all applicable laws and regulations in placing its facilities, including any special requirements that may be applicable to historic sites, districts, or landmarks.

The City of Peekskill is located above aquifers. The City is partially within a coastal area. It has designated wetlands areas and designated 100 year flood plains. Verizon's FTTP extensions and drop wires will be placed only to serve existing or future residences and businesses and will be consistent with physical arrangements for the provision of non-video communications services (voice, data), and other types of utility service, to such areas. Video programming will be delivered over existing distribution routes and supporting structures. Moreover, cable service is already provided within the franchise area by the incumbent, Cablevision. Thus, Verizon's construction activities would not impact otherwise undeveloped areas.

Three maps are included with this addendum. The first map shows the franchise area, the coastal area boundary and freshwater wetlands, lakes and ponds. The second map shows the 100 year flood plains. The third map shows the aquifers in the area.

***Description of Potential Construction Activities***

The Commission is being asked to approve the City's award of a cable television franchise to Verizon. The franchise will enable Verizon to deliver video programming to subscribers over its FTTP network, which is also used for the provision of voice and data services. It is Verizon's position that the construction, extension, modification, and repair of the facilities comprising the FTTP network are independently authorized, do not require franchise authority, and are thus not included within any "action" (within the meaning of SEQRA) for which approval is sought in this proceeding. Nevertheless, at Staff's request, Verizon is providing the following information concerning work on Verizon's FTTP facilities that may be undertaken in the City subsequent to the Commission's approval of the franchise.

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<sup>1</sup> Attached is a page from the State Department of Environmental Conservation web site that lists critical environmental areas designated by the County of Westchester. We do not know whether any of the County-designated areas (*e.g.*, certain watersheds) include land within the City.

Extensions of Verizon's FTTP network may take place in the City of Peekskill following the award of the franchise. FTTP construction in the City's rights-of-way would relate to facilities that will also be used for Verizon's voice and data services. (Any equipment that is utilized exclusively for the provision of cable services in the City will be located in Verizon's central offices.) Verizon has completed the construction of its FTTP network to approximately 50% of the current households in the franchise area.

When a Verizon subscriber requests the FiOS<sup>SM</sup> voice, data, and/or video services that are available over the FTTP network, fiber drop wire is run to the subscriber's home. There are 9,053 households within the City of Peekskill that could potentially be served with fiber drops.<sup>2</sup> In terms of the potential environmental impact of drop placement activities, the fiber drops that are associated with FTTP do not differ in any significant respect from the copper drops that Verizon routinely installs, maintains and on occasion replaces in connection with its current services. Moreover, fiber drops will be deployed to customers who request other FiOS services even if such customers do not elect to purchase FiOS video.

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<sup>2</sup> In general, Verizon's outside plant may include both aerial and underground facilities. Some of the work related to the extension of FTTP facilities and the placement of drops may therefore be underground.



USN	Class.	BF	Street Address/Location/Bldg. Name	Deter.	NR Ref. No.	SR Date	NR Date	NHL Date
11945.000072								
11945.000142								
11945.000069								
11945.000073								
11945.000002								
11945.000070								
11945.000092								
11945.000141								
11945.000071								
11945.000003			UNASSIGNED NUMBER					
11945.000100			-					
11945.000080			-					
11945.000112			-					
11945.000005	A		BASEMENT/ CELLAR					
11945.000529	B		BUILDING 84 CAMP SMITH:					
11945.000094			EPISCOPAL DIOCESE CHAPEL CONVENT MT. ST. GABRIEL OFF JOHNSON ST					
11945.000006	A		FOOTING FOR A DAM OR BRIDGE					
11945.000539	A		FORT HILL REVOLUTIONARY WAR SITE	Undetermined				
11945.000475	B		HUDSON VALLEY HOSPITAL CENTER RTE 202	Not Eligible				
11945.000008	A		JONES HILL SITE					

11945.000093			MONTEERDE RESTAURANT RTE. 6/202 SOUTHWEST SD; 1/2 MILE WEST OF CAMP SMITH ACCESS RD					
11945.000431			MOUNT SAINT FRANCIS / SAINT JOSEPH'S HOME HISTORIC DISTRICT					
11945.000426			PEEKSKILL HAT MANUFACTURING COMPANY HISTORIC COMPLEX					
11945.000007	A		SACHUS OR SACKHURS					
11945.000004	A		STONE WALL					
11945.000009	A		VILLAGE FORT					
11945.000551			Fort Hill-Nelson Ave. H.D.	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000540			Peekskill Downtown Historic District	Historic District	03NR05123	9/18/2003	5/6/2004	
11945.000541			1 Bank St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000544			10 Bank St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000545			13 Bank St Center Diner	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000546			14 Bank St F.W. Woolworth Store (former)	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000669	B		16 Bank St Westchester County National Bank	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000547			17-21 Bank St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000542			2 Bank St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000033			55 BANK ST GAS STATION	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000543			9 Bank St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	

11945.000140		110 BAY ST JAMISON RES					
11945.000051		31 BAY ST					
11945.000536		BEAR MOUNTAIN PKWY BEAR MOUNTAIN PKWY BETWEEN ROUTE 9 AND 35/202	Not Eligible				
11945.000442	B	1006-101 BROWN ST PARAMOUNT Theater	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000548	B	1007-101 Brown St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000549		1013 Brown St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000477	B	1016-102 BROWN ST	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000550		1023 Brown St NY Telephone	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000143	B	1038 BROWN ST PEEKSKILL ELKS LODGE #744	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000509	B	CENTRAL AVE RAILROAD ST PEEKSKILL FREIGHT STATION					
11945.000144	B	411 CENTRAL AVE ARCO SCRAP IRON & METAL COMPANY	Individually Eligible				
11945.000102		424 CENTRAL AVE YASCO INDUSTRY					
11945.000493	B	425-427 CENTRAL AVE					
11945.000103		444 CENTRAL AVE WALTER G, LEDGGE CO.					
11945.000145	B	638 CENTRAL AVE MACKELLAR MILL BUILDING	Individually Eligible				
11945.000146	B	650 CENTRAL AVE ABLE FLOURS, INC.	Individually Eligible				
11945.000104		800 CENTRAL AVE CONSOLIDATED EDISON COMPANY OF NY SUB STATION					
11945.000148		904 CENTRAL AVE CONWAY RESIDENCE					
11945.000474		926 CENTRAL AVE					
11945.000670	B	929-931 Central Ave Commercial	Listed	03NR05123	9/18/2003	5/6/2004	

11945.000671	B		933-935 Central Ave Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000147			939 CENTRAL AVE CLUB TIKI	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000105			CHARLES POINT AVE STANDARD BRANDS, INC. VINEGAR PLANT					
11945.000106			CONGRESS AVE GIUSTI RESIDENCE WEST SD					
11945.000562	B		900 Constant Ave John Conklin House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000050	B		908 CONSTANT AVE KILEY RES	Individually Eligible				
11945.000150			918 CONSTANT AVE CLEBA RES					
11945.000151			921 CONSTANT AVE PASQUALE RESIDENCE					
11945.000152			945-947 CONSTANT AVE INGERSOLL RESIDENCE					
11945.000153			1023 CORTLAND ST DORSEY RESIDENCE					
11945.000534	B		1701 CROMPOUND RD VILLA AT THE WOODS					
11945.000616			115 decatur ave	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000616			115 decatur ave	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000617			117 decatur ave	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000553	B		209 Decatur Ave Daniel F. Odell House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000554	B		215 Decatur Ave the Misses Paulding House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000555	B		223 Decatur Ave James R. Lee House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000556	B		300 Decatur Ave Albert C. Sloat House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000557	B		301 Decatur Ave Robert S. Lickley House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000558	B		303 Decatur Ave Horton-Losee House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000559	B		304 Decatur Ave	Listed	05NR05459	9/19/2005	5/4/2006	

11945.000560	B		305 Decatur Ave Heleker-Valentine House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000561	B		307 Decatur Ave Covert House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000618	S		309 Decatur Ave vacant lot	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000615	B		219 Decatur St John Towart House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000107			DELANEY AVE  1ST HUNGARIAN CHURCH OF AMERICA SOUTH SD					
11945.000157			DEPEW ST SHAW RESIDENCE					
11945.000010	B		130 DEPEW ST ARJANI RESIDENCE	Individually Eligible				
11945.000015	B		135 DEPEW ST FEDERICO RES	Individually Eligible				
11945.000016			139 DEPEW ST BERGMANN RES ==					
11945.000011	B		146 DEPEW ST SCHRAGIS RES	Individually Eligible				
11945.000012			148 DEPEW ST PICARELLO RES					
11945.000156			149 DEPEW ST MCMAHON RESIDENCE					
11945.000017			163 DEPEW ST RYAN RES					
11945.000018	B		167 DEPEW ST SHAW RES	Individually Eligible				
11945.000019	B		173 DEPEW ST KENNEDY RES	Individually Eligible				
11945.000020	B		175 DEPEW ST FOLBERTH RES	Individually Eligible				
11945.000013			176 DEPEW ST TRAVIS RES					
11945.000014	B		200 DEPEW ST RITORNATO RES	Individually Eligible				

11945.000158		213 DEPEW ST WOOD RESIDENCE					
11945.000159		221 DEPEW ST LANGBERG RESIDENCE					
11945.000160		225 DEPEW ST WEITZMAN RES					
11945.000161		229 DEPEW ST PORTEE RES					
11945.000162		305 DEPEW ST ARCADIO & LEYDA RESIDENCE					
11945.000155	B	310 DEPEW ST PRTRANE RESIDENCE	Individually Eligible				
11945.000163		313 DEPEW ST QUAS-RESIDENCE					
11945.000619	S	924 Diven St vacant lot	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000164	B	929 DIVEN ST John A. Seale House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000620	S	930 Diven St Thomas G. Powers House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000621	B	931 Diven St Mrs. S. E. Terbush House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000165		935-937 DIVEN ST  LEVI GOLDEN (CORNICE INSCRIPTION)	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000563	B	936 Diven St William Montrose House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000622	B	939 Diven St John B. Spock House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000166		943 DIVEN ST GILMORE RESIDENCE	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000623	S	944 Diven St vacant lot	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000564	B	946 Diven St Mrs. Royce House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000624	B	947 Diven St	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000625	B	950 Diven St The White House	Historic District	05NR05459	9/19/2005	5/4/2006	
11945.000626	B	951 Diven St Reiner House	Listed	05NR05459	9/19/2005	5/4/2006	

11945.000627	B		953 Diven St	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000565	B		954 Diven St Alexander Elliot House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000628	B		956 Diven St Irving L. Ellis House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000629	B		959 Diven St Gallager House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000167			1 DIVISION ST JASMINE CAFE 1004 PARK ST					
11945.000168			3-7 DIVISION ST NORTH COUNTY RED QUARTERS					
11945.000089			408 DYCKMAN ST REBELE RESIDENCE					
11945.000444			EAST MAIN ST BEECHER-MCFADDEN ESTATE	Listed	90NR02498	9/28/1987	11/2/1987	
11945.000109	B		1031 ELM ST PEEKSKILL CITY SCHOOL DISTRICT ADMINISTRATIVE CONTR.	Individually Eligible	04NR05313	2/7/2006	4/12/2006	
11945.000208			1112 ELM ST HILTON RESIDENCE					
11945.000021			1116 ELM ST STRANG RES					
11945.000207	B		1116 ELM ST STRANG RESIDENCE	Individually Eligible				
11945.000211			1121 ELM ST CROOKSTON RES					
11945.000479	B		1122 ELM ST	Individually Eligible				
11945.000212	B		1215 ELM ST ROBILLARD RES	Individually Eligible				
11945.000213			1217 ELM ST KROPF RES					
11945.000110			1219 ELM ST SORICELLI RES					
11945.000154			122-124 ELM ST GODBEE RES					
11945.000209			1308 ELM ST WILLIES RES					
11945.000214			1311 ELM ST LUIGI RESIDENCE					

11945.000111	B		1426 ELM ST KARR RESIDENCE	Individually Eligible				
11945.000022			767 ELM ST GORDINEER RES					
11945.000205			768 ELM ST DONOVAN RESIDENCE					
11945.000210	B		911 ELM ST TRAVIS RES	Individually Eligible				
11945.000206			914 ELM ST VALENTE RESIDENCE					
11945.000672	B		201 Esther St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000673	B		911 First St Church of the Assumption Rectory	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000480	B		914-916 FIRST ST	Individually Eligible				
11945.000023	B		920 FIRST ST THE GUARDIAN ROMAN CATHOLIC ASSUMPTION CHURCH NORTH SD OFF UNION AVE	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000674	B		921 First St Lent House	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000675	B		925 First St Horton House	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000024			163 FREMONT ST CALABRESE RESIDENCE					
11945.000215			741-743 FROST AVE HERMANOWSKI RES					
11945.000419			1000 FROST LN					
11945.000417			932 GARFIELD AVE					
11945.000494	B		101 GROVE ST					
11945.000216			112 HADDEN ST PICKERT RES					
11945.000217			418 HIGHLAND AVE ROBERT MEYERSON & ELLEN RESIDENCE					
11945.000481	B		516 HIGHLAND AVE	Individually Eligible				
11945.000221	B		1001 HOWARD ST FROST MEMORIAL PARISH HOUSE (ST. PETER'S EPISCOPAL CHURCH)	Individually Eligible				



11945.000227			1028 HOWARD ST MOCERIN RES					
11945.000472			1131 HOWARD ST					
11945.000224			1137 HOWARD ST MOSHIER RESIDENCE					
11945.000222			1138-1140 HOWARD ST GARCIA RESIDENCE					
11945.000223			1214 HOWARD ST CHUNG RES					
11945.000225	B		1215 HOWARD ST GILLON RESIDENCE	Individually Eligible				
11945.000226			1220 HOWARD ST SEKEL RESIDENCE					
11945.000501	B		118 HUDSON AVE					
11945.000500	B		120 HUDSON AVE					
11945.000429	B		125 HUDSON AVE, 306 SIMPSON PL	Individually Eligible				
11945.000229	B		144 HUDSON AVE ALGOZZINI RES	Individually Eligible				
11945.000230	B		147 HUDSON AVE ZIMMER RES	Individually Eligible				
11945.000231			153 HUDSON AVE BENKEN RESIDENCE					
11945.000232	B		163 HUDSON AVE GROVE ST. REALY CO.	Individually Eligible				
11945.000228			50 HUDSON AVE STANDARD HOUSE (CARBONES RESTAURANT)	Listed	00NR01615	4/5/2000	8/22/2000	
11945.000495	B		51 HUDSON AVE					
11945.000499	B		52 HUDSON AVE					
11945.000496	B		55 HUDSON AVE					
11945.000420			57 HUDSON AVE					
11945.000497	B		63-65 HUDSON AVE					
11945.000498	B		64 HUDSON AVE					
11945.000114			705 HUDSON AVE FIRST CHURCH OF CHRIST SCIENTIST					
11945.000025	B		714 HUDSON AVE LUTHERAN CHURCH	Individually Eligible				

11945.000448		JOHN ST ANGELO'S/SAINT ANDREW'S HOUSE- SAINT MARY'S EPISCOPAL COMPLEX BLDG #4; NORTH OF BELDEN ST	Listed	90NR03125			
11945.000451		JOHN ST CEMETERY-SAINT MARY'S EPISCOPAL COMPLEX #7	Listed	90NR03125			
11945.000445		JOHN ST DOMINIC'S HOUSE/HERMITAGE-SAINT MARY'S EPISCOPAL COMPLEX BLDG #1	Listed	90NR03125			
11945.000449		JOHN ST LAUNDRY-SAINT MARY'S EPISCOPAL COMPLEX BLDG #5	Listed	90NR03125			
11945.000452		JOHN ST SAINT BENEDICT'S RETREAT HOUSE- SAINT MARY'S EPISCOPAL COMPLE BLDG #8; NON-CONTRIBUTING	Listed	90NR03125			
11945.000450		JOHN ST SAINT GABRIEL'S HOUSE-SAINT MARY'S EPISCOPAL COMPLEX BLDG #6	Listed	90NR03125			
11945.000456		JOHN ST SAINT JOSEPH'S HOUSE-SAINT MARY'S EPISCOPAL COMPLEX BLDG #12	Listed	90NR03125			
11945.000454		JOHN ST SAINT MARY'S EPISCOPAL CHAPEL- SAINT MARY'S EPISCOPAL COMPLEX BLDG #10	Listed	90NR03125			
11945.000453	B	JOHN ST SAINT MARY'S EPISCOPAL SCHOOL- SAINT MARY'S EPISCOPAL COMPLEX BLDG #9	Listed	90NR03125			
11945.000455		JOHN ST SISTERS OF SAINT MARY CONVENT- SAINT MARY'S EPISCOPAL COMPLEX BLDG #11	Listed	90NR03125			

11945.000236			601 JOHN ST MUNROE RES					
11945.000566	B		822-824 John St George Boyce House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000567	B		825 John St Aray House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000630	B		826-828 John St	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000568	B		827 John St Arthur Esposito House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000237	B		830-832 JOHN ST Whikehart House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000569	B		831 John St George E. Hutchinson House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000631	B		833 John St	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000031	B		834 JOHN ST Sarah J. Travis House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000632	B		835 John St Alma Green Boarding house	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000238			915 LIBERTY ST KELLY RES					
11945.000239			937 LIBERTY ST GUTOWSKI RES					
11945.000240			1723 LINCOLN TERR PICANNO RES					
11945.000241			1738 LINCOLN TERR SMITH RES					
11945.000242	B		1366 LONGVIEW AVE LLOYD RESIDENCE	Individually Eligible				
11945.000243	B		1401 LONGVIEW AVE BABEHAK RES	Individually Eligible				
11945.000122			400 LOWER MAIN ST NORTH LOCKWOOD & TRAVIS INDUSTRY					
11945.000123	B		636 LOWER MAIN ST LINDROSS HOTEL/FREDERICK IRVING HOUSE	Individually Eligible				
11945.000487	B		660 LOWER MAIN ST	Individually Eligible				
11945.000489	B		LOWER SOUTH ST SOUTH ST LENT HOUSE	Individually Eligible				

11945.000684	B		1000 Main St Mandeville's Tavern	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000253			1008 MAIN ST COMMERCIAL	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000121			1014-1016 MAIN ST HAIR STYLING SALON/ PEEKSKILL SPORTS CENTER					
11945.000685	B		1020 Main St Westchester Lighting Co.	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000686	B		1022-24 Main St A & P	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000120			1028 MAIN ST PEEKSKILL FINANCIAL CENTER YWCA CONTIGUOUS STRUCTURE 00					
11945.000254	S		1028 MAIN ST PEEKSKILL FINANCIAL CENTER - demolished 2003	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000687	S		1036 Main St Pugsley Park	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000688	B		1037 Main St E. J. Tompkins Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000689	B		1040 Main St St. Paul's Methodist Church	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000690	B		1049 Main St Ulm Brothers Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000691	B		1106 Main St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000255	B		1112 MAIN ST CARHART RESIDENCE	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000256	B		1116 MAIN ST RESIDENCE	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000257			1122 MAIN ST  GUIDING EYES FOR BLIND RESIDENCE	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000258	B		1124 MAIN ST HALES RESIDENTIAL/ COMMERCIAL	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000259			1132 MAIN ST  HERBIN PROFESSIONAL/ RESIDENTIAL	Listed	03NR05123	9/18/2003	5/6/2004	

11945.000260			1134 MAIN ST HERBIN RES	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000692	B		1138 Main St Residence	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000261	B		1204 MAIN ST JONKE & DALY RES	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000262	B		1206 MAIN ST KELLER RESIDENCE	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000263	B		1214 MAIN ST RICHTER RES	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000264			1318 MAIN ST HALPER RES					
11945.000265			1322 MAIN ST MCLEAN RESIDENCE					
11945.000266			1328 MAIN ST CRESSETT RESIDENCE					
11945.000267			1332 MAIN ST SCUCCIMARRA RES					
11945.000268			1336 MAIN ST LASZLO & JEANNE RES					
11945.000269			1400 MAIN ST HOWARD RES					
11945.000486	B		1401 MAIN ST	Individually Eligible				
11945.000270			1404 MAIN ST STUFANO RES					
11945.000119			1405 MAIN ST RESIDENCE					
11945.000271			1418 MAIN ST ACHALA RES					
11945.000473			1425 MAIN ST					
11945.000289			1511 1/2 MAIN ST RES					
11945.000290			1513 MAIN ST RES					
11945.000115			660 MAIN ST CHAUNEY M. DEPEW HOUSES					
11945.000117	B		813 MAIN ST FIRST HEBREW CONGREGATION	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000116	B		824 MAIN ST FORMER--PEEKSKILL EVENING STAR	Listed	03NR05123	9/18/2003	5/6/2004	

11945.000001	B		828 MAIN ST PRIVATE RESIDENCE	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000676	B		829 Main St tenement	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000118	B		831 MAIN ST BIBLE WAY CHURCH	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000245	B		840 MAIN ST CITY HALL	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000246			900-902 MAIN ST CAPITOL GLASS-KURZBAL'S HARDWARE	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000485	B		902 MAIN ST	Individually Eligible				
			904-910 MAIN ST					
11945.000247			MAIN ST, MARKET PAPA JOES FRIED CHICKEN CLEMENTS CLEANER/TAILORS	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000248			916 MAIN ST FRED'S WESTCHESTER DAIRY	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000249	B		942-944 MAIN ST CRYPTIC LODGE #75, INTERNATIONAL ORDER OF OLD FELL	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000250	B		950 MAIN ST J.J. DORSEY APPLIANCES & VACUUM/T & D ELEC. CONTRACTING	Individually Eligible				
11945.000532	B		951 MAIN ST	Not Eligible				
11945.000677	B		960 Main St Dorsey Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000678	B		968-970 Main St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000679	B		979 Main St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000680	B		981-983 Main St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000681	B		982 Main St Jordon Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000251			986-990 MAIN ST CASDEN'S HARDWARE, NUNZIO'S TAILOR SHOP, PEEKSKILL 7TH DAY ADVENTI.	Listed	03NR05123	9/18/2003	5/6/2004	

11945.000682	B		987 Main St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000252			992 MAIN ST CENTER FOR SAFETY	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000683	B		994 Main St Koern's	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000461			MAPLE AVE BOILER HOUSE/LAUNDRY/MOUNT FLORENCE BLDG #5	Listed	91NR00040	12/30/1987		
11945.000467			MAPLE AVE  CARETAKER'S RES/MOUNT FLORENCE BLDG #11	Listed	91NR00040	12/30/1987		
11945.000463			MAPLE AVE CEMETERY/MOUNT FLORENCE #7	Listed	91NR00040	12/30/1987		
11945.000460	B		MAPLE AVE CHAPEL/MOUNT FLORENCE BLDG #4	Listed	91NR00040	12/30/1987		
11945.000457			MAPLE AVE DANIEL H CRAIG MANSION/MOUNT FLORENCE BLDG #1	Listed	91NR00040	12/30/1987		
11945.000459			MAPLE AVE EAST BUILDING/MOUNT FLORENCE BLDG #3	Listed	91NR00040	12/30/1987		
11945.000465			MAPLE AVE GYMNASIUM/MOUNT FLORENCE BLDG #9	Listed	91NR00040	12/30/1987		
11945.000466			MAPLE AVE JUNIORATE/MOUNT FLORENCE BLDG #10	Listed	91NR00040	12/30/1987		
11945.000462			MAPLE AVE LONG BUILDING/MOUNT FLORENCE BLDG #6	Listed	91NR00040	12/30/1987		
11945.000464			MAPLE AVE STABLE/GARAGE/MOUNT FLORENCE BLDG #8	Listed	91NR00040	12/30/1987		

11945.000458		MAPLE AVE WEST BUILDING/MOUNT FLORENCE BLDG #2	Listed	91NR00040	12/30/1987		
11945.000291		1204 MAPLE AVE UNDLY RES					
11945.000034	B	1282 MAPLE AVE WIGGINS RESIDENCE	Individually Eligible				
11945.000292		1501 MAPLE AVE CASSELLA RES					
11945.000124		1815 MAPLE AVE GARDINEER RES					
11945.000244		103 MCGUIRE AVE POLINSKY RESIDENCE					
11945.000423	B	1024 MCKINLEY ST SCHOOL	Individually Eligible				
11945.000418		936 MCKINLEY ST					
11945.000537		2 N WOODS END CIR	Not Eligible				
11945.000293	B	120 NASSAU PL MURPHY RES	Individually Eligible				
11945.000633	B	110 Nelson Ave					
11945.000634	B	114 Nelson Ave Hugh F. Reilly House					
11945.000035	B	116 NELSON AVE BARONE RES	Individually Eligible				
11945.000036	B	122 NELSON AVE CHANDRABALLI RES	Individually Eligible				
11945.000294		200 NELSON AVE GRUNBERGER RES					
11945.000298	B	205 NELSON AVE KELLY RES	Individually Eligible				
11945.000295		206 NELSON AVE LENT RES					
11945.000037	B	212 NELSON AVE GANELES RES	Individually Eligible				
11945.000635	B	217 Nelson Ave S. James Alterman House					
11945.000636	B	218 Nelson Ave Edward A. Hodgkins House					
11945.000637	B	219 Nelson Ave Irving L. and May C. Ellis House					



11945.000638	B		222 Nelson Ave Noxon-Horn House					
11945.000639	B		223 Nelson Ave Wade R. Van Steenberg House					
11945.000299	B		225 NELSON AVE RELCHER RES	Individually Eligible				
11945.000640	B		229 Nelson Ave John R. Boyd House					
11945.000296			230 NELSON AVE CARLSON RES					
11945.000641	B		300 Nelson Ave Joseph Hudson II House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000642	B		304 Nelson Ave James K. Apgar House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000643	B		305 Nelson Ave Joseph Hudson I House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000644	B		308 Nelson Ave Manser-McCutcheon House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000645	B		309 Nelson Ave Conklin House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000570	B		314-316 Nelson Ave Barmore House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000571	B		315 Nelson Ave	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000128	B		320 NELSON AVE BARHAM RESIDENCE	Individually Eligible				
11945.000646	B		320 Nelson Ave Grace Powers House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000647	B		321 Nelson Ave Whitney Travis House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000572	B		322 Nelson Ave Haws House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000573	B		325 Nelson Ave	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000648	B		326 Nelson Ave Thomas and Mary Etta Timmons House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000574	B		333 Nelson Ave Edward F. and Jessie D. Hill house	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000575	B		400 Nelson Ave Fred I. and Emma Gaylord Pugsley House	Listed	05NR05459	9/19/2005	5/4/2006	

11945.000576	B		404 Nelson Ave William Silleck House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000577	B		408 Nelson Ave Leon Kornfeld House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000578	B		413 Nelson Ave Charles W. and Catherine Ellison house	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000649	B		415 Nelson Ave Isaac Reynolds House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000650	B		416 Nelson Ave Mrs. Minnie Cunningham House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000651	B		419 Nelson Ave	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000579	B		420 Nelson Ave Stephen Leardi house	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000652	B		421 Nelson Ave	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000653	B		500 Nelson Ave Henry Dain House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000580	B		504 Nelson Ave John A. Barnard house	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000581	B		508 Nelson Ave Caroline Kurzhals House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000654	B		512 Nelson Ave Charles Miller House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000655	B		513 Nelson Ave Edgar Ruxton House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000582	B		514 Nelson Ave Ferris D. Oakley House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000300			515 NELSON AVE ROWE RES					
11945.000656	B		515 Nelson Ave Misses Beck House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000583	B		517-519 Nelson Ave Reynolds-Cole House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000297			520 NELSON AVE CARLSON RES					
11945.000657	B		520 Nelson Ave Edward Mansbach House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000584	B		523 Nelson Ave William Silleck House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000585	B		526 Nelson Ave Eugene B. Hill House	Listed	05NR05459	9/19/2005	5/4/2006	

11945.000586	B		601 Nelson Ave Mary Rixon House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000587	B		602 Nelson Ave Clarence J. Lent house	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000588	B		604 Nelson Ave William Callan House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000658	B		605 Nelson Ave Henry G. Abele House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000659	B		608 Nelson Ave Mary Miller House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000589	B		612 Nelson Ave Myle J. Holley house	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000590	B		615 Nelson Ave Charles H. and Martha Dayton House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000591	B		617 Nelson Ave Otto Vogt House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000592	B		620 Nelson Ave William H. Wildey House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000301	B		621 NELSON AVE ZEOLI RES	Individually Eligible				
11945.000660	B		621 Nelson Ave Caroline Kay House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000593	B		628 Nelson Ave house foundation	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000594	B		701 Nelson Ave Jacob A. Kurzhals House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000595	B		705 Nelson Ave William and Kittie Holdren House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000596	B		709 Nelson Ave Sela Ferris House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000597	B		712 Nelson Ave Otto C. Wasserscheid House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000598	B		713 Nelson Ave	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000599	B		714 Nelson Ave Louis Seger House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000425			11 NORTH BROAD ST COMMERCIAL					

11945.000428			NORTH DIVISION ST BLDG #5 PEEKSKILL HAT MANUFACTURING COMPANY HISTORIC COMPLEX WESTERLY SIDE; CENTER OF COMPLEX AT FORK WITH LOCKWOOD ST					
11945.000478	B		NORTH DIVISION ST FIRST HUNGARIAN CHURCH OF AMERICA	Individually Eligible				
11945.000693	S		North Division St Jan Peek Square Park	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000694	B		1 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000186			100 NORTH DIVISION ST DAVID M. WALD REAL ESTATE					
11945.000427			1000 NORTH DIVISION ST BLDG #8 PEEKSKILL HAT MANUFACTURING COMPANY HISTORIC COMPLEX EAST SIDE OF LOCKWOOD ST					
11945.000710	B		1006-10 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000711	B		1019 North Division St Bank	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000712	B		1027 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000713	B		1038 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000708	B		105-111 North Division St Eagle Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000709	B		108 North Division St Sutton Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000699	B		11 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000187			112-116 NORTH DIVISION ST A-1 RESTAURANT/MARTINA SHOE REPAIR/DIS & DAT RECORDS	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000173	B		113-117 NORTH DIVISION ST COMMERCIAL	Listed	03NR05123	9/18/2003	5/6/2004	

11945.000188		118 NORTH DIVISION ST COMMERCIAL	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000174		119 NORTH DIVISION ST PEEKSKILL BEDDING COMPANY	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000184		12 NORTH DIVISION ST JACK'S LEATHER AND LUGGAGE	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000175		121 NORTH DIVISION ST EAGLE BUILDING	Listed				
11945.000189	B	122-124 NORTH DIVISION ST RESIDENTIAL	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000170		13-17 NORTH DIVISION ST  KEVIN'S POT POURRO VARIETY STORE	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000176	B	137 NORTH DIVISION ST ST. PETER'S EPISCOPAL CHURCH	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000176	B	137 NORTH DIVISION ST ST. PETER'S EPISCOPAL CHURCH	Listed	02NR05014	4/15/2003	7/5/2003	
11945.000190		150-154 NORTH DIVISION ST COMMERCIAL	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000700	B	19 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000701	B	20 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000191		212 NORTH DIVISION ST COMMERCIAL					
11945.000702	B	22 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000703	B	25 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000704	B	26-28 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000183		29 NORTH DIVISION ST JOB SERVICEW--NYS DEPARTMENT OF LABOR	Listed				
11945.000695	B	3-7 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000177		317 NORTH DIVISION ST SAMPSON RESIDENCE	Listed				
11945.000705	B	32 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	

11945.000178		321 NORTH DIVISION ST DEGROFF RES	Listed				
11945.000185		36 NORTH DIVISION ST RUBENFEIDA CLOTHING STORE	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000171	B	37-39 NORTH DIVISION ST CHASE NATIONAL BANK OF WESTCHESTER	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000706	B	38 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000696	B	4 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000172	B	41-47 NORTH DIVISION ST HOWLAND DEPARTMENT STORES	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000192		416 NORTH DIVISION ST DIREGGI RES					
11945.000707	B	42 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000179		431 NORTH DIVISION ST DEATING RES	Listed				
11945.000193		510 NORTH DIVISION ST BENE RESIDENCE					
11945.000194		514 NORTH DIVISION ST FONTENOT RESIDENCE					
11945.000180		517 NORTH DIVISION ST BURNS RES	Listed				
11945.000195		518 NORTH DIVISION ST BOSTIC RES					
11945.000470		526 NORTH DIVISION ST					
11945.000697	B	6 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000196	B	626 NORTH DIVISION ST BURKE RESIDENCE	Individually Eligible				
11945.000181		695 NORTH DIVISION ST DUDA RESIDENCE	Listed				
11945.000197	B	710 NORTH DIVISION ST COLLABOTTA RES	Individually Eligible				
11945.000698	B	8 North Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000169	B	9 NORTH DIVISION ST NEW CHINA RESTAURANT	Individually Eligible				

11945.000182			935 NORTH DIVISION ST RODAK RES	Listed				
11945.000218			312-314 NORTH HIGHLAND AVE GRAHAM COMMERCIAL/ RES					
11945.000219			412 NORTH HIGHLAND AVE ALEXANDER & HELEN WATERS RES					
11945.000220			516 NORTH HIGHLAND AVE SNIFFEN RES					
11945.000233			218 NORTH JAMES ST JAM-COR REALTY CORP.					
11945.000234			225 NORTH JAMES ST RES					
11945.000026			303 NORTH JAMES ST J.J. DORSEY INC. FUNERAL HOME					
11945.000482	B		313 NORTH JAMES ST	Individually Eligible				
11945.000027			313 NORTH JAMES ST FUNERAL HOME					
11945.000483	B		319 NORTH JAMES ST	Individually Eligible				
11945.000028			319 NORTH JAMES ST CURRY FUNERAL HOME					
11945.000484	B		325 NORTH JAMES ST	Individually Eligible				
11945.000029			325 NORTH JAMES ST CURRY RESIDENCE					
11945.000030			418 NORTH JAMES ST CAPOSELLA RES					
11945.000235			517 NORTH JAMES ST EVERITT RESIDENCE					
11945.000422			NORTH WATER ST INDUSTRIAL SOUTHWEST SIDE; ABOUT 150 FT NORTH OF MAIN ST					
11945.000491	B		NORTH WATER ST SECTION 13 BLOCK 1 LOT 2	Individually Eligible				
11945.000503	B		12 NORTH WATER ST					
11945.000504	B		2-8 NORTH WATER ST					
11945.000312	B		1100 ORCHARD ST I.O. CURRY FUNERAL	Individually Eligible				
11945.000041			1104 ORCHARD ST VALENTE RES					

11945.000313			1106 ORCHARD ST ST. WILLIS RESIDENCE					
11945.000319			1111 ORCHARD ST LEE RESIDENCE					
11945.000042			1112 ORCHARD ST SEARLES RES					
11945.000320			1115 ORCHARD ST DALIKE RES					
11945.000321	B		1117 ORCHARD ST GERWIG RES	Individually Eligible				
11945.000322			1127 ORCHARD ST GREENE RES					
11945.000323			1133 ORCHARD ST COX RES					
11945.000600	B		850 Orchard St Edgar Post House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000601	B		857-859 Orchard St Brill-Finger House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000602	B		860 Orchard St Charles H. Taylor House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000302			900 ORCHARD ST DESMONE RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000303			906 ORCHARD ST BURRETT RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000304			912 ORCHARD ST SILVERSTEIN RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000305			914 ORCHARD ST SURAK RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000306	B		920 ORCHARD ST CALVIN RES	Individually Eligible	05NR05459	9/19/2005	5/4/2006	
11945.000314	B		921 ORCHARD ST PICCOLI RES	Individually Eligible	05NR05459	9/19/2005	5/4/2006	
11945.000603	B		924 Orchard St James Adams House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000315			925 ORCHARD ST SCIVOLETTO RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000604	B		928 Orchard St William A. Sipperly House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000605	B		932 Orchard St Charles B. And Sarah Searles House	Listed	05NR05459	9/19/2005	5/4/2006	



11945.000038		935 ORCHARD ST BELMONTE RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000307		936 ORCHARD ST COLLINS RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000316	B	937-939 ORCHARD ST Eugene B. Hill House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000308		940 ORCHARD ST HICKEY RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000039	B	943 ORCHARD ST CONNOLY RES	Individually Eligible	05NR05459	9/19/2005	5/4/2006	
11945.000309		944 ORCHARD ST BRIDGE RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000040	B	947 ORCHARD ST CSONTOS RES	Individually Eligible	05NR05459	9/19/2005	5/4/2006	
11945.000310		948 ORCHARD ST CARRASQUILIE RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000317		951 ORCHARD ST KORNFELD RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000311		952 ORCHARD ST BERRY RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000318		955 ORCHARD ST HITNEY RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000606	B	956 Orchard St Henry Van Wart House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000607	B	957 Orchard St	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000608	B	960 Orchard St Charles Kimball House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000609	B	963 Orchard St Mrs. Alonzo B. Pollock House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000533	B	150 OVERLOOK AVE	Not Eligible				
11945.000421		1218 PARK AVE CHURCH					
11945.000332	B	PARK ST PARK ST SCHOOL	Individually Eligible				
11945.000324	B	1001-100 PARK ST BALLARD BUILDING	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000325	B	1007-101 PARK ST DIAMOND ALICE'S SPECIALTY SHOP/ ARNOLD'S FURNITURE	Listed	03NR05123	9/18/2003	5/6/2004	

11945.000330			1012 PARK ST NICKERSON RES	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000326			1013-1015 PARK ST HANSEN'S FABRIC STORE/HOULIHAN/LAWRENCE INC.	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000327			1017 PARK ST THE ELENOR	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000488	B		1218 PARK ST	Individually Eligible				
11945.000125			1226 PARK ST AFRICAN METHODIST EPISCOPAL ZION CHURCH					
11945.000328			1405 PARK ST CIBALE RES					
11945.000329			1413 PARK ST BUT SHU LOUIE & MUI MAY RES	Individually Eligible				
11945.000331			1420 PARK ST MCCRAE RES					
11945.000272			1422 PARK ST MIREKU RES					
11945.000471			1424 PARK ST					
11945.000333			1620-1638 PARK ST BELLUSCI & RUSSO RES					
11945.000610	B		822 Paulding St Louis P. Goldschlag House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000611	B		824 Paulding St Stephen and Mary Lines House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000661	B		850 Paulding St Elizabeth Kavanaugh House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000043			853 PAULDING ST RESIDENCE	Individually Eligible	05NR05459	9/19/2005	5/4/2006	
11945.000662	B		856 Paulding St Samuel Wessells House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000663	B		857 Paulding St Fred Huebner House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000664	B		858 Paulding St Thomas and Julia Duane House	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000334			859 PAULDING ST ABBATE RES	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000665	B		864 Paulding St E. E. Young House	Listed	05NR05459	9/19/2005	5/4/2006	

11945.000046		910 PAULDING ST GALLO RESIDENCE	Listed	05NR05459	9/19/2005	5/4/2006	
11945.000044		913 PAULDING ST CHASE RESIDENCE	Individually Eligible	05NR05459	9/19/2005	5/4/2006	
11945.000047		914 PAULDING ST KINEMAN RESIDENCE	Individually Eligible				
11945.000338		922-924 PAULDING ST DASHNAW RES					
11945.000045		927 PAULDING ST RASBECK RESIDENCE	Individually Eligible				
11945.000335		929 PAULDING ST GANS RES					
11945.000048		934 PAULDING ST APTS.					
11945.000339		934 PAULDING ST RES					
11945.000095		934 PAULDING ST STAR RES. INC. REAR					
11945.000336		935 PAULDING ST GARACO RES					
11945.000612	B	939 Paulding St Henry N. Foshay House					
11945.000340		944 PAULDING ST RES					
11945.000049		950 PAULDING ST WOLF RES	Individually Eligible				
11945.000666	B	953 Paulding St George Strang House (later Sherman)					
11945.000667	B	956 Paulding St Seymour House					
11945.000668	B	957 Paulding St					
11945.000341		958 PAULDING ST DEANE RES	Individually Eligible				
11945.000613	B	962 Paulding St George V. B. Frost House					
11945.000337		963 PAULDING ST WILLIAMS RES					
11945.000614	B	967 Paulding St St. John Croft House					

11945.000342			117 PINE ST JONES RES					
11945.000052			118 PINE ST WHITE RES					
11945.000343			119 PINE ST WILLIAMS RES					
11945.000344			123 PINE ST SIDORIK RES					
11945.000126			1025 PUGELEY PARK SCHWARTZ PROFESSIONAL OFFICE					
11945.000531	B		RAILROAD AVE PEEKSKILL RAILROAD STATION - HUDSON LINE WEST SIDE: AT HUDSON ST	Individually Eligible				
11945.000506	B		325 RAILROAD ST					
11945.000507	B		327 RAILROAD ST					
11945.000505	B		328 RAILROAD ST					
11945.000508	B		341 RAILROAD ST					
11945.000511	B		120 REQUA ST					
11945.000510	B		303 REQUA ST					
11945.000345			315 REQUA ST DEBENADICTIS RES					
11945.000346			934 REYNOLDS ST ADAMS RES					
11945.000347			634 RIDGE ST DEPEW RES					
11945.000348			653 RIDGE ST CLIFFORD RES					
11945.000443			RINGGOLD ST DRUM HILL HIGH SCHOOL	Listed	90NR02497	6/23/1980	12/31/1979	
11945.000349			100 RINGGOLD ST RES					
11945.000350			204 RINGGOLD ST LINE RES					
11945.000351			232 RINGGOLD ST ODONNELL RES					
11945.000355			233 RINGGOLD ST BARGE RES					
11945.000352			300 RINGGOLD ST POLITI RES					

11945.000353			304 RINGGOLD ST HENRILAS RES					
11945.000356			305 RINGGOLD ST RES					
11945.000354			308 RINGGOLD ST NACKE RES					
11945.000357			317 RINGGOLD ST DOLAN RES					
11945.000127			1420 RIVERVIEW AVE GRISCHKOWSKY RESIDENCE	Individually Eligible				
11945.000358			1430 RIVERVIEW AVE RILEY RES	Individually Eligible				
11945.000053			525 ROOSEVELT AVE GALLO RES					
11945.000447			SAINT MARY ST HOUSE-SAINT MARY'S EPISCOPAL COMPLEX WEST SIDE; SOUTH OF BELDEN ST' BLDG #3	Listed	90NR03125			
11945.000446			SAINT MARY ST RESIDENCE-SAINT MARY'S EPISCOPAL COMPLEX WEST SIDE; NORTH OF JOHN ST; BLDG #2	Listed	90NR03125			
11945.000359			212 SAINT MARYS AVE BEACH RES					
11945.000099			901 SECOND ST APARTMENT					
11945.000360			901 SECOND ST APOLLINO RES					
11945.000361			913 SECOND ST LEWIS RES					
11945.000362			920 SECOND ST MARTIN RES					
11945.000129			1223-1231 SEYMOUR LN NELSON HOUSE	Listed	01NR01774	6/5/2001	8/8/2001	
11945.000364			425 SIMPSON AVE RES					
11945.000366			524 SIMPSON AVE SHABERT RES					

11945.000054			310 SIMPSON PL SCARAVELLO RES					
11945.000363			345 SIMPSON PL BRICKHOUSE RES					
11945.000055			403 SIMPSON PL BAILEY RESIDENCE					
11945.000056			409 SIMPSON PL RESIDENCE					
11945.000057			413 SIMPSON PL MCGUIRE RES					
11945.000365			517-519 SIMPSON PL LAMONDO RES					
11945.000367			113 SMITH ST ALEXANDER RES					
11945.000130			120 SMITH ST CARRIAGE HOUSE RESIDENCE					
11945.000058			134 SMITH ST PHILLIPS RES					
11945.000368			151 SMITH ST BANKS RES					
11945.000059			203 SMITH ST RECTORY CARSTENS RES					
11945.000369			235 SMITH ST RES					
11945.000375			240 SMITH ST WILLIAMS RES					
11945.000376			310 SMITH ST GILCH RES					
11945.000370			313-315 SMITH ST RES					
11945.000060			332 SMITH ST RESIDENCE					
11945.000371			337 SMITH ST BARTHELMES RES					
11945.000372			345 SMITH ST FINNEGAN RES					
11945.000377			350 SMITH ST DOMINICK RES					
11945.000373			355-357 SMITH ST RISCO RES					

11945.000061		358 SMITH ST WOHLSTEIN RESIDENCE	Individually Eligible				
11945.000062		363-365 SMITH ST REUTER RES					
11945.000063		367 SMITH ST RESIDENCE					
11945.000131		400 SMITH ST COMMERCIAL/ RESIDENCE	Individually Eligible				
11945.000378		400 SMITH ST PURDY RES	Individually Eligible				
11945.000379		430 SMITH ST KING RES					
11945.000374		517 SMITH ST HINTER RES					
11945.000380		522 SMITH ST WARN RES					
11945.000734	B	1-3 South Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000740	B	101 South Division St Flatiron Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000204	B	104-108 SOUTH DIVISION ST RILEY BLDG. EDWARD'S SCHOOL COURTESY BARBER	Individually Eligible				
11945.000200	B	105 SOUTH DIVISION ST FLAT IRON BUILDING/JAMES DEMPNEY BUILDING	Individually Eligible				
11945.000737	B	12 South Division St Clinton Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000203		1219 SOUTH DIVISION ST SWEAT RES					
11945.000108		13 SOUTH DIVISION ST RUBY'S INFANT TO TEEN	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000198		15-19 SOUTH DIVISION ST MCCRORY BUILDING	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000738	B	16 South Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000735	B	2 South Division St Bank	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000741	B	201 South Division St Shop	Listed	03NR05123	9/18/2003	5/6/2004	

11945.000742	B		209 South Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000743	B		211 South Division St Residence	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000744	B		216 South Division St Residence	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000739	B		23-27 South Division St Hermax Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000199			27 SOUTH DIVISION ST HERMAX BUILDING					
11945.000201	B		405 SOUTH DIVISION ST FRANCIS RESIDENCE	Individually Eligible				
11945.000202			417 SOUTH DIVISION ST HASKING RES					
11945.000736	B		8 South Division St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000436	B		SOUTH ST CHAPLIN'S HOUSE / PROVINCIALATE - BLDG #5 WEST; NORTH END OF COMPLEX; PRIVATE DRIVE; SOUTHEAST SIDE	Historic District				
11945.000434			SOUTH ST CONVENT / GIRLS' DORMITORIES AND CLASSROOMS WEST SIDE; JUST NORTH OF PRIVATE DRIVE FROM STREET	Historic District				
11945.000438	B		SOUTH ST FIRE STATION - BLDG #7 WEST SIDE; AT SOUTH OF PRIVATE DRIVE	Historic District				
11945.000432	B		SOUTH ST FORMER TOWNSEND ESTATE RESIDENCE - MT. SAINT FRANCIS ABOUT 575 FT WEST OF RD; ON RIVER; BETWEEN BAY & REQUA STS	Historic District				
11945.000440	B		SOUTH ST HEATING PLANT = BLDG #9 WEST SIDE; AT SOUTHWEST END OF SOUTH PRIVATE DRIVE	Historic District				



11945.000437	B		SOUTH ST INFIRMARY - TRADE SCHOOL BLDG #6 WEST SIDE; AT NORTHEAST CORNER OF PRIVATE DRIVEWAYS	Historic District				
11945.000441	B		SOUTH ST LAUNDRY - AUDITORIUM - BLDG #10 WEST SIDE; SOUTHWEST FROM SOUTH PRIVATE DRIVE	Historic District				
11945.000435	B		SOUTH ST NOVITIATE - BLDG #4 WEST / REAR WING OF BUILDING COMPLEX	Historic District				
11945.000439	B		SOUTH ST PRINT SHOP - BLDG #8 WEST SIDE; SET BACK FROM SOUTH PRIVATE DRIVEWAY	Historic District				
11945.000433	B		SOUTH ST SAINT MARGARET'S CHAPEL WEST SIDE; NORTH WING ADDITION TO MAIN HOUSE	Historic District				
11945.000384			10 SOUTH ST BROWN RES LOWER					
11945.000385			1029 SOUTH ST RES					
11945.000386			1057 SOUTH ST RES	Individually Eligible				
11945.000512	B		318 SOUTH ST					
11945.000513	B		322 SOUTH ST					
11945.000518	B		330 SOUTH ST					
11945.000519	B		342 SOUTH ST					
11945.000514	B		344 SOUTH ST					
11945.000515	B		400 SOUTH ST					
11945.000516	B		404 SOUTH ST					
11945.000517	B		415 SOUTH ST					
11945.000064			505 SOUTH ST MARKEVA EST. INC. 136 SMITH ST					

11945.000065			535 SOUTH ST RESIDENTIAL					
11945.000132			545 SOUTH ST PARKWAY PLAZA APARTMENTS					
			618 SOUTH ST					
11945.000068			RESIDENTIAL/PROFESSIONAL OFFICE					
11945.000066			705 SOUTH ST PEEKSKILL PRESBYTERIAN CHURCH	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000066			705 SOUTH ST PEEKSKILL PRESBYTERIAN CHURCH	Listed	02NR04921	10/2/2002	11/25/2002	
11945.000714	B		729 South St Residence	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000067			735 SOUTH ST BARBARA'S DRESS MAKING AND MILLINERY SHOP	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000381			738 SOUTH ST US POST OFFICE	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000381			738 SOUTH ST US POST OFFICE	Listed	90NR02500	5/11/1989	5/11/1989	
11945.000715	B		739 South St Residence	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000716	B		747 South St Miller Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000717	B		800 South St Artlofts	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000718	B		804 South St Murden Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000382			810-812 SOUTH ST RES/COM	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000719	B		812-818 South St Artlofts	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000720	B		824-830 South St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000133			832-834 SOUTH ST MCDERMOTT RES; CORNICE INSCRIPTION	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000721	B		900 South St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	

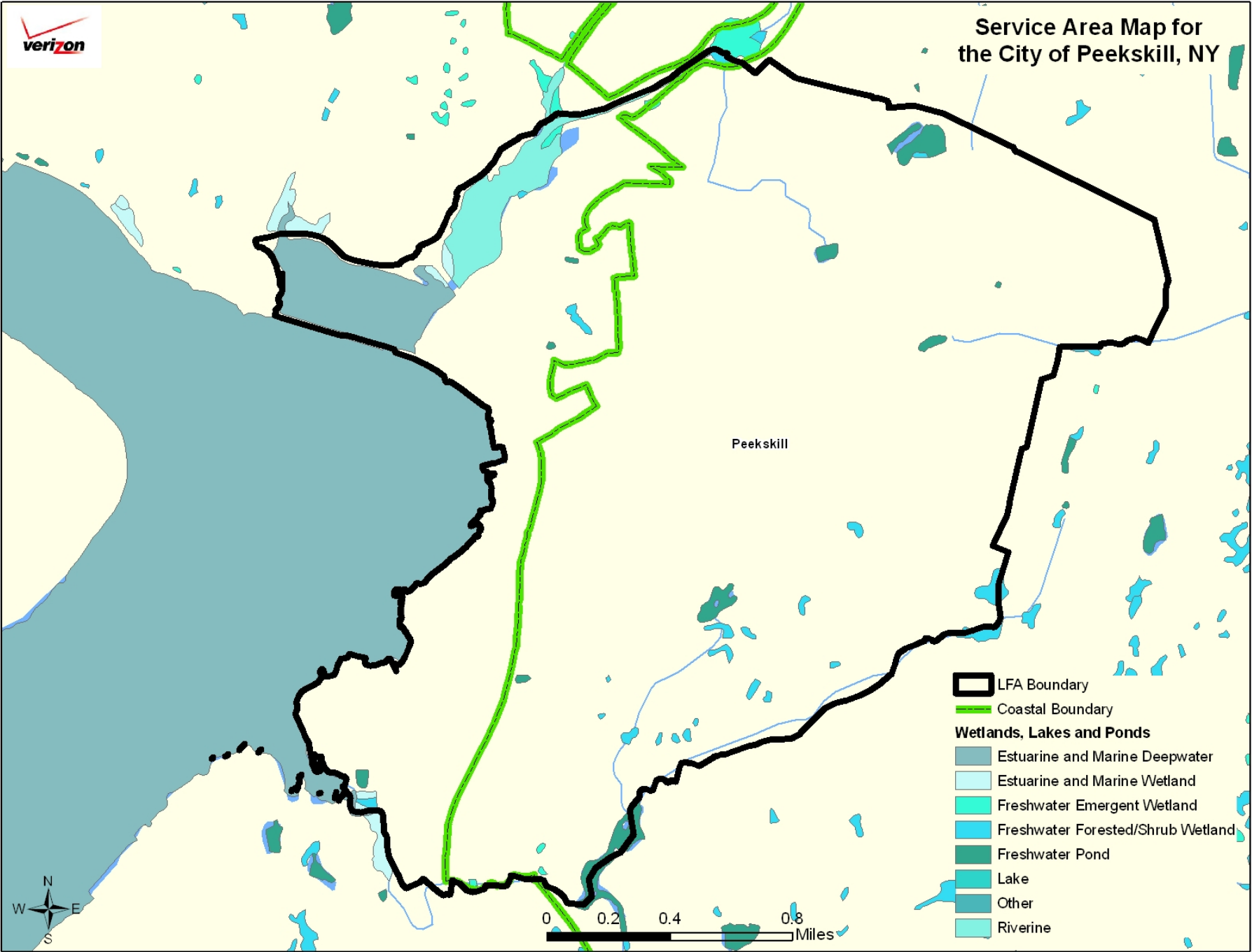
11945.000101			901 SOUTH ST 2ND PRESBYTERIAN CHURCH (FIELD-SMITH LIBRARY)	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000134			901 SOUTH ST THE WESTCHESTER SHOWPLACE; 2ND PRESBYTERIAN CHURCH	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000722	B		904 South St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000723	B		906 South St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000724	B		907 South St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000725	B		911 South St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000726	B		913 South St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000727	B		923 South St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000728	B		925 South St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000730	B		929 South St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000729	B		930 South St Lincoln Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000731	B		933 South St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000383			934-936 SOUTH ST WESSELLE BURDING	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000732	B		937 South St Riley Building	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000733	B		938 South St Commercial	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000424			1 SOUTH WATER ST FIRE COMPANY BUILDING	Individually Eligible				
11945.000523	B		18 SOUTH WATER ST					
11945.000524	B		24-26 SOUTH WATER ST					
11945.000521	B		37-39 SOUTH WATER ST					
11945.000535	B		41 SOUTH WATER ST ABRAHAM LINCOLN SPEECH SITE; FREIGHT DEPOT; HUDSON RV DV		01NR01773	11/3/2003	10/27/2004	

11945.000520	B		47-53 SOUTH WATER ST					
11945.000522	B		5 SOUTH WATER ST					
11945.000468			55 SOUTH WATER ST					
11945.000469			63 SOUTH WATER ST					
11945.000387			14 SOUTHARD AVE RES					
11945.000135			104 SPRING ST PRIVATE RESIDENCE					
11945.000388			124 SPRING ST ANDERSON RES					
11945.000745	B		108 Union Ave Residence	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000074	B		109 UNION AVE B.J. & N. HALPER RES	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000746	B		112 Union Ave Residence	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000096			121 UNION AVE PRIVATE RES					
11945.000077	B		124 UNION AVE Peekskill Museum	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000098			131 UNION AVE CHURCH OF THE ASSUMPTION RECTORY	Individually Eligible				
11945.000747	B		131 Union Ave Church of the Assumption	Listed	03NR05123	9/18/2003	5/6/2004	
11945.000078			136 UNION AVE JOHN MCCURTY RES/ PROFESSIONAL OFFICE	Individually Eligible				
11945.000097			140 UNION AVE PRIVATE RES					
11945.000490	B		150 UNION AVE	Individually Eligible				
11945.000390			155 UNION AVE CONKLIN RES					
11945.000391			177 UNION AVE RES N9					
11945.000395			192 UNION AVE RES					
11945.000079			200 UNION AVE GUY & MARY LOWE RES	Individually Eligible				

11945.000392			201 UNION AVE RE					
11945.000393			207 UNION AVE DEYO RES					
11945.000396			212 UNION AVE ENGEL RES					
11945.000397			216 UNION AVE GOLDBERG RES					
11945.000394			219 UNION AVE NIGGLE RES					
11945.000398			220 UNION AVE BALCH RES					
11945.000075			223 UNION AVE PERRY RES	Individually Eligible				
11945.000399			224 UNION AVE SPANGLER RES					
11945.000076			225 UNION AVE ANTHONY P. ORIENTALE RES	Individually Eligible				
11945.000400			228 UNION AVE MADDOCK RES					
11945.000402			242 UNION AVE DANDREAND RES					
11945.000403			304 UNION AVE DORSEY RES					
11945.000404			512 UNION AVE ROBINSON RES					
11945.000401			232 UNION ST LEE RES					
11945.000430			US 202 VILLA LORETTO NO MAP	Listed	90NR02499	12/30/1987	4/27/1989	
11945.000525			US 6 BIN 1-05438-0 OVER NY 9					
11945.000492	B		US 6 PUMP HOUSE CAMP SMITH	Individually Eligible				

11945.000091			US 6 US 202 OLD TOLL HOUSE FOR HIGHWAY NORTH EAST SIDE; 6/10 MI WEST OF CAMP SMITH ACCESS RD					
11945.000090			US 6 US 202 ORIGINAL PRIVATE TOLL ROAD  BETWEEN ANNSVILLE CREEK & BEAR MTN BRIDGE; ON HUDSON RIVER					
11945.000528			US 9 BIN 1-00512-0 OVER REQUA ST					
11945.000527			US 9 BIN 1-00513-0 OVER HUDSON RIVER					
11945.000526			US 9 BIN 1-00514-0 OVER CENTRAL AVE					
11945.000405			201 WALNUT ST MUZZALO RES					
11945.000081			209 WALNUT ST HOUSING AUTHORITY					
11945.000082			215 WALNUT ST HILL RES					
11945.000084			218 WALNUT ST HOWELL RESIDENCE					
11945.000083			221 WALNUT ST DWIGHT RESIDENCE					
11945.000085			222 WALNUT ST MABIE RES	Individually Eligible				
11945.000406			223 WALNUT ST RES					
11945.000407			227 WALNUT ST TOMPKINS RES					
11945.000408			304 WALNUT ST LOOKSON RES					
11945.000409			308 WALNUT ST FRIEDRICH RES					
11945.000410			314 WALNUT ST FINNIGAN RES					

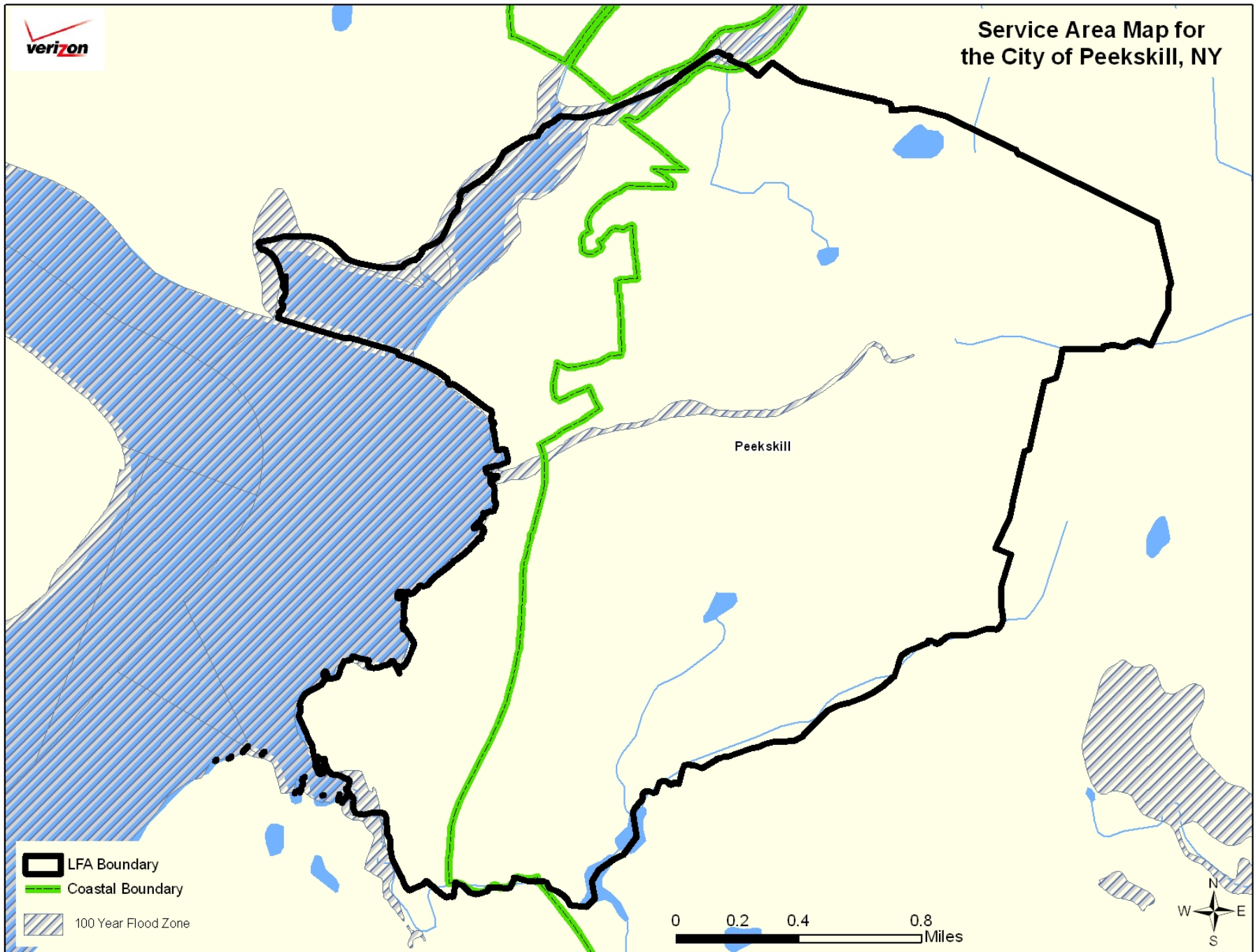
11945.000552	B		Washington St Peekskill Middle School	Not Eligible				
11945.000411			311 WASHINGTON ST GARCIA RES					
11945.000086			315 WASHINGTON ST SUAREZ RESIDENCE	Individually Eligible				
11945.000412			339 WASHINGTON ST GARCIA RES					
11945.000087			344 WASHINGTON ST COMMERCIAL FUNERAL HOME	Individually Eligible				
11945.000413			368 WASHINGTON ST FISHER RES					
11945.000136			832 WASHINGTON ST TOMASSIO RESIDENCE	Individually Eligible				
11945.000137	B		955 WASHINGTON ST PEEKSKILL ARMORY	Individually Eligible				
11945.000414			960 WASHINGTON ST AUGUSTOWSKI RES	Individually Eligible				
11945.000138			115 WATER ST HENDRICK'S ROUNDING CORP.	Individually Eligible				
11945.000139			200 WATER ST THOMAS F. PERNA AND OTHERS/ INDUSTRIAL					
11945.000538			114 WELLS ST	Not Eligible				
11945.000415			116 WELLS ST MITCHELL RES					
11945.000088			116 WELLS ST MITCHELL RES					
11945.000416			122 WELLS ST LUGONES RES					
11945.000502	B		634 WEST MAIN ST					







# Service Area Map for the City of Peekskill, NY





# Service Area Map for the City of Peekskill, NY



Designating Agency:	Critical Environmental Area	Recorded Date	Effective Date
Westchester, County of	Westchester County Airport 60Ldn Noise Contour	1-2-90	1-31-90
	Croton Point Park	1-2-90	1-31-90
	Byram Lake	1-2-90	1-31-90
	Tarrytown Lakes Reservoirs	1-2-90	1-31-90
	Long Island Sound	1-2-90	1-31-90
	County and State Park Lands	1-2-90	1-31-90
	Mianus River	1-2-90	1-31-90
	Mianus Gorge Preserve	1-2-90	1-31-90
	Indian Brook Reservoir	1-2-90	1-31-90
	Larchmont Reservoir & J.G. Johnson Jr. Conservancy	1-2-90	1-31-90
	Poncantico Lakes & Watershed Property	1-2-90	1-31-90
	Hudson River	1-2-90	1-31-90
	Peekskill Hollow Brook	1-2-90	1-31-90
	All Land 500' Peripheral to Amawalk Reservoir Boundary	1-2-90	1-31-90
	County Designated Watershed Properties	1-2-90	1-31-90