

ATTACHMENT D

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

1. 6/29/07 Correspondence from Verizon's outside counsel, Adrian Copiz of Alston & Bird LLP, to Village Mayor, Theodore Smith, enclosing Verizon's application for a cable television franchise
2. 7/27/07 Correspondence from Verizon's outside counsel, Adrian Copiz of Alston & Bird LLP, to Village Attorney, Peter Colgrove, enclosing sample notice of public hearing
3. 8/28/07 Correspondence from Verizon's outside counsel, Adrian Copiz of Alston & Bird LLP, to Village Mayor, Theodore Smith, enclosing Verizon's proposed franchise agreement
4. 9/5/07 Correspondence from Verizon's Senior Vice President, Monica Azare, to Village Mayor, Theodore Smith, regarding the September 10 public hearing and enclosing an information sheet outlining the benefits of Verizon FiOS TV service
5. 9/7/07 Correspondence from Verizon's outside counsel, Adrian Copiz of Alston & Bird LLP, to Village Attorney, Peter Colgrove, enclosing revised franchise agreement in clean and blackline formats
6. 9/20/07 Correspondence from Verizon's outside counsel, Adrian Copiz of Alston & Bird LLP, to Village Attorney, Peter Colgrove, enclosing certain PSC orders

Tab 1

ALSTON & BIRD LLP

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Washington, DC 20004-1404

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Adrian Copiz

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June 29, 2007

BY OVERNIGHT DELIVERY

Theodore B. Smith
Mayor
Village Hall
32 Frost Mill Road
Box 351
Village of Mill Neck, NY 11765

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

Dear Mayor Smith:

Pursuant to the requirements of 16 N.Y.C.R.R. Section 894.5, enclosed is the application of Verizon New York Inc. ("Verizon") to the Village of Mill Neck for a cable television franchise.

Verizon respectfully requests that the Village of Mill Neck grant Verizon a cable television franchise as negotiated with the Village and accordingly set a public hearing at the Village's earliest convenience.

Please contact Joan Elliston at 703-974-2836 or me at 202-756-3572 should you have any questions.

Sincerely,



Adrian Copiz

Cc: Peter Colgrove

Enclosure

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Fax: 404-881-7777

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Charlotte, NC 28280-4000
704-444-1000
Fax: 704-444-1111

90 Park Avenue
New York, NY 10016
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APPLICATION FOR A CABLE TELEVISION FRANCHISE
BY VERIZON NEW YORK INC.

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

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

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

In response to the information requested in subsection 1(c) and 1(d)(iii), Verizon NY does not currently plan to engage in origination cable casting.

In response to the information sought in subsection 1(d)(v), upon request of the Municipality, Verizon NY intends to provide capacity on its basic service tier for up to one (1) dedicated Public Access Channel, one (1) dedicated Educational Access Channel, and up to one (1) dedicated Government Access Channel.

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

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

- (3) The terms concerning rates and construction schedules.

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

Verizon NY has completed the construction of its fiber to the premises ("FTTP") network to approximately 85% of the households in the Municipality. A full discussion of the construction requirements and central office conversion requirements to bring FTTP and cable television service to the Municipality is contained in Exhibit 1.

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

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

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

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

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

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

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

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

Verizon NY was awarded cable television franchise by the following municipalities: (1) Village of Massapequa Park (Nassau County); (2) Village of Nyack (Rockland County); (3) Village of South Nyack (Rockland County); (4) Village of Upper Nyack (Rockland County); (5) Town of Hempstead (Nassau County); (6) Village of Cedarhurst (Nassau County); (7) Town of Oyster Bay (Nassau County); (8) Village of Laurel Hollow (Nassau County); (9) Village of Grand View-on-Hudson (Rockland County); (10) Village of Lynbrook (Nassau County); (11) Town of Clarkstown (Rockland County); (12) Village of Mineola (Nassau County); (13) Village of East Rockaway (Nassau County); (14) Town of Greenburgh (Westchester County); (15) Town of Smithtown (Suffolk County); (16) Village of Irvington (Westchester County); (17) Village of Valley Stream (Nassau County); (18) Town of Huntington (Suffolk County); (19) Village of Farmingdale (Nassau County); (20) Village of Ardsley (Westchester County); (21) Village of Freeport (Nassau County); (22) Village of Dobbs Ferry (Westchester County); (23) Village of Tarrytown (Westchester County); (24) Town of Eastchester (Westchester County); (25) Town of Mount Kisco (Westchester County); (26) Village of Elmsford (Westchester County); (27) Village of Port Chester (Westchester County); (28) Village of Tuckahoe (Westchester County); (29) Town of Orangetown (Rockland County); (30) Village of Piermont (Rockland County); (31) City of White Plains (Westchester County); (32) Village of Airmont (Rockland County); (33) Village of Williston Park (Nassau County); (34) Town of North Hempstead (Nassau County); (35) Village of Rye Brook (Westchester County); (36) Town of Haverstraw (Rockland County); (37) Village of New Hyde Park (Nassau County); (38) Village of West Haverstraw (Rockland County); (39) Town of North Castle (Westchester County); (40) Village of Chestnut Ridge (Rockland County); (41) Village of Bayville (Nassau County); (42) Town of Mount Pleasant (Westchester County); (43) Village of Sands Point (Nassau County); (44) Village of Old Field (Nassau County); (45) City of Mount Vernon (Westchester County); and, (46) Village of Spring Valley (Rockland County).

The NY PSC granted the following Orders and Certificates of Confirmation for Verizon NY's approved franchises: (1) Massapequa Park - December 14, 2005; (2) Nyack - February 8, 2006; (3) South Nyack - February 8, 2006; (4) Upper Nyack - May 18, 2006; (5) Hempstead - May 18, 2006; (6) Cedarhurst - June 22, 2006; (7) Oyster Bay - June 23, 2006; (8) Laurel Hollow - August 24, 2006; (9) Grand View-

on-Hudson – August 24, 2006; (10) Lynbrook – September 21, 2006; (11) Clarkstown – September 21, 2006; (12) Mineola – September 21, 2006; (13) East Rockaway – October 19, 2006; (14) Greenburgh – October 19, 2006; (15) Smithtown – November 10, 2006; (16) Irvington – November 10, 2006; (17) Valley Stream – November 10, 2006; (18) Huntington – November 10, 2006; (19) Farmingdale – November 10, 2006; (20) Ardsley – December 15, 2006; (21) Dobbs Ferry – December 15, 2006; (22) Freeport – December 15, 2006; (23) Tarrytown – December 15, 2006; (24) Eastchester – January 19, 2007; (25) Mount Kisco – January 19, 2007; (26) Elmsford – February 16, 2007; (27) Port Chester – March 23, 2007; (28) Tuckahoe – March 23, 2007; (29) Orangetown – April 20, 2007; (30) Piermont – April 20, 2007; (31) White Plains – May 17, 2007; (32) Airmont – May 17, 2007; (33) Williston Park – May 17, 2007; (34) Rye Brook – May 17, 2007; (35) North Hempstead – June 22, 2007; (36) Town of Haverstraw – June 22, 2007; (37) New Hyde Park – June 22, 2007; (38) West Haverstraw – June 22, 2007; (39) North Castle – June 22, 2007; (40) Chestnut Ridge – June 22, 2007; (41) Bayville – June 22, 2007; and, (42) Sands Point – June 22, 2007.

Furthermore, other subsidiaries of Verizon Communications Inc. were awarded cable television franchises by 807 franchising authorities in California, Delaware, Florida, Maryland, Massachusetts, New Jersey, Pennsylvania, Texas, and Virginia.

- (6) A statement indicating whether Verizon NY or any of its principals owns or operates any other cable television system, directly or indirectly, and a statement indicating the name of any such operations and the name and address of the chief executive officer of the franchising authority in which such system or station is located.

Verizon NY does not own or operate any other cable television system, directly or indirectly.

- (7) A documented plan for financing the proposed system, which plan shall indicate specifically every significant anticipated source of capital and any and all limitations or conditions with respect to the availability of the indicated sources of capital.

Verizon NY intends to finance the construction of the FTTP system and the provision of cable services over the FTTP system through a variety of internally and externally generated funds. Verizon NY is a financially stable company which has provided telecommunications services in New York State for more than a century. Its parent company, Verizon Communications Inc., is a Fortune 20 company, a Dow 30 Industrials company, and had 2006 revenues in excess of \$88 billion. A copy of The 2006 Form 10-K of Verizon Communications Inc. can be accessed via the following internet address:

http://investor.verizon.com/sec/sec_frame.aspx?FilingID=5002107

A copy of the Verizon Communications Inc. 2006 Annual Report to Shareholders can be accessed via the following internet address:

http://investor.verizon.com/financial/quarterly/pdf/06_annual_report.pdf

- (8) A statement indicating whether Verizon NY or any of its officers, directors and persons having a legal or equitable interest in 10% or more of the voting stock: (a) has ever been convicted of a crime involving moral turpitude (including criminal fraud) or is presently under indictment charging such a crime; (b) has ever been held liable by any court of competent jurisdiction in any civil action based on fraud, deceit or misrepresentation; or (c) has ever been punished or censured in any jurisdiction for any violation or attempted violation of any law, rule or order relating to cable television operations.

Verizon NY has no knowledge of any such finding of guilt toward Verizon NY, any person controlling Verizon NY, or any officer, director or major stockholder of Verizon NY.

PROPOSED SERVICE OVERVIEW, PRODUCT OFFERS AND ARCHITECTURE

- **Overview of Fiber to the Premises (FTTP) Deployment**
- **Service Overview**
 - **Product Offer**
 - **Service Delivery/Connection Method**
- **FTTP System Architecture**
 - **End-to-End Architecture**
 - **Wide Area Transport**

Overview of Fiber To The Premises (FTTP) Deployment

Fiber to the Premises (FTTP) is a key Verizon corporate initiative to provide voice, cable television and very high speed data services. FTTP uses fiber-optic cable and optical electronics to directly link homes and many businesses to the Verizon network. The fiber network being deployed can support cable television and, where appropriate, Verizon will seek to provide cable service to customers. Key objectives include, but are not limited to, the delivery of higher customer satisfaction, superior performance (network, applications & technical support), and an installation process that surpasses the Cable, DBS and DSL experience today.

- Verizon Communications companies began deploying FTTP in twelve states in 2004. Verizon passed six million homes with FTTP in sixteen states by the end of 2006.
- Cable television services deployment will be a subset that is ancillary to the voice and data FTTP services. Select FTTP-enabled wire centers will be deployed for cable service in the first instance.

Service Overview

The FTTP Network will enable provision of a feature rich and fully competitive cable television offering. The major components of the cable television services which Verizon will offer to consumers will include:

- Basic tier, including local and Educational and Government (EG) channels as requested by and as negotiated with the community
- Expanded Service tiers
- Premium channel tiers
- Pay Per View (PPV)
- HDTV channels
- Digital music channels

- **Digital Video Recorder (DVR)**
- **Interactive programming guide (IPG)**
- **Inside coax cable wire installation**

Product Offers

For residential customers, Verizon will initially offer Broadcast Television, High Definition TV (HDTV), Digital Video Recorders (DVR), Interactive Programming Guide (IPG) and Pay Per View (PPV) Movies and Events. The Broadcast Television offering will consist of both a Basic Service tier and an Expanded Service tier. The Basic Service tier will include local, educational/government (EG) channels and select cable channels. The Expanded Service tier will include all channels carried on the Basic Service tier as well as additional cable channels, premium cable channels, Spanish language channels, international channels, digital music channels, an interactive program guide (IPG), HDTV programming (for subscribers with an HD STB) and PPV programming. Customers will be charged a monthly recurring fee for each set top box (STB) based upon model. The customer will be offered the option to upgrade STBs to include support for HDTV, or a combined HD DVR STB for additional monthly fees.

In addition to organizing and informing the customer of the programming line-up, the system is designed from its outset to be an active two-way system for subscriber interaction, if any, required for the selection or use of cable service. The IPG will support on-screen program control, parental controls, timers, search, and ordering of PPV services. Pay Per View allows subscribers to pay for and watch prescheduled programming events on an on-demand basis. PPV movies or events will be selected from the IPG. Authorization for billing will occur at the time of purchase. Events begin at pre-scheduled intervals (i.e., programming is not immediately available). Customers will purchase PPV either as discrete events or in pre-defined packages.

Service Delivery/Connection Method

Connection Method

At initial deployment, an installation and maintenance (I&M) technician will connect the Optical Network Terminal (ONT) to a central point of demarcation where a cable television I&M technician will make final connections to provide the cable television service. After the installation of the ONT, a cable television field technician will test the existing in-home coaxial cable to determine if it is technically acceptable and will connect the service. If no coaxial cable exists or the coaxial cable is unacceptable, the technician will install wiring to the first cable outlet, and will install new coaxial wiring to other locations identified by the customer at the customer's request and expense. The customer may choose to self-install such wiring, or to obtain inside wiring installation service from a third party or Verizon.

Connection Method – Set Top Box

The technician will have a set top box that will need to be installed near the TV. The technician will connect a coaxial cable from the wall outlet to the set top and another coaxial cable from the set top box to the TV. The technician will also connect the customer's VCR and/or DVD device and check for proper operation. A fee may be charged for non-standard installations involving multiple components such as surround sound systems or other electronic equipment. This process will be followed for any boxes installed.

When a set top box is installed the technician will call the service center at which point certain services previously ordered by the customer will be activated. A remote command will be issued to the set top box in real time to turn the purchased service(s) on.

Connection Method: - PPV

The set top box provides access to the service. Customers will use their remote control to purchase the programming they desire. Purchases will appear on the monthly bill.

Equipment Changes and Re-Configurations

When a customer changes the in-home configuration (e.g., moving a set top box from one TV to another), the customer will be able to accomplish this change without reconfiguring the set top box.

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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

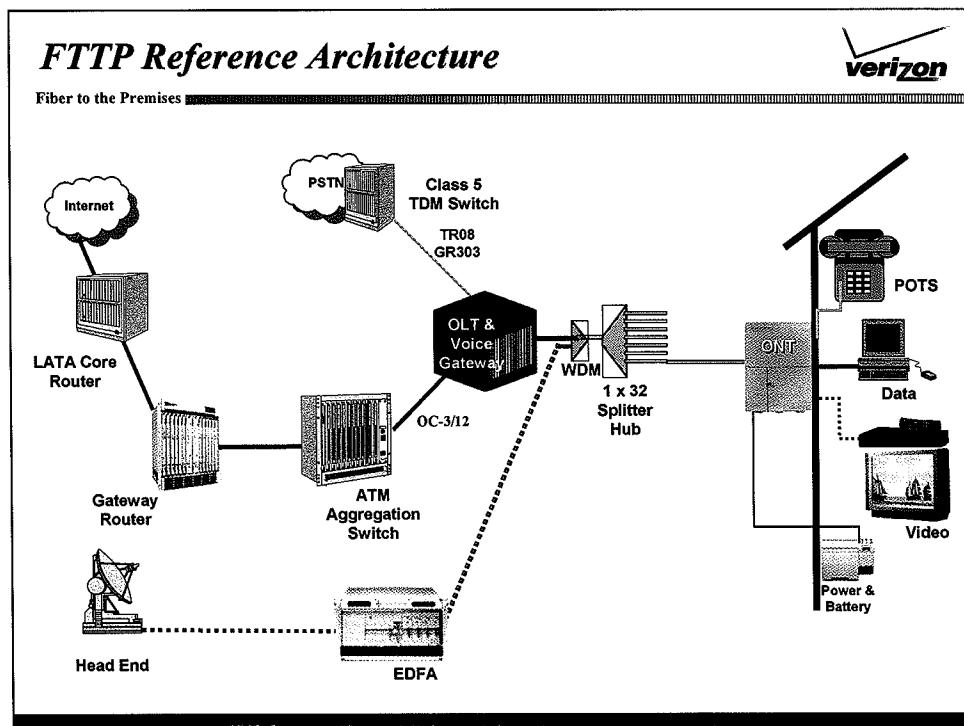
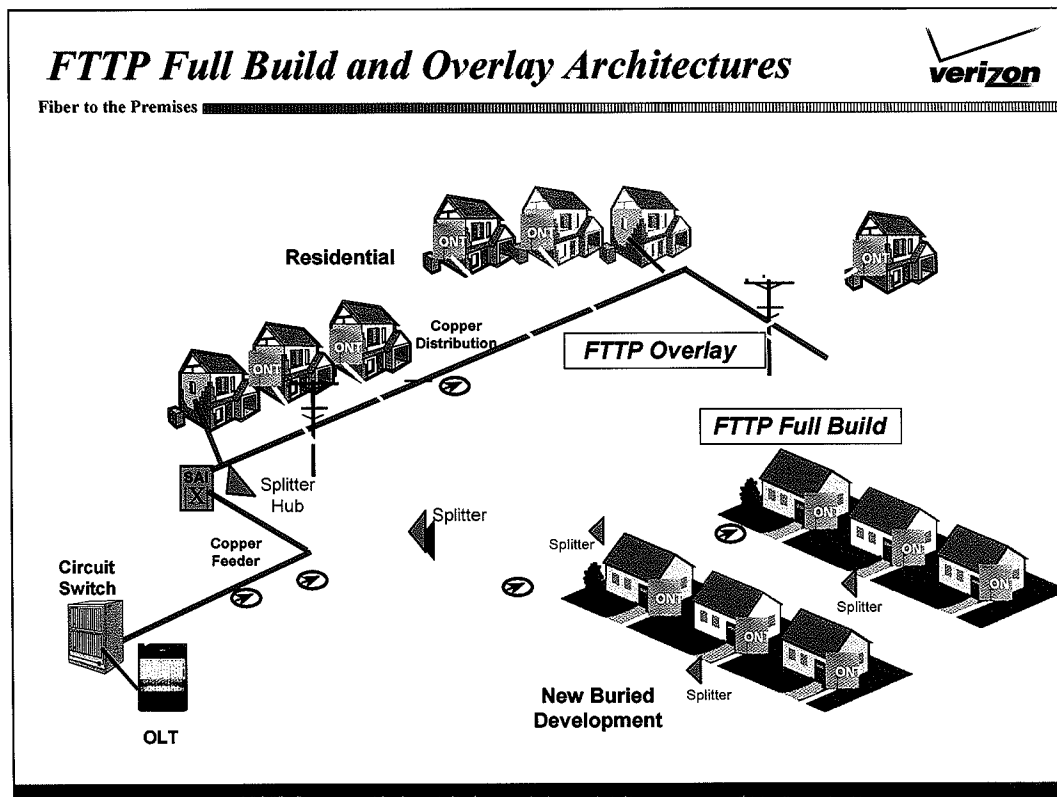


Figure 2-FTTP Full Build and Overlay Architectures



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).

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.

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).

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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LEGAL AUTHORITY TO CONSTRUCT FIBER TO THE PREMISES

Verizon New York Inc. ("Verizon"), as a common carrier under Title II of the Communications Act of 1934 (the "Act"), is constructing its Fiber To The Premises (FTTP) network as an upgrade to its existing telecommunications network. Verizon has the requisite authority to upgrade its network for enhanced voice and broadband services for the reasons discussed, in part, below.

Verizon has the necessary Federal, state and local authorizations to upgrade its Title II telecommunications network, subject to customary time, place and manner permitting requirements. Specifically, Section 27 of the New York Transportation Corporations Law ("New York Telecom Law") grants Verizon the right to place its facilities upon, over or under any public streets within the State of New York. See New York Tel. Co. v. Town of North Hempstead, 41 N.Y.2d 691, 363 N.E.2d 694 (1977); New York Tel. Co. v. City of Amsterdam, 613 N.Y.S.2d 993, 994 (App. Div. 1994) (stating that Section 27 grants "an unconditional privilege to install, maintain and repair" telephone facilities in public streets).

The Title II services to be provided over Verizon's FTTP network are not subject to Title VI of the Act or Article 11 of the New York State Public Service Law ("New York Cable Law"), which regulate cable television service. Verizon plans to utilize FTTP to offer its customers enhanced voice and broadband data services. While FTTP may give Verizon the future capability of providing video service, the network is not subject to Title VI of the Act or the New York Cable Law (including any construction requirements that may be set forth therein) unless and until the network constitutes a "cable system" as defined in Section 602(7) of the Act or a "cable television system" as defined in Section 212(2) of the New York Cable Law. This is triggered only when cable services, such as video programming, are provided to multiple subscribers within a community. As stated in Section 602(7) the Act, "the term 'cable system' ... does not include ... (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this Act, except ... to the extent that such facility is used in the transmission of video programming directly to subscribers...." (emphasis added) 47 U.S.C. § 522(7)(C). See Nat'l Cable Television Ass'n v. FCC, 33 F.3d 66 (D.C. Cir. 1994) (concluding that the FCC "reasonably interpreted the Act to require that an entity obtain a cable franchise only when that entity selects or provides the video programming to be offered.") Moreover, Section 621(b)(3) of the Act (47 U.S.C. § 541(b)(3)) further specifically prohibits franchising authorities from requiring cable franchises for the provision of telecommunications service or in any way restricting or impeding the provision of such service.

Verizon has the requisite authority as a common carrier under Title II of the Act and Section 27 of the NY Telecom Law to construct its FTTP network. It need not seek supplemental authority to construct the network. However, as provided in Title VI of the Act and the New York Cable Law, a cable franchise would be required prior to Verizon using the FTTP network to provide video programming to multiple subscribers in a local franchise area.

Furthermore, on June 15, 2005, the New York Public Service Commission ruled that Verizon does not need to obtain a cable franchise before constructing its FTTP network. The

Commission found that unlike cable companies, Verizon already has the necessary authority under state law to use the public rights-of-way. Thus, the Commission concluded that Verizon has the right to upgrade its telecommunications network to make it capable of providing cable service. See Declaratory Ruling on Verizon Communication, Inc.'s Built-Out of its Fiber to the Premises Network, NY Public Service Commission, Case 05-M-0520/05-M-0247, June 15, 2005.

EXHIBIT 2
APPLICATION FOR A CABLE TELEVISION FRANCHISE
VILLAGE OF MILL NECK/VERIZON NEW YORK INC.

VERIZON NEW YORK INC.

VERIZON FIOS TV – NEW YORK AREA CHANNEL LINEUP

NOTE: ALL INFORMATION PROVIDED
IS FOR THE NEW YORK AREA
AND IS SUBJECT TO CHANGE FOR THE MUNICIPALITY

HD	
HD Broadcast	
801 CW — WPXI HD	
802 CBS — WCBS HD	
803 PBS — WNET HD	
804 NBC — WNBC HD	
805 FOX — WNYW HD	
807 ABC — WABC HD	
809 My WWOR 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 Wealth 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 Cinemax 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-Rise
- 870 WLW 21
- 871 WLW Create
- 872 13 Kids
- 873 13 World

**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.

HD Local Plus VOD

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	
here!	
Karaoke Channel	
WWE 24-7	
Events	
Sports	
Uncensored	
En Español	
Adult	
Fios TV Help	

PUBLIC/EDUCATION/GOVERNMENT***	
Ardley	
37 Public Access	
Cedarhurst	
38 Public Access	
Clarks town	
37 Public Access	
Dobbs Ferry	
37 Public Access	
46 Government Access Channel	
47 Educational Access Channel	
Eastchester	
40 Eastchester Town Gov. Access 1	
East Rockaway	
38 Public Access	

Local Public/Education/Government

Elmsford	
37 Public Access	
Farmingdale	
38 Public Access	
Freeport	
38 Public Access	
Grandview on Hudson	
38 Public Access	
Greenburgh	
32 Government Access Channel	
34 Public Access Channel 1	
35 Government Access Channel 2	
37 Public Access Channel 2	
Hempstead	
38 Public Access	
Huntington	
38 Public Access	
Irvington	
37 Public Access	
Laurel Hollow	
38 Public Access	
Lynbrook	
32 Lynbrook Education	
33 Lynbrook Government 1	
34 Lynbrook Government 2	
38 Public Access	
Massapequa Park	
38 Public Access	
Mineola	
38 Public Access	
40 Mineola Education & Government Access	
Mount Kisco	
37 Public Access	
New Hyde Park	
38 Public Access	
Nyack	
37 Public Access	
Orangetown	
37 Public Access	
Oyster Bay	
38 Public Access	
Port Chester	
37 Public Access	
Scarsdale	
37 Public Access	
Smithtown	
27 Smithtown Government	
38 Public Access	
South Nyack	
37 Public Access	
Tarrytown	
37 Public Access	
Tuckahoe	
37 Public Access	
Upper Nyack	
37 Public Access	
Valley Stream	
38 Public Access	

5/07 VRZNIFFC0936
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Verizon FiOS TV New York Channel Lineup

EFFECTIVE MAY 2007

FIOS TV LOCAL

- 2 CBS — WCBS-TV 2
- 4 NBC — WNBC-TV 4
- 5 FOX — WNYW-TV 5
- 6 WRNN-TV 62
- 7 ABC — WABC-TV 7
- 8 Superstation — WGN-TV
- 9 My WWOR-TV 9
- 10 WLNY-TV 55
- 11 CW — WPIX-TV 11
- 12 Telemundo — WNUJ-TV 47
- 13 PBS — WNET-TV 13
- 17 WFTY-TV 67
- 18 WNBC-TV 63
- 21 PBS — WLW-TV 21
- 23 PBS — WNUN-TV 50
- 25 NYC-TV
- 29 PBS — WFME-TV 66
- 31 IQN-TV 31
- 32 Local Programming
- 33 Local Programming
- 34 Local Programming
- 37 Local Programming
- 38 Local Programming
- 40 Local Programming
- 41 Univision — WXTV-TV 41
- 48 TV Guide
- 49 WeatherScan 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
- 65 YES
- 67 SportsNet NY
- 68 MSG
- 69 Fox Sports Net NY
- 71 Speed Channel
- 72 NFL Network
- 75 VERSUS
- 76 Fox Soccer Channel

News

- 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

Information

- 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)

Women

- 120 Lifetime
- 121 Lifetime Movie Network
- 122 Lifetime Real Women
- 123 SoapNet
- 124 Oxygen
- 129 Women's Entertainment

Shopping

- 130 QVC
- 131 HSN
- 135 Jewelry
- 137 Shop NBC

Home & Leisure

- 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

Pop Culture

- 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

Music

- 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

Movies

- 200 Turner Classic Movies
- 201 AMC
- 202 Fox Movie Channel
- 210 Hallmark Channel (East)
- 212 Family Net
- 213 AmericanLife TV
- 214 TV Land



FiOS TV is frequently changing its channel offerings. To view our latest published channel lineup, please visit verizonfios.com/tv.

FiOS TV Local Arts & Entertainment Sports News & Information Lifestyle

(continued)

MOVIES**

- | | | |
|------------------------------------|---------------------------------|------------------|
| Children | 2220 Disney | 340 Starz |
| 2221 Toon Disney | 341 Starz West | |
| 2222 Nickelodeon | 342 Starz Edge | |
| 2223 Nick Too | 343 Starz Edge West | |
| 2224 Nick Toons | 344 Starz in Black | |
| 2225 GAS | 345 Starz Kids & Family | |
| 2226 Noggin | 346 Starz Cinema | |
| 2227 Cartoon Network (ESP)* | 347 Starz Comedy | |
| 2228 Boomerang (ESP)* | 348 Encore | |
| 2229 Discovery Kids | 349 Encore West | |
| 230 Varsity | 350 Encore Love | |
| 231 FUNimation | 351 Encore Love West | |
| 232 PBS Kids Sprout | 352 Encore Westerns | |
| 233 PBS Kids Sprout | 353 Encore Westerns West | |
| 234 PBS Kids Sprout | 354 Encore Mystery | |
| 235 PBS Kids Sprout | 355 Encore Mystery West | |
| 236 PBS Kids Sprout | 356 Encore Drama | |
| 237 PBS Kids Sprout | 357 Encore Drama West | |
| 238 PBS Kids Sprout | 358 Encore Action | |
| 239 PBS Kids Sprout | 359 Encore Action West | |
| 240 BET | 360 Encore WAM! | |
| 241 TV One | 361 Showtime | |
| 242 TV One | | |
| 243 MTV Tr3s | | |
| 244 Galavisión | | |
| 245 Mun2 | | |
| 246 S/TV | | |
| 247 AZN Television | | |
| 248 Bridges TV | | |

on

- 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 Next West
376 Showtime Next West
377 Showtime Next West
378 Showtime Next West
379 Showtime Next West
380 Showtime Next West
381 Showtime Next West
382 Showtime Next West
383 Showtime Next West
384 Showtime Next West
385 Showtime Next West
386 Showtime Next West
387 Showtime Next West
388 Showtime Next West
389 Showtime Next West
390 Showtime Next West
391 Showtime Next West
392 Showtime Next West
393 Showtime Next West
394 Showtime Next West
395 Showtime Next West
396 Showtime Next West
397 Showtime Next West
398 Showtime Next West
399 Showtime Next West
400 Showtime Next West

SPORTS**

- | | | | |
|-----|-------------------------------|-----|-----------------------------|
| 300 | Fox College Sports — Atlantic | 379 | The Movie Channel Xtra West |
| 301 | Fox College Sports — Central | 380 | The Movie Channel Xtra West |
| 302 | Fox College Sports — Pacific | 381 | Flix |
| 303 | Fox College Sports — National | 382 | Flix West |
| 304 | Tennis Channel | 383 | Flix West |
| 305 | Golf Channel | 384 | Sumande |
| 307 | Outdoor Channel | 385 | Independent Film Channel |
| 308 | The Sportsman Channel | | |
| 311 | Fox Sports en Español | | |
| 313 | GoTV | | |
| 315 | TVG Horse Racing | | |
| 316 | Horse Racing TV | | |
| 318 | Max TV | | |
| 319 | Blackbell TV | | |
| 321 | MSG 2 | | |
| 322 | Fox Sports Net NY 2 | | |

INTERNATIONAL

- | | |
|-----|----------------------------------|
| 480 | SBTN (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

- | | |
|---------------|---------------------------|
| Entertainment | 500 USA Network |
| | 501 TNT |
| | 502 TBS |
| | 503 Galevisión |
| | 504 FX |
| | 505 Spike TV |
| Sports | |
| | 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 |

**SPANISH
LANGUAGE****

- | | |
|-------------------|---------------------------|
| En Español | |
| 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 Trés |
| 458 | VH Uno |
| 459 | Telehit |
| 462 | Do Película |
| 463 | Do Película Clásico |
| 464 | Cine Latino |
| 465 | Cine Mexicano |
| 468 | La Familia |
| 469 | TV Chile |
| 470 | TV Colombia |
| 472 | Sopresa |
| 473 | Toon Disney Español |
| 474 | Boomerang (ESP)* |
| 475 | Discovery Kids en Español |
| 477 | TBN Enlace |
| 478 | EWTN Español |

PREMIUMS**

- | | |
|-----|---------------------------|
| 472 | Sorpresa |
| 473 | Toon Disney Español |
| 474 | Boomerang (ESPT*) |
| 475 | Discovery Kids en Español |
| 477 | TBN Enlace |
| 478 | EWTV Español |

MUSIC CHOICE

- | | |
|-----|------------------------|
| 300 | Showcase |
| 301 | Today's Country |
| 302 | Classic Country |
| 303 | Bluegrass |
| 304 | R&B and Hip-Hop |
| 305 | Classic R&B |
| 306 | Smooth R&B |
| 307 | R&B Hits |
| 308 | Rap |
| 309 | Metal |
| 310 | Rock |
| 311 | Arena Rock |
| 312 | Classic Rock |
| 313 | Alternative |
| 314 | Retro-Active |
| 315 | Electronica |
| 316 | Dance |
| 317 | Adult Alternative |
| 318 | Soft Rock |
| 319 | Hit List |
| 320 | Party Favorites |
| 321 | 90s |
| 322 | 80s |
| 323 | 70s |
| 324 | Solid Gold Oldies |
| 325 | Singers & Standards |
| 326 | Big Band & Swing |
| 327 | Easy Listening |
| 328 | Smooth Jazz |
| 329 | Jazz |
| 330 | Blues |
| 331 | Reggae |
| 332 | Soundscapes |
| 333 | Classical Masterpieces |
| 334 | Opera |
| 335 | Light Classical |
| 336 | Show Tunes |
| 337 | Contemporary Christian |
| 338 | Gospel |
| 339 | Radio Disney |
| 340 | Sounds of the Seasons |
| 341 | Música Urbana |
| 342 | Salsa y Merengue |
| 343 | Rock en Español |
| 344 | Pop Latino |
| 345 | Mexicana |
| 346 | Americana |

PAY PER VIEW

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

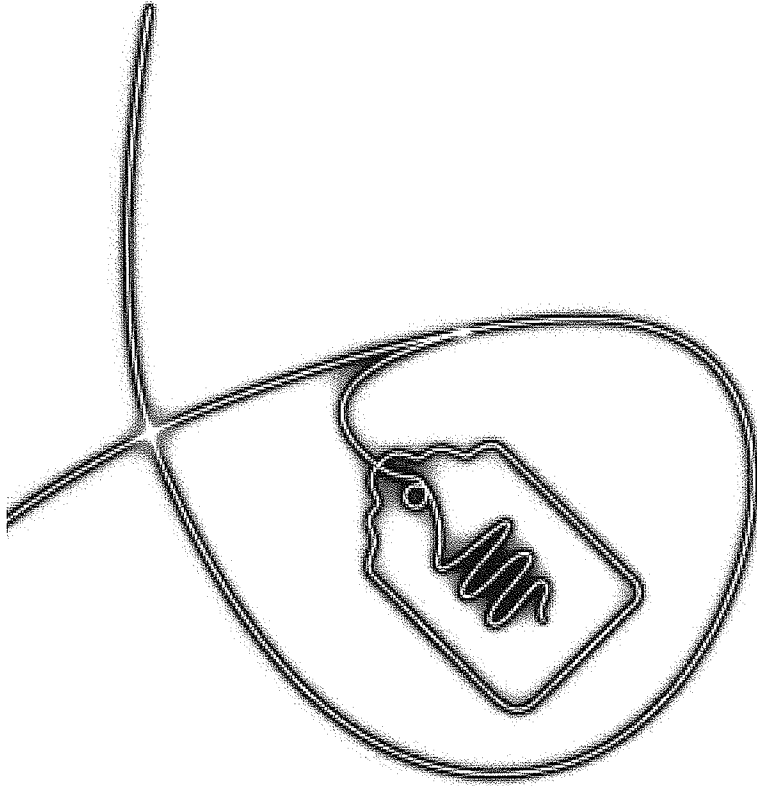
A Spanish-language Secondary Audio Program (SAP) is available for selection.

EXHIBIT 3

*APPLICATION FOR A CABLE TELEVISION FRANCHISE
VILLAGE OF MILL NECK/VERIZON NEW YORK INC.*

Verizon FiOS TV

Rates & Packages



Get more from your
fiber-optic experience.

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 ¹	15-35	\$12.99
Digital Service (Requires Set Top Box (STB) and Router ²)		
FiOS TV Premier ³	160 + FiOS TV Local	\$42.99
La Conexión ⁴	115 + FiOS TV Local	\$32.99

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

Packages (Requires STB)	Number of Channels	Monthly Price
Sports	13	\$7.99
Movies	44	\$12.99
Sports/Movies Combination	59	\$15.99
Spanish Language	25	\$11.99

Premiums ⁵ (Requires STB)	Number of Channels	Monthly Price
HBO ⁶	14	\$15.99
Cinemax ⁶	12	\$15.99
HBO/Cinemax Combination	26	\$25.99
Playboy TV ⁷ /Playboy TV en Español	2	\$15.99
here!	1	\$7.99

International Premiums ⁸ (Requires STB)	Number of Channels	Monthly Price
International Premium Channels	17	Individually Priced

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

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
Standard Definition	\$4.99
High Definition (includes HD channels)	\$9.99
High Definition Digital Video Recorder (includes HD channels)	\$12.99
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

Subsequent Installations/Charges	One-Time Charges
Set Top Box Addition or Upgrade/Downgrade	\$24.99
Premise Visit*	\$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
Disconnect of Set Top Box ⁷	\$24.99 + \$5.00/STB
Downgrade of Service from Digital to Analog	\$49.99 + \$5.00/STB
FiOS TV Service Disconnect	No Charge

Other Services and Charges	One-Time Charges
Seasonal Service Suspension (charged at initiation, 1–6 months)*	\$24.99
Replacement Remote — FiOS TV Universal	\$6.99 + Shipping & Handling
Replacement Remote — Basic Universal	\$5.00 + Shipping & Handling
Unreturned/Damaged STB — Standard Definition	\$240.00
Unreturned/Damaged STB — High Definition	\$350.00
Unreturned/Damaged STB — Digital Video Recorder (DVR)	\$550.00

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



We never stop working for you.

- 1 In order to be eligible for Movies or Sports, FIOS TV Premier or La Conexión is required. 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.
- 2 Router provided will be a new or fully inspected, tested and warranted return unit. If service is cancelled within the first 12 months, router must be returned or \$99.99 equipment fee applies. If you maintain service for twelve (12) consecutive months, ownership of the router shall transfer to you, after which time all maintenance of the router shall be at your sole cost and expense, and the risk of loss will be yours should the router be damaged or stolen.
- 3 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. 30-day minimum billing period required for all digital packages.
- 4 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. 30-day minimum billing period required for all digital packages.
- 5 Subscription VOD is included with all Premiums at no extra charge (where applicable). 30-day minimum billing period required for all Premiums.
- 6 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.
- 7 The Set Top Box disconnect charge is assessed only when the customer maintains at least one FIOS TV Set Top Box. If all Set Top Box receivers are disconnected, the service downgrade charge applies.
- 8 Seasonal service suspension requires a minimum suspension of one month and a maximum suspension of six months.

Programming services offered within each package are subject to change and the number of channels within each package are approximations. Not all programming services available at all times. Blackout restrictions also apply. In addition, the pricing of the packages and the terms and conditions regarding your use of Verizon FIOS TV are also subject to change. Pricing applies to residential use only within the United States. Not all services are available in all areas. Acceptance of FIOS TV Terms of Service is required in order to use FIOS TV, and a copy of the Terms of Service will be given to you at the time of installation. The customer is financially responsible for any damage to, or misuse of, any equipment or for the failure to return any equipment if service is terminated. Applicable franchise fees, regulatory fees and taxes apply. Other terms and conditions apply.

VEFIF60157-307

Tab 2

From: Copiz, Adrian
Sent: Friday, July 27, 2007 4:12 PM
To: pcolgrove@farrellfritz.com
Subject: Verizon - Mill Neck

Peter,

As discussed, attached is the form of public notice for the anticipated publication date of August 29. Please let me know if you have any questions or wish to discuss further.

Adrian

<<Proposed Public Notice Language for Village of Mill Neck NY_1.DOC>>

*Adrian B. Copiz
Alston & Bird LLP
The Atlantic Building
950 F Street, N.W.
Washington, D.C. 20004-1404
202-756-3572
Fax: 202-654-4882
email: adrian.copiz@alston.com*

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Thank you.

**VILLAGE OF MILL NECK
NOTICE OF PUBLIC HEARING**

PLEASE TAKE NOTICE that a public hearing will be held by the Village Board of the Village of Mill Neck on September __, 2007 at _:__ P.M. at Village Hall, _____, Village of Mill Neck, New York, for the purpose of considering a proposed initial franchise agreement for cable television service in the Village of Mill Neck with Verizon New York, Inc. Copies of the franchise application and proposed franchise agreement are on file at Village Hall and may be viewed during normal business hours, between _:__ a.m. and _:__ p.m., Monday-Friday.

All interested persons will have the opportunity to be heard during the Public Hearing in regard to the proposed franchise agreement.

BY ORDER OF THE VILLAGE BOARD of the Village of Mill Neck.

Village Clerk

DATED:

Tab 3

ALSTON & BIRD LLP

The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404

202-756-3300
Fax: 202-756-3333
www.alston.com

Adrian Copiz

Direct Dial: 202-756-3572

E-mail: adrian.copiz@alston.com

August 28, 2007

BY OVERNIGHT DELIVERY

Theodore B. Smith
Mayor
Village Hall
32 Frost Mill Road
Village of Mill Neck, NY 11765

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

Dear Mayor Smith:

In support of its application for a cable television franchise filed on July 2, 2007, Verizon New York Inc. ("Verizon") hereby submits the proposed franchise agreement as negotiated with the Village of Mill Neck.

Please contact Joan Elliston at 703-974-2836 or me at 202-756-3572 should you have any questions.

Sincerely,



Adrian Copiz

Cc: Peter Colgrove

Enclosure

LEGAL02/30505007v1

One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
404-881-7000
Fax: 404-881-7777

Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
704-444-1000
Fax: 704-444-1111

90 Park Avenue
New York, NY 10016
212-210-9400
Fax: 212-210-9444

3201 Beechleaf Court, Suite 600
Raleigh, NC 27604-1062
919-862-2200
Fax: 919-862-2260

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

Cable Franchise Agreement

By and between

The Village of Mill Neck, New York

And

Verizon New York Inc.

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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4. SYSTEM FACILITIES	10
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EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Mill Neck, 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 will occupy 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 substantially 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

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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, 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.

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) revenues from the sale or lease of access channel(s) or channel capacity; (iv) Franchise Fees imposed on Franchisee by the LFA that are passed through from Franchisee as a line item paid by Subscribers; 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

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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.

Gross Revenue shall not include: Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal rules, regulations, standards or orders; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross 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; or any fees or charges collected from Subscribers or other third parties for any PEG Support Grant payments.

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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 Village of Mill Neck, 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.

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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 therefore 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

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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 and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal and state law as 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.

2.8. *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

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LFA in a manner not materially in conflict with the privileges granted in this Franchise and consistent with all federal and state laws, regulations and orders.

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

2.10. *Restoration of Subscriber Premises:* The Franchisee shall ensure that Subscriber's premises are restored to their 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.

2.11. *Level Playing Field:* In accordance with the requirements of Section 895.3 of the PSC Rules, the parties hereto have determined that the terms of this Agreement, when compared against the terms of that certain agreement (the "Incumbent Agreement"), dated January 14, 1997, by and between the LFA and the incumbent cable operator, Cablevision Systems Long Island Corporation ("Cablevision"), does not contain economic or regulatory burdens, which, when taken as a whole, are greater or lesser than those burden placed upon Cablevision pursuant to the Incumbent Agreement.

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

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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 two hundred fifty (250) aerial feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed two hundred fifty (250) feet or for underground connections 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 25 occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. Such actual costs 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 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 extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. For underground installations, Franchisee shall charge the recipient the actual cost. 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. 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.

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

4. SYSTEM FACILITIES

4.1. *Quality of Materials and Work:* Franchisee shall construct and maintain its System using materials of good and durable quality, and all work involved in the construction, installation, maintenance and repair of the Cable System shall be performed in a safe, thorough and reliable manner.

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

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

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

4.3. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

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

5. PEG SERVICES

5.1. *PEG Set Aside*

5.1.1. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide capacity on its Basic Service Tier for up to one (1) dedicated Public Access Channel, one (1) dedicated Educational Access Channel, and up to one (1) dedicated Government Access Channel (collectively, "PEG Channels").

5.1.2. The programming to be carried on each of the PEG Channels set aside by Franchisee is reflected in Exhibit C attached hereto. The LFA hereby authorizes Franchisee to transmit such programming within and without LFA jurisdictional boundaries.

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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 Support Grant:*

5.2.1. The Franchisee shall pay a grant to the LFA ("PEG Support Grant") in the amount of five thousand dollars (\$5,000), which shall be payable within sixty (60) days of the Effective Date.

5.2.2. The PEG Support Grant shall be used by the LFA in a manner consistent with applicable federal and state laws, rules, and regulations.

5.3. *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.

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

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6. FRANCHISE FEES

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of five percent (5%) of annual Gross Revenue (the "Franchise Fee"). In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable.

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

6.3. *Audit:* Subject to the confidentiality requirements set forth in Section 7.1 of this Franchise and the LFA's imposition of comparable obligations to those contained in this Section 6.3 on all cable service providers in the Service Area, Franchisee shall be responsible for making available to the LFA for inspection and audit, all records necessary to confirm the accurate payment of Franchise Fees, whether the records are held by the Franchisee, an Affiliate, or any other entity that collects or receives funds related to the Franchisee's Cable Services operation in the LFA subject to the payment of Franchise Fees under this Agreement, including, by way of illustration and not limitation, any entity that sells advertising on the Franchisee's behalf. Franchisee shall maintain such records for six (6) years, provided that, if the LFA commences an audit within that six (6) year period, Franchisee shall continue to maintain such records for the duration of any audit in progress at the end of that six (6) year period. The LFA shall conduct all audits expeditiously, and neither the LFA nor Franchisee shall unreasonably delay the completion of an audit. The LFA's audit expenses shall be borne by the LFA unless the audit determines that the payment to the LFA should be increased by five percent (5%) or more in the audited period, in which case the reasonable and customary costs of the audit, together with any additional amounts due to the LFA as a result of such audit, shall be paid by Franchisee to the LFA within sixty (60) days following written notice to Franchisee by the LFA of the underpayment, which notice shall include a copy of the audit report; provided, however, that Franchisee's obligation to pay or reimburse the LFA's audit expenses shall not exceed an aggregate of four thousand dollars (\$4,000). If re-computation results in additional revenue to be paid to the LFA, such amount shall be subject to interest charges computed from the due date, at the then-current rate set forth in Section 5004 of the New York Civil Practice Law and Rules per annum during the period such unpaid amount is owed. If the audit determines that there has been an overpayment by Franchisee, the Franchisee may credit any overpayment against its next quarterly payment. Said audit shall be conducted by an independent third party and no auditor so employed by the LFA shall be compensated on a success based formula, e.g., payment based on

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a percentage of an underpayment, if any. The LFA shall not conduct an audit more frequently than once every three (3) years.

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

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

7. REPORTS AND RECORDS

7.1. *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the LFA shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. The LFA shall treat any information disclosed by Franchisee as confidential and shall only disclose it to employees, representatives, and agents thereof who have a need to know, or in order to enforce the provisions hereof. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

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

7.2.1. Records of all written complaints for a period of three (3) 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;

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7.2.2. Records of outages for a period of three (3) 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 three (3) 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 three (3) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

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

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

8. INSURANCE AND INDEMNIFICATION

8.1. Insurance:

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

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

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

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

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

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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, its officers, agents, boards, elected officials, authorized representatives and employees for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees, or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels as provided in Section 5.2, provided that the LFA shall give Franchisee written notice of the LFA's request for indemnification within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

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

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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 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 within ten (10) business days of the completion of the assessments 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

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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, to the extent permitted under applicable law, 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.

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

One Verizon Way
Room VC43E010
Basking Ridge, NJ 07920-1097

12.5.2. Notices to the LFA shall be mailed to:

Village Clerk
Village of Mill Neck
P.O. Box 351
Mill Neck, New York 11765

12.5.3. with a copy to:

Peter B. Colgrove
Farrell Fritz, P.C.
1230 Reckson Plaza
Uniondale, New York 11556

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:* With the exception of the “material provisions” of this Agreement, 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, sub-subsection, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of the Franchise. For purposes of this Section 12.9, the term “material provision” or “material provisions” shall mean the terms set forth in Section 2.3 (Effective Date

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

and Term), Article 3 (Provision of Cable Service), Subsection 4.2 (System Characteristics), Section 7.1 (Open Books and Records), and Article 9 (Transfer of 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. *Identification of Franchisee's Employees, Vehicles & Contractors:* The Franchisee shall require all Franchisee personnel, contractors, and subcontractors contacting Subscribers or potential Subscribers outside the office of the Franchisee to wear a clearly visible identification card bearing their name and photograph.

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

12.17.1. The Franchisee shall make reasonable efforts to account for all identification cards at all times.

12.17.2. The Franchisee shall require all Franchisee's representatives to wear appropriate clothing while working at a Subscriber's premises.

12.17.3. The Franchisee shall require that all service vehicles of the Franchisee and its contractors or subcontractors be clearly identified as such to the public. The Franchisee shall require that all contractors and subcontractors working for the Franchisee shall have the contractor's/subcontractor's name plus marking (such as a magnetic door sign) indicating they are under contract to the Franchisee.

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

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

[The remainder of this page is intentionally left blank.]

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

AGREED TO THIS ____ DAY OF _____, 2006.

LFA:

By: _____
[Title]

Verizon New York Inc.

By: _____
[Title]

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Village Hall
32 Frost Mill Road
Mill Neck, NY 11765

Village Garage
351 Frost Mill Road
Mill Neck, NY 11765

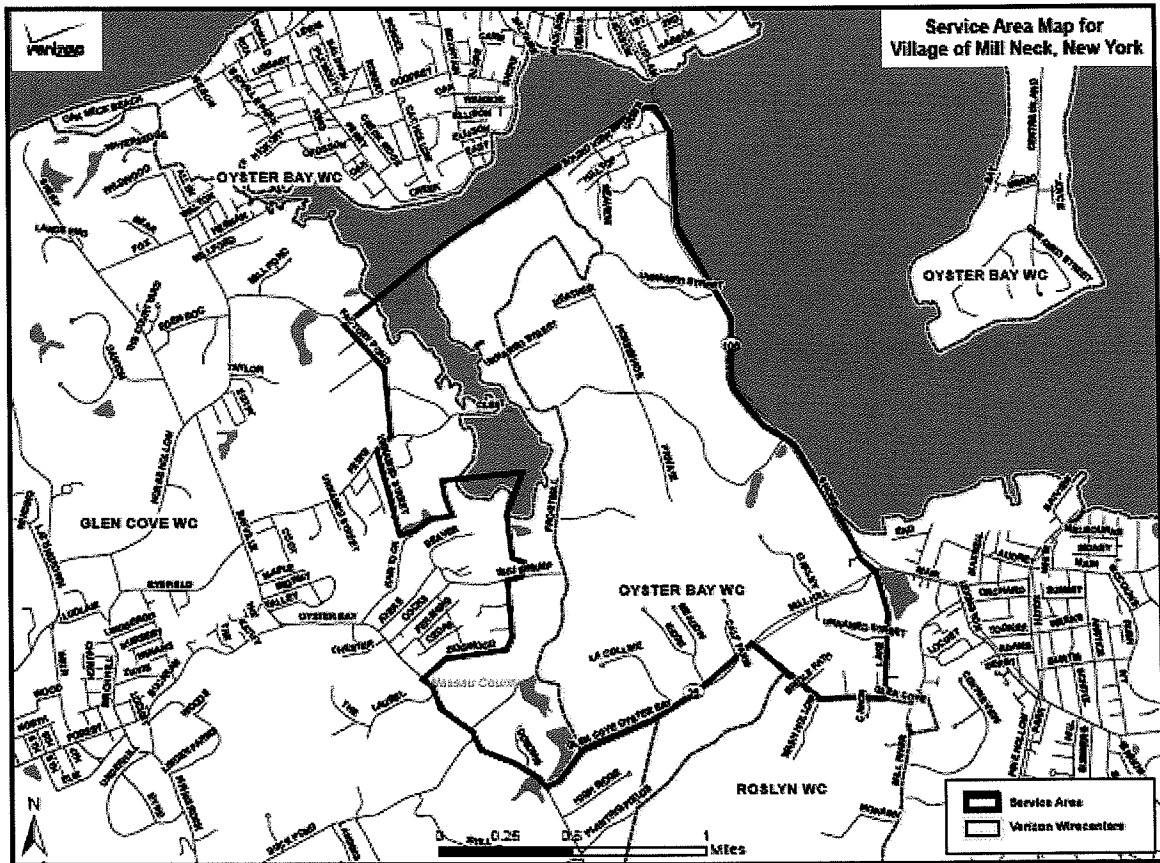
VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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 85% 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 85% deployment at 6 months, 88% deployment at 12 months, 91% deployment at 18 months, 94% deployment at 24 months, 95% deployment at 30 months, 96% deployment at 36 months, 97% deployment at 42 months, 98% deployment at 48 months, 99% deployment at 54 months, 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.



VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

EXHIBIT C

PEG CHANNELS

At this time, the LFA has not requested any PEG Channels.

Tab 4



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

140 West Street, 30th Floor
New York, NY 10007

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

September 5, 2007

The Honorable Theodore B. Smith, Jr
Village Of Mill Neck
32 Frost Mill Road
Mill Neck, NY 11765

Dear Mayor Smith:

Verizon is looking forward to the public hearing on September 10 in the Village of Mill Neck 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 Mill Neck.

I respect and thank you and those who negotiated on behalf of Mill Neck 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 Mill Neck. 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 Board.

Again, thank you for your commitment to bringing cable choice and a new video technology to the Village of Mill Neck.

Sincerely,



Monica Azare

cc: The Honorable John K. Colgate, Jr., Deputy Mayor
The Honorable Jane S. Greenleaf, Trustee
The Honorable Randolph Harrison, Trustee
The Honorable G. Morgan Browne, Trustee

Verizon FiOS TV

Village of Mill Neck, NY



The Village of Mill Neck Can Advance New York's Broadband Revolution.

Favorable action on Verizon's proposed cable franchise agreement positions Mill Neck 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 Mill Neck** – 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 Village of Mill Neck is among the first.

Deployment Commitment: Mill Neck is among the first communities in New York to benefit from Verizon's fiber-to-the-premises (FTTP) initiative. Today, this network offers Mill Neck 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 Mill Neck.

Broadband. The Village of Mill Neck 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!

For more information, visit:
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

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

VIDEO ON DEMAND	
800 FOS On Demand	
ALL FREE	

HD	
HD Broadcast	
801 CW — WPX HD	
802 CBS — WCBS HD	
803 PBS — WNET HD	
804 NBC — WNBC HD	
805 FOX — WNYW HD	
807 ABC — WABC HD	
809 My WWOR 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	
Movies	
839 MTV HD	
840 Fox Network HD	
841 HGTV HD	
845 Lifetime Movie Network HD	
HD Premium	
851 HBO HD	
852 Cinemax HD	
853 Showtime HD	
854 TMC HD	
855 Starz HD	

PUBLIC/EDUCATION/GOVERNMENT**	
Ardsley/Greenburgh/Inverton/Tarrytown	
32 Government Access Channel	
34 Public Access Channel 1	
35 Government Access Channel 2	
Doobs Ferry	
46 Government Access Channel	
47 Educational Access Channel	
Eastchester	
40 Eastchester Town Gov. Access 1	
Elmsford	
30 Public Access	
Lynbrook	
32 Lynbrook Education	
33 Lynbrook Government 1	
34 Lynbrook 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.

FOS TV LOCAL	
2	CBS — WCBS-TV 2
4	NBC — WNBC-TV 4
5	FOX — WNYW-TV 5
6	WRNN-TV 62
7	ABC — WABC-TV 7
8	Superstation — WGN-TV
9	My WWOR-TV 9
10	WLNY-TV 55
11	CW — WPX-TV 11
12	Telemundo — WNUJ-TV 47
13	PBS — WNET-TV 13
17	WFTV-TV 67
18	WABC-TV 63
21	PBS — WLW-TV 21
23	PBS — WJUN-TV 50
25	NYC-TV
27	Local Programming
29	PBS — WPIE-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	WeatherScan Local

FOS TV PREMIER	
Entertainment	
50	USA Network
51	TNT
52	TBS
53	FX
54	Spike TV
Sports	
60	ESPN
61	ESPN Classic Sports
62	ESPN News
63	ESPN2
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

FOS TV PREMIER	
Entertainment	
50	USA Network
51	TNT
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68	MSG
69	Fox Sports Net NY
71	Speed Channel
72	NFL Network
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76	Fox Soccer Channel

Verizon FiOS TV

New York Channel Lineup

EFFECTIVE JULY 2007

FOS TV LOCAL	
2	CBS — WCBS-TV 2
4	NBC — WNBC-TV 4
5	FOX — WNYW-TV 5
6	WRNN-TV 62
7	ABC — WABC-TV 7
8	Superstation — WGN-TV
9	My WWOR-TV 9
10	WLNY-TV 55
11	CW — WPX-TV 11
12	Telemundo — WNUJ-TV 47
13	PBS — WNET-TV 13
17	WFTV-TV 67
18	WABC-TV 63
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37	Public Access
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40	Local Programming
41	Univision — WXTV-TV 41
42-44	Local Programming
46	Local Programming
47	Local Programming
48	TV Guide
49	WeatherScan Local

FOS TV LOCAL	
2	CBS — WCBS-TV 2
4	NBC — WNBC-TV 4
5	FOX — WNYW-TV 5
6	WRNN-TV 62
7	ABC — WABC-TV 7
8	Superstation — WGN-TV
9	My WWOR-TV 9
10	WLNY-TV 55
11	CW — WPX-TV 11
12	Telemundo — WNUJ-TV 47
13	PBS — WNET-TV 13
17	WFTV-TV 67
18	WABC-TV 63
21	PBS — WLW-TV 21
23	PBS — WJUN-TV 50
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42-44	Local Programming
46	Local Programming
47	Local Programming
48	TV Guide
49	WeatherScan Local



7/07 VRZNF0697
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Pop Culture	
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
Music	
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
Movies	
200	Turner Classic Movies
201	AMC
202	Fox Movie Channel
Family	
210	Hallmark Channel (East)
212	Family Net
213	AmericanLife TV
214	TV Land
Children	
220	Disney
221	Toon Disney
222	Nickelodeon
223	Nick Too
224	Nick Toons
225	GAS
226	Noggin
227	Cartoon Network (ESP)*
228	Boomerang (ESP)*
229	Discovery Kids
230	Variety
231	FUNimation
232	PBS MDS Sprout

Pop Culture	
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161	A&E
162	Crime & Investigation Network
163	Court TV
164	GSN
165	Bravo
166	Sleuth
167	Logo
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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
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201	AMC
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165	Bravo
166	Sleuth
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200	Turner Classic Movies
201	AMC
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212	Family Net
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226	Noggin
227	Cartoon Network (ESP)*
228	Boomerang (ESP)*
229	Discovery Kids
230	Variety
231	FUNimation
232	PBS MDS Sprout

FiOS TV is frequently changing its channel offerings. To view our latest published channel lineup, please visit verizonfios.com/tv.

FiOS TV Local Arts & Entertainment Sports News & Information Lifestyle

Pay Per View HD Local Plus

VOD Local Public/Education/Government

FIOS TV PREMIER (continued)

People & Culture

240 BET
241 TV One
243 MTV Tr3s
244 Galavisión
245 Mu2
246 S1TV
247 AZN Television
248 Bridges TV

Religion

260 EWTN
261 INSP
262 iLife
263 Church
264 JCTV
265 BYU
266 Three Angels
267 The World 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

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

Other Premiums

430 Playboy TV
431 Playboy TV en Español
435 heral

SPANISH LANGUAGE**

En Español
440 Galavisión
442 ESPN Deportes
443 Fox Sports en Español
444 GoTV
446 CNN en Español
447 Canal SUR
448 TVE Internacional
452 History en Español
453 Discovery en Español
454 Viajar y Vivir
456 Infinito
457 MTV Tr3s
458 VH Uno
459 Telehit
462 De Película
464 Cine Latino
465 Cine Mexicano
468 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

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
412 HBO Zone West
413 HBO Latino
414 HBO Latino West
Cinemax
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

INTERNATIONAL PREMIUMS**

480 SBTV (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 Reng A Reng (Pers)
492 RTN Russian
493 Channel 1 Russian

LA CONEXIÓN

Entertainment

500 USA Network
501 TNT
502 TBS
503 Galavisión
504 FX
505 Spike TV

Sports

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

En Español

518 CNN en Español
519 CNN
520 CNN Headline News
521 Fox News
522 CNBC
524 C-SPAN
525 Canal SUR

Women

529 TVE Internacional
530 History Español
531 Discovery Channel
532 Discovery en Español
534 Animal Planet
535 TLC (The Learning Channel)

Shopping

537 Lifetime
538 Lifetime Movie Network

Home & Leisure

545 Discovery Health
546 Viajar y Vivir
549 Infinito
550 Food Network
551 HGTV (Home & Garden Television)
552 Travel Channel

Pop Culture

555 E! Entertainment Television
556 A+E
557 S1TV
558 Mun2
559 Comedy Central
560 So-Fi Channel

MUSIC

562 MTV Tr3s
563 MTV2
564 Telehit
565 VH Uno
566 CMT

Movies

569 De Película
570 De Película Clásico
571 Cine Mexicano
572 Cine Latino

Family

574 ABC Family
575 La Familia
576 TV Chile
577 TV Colombia
578 TV Land

Children

580 Nickelodeon
581 Disney en Español
582 Toon Disney Español
583 Boomerang (ESP)*
584 Cartoon Network (ESP)*
585 Sorpresa
586 Discovery Kids en Español

Religion

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

URGE RADIO

647 Church
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-ies
658 Celebration
659 Untergatable
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 A&S
670 Opera Babylon
671 Dream Sequence
672 Crescendo
673 Bluegrass Radio
674 Plush
675 Zen
676 Discotect
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 VH1 Soul
690 Cinema
691 Jazup Broadway
692 Big World
693 Ragga
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.

Free On Demand	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.
Movies On Demand	Find the blockbuster movies and your old favorites at the press of a button for a fraction of the cost of a movie ticket.
Premium On Demand	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.
Pay Per View	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

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 ¹	15-35	\$12.99
Digital Service (Requires Set Top Box [STB] and Router ²)		
FiOS TV Premier ³	228 + FiOS TV Local	\$42.99
La Conexión ⁴	162 + FiOS TV Local	\$32.99

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

Packages (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 (Requires STB)	Number of Channels	Monthly Price
HBO ⁵	14	\$15.99
Cinemax ⁶	12	\$15.99
HBO/Cinemax Combination	26	\$25.99
Playboy TV ⁷ /Playboy TV en Español	2	\$15.99
here!	1	\$7.99

International Premiums (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
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 ⁷	\$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)*	\$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.



¹ 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.

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

³ 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.

⁴ 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.

⁵ 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.

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

⁷ 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.

⁸ 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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VRZN_FIFF_C0984

Tab 5

From: Copiz, Adrian B.
Sent: Friday, September 07, 2007 4:30 PM
To: pcolgrove@farrellfritz.com
Cc: joan.l.elliston@verizon.com
Subject: Verizon - Mill Neck

Peter, attached is the agreement (clean and blacklined) with the revisions we discussed earlier today. Adrian

Please consider the environment before printing this email.

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message. To contact our email administrator directly, send to postmaster@dlapiper.com

Thank you.

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

Cable Franchise Agreement

By and between

The Village of Mill Neck, New York

And

Verizon New York Inc.

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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<u>ARTICLE</u>	<u>PAGE</u>
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EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the Village of Mill Neck, 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 will occupy 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 substantially 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

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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, 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.

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 and pay-per-view; (iv) revenues from the sale or lease of access channel(s) or channel capacity; (v) Franchise Fees imposed on Franchisee by the LFA that are passed through from Franchisee as a line item paid by Subscribers; and, (vi) 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

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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.

Gross Revenue shall not include: Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal rules, regulations, standards or orders; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser’s customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross 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; or any fees or charges collected from Subscribers or other third parties for any PEG Support Grant payments. Should revenue from any service provided by Franchisee over the

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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 Village of Mill Neck, 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 therefore 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.

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

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. Subject to the terms of Section 2.8 hereof, 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 and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal and state law as 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

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

2.7. Construction of Agreement:

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

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

2.8. *Police Powers:* The LFA shall not subject Franchisee to any local laws that are inconsistent with this Franchise, provided, however, that nothing in this Franchise shall be construed to prohibit the LFA's reasonable, necessary and lawful exercise of its police powers, including, without limitation, in addition to the implementation and enforcement of the provisions of this Agreement and existing applicable laws and regulations, the enactment, adoption, implementation and enforcement of such additional laws and regulations as the LFA may deem necessary in the exercise of its police power; provided, however that such laws and regulations are reasonable and not materially in conflict with the privileges granted in this Franchise and consistent with all federal and state laws, regulations and orders.

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's premises are restored to their 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.

2.11. *Level Playing Field:* In accordance with the requirements of Section 895.3 of the PSC Rules, the parties hereto have determined that the terms of this Agreement, when compared against the terms of that certain agreement (the "Incumbent Agreement"), dated January 14, 1997, by and between the LFA and the incumbent cable operator, Cablevision Systems Long Island Corporation ("Cablevision"), does not contain economic or regulatory burdens, which, when taken as a whole, are greater or lesser than those burden placed upon Cablevision pursuant to the Incumbent Agreement.

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 two hundred fifty (250) aerial feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed two hundred fifty (250) feet or for underground connections 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 25 occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. Such actual costs 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 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 extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. For underground installations, Franchisee shall charge the recipient the actual cost. 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. 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, at a minimum, with the requirements of Section 895.5 of NY PSC rules and regulations.

4. SYSTEM FACILITIES

4.1. *Quality of Materials and Work:* Franchisee shall construct and maintain its System using materials of good and durable quality, and all work involved in the construction, installation, maintenance and repair of the Cable System shall be performed in a safe, thorough and reliable manner.

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

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

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

4.3. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

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

4.5. *Parental Control:* Upon request by any Subscriber, and where technologically feasible, the Franchisee shall provide such requesting Subscriber with a parental control device. Such device will, at a minimum, offer as an option that a Person ordering programming must provide a personal identification number or other means provided by the Franchisee only to a Subscriber. Provided, however, that the Franchisee shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

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 Support Grant:*

5.2.1. The Franchisee shall pay a grant to the LFA ("PEG Support Grant") in the amount of five thousand dollars (\$5,000), which shall be payable within sixty (60) days of the Effective Date.

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5.2.2. The PEG Support Grant shall be used by the LFA in a manner consistent with applicable federal and state laws, rules, and regulations.

5.3. *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.

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

6. FRANCHISE FEES

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of five percent (5%) of annual Gross Revenue (the "Franchise Fee"). In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable.

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

6.3. *Audit:* Subject to the confidentiality requirements set forth in Section 7.1 of this Franchise and the LFA's imposition of comparable obligations to those contained in this Section 6.3 on all cable service providers in the Service Area, Franchisee shall be responsible for making available to the LFA for inspection and audit, all records necessary to confirm the

accurate payment of Franchise Fees, whether the records are held by the Franchisee, an Affiliate, or any other entity that collects or receives funds related to the Franchisee's Cable Services operation in the LFA subject to the payment of Franchise Fees under this Agreement, including, by way of illustration and not limitation, any entity that sells advertising on the Franchisee's behalf. Franchisee shall maintain such records for six (6) years, provided that, if the LFA commences an audit within that six (6) year period, Franchisee shall continue to maintain such records for the duration of any audit in progress at the end of that six (6) year period. The LFA shall conduct all audits expeditiously, and neither the LFA nor Franchisee shall unreasonably delay the completion of an audit. The LFA's audit expenses shall be borne by the LFA unless the audit determines that the payment to the LFA should be increased by five percent (5%) or more in the audited period, in which case the reasonable and customary costs of the audit, together with any additional amounts due to the LFA as a result of such audit, shall be paid by Franchisee to the LFA within sixty (60) days following written notice to Franchisee by the LFA of the underpayment, which notice shall include a copy of the audit report; provided, however, that Franchisee's obligation to pay or reimburse the LFA's audit expenses shall not exceed an aggregate of four thousand dollars (\$4,000). If re-computation results in additional revenue to be paid to the LFA, such amount shall be subject to interest charges computed from the due date, at the then-current rate set forth in Section 5004 of the New York Civil Practice Law and Rules per annum during the period such unpaid amount is owed. If the audit determines that there has been an overpayment by Franchisee, the Franchisee may credit any overpayment against its next quarterly payment. Said audit shall be conducted by an independent third party and no auditor so employed by the LFA shall be compensated on a success based formula, e.g., payment based on a percentage of an underpayment, if any. The LFA shall not conduct an audit more frequently than once every three (3) years.

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

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

7. REPORTS AND RECORDS

7.1. *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the LFA shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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

7.4. *Performance Review*: The LFA may, at its discretion but not more than once per twelve-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.

8. INSURANCE AND INDEMNIFICATION

8.1. Insurance:

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

8.1.1.1. Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee’s Cable Service business in the LFA.

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

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

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

8.1.1.5. Excess liability or umbrella coverage of not less than 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, its officers, agents, boards, elected officials, authorized representatives and employees for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees, or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels as provided in Section 5.2, provided that the LFA shall give Franchisee written notice of the LFA's request for indemnification within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

8.2.2. With respect to Franchisee's indemnity obligations set forth in subsection 8.2.1, Franchisee shall provide the defense of any claims brought against the LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the LFA, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the LFA and the LFA does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the LFA shall in no event exceed the amount of such settlement.

8.2.3. The LFA shall 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 within ten (10) business days of the completion of the assessments 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, to the extent permitted under applicable law, 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,

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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.

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

12.5.1. Notices to Franchisee shall be mailed to:

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

12.5.2. Notices to the LFA shall be mailed to:

Village Clerk
Village of Mill Neck
P.O. Box 351
Mill Neck, New York 11765

12.5.3. with a copy to:

Peter B. Colgrove
Farrell Fritz, P.C.
1320 RexCorp Plaza
Uniondale, New York 11556

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. The LFA shall not subject the Franchisee to any local laws or parts of local laws that materially conflict with the provisions of 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*: With the exception of the “material provisions” of this Agreement, 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, sub-subsection, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of the Franchise. For purposes of this Section 12.9, the term “material provision” or “material provisions” shall mean the terms set forth in Section 2.3 (Effective Date and Term), Article 3 (Provision of Cable Service), Subsection 4.2 (System Characteristics), Section 7.1 (Open Books and Records), and Article 9 (Transfer of 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

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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. *Identification of Franchisee's Employees, Vehicles & Contractors:* The Franchisee shall require all Franchisee personnel, contractors, and subcontractors contacting Subscribers or potential Subscribers outside the office of the Franchisee to wear a clearly visible identification card bearing their name and photograph.

12.17.1. The Franchisee shall make reasonable efforts to account for all identification cards at all times.

12.17.2. The Franchisee shall require all Franchisee's representatives to wear appropriate clothing while working at a Subscriber's premises.

12.17.3. The Franchisee shall require that all service vehicles of the Franchisee and its contractors or subcontractors be clearly identified as such to the public. The Franchisee shall require that all contractors and subcontractors working for the Franchisee shall have the contractor's/subcontractor's name plus marking (such as a magnetic door sign) indicating they are under contract to the Franchisee.

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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

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

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VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

AGREED TO THIS ____ DAY OF _____, 2007.

LFA:

By: _____
Title

Verizon New York Inc.

By: _____
Title

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Village Hall
351 Frost Mill Road
Mill Neck, NY 11765

Village Garage
351 Frost Mill Road
Mill Neck, NY 11765

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 85% 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 85% deployment at 6 months, 88% deployment at 12 months, 91% deployment at 18 months, 94% deployment at 24 months, 95% deployment at 30 months, 96% deployment at 36 months, 97% deployment at 42 months, 98% deployment at 48 months, 99% deployment at 54 months, 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.

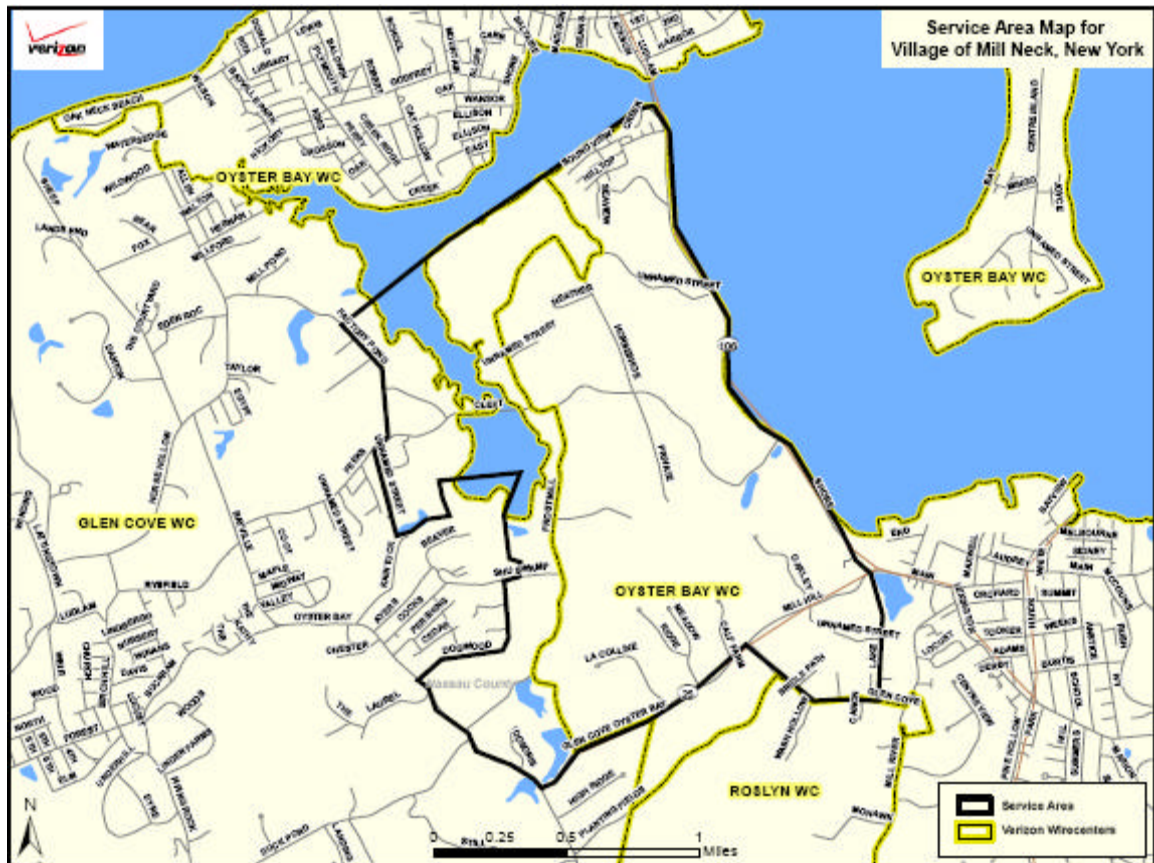


EXHIBIT C

PEG CHANNELS

At this time, the LFA has not requested any PEG Channels.

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

Cable Franchise Agreement

By and between

The Village of Mill Neck, New York

And

Verizon New York Inc.

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the Village of Mill Neck, 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 will occupy 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 substantially 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

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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, 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.

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 and pay-per-view; (iv) revenues from the sale or lease of access channel(s) or channel capacity; ~~(iv)~~ Franchise Fees imposed on Franchisee by the LFA that are passed through from Franchisee as a line item paid by Subscribers; 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

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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.

Gross Revenue shall not include: Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal rules, regulations, standards or orders; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser’s customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross 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; or any fees or charges collected from Subscribers or other third parties for any PEG Support Grant payments. [Should revenue from any service provided by Franchisee over the](#)

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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 Village of Mill Neck, 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 therefore 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.

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

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~~Subject to the terms of Section 2.8 hereof, 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 and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal and state law as 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.

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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.

2.8. *Police Powers:* The LFA shall not ~~enact~~subject Franchisee to any local laws that are inconsistent with this Franchise, provided, however, that nothing in this Franchise shall be construed to prohibit the LFA's reasonable, necessary and lawful exercise of ~~the police powers of the LFA in a manner~~its police powers, including, without limitation, in addition to the implementation and enforcement of the provisions of this Agreement and existing applicable laws and regulations, the enactment, adoption, implementation and enforcement of such additional laws and regulations as the LFA may deem necessary in the exercise of its police power; provided, however that such laws and regulations are reasonable and not materially in conflict with the privileges granted in this Franchise and consistent with all federal and state laws, regulations and orders.

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

2.10. *Restoration of Subscriber Premises:* The Franchisee shall ensure that Subscriber's premises are restored to their 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.

2.11. *Level Playing Field:* In accordance with the requirements of Section 895.3 of the PSC Rules, the parties hereto have determined that the terms of this Agreement, when compared against the terms of that certain agreement (the "Incumbent Agreement"), dated January 14, 1997, by and between the LFA and the incumbent cable operator, Cablevision Systems Long Island Corporation ("Cablevision"), does not contain economic or regulatory burdens, which, when taken as a whole, are greater or lesser than those burden placed upon Cablevision pursuant to the Incumbent Agreement.

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 two hundred fifty (250) aerial feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed two hundred fifty (250) feet or for underground connections 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 25 occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. Such actual costs 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 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 extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. For underground installations, Franchisee shall charge the recipient the actual cost. 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. 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, at a minimum, with the requirements of Section 895.5 of NY PSC rules and regulations.

4. **SYSTEM FACILITIES**

4.1. *Quality of Materials and Work:* Franchisee shall construct and maintain its System using materials of good and durable quality, and all work involved in the construction, installation, maintenance and repair of the Cable System shall be performed in a safe, thorough and reliable manner.

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

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

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

4.3. *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

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

4.5. *Parental Control:* Upon request by any Subscriber, and where technologically feasible, the Franchisee shall provide such requesting Subscriber with a parental control device. Such device will, at a minimum, offer as an option that a Person ordering programming must provide a personal identification number or other means provided by the Franchisee only to a Subscriber. Provided, however, that the Franchisee shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

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 Support Grant:*

5.2.1. The Franchisee shall pay a grant to the LFA (“PEG Support Grant”) in the amount of five thousand dollars (\$5,000), which shall be payable within sixty (60) days of the Effective Date.

5.2.2. The PEG Support Grant shall be used by the LFA in a manner consistent with applicable federal and state laws, rules, and regulations.

5.3. *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.

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

6. FRANCHISE FEES

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of five percent (5%) of annual Gross Revenue (the “Franchise Fee”). In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable.

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

6.3. *Audit:* Subject to the confidentiality requirements set forth in Section 7.1 of this Franchise and the LFA's imposition of comparable obligations to those contained in this Section 6.3 on all cable service providers in the Service Area, Franchisee shall be responsible for making available to the LFA for inspection and audit, all records necessary to confirm the accurate payment of Franchise Fees, whether the records are held by the Franchisee, an Affiliate, or any other entity that collects or receives funds related to the Franchisee's Cable Services operation in the LFA subject to the payment of Franchise Fees under this Agreement, including, by way of illustration and not limitation, any entity that sells advertising on the Franchisee's behalf. Franchisee shall maintain such records for six (6) years, provided that, if the LFA commences an audit within that six (6) year period, Franchisee shall continue to maintain such records for the duration of any audit in progress at the end of that six (6) year period. The LFA shall conduct all audits expeditiously, and neither the LFA nor Franchisee shall unreasonably delay the completion of an audit. The LFA's audit expenses shall be borne by the LFA unless the audit determines that the payment to the LFA should be increased by five percent (5%) or more in the audited period, in which case the reasonable and customary costs of the audit, together with any additional amounts due to the LFA as a result of such audit, shall be paid by Franchisee to the LFA within sixty (60) days following written notice to Franchisee by the LFA of the underpayment, which notice shall include a copy of the audit report; provided, however, that Franchisee's obligation to pay or reimburse the LFA's audit expenses shall not exceed an aggregate of four thousand dollars (\$4,000). If re-computation results in additional revenue to be paid to the LFA, such amount shall be subject to interest charges computed from the due date, at the then-current rate set forth in Section 5004 of the New York Civil Practice Law and Rules per annum during the period such unpaid amount is owed. If the audit determines that there has been an overpayment by Franchisee, the Franchisee may credit any overpayment against its next quarterly payment. Said audit shall be conducted by an independent third party and no auditor so employed by the LFA shall be compensated on a success based formula, e.g., payment based on a percentage of an underpayment, if any. The LFA shall not conduct an audit more frequently than once every three (3) years.

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

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

7. REPORTS AND RECORDS

7.1. *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the LFA shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. The LFA shall treat any information disclosed by Franchisee as confidential and shall only disclose it to employees, representatives, and agents thereof who have a need to know, or in order to enforce the provisions hereof. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

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

7.2.1. Records of all written complaints for a period of ~~threesix~~ (36) 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 ~~threesix~~ (36) 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 ~~threesix~~ (36) 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 ~~threesix~~ (36) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

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

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

7.4. *Performance Review:* The LFA may, at its discretion but not more than once per twelve-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.

8. INSURANCE AND INDEMNIFICATION

8.1. Insurance:

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

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

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

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

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

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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, its officers, agents, boards, elected officials, authorized representatives and employees for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees, or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels as provided in Section 5.2, provided that the LFA shall give Franchisee written notice of the LFA's request for indemnification within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

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

of any such settlement. In the event that the terms of any such proposed settlement includes the release of the LFA and the LFA does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the LFA shall in no event exceed the amount of such settlement.

8.2.3. The LFA shall 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 within ten (10) business days of the completion of the assessments 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, to the extent permitted under applicable law, 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.

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

12.5.1. Notices to Franchisee shall be mailed to:

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

12.5.2. Notices to the LFA shall be mailed to:

Village Clerk
Village of Mill Neck
P.O. Box 351
Mill Neck, New York 11765

12.5.3. with a copy to:

Peter B. Colgrove
Farrell Fritz, P.C.
1320 RexCorp Plaza
Uniondale, New York 11556

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~~The LFA shall not subject the Franchisee to 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*: With the exception of the “material provisions” of this Agreement, 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, sub-subsection, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of the Franchise. For purposes of this Section 12.9, the term “material provision” or “material provisions” shall mean the terms set forth in Section 2.3 (Effective Date and Term), Article 3 (Provision of Cable Service), Subsection 4.2 (System Characteristics), Section 7.1 (Open Books and Records), and Article 9 (Transfer of 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.

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

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. *Identification of Franchisee's Employees, Vehicles & Contractors:* The Franchisee shall require all Franchisee personnel, contractors, and subcontractors contacting Subscribers or potential Subscribers outside the office of the Franchisee to wear a clearly visible identification card bearing their name and photograph.

12.17.1. The Franchisee shall make reasonable efforts to account for all identification cards at all times.

12.17.2. The Franchisee shall require all Franchisee's representatives to wear appropriate clothing while working at a Subscriber's premises.

12.17.3. The Franchisee shall require that all service vehicles of the Franchisee and its contractors or subcontractors be clearly identified as such to the public. The Franchisee shall require that all contractors and subcontractors working for the Franchisee shall have the contractor's/subcontractor's name plus marking (such as a magnetic door sign) indicating they are under contract to the Franchisee.

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

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

[The remainder of this page is intentionally left blank.]

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

AGREED TO THIS ____ DAY OF _____, 2007.

LFA:

By: _____
{Title}

Verizon New York Inc.

By: _____
{Title}

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

VILLAGE OF MILL NECK, NY FRANCHISE AGREEMENT

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Village Hall
351 Frost Mill Road
Mill Neck, NY 11765

Village Garage
351 Frost Mill Road
Mill Neck, NY 11765

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 85% 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 85% deployment at 6 months, 88% deployment at 12 months, 91% deployment at 18 months, 94% deployment at 24 months, 95% deployment at 30 months, 96% deployment at 36 months, 97% deployment at 42 months, 98% deployment at 48 months, 99% deployment at 54 months, 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.

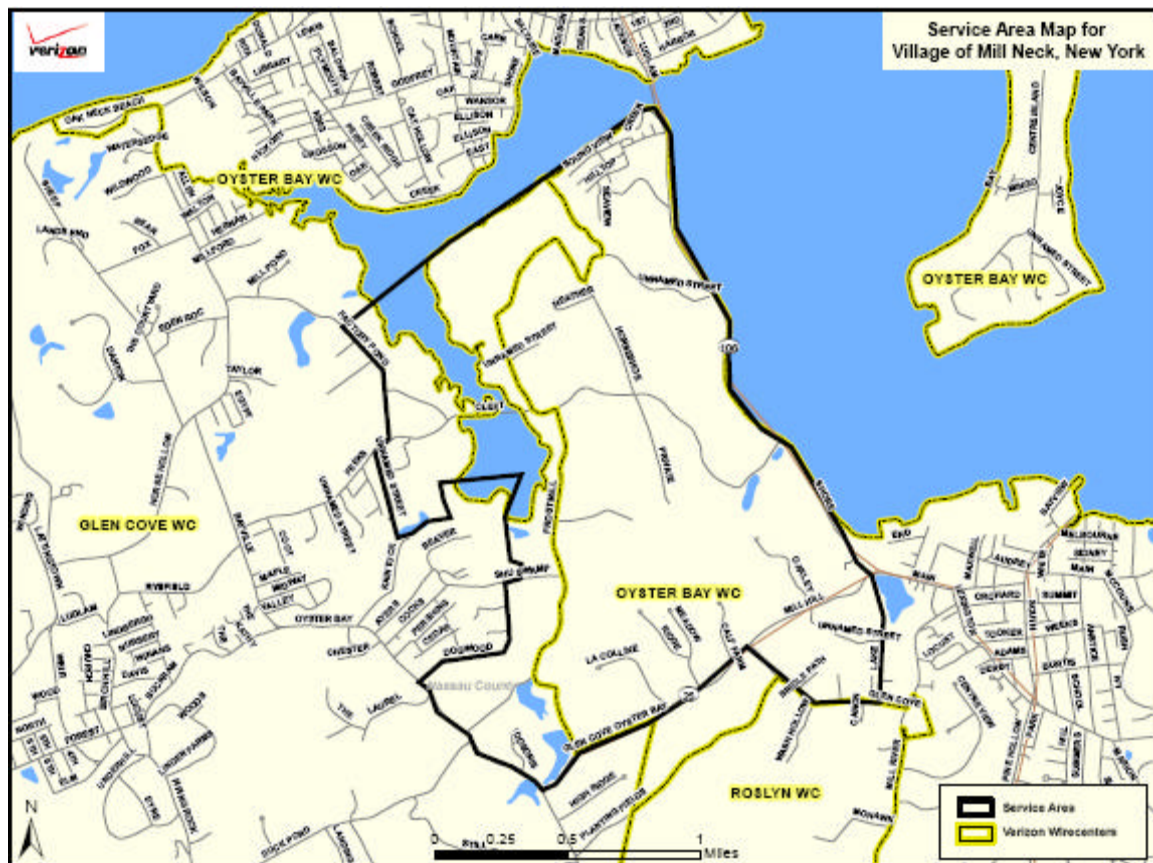


EXHIBIT C

PEG CHANNELS

At this time, the LFA has not requested any PEG Channels.

Document comparison done by Workshare Professional on Friday, September 07, 2007
1:31:12 PM

Input:	
Document 1	interwovenSite://WASHDMS/WASH1/4921718/1
Document 2	interwovenSite://WASHDMS/WASH1/4924356/1
Rendering set	DLAPiper

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:		
	Count	
Insertions		29
Deletions		27
Moved from		0
Moved to		0
Style change		0
Format changed		0
Total changes		56

Tab 6

From: Copiz, Adrian B.
Sent: Thursday, September 20, 2007 5:54 PM
To: pcolgrove@farrellfritz.com
Cc: joan.l.elliston@verizon.com
Subject: PSC Documents

Peter, as discussed this afternoon, attached are the PSC documents. Adrian

Please consider the environment before printing this email.

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message. To contact our email administrator directly, send to postmaster@dlapiper.com

Thank you.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 15, 2005

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 05-M-0250 - Joint Petition of the Town of Babylon, the Cable Telecommunications Association of New York, Inc. and CSC Holdings, Inc. for a Declaratory Ruling Concerning Unfranchised Construction of Cable Systems in New York by Verizon Communications, Inc.

CASE 05-M-0247 - Petition of the City of Yonkers for a Declaratory Ruling Concerning the Installation by Verizon New York Inc. of a Fiber to the Premises Network.

DECLARATORY RULING ON VERIZON COMMUNICATIONS, INC.'S BUILD-OUT
OF ITS FIBER TO THE PREMISES NETWORK

(Issued and Effective June 15, 2005)

BY THE COMMISSION:

INTRODUCTION

On March 2, 2005, the Town of Babylon, the Cable Telecommunications Association of New York, Inc. (CTANY) and CSC Holdings, Inc. (Cablevision)(collectively the Petitioners) filed a Request for a Declaratory Ruling (Joint Petition) alleging that: (1) Verizon New York Inc.'s (Verizon) construction of its fiber to the premises (FTTP) network constitutes a "cable television system" under the New York State Public Service Law (PSL) and (2) that Verizon has not obtained the necessary cable

franchises required by Article 11 (applicable to cable television companies) of the PSL (Article 11), and has, therefore, violated various statutes, rules and Commission policies.

Specifically, the Petitioners request that we:

- (1) declare that state law requires Verizon to obtain cable franchises prior to the construction of its FTTP network in each municipality in which Verizon seeks to provide service,
- (2) order Verizon to show cause why such construction activity should not be suspended until this issue is resolved, and
- (3) take any further action necessary to mitigate the effects on local municipalities where Verizon has deployed its FTTP network.¹

Prior to the filing of the Joint Petition, on February 24, 2005, the City of Yonkers filed a Letter Petition (Yonkers Petition) with the Commission requesting similar declaratory relief with regard to Verizon's FTTP build-out. The City of Yonkers argues that in its view such a network constitutes a cable television system under New York law, thus, requiring Verizon to obtain a cable franchise before it commences construction.

On April 1, 2005, the Town of Eastchester (Eastchester) filed a separate Petition for Declaratory Ruling with the Commission concerning Verizon's alleged unfranchised construction activities. Eastchester asserts that Verizon's FTTP build-out meets the definition of a cable television system under state law, and is, therefore, required to obtain a cable franchise before commencing construction. Eastchester raises concerns over right-of-way disturbances, its ability to comment

¹ Joint Petition at p. 31.

on and approve the design of Verizon's network, and redlining.² In addition, on May 10, 2005 and May 25, 2005, respectively, the Village of Tuckahoe (Tuckahoe) and the Town of Poughkeepsie (Poughkeepsie) filed their own Petitions seeking similar declaratory relief.³

Verizon filed its Brief in Opposition (Opposition Brief) to the various petitions on March 24, 2005. In addition, Petitioners filed a Reply Brief on April 4, 2005 and Verizon filed a Supplemental Brief in Opposition (Supplemental Brief) on April 11, 2005.⁴ A summary of these pleadings is provided below.

The issues presented here are ones of first impression. While Verizon may not construct or operate a stand-alone cable television system without first obtaining the necessary cable franchises, this case involves the application of the PSL insofar as when cable authorization is required for upgrading a pre-existing network that can ultimately provide multiple services, including cable. In making our decision, we recognize that it is in the public interest to encourage the deployment of Verizon's FTTP network, but at the same time are cognizant of the concerns of local municipalities and their authority to manage their rights-of-way and negotiate cable franchises.

² Redlining is the practice of providing service to high income areas while avoiding low income areas.

³ While these petitions were assigned different case numbers by the Commission, because the issues raised therein are identical to the issues raised by the Joint Petition and the Yonkers Petition, this ruling will resolve these petitions as well.

⁴ The Reply Brief and Supplemental Brief are accepted by the Commission in the absence of any clear authority to file, in order to achieve a fully-informed record on which to base our decision.

Based on our review of the record and the numerous comments and letters received to date, we find that Verizon FTTP network is not subject to the laws and rules of Article 11 at this time. However, we conclude that Verizon must first obtain cable franchises from affected municipalities if it installs plant in its network that is to be used exclusively for cable service or seeks to offer broadcast programming.

In sum, we declare that Verizon's FTTP upgrade is authorized under its existing state telephone rights because the upgrade furthers the deployment of telecommunications and broadband services, and is consistent with state and federal law and in the public interest. In contrast to a company seeking to build an unfranchised cable television system, Verizon already has the necessary authority to use the rights-of-way to provide telecommunications service over its existing network, and should, therefore, not be required to seek additional authority to enhance its offerings related to that specific service.⁵

We do, however, caution Verizon to adhere to all applicable local rights-of-way management requirements with regard to public safety, aesthetics, pole attachments and other

⁵ There is no state or federal requirement to obtain a separate franchise to deploy broadband over a telecommunications system.

legitimate municipal concerns.⁶ Notwithstanding Verizon's authority under its state telephone rights, deployment of its FTTP network is subject to municipal oversight and supervision. We fully expect Verizon to cooperate with those affected municipalities.⁷

BACKGROUND

Verizon's Upgrade

The upgrade at issue here consists of a fiber optic-based network that will be capable of deploying telephone, broadband and cable services. While fiber optics has been deployed ubiquitously for long distance and inter-city communications, Verizon's FTTP network is among the first to begin deploying directly to local homes and businesses. Verizon's network should enhance its ability to offer reliable services in wet weather, which, historically, has hampered the reliability and service quality of its copper network. The

⁶ The Joint Petition cites examples of alleged violations by Verizon of certain safety standards. Specifically, requirements with respect to spacing of attachments on poles and weight limitations. We expect Verizon to follow and adhere to industry standards and code requirements. These standards include certain minimum spacing requirements from other attachments unless the other carrier consents. Having said that, we agree with Verizon that this proceeding is not the proper forum to review specific allegations of pole attachment irregularities and we understand that Verizon and Cablevision have been reviewing these concerns on a business to business basis. At least in the first instance, that is the approach the parties should pursue. To ensure that these issues are timely resolved consistent with the public interest, however, we expect the Department staff to closely monitor this situation and ensure that relevant industry standards and code requirements are properly adhered to.

⁷ Our understanding is that a number of municipalities have issued formal and informal directives to Verizon regarding its activities in the rights-of-way and that Verizon has been responsive to those concerns.

upgrade is being carried out primarily in parts of Westchester county and Long Island. It is also taking place in parts of Albany and Onondaga counties and other surrounding areas.

Rights-of-way Management

Local governments play a key role in overseeing construction within their public rights-of-way, and that role is recognized under both state and federal law.

If the construction consists of a telecommunications network, then pursuant to PSL §99(1), no telephone company "shall begin construction" of its network "without first having obtained the permission and approval of the commission and its certificate of public convenience and necessity **and the required consent of the proper municipal authorities**" (emphasis added). Further, under Transportation Corporations Law (TCL) §27, a company needs municipal "permission to use the streets within such city, village or town..." Although the Commission does not specifically approve telephone franchises pursuant to the PSL, it is our understanding that municipalities have granted consent to Verizon to use the rights-of-way for telecommunications. Finally, §253 of the Federal Telecommunications Act of 1996 (the Act) specifically acknowledges a local government's ability to police its right-of-way.⁸ Section 253(c) states that "[n]othing in this section affects the authority of a State or local government to manage the public rights-of-way" In this proceeding, Verizon has acknowledged that it is subject to local review for purposes of telecommunications.

Under PSL Article 11, a key requirement for construction or expansion of a cable television system is the local cable franchise. Public Service Law § 219(1) specifically requires that no cable television system may "commence

⁸ 47 U.S.C. § 253.

operations or expand the area it serves unless it has been franchised by each municipality in which it proposes to provide or extend service." A franchise shall mean "any authorization granted by a municipality ... to construct, operate, maintain, or manage a cable television system...." (PSL §212(3)).

Thus, municipal consent and oversight for construction activities in the public rights-of-way are maintained whether the network is for telephone or cable service.

PLEADINGS AND COMMENTS

On March 2, 2005, the Petitioners filed their Joint Petition. As a factual matter, Petitioners claim that it is undisputed that Verizon is building a FTTP network designed to provide cable service and that it is obtaining cable franchises in other jurisdictions where it is deploying this network.⁹ The Petitioners further alleged that this activity is burdening local rights-of-way and Verizon is violating various state and industry pole, safety and zoning requirements.¹⁰

As a legal matter, Petitioners contend, that the fact that Verizon's system will also be capable of providing telephone and broadband services is not dispositive on the issue of whether Verizon must obtain cable franchises before it constructs this network.¹¹ Petitioners claim that because Verizon's network meets the definition of a cable television system under the Title VI of the federal Cable Act (Title VI or the federal Cable Act) and Article 11 of the PSL Verizon is required to obtain cable franchises before it commences construction.¹² Petitioners claim that the legislative intent of

⁹ Joint Petition at pp. 10-14.

¹⁰ Id. at pp. 16-17.

¹¹ Id. at pp. 18-19.

¹² Id.

Title VI makes clear that a system designed to provide cable satisfies the definition of a cable television system.¹³ Similarly, under state law, a system designed to provide cable service meets the definition of a cable television system under Article 11 and triggers the cable franchising requirements.¹⁴ Accordingly, the Petitioners urge the Commission to apply an intended use or economic but for test to determine whether Article 11 is invoked.¹⁵

Finally, if Verizon is allowed to "bypass" state cable requirements, the Petitioners claim that the construction standards and municipal oversight of cable television systems are nullified. Furthermore, Petitioners claim that an exemption from the cable requirements for Verizon results in discrimination against existing incumbent cable providers who have been required to meet and confer with the local franchising authorities (LFAs) prior to commencing construction of a cable television system.¹⁶ Consequently, Petitioners assert that certain cable regulations are rendered meaningless, and Verizon gains an unfair competitive advantage over existing cable providers.¹⁷

On March 24, 2005, Verizon filed its Opposition Brief. Verizon claims that its FTTP network is not a cable television system as defined under federal and state law.¹⁸ Rather, Verizon asserts that it is conducting a network upgrade to its existing telecommunications system for voice and broadband services.

¹³ Id.

¹⁴ Id. at p. 20.

¹⁵ Id. at pp. 5, 12.

¹⁶ Id. at pp. 21-22, 28.

¹⁷ Id.

¹⁸ Opposition Brief at p. 2.

Verizon argues that it has the requisite authority to conduct this upgrade under its existing state telephone rights.¹⁹ Verizon further claims that while its FTTP network may, at some future point, give it the capability to provide video or cable service, the Article 11 cable franchise rules and regulations do not apply, unless and until the network is actually "used" as a cable television system, which, Verizon submits, at this time it is not.²⁰ Therefore, Verizon urges this Commission to apply an actual use test in determining whether Article 11 applies.²¹

Specifically, Verizon asserts that under federal law, the relief sought by the Petitioners is preempted because the federal Cable Act exempts common carriers from cable franchising requirements unless and until they begin offering video programming directly to subscribers.²² According to Verizon, since state and local governments cannot impose franchise related requirements that are inconsistent with Title VI, any such requirements are preempted.²³ Moreover, Verizon contends this interpretation of Title VI is supported by the Federal Communications Commission's (FCC) interpretation of Title VI.²⁴ However, even if this preemption argument is not controlling, Verizon argues that because its system is not being used to deliver video programming, it is not a cable television system

¹⁹ Id. Verizon states that the New York TCL, §§26, 27, grants it the right to install, maintain and repair its telephone facilities in public streets.

²⁰ Opposition Brief at pp. 1-2, 17-18.

²¹ Id. at pp. 2-4.

²² Id. at pp. 5, 7-11.

²³ Id.

²⁴ Id. at pp. 10-14.

as defined under state law.²⁵ Therefore, Article 11 does not apply.²⁶

Moreover, Verizon submits that the Petitioners' discrimination claims are unfounded.²⁷ First, Verizon asserts that the cable franchising requirements as they relate to this construction are beyond the limits set by federal and state laws.²⁸ Second, Verizon objects to the imposition of cable franchising requirements upon its FTTP network until Verizon actually enters head-to-head competition with cable companies, because Verizon is already subject to entirely different regulatory regimes.²⁹

Finally, Verizon asserts that issues regarding safety, aesthetics, redlining and other cable franchising concerns do not give rise to the franchising requirements under state and federal laws, and are not within the scope of this proceeding.³⁰ Verizon suggests that a proceeding seeking a declaratory ruling as to the application of a rule or statute enforceable by this Commission is not the appropriate forum in which to consider factual allegations concerning Verizon's construction activities.³¹ Similarly, Verizon suggests that this is not the appropriate proceeding to address allegations concerning terms and conditions of future cable franchises.³²

²⁵ Id. at pp. 15-16.

²⁶ Id. at pp. 16-17.

²⁷ Id. at pp. 20-23.

²⁸ Id. at pp. 20-21.

²⁹ Id.

³⁰ Id. at pp. 20-23.

³¹ Id.

³² Id. at pp. 23-24.

On April 4, 2005, the Petitioners filed a Reply Brief to Verizon's Opposition Brief. Petitioners assert that Verizon's statutory construction of state and federal law is misplaced. Specifically, 47 U.S.C. §522(7)(definition of a cable system) explicitly contradicts Verizon's interpretation of the phrase "is used", which has a descriptive role that applies to present, as well as future use of the subject cable system.³³ According to the Petitioners, because Verizon's FTTP network is currently designed to provide cable service and capable of being used as a cable television system in the future, it is a cable television system under federal law.³⁴ Similarly, Petitioners assert that §212 of the PSL, which defines a cable television system as one that "operates" to provide service and is, therefore, governed by all applicable pre-construction and cable franchising obligations under state law, makes no distinction between current and future use.³⁵ Finally, Petitioners submit that Verizon's authority to offer telephone service in New York does not override the federal mandate that a provider of cable service be subject to the local franchising requirements including those instances where the system is constructed by a common carrier.³⁶

On April 11, 2005, Verizon filed its Supplemental Brief, asserting that Petitioners' arguments on statutory interpretation should be rejected. Verizon states that Petitioners' interpretation of the term "is used" under federal law is inaccurate because Congress clearly distinguished between a facility that "is designed" and one that "is used" to provide

³³ Reply Brief at pp. 6-10.

³⁴ Id. at pp 10-11.

³⁵ Id. at p. 11.

³⁶ Id. at p. 13.

video programming under 47 U.S.C. §522(7).³⁷ Further, Verizon asserts that Petitioners' analysis is inconsistent with the FCC's interpretation of the federal Cable Act.³⁸

Because the Petitioners sought relief beyond the request for a declaratory ruling, notice of the Petitioners' request for declaratory ruling and additional relief was published on March 8, 2005, pursuant to the State Administrative Procedure Act (SAPA). The following comments were received in response to that SAPA Notice.

Numerous towns, cities and villages submitted letters requesting expedited treatment of this issue and advocating support, in whole or in part, for the Yonkers Petition and the Joint Petition.³⁹ Because those various letters request similar, if not identical, relief as the Joint Petition and the Yonkers Petition under consideration, we will treat the issues generically herein as opposed to dealing with them on a case-by-case basis.

By letter dated March 23, 2005, Time Warner Cable, Inc. (Time Warner) supports the Petitioners' request that we

³⁷ Supplemental Brief at pp. 2-5.

³⁸ Id.

³⁹ Those Towns, Villages and Cities are as follows: Villages of Malverne, Spencerport, Hempstead, Westbury, Amityville, Bayville, Mount Kisco, Great Neck Estates, Hewlett Bay Park, Hewlett Neck, North Hills, Oyster Bay Cove, Saddle Rock, Thomaston, Woodsburgh, Rockville Center, Flower Hill, Great Neck, Great Neck Plaza, Kensington, Kings Point, Lake Success, Munsey Park, Plandome, Plandome Heights, Plandome Manor, Southampton, Northport and Russell Gardens, and the Towns of Conesus, LeRoy, Goshen, Henrietta, Liberty, Rosendale, Romulus, Bethel, New Windsor, Blooming Grove, Byron, Hilton Smithtown, Oyster Bay, Mount Kisco, North Salem, Poughkeepsie, and Greenburgh, and the Cities of Rome, Rye and New Rochelle and the Dutchess County Supervisors and Mayors Association.

find that Verizon's activities violate state law and are, therefore prohibited. Further, Time Warner asserts that Verizon should be subject to the same basic regulatory requirements as all cable companies, and warns against redlining by Verizon.

The Association of Towns of the State of New York (the Association) and the Conference of Mayors and Municipal Officials (the Conference) support the various petitions to declare Verizon's construction activities a cable television system thereby invoking the protections afforded under Article 11 and the cable franchising requirements. The thrust of their opposition to Verizon's build-out, and hence their support for the petitions, concerns the municipalities' ability to govern their rights-of-way, including but not limited to proper indemnification and construction safety and ensuring aesthetically compatible infrastructure. Moreover, there is concern that Verizon may attempt to circumvent the cable franchise regulations when it is ready to offer cable service, specifically, the provisions pertaining to public, educational and government (PEG) access channels, redlining, and franchise fee payments. At that point, the Association and the Conference suggest that Verizon may be unwilling or unable to make the necessary modifications to its FTTP system to accommodate those concerns.

The City of New York Department of Information Technology and Telecommunications (the City), does not take a definitive position regarding Verizon's build-out.⁴⁰ Rather, it raises four related concerns. First, the City objects to

⁴⁰ It should be noted that Verizon and the City are involved in litigation concerning Verizon's authority to use its streets and roads; that matter has not been resolved. However, the City has not sought to enjoin Verizon from installing and maintaining certain facilities.

Verizon's argument that federal law is preemptive of state and local franchising rights. The City asserts that pursuant to the City of Dallas⁴¹ case (overturning the FCC's attempt to preempt local franchise authority for Open Video Systems (OVSS)), franchise requirements arise from state and local authority and the federal Cable Act is merely an overlay that establishes an additional franchise requirement.

Second, the City opposes Verizon's assertion that it somehow has the authority to build its FTTP network under §27 of the TCL. The City asserts that §27 merely grants Verizon the right to exist as a corporation, while the privilege to use the streets and roads is a right granted by the municipality. The Commission does not, here, render a determination as to the effect of §27 over Verizon's right to access rights-of-way.

Third, the City asserts that Verizon's FTTP upgrade is conditional on abiding by all applicable local requirements. The Commission agrees with this requirement and that position is reflected herein.

Fourth, the City is concerned that Verizon's large capital expenditure in upgrading its network will somehow place it in a position where it cannot adhere to cable franchise obligations once it becomes necessary to engage in cable franchise negotiations and, therefore, the City calls for the Commission to have Verizon certify that it will be able to support its pre-franchise FTTP investment without affecting its wireline network viability. The City's position speculates that Verizon's adherence to the cable franchise regulations might make its investment untenable and could potentially affect its wireline business. Because safeguards currently exist that

⁴¹ City of Dallas v. FCC, 165 F.3d 341 (5th Cir. 1999).

adequately protect the wireline infrastructure, we conclude that additional certification is not warranted at this time.

New York State Assemblymen Brodsky and Rivera and the New York State Assembly Puerto Rican/Hispanic Task Force (the Task Force) assert that the Commission has essentially closed this proceeding to public participation. They urge for hearings to be conducted to further explore Verizon's build-out. Assemblyman Rivera and the Task Force also express concern over potential redlining by Verizon.

The original petitions came in as requests for a declaratory ruling and are subject to the procedural rules governing declaratory rulings (16 NYCRR Part 8). Although declaratory rulings are not subject to SAPA, we nevertheless issued a SAPA because additional relief was requested beyond the request for declaratory ruling, and we received comments from stakeholders, villages, towns and cities totaling over 35 municipalities and municipal representatives encompassing over a million constituents. The comments come from essentially the same areas where Verizon has begun building-out its FTTP network. This broad input demonstrates to us that the Commission's process is robustly open and we, therefore, do not see the need to augment the process further. A determination at this time is also beneficial in that we have received numerous requests from various municipalities that the Commission decide this issue expeditiously.

The Larchmont-Mamaroneck Cable Television Board of Control (the Board) claims, similarly to the City, that despite Verizon's preemption argument, local franchising power is preserved. The Board goes on to assert that pre-construction cable requirements are necessary to allow communities to address such issues as PEG access before construction rather than after. Further, the Board asserts that because the definition of

franchise under Article 11 contemplates that a cable franchise is obtained before construction begins, Verizon should be required to obtain cable franchises. The Board emphasizes that if the Commission allows Verizon to continue its construction activities, the Commission's construction regulations will be a nullity. However, should the Commission declare that Verizon's system is not yet a cable television system, the Board argues in the alternative that Verizon runs the risk of re-building an entirely new network (or making extensive modifications to its FTTP network) prior to obtaining cable franchises because municipalities may require specific changes before they enter into a cable franchise agreement.

The Board further asserts that Verizon's pre-construction franchising requirements will not be unnecessarily delayed because Verizon can avail itself of the 30-day franchising process where a second entrant agrees to the same terms and conditions of the incumbent operator under the Commission's new cable regulations.⁴² This argument does not directly bear upon the interpretive question presented.

Lastly, the Board argues that because state law does not specifically preclude localities from requiring franchises prior to construction, the Commission should declare that it is up to the respective municipalities as to when to exercise that requirement.

Finally, under the veil of the SAPA notice, on May 9, 2005, the Petitioners⁴³ seek to supplement the underlying record with a factual allegation regarding Verizon's deployment plan and request an evidentiary hearing to explore Verizon's

⁴² NYCRR § 894.7(e).

⁴³ The May 9 letter indicates that it is being submitted by Cablevision and CTANY only and, therefore, it does not appear that the Town of Babylon joins in this request.

characterization of its FTTP build-out. On May 12, 2005, Verizon objected to this filing as an abuse of the Commission's rules. On a substantive basis, Verizon further contends that no factual issues exist, that warrant further Commission review.

DISCUSSION

The threshold question here is whether Verizon's upgrade converts its telecommunications system into a "cable television system" as defined under § 212(2) of the PSL. If it does, then Verizon is subject to the applicable laws, rules and regulations established under Article 11, including the requirement to obtain a cable franchise before the construction and operation of a cable television system commences. If it does not, then Article 11 is not triggered, unless and until Verizon's activities constitute a cable television system.

The Petitioners urge us to apply an intended use or economic "but for" test to Verizon's FTTP network.⁴⁴ In other words, but for the intended use or economic benefits of a FTTP network to provide cable service, Verizon would not build it. Therefore, Petitioners claim that we should declare Verizon's network a cable television system and require it to obtain the necessary cable franchises prior to construction.

Conversely, Verizon urges the Commission to apply an actual use test.⁴⁵ Verizon contends that merely because the upgraded system will be capable of deploying cable service, Article 11 does not attach until the network is actually used to provide cable. Verizon submits that it is already subject to the panoply of local, state and federal laws and regulations in its capacity as a telecommunications provider and, therefore, it

⁴⁴ Joint Petition at pp. 5, 12.

⁴⁵ Opposition Brief at pp. 2, 4, 13.

makes no sense to add an additional layer of franchising as a precondition to its build-out of its FTTP network.⁴⁶

We decline to adopt either test. Based on our review of the PSL and the federal Cable Act, we conclude that because Verizon's construction activities enhance and improve its voice and data offerings, a separate cable franchise is not mandated. However, before Verizon offers for hire broadcast programming or installs plant exclusively for a cable television system, it must comply with Article 11 including the requirement of obtaining cable franchises. This finding applies the PSL in a manner that balances the state's interest in ensuring that local governments have the ability to manage their rights-of-way and negotiate cable franchises with the goal of promoting the deployment of advanced technologies, and is consistent with federal law.

Public Service Law

The Petitioners claim that Verizon's FTTP network is a cable television system under state law because it will be capable of providing a multi-channel video programming delivery system.⁴⁷ Petitioners further claim that because Verizon is an entity owning and controlling this system, it is also a cable television company as defined under state law.⁴⁸ Therefore, Petitioners submit that Verizon is required to obtain the necessary cable franchises prior to commencing construction of this network.

Verizon explains that its FTTP network will be capable of providing telecommunications and broadband services and

⁴⁶ Id. at p. 18.

⁴⁷ Joint Petition at p. 18.

⁴⁸ Id.

acknowledges that it may be used to provide video.⁴⁹ However, Verizon maintains that its network will only be used to deliver voice and broadband services at this time.⁵⁰ When, and if, Verizon seeks to use the network to provide video programming, it is committed to obtaining the necessary municipal and state approvals under Article 11.⁵¹ Thus, because it is not currently "using" its network to "transmi[t] video programming directly to subscribers" (and it will not do so until it obtains the requisite municipal and state approvals), its current activities do not constitute the operation of a cable television system.⁵²

The PSL does not precisely mandate when a cable franchise is required for upgrades to an existing network that can deploy multiple services. A cable television system is defined as a system that "operates ... the service of receiving and amplifying programs..." (PSL § 212(2)). PSL § 219(1) states in pertinent part that "...no cable television system ... **may commence operations** or expand the area it serves unless it has been franchised by each municipality in which it proposes to provide or extend service (emphasis added)." Article 11 of the PSL applies to "every cable television system and every cable television company including a cable television company which constructs, operates and maintains a cable television system in whole or in part through the facilities of a person franchised to offer a common or contract carrier service." (PSL § 213(1)).

Verizon argues that because its system does not currently receive and amplify programming it does not satisfy

⁴⁹ Opposition Brief at pp. 2, 16; Supplemental Brief at p. 1.

⁵⁰ Id.

⁵¹ Opposition Brief at pp. 2, 24.

⁵² Id. at pp. 2, 16.

the definition of a cable television system.⁵³ Further, it is not using its system for the delivery of cable. Petitioners claim that these arguments are "clever wordsmithing" and Verizon should be required to obtain cable franchises consistent with Article 11.⁵⁴

In the past, we have interpreted Article 11 to require municipal and state approvals of a cable franchise for a company constructing or extending a cable television system.⁵⁵ Those cases involved the construction or extension of a system that was used exclusively to deploy cable service. In those cases, obtaining a cable franchise was essential to ensuring local authorization to use the various rights-of-way. Article 11 does not, however, provide the exclusive means by which construction can take place for a system that is capable of providing multiple services, including cable. Indeed, we have never considered whether prior approval of a cable franchise is required for the upgrade of a pre-existing network capable of deploying multiple services. Moreover, Article 11 does not specifically mandate that a cable franchise must be obtained for the construction at issue here.

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

⁵³ Id. For similar reasons, Verizon states it is not yet a cable television company pursuant to PSL §212(2) because it does not yet own, control, operate, manage or lease a cable television system.

⁵⁴ Joint Petition at p. 5.

⁵⁵ See e.g.; Case 97-V-0122 - Application of Castle Cable TV, Inc. for Approval of a Certificate of Confirmation for a Cable Television Franchise for the Town of Theresa (Jefferson County), Order Granting Certificate of Confirmation (issued June 2, 1997).

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 local oversight. Municipal governance over rights-of-way is still in effect and Verizon must adhere to those requirements.

Accordingly, to the extent the network upgrade to further Verizon's telecommunication service is consistent with pre-existing rights-of-way authorizations, and inasmuch as Verizon's activities are subject to municipal oversight and do not involve plant used exclusively for cable nor do they involve the offering of broadcast programming for hire, we do not construe Article 11 as mandating that Verizon must first obtain cable franchises to construct its FTTP network. Thus, we conclude that Verizon does not need to obtain a cable franchise at this time. However, should Verizon seek to install plant in its network that can only be used exclusively for cable or offer for hire broadcast programming, we conclude that Verizon's network would then constitute a cable television system requiring cable franchises prior to any further build-out.⁵⁶

Federal Law

The Petitioners claim that Verizon's FTTP network should be considered a cable television system under federal law because Verizon's network will consist of a set of closed transmission paths and other specific architecture that meet the

⁵⁶ Verizon indicates in its Brief in Opposition that its FTTP network will "require the installation of significant additional equipment before it could be considered "video-capable." See p. 14, fn. 33.

definition of a cable system under 47 U.S.C. §522(7).⁵⁷ The Petitioners argue that notwithstanding the fact that Verizon's network can be used to deploy data and telephone, because it is designed to deploy cable, Title VI applies. Petitioners further argue that Verizon's interpretation of federal law - that a system such as Verizon's is not a cable system until it is actually used as one - is misleading because federal law clearly mandates that a system designed to provide cable falls under the ambit of Title VI, as opposed to one that is actually used to provide cable.⁵⁸

Under federal law, a cable system is defined as a "facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that **is designed** to provide cable service ... but ... does not include ... a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) to the extent such facility **is used** in the transmission of video programming directly to subscribers...."(47 U.S.C. § 522(7)) (emphasis added).

Petitioners claim in their Reply Brief that the distinction in the phrases "is used" and "is designed" in §522(7) was meant to make clear that a common carrier's network does not become a cable system simply because its facilities are used to transport video programming on behalf of a third party. Petitioners suggest that Congress reaffirmed this intent under §571(a)(2) which states that "[t]o the extent that a common carrier is providing transmission of video programming on a

⁵⁷ Joint Petition at pp. 18-19.

⁵⁸ Reply Brief at pp. 2-4.

common carrier basis, such carrier shall be subject to the requirements of subchapter II This paragraph shall not affect the treatment under section 522(7)(C) of this Title of a facility of a common carrier as a cable system." By contrast, the Petitioners argue that a telephone company that designs and constructs facilities to provide video programming to subscribers directly, owns and operates a cable system as defined under federal law.

Verizon counters that its FTTP network is not a cable television system under federal law. Pursuant to the various definitions of cable service, cable system, and cable operator under Title VI, Verizon argues that its network does not fall under the scope of Title VI unless and until its network is actually "used" to deploy cable service.⁵⁹ Until that time, the cable franchising requirements of Title VI do not attach.⁶⁰ Further, Verizon submits that Petitioners' interpretation of Title VI, and more precisely §522(7), is misplaced because Congress' deliberate choice of the words "is designed" rather than "is used" makes it clear that the main clause of that section refers to the characteristics and capabilities of the system, not the manner in which the system is employed at a particular time.

Moreover, Verizon claims that the Petitioners' arguments are inconsistent with the FCC's interpretation of Title VI. Specifically, Verizon asserts that the FCC's analysis in its Telephone Company-Cable Television Cross-Ownership

⁵⁹ Opposition Brief at pp. 7-9.

⁶⁰ Id.

proceeding⁶¹ makes clear that mere ownership of a video capable network is not sufficient to trigger the cable franchising requirements unless the network is also being used by the network owner to provide video programming directly to subscribers.⁶² Finally, Verizon maintains that the relief sought by Petitioners is preempted by federal law which specifically exempts common carriers from cable franchising requirements unless and until they begin offering video programming directly to subscribers.⁶³

We agree with Verizon that Congress' choice of words in §522(7) is dispositive. The phrase "is designed" versus "is used" demonstrates to us a clear intent to distinguish a hybrid system from one that is constructed exclusively to provide cable. We do not agree with Petitioners that Congress intended these phrases to carry the same meaning in the statute.

Petitioners' argument that distinctions between design and use in §522(7)(C) merely exempt common carriage of video traffic is unavailing. The common carriage of video programming is specifically addressed in §571(a)(2), where the law clarifies that third-party use and provision of video over common carriage is subject to Title II. This exception is expressly different than the carve-out recognized in §522(7)(C) which addresses the issue here: when Verizon's system is considered a cable television system.

⁶¹ Telephone Company - Cable Television Cross-Ownership Rules, Sections 63.5-63.58, CC Docket No. 87-266, Further Notice of Proposed Rulemaking, First Report and Order and Second Further Notice of Inquiry, 7 FCC Rcd 300 (1991); *id*, Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 5069 (1992).

⁶² Opposition Brief at p. 14.

⁶³ Id. at pp. 5-6.

Like New York law, Title VI does not specifically mandate that a cable franchise must be obtained before a common carrier upgrades its common carrier network to a hybrid system that includes the ability to provide cable. 47 U.S.C. §541(b)(1) states that "a cable operator may not provide cable service without a franchise." There is no guidance as to when the cable franchising obligations of Title VI are triggered. Accordingly, we believe our interpretation here is consistent with federal law.

However, we are unwilling to accept completely Verizon's position. Verizon argues that federal law contemplates that Title VI does not attach until it actually uses its FTTP network to deliver cable service. We disagree. Our conclusion requires that cable franchises must be obtained before any plant that is used exclusively to provide cable is installed, because such plant would not be subject to the common carrier requirements and the exception in §522(7) would not apply. Thus, our conclusion is consistent with federal law.

Discrimination and Rights-of-way Management

Petitioners claim that Verizon's build-out is discriminatory and affects local rights-of-way management.⁶⁴ Specifically, Petitioners assert that, if Verizon is not required to obtain cable franchises, the affected municipalities are deprived of their rights to analyze and approve the construction of the proposed cable system and prepare the necessary environmental reviews. Moreover, Petitioners claim that not requiring cable franchises in these circumstances limits the management and oversight of municipal rights-of-way. Ultimately, Petitioners assert that not requiring cable franchises gives Verizon an unfair advantage over incumbent

⁶⁴ Joint Petition at p. 25.

cable providers by not holding Verizon to the same set of regulations and standards.⁶⁵

Verizon responds that neither federal nor state law was intended to impose an added layer of franchising on a company that already has a franchise to conduct certain activities in which it is lawfully engaged.⁶⁶ Verizon further submits that the pre-construction and construction regulations of Article 11 are not rendered "meaningless." Rather, they apply in certain circumstances: "where a new network is being constructed solely for the purpose of offering video programming directly to subscribers; and not in others - *not* where a pre-existing network subject in whole or in part to common carriage regulation subsequently is enhanced for the provision of video programming."⁶⁷

Verizon further suggests that the issues raised by the Joint Petition regarding safety violations are not properly the subject of this declaratory review.⁶⁸ Finally, Verizon asserts that Petitioners' discrimination claim is unfounded. Verizon states that the law actually supports fair competition by forbearing from imposing cable regulations upon a telephone company before it actually competes head-to-head with incumbent cable companies.⁶⁹

Our conclusion does not undermine Article 11. Verizon's network upgrade is authorized under its existing statewide telephone rights. Moreover, if Verizon offers cable service or installs plant in its network that can only be used

⁶⁵ Id. at pp. 25-27.

⁶⁶ Opposition Brief at pp. 18-19.

⁶⁷ Id. at p. 20.

⁶⁸ Id. at p. 22.

⁶⁹ Id. at p. 20.

exclusively for a cable television system, then Verizon is required to obtain cable franchises. This includes adherence to all of the attendant rules and regulations established under Article 11. Thus, the municipalities are not deprived of their rights under state law. Our rules remain in effect and Verizon remains subject to Article 11. Finally, we agree with Verizon that this is not the appropriate forum to raise factual issues concerning Verizon's alleged pole safety issues.⁷⁰

For these reasons, we also conclude that there is no discriminatory effect. If Verizon opts to construct a cable television system, it will be required to adhere to the applicable rules and regulations that incumbent providers are subject to. Further, Verizon is required to obtain all necessary permits and adhere to all relevant ordinances while working in the respective rights-of-way. The key practical effect of our conclusion is that Verizon need not obtain cable franchises under these narrow circumstances, until it seeks to install cable specific plant or offer cable service directly to subscribers.

Having addressed the issues presented in the Joint Petition and various other petitions, we now turn to the comments received pursuant to our SAPA notice summarized above.

While the City objects, *infra*, to Verizon's characterization that federal law preempts local franchising rights, our decision here does not rest on any federal preemption. The City of Dallas case cited by the City dealt with a very narrow FCC ruling seeking to explicitly preempt local franchising requirements over OVSSs, whereas here, the Commission recognizes a municipality's right to govern its streets and roads as it relates to cable television systems. We

⁷⁰ See *infra* fn. 6.

declare that the cable franchising obligations are not triggered, however, until Verizon installs cable exclusive plant or offers cable for hire to the public. Thus, local franchising rights are not revoked.⁷¹

While the Board argues, *infra*, that state law does not preclude localities from requiring cable franchises prior to construction, in casting the scope of the cable franchising requirement under the PSL, our ruling balances the state's interest in ensuring that local governments have the ability to manage their rights-of-way, while promoting the deployment of advanced technologies. We believe our findings here best accomplishes this balance. The Commission is not preventing the localities from exercising their franchise rights; it merely is declaring that the Article 11 cable franchising requirements are not invoked at this particular time.

Finally, the Petitioners' attempt to supplement the record with a request for an evidentiary hearing is misplaced.⁷² As a matter of procedure, the Petitioners' attempt to use SAPA to supplement their Request for a Declaratory Ruling is inappropriate. Moreover, the Commission is acting well within its discretion to base its ruling upon the assumed set of facts in the Joint Petition.⁷³ However, even if that were not the case, and the Commission considered the Petitioners' request on the merits, it would not change the underlying determination herein which is based on legal conclusions regarding the application of Article 11 and when it is applied to the type of

⁷¹ Time Warner supplemented its earlier letter comments and essentially echoed the City's position regarding Verizon's preemption argument.

⁷² See *infra*, p. 16.

⁷³ See Power Authority of the State of New York v. NYDEC, 58 NY2d 427 (1983).

network Verizon is deploying. The issues raised by the Petitioners at this late stage are more appropriately dealt with once the legal findings are made. However, it is certainly not clear from the affidavit submitted in support of the Petitioners' request that there is any merit to the allegations that would warrant further review.

CONCLUSION

Based upon the foregoing, the Joint Petition, the Yonkers Petition and related Petitions are denied, consistent with the discussion above. We clarify that Verizon must first obtain cable franchises from affected municipalities before it offers cable service or installs plant in its FTTP network that can only be used exclusively for a cable television system. Further, because the network upgrades can introduce significant construction activities in certain localities, we expect Verizon to work cooperatively with municipalities to ensure that local officials are timely informed of construction plans so that local officials are able to effectively manage their respective rights-of-way. Finally, where Verizon has plans to eventually use its network to provide cable service, we strongly urge Verizon to work with local officials to understand their needs so that they can be engineered and met efficiently.

The Commission Finds and Declares:

1. The relief requested in the Joint Petition for Declaratory Ruling and the Yonkers Petition for Declaratory Ruling is denied consistent with this ruling.

2. Verizon New York Inc. is required to obtain municipal cable franchises in affected areas prior to installing plant used exclusively for a cable television system or prior to offering broadcast programming.

3. These proceedings are closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 8, 2006

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin
Patricia L. Acampora

CASE 05-V-1570 - Petition of Verizon New York Inc. for a Certificate of Confirmation
for its Franchise with the Village of Nyack, Rockland County.

ORDER AND CERTIFICATE OF CONFIRMATION

(Issued and Effective February 8, 2006)

BY THE COMMISSION:

BACKGROUND

The above-captioned application was submitted by Verizon New York Inc. (Verizon or franchisee) on December 9, 2005. A copy of same was served on the franchisor, the Village of Nyack (local franchising authority (LFA) or Village). All local notice requirements were met.

This application is governed by Section 221 of the Public Service Law (PSL), which requires our approval of a Certificate of Confirmation unless we find specific violations of law, Commission regulations, or the public interest. Section 221(4) of the PSL provides that we may approve the application contingent upon compliance with certain standards, terms or conditions set by the Commission determined not to have been met by the applicant, system or franchise as proposed. After reviewing the subject petition, and all the comments, in the context of the applicable statutory and regulatory standards, we have determined to approve the Certificate of Confirmation subject to the

conditions set forth herein. Because this confirmation will promote consumer choice and enhance competition in the cable market, our determination furthers the public interest.

SUMMARY OF COMMENTS

A public notice of Verizon's application for a Certificate of Confirmation from the Commission was published in a newspaper of general circulation in the Village on December 12, 2005, as required pursuant to 16 NYCRR §897.2(g). Comments were received from Cablevision Systems Long Island Corporation (Cablevision or incumbent) and the Cable Telecommunications Association of New York, Inc. (CTANY) on December 22, 2005. Verizon filed reply comments on January 10, 2006.

Cablevision contends that the proposed franchise agreement between Verizon and the Village, as approved by the Village Board, is deficient in numerous respects. It claims that the proposed franchise agreement suffers from the same defects as those terms to which the Commission attached conditions in its confirmation of the Massapequa Park cable franchise.¹ Specifically, Cablevision alleges that the proposed agreement violates the Commission's rules on line extension, indemnification, construction quality and safety, description of the cable system, public, educational and government (PEG) access, restoration of municipal property, rates, customer service, and abandonment. Consequently, Cablevision asserts that the cable franchise at issue here, must, at a minimum, be revised to reflect the same conditions and modifications as Verizon's Massapequa Park cable franchise.

In addition, Cablevision alleges that because of a purported misunderstanding between Verizon and the Village officials over the supervision of Verizon's fiber to the premises (FTTP) network, we should afford the Village additional time to consider its cable franchise with Verizon. Specifically, Cablevision alleges that Verizon continues to adhere to the position that its mixed-use facilities that are also used in the deployment of cable service are exempt from Article 11 regulations. Cablevision

¹ Case 05-V-1263, Order and Certificate of Confirmation (issued December 15, 2005) (Massapequa Park).

states that because this issue was ultimately resolved in Massapequa Park, we should reaffirm our holding that Article 11 applies to mixed-use facilities.

Finally, Cablevision raises level playing field concerns similar to those raised in the Massapequa Park franchise proceeding, and states that, at a minimum, the proposed franchise here cannot be confirmed absent revisions similar to those imposed in Massapequa Park.²

Accordingly, Cablevision urges the Commission to: (1) revise the proposed franchise agreement in a manner consistent with Massapequa Park and (2) afford the Village an opportunity to revisit the proposed franchise agreement in light of our determination concerning the Village's authority over Verizon's FTTP network provided in Massapequa Park.

CTANY echoes many of the comments made by Cablevision, arguing that the proposed franchise agreement must be made to comply with the modifications and conditions outlined in Massapequa Park and the Commission should reaffirm its findings that Article 11 applies to mixed-use facilities.

In reply, Verizon asserts that a central goal of both federal and state law is to encourage competitive entry in the video market. Moreover, Verizon asserts that Cablevision misapplies Massapequa Park by arguing that it applies Article 11 to the entirety of Verizon's voice-and-data FTTP network and, therefore, grants a municipality broad new authority over the construction, placement and operation of that network. Verizon opines that Massapequa Park established only that once Verizon begins offering cable service it would in some part be operating a cable system, but only "to the extent" any part of Verizon's network is being used to provide cable service, and does not apply to the entirety of the FTTP network.

² Cablevision emphasizes that the issue concerning facilities supervision in this proposed franchise is more problematic here because while the Massapequa Park franchise contained a handful of rights-of-way supervision provisions, the proposed agreement contains only one such provision.

Verizon argues that its interpretation of Massapequa Park is consistent with both state and federal law. Under federal law, Verizon asserts that its FTTP network is a cable system only "to the extent" it is used to transmit video programming directly to subscribers. Verizon construes this language to mean that the entirety of its telecommunication/data network is not automatically converted to a cable system once subscribers receive video programming. Verizon states that this interpretation is reasonable because Verizon already has access to local rights-of-way in its capacity as a telecommunications provider and, therefore, the mere fact that it also provides cable service should not change the character or extent of its use of the rights-of-way. Moreover, under PSL §212(2), Verizon argues that the definition of a cable television system does not specify which particular facilities are part of that system and, thus, when read in light of the mandates in the federal Cable Act, it is a cable system only "to the extent" it provides cable service. Verizon points out that nothing in Article 11 "...shall be construed to prevent franchise requirements in excess of those prescribed by the Commission, unless such requirement is inconsistent with this article, any regulation, policy or procedures of the commission, or federal law." PSL §219(3). Thus, it claims the purported limitation in the "to the extent" language in federal law also applies under the Public Service Law.

Finally, Verizon argues that its interpretation is also supported by other provisions of federal law. For example, according to Verizon, under 47 U.S.C. §621(b)(3)(B) a franchise authority is prohibited from imposing any requirement that limits or restricts telecommunication service by a cable operator. Similarly, 47 U.S.C. §253(a) prohibits state or local regulation that may have the "...effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Moreover, Verizon raises First Amendment considerations that are implicated by attempts to use the cable franchising process to restrict entry into the video market.

For all these reasons, Verizon urges the Commission to reject arguments that distort Massapequa Park and reaffirm that the scope of the activity requiring a cable franchise for Verizon's cable service over its FTTP network applies to cable-only facilities in the public rights-of-way, that the transmission of cable service does not give

municipalities greater authority over the construction, placement or operation of its mixed-use facilities than they already have under generally applicable telecommunications laws and does not, therefore, allow them to impose additional burdens on those physical facilities, and that the definition of a cable television system under state law is co-extensive with the definition under the federal Cable Act.

Finally, Verizon argues that there is no basis to remand the proposed franchise agreement to the Village. The scope of municipal authority over Verizon's FTTP facilities was, according to Verizon, a contentious issue for the Village during franchise negotiations. The Village had the benefit of Cablevision's arguments to assist them and was fully aware of this dispute regarding the proper legal standard. Therefore, there is no basis here to claim a misunderstanding and no need for a remand.

The remainder of Verizon's reply comments is dedicated to rebutting Cablevision's claims under the Commission's minimum franchising and level playing field standards. These arguments are also substantially similar to those raised in the Massapequa Park franchise proceeding and we will, therefore, not restate them here.

Based on the foregoing, Verizon requests that the Commission approve the petition for a Certificate of Confirmation.³

As discussed in detail below, we approve the Certificate of Confirmation, provided certain provisions contained in the proposed franchise agreement are modified or stricken to satisfy the minimum franchise standards contained in the Commission's rules. Moreover, we provide further clarity on the scope of a municipality's control over Verizon's mixed-used facilities.

³ On January 12 and 13, 2006, CTANY and Cablevision, respectively, filed letters with the Commission, requesting leave to submit, and arguing that, Verizon's attempt to misconstrue the Commission's holding on the scope of control over Verizon's mixed-use facilities should be denied.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

Under SEQRA (Article 8 of the Environmental Conservation Law) and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 897), all state agencies must determine whether the actions they are requested to approve may have a significant impact on the environment. SEQRA (6 NYCRR §617.6(a)(3)) requires applicants to submit a completed environmental assessment form (EAF) describing and disclosing the likely impacts of the proposed actions. Verizon submitted an EAF for our review.

We have reviewed Verizon's application for its impact on the environment. We find that the proposed action does not meet the definitions of either a Type I or Type II action contained in 6 NYCRR §§617.4, 617.5 and 16 NYCRR §7.2 and §897.6, and, therefore, is an "unlisted" action. We assume "Lead Agency" status and pursuant to an "uncoordinated" review determine that our approval and construction of the proposed cable system will not have a significant impact on the environment.⁴

In determining that the action of approving the certificate here will not result in any significant adverse environmental impacts, we note that the Commission has previously recognized that Verizon has the independent authority to upgrade its existing telecommunications network with FTTP. We have assessed the environmental impact of our action on the entire franchise area. The action here is limited to the confirmation of a cable franchise which authorizes the construction of equipment used exclusively for cable television service and the offering for hire of broadcast programming. The offering of broadcast programming may result in an increase in requests for fiber drop wires and limited extensions of the already upgraded FTTP network. This incremental installation activity will be associated with customers that presumably already have service from Verizon. Verizon has represented to staff that most of the fiber optic cable is already installed within the Village. Moreover, Verizon has represented that any additional exclusively cable-related equipment necessary to provide cable service will be installed

⁴ We note that rule 16 NYCRR §897.7(a) incorrectly refers to 6 NYCRR §617.19, the prior subsection for the EAF form, which is now §617.20.

within existing Verizon central offices and that no other purely cable-related equipment need be installed. Further, based upon our review of the EAF, we determined that the Village does not contain agriculture areas, that might be adversely impacted by the type of construction proposed. However, should future extensions of the system entail construction in wetlands, coastal zones or affect buildings and structures on the National Historic Landmarks and State and National Registers of Historic Places, the franchisee shall, seek consultation and/or permitting from the appropriate local and state agencies including the New York State Department of State and Office of Parks and Recreation.

A Notice of Determination of Significance, Negative Declaration, for this unlisted action is approved in conjunction with this Order. The Notice and EAF will be retained in our files. A copy of the Notice is annexed to this Order.

DISCUSSION

This application seeks our approval of a Certificate of Confirmation of a cable television franchise granted by the Village of Nyack by Resolution of the Village Board dated November 28, 2005 following duly noticed public hearings held on November 10 and 28, 2005. The term of the proposed franchise agreement is 15 years, measured from the date of this Order.

Verizon asserts that parties are misconstruing the determination in Massapequa Park pertaining to the scope of authority granted to a municipality concerning mixed-use facilities. While the Commission did intend to apply Article 11 and our minimum franchise standards to the entirety of Verizon's FTTP network, including mixed-use facilities, we do not view this determination as granting broad new authority to a municipality.

The Commission's rules establish minimum franchise standards and preserve municipal police power over cable facilities. The Commission's June 15, 2005 Declaratory Ruling recognized that local governments have oversight authority for facilities in the public rights-of-way, even if they are used exclusively for telephone services. By 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. 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.

Attempts 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.⁵ Thus, for example, cable franchise provisions requiring the undergrounding of mixed-use facilities would go beyond our minimum franchise requirements and would unduly extend cable franchising requirements that affect telephone plant and services. Where lawful and appropriate, such local requirements might be effectuated via local ordinances pursuant to police powers and presumably would be applicable to all other utilities using the public rights-of-way. We did not intend in Massapequa Park that Article 11 could be used to effectuate, in a cable franchise, undergrounding of existing aerial plant or other construction/operating requirements pertaining to mixed-use plant.⁶

In Massapequa Park, we determined that our minimum cable franchise standards applied to Verizon's mixed-use facilities. The subject franchise agreement states in numerous sections that the LFA's regulatory authority over Verizon's FTTP network is limited in that the franchise and Article 11 of the PSL do not apply to its FTTP

⁵ See *e.g.*, PSL §219(3), 47 U.S.C. §541(a)(1) and 16 N.Y.C.R.R. §894.8(a).

⁶ We are not persuaded by Verizon's argument that the First Amendment to the United States Constitution prohibits municipal police power over its mixed-use plant. Verizon failed to establish that municipal regulation of rights-of-way is precluded.

network to the extent the network is used for the provision of telephone or data services.⁷ Therefore, based on the same reasons for our determination in Massapequa Park and as discussed above, as a condition of this Order, any reference in the proposed franchise agreement to facilities that are mixed-use and, therefore, purportedly subject to Title II and/or TCL §27 regulation exclusively, are deemed to be stricken from the proposed agreement. Thus, the franchise will be construed such that if Verizon's network is being used to provide cable service within the Village the entire network is subject to PSL Article 11 and the Commission's cable rules.⁸

We further find that, in view of the above determination, the proposed franchise agreement substantially complies with our rules at 16 N.Y.C.R.R. Part 895,⁹ except for certain provisions of the proposed franchise agreement that require conditional approval as set forth below.¹⁰

First, §13.15 of the agreement, which pertains to rates, is inconsistent with Section 895.1(e) of our rules, which requires that any rates and charges be subject to regulation in accordance with federal law. Although the Village and Verizon agree that the franchisee is subject to effective competition and, therefore, not subject to Commission rate regulation, Verizon must seek such a ruling from the Federal

⁷ See *e.g.*, Verizon franchise at §§1.6, 1.29, 1.31, 1.32, 2.2, 4, 13.1.1 and 13.11.

⁸ Verizon argues that the scope of activity for which a cable franchise is required by it applies to cable-only facilities in the rights-of-way and relies on the Village of Warwick (Case 02-V-0224, "Order Approving Certificate of Confirmation and Denying Request for Waiver of Line Extension Rules" (issued June 28, 2002)) proceeding to support its position. However, the Village of Warwick proceeding did not address the particular issue of whether mixed-use plant would be subject to cable regulations under Article 11 because the Warwick franchise did not distinguish between cable exclusive and mixed-use facilities.

⁹ On or about April 15, 2005, the Commission's cable television rules in 16 NYCRR §890 *et seq.* became effective. Accordingly, the proposed franchise agreement is governed by the new rules.

¹⁰ Our authority to condition our approval of the proposed franchise agreement on certain modifications is derived from PSL §213(1).

Communications Commission (FCC).¹¹ Until it has received an exemption from rate regulation from the FCC, rates are subject to federal regulation. It will be a condition of this Order that Section 895.1(e) is deemed a part of the proposed agreement as if specifically set forth therein.

Second, this Order will be granted upon the condition that the franchisee comply with the minimum consumer protection and customer service standards set forth in Parts 890 and 896 of the Commission's rules. Verizon states in its reply comments that it will comply with these rules.

Third, this Order will be granted upon condition that the franchisee comply with the minimum standards for PEG access contained in Sections 895.1(f) and 895.4 of our rules. Pursuant to our rules, Verizon is required to provide PEG access capability at the same time it offers cable television service to the Village. Verizon cannot simply rely on voluntary interconnection or, in the alternative, Commission approval of a petition for interconnection with the incumbent. That does not satisfy the requirement that the "designation of PEG access facilities shall include the provision by the cable television franchisee of the technical ability to play back prerecorded programming and to transmit programming information consistent with the designated uses of PEG access channels."¹² Accordingly, Verizon must comply with the foregoing, consistent with our rules. We note that Verizon states in its reply comments that it will comply with these requirements.

Fourth, this Order will be granted upon the condition that the franchisee comply with the minimum line extension standards contained in Section 895.5 of the Commission's rules. Because the proposed franchise agreement includes certain exceptions that are inconsistent with the Commission's line extension rules, our approval will be furthered conditioned upon striking the exceptions relating to "technical

¹¹ See, 47 U.S.C. §543(a)(2) and 47 C.F.R. §§76.905, 76.907.

¹² 16 NYCRR §895.4(c)(7).

difficulties" and inability to access "under reasonable terms and conditions" from the proposed agreement.¹³

Fifth, the agreement does not fully comply with Section 895.1(i)(1) of our rules which requires the franchisee to indemnify the municipality and hold it harmless from all liability, damage, cost or expense as a result of conduct undertaken pursuant to the franchise. The exception to indemnity in §9.2.1 of the proposed agreement stating that the franchisee shall not indemnify the LFA for any damage, liability or claims resulting from the "distribution of any Cable Service over the Cable System" is inconsistent with our regulations. Our rule states that the franchisee shall indemnify the municipality for all liability, damage, cost or expense arising from any conduct undertaken pursuant to the franchise (emphasis added). In this regard, our approval will be granted upon the express condition that the quoted language in §9.2.1 be stricken from the proposed franchise agreement.

Sixth, Section 895.1(j) of our rules requires the franchise to include a provision stating that any municipal property damage shall be promptly repaired or replaced by the franchisee and restored to serviceable condition. The negligence standard in § 2.9 of the proposed agreement limits the applicability to "negligent" acts.¹⁴ It will be a condition of this Order that the reference to "negligent" acts in the proposed agreement

¹³ In the past, we have rejected similar exclusions regarding access and technical difficulties. See, *e.g.*, Case 03-V-0887, Application of MTC Cable for Approval of the Renewal of its Cable Television Franchise for the Village of Fleischmanns (Delaware County) at pp 4-5 (October 16, 2003). We do not, however, intend to suggest that technical difficulties or unreasonable access conditions would not be grounds for a possible waiver request.

¹⁴ 16 N.Y.C.R.R. §895.1(j).

be stricken and that Section 895.1(j) be deemed a part of the proposed agreement, as if specifically set forth therein.¹⁵

Seventh, Section 895.1(t) of our rules requires a provision stating that any valid reporting requirement in the franchise may be satisfied with system-wide statistics, except those related to franchise fees and customer complaints. It will be a condition of this Order that Section 895.1(t) be deemed a part of the proposed agreement, as if specifically set forth therein.

Eighth, §§2.7.3, 13.7 and 13.12 purport to effect an automatic amendment to the agreement under certain circumstances. We clarify that any modification of the agreement pursuant to these sections would constitute an amendment of the franchise subject to our approval pursuant to Section 222 of the PSL and Subpart 892-1. In its reply comments, Verizon raises no objection to this requirement.

Ninth, Section 895.1(b)(c) of our rules require a provision in all franchise agreements regarding a description of the system and the location of trunk and feeder plant and a provision requiring that the franchisee shall construct and maintain its cable system using materials of good and durable quality and that all work involved in the construction, installation, maintenance, and repair of the cable system shall be performed in a safe and reliable manner. It will be a condition of our approval that Section 895.1(b) be deemed part of the proposed agreement, as if specifically set forth therein. Verizon

¹⁵ Restoration of municipal property was not conditioned under Massapequa Park because that franchise did not contain a negligence exception. Verizon claims that any restoration is legitimately tied to a modest limitation imposed by a negligence standard and that this standard when read in conjunction with the Rule 895.1(j) is in substantial compliance. Our aim is to ensure that restoration of potentially dangerous conditions in public rights-of-way occur without delay. We note, however, that should a municipality exercise this provision we expect that it will first undertake the necessary investigation to ascertain whether Verizon activities resulted in the damage and the need for restoration.

indicates in its reply comments that it will provide the Village with documentation sufficient to satisfy this requirement.

The proposed franchise agreement contains additional provisions not required by Part 895 of our rules. We approve these provisions to the extent that they are consistent with Article 11 and its regulations. In the event of an ambiguity in any such provision, the provision will be construed in the manner most favorable to the franchisor.

Based on the foregoing, we find that the proposed franchise agreement, as modified by the conditions outlined above, is in substantial compliance with our cable regulations. We also find that the proposed franchise agreement does not violate the Commission's level playing field rule. Part 895.3 states that no 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 upon an incumbent's franchise in the same franchise area. This 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.¹⁶ We will, however, ensure that both agreements in a particular franchise area substantially comply with our franchising standards in Part 895, and that no cable operator enjoys a material competitive advantage in that particular community.

Based upon our review, we find that 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. Based on the conditions outlined above, the proposed franchise agreement does not create a level playing field concern which requires further Commission action.

¹⁶ Case 01-V-0381, Memorandum and Resolution Adopting 16 NYCRR Parts 890-899 (issued April 4, 2005).

Finally, with regard to Cablevision's request that we remand the proposed franchise back to the Village for further consideration in light of our discussion on the scope of Article 11 over Verizon's FTTP network, we decline to do so. In light of the modifications outlined above, we find that the necessary protections are in place vis-à-vis the Village's ability to govern its rights-of-way.

The Commission orders:

1. Pursuant to Section 221 of the Public Service Law and the rules and regulations of this Commission, the application of Verizon New York Inc. for approval of a Certificate of Confirmation of the franchise to provide cable television service for the Village of Nyack (Rockland County) is hereby approved, subject to the conditions set forth in the body of this certificate and Order. Said certificate shall expire 15 years from the date of this Order.
2. This certificate and Order does not in any way confer rights or privileges other than those granted in the underlying franchise and the certificate holder remains subject to the obligations imposed by Article 11 of the Public Service Law, the underlying franchise and all applicable rules, regulations and orders of this Commission.
3. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 05-V-1570 - Petition of Verizon New York Inc., for a Certificate of Confirmation for its Franchise with the Village of Nyack, Rockland County.

NOTICE OF DETERMINATION
OF SIGNIFICANCE

NEGATIVE DECLARATION

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission of the Petition of Verizon New York Inc., for a Certificate of Confirmation for its cable television franchise with the Village of Nyack, Rockland County, based upon our determination in accordance with Article 8 of the Environmental Conservation Law, that such action will not have a significant adverse effect on the environment. The approval of this action is an Unlisted Action as defined under 6 NYCRR Section 617.7(c).

Based upon our review of the record, the confirmation of the exercise of the franchise granted to Verizon New York Inc by the Village of Nyack to provide cable service under Section 221 of the Public Service Law will not result in significant adverse environmental impacts because the incremental construction that would be induced is insignificant in that it would involve only individual service lines and equipment within existing Verizon central offices.

The address of the Public Service Commission, the lead agency for the purposes of the Environmental Quality Review of this project is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Richard H. Powell at (518) 486-2885 or to the address above.

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 8, 2006

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin
Patricia L. Acampora

CASE 05-V-1571 - Petition of Verizon New York Inc. for a Certificate of Confirmation
for its Franchise with the Village of South Nyack, Rockland County.

ORDER AND CERTIFICATE OF CONFIRMATION

(Issued and Effective February 8, 2006)

BY THE COMMISSION:

BACKGROUND

The above-captioned application was submitted by Verizon New York Inc. (Verizon or franchisee) on December 9, 2005. A copy of same was served on the franchisor, the Village of South Nyack (local franchising authority (LFA) or Village). All local notice requirements were met.

This application is governed by Section 221 of the Public Service Law (PSL), which requires our approval of a Certificate of Confirmation unless we find specific violations of law, Commission regulations, or the public interest. Section 221(4) of the PSL provides that we may approve the application contingent upon compliance with certain standards, terms or conditions set by the Commission determined not to have been met by the applicant, system or franchise as proposed. After reviewing the subject petition, and all the comments, in the context of the applicable statutory and regulatory standards, we have determined to approve the Certificate of Confirmation subject to the

conditions set forth herein. Because this confirmation will promote consumer choice and enhance competition in the cable market, our determination furthers the public interest.

SUMMARY OF COMMENTS

A public notice of Verizon's application for a Certificate of Confirmation from the Commission was published in a newspaper of general circulation in the Village on December 12, 2005, as required pursuant to 16 NYCRR §897.2(g). Comments were received from Cablevision Systems Long Island Corporation (Cablevision or incumbent) and the Cable Telecommunications Association of New York, Inc. (CTANY) on December 22, 2005. Verizon filed reply comments on January 10, 2006.

Cablevision contends that the proposed franchise agreement between Verizon and the Village, as approved by the Village Board, is deficient in numerous respects. It claims that the proposed franchise agreement suffers from the same defects as those terms to which the Commission attached conditions in its confirmation of the Massapequa Park cable franchise.¹ Specifically, Cablevision alleges that the proposed agreement violates the Commission's rules on line extension, indemnification, construction quality and safety, description of the cable system, public, educational and government (PEG) access, restoration of municipal property, rates, customer service, and abandonment. Consequently, Cablevision asserts that the cable franchise at issue here, must, at a minimum, be revised to reflect the same conditions and modifications as Verizon's Massapequa Park cable franchise.

In addition, Cablevision alleges that because of a purported misunderstanding between Verizon and the Village officials over the supervision of Verizon's fiber to the premises (FTTP) network, we should afford the Village additional time to consider its cable franchise with Verizon. Specifically, Cablevision alleges that Verizon continues to adhere to the position that its mixed-use facilities that are also used in the deployment of cable service are exempt from Article 11 regulations. Cablevision

¹ Case 05-V-1263, Order and Certificate of Confirmation (issued December 15, 2005) (Massapequa Park).

states that because this issue was ultimately resolved in Massapequa Park, we should reaffirm our holding that Article 11 applies to mixed-use facilities.

Finally, Cablevision raises level playing field concerns similar to those raised in the Massapequa Park franchise proceeding, and states that, at a minimum, the proposed franchise here cannot be confirmed absent revisions similar to those imposed in Massapequa Park.²

Accordingly, Cablevision urges the Commission to: (1) revise the proposed franchise agreement in a manner consistent with Massapequa Park and (2) afford the Village an opportunity to revisit the proposed franchise agreement in light of our determination concerning the Village's authority over Verizon's FTTP network provided in Massapequa Park.

CTANY echoes many of the comments made by Cablevision, arguing that the proposed franchise agreement must be made to comply with the modifications and conditions outlined in Massapequa Park and the Commission should reaffirm its findings that Article 11 applies to mixed-use facilities.

In reply, Verizon asserts that a central goal of both federal and state law is to encourage competitive entry in the video market. Moreover, Verizon asserts that Cablevision misapplies Massapequa Park by arguing that it applies Article 11 to the entirety of Verizon's voice-and-data FTTP network and, therefore, grants a municipality broad new authority over the construction, placement and operation of that network. Verizon opines that Massapequa Park established only that once Verizon begins offering cable service it would in some part be operating a cable system, but only "to the extent" any part of Verizon's network is being used to provide cable service, and does not apply to the entirety of the FTTP network.

² Cablevision emphasizes that the issue concerning facilities supervision in this proposed franchise is more problematic here because while the Massapequa Park franchise contained a handful of rights-of-way supervision provisions, the proposed agreement contains only one such provision.

Verizon argues that its interpretation of Massapequa Park is consistent with both state and federal law. Under federal law, Verizon asserts that its FTTP network is a cable system only "to the extent" it is used to transmit video programming directly to subscribers. Verizon construes this language to mean that the entirety of its telecommunication/data network is not automatically converted to a cable system once subscribers receive video programming. Verizon states that this interpretation is reasonable because Verizon already has access to local rights-of-way in its capacity as a telecommunications provider and, therefore, the mere fact that it also provides cable service should not change the character or extent of its use of the rights-of-way. Moreover, under PSL §212(2), Verizon argues that the definition of a cable television system does not specify which particular facilities are part of that system and, thus, when read in light of the mandates in the federal Cable Act, it is a cable system only "to the extent" it provides cable service. Verizon points out that nothing in Article 11 "...shall be construed to prevent franchise requirements in excess of those prescribed by the Commission, unless such requirement is inconsistent with this article, any regulation, policy or procedures of the commission, or federal law." PSL §219(3). Thus, it claims the purported limitation in the "to the extent" language in federal law also applies under the Public Service Law.

Finally, Verizon argues that its interpretation is also supported by other provisions of federal law. For example, according to Verizon, under 47 U.S.C. §621(b)(3)(B) a franchise authority is prohibited from imposing any requirement that limits or restricts telecommunication service by a cable operator. Similarly, 47 U.S.C. §253(a) prohibits state or local regulation that may have the "...effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Moreover, Verizon raises First Amendment considerations that are implicated by attempts to use the cable franchising process to restrict entry into the video market.

For all these reasons, Verizon urges the Commission to reject arguments that distort Massapequa Park and reaffirm that the scope of the activity requiring a cable franchise for Verizon's cable service over its FTTP network applies to cable-only facilities in the public rights-of-way, that the transmission of cable service does not give

municipalities greater authority over the construction, placement or operation of its mixed-use facilities than they already have under generally applicable telecommunications laws and does not, therefore, allow them to impose additional burdens on those physical facilities, and that the definition of a cable television system under state law is co-extensive with the definition under the federal Cable Act.

Finally, Verizon argues that there is no basis to remand the proposed franchise agreement to the Village. The scope of municipal authority over Verizon's FTTP facilities was, according to Verizon, a contentious issue for the Village during franchise negotiations. The Village had the benefit of Cablevision's arguments to assist them and was fully aware of this dispute regarding the proper legal standard. Therefore, there is no basis here to claim a misunderstanding and no need for a remand.

The remainder of Verizon's reply comments is dedicated to rebutting Cablevision's claims under the Commission's minimum franchising and level playing field standards. These arguments are also substantially similar to those raised in the Massapequa Park franchise proceeding and we will, therefore, not restate them here.

Based on the foregoing, Verizon requests that the Commission approve the petition for a Certificate of Confirmation.³

As discussed in detail below, we approve the Certificate of Confirmation, provided certain provisions contained in the proposed franchise agreement are modified or stricken to satisfy the minimum franchise standards contained in the Commission's rules. Moreover, we provide further clarity on the scope of a municipality's control over Verizon's mixed-used facilities.

³ On January 12 and 13, 2006, CTANY and Cablevision, respectively, filed letters with the Commission, requesting leave to submit, and arguing that, Verizon's attempt to misconstrue the Commission's holding on the scope of control over Verizon's mixed-use facilities should be denied.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

Under SEQRA (Article 8 of the Environmental Conservation Law) and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 897), all state agencies must determine whether the actions they are requested to approve may have a significant impact on the environment. SEQRA (6 NYCRR §617.6(a)(3)) requires applicants to submit a completed environmental assessment form (EAF) describing and disclosing the likely impacts of the proposed actions. Verizon submitted an EAF for our review.

We have reviewed Verizon's application for its impact on the environment. We find that the proposed action does not meet the definitions of either a Type I or Type II action contained in 6 NYCRR §§617.4, 617.5 and 16 NYCRR § 7.2 and §897.6, and, therefore, is an "unlisted" action. We assume "Lead Agency" status and pursuant to an "uncoordinated" review determine that our approval and construction of the proposed cable system will not have a significant impact on the environment.⁴

In determining that the action of approving the certificate here will not result in any significant adverse environmental impacts, we note that the Commission has previously recognized that Verizon has the independent authority to upgrade its existing telecommunications network with FTTP. We have assessed the environmental impact of our action on the entire franchise area. The action here is limited to the confirmation of a cable franchise which authorizes the construction of equipment used exclusively for cable television service and the offering for hire of broadcast programming. The offering of broadcast programming may result in an increase in requests for fiber drop wires and limited extensions of the already upgraded FTTP network. This incremental installation activity will be associated with customers that presumably already have service from Verizon. Verizon has represented to staff that most of the fiber optic cable is already installed within the Village. Moreover, Verizon has represented that any additional exclusively cable-related equipment necessary to provide cable service will be installed

⁴ We note that rule 16 NYCRR §897.7(a) incorrectly refers to 6 NYCRR §617.19, the prior subsection for the EAF form, which is now §617.20.

within existing Verizon central offices and that no other purely cable-related equipment need be installed. Further, based upon our review of the EAF, we determined that the Village does not contain land uses such as agriculture or wetlands that might be adversely impacted by the type of construction proposed. However, should future extensions of the system entail construction in coastal zones or affect buildings and structures on the National Historic Landmarks and State and National Registers of Historic Places, the franchisee shall, seek consultation and/or permitting from the appropriate local and state agencies including the New York State Department of State and Office of Parks and Recreation.

A Notice of Determination of Significance, Negative Declaration, for this unlisted action is approved in conjunction with this Order. The Notice and EAF will be retained in our files. A copy of the Notice is annexed to this Order.

DISCUSSION

This application seeks our approval of a Certificate of Confirmation of a cable television franchise granted by the Village of South Nyack by Resolution of the Village Board dated November 29, 2005 following duly noticed public hearings held on November 15 and 29, 2005. The term of the proposed franchise agreement is 15 years, measured from the date of this Order.

Verizon asserts that parties are misconstruing the determination in Massapequa Park pertaining to the scope of authority granted to a municipality concerning mixed-use facilities. While the Commission did intend to apply Article 11 and its minimum franchise standards to the entirety of Verizon's FTTP network, including mixed-use facilities, we do not view this determination as granting broad new authority to a municipality.

The Commission's rules establish minimum franchise standards and preserve municipal police power over cable facilities. The Commission's June 15, 2005 Declaratory Ruling recognized that local governments have oversight authority for facilities in the public rights-of-way, even if they are used exclusively for telephone services. By 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. 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.

Attempts 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.⁵ Thus, for example, cable franchise provisions requiring the undergrounding of mixed-use facilities would go beyond our minimum franchise requirements and would unduly extend cable franchising requirements that affect telephone plant and services. Where lawful and appropriate, such local requirements might be effectuated via local ordinances pursuant to police powers and presumably would be applicable to all other utilities using the public rights-of-way. We did not intend in Massapequa Park that Article 11 could be used to effectuate, in a cable franchise, undergrounding of existing aerial plant or other construction/operating requirements pertaining to mixed-use plant.⁶

In Massapequa Park, we determined that our minimum cable franchise standards applied to Verizon's mixed-use facilities. The subject franchise agreement states in numerous sections that the LFA's regulatory authority over Verizon's FTTP network is limited in that the franchise and Article 11 of the PSL do not apply to its FTTP

⁵ See *e.g.*, PSL §219(3), 47 U.S.C. §541(a)(1) and 16 N.Y.C.R.R. §894.8(a).

⁶ We are not persuaded by Verizon's argument that the First Amendment to the United States Constitution prohibits municipal police power over its mixed-use plant. Verizon has failed to establish any link to an infringement on First Amendment freedoms and municipal regulation of rights-of-way that would preclude the exercise of police power over its infrastructure.

network to the extent the network is used for the provision of telephone or data services.⁷ Therefore, based on the same reasons for our determination in Massapequa Park and as discussed above, as a condition of this Order, any reference in the proposed franchise agreement to facilities that are mixed-use and, therefore, purportedly subject to Title II and/or TCL §27 regulation exclusively, are deemed to be stricken from the proposed agreement. Thus, the franchise will be construed such that if Verizon's network is being used to provide cable service within the Village the entire network is subject to PSL Article 11 and the Commission's cable rules.⁸

We further find that, in view of the above determination, the proposed franchise agreement substantially complies with our rules at 16 N.Y.C.R.R. Part 895,⁹ except for certain provisions of the proposed franchise agreement that require conditional approval as set forth below.¹⁰

First, §13.15 of the agreement, which pertains to rates, is inconsistent with Section 895.1(e) of our rules, which requires that any rates and charges be subject to regulation in accordance with federal law. Although the Village and Verizon agree that the franchisee is subject to effective competition and, therefore, not subject to Commission rate regulation, Verizon must seek such a ruling from the Federal

⁷ See *e.g.*, Verizon franchise at §§1.6, 1.29, 1.31, 1.32, 2.2, 4, 13.1.1 and 13.11.

⁸ Verizon argues that the scope of activity for which a cable franchise is required by it applies to cable-only facilities in the rights-of-way and relies on the Village of Warwick (Case 02-V-0224, "Order Approving Certificate of Confirmation and Denying Request for Waiver of Line Extension Rules" (issued June 28, 2002)) proceeding to support its position. However, the Village of Warwick proceeding did not address the particular issue of whether mixed-use plant would be subject to cable regulations under Article 11 because the Warwick franchise did not distinguish between cable exclusive and mixed-used facilities.

⁹ On or about April 15, 2005, the Commission's cable television rules in 16 NYCRR §890 *et seq.* became effective. Accordingly, the proposed franchise agreement is governed by the new rules.

¹⁰ Our authority to condition our approval of the proposed franchise agreement on certain modifications is derived from PSL §213(1).

Communications Commission (FCC).¹¹ Until it has received an exemption from rate regulation from the FCC, rates are subject to federal regulation. It will be a condition of this Order that Section 895.1(e) is deemed a part of the proposed agreement as if specifically set forth therein.

Second, this Order will be granted upon the condition that the franchisee comply with the minimum consumer protection and customer service standards set forth in Parts 890 and 896 of the Commission's rules. Verizon states in its reply comments that it will comply with these rules.

Third, this Order will be granted upon condition that the franchisee comply with the minimum standards for PEG access contained in Sections 895.1(f) and 895.4 of our rules. Pursuant to our rules, Verizon is required to provide PEG access capability at the same time it offers cable television service to the Village. Verizon cannot simply rely on voluntary interconnection or, in the alternative, Commission approval of a petition for interconnection with the incumbent. That does not satisfy the requirement that the "designation of PEG access facilities shall include the provision by the cable television franchisee of the technical ability to play back prerecorded programming and to transmit programming information consistent with the designated uses of PEG access channels."¹² Accordingly, Verizon must comply with the foregoing, consistent with our rules. We note that Verizon states in its reply comments that it will comply with these requirements.

Fourth, this Order will be granted upon the condition that the franchisee comply with the minimum line extension standards contained in Section 895.5 of the Commission's rules. Because the proposed franchise agreement includes certain exceptions that are inconsistent with the Commission's line extension rules, our approval

¹¹ See, 47 U.S.C. §543(a)(2) and 47 C.F.R. §§76.905, 76.907.

¹² 16 NYCRR §895.4(c)(7).

will be furthered conditioned upon striking the exceptions relating to "technical difficulties" and inability to access "under reasonable terms and conditions" from the proposed agreement.¹³

Fifth, the agreement does not fully comply with Section 895.1(i)(1) of our rules which requires the franchisee to indemnify the municipality and hold it harmless from all liability, damage, cost or expense as a result of conduct undertaken pursuant to the franchise. The exception to indemnity in §9.2.1 of the proposed agreement stating that the franchisee shall not indemnify the LFA for any damage, liability or claims resulting from the "distribution of any Cable Service over the Cable System" is inconsistent with our regulations. Our rule states that the franchisee shall indemnify the municipality for all liability, damage, cost or expense arising from any conduct undertaken pursuant to the franchise (emphasis added). In this regard, our approval will be granted upon the express condition that the quoted language in § 9.2.1 be stricken from the proposed franchise agreement.

Sixth, Section 895.1(j) of our rules requires the franchise to include a provision stating that any municipal property damage shall be promptly repaired or replaced by the franchisee and restored to serviceable condition. The negligence standard in §2.9 of the proposed agreement limits the applicability to "negligent" acts.¹⁴ It will be a condition of this Order that the reference to "negligent" acts in the proposed agreement

¹³ In the past, we have rejected similar exclusions regarding access and technical difficulties. See, *e.g.*, Case 03-V-0887, Application of MTC Cable for Approval of the Renewal of its Cable Television Franchise for the Village of Fleischmanns (Delaware County) at pp 4-5 (October 16, 2003). We do not, however, intend to suggest that technical difficulties or unreasonable access conditions would not be grounds for a possible waiver request.

¹⁴ 16 N.Y.C.R.R. §895.1(j).

be stricken and that Section 895.1(j) be deemed a part of the proposed agreement, as if specifically set forth therein.¹⁵

Seventh, Section 895.1(t) of our rules requires a provision stating that any valid reporting requirement in the franchise may be satisfied with system-wide statistics, except those related to franchise fees and customer complaints. It will be a condition of this Order that Section 895.1(t) be deemed a part of the proposed agreement, as if specifically set forth therein.

Eighth, §§2.7.3, 13.7 and 13.12 purport to effect an automatic amendment to the agreement under certain circumstances. We clarify that any modification of the agreement pursuant to these sections would constitute an amendment of the franchise subject to our approval pursuant to Section 222 of the PSL and Subpart 892-1. In its reply comments, Verizon raises no objection to this requirement.

Ninth, Section 895.1(b)(c) of our rules require a provision in all franchise agreements regarding a description of the system and the location of trunk and feeder plant and a provision requiring that the franchisee shall construct and maintain its cable system using materials of good and durable quality and that all work involved in the construction, installation, maintenance, and repair of the cable system shall be performed in a safe and reliable manner. It will be a condition of our approval that Section 895.1(b) be deemed part of the proposed agreement, as if specifically set forth therein. Verizon indicates in its reply comments that it will provide the Village with documentation sufficient to satisfy this requirement.

¹⁵ Restoration of municipal property was not conditioned under Massapequa Park because that franchise did not contain a negligence exception. Verizon claims that any restoration is legitimately tied to a modest limitation imposed by a negligence standard and that this standard when read in conjunction with the Rule 895.1(j) is in substantial compliance. Our aim is to ensure that restoration of potentially dangerous conditions in public rights-of-way occur without delay. We note, however, that should a municipality exercise this provision we expect that it will first undertake the necessary investigation to ascertain whether Verizon activities resulted in the damage and the need for restoration.

The proposed franchise agreement contains additional provisions not required by Part 895 of our rules. We approve these provisions to the extent that they are consistent with Article 11 and its regulations. In the event of an ambiguity in any such provision, the provision will be construed in the manner most favorable to the franchisor.

Based on the foregoing, we find that the proposed franchise agreement, as modified by the conditions outlined above, is in substantial compliance with our cable regulations. We also find that the proposed franchise agreement does not violate the Commission's level playing field rule. Part 895.3 states that no 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 upon an incumbent's franchise in the same franchise area. This 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.¹⁶ We will, however, ensure that both agreements in a particular franchise area substantially comply with our franchising standards in Part 895, and that no cable operator enjoys a material competitive advantage in that particular community.

Based upon our review, we find that 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. Based on the conditions outlined above, the proposed franchise agreement does not create a level playing field concern which requires further Commission action.

¹⁶ Case 01-V-0381, Memorandum and Resolution Adopting 16 NYCRR Parts 890-899 (issued April 4, 2005).

Finally, with regard to Cablevision's request that we remand the proposed franchise back to the Village for further consideration in light of our discussion on the scope of Article 11 over Verizon's FTTP network, we decline to do so. In light of the modifications outlined above, we find that the necessary protections are in place vis-à-vis the Village's ability to govern its rights-of-way.

The Commission orders:

1. Pursuant to Section 221 of the Public Service Law and the rules and regulations of this Commission, the application of Verizon New York Inc. for approval of a Certificate of Confirmation of the franchise to provide cable television service for the Village of South Nyack (Rockland County) is hereby approved, subject to the conditions set forth in the body of this certificate and Order. Said certificate shall expire 15 years from the date of this Order.
2. This certificate and Order does not in any way confer rights or privileges other than those granted in the underlying franchise and the certificate holder remains subject to the obligations imposed by Article 11 of the Public Service Law, the underlying franchise and all applicable rules, regulations and orders of this Commission.
3. This proceeding is closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 05-V-1571 - Petition of Verizon New York Inc., for a Certificate of Confirmation for its Franchise with the Village of South Nyack, Rockland County.

NOTICE OF DETERMINATION
OF SIGNIFICANCE

NEGATIVE DECLARATION

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission of the Petition of Verizon New York Inc., for a Certificate of Confirmation for its cable television franchise with the Village of South Nyack, Rockland County, based upon our determination in accordance with Article 8 of the Environmental Conservation Law, that such action will not have a significant adverse effect on the environment. The approval of this action is an Unlisted Action as defined under 6 NYCRR Section 617.7(c).

Based upon our review of the record, the confirmation of the exercise of the franchise granted to Verizon New York Inc by the Village of South Nyack to provide cable service under Section 221 of the Public Service Law will not result in significant adverse environmental impacts because the incremental construction that would be induced is insignificant in that it would involve only individual service lines and equipment within existing Verizon central offices.

The address of the Public Service Commission, the lead agency for the purposes of the Environmental Quality Review of this project is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Richard H. Powell at (518) 486-2885 or to the address above.

JACLYN A. BRILLING
Secretary