

PENDING PETITION MEMO

Date: 5/18/2007

TO : OT  
OGC  
OEE

FROM: CENTRAL OPERATIONS

UTILITY: VERIZON NEW YORK INC.

SUBJECT: 07-V-0591

Petition of Verizon New York Inc. for a Certificate of Confirmation  
for its Franchise with the Village of West Haverstraw, Rockland  
County.

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PUBLIC SERVICE  
COMMISSION  
EXEC-FILES-ALBANY

2007 MAY 18 PM 2: 07

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**Joseph A. Post**  
Assistant General Counsel



May 18, 2007

**BY HAND**

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

***Re: Case 07-V-\_\_\_\_\_***

Dear Secretary Brillling:

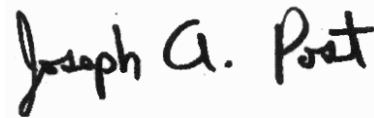
Enclosed please find an original and four (4) copies of the Petition of Verizon New York Inc. ("Verizon") for confirmation, pursuant to § 221 of the Public Service Law, of a cable franchise awarded to Verizon by the Village of West Haverstraw, New York.

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

Honorable Jaclyn A. Brillling  
May 18, 2007

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

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph A. Post". The signature is written in a cursive, slightly slanted style.

cc: Village of West Haverstraw  
Mr. O. Fred Miller  
Village Clerk  
Village of West Haverstraw  
130 Samsondale Avenue  
West Haverstraw, New York 10993

Cablevision  
Michael E. Olsen, Esq. (Courtesy Copy)

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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

**Case 07-V-\_\_\_\_\_**

**PETITION FOR CONFIRMATION**

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

**Counsel for Verizon New York Inc.**

**May 18, 2007**



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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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

**Case 07-V-\_\_\_\_\_**

**PETITION FOR CONFIRMATION**

Verizon New York Inc. (“Verizon”) respectfully requests that the Commission confirm, pursuant to § 221 of the Public Service Law, a non-exclusive cable franchise (the “Franchise”) that has been awarded to Verizon by the Village of West Haverstraw, a municipality located in Rockland County (the “Franchisor”).

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

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

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

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

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

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

1. The applicant for confirmation and approval of the Franchise is Verizon. Verizon's contact for purposes of this application is Thomas McCarroll, Vice President — Regulatory Affairs, 158 State Street, Albany, New York 12207, (518) 396-1001. The municipality that will be served pursuant to the Franchise is the Franchisor. Verizon anticipates that it will begin offering service to the public for hire pursuant to the Franchise as soon as is practicable after the Commission confirms the Franchise. (16 NYCRR § 897.2(a))

2. True copies of the Franchise and the resolution authorizing the Franchise are provided as Attachments A and B, respectively, to this Petition. A public hearing (the "Hearing") on Verizon's application for a franchise was held by the Franchisor on April 10, 2007, at Village Hall, 130 Samsondale Avenue, West Haverstraw, New York, starting at approximately 7:00 P.M. The hearing continued on May 16, 2007, and was concluded on that

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

date. A true copy of the affidavit of publication of the notice of public hearing is provided as Attachment C to this petition. (16 NYCRR § 897.2(b))

3. True copies of the documents submitted by Verizon to the Franchisor as part of, or in support of, its application for the Franchise are included in Attachment D to this petition. (16 NYCRR § 897.2(c))

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

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

The Commission's rules do not require, and Verizon has no plans at this time to engage in, origination cablecasting, and Verizon will not be providing any facilities, equipment, or staff to be employed in such cablecasting. Verizon meets all of the Commission's regulations regarding the provision of PEG access channels. With respect to access cablecasting, the Franchise provides that:

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.

(16 NYCRR § 897.2(e))

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

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

8. A notice of this Petition will be published on May 22, 2007 in The Journal News. The Journal News is a newspaper of general circulation in the Village of West Haverstraw. Verizon has submitted the notice to that newspaper, has arranged for payment of the necessary charges, and has been assured that the notice will be published on the specified date. Proof of these facts is provided as Attachment G to this Petition. Verizon will file a supplemental affidavit confirming the actual publication of the notice following publication. (16 NYCRR § 897.2(g))

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

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

It is Verizon’s position that submission of an EAF is not required for the activities at issue in this Petition, and that even if such a submission were required, a short-form EAF would suffice.<sup>2</sup> Attachment H is submitted without prejudice to that position, at Staff’s request, and in recognition of the fact that the Commission has concluded in previous orders that the offering of

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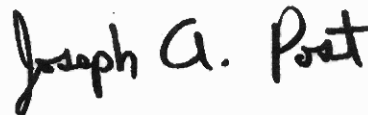
For an explanation of the basis of this position, see Section II of Verizon’s October 6, 2005 petition for confirmation of a franchise granted by the Village of Massapequa Park, New York (Case 05-V-1263).

cable service by Verizon is an “unlisted” action — rather than a Type II action or a non-action — under the State Environmental Quality Review Act (“SEQRA”). Even if the Commission concludes that submission of an EAF is required, it should determine on the basis of Attachment H that the actions at issue here will not have a significant effect on the environment — *i.e.*, the Commission should issue a “negative declaration” under SEQRA — as it has done in prior Verizon confirmation proceedings.

### III. CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph A. Post". The signature is written in a cursive, slightly stylized font.

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

Counsel for Verizon New York Inc.

May 18, 2007

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

**STATE OF NEW JERSEY )  
 )  
COUNTY OF SOMERSET )**

*Veronica C. Glennon*  
**VERONICA C. GLENNON**

John J. DiSore  
Notary Public

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

## **LIST OF ATTACHMENTS TO THE PETITION**

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



# **ATTACHMENT A**

**Cable Franchise Agreement**  
**by and between**  
**the Village of West Haverstraw**  
**and**  
**Verizon New York Inc.**

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### **Exhibits**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: Form of Performance Bond

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

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

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

WHEREAS, Franchisee is in the process of completing the upgrading of its existing telecommunications and information services network through the installation of a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area which transmits the Non-Cable Services pursuant to authority granted by Section 27 of the New York Transportation Corporations Law, as amended, and Title II of the Communications Act, which Non-Cable Services are not subject to the Cable Law or Title VI of the Communications Act;

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

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

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

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

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

NOW, THEREFORE, in consideration of the LFA's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of the LFA pursuant to and consistent with the Cable Law (as hereinafter defined), pursuant to the

terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

1.10. *Educational Access Channel*: An Access Channel available for noncommercial use solely by local public schools and public school districts in the Franchise Area and other not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents in the Franchise Area as specified by the LFA in Exhibit C to this Agreement.

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

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

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

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

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

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

1.16.1. Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) video on demand, including pay-per-view; (iv) revenues from the sale or lease of access channel(s) or channel capacity; and (v) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, subject to the exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

**1.16.2. Gross Revenue shall not include:**

**1.16.2.1. Franchise Fees imposed on Franchisee by the LFA that are passed through from Franchisee as a line item paid by Subscribers; revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; 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; any fees or charges collected from Subscribers or other third parties for any PEG Grant payments; and**

**1.16.2.2. except as otherwise provided in Subsection 1.16.1, any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders. Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with**

the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

1.31. *Transfer of the Franchise*:

1.31.1. Any transaction in which:

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

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

1.31.2. However, notwithstanding Sub-subsections 1.31.1.1 and 1.31.1.2 above, a *Transfer of the Franchise* shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

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

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

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

2.2. *The FTTP Network*: Upon delivery of Cable Service, by subjecting Franchisee's mixed-use facilities to the NY PSC's minimum franchise standards and the LFA's police power, the LFA has not been granted broad new authority over the construction, placement and operation of the Franchisee's mixed-use facilities.

2.3. *Effective Date and Term*: This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise.

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

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

2.6. *No Waiver:*

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

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

2.7. *Construction of Agreement:*

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

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

2.8. *Police Powers:* Nothing in this Agreement shall be construed to prohibit the LFA's reasonable, necessary and lawful exercise of its police power 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, not materially in conflict with the privileges granted in this Franchise and consistent with all applicable federal and state laws, rules, regulations and orders.

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

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

### 3. PROVISION OF CABLE SERVICE

#### 3.1. *Service Area:*

3.1.1. *Service Area:* Subject to the issuance of all necessary permits by the LFA, Franchisee shall offer Cable Service to significant numbers of Subscribers within residential areas of the Service Area and may make Cable Service available to businesses in the Service Area, within twelve (12) months and shall offer Cable Service to all residential areas of the Service Area within five (5) years, of the Effective Date of this Franchise, or, in both instances, such longer period as may be permitted by the Cable Law, except, in accordance with NY PSC rules and regulations: (A) for periods of Force Majeure; (B) for periods of delay caused by the LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in areas, developments or buildings where Franchisee cannot gain access after good faith efforts; (F) in areas, developments or buildings where the provision of Cable Service is economically infeasible because such provision requires nonstandard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density and other requirements set forth in Sub-subsection 3.1.1.1. and Section 3.2.

3.1.1.1. *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than twenty-five (25) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, Franchisee shall provide Cable Service to such area within twelve (12) months of receiving notice from the LFA that the density requirements have been met.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed

to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual costs. Such 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 aerial service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as may be designated by the LFA as provided in Exhibit A attached hereto; provided, however, that if it is necessary to extend Franchisee's aerial trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such aerial extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual costs. Such costs shall be submitted to said recipient in writing before installation is begun. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged.

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

#### 4. SYSTEM FACILITIES

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

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

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

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

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

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

## 5. **PEG SERVICES**

### 5.1. *PEG Set Aside:*

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

5.1.2. The programming to be carried on each of the PEG Channels set aside by Franchisee is reflected in Exhibit C attached hereto. The LFA hereby authorizes Franchisee to transmit such programming within and without LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

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

### 5.2. *PEG Grant:*

5.2.1. Subject to Subsection 5.3.2, Franchisee shall provide to the LFA for use in support of the production of local PEG programming a PEG grant (the "PEG Grant") in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00). Franchisee shall pay the PEG Grant in six (6) installments, as follows: (i) the first installment, in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), shall be payable within sixty (60) days of the Effective Date; and (ii) the remaining five (5) installments, in equal amounts of FIVE THOUSAND

DOLLARS (\$5,000.00) each, shall be payable on the first through fifth anniversary dates of the Effective Date. Such PEG Grant shall be used solely by the LFA for PEG access equipment, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities.

5.2.2. Notwithstanding the foregoing Subsection 5.3.1, however, Franchisee's obligation to provide PEG Grants under this Section 5.3 shall not commence until the LFA imposes an equivalent economic burden on all cable service providers within the Franchise Area.

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

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:* Consistent with applicable law, Franchisee shall be permitted to externalize, line-item, or otherwise pass-through to Subscribers any costs arising from the provision of PEG services, interconnection and any other franchise-related costs.

## **6. FRANCHISE FEES**

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of five percent (5%) of annual Gross Revenue (the "Franchise Fee"). In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. Late payments for Franchise Fees shall be subject to interest at the then-current rate set forth in Section 5004 of Article 50 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) from the due date to the date that such payment is made.

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

6.3. *Audit:* Subject to the confidentiality requirements set forth in Section 7.1 of this Franchise and the LFA's imposition of identical obligations to those contained in this Section 6.3 on all cable service providers in the Service Area, Franchisee shall be responsible for making available to the LFA for inspection and audit, all records necessary to confirm the accurate payment of Franchise Fees, whether the records are held by the Franchisee, an Affiliate, or any other entity that collects or receives funds related to the Franchisee's Cable Services operation in the LFA subject to the payment of Franchise Fees under this Agreement, including, by way of illustration and not limitation, any entity that sells advertising on the Franchisee's behalf. Franchisee shall maintain such records for six (6) years, provided that, if the LFA commences an audit within that six (6) year period, Franchisee shall continue to maintain such records for the duration of any audit in progress at the end of that six (6) year period. The LFA shall conduct all audits expeditiously, and neither the LFA nor Franchisee shall unreasonably delay the completion of an audit. The LFA's audit expenses shall be borne by the LFA unless the audit determines that the payment to the LFA should be increased by five percent (5%) or more in the audited period, in which case the reasonable 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 FIVE THOUSAND DOLLARS (\$5,000.00). If re-computation results in additional revenue to be paid to the LFA, such amount shall be subject to interest charges computed from the due date, at the then-current rate set forth in Section 5004 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) per annum during the period such unpaid amount is owed. If the audit determines that there has been an overpayment by Franchisee, the Franchisee may credit any overpayment against its next quarterly payment. Said audit shall be conducted by an independent third party and no auditor so employed by the LFA shall be compensated on a success based formula, e.g., payment based on a percentage of an underpayment, if any. The LFA shall not conduct an audit more frequently than once every three (3) years.

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

6.5. *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 the operation of the Cable System or 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 make the necessary books and records available for such inspection at a mutually agreed upon location. 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. Subject to the requirements of the New York Freedom of Information Law ("FOIL"), the LFA shall treat any information disclosed by Franchisee as confidential under Section 87(2)(d) of the New York Public Officers Law, and shall disclose it only to employees, representatives, and agents thereof who have a need to know and who agree to maintain the confidentiality of all such information, or only as necessary in order to enforce the provisions hereof. For purposes of this Section, "proprietary or confidential" information includes, but is not limited to: information related to the Cable System design; trade secrets; Subscriber lists; marketing plans; financial information unrelated to the calculation of Franchise Fees; or other information that is reasonably determined by the Franchisee to be competitively sensitive. If the LFA receives a request under FOIL or similar law for the disclosure of information that Franchisee has designated as confidential, trade secret or proprietary, the LFA shall notify Franchisee of such request and cooperate with Franchisee to enforce the provisions of this paragraph to the fullest extent permitted by law. LFA shall not make public disclosure of such information if it is exempt from mandatory disclosure under FOIL or unless required by court order. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. § 551.

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

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

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

**7.2.3.** Records of service calls for repair and maintenance for a period of six (6) years after resolution by Franchisee, indicating the date and time service was required, the



date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

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

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

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

## 8. INSURANCE AND INDEMNIFICATION

### 8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of two million dollars (\$2,000,000) 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 five million dollars (\$5,000,000).

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.

8.1.6. The policy amounts and limits required herein are not intended, and shall not be, construed to constitute a limitation on Franchisee's liability in connection with any claim, including a claim of indemnification.

## *8.2. Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, provided that the LFA shall give Franchisee reasonable written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee, its officers, agents, employees, attorneys, consultants, independent contractors 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 promptly so that Franchisee will have adequate time to submit a proposal under 47 U.S.C. § 546 and complete renewal of the Franchise prior to expiration of its term.

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

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 timely 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) calendar days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

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

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

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

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

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

11.5. *Revocation:* Should the LFA seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, the LFA shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the LFA has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a second public hearing. The LFA shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

11.5.1. At the designated public hearing, Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the LFA, to compel the testimony

of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

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

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

#### 11.6. *Security:*

11.6.1. Prior to the Effective Date, the Franchisee shall provide to the LFA security for the performance of its obligations under this Agreement in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00). The form of this security may, at Franchisee's option, be a performance bond, letter of credit, cash deposit, cashier's check or any other security acceptable to the LFA. If the Franchisee posts a performance bond, it shall be substantially in the form of Exhibit D.

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

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

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

## 12. MISCELLANEOUS PROVISIONS

12.1. *Actions of Parties:* In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under

the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

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 subject to NY PSC rules and regulations.

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; provided, however, that in the event of a Force Majeure, the time specified for performance of Franchisee's obligations hereunder shall extend for such reasonable time thereafter as may be agreed by the LFA and Franchisee.

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

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

12.5.1. Notices to Franchisee shall be mailed to:

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

12.5.2. Notices to the LFA shall be mailed to:

Village Clerk  
Village of West Haverstraw  
Village Hall  
130 Samsondale Avenue  
West Haverstraw, New York 10993

12.5.3. with a copy to:

Village Attorney  
Village of West Haverstraw  
Village Hall  
130 Samsondale Avenue  
West Haverstraw, New York 10993

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.

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

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

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

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

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

be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

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

12.13. *Rates and Charges:* The rates and charges for Cable Service provided pursuant to this Franchise shall be subject to regulation in accordance with federal law.

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

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

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

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

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

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



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

AGREED TO THIS 16<sup>th</sup> DAY OF May, 2007.

LFA:

VILLAGE OF WEST HAVERSTRAW

By: Carol A. Zuply

Title: Mayor

FRANCHISEE:

VERIZON NEW YORK INC.

By: Joseph R. D'Amico

Title: Vice President - Capital Market Area

FORM APPROVED

Attorney

Date

4/3/07

## **EXHIBITS**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Areas

Exhibit C: PEG Channels

Exhibit D: Form of Performance Bond

Exhibit List

West Haverstraw/Verizon New York Inc.  
Franchise Agreement/April 2007

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

North Rockland Central School District  
(North Garnerville Elementary School and Administration Offices)  
65 Chapel Street  
Garnerville, NY 10923

Railroad Avenue School  
1 Cosgrove Avenue  
West Haverstraw, NY 10993

West Haverstraw Elementary School  
71 Blauvelt Avenue  
West Haverstraw, NY 10993

Village of West Haverstraw Village Hall  
130 Samsondale Avenue  
West Haverstraw, NY 10993

Village of West Haverstraw Community Center  
130 Samsondale Avenue  
West Haverstraw, NY 10993

Village of West Haverstraw Department of Public Works  
130 Samsondale Avenue (rear building / separate from Village Hall)  
West Haverstraw, NY 10993

Village of West Haverstraw Fire Department – S.W. Johnson Steam Fire Engine Co. No. 1  
7 Eakman Drive  
Garnerville, NY 10923

Village of West Haverstraw Fire Department – Volunteer Hose Fire Company No. 2  
30 East Railroad Avenue  
West Haverstraw, NY 10993

## **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 26% of the current households in the Franchise Area. At present, Franchisee's anticipated schedule calls for 60% deployment by October 2007, 65% deployment by April 2008, 70% deployment by October 2008, 75% deployment by April 2009, 80% deployment by October 2009, 84% deployment by April 2010, 88% deployment by October 2010, 92% deployment by April 2011, 96% deployment by October 2011, and 100% deployment by April 2012. 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**

Upon written request of the LFA, Franchisee shall make available on its Basic Service tier up to one (1) dedicated Public Access Channel, one (1) dedicated Educational Access Channel, and up to one (1) dedicated Government Access Channel.

## EXHIBIT D FORM OF PERFORMANCE BOND

Franchise Bond  
Bond No. \_\_\_\_\_

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

WHEREAS the Principal and Obligor have entered into a Franchise Agreement dated \_\_\_\_\_ which is hereby referred to and made a part hereof.

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

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

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

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

1. In the event of default by the Principal, Obligor shall deliver to Surety a written notice of the details of such default within 30 days after the Obligor shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein.
2. This Bond shall be effective \_\_\_\_\_, 20\_\_\_\_, and shall remain in full force and effect thereafter for a period of one year and will automatically extend for additional one year periods from the expiry date hereof, or any future expiration date, unless the Surety provides to the Obligor not less than sixty (60) days advance written notice of its intent not to renew this Bond or unless the Bond is earlier canceled pursuant to the following. This Bond may be canceled at any time upon sixty (60) days advance written notice from the Surety to the Obligor.
3. Neither cancellation, termination nor refusal by Surety to extend this bond, nor inability of Principal to file a replacement bond or replacement security for its obligations under said Agreement, shall constitute a loss to the Obligor recoverable under this bond.

Page 1 of 2

Exhibit D - 1 of 2

West Haverstraw/Verizon New York Inc.  
Franchise Agreement/April 2007

Bond No. \_\_\_\_\_

4. No claim, action, suit or proceeding shall be instituted against this bond unless same be brought or instituted and process served within one year after termination or cancellation of this bond.
5. No right of action shall accrue on this bond for the use of any person, corporation or entity other than the Oblige named herein or the heirs, executors, administrators or successors of the Oblige.
6. The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond remains in force or the amount or number of claims brought against this bond.
7. This bond shall be construed to be strictly one of suretyship only. If any conflict or inconsistency exists between the Surety's obligations as described in this bond and as may be described in any underlying agreement, permit, document or contract to which this bond is related, then the terms of this bond shall supersede and prevail in all respects.

This bond shall not bind the surety unless it is accepted by the Oblige by signing below.

IN WITNESS WHEREOF the above bound Principal and surety have hereunto signed and sealed this bond effective \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Principal

Surety

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

By: \_\_\_\_\_, Attorney

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

# **ATTACHMENT B**



**RESOLUTION OF THE VILLAGE BOARD OF THE VILLAGE OF WEST  
HAVERSTRAW, APPROVING A FRANCHISE AGREEMENT WITH VERIZON NEW  
YORK INC. TO PROVIDE CABLE SERVICE TO THE VILLAGE OF WEST  
HAVERSTRAW, AND AUTHORIZING THE MAYOR TO EXECUTE SUCH AN  
AGREEMENT**

The following resolution was moved by Trustee Denise, seconded by Trustee Nardi, and carried by a vote of 5 ayes and 0 nays as set forth below:

WHEREAS, the Village of West Haverstraw (the "Village") is a franchising authority in accordance with Title VI of the Communications Act of 1934 (the "Communications Acts"), and is authorized to grant one or more cable television franchises pursuant to Article 11 of the New York State Public Service Law, (the "Cable Laws"); and

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

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

WHEREAS, Verizon has submitted a written application for a cable television franchise to the Village on March 13, 2007 (the "Verizon Application"), which the Village has had an opportunity to thoroughly review; and

WHEREAS, due negotiations between the Village and Verizon have resulted in a proposed agreement entitled "Cable Franchise Agreement between the Village of West Haverstraw and Verizon New York Inc.," which proposed agreement was filed with the Village on March 28, 2007 ("Verizon Franchise Agreement"); and

WHEREAS, on April 10, 2007 at a meeting of the Village Board, that was duly and reasonably advertised to the public, Verizon made a presentation to the Village Board in favor of the proposed Verizon Franchise Agreement, including an outline of the cable television services proposed to be provided to the Village pursuant thereto, and members of the Village Board, the public, and representatives of Cablevision, the existing franchise, were given notice and the

opportunity to comment on Verizon's presentation and ask questions to be addressed by Verizon's representatives; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Village of West Haverstraw hereby establishes itself as the lead agency for the purpose of review of the proposed action under the provisions of the State Environmental Quality Review Act (SEQRA), and makes the following findings, and alternative determinations, with respect to the environmental impact of the proposed Verizon Franchise Agreement:

(a) That in order to provide the equipment necessary to support its proposed Cable Franchise Service in the Village, Verizon will complete the installation of a fiber optic network, which work is already in progress. Even without the proposed use for Cable Television Transmissions, this ongoing network conversion would continue to occur so as to service Verizon's existing telecommunications operations, although the pace of the conversion is expected to be accelerated if the pending application is approved;

(b) That the Village Board's execution of the proposed Franchise Agreement is a TYPE II Action under the State Environmental Quality Review Act (SEQRA). Specifically, this action is covered under 6 NYCRR §617.5(20): "routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment." Accordingly, it has been predetermined that adoption of the proposed Franchise Agreement requires no further review under SEQRA;

(c) That even if the said action on the part of the Village Board approving the grant of a Cable Television Franchise were an unlisted action, the Board, having taken a hard look at same, and in possession of all information reasonably necessary to make the determination as to the environmental significance of the proposed Verizon Franchise Agreement concludes that such action will not result in a significant impact on the environment;

and be it,

FURTHER RESOLVED, that the Village of West Haverstraw approves the character of Verizon; and be it

FURTHER RESOLVED, that the Village of West Haverstraw concludes that Verizon is legally (pursuant to Public Service Commission Rules and other statutory requirements), technically, and financially and otherwise qualified to meet the cable-related needs and interests of the Village of West Haverstraw, which needs and interests were ascertained by the Village of West Haverstraw; and be it

FURTHER RESOLVED, that the Village of West Haverstraw concludes that Verizon will be required to provide adequate public, educational, governmental access capacity, either through channels dedicated to same, or through interconnection between cable operators as permitted by law; and be it

FURTHER RESOLVED, that the Village of West Haverstraw concludes that Verizon will meet all statutory and regulatory non-discrimination requirements; and be it

FURTHER RESOLVED, that the Village of West Haverstraw concludes, based on the presentation by Verizon, that the cable service offered by Verizon will include competitive offerings with its existing completion; and be it

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

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

FURTHER RESOLVED, that the Village Board authorizes the award of a non-exclusive franchise to Verizon to own, construct, operate and maintain a cable system along the public rights-of-way within the Village, in order to provide cable service, which authorization is made in accordance with the applicable provisions of Title VI of the Communications Act and the cable laws; and be it

FURTHER RESOLVED, that the Village Board hereby authorizes the Mayor to enter into a franchise agreement with VERIZON NEW YORK INC., in a form approved by the Village Attorney, and to execute any other documents necessary to effectuate the granting of the franchise on behalf of the Village of West Haverstraw.

Roll Call Vote:

	<u>Aye</u>	<u>Nay</u>
Mayor Zugibe	<u>X</u>	—
Trustee Denise	<u>X</u>	—
Trustee Nardi	<u>X</u>	—
Trustee D'Amelio	<u>X</u>	—
Trustee Lagrow	<u>X</u>	—

VILLAGE OF WEST HAVERSTRAW  
STATE OF NEW YORK  
COUNTY OF ROCKLAND

} ss:

I, Karen L. Bulley Deputy Clerk of said Village of West Haverstraw,  
County of Rockland, hereby certify that I have compared the foregoing copy  
of Verizon Resolution 5/16/07 with the original now on file  
in said office, and find the same to be a true and correct transcript therefrom and of the whole of  
such original.

IN TESTIMONY WHEREOF, I have hereunto subscribed my  
name and affixed the seal of said Village of West Haverstraw,  
this 17th day of May 20 07

Karen L. Bulley  
Deputy Village Clerk

# **ATTACHMENT C**

**AFFIDAVIT OF PUBLICATION**  
from  
**The Journal News**

**LINDA PARELLI**

\_\_\_\_\_ being duly sworn says that he/she is the principal clerk of The Journal News, a newspaper published in the County of Westchester and State of New York, and the notice of which the annexed is a printed copy, was published in the newspaper area(s) on the date(s) below:

**Note:** The two-character code to the left of the run dates indicates the zone(s) that the ad was published. (See Legend below)

JN 03/29/07

Signed *Linda Parelli*

Sworn to before me

This 2nd day of April 20 07

**ROBERT A. MAZGA**  
Public, State of New York  
No. 011-15151-42  
Qualified in Westchester County  
Term Expires July 24, 2010

*Robert A. Mazga*  
Notary Public, Westchester County

**Legend:**

**Northern Area (AN):**

Amawalk, Armonk, Baldwin Place, Bedford, Bedford Hills, Briarcliff Manor, Buchanan, Chappaqua, Crompond, Cross River, Croton Falls, Croton on Hudson, Goldens Bridge, Granite Springs, Jefferson Valley, Katonah, Lincolnale, Millwood, Mohegan Lake, Montrose, Mount Kisco, North Salem, Ossining, Peekskill, Pound Ridge, Purdys, Shenorock, Shrub Oak, Somers, South Salem, Verplanck, Waccabuc, Yorktown Heights, Brewster, Carmel, Cold Spring, Garrison, Lake Peekskill, Mahopac, Mahopac Falls, Putnam Valley, Patterson

**Central Area (AC):**

Ardley, Ardsley on Hudson, Dobbs Ferry, Elmsford, Harrison, Hartsdale, Hastings, Hastings on Hudson, Hawthorne, Irvington, Larchmont, Mamaroneck, Pleasantville, Port Chester, Purchase, Rye, Scarsdale, Tarrytown, Thornwood, Valhalla, White Plains, Greenburgh

**Southern Area (AS):**

Bronxville, Eastchester, Mount Vernon, New Rochelle, Pelham, Tuckahoe, Yonkers

**Rockland Area (JN or RK):**

Blauvelt, Congers, Garnerville, Haverstraw, Hillburn, Monsey, Nanuet, New City, Nyack, Orangeburg, Palisades, Sloatsburg, Sparkill, Spring Valley, Stony Point, Suffern, Tallman, Tappan, Thiells, Tomkins Cove, West Haverstraw, West Nyack, Pearl River, Piemont, Valley Cottage, Pomona

**Patent Trader (PT):**

Amawalk, Armonk, Baldwin Place, Bedford, Bedford Hills, Briarcliff, Chappaqua, Cortlandt Manor, Cross River, Croton Falls, Goldens Bridge, Granite Springs, Jefferson Valley, Katonah, Lincolnale, Millwood, Mohegan Lake, Mount Kisco, North Salem, Pleasantville, Pound Ridge, Purdys, Shrub Oak, Somers, South Salem, Thornwood, Verplanck, Waccabuc, Yorktown Heights

**Review/Press (BVW):**

Bronxville, Eastchester, Scarsdale, Tuckahoe

NOTICE OF PUBLIC HEARING  
VILLAGE OF WEST HAVENSTRAW  
TRAW

PLEASE TAKE NOTICE that a Public Hearing will be held by the Village Board of the Village of West Haverstraw, at the Village Hall, 130 Salmondale Avenue, West Haverstraw, New York 10993, on the 10th day of April, 2007, at 7:00 p.m. to afford all interested parties an opportunity to be heard concerning the application of Verizon New York, Inc. for an initial cable television franchise.

A copy of the aforesaid application is available for public inspection during normal business hours at the Office of the Village Clerk of the Village of West Haverstraw, 130 Salmondale Avenue, West Haverstraw, New York 10993.

By Order of the Village Board of the Village of West Haverstraw.

Dated: West Haverstraw, New York  
March 26, 2007  
O. Fred [Signature]  
Village Clerk

## **NOTICE OF PUBLIC HEARING**

**PLEASE TAKE NOTICE** that a Public Hearing will be held by the Village Board of the Village of West Haverstraw, at the Village Hall, 130 Samsondale Avenue, West Haverstraw, New York 10993, on the 10<sup>th</sup> day of April, 2007, at 7:00 p.m. to afford all interested parties an opportunity to be heard concerning the application of Verizon New York, Inc. for an initial cable television franchise.

A copy of the aforesaid application is available for public inspection during normal business hours at the Office of the Village Clerk of the Village of West Haverstraw, 130 Samsondale Avenue, West Haverstraw, New York 10993.

By Order of the Village Board of the Village of West Haverstraw.

Dated: West Haverstraw, New York  
March 26, 2007

O. Fred Miller  
Village Clerk



# **ATTACHMENT D**

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

1. 3/27/07 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village Clerk, O. Fred Miller, enclosing Verizon's application for a cable television franchise and Verizon's proposed franchise agreement
2. 3/27/07 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village Attorney, John Edwards, regarding Short Environmental Assessment Form
3. 3/27/07 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village officials regarding a senior citizens discount
4. 3/27/07 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village officials regarding the April 10 public hearing and Cablevision's anticipated claims
5. 04/6/07 Correspondence from Verizon's Senior Vice President, Monica Azare, to Village Mayor, Edward Zugibe, regarding the April 10 public hearing and enclosing an information sheet outlining the Verizon FiOS TV service

## Tab 1

McGuireWoods LLP  
1345 Avenue of the Americas  
New York, NY 10105-0106  
Phone: 212.548.2100  
Fax: 212.548.2150  
www.mcguirewoods.com

Pamela N. Goldstein  
Direct: 212.548.2136

McGUIREWOODS

pngoldstein@mcguirewoods.com  
Direct Fax: 212.548.2173

**BY HAND**

March 27, 2007

O. Fred Miller  
Village Clerk  
Village of West Haverstraw  
Village Hall  
130 Samsondale Avenue  
West Haverstraw, New York 10993

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

Dear Mr. Miller:

Pursuant to the requirements of 16 N.Y.C.R.R. Section 894.5, please find enclosed the application of Verizon New York Inc. to the Village of West Haverstraw for a cable television franchise.

Also enclosed is the proposed Cable Franchise Agreement by and between the Village of West Haverstraw and Verizon New York Inc.

Please contact John Harrington at (617) 628-5068 or me at (212) 548-2136 should you have any questions.

Very truly yours,



Pamela N. Goldstein

Enclosures

cc: John S. Edwards, Esq., Village Attorney  
Verizon New York Inc.

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

Verizon New York Inc. ("Verizon NY") respectfully submits this application form ("Application") and requests the award of a cable television franchise from the Village of West Haverstraw ("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 26% 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); and (29) Town of Orangetown (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; and (28) Tuckahoe – March 23, 2007.**

**Furthermore, other subsidiaries of Verizon Communications Inc. were awarded cable television franchises by 736 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 2005 revenues in excess of \$75 billion. A copy of The 2005 Form 10-K of Verizon Communications Inc. can be accessed via the following internet address:**

**[http://investor.verizon.com/sec/sec\\_frame.aspx?FilingID=4275196](http://investor.verizon.com/sec/sec_frame.aspx?FilingID=4275196).**

**A copy of the Verizon Communications Inc. 2005 Annual Report to Shareholders can be accessed via the following internet address:**

**<http://investor.verizon.com/financial/annual/2005/index.html>.**

- (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)

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- 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

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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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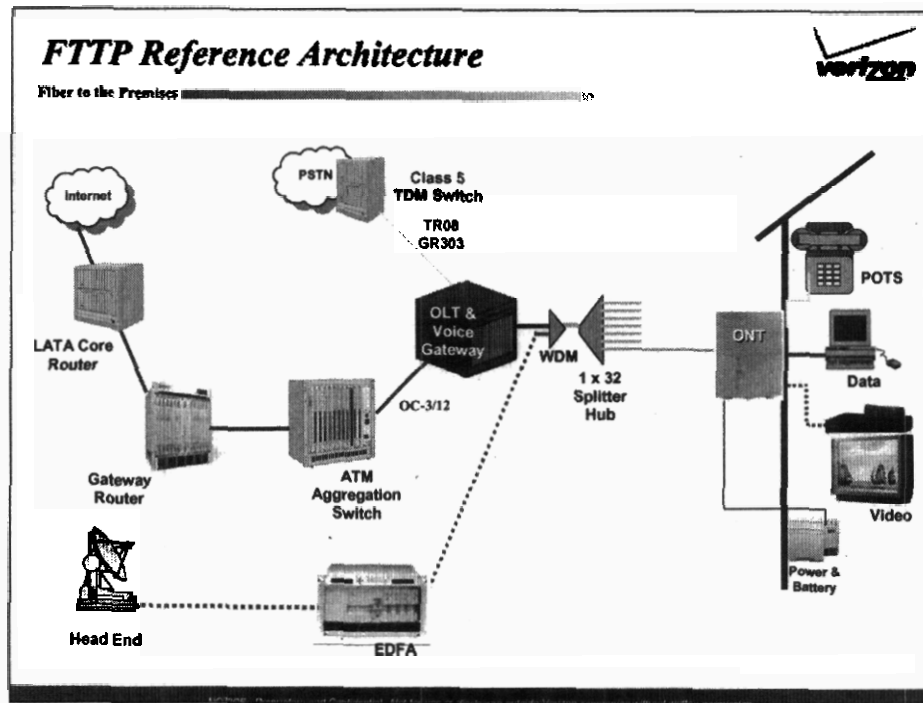
## FTTP System Architecture

### 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.

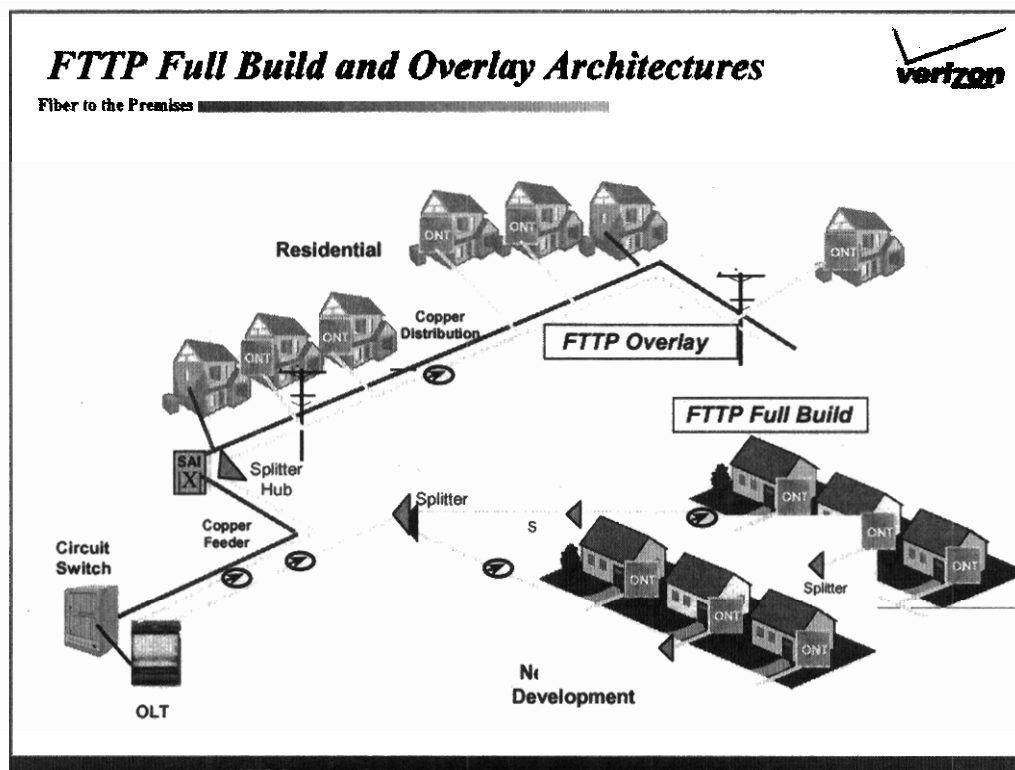
Figure 2 shows full build and overlay architecture. FTTP will be built instead of copper facilities in new communities. In existing communities, the existing copper network will continue to serve those customers who have not migrated to the FTTP network. The fiber is deployed from a Central Office location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

Figure 1-High Level End to End Architecture



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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).

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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.

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**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).

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**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 Village of West Haverstraw is located in West Haverstraw, 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.



### **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

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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 WEST HAVERSTRAW/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**

# Verizon FiOS TV — New York Area Channel Lineup

Local	
2	CBS — WCBS-TV 2
4	NBC — WNBC-TV 4
5	FOX — WNYW-TV 5
6	WRNN-TV 48
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	WFTV-TV 67
18	WMBC-TV 63
21	PBS — WLWJ-TV 21
23	PBS — WUJN-TV 50
25	NYC-TV
29	PBS — WFME-TV 66
31	WPXN-TV 31
32	Local Programming
33	Local Programming
34	Local Programming
37	Local Programming
38	Local Programming
41	Univision — WXTV-TV 41
48	TV Guide
49	Weatherscan Local
Entertainment	
50	USA Network
51	TNT
52	TBS
53	FX
54	Spike TV
Sports	
60	ESPN
61	ESPN Classic Sports
62	ESPNNews
63	ESPNU
64	ESPN 2
65	YES
67	SportsNet NY
68	Speed Channel
69	NFL Network
306	VERSUS
70	CNN
71	CNN Headline News
72	Fox News
73	CNBC
75	Bloomberg TV
76	CNN International
77	CNBC World
78	ABC News Now
79	C-SPAN
80	C-SPAN 2
81	C-SPAN 3
89	The Weather Channel
90	Discovery Channel
91	National Geographic Channel
92	Science Channel
93	Discovery Times
94	Pentagon Channel
95	Military Channel
96	Military History Channel

History Channel	
97	History Channel International
98	History Channel
99	Biography Channel
100	Animal Planet
101	TLC (The Learning Channel)
Women	
110	Lifetime
111	Lifetime Movie Network
112	Lifetime Real Women
113	SoapNet
114	Oxygen
Shopping	
120	QVC
121	HSN
123	America's Store
125	Jewelry
127	Shop NBC
Home & Leisure	
130	Style
131	Discovery Health
132	LIME
133	Fit TV
134	Food Network
135	HGTV (Home & Garden Television)
136	Fine Living
137	DIY (Do It Yourself)
138	Discovery Home
139	Wealth TV
140	Travel Channel
150	Sci-Fi Channel
151	A&E
152	Crime & Investigation Network
153	Court TV
154	GSN
155	Bravo
156	Sleuth
157	Logo
158	Ovation
159	BBC America
160	Comedy Central
161	E! Entertainment Television
162	Fox Reality
163	Fuel
164	ABC Family
170	MTV
171	MTV2
173	MTV Jams
174	MTV Hits
175	VH1
176	VH1 Classic
177	VH1 Soul
178	IMF
179	BET Jazz
180	CMT
181	CMT Pure Country
182	Great American Country
183	Gospel Music Channel
184	BET Gospel
185	Soundtrack Channel
190	Turner Classic Movies
192	Fox Movie Channel

Family	
200	Hallmark Channel
202	Family Net
203	AmericanLife TV
204	TV Land
Children	
210	Disney
211	Toon Disney
212	Nickelodeon
213	Nick Too
214	The Nicktoons Network
215	GAS
216	noggin
217	Cartoon Network (ESP)*
218	Boomerang (ESP)*
219	Discovery Kids
220	Varsity TV
221	FUNimation
People	
230	BET
231	TV One
232	Black Family Channel
233	MTV Tr3s
234	Galavisión
235	Mun2
236	Si TV
237	AZN Television
240	EWTN
241	INSP
242	i-Life
243	Church
244	JCTV
245	BYU
246	Three Angels
248	Daystar
249	Smile of a Child
250	TBN
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
312	Fox Soccer Channel
313	GolTV
315	TVG (Horse Racing)
316	Horse Racing TV
318	Mav TV
319	Blackbelt TV
320	G4
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

Encore	
351	Encore Love West
352	Encore Westerns
353	Encore Westerns West
354	Encore Mystery
355	Encore Mystery West
356	Encore Drama
357	Encore Drama West
358	Encore Action
359	Encore Action West
360	Encore WAM!
361	Showtime
362	Showtime West
363	Showtime Showcase
364	Showtime Showcase West
365	Showtime Too
366	Showtime Too West
367	Showtime Beyond
368	Showtime Beyond West
369	Showtime Extreme
370	Showtime Extreme West
371	Showtime Women
372	Showtime Women West
373	Showtime Next
374	Showtime Next West
375	Showtime Family Zone
376	Showtime Family Zone West
377	The Movie Channel
378	The Movie Channel West
379	The Movie Channel Xtra
380	The Movie Channel Xtra West
381	Flix
382	Flix West
384	Sundance
HBO**	
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	OuterMax
Other Premiums**	
430	Playboy TV
431	Playboy TV en Español
435	here!

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

\*\*Subscription to corresponding premium channels and packages required.

FiOS TV frequently updates its channel offerings. To view our latest published channel lineup, please visit [verizon fios.com/tv](http://verizon fios.com/tv).

# Verizon FiOS TV — New York Area Channel Lineup

Spanish Language	<b>En Español*</b>				
	440	Galevisión			
	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			
La Conexión	454	Viajar y Vivir			
	456	Infinito			
	457	MTV Tr3s			
	458	VH Uno			
	459	Telehit			
	462	De Película			
	463	De Película Clásico			
	464	Cine Latino			
	465	Cine Mexicano			
	468	La Familia			
International Premiums	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			
La Conexión	<b>International Premiums**</b>				
	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)			
La Conexión	489	TV 5 (French)			
	490	TV Polonia			
	491	Rang A Rang (Farsi)			
	492	RTN Russian			
	493	Channel 1 Russian			
	496	Bridges TV			
	497	MTV K			
	498	MTV Chi			
	499	MTV Desi			
La Conexión	<b>Entertainment</b>				
	500	USA Network			
	501	TNT			
	502	TBS			
	503	Galevisión			
	504	FX			
	505	Spike TV			
La Conexión	<b>Sports</b>				
	508	ESPN Deportes			
	510	YES			
	512	SportsNet NY			
	513	Fox Sports en Español			
	514	Fox Soccer Channel			
	516	GoTV			
La Conexión	518	CNN en Español			
	519	CNN			
La Conexión	<b>La Conexión</b>				
	520	CNN Headline News			
	521	Fox News			
	522	CNBC			
	524	C-SPAN			
	525	Canal SUR			
		<b>Information</b>			
	529	TVE Internacional			
	530	History Español			
	531	Discovery Channel			
	532	Discovery en Español			
La Conexión	534	Animal Planet			
	535	TLC (The Learning Channel)			
		<b>Women</b>			
	537	Lifetime			
	538	Lifetime Movie Network			
		<b>Shopping</b>			
	540	QVC			
	541	HSN			
	543	Shop NBC			
		<b>Home &amp; Leisure</b>			
La Conexión	545	Discovery Health			
	546	Viajar y Vivir			
	549	Infinito			
	550	Food Network			
	551	HGTV (Home & Garden Television)			
	552	Travel Channel			
	555	E! Entertainment Television			
	556	A&E			
	557	SI TV			
	558	Mun2			
La Conexión	559	Comedy Central			
	560	Sci-Fi Channel			
		<b>Music</b>			
	562	MTV Tr3s			
	563	MTV2			
	564	Telehit			
	565	VH Uno			
	566	CMT			
		<b>Movies</b>			
	569	De Película			
La Conexión	570	De Película Clásico			
	571	Cine Mexicano			
	572	Cine Latino			
		<b>Family</b>			
	574	ABC Family			
	575	La Familia			
	576	TV Chile			
	577	TV Colombia			
	578	TV Land			
		<b>Children</b>			
La Conexión	580	Nickelodeon			
	581	Disney en Español			
	582	Toon Disney Español			
	583	Boomerang (ESP)*			
	584	Cartoon Network (ESP)*			
	585	Sorpresa			
	586	Discovery Kids en Español			
		<b>Religion</b>			
	588	TBN Enlace			
	589	EWTN Español			
La Conexión					
La Conexión	<b>Music Choice</b>				
	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			
La Conexión	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			
La Conexión	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			
La Conexión	629	Jazz			
	630	Blues			
	631	Reggae			
	632	Soundscape			
	633	Classical Masterpieces			
	634	Opera			
	635	Light Classical			
	636	Show Tunes			
	637	Contemporary Christian			
	638	Gospel			
La Conexión	639	Radio Disney			
	640	Sounds of the Seasons			
	641	Música Urbana			
	642	Salsa y Merengue			
	643	Rock en Español			
	644	Pop Latino			
	645	Mexicana			
	646	Americana			
La Conexión	701	TVN Events			
	702-707	ESPN-NCAA Sports/ GamePlan/FullCourt			
La Conexión	<b>HD Broadcast</b>				
	801	CW — WPIX 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			
La Conexión	<b>HD National**</b>				
	810	TNT HD			
	811	ESPN HD			
	812	ESPN 2 HD			
	814	NFL Network HD			
	817	HD Net			
La Conexión	<b>HD</b>				
	818	HD Net Movies			
	819	Universal HD			
	820	Discovery HD			
	821	Wealth TV HD			
	822	National Geographic Channel HD			
	823	MTV HD			
		<b>HD Premium**</b>			
	830	HBO HD			
	831	Cinemax HD			
La Conexión	832	Showtime HD			
	833	TMC HD			
	834	Starz HD			
La Conexión	<b>Local Plus</b>				
	850	NBC Weather Plus			
	851	Tube Music Network			
	854	WNBC 4.4-Multicast			
	860	PBS — WLIW 21			
	861	PBS — WLIW CRTE			
	862	13 Kids			
	863	13 WORLD			
		<b>FIOS ON DEMAND**</b>			
	900	On Demand Access & Menu			
La Conexión		<b>Kids FREE</b>			
		<b>ALL FREE</b>			
		Home & Leisure			
		Info & Education			
		Kids			
		Music			
		News			
		Pop Culture			
		Shopping			
		Sports			
La Conexión		<b>Movies</b>			
		New Movies			
		New by Category			
		All Movies			
		All Movies by Category			
		In Theaters			
		En Español			
		<b>Subscriptions</b>			
		Cinemax			
		HBO			
La Conexión		Showtime			
		Starz			
		Sundance			
		The Movie Channel			
		WWE			
		Karaoke			
		Playboy			
		<b>Adult</b>			
		Events			
		Hustler			
La Conexión		Spice			
		TEN			
		Playboy Subscribers			
		<b>FIOS TV Help</b>			

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

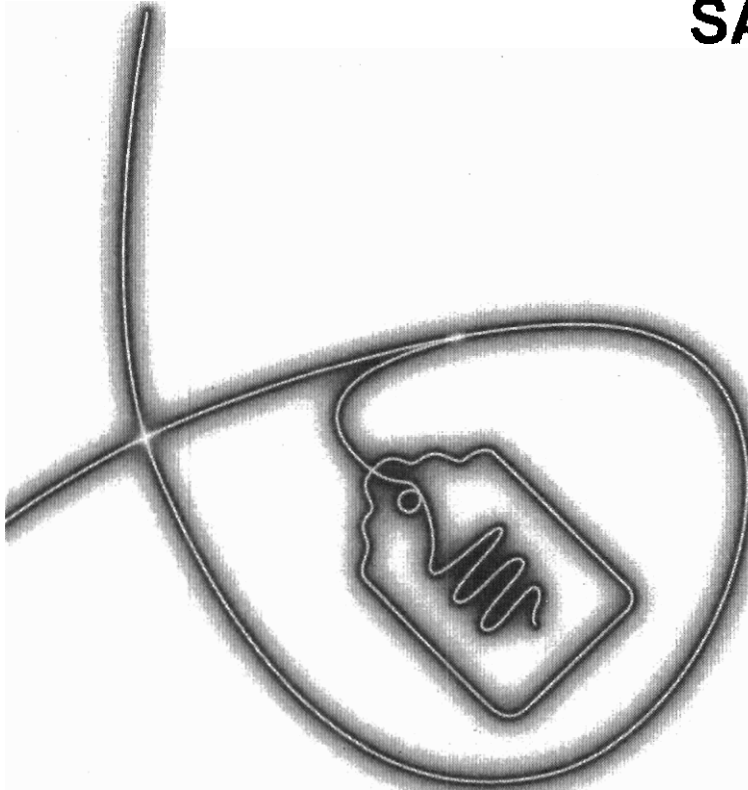
\*\*Subscription to corresponding premium channels and packages required.

**EXHIBIT 3**  
**APPLICATION FOR A CABLE TELEVISION FRANCHISE**  
**VILLAGE OF WEST HAVERSTRAW/VERIZON NEW YORK INC.**

**Verizon FiOS TV**

Rates & Packages

**SAMPLE**



Get more from your  
fiber-optic experience.

# SAMPLE

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

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

Service	Number of Channels	Monthly Price
FIOS TV Local <sup>1</sup>	15-35	\$12.99
Digital Service (Requires Set Top Box (STB) and Router <sup>2</sup> )		
FIOS TV Premier <sup>3</sup>	160 + FIOS TV Local	\$42.99
La Conexión <sup>4</sup>	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 <sup>1</sup>	15	\$7.99
Movies	44	\$12.99
Sports/Movies Combination	59	\$15.99
Spanish Language	25	\$11.99

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

International Premiums <sup>4</sup> (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
---	-------

<b>On Demand Movies</b>	
New Releases	\$3.99
Library	\$2.99

<b>On Demand Subscriptions</b>	
WWE	\$7.99/mo.
Karaoke	\$7.99/mo.



# SAMPLE

On Demand Adult	\$14.99/mo.
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*	\$24.99 + \$5.00/STB
Downgrade of Service from Digital to Analog	\$49.99 + \$5.00/STB
FIOS TV Service Disconnect	No Charge
FIOS TV Service Reconnect (up to 3 outlets)*	\$49.99

Other Services and Charges	One-Time Charges
Seasonal Service Suspension (charged at initiation, 1–6 months)*	\$24.99
Replacement Remote — Basic Universal	\$5.00 + Shipping & Handling
Replacement Remote — FIOS TV Universal	\$6.99 + 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.

# SAMPLE



- 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 The reconnect fee applies when establishing service after a service disconnect.
- 9 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.

VEFIFF60157-1106

**Cable Franchise Agreement**  
**by and between**  
**the Village of West Haverstraw**  
**and**  
**Verizon New York Inc.**

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### **Exhibits**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: Form of Performance Bond

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

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

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

WHEREAS, Franchisee is in the process of completing the upgrading of its existing telecommunications and information services network through the installation of a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area which transmits the Non-Cable Services pursuant to authority granted by Section 27 of the New York Transportation Corporations Law, as amended, and Title II of the Communications Act, which Non-Cable Services are not subject to the Cable Law or Title VI of the Communications Act;

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

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

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

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

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

NOW, THEREFORE, in consideration of the LFA's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of the LFA pursuant to and consistent with the Cable Law (as hereinafter defined), pursuant to the

terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

1.10. *Educational Access Channel*: An Access Channel available for noncommercial use solely by local public schools and public school districts in the Franchise Area and other not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents in the Franchise Area as specified by the LFA in Exhibit C to this Agreement.

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

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

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

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

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

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

1.16.1. Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) video on demand, including pay-per-view; (iv) revenues from the sale or lease of access channel(s) or channel capacity; and (v) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, subject to the exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

**1.16.2. Gross Revenue shall not include:**

**1.16.2.1. Franchise Fees imposed on Franchisee by the LFA that are passed through from Franchisee as a line item paid by Subscribers; revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; 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; any fees or charges collected from Subscribers or other third parties for any PEG Grant payments; and**

**1.16.2.2. except as otherwise provided in Subsection 1.16.1, any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders. Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with**



the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.31. *Transfer of the Franchise:*

1.31.1. Any transaction in which:

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

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

1.31.2. However, notwithstanding Sub-subsections 1.31.1.1 and 1.31.1.2 above, a *Transfer of the Franchise* shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

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

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

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

2.2. *The FTTP Network:* Upon delivery of Cable Service, by subjecting Franchisee's mixed-use facilities to the NY PSC's minimum franchise standards and the LFA's police power, the LFA has not been granted broad new authority over the construction, placement and operation of the Franchisee's mixed-use facilities.

2.3. *Effective Date and Term:* This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise.

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

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

**2.6. *No Waiver:***

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

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

**2.7. *Construction of Agreement:***

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

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

**2.8. *Police Powers:*** Nothing in this Agreement shall be construed to prohibit the LFA's reasonable, necessary and lawful exercise of its police power 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, not materially in conflict with the privileges granted in this Franchise and consistent with all applicable federal and state laws, rules, regulations and orders.

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

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

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

#### 3.1. *Service Area:*

3.1.1. *Service Area:* Subject to the issuance of all necessary permits by the LFA, Franchisee shall offer Cable Service to significant numbers of Subscribers within residential areas of the Service Area and may make Cable Service available to businesses in the Service Area, within twelve (12) months and shall offer Cable Service to all residential areas of the Service Area within five (5) years, of the Effective Date of this Franchise, or, in both instances, such longer period as may be permitted by the Cable Law, except, in accordance with NY PSC rules and regulations: (A) for periods of Force Majeure; (B) for periods of delay caused by the LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in areas, developments or buildings where Franchisee cannot gain access after good faith efforts; (F) in areas, developments or buildings where the provision of Cable Service is economically infeasible because such provision requires nonstandard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density and other requirements set forth in Sub-subsection 3.1.1.1. and Section 3.2.

3.1.1.1. *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than twenty-five (25) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, Franchisee shall provide Cable Service to such area within twelve (12) months of receiving notice from the LFA that the density requirements have been met.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed

to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual costs. Such 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 aerial service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as may be designated by the LFA as provided in Exhibit A attached hereto; provided, however, that if it is necessary to extend Franchisee's aerial trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such aerial extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual costs. Such costs shall be submitted to said recipient in writing before installation is begun. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged.

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

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

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

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

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

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

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

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

## 5. **PEG SERVICES**

### 5.1. *PEG Set Aside:*

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

5.1.2. The programming to be carried on each of the PEG Channels set aside by Franchisee is reflected in Exhibit C attached hereto. The LFA hereby authorizes Franchisee to transmit such programming within and without LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

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

### 5.2. *PEG Grant:*

5.2.1. Subject to Subsection 5.3.2, Franchisee shall provide to the LFA for use in support of the production of local PEG programming a PEG grant (the "PEG Grant") in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00). Franchisee shall pay the PEG Grant in six (6) installments, as follows: (i) the first installment, in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), shall be payable within sixty (60) days of the Effective Date; and (ii) the remaining five (5) installments, in equal amounts of FIVE THOUSAND

DOLLARS (\$5,000.00) each, shall be payable on the first through fifth anniversary dates of the Effective Date. Such PEG Grant shall be used solely by the LFA for PEG access equipment, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities.

5.2.2. Notwithstanding the foregoing Subsection 5.3.1, however, Franchisee's obligation to provide PEG Grants under this Section 5.3 shall not commence until the LFA imposes an equivalent economic burden on all cable service providers within the Franchise Area.

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

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:* Consistent with applicable law, Franchisee shall be permitted to externalize, line-item, or otherwise pass-through to Subscribers any costs arising from the provision of PEG services, interconnection and any other franchise-related costs.

## 6. **FRANCHISE FEES**

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of five percent (5%) of annual Gross Revenue (the "Franchise Fee"). In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. Late payments for Franchise Fees shall be subject to interest at the then-current rate set forth in Section 5004 of Article 50 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) from the due date to the date that such payment is made.

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

6.3. *Audit:* Subject to the confidentiality requirements set forth in Section 7.1 of this Franchise and the LFA's imposition of identical obligations to those contained in this Section 6.3 on all cable service providers in the Service Area, Franchisee shall be responsible for making available to the LFA for inspection and audit, all records necessary to confirm the accurate payment of Franchise Fees, whether the records are held by the Franchisee, an Affiliate, or any other entity that collects or receives funds related to the Franchisee's Cable Services operation in the LFA subject to the payment of Franchise Fees under this Agreement, including, by way of illustration and not limitation, any entity that sells advertising on the Franchisee's behalf. Franchisee shall maintain such records for six (6) years, provided that, if the LFA commences an audit within that six (6) year period, Franchisee shall continue to maintain such records for the duration of any audit in progress at the end of that six (6) year period. The LFA shall conduct all audits expeditiously, and neither the LFA nor Franchisee shall unreasonably delay the completion of an audit. The LFA's audit expenses shall be borne by the LFA unless the audit determines that the payment to the LFA should be increased by five percent (5%) or more in the audited period, in which case the reasonable 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 FIVE THOUSAND DOLLARS (\$5,000.00). If re-computation results in additional revenue to be paid to the LFA, such amount shall be subject to interest charges computed from the due date, at the then-current rate set forth in Section 5004 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) per annum during the period such unpaid amount is owed. If the audit determines that there has been an overpayment by Franchisee, the Franchisee may credit any overpayment against its next quarterly payment. Said audit shall be conducted by an independent third party and no auditor so employed by the LFA shall be compensated on a success based formula, e.g., payment based on a percentage of an underpayment, if any. The LFA shall not conduct an audit more frequently than once every three (3) years.

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

6.5. *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 the operation of the Cable System or 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 make the necessary books and records available for such inspection at a mutually agreed upon location. 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. Subject to the requirements of the New York Freedom of Information Law ("FOIL"), the LFA shall treat any information disclosed by Franchisee as confidential under Section 87(2)(d) of the New York Public Officers Law, and shall disclose it only to employees, representatives, and agents thereof who have a need to know and who agree to maintain the confidentiality of all such information, or only as necessary in order to enforce the provisions hereof. For purposes of this Section, "proprietary or confidential" information includes, but is not limited to: information related to the Cable System design; trade secrets; Subscriber lists; marketing plans; financial information unrelated to the calculation of Franchise Fees; or other information that is reasonably determined by the Franchisee to be competitively sensitive. If the LFA receives a request under FOIL or similar law for the disclosure of information that Franchisee has designated as confidential, trade secret or proprietary, the LFA shall notify Franchisee of such request and cooperate with Franchisee to enforce the provisions of this paragraph to the fullest extent permitted by law. LFA shall not make public disclosure of such information if it is exempt from mandatory disclosure under FOIL or unless required by court order. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. § 551.

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

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

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

7.2.3. Records of service calls for repair and maintenance for a period of six (6) years after resolution by Franchisee, indicating the date and time service was required, the

date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

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

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

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

## 8. INSURANCE AND INDEMNIFICATION

### 8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of two million dollars (\$2,000,000) 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 five million dollars (\$5,000,000).

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.

8.1.6. The policy amounts and limits required herein are not intended, and shall not be, construed to constitute a limitation on Franchisee's liability in connection with any claim, including a claim of indemnification.

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, provided that the LFA shall give Franchisee reasonable written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee, its officers, agents, employees, attorneys, consultants, independent contractors 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 promptly so that Franchisee will have adequate time to submit a proposal under 47 U.S.C. § 546 and complete renewal of the Franchise prior to expiration of its term.

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

## **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 timely 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) calendar days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

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

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

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

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

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

**11.5. *Revocation:*** Should the LFA seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, the LFA shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the LFA has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a second public hearing. The LFA shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

11.5.1. At the designated public hearing, Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the LFA, to compel the testimony

of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

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

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

#### 11.6. *Security:*

11.6.1. Prior to the Effective Date, the Franchisee shall provide to the LFA security for the performance of its obligations under this Agreement in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00). The form of this security may, at Franchisee's option, be a performance bond, letter of credit, cash deposit, cashier's check or any other security acceptable to the LFA. If the Franchisee posts a performance bond, it shall be substantially in the form of Exhibit D.

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

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

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

## 12. MISCELLANEOUS PROVISIONS

12.1. *Actions of Parties:* In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under

the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

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 subject to NY PSC rules and regulations.

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; provided, however, that in the event of a Force Majeure, the time specified for performance of Franchisee's obligations hereunder shall extend for such reasonable time thereafter as may be agreed by the LFA and Franchisee.

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

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

12.5.1. Notices to Franchisee shall be mailed to:

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

12.5.2. Notices to the LFA shall be mailed to:

Village Clerk  
Village of West Haverstraw  
Village Hall  
130 Samsondale Avenue  
West Haverstraw, New York 10993

12.5.3. with a copy to:

Village Attorney  
Village of West Haverstraw  
Village Hall  
130 Samsondale Avenue  
West Haverstraw, New York 10993

**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.

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

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

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

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

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



be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

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

12.13. *Rates and Charges:* The rates and charges for Cable Service provided pursuant to this Franchise shall be subject to regulation in accordance with federal law.

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

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

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

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

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

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

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

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

LFA:

VILLAGE OF WEST HAVERSTRAW

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

FRANCHISEE:

VERIZON NEW YORK INC.

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

## **EXHIBITS**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Areas

Exhibit C: PEG Channels

Exhibit D: Form of Performance Bond

Exhibit List

West Haverstraw/Verizon New York Inc.  
Franchise Agreement/April 2007

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

North Rockland Central School District  
(North Garnerville Elementary School and Administration Offices)  
65 Chapel Street  
Garnerville, NY 10923

Railroad Avenue School  
1 Cosgrove Avenue  
West Haverstraw, NY 10993

West Haverstraw Elementary School  
71 Blauvelt Avenue  
West Haverstraw, NY 10993

Village of West Haverstraw Village Hall  
130 Samsondale Avenue  
West Haverstraw, NY 10993

Village of West Haverstraw Community Center  
130 Samsondale Avenue  
West Haverstraw, NY 10993

Village of West Haverstraw Department of Public Works  
130 Samsondale Avenue (rear building / separate from Village Hall)  
West Haverstraw, NY 10993

Village of West Haverstraw Fire Department – S.W. Johnson Steam Fire Engine Co. No. 1  
7 Eakman Drive  
Garnerville, NY 10923

Village of West Haverstraw Fire Department – Volunteer Hose Fire Company No. 2  
30 East Railroad Avenue  
West Haverstraw, NY 10993

## **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 26% of the current households in the Franchise Area. At present, Franchisee's anticipated schedule calls for 60% deployment by October 2007, 65% deployment by April 2008, 70% deployment by October 2008, 75% deployment by April 2009, 80% deployment by October 2009, 84% deployment by April 2010, 88% deployment by October 2010, 92% deployment by April 2011, 96% deployment by October 2011, and 100% deployment by April 2012. 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**

Upon written request of the LFA, Franchisee shall make available on its Basic Service tier up to one (1) dedicated Public Access Channel, one (1) dedicated Educational Access Channel, and up to one (1) dedicated Government Access Channel.

## EXHIBIT D FORM OF PERFORMANCE BOND

**Franchise Bond**  
**Bond No. \_\_\_\_\_**

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

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

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

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

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

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

1. In the event of default by the Principal, Obligor shall deliver to Surety a written statement of the details of such default within 30 days after the Obligor shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein.
2. This Bond shall be effective \_\_\_\_\_, 20\_\_\_\_, and shall remain in full force and effect thereafter for a period of one year and will automatically extend for additional one year periods from the expiry date hereof, or any future expiration date, unless the Surety provides to the Obligor not less than sixty (60) days advance written notice of its intent not to renew this Bond or unless the Bond is earlier canceled pursuant to the following. This Bond may be canceled at any time upon sixty (60) days advance written notice from the Surety to the Obligor.
3. Neither cancellation, termination nor refusal by Surety to extend this bond, nor inability of Principal to file a replacement bond or replacement security for its obligations under said Agreement, shall constitute a loss to the Obligor recoverable under this bond.

Page 1 of 2

Exhibit D - 1 of 2

West Haverstraw/Verizon New York Inc.  
Franchise Agreement/April 2007

Bond No. \_\_\_\_\_

4. No claim, action, suit or proceeding shall be instituted against this bond unless same be brought or instituted and process served within one year after termination or cancellation of this bond.
5. No right of action shall accrue on this bond for the use of any person, corporation or entity other than the Oblige named herein or the heirs, executors, administrators or successors of the Oblige.
6. The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond remains in force or the amount or number of claims brought against this bond.
7. This bond is and shall be construed to be strictly one of suretyship only. If any conflict or inconsistency exists between the Surety's obligations as described in this bond and as may be described in any underlying agreement, permit, document or contract to which this bond is related, then the terms of this bond shall supersede and prevail in all respects.

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

IN WITNESS WHEREOF, the above bounded Principal and Surety have hereunto signed and sealed this bond effective \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Principal

Surety

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

By: \_\_\_\_\_, Attorney

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



## **Tab 2**

**BY HAND**

March 27, 2007

John S. Edwards, Esq.  
Village Attorney  
Village of West Haverstraw  
Village Hall  
130 Samsondale Avenue  
West Haverstraw, New York 10993

**Re: Verizon New York Inc. Short Environmental Assessment Form**

Dear John:

In connection with the application (the "Application") of Verizon New York Inc. ("Verizon") to the Village of West Haverstraw ("West Haverstraw" or the "Village") for a cable television franchise (the "Franchise"), enclosed is Verizon's completed Part I of the Short Environmental Assessment Form ("EAF"). Part II is to be completed by the Village as "Lead Agency," and Part III requires a certification by the Village concerning the existence or non-existence of a significant adverse environmental impact. Verizon does not believe that it is required to submit an EAF in support of its Application, and the EAF is submitted without prejudice to that position.

State Environmental Quality Review Act ("SEQRA") requirements are triggered only when an agency undertakes, funds, or approves an "action." Verizon is not proposing any "action" within the meaning of SEQRA. The basic fiber to the premises ("FTTP") facilities required to provide cable service within the Village are already in place, having been constructed pursuant to existing permissions and authorities. The New York Public Service Commission (the "NY PSC") has already determined that Verizon's construction of FTTP facilities does not by itself require a cable franchise.<sup>1</sup> Although further construction may be required in the future to extend FTTP facilities to other customers within the West Haverstraw franchise area, it is Verizon's position that such construction activities would also be undertaken pursuant to Verizon's pre-existing permissions and authorities to deploy, extend, upgrade, repair, and maintain plant used for the provision of telecommunications and information services. Since Verizon will be providing cable service using independently authorized facilities, the key effect of the Franchise will be to authorize the delivery of video programming to subscribers using such facilities. Such delivery of video programming cannot by itself be an "action" under SEQRA, since it does not

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<sup>1</sup> Cases 05-M-0250, *et al.*, "Declaratory Ruling on Verizon Communications, Inc.'s Build-Out of its Fiber to the Premises Network" (Issued and Effective June 15, 2005).

March 27, 2007

Page 2

involve any physical alteration of the environment. Thus, the Village's approval of the Franchise is not subject to SEQRA.<sup>2</sup>

However, to the extent that the Village concludes that Verizon's offering of cable service in the Village is a SEQRA "action," that action is a "Type II" action, and Type II actions have been categorically determined *not* to have a significant impact on the environment.<sup>3</sup> Type II actions do not require the submission of an EAF, or indeed any action on the part of the Village pursuant to SEQRA.<sup>4</sup> The actions at issue here will not have a significant effect on the environment. Of course, the mere delivery of video programming to subscribers could not have any impact on the environment at all, much less a "significant" one. Even if the placement of additional fiber drops and extensions of existing FTTP routes were considered to be within the scope of the "action" being approved by the Village, such activities would be essentially identical to those routinely undertaken in connection with the provision of telephone service within the Village; and the impact of such activities would be minimal, as the NY PSC has concluded. Accordingly, if the Village determines that it needs to take any action at all under SEQRA, that action should be the issuance of a negative declaration.

Please call should you have any questions.

Best regards.

Sincerely,



Pamela N. Goldstein

Enclosure

cc: O. Fred Miller, Village Clerk  
Verizon New York Inc.

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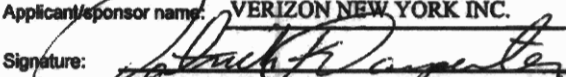
<sup>2</sup> We are mindful of the fact that in its recent orders confirming Verizon's franchises, the NY PSC treated approval of the franchises as an unlisted action under SEQRA (rather than a non-action or a Type II action), contrary to the position taken here. We respectfully disagree with that conclusion, and note that it may well be tied to the NY PSC's conclusion, in those orders, that Verizon's mixed-use FTTP facilities become "cable television systems" subject to Article 11 of the Public Service Law and the NY PSC's "minimum franchise standards" once they are used to deliver video programming to subscribers. The issue of the extent to which mixed-use FTTP facilities become a "cable system" under federal law (an issue that necessarily affects the question of how those facilities should be characterized under state law) is now pending before the Federal Communications Commission in its § 621(a) review. In any event, the NY PSC concluded in its confirmation orders for Verizon franchises that approval would not result in any significant adverse environmental impacts, and issued negative declarations under SEQRA.

<sup>3</sup> See, e.g., 6 NYCRR § 617.5(c)(11) ("The following actions are not subject to review under this Part: . . . extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list.").

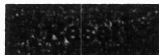
<sup>4</sup> Even if this were deemed to be an "unlisted" action, submission of a long-form EAF is not required. See 6 NYCRR § 617.6(a)(3).

617.20  
**Appendix C**  
**State Environmental Quality Review**  
**SHORT ENVIRONMENTAL ASSESSMENT FORM**  
For UNLISTED ACTIONS Only

**PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)**

<b>1. APPLICANT/SPONSOR</b> Verizon New York Inc.	<b>2. PROJECT NAME</b> Provision of cable service in West Haverstraw, New York
<b>3. PROJECT LOCATION:</b> Municipality Village of West Haverstraw (the "Village") County Rockland County, NY	
<b>4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map)</b> There is no precise location. The project entails the provision of cable service throughout the Village.	
<b>5. PROPOSED ACTION IS:</b> <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
<b>6. DESCRIBE PROJECT BRIEFLY:</b> Cable service will be provided within the territorial limits of the Village using Fiber to the Premises ("FTTP") facilities. See cover letter.	
<b>7. AMOUNT OF LAND AFFECTED:</b> Initially <u>zero or minimal</u> acres    Ultimately <u>zero or minimal</u> acres	
<b>8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If No, describe briefly No such restrictions are applicable to the Project.	
<b>9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT?</b> <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: Not applicable. See cover letter.	
<b>10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals: A permit (cable franchise) must be granted by the Village. Once the Village grants the cable franchise, Verizon will seek Public Service Commission confirmation of that franchise.	
<b>11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals: See Item 10 above.	
<b>12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No    Not applicable. See Item 10 above.	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: VERIZON NEW YORK INC. Date: 03/06/07 Signature: 	

**If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment**



## Tab 3

**BY HAND**

March 27, 2007

The Honorable Edward P. Zugibe, Mayor  
The Honorable Joseph Denise, Deputy Mayor/Trustee  
The Honorable Frances Nardi, Trustee  
The Honorable Robert R. D'Amelio, Trustee  
The Honorable Robert LaGrow, Trustee  
c/o O. Fred Miller, Village Clerk  
Village of West Haverstraw  
Village Hall  
130 Samsondale Avenue  
West Haverstraw, New York 10993

**Re: Application of Verizon New York Inc. to the  
Village of West Haverstraw for a Cable Television Franchise**

Dear Mr. Mayor and Village Trustees:

Verizon New York Inc. ("Verizon") looks forward to appearing before you at the upcoming April 10, 2007 public hearing (the "Public Hearing") regarding its application to the Village of West Haverstraw ("West Haverstraw" or the "Village") for a cable television franchise. Verizon very much appreciates this opportunity.

Verizon understands that a discount for senior citizens is of substantial concern to West Haverstraw. In fact, the Village's franchise negotiator, John Edwards, consistently expressed this concern during negotiations. In response, Verizon's negotiators pointed out that competition will result in improved pricing for *all* West Haverstraw residents. The purpose of this letter is to expand upon Verizon's position with respect to this issue.

Competition is defined as "[t]he effort of two or more parties acting, independently, to secure the business of a third party by offering the most favorable terms." With the introduction of unprecedented competition in the cable television space, the market will dictate pricing, and each company will be required to respond accordingly in order to secure or maintain consumers' business. In fact, the Federal Communications Commission (the "FCC") reported in its 2005 assessment of video programming competition that increased competition in the multichannel video programming distributor market has led to improvements in cable television services, and, *in the case of facilities-based competition – lower prices for customers*. Moreover, studies by the General Accounting Office ("GAO") in 2004 and the FCC in 2005 show that prices are 15 –

March 27, 2007

Page 2

16% lower when two wireline cable providers compete in the same market. FCC Chairman Kevin Martin proclaimed in February 2006 that "competition in the market for video programming serves to improve quality and customer service, increase consumer choice, decrease prices, and promote innovation." Competitive pricing can beat a situation where a regulated floor has been established. All West Haverstraw consumers will benefit by the arrival of competition.

Please find enclosed for your reference the following two documents: (1) a December 7, 2006 *Wall Street Journal* article entitled "Cable Rate Increases Are Smallest in Years;" and (2) the 2004 GAO study referenced above.

Verizon is excited to compete head-to-head for video subscribers in West Haverstraw by introducing cable competition and offering Village residents the historic opportunity to vote with their wallets and choose among cable providers.

Verizon anticipates the Village's award of a cable franchise to Verizon at the Public Hearing. In the meantime, we remain available at any time to answer any questions that you may have. John Harrington may be reached at (617) 628-5068 and I may be reached at (212) 548-2136.

Respectfully submitted,



Pamela N. Goldstein

Enclosures

cc: John S. Edwards, Esq., Village Attorney  
O. Fred Miller, Village Clerk  
Verizon New York Inc.

## **Cable Rate Increases Are Smallest in Years**

**Heightened Competition Offers Consumers Chance  
To Play One Provider off Another; When to Bundle**

By SARMAD ALI

*December 7, 2006; Page D1*

For years consumers have enjoyed falling phone rates thanks to increasing competition in the telecommunications business. Now competition is beginning to have a similar effect on how much households pay for television service.

With telephone companies pushing into the TV business, rate increases planned by cable operators for 2007 are going to be the most moderate in years. Next year, for example, **Comcast Corp.**, the country's largest cable operator by number of customers, will raise the cost of its most popular 75-channel analog package an average 4.5% -- from about \$41 a month to \$43 -- its lowest increase in more than a decade.

Other companies are planning minimal or even no price increases. While Time Warner Cable, the cable unit of **Time Warner Inc.**, is planning increases of the standard cable package in some markets, in Dallas and Los Angeles the rate will stay the same. **Cablevision Systems Corp.**, an operator serving the New York City area, isn't planning to raise its standard rate at all.

Meantime, consumers also are benefiting from the move by cable operators to offer new services, like phone and high-speed Internet, and bundle them with TV service at discounted rates. Many of the leading cable operators, including Comcast, Time Warner and Cablevision, have introductory bundle offers of all three products for just \$100 a month for the first year. Sold separately they would cost as much as \$125.

### **TRIM YOUR BILL**

Some ways to save money on your cable-TV service:

- **Add other services.** Most cable-TV companies give discounts to customers who also take phone and high-speed Internet service.

**Threaten to leave.** Many large companies will offer customers promotions, like a few months of free HBO, to keep them.

- **Switch to "basic cable."** Cable operators are required by law to offer a scaled-down service. It usually includes about 20 channels and costs \$15 to \$20 a month.

Consumers who are used to playing phone companies against each other to get better rates now have their eyes set on their TV bills. Six months ago, Denise Harrison, a 39-year-old house cleaner in West Chester, Pa., began buying all three products from Comcast partly for the price and partly because she likes having only one bill for three services. But she says she would likely switch to **Verizon Communications Inc.**, if the local telephone provider made a better offer. "It's all about saving money," she says.



The idea of saving money from a cable company may come as a shock to many consumers who remember how operators used to levy giant increases during the days they enjoyed near monopolies in the pay-TV business. Cable rates increased 93% between 1995 and 2005, according to the Federal Communications Commission.

But competition has slowly moderated this behavior. Cable companies got their first taste of it from satellite TV operators, such as **EchoStar Communications Corp.** and **DirecTV Group Inc.**, which lured away millions of cable customers with cheaper prices and more channels. Kagan Research, a division of JupiterKagan Inc., estimates that there will be 65.4 million cable subscribers at the end of this year compared with 29 million satellite subscribers.

Cable operators responded to this by beginning to ease up on boosting prices. Indeed last year, average satellite prices rose 8.1% compared to cable's 5.1%, according to Kagan. Next year satellite operators also may put on the brakes. For example, EchoStar's Dish Network's basic package that includes more than 80 channels costs \$29.99 a month now and will remain at that price next year, a company representative says.

Pressure on cable companies to raise TV rates also has eased as operators have opened up new revenue streams from new products like phone, high-speed Internet, digital cable, high-definition television and digital video recorders.

At the same time, phone companies are beginning to offer a similar palette of services, sometimes for less money than the local cable operator is charging. More than 100,000 households in eight states are subscribing to Verizon's new TV service, which includes 200 channels of TV and music. Verizon recently announced it was increasing the price of that offer to \$42.99 monthly from \$39.95, but existing customers will continue paying the lower price.

AT&T Inc. began offering its "U-verse" TV service earlier this year in Texas and says it is planning to add 13 new markets before the end of this year. The company is charging \$44 a month for one of its packages, which includes 100 channels. Both AT&T and Verizon also have cut deals with satellite-TV providers to offer TV in areas not reached by the phone companies' television services.

AT&T and Verizon have ambitious plans to expand their own TV services. But these plans will depend on how fast the phone companies can get permission from local governments to launch in their areas. Phone companies have been lobbying to pass federal and state legislation passed to expedite this process, arguing that it would lead to even more price competition. Cable companies have been resisting these efforts, claiming that phone companies are seeking special privileges that cable operators don't get.

Increases in cable rates vary among regions. Comcast customers in Savannah, Ga., for example, will pay \$49.99 next year for the standard analog package of about 75 channels, up from \$48.50, a 3.1% increase. Customers in Washington state, however, will pay \$48.27 per month, up 6.8% from \$45.18.

But cable companies that are facing the early waves of phone-company competition are showing the most restraint in raising prices. Cablevision, for example, which is facing threats from Verizon in much of its turf, has some of the lowest price increases in the business. A Cablevision spokesman also credited the company's "surge" in revenue from its phone and Internet businesses for its low price increases.

Also, cable operators that are raising analog rates are showing more restraint in increasing the price of their other products, especially those like high-speed Internet service that are facing stiff competition from phone companies. Comcast says its average subscriber will pay 3.1% more next year because more customers are taking multiple products, down from a 4.3% increase this year.

Time Warner subscribers in Milwaukee who take just the standard 80-channel analog package will see a 4.4% increase in their bill next year to \$48.15. But over one-third of Milwaukee's cable subscribers won't see any change in their bill because they're taking some form of bundled package, a company spokesman says.

Most of these cable rate increases are still well above the current overall rate of inflation. But cable operators say they have little choice because popular networks like ESPN have been sharply raising the costs of their programming. Cox Communications Inc., for example, said its programming costs have risen an average of 10% every year in the past three years. "We work hard to keep our prices reasonable, but simply must pass at least a portion of our costs on to our subscribers," a spokesman for the company says.

Meanwhile, many cable subscribers who took advantage of the bundle prices offered by many operators may suffer sticker shock when the introductory period expires. For example, Time Warner Cable charges \$99 for the bundle for the first year. When it elapses the price rises to \$115 to \$125 depending on the location. But even at those higher prices, the three products often cost slightly less in a bundle than what they would cost individually.

Consumers also might see other reasons to stick with the package after the year elapses. "It's easier to deal with one company that provides all three services as opposed to having three companies do it," says Richard Myers, 38, a researcher at a New York online service who is paying the higher price for the Time Warner Cable bundle plan.

Write to Sarmad Ali at [sarmad.ali@wsj.com](mailto:sarmad.ali@wsj.com)<sup>1</sup>

## Rate Plans

Some of the planned rate increases by cable-TV companies for a selection of cities.

CITY	OPERATOR	2006	2007	PERCENT INCREASE
Philadelphia	Comcast	\$50.75	\$52.55	3.5%
Washington State	Comcast	\$45.18	\$48.27	6.8
Milwaukee	Time Warner	\$46.10	\$48.15	4.4
Long Island, N.Y.	Cablevision	\$46.95	\$46.95	0
Los Angeles	Time Warner	\$50.26	\$50.26	0
Columbia, S.C.	Time Warner	\$48.99	\$50.49	3.1
San Diego	Cox	\$41.95	\$43.95*	4.7

Source: The companies \*increase went into effect in June

GAO

Testimony

Before the Committee on Commerce,  
Science, and Transportation, U.S. Senate

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# TELECOMMUNICATIONS

## Subscriber Rates and Competition in the Cable Television Industry

Statement of Mark L. Goldstein, Director  
Physical Infrastructure Issues



G A O

Accountability \* Integrity \* Reliability



Highlights of GAO-04-262T, a testimony before the Committee on Commerce, Science, and Transportation, U.S. Senate

## Why GAO Did This Study

In recent years, rates for cable service have increased at a faster pace than the general rate of inflation. GAO agreed to (1) examine the impact of competition on cable rates and service, (2) assess the reliability of information contained in the Federal Communications Commission's (FCC) annual cable rate report, (3) examine the causes of recent cable rate increases, (4) assess the impact of ownership affiliations in the cable industry, (5) discuss why cable operators group networks into tiers, and (6) discuss options to address factors that could be contributing to cable rate increases.

GAO issued its findings and recommendations in a report entitled *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry* (GAO-04-8). In that report, GAO recommended that the Chairman of FCC take steps to improve the reliability, consistency, and relevance of information on cable rates and competition in the subscription video industry. In commenting on GAO's report, FCC agreed to make changes to its annual cable rate survey, but FCC questioned, on a cost/benefit basis, the utility of revising its process to keep the classification of effective competition up to date. GAO believes that FCC should examine whether cost-effective alternative processes could help provide more accurate information. This testimony is based on that report.

[www.gao.gov/cgi-bin/getrpt?GAO-04-262T](http://www.gao.gov/cgi-bin/getrpt?GAO-04-262T)

To view the full product, including the scope and methodology, click on the link above. For more information, contact Mark Goldstein at (202) 512-2834 or [goldsteinm@gao.gov](mailto:goldsteinm@gao.gov).

## TELECOMMUNICATIONS

# Subscriber Rates and Competition in the Cable Television Industry

## What GAO Found

Competition leads to lower cable rates and improved quality. Competition from a wire-based company is limited to very few markets. However, where available, cable rates are substantially lower (by 15 percent) than in markets without this competition. Competition from direct broadcast satellite (DBS) companies is available nationwide, and the recent ability of these companies to provide local broadcast stations has enabled them to gain more customers. In markets where DBS companies provide local broadcast stations, cable operators improve the quality of their service.

FCC's cable rate report does not appear to provide a reliable source of information on the cost factors underlying cable rate increases or on the effects of competition. GAO found that cable operators did not complete FCC's survey in a consistent manner, primarily because the survey lacked clear guidance. Also, GAO found that FCC does not initiate updates or revisions to its classification of competitive and noncompetitive areas. Thus, FCC's classifications might not reflect current conditions.

A variety of factors contribute to increasing cable rates. During the past 3 years, the cost of programming has increased considerably (at least 34 percent), driven by the high cost of original programming, among other things. Additionally, cable operators have invested large sums in upgraded infrastructures, which generally permit additional channels, digital service, and broadband Internet access.

Some concerns exist that ownership affiliations might indirectly influence cable rates. Broadcasters and cable operators own many cable networks. GAO found that cable networks affiliated with these companies are more likely to be carried by cable operators than nonaffiliated networks. However, cable networks affiliated with broadcasters or cable operators do not receive higher license fees, which are payments from cable operators to networks, than nonaffiliated networks.

Technological, economic, and contractual factors explain the practice of grouping networks into tiers, thereby limiting the flexibility that subscribers have to choose only the networks that they want to receive. An à la carte approach would facilitate more subscriber choice but require additional technology and customer service. Additionally, cable networks could lose advertising revenue. As a result, some subscribers' bills might decline but others might increase.

Certain options for addressing cable rates have been put forth. Although reregulation of cable rates is one option, promoting competition could influence cable rates through the market process. While industry participants have suggested several options for addressing increasing cable rates, these options could have other unintended effects that would need to be considered in conjunction with the benefits of lower rates.

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Mr. Chairman and Members of the Committee:

I am pleased to be here today to report on our work on cable rates and competition in the cable television industry. In recent years, cable television has become a major component of the American entertainment industry, with more than 70 million households receiving television service from a cable television operator. As the industry has developed, it has been affected by regulatory and economic changes. Since 1992, the industry has undergone rate reregulation and then in 1999, partial deregulation. Additionally, competition to cable operators has emerged erratically. Companies emerged in some areas to challenge cable operators, only to halt expansion or discontinue service altogether. Conversely, competition from direct broadcast satellite (DBS) operators has emerged and grown rapidly in recent years. Nevertheless, cable rates continue to increase at a faster pace than the general rate of inflation. As you know, on October 24, 2003, we issued a report to you on these issues, and issued a subsequent report to the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights on similar issues.<sup>1</sup> My statement today will summarize the major findings from our October 2003 report, and additional findings from our February 2004 report.

At the request of this committee, we have (1) examined the impact of competition on cable rates and service; (2) assessed the reliability of the information contained in the Federal Communications Commission's (FCC) annual cable rate report on the cost factors underlying cable rate increases, FCC's current classification of cable franchises regarding whether they face effective competition, and FCC's related findings on the effect of competition; (3) examined the causes of recent cable rate increases; (4) assessed whether ownership of cable networks (such as CNN and ESPN) may indirectly affect cable rates through such ownership's influence on cable network license fees or the carriage of cable networks; (5) discussed why cable operators group networks into tiers, rather than package networks so that customers can purchase only those networks they wish to receive; and (6) discussed options to address factors that could be contributing to cable rate increases.

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<sup>1</sup>See U.S. General Accounting Office, *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8 (Washington, D.C.: Oct. 24, 2003) and U.S. General Accounting Office, *Telecommunications: Wire-Based Competition Benefited Consumers in Selected Markets*, GAO-04-241 (Washington, D.C.: Feb. 2, 2004).

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To address these issues, we developed an empirical model (our cable-satellite model) that examined the effect of competition on cable rates and service using data from 2001;<sup>2</sup> conducted a telephone survey with 100 randomly sampled cable franchises that responded to FCC's 2002 cable rate survey, and asked these franchises a series of questions about how they completed a portion of FCC's survey that addresses cost factors underlying annual cable rate changes; interviewed representatives of the cable operator, cable network, and broadcast industries; and developed empirical models that examined whether ownership of cable networks by broadcasters or by cable operators influenced (1) the level of license fee (our cable license fee model) or (2) the likelihood that the network will be carried (our cable network carriage model) based on data from 2002. For a more detailed description of our scope and methodology, see appendix I.

This testimony is based on our report issued October 24, 2003, for which we did our work from December 2002 through September 2003. We provide additional information based on our report issued February 2, 2004, for which we did our work from May 2003 to December 2003. We preformed our work for both assignments in accordance with generally accepted government auditing standards.

My statement will make the following points:

- Wire-based competition is limited to very few markets; according to FCC, cable subscribers in about 2 percent of all markets have the opportunity to choose between two or more wire-based operators. However, in those markets where this competition is present, cable rates are about 15 percent lower than cable rates in similar markets without wire-based competition in 2001. In our February 2004 report, we examined 6 markets with wire-based competition in depth and found that cable rates in 5 of these 6 markets were 15 to 41 percent lower than similar markets without wire-based competition in 2003. DBS operators have emerged as a nationwide competitor to cable operators, which has been facilitated by the opportunity to provide local broadcast stations. Competition from DBS operators has induced cable operators to lower cable rates slightly, and DBS provision of local broadcast stations has induced cable operators to improve the quality of their service.

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<sup>2</sup>Our model was based on data from 2001 since this was the most recent year for which we were able to acquire the required data on cable rates and services and DBS penetration rates when we began our analysis.

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- As we mentioned in our May 6, 2003, testimony before this Committee, certain issues undermine the reliability of information in FCC's cable rate report, which provides information on cable rates and competition in the subscription video industry.<sup>3</sup> Because the Congress and FCC use this information in their monitoring and oversight of the cable industry, the lack of reliable information in FCC's cable rate report may compromise the ability of the Congress and FCC to fulfill these roles. To improve the quality and usefulness of the data FCC collects annually, we recommend that the Chairman of FCC take steps to improve the reliability, consistency, and relevance of information on rates and competition in the subscription video industry
  - We found that a number of factors contributed to the increase in cable rates. On the basis of data from 9 cable operators, programming expenses and infrastructure investment appear to be the primary cost factors that have been increasing in recent years. During the past 3 years, the cost of programming has increased at least 34 percent. Also, since 1996, the cable industry has spent over \$75 billion to upgrade its infrastructure.
  - Some industry representatives believe that certain factors related to the nature of ownership affiliations may also indirectly influence cable rates. We did not find that ownership affiliations between cable networks (such as CNN and ESPN) and broadcasters (such as NBC and CBS) or between cable networks and cable operators (such as Time Warner and Cablevision) are associated with higher license fees—that is, the fees cable operators pay to carry cable networks. However, we did find that both forms of ownership affiliations are associated with a greater likelihood that a cable operator would carry a cable network.
  - Today, subscribers have little choice regarding the specific networks they receive with cable television service. Adopting an à la carte approach, where subscribers could choose to pay for only those networks they desire, would provide consumers with more individual choice, but could require additional technology and could alter the current business model of the cable network industry wherein cable networks obtain roughly half of their overall revenues from advertising. A move to an à la carte approach could result in reduced advertising revenues and might result in higher per-channel rates and less diversity in program choice. A variety of factors—such as the pricing of à la carte service, consumers' purchasing

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<sup>3</sup>See U.S. General Accounting Office, *Telecommunications: Data Gathering Weaknesses In FCC's Survey Of Information on Factors Underlying Cable Rate Changes*, GAO-03-742T (Washington, D.C.: May 6, 2003).



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patterns, and whether certain niche networks would cease to exist with à la carte service—make it difficult to ascertain how many consumers would be better off and how many would be worse off under an à la carte approach.

- Certain options for addressing factors that may be contributing to cable rate increases have been put forth. Some consumer groups have suggested that reregulation of cable rates needs to be considered, although others have noted problems with past efforts at regulation. Other options put forth include reviewing whether modifications to the program access rules would be beneficial, promoting wireless competition, and reviewing whether changes to the retransmission consent process should be considered. Any options designed to help bring down cable rates could have other unintended effects that would need to be considered in conjunction with the benefits of lower rates. We are not making any specific recommendations regarding the adoption of these options.

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## Background

Cable television emerged in the late 1940s to fill a need for television service in areas with poor over-the-air reception, such as mountainous or remote areas. By the late 1970s, cable operators began to compete more directly with free over-the-air television by providing new cable networks, such as HBO, Showtime, and ESPN. According to FCC, cable's penetration rate—as a percentage of television households—increased from 14 percent in 1975 to 24 percent in 1980 and to 67 percent today. Cable television is by far the largest segment of the subscription video market, a market that includes cable television, satellite service (including DBS operators such as DIRECTV and EchoStar), and other technologies that deliver video services to customers' homes.

To provide programming to their subscribers, cable operators (1) acquire the rights to carry cable networks from a variety of sources and (2) pay license fees—usually on a per-subscriber basis—for these rights. The three primary types of owners of cable networks are large media companies that also own major broadcast networks (such as Disney and Viacom), large cable operators (such as Time Warner and Cablevision), and independent programmers (such as Landmark Communications).

At the community level, cable operators obtain a franchise license under agreed-upon terms and conditions from a franchising authority, such as a local or state government. During cable's early years, franchising authorities regulated many aspects of cable television service, including subscriber rates. In 1984, the Congress passed the Cable Communications

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Policy Act, which imposed some limitations on franchising authorities' regulation of rates.<sup>4</sup> However, 8 years later in response to increasing rates, the Congress passed the Cable Television Consumer Protection and Competition Act of 1992. The 1992 Act required FCC to establish regulations ensuring reasonable rates for basic service—the lowest level of cable service, which includes the local broadcast stations—unless a cable system has been found to be subject to effective competition, which the act defined.<sup>5</sup> The act also gave FCC the authority to regulate any unreasonable rates for upper tiers (often referred to as expanded-basic service), which include cable programming provided over and above that provided on the basic tier.<sup>6</sup> Expanded-basic service typically includes such popular cable networks as USA Network, ESPN, and CNN. In anticipation of growing competition from satellite and wire-based operators, the Telecommunications Act of 1996 phased out all regulation of expanded-basic service rates by March 31, 1999. However, franchising authorities can regulate the basic tier of cable service where there is no effective competition.

As required by the 1992 Act, FCC annually reports on average cable rates for operators found to be subject to effective competition compared with operators not subject to effective competition. To fulfill this mandate, FCC annually surveys a sample of cable franchises regarding their cable rates. In addition to asking questions that are necessary to gather information to provide its mandated reports, FCC also typically asks questions to help the agency better understand the cable industry. For example, the 2002 survey included questions about a range of cable issues, including the cost factors underlying changes in cable rates, the percentage of subscribers purchasing other services (such as broadband Internet access and telephone service), and the specifics of the programming channels offered on each tier.

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<sup>4</sup>Under the 1984 Act and FCC's subsequent rulemaking, over 90 percent of all cable systems were not subject to rate regulation.

<sup>5</sup>Under statutory definitions in the 1992 Act, substantially more cable operators were subject to rate regulations than had previously been the case.

<sup>6</sup>Basic and expanded-basic are the most commonly subscribed to service tiers—bundles of networks grouped into a package—offered by cable operators. In addition, customers in many areas can purchase digital tiers and also premium pay channels, such as HBO and Showtime.

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Some franchise agreements were initially established on an exclusive basis, thereby preventing wire-based competition to the initial cable operator. In 1992, the Congress prohibited the awarding of exclusive franchises, and, in 1996, the Congress took steps to allow telephone companies and electric companies to enter the video market. Initially unveiled in 1994, DBS served about 18 million American households by June 2002. Today, two of the five largest subscription video service providers are DIRECTV and EchoStar—the two primary DBS operators.

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## Competition Leads to Lower Cable Rates and Improved Quality and Service among Cable Operators

Competition from a wire-based provider—that is, a competitor using a wire technology—is limited to very few markets, but where available, has a downward impact on cable rates. In a recent report, FCC noted that very few markets—about 2 percent—have been found to have effective competition based on the presence of a wire-based competitor.<sup>7</sup> Our interviews with cable operators and financial analysis firms yielded a similar finding—wire-based competition is limited. However, according to our cable-satellite model that included over 700 cable franchises throughout the United States in 2001, cable rates were approximately 15 percent lower in areas where a wire-based competitor was present. With an average monthly cable rate of approximately \$34 that year, this implies that subscribers in areas with a wire-based competitor had monthly cable rates about \$5 lower, on average, than subscribers in similar areas without a wire-based competitor. Our interviews with cable operators also revealed that these companies generally lower rates and/or improve customer service where a wire-based competitor is present.

For our February 2004 report to the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, we developed an alternative methodology to examine the relationship between cable rates and wire-based competition. In particular, we developed a case-study approach that compared 6 cities where a broadband service provider (BSP)—new wire-based competitors that generally offer local telephone, subscription television, and high-speed Internet services to consumers—has been operating for at least 1 year with 6 similar cities that do not have such a competitor. We compared the *lowest price available* for cable

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<sup>7</sup>See Federal Communications Commission, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Ninth Annual Report*, FCC 02-338 (Washington, D.C.: Dec. 31, 2002).

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service in the market with a BSP to the price for cable service offered in markets without a BSP.

We found that cable rates were generally lower in the 6 markets we examined with a BSP present than in the 6 markets that did not have BSP competition. However, the extent to which rates were lower in a BSP market compared to its “matched market” varied considerably across markets. For example, in 1 BSP market, the monthly rate for cable television service was 41 percent lower compared with the matched market, and in 2 other BSP locations, cable rates were more than 30 percent lower when compared with their matched markets. In two other BSP markets, rates were lower by 15 and 17 percent, respectively, in the BSP market compared to its matched market. On the other hand, in 1 of the BSP markets, the price for cable television service was 3 percent *higher* in the BSP market than it was in the matched market.

In recent years, DBS has become the primary competitor to cable operators. The ability of DBS operators to compete against cable operators was bolstered in 1999 when they acquired the legal right to provide local broadcast stations—such as over-the-air affiliates of ABC, CBS, Fox, and NBC—via satellite to their customers.<sup>8</sup> On the basis of our cable-satellite model, we found that in areas where subscribers can receive local broadcast stations from both primary DBS operators, the DBS penetration rate is approximately 40 percent higher than in areas where subscribers cannot receive these stations from the DBS operators. In terms of rates, we found that a 10 percent higher DBS penetration rate in a franchise area is associated with a slight rate reduction—about 15 cents per month. Also, in areas where both primary DBS operators provide local broadcast stations, we found that the cable operators offer subscribers approximately 5 percent more cable networks than cable operators in areas where this is not the case. During our interviews with cable operators, most operators told us that they responded to DBS competition through one or more of the following strategies: focusing on customer service, providing bundles of services to subscribers, and lowering prices and providing discounts.

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<sup>8</sup>In 1999, the Congress passed the Satellite Home Viewer Improvement Act, which allows satellite operators to provide local broadcast stations to their customers. Prior to this act, satellite operators were limited to providing local broadcast stations to *unserved areas* where customers could not receive sufficiently high-quality, over-the-air signals. This practice had the general effect of preventing satellite operators from providing local broadcast stations directly to customers in most circumstances.

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## Concerns Exist about the Reliability of FCC's Data for Cable Operator Cost Factors and Effective Competition

As we mentioned in our May 6, 2003, testimony before this Committee, weaknesses in FCC's survey of cable franchises may lead to inaccuracies in the relative importance of cost factors reported by FCC. Cable franchises responding to FCC's 2002 survey did not complete in a consistent manner the section pertaining to the factors underlying cable rate increases primarily because of a lack of clear guidance. These inconsistencies may have led to unreliable information in FCC's report on the relative importance of factors underlying recent cable rate increases. Overall, we found that 84 of the 100 franchises we surveyed did not provide a complete or accurate accounting of their cost changes for the year. As such, an overall accurate picture of the relative importance of various cost factors, which may be important for FCC and congressional oversight, may not be reflected in FCC's data.

FCC's cable rate report also does not appear to provide a reliable source of information on the effect of competition. FCC is required by statute to produce an annual report on the differences between average cable rates in areas that FCC has found to have effective competition compared with those that have not had such a finding. However, FCC's process for implementing this mandate may lead to situations in which the effective competition designation may not reflect the actual state of competition in the current time frame. In particular, FCC relies exclusively on external parties to file for changes in the designation. Using data from FCC's 2002 survey, we conducted several tests to determine whether information contained in franchises' survey information—which was filed with FCC in mid-2002—was consistent with the designation of effective competition for the franchise in FCC's records. We found some discrepancies. These discrepancies may explain, in part, the differential findings regarding the impact of wire-based competition reported by FCC, which found a nearly 7 percent reduction in cable rates, and our finding of a 15 percent reduction in cable rates.

Because the Congress and FCC use this information in their monitoring and oversight of the cable industry, the lack of reliable information in FCC's report on these two issues—factors underlying cable rate increases and the effect of competition—may compromise the ability of the Congress and FCC to fulfill these roles. Additionally, the potential for this information to be used in debate regarding important policy decisions, such as media consolidation, also necessitates reliable information in FCC's report. As a result, we recommended that the Chairman of FCC improve the reliability, consistency, and relevance of information on cable rates and competition in the subscription video industry by (1) taking immediate steps to improve its cable rate survey and (2) reviewing the

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commission's process for maintaining the classification of effective competition.<sup>9</sup> In commenting on our report, FCC agreed to make changes to its annual cable rate survey in an attempt to obtain more accurate information, but questioned, on a cost/benefit basis, the utility of revising its process to keep the classification of effective competition in franchises up to date. We recognize that there are costs associated with FCC's cable rate survey, and we recommend that FCC examine whether cost-effective alternative processes exist that would enhance the accuracy of its effective competition designations.

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## A Variety of Factors Contribute to Cable Rate Increases

Increases in expenditures on cable programming contribute to higher cable rates. A majority of cable operators and cable networks, and all financial analysts that we interviewed told us that high programming costs contributed to rising cable rates. On the basis of financial data supplied to us by 9 cable operators, we found that these operators' yearly programming expenses, on a per-subscriber basis, increased from \$122 in 1999 to \$180 in 2002—a 48 percent increase.<sup>10</sup> Almost all of the cable operators we interviewed cited sports programming as a major contributor to higher programming costs. On the basis of our analysis of Kagan World Media data, the average license fees for a cable network that shows almost exclusively sports-related programming increased by 59 percent, compared to approximately 26 percent for 72 nonsports networks, in the 3 years between 1999 and 2002.<sup>11</sup> Further, the average license fees for the sports networks were substantially higher than the average for the nonsports networks (see fig. 1).

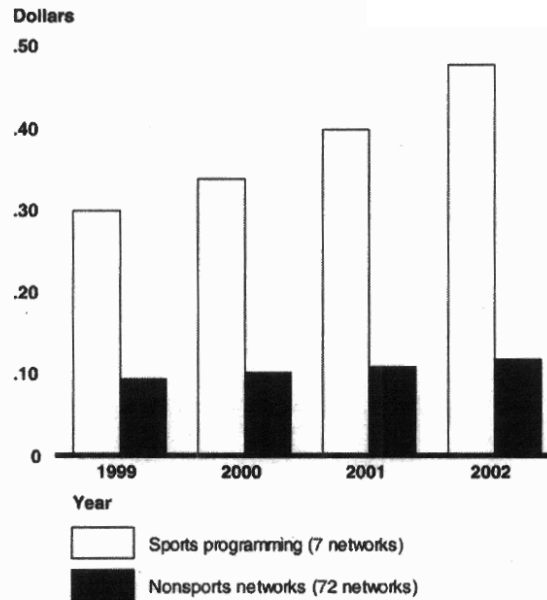
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<sup>9</sup>See U.S. General Accounting Office, *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8 (Washington, D.C.: Oct. 24, 2003), page 45 for a full discussion of our recommendations.

<sup>10</sup>Using data from Kagan World Media, we found that the average fees cable operators must pay to purchase programming (referred to as license fees) increased by 34 percent from 1999 to 2002.

<sup>11</sup>The seven national sports networks that we included in our analysis were ESPN, ESPN Classic, ESPN2, FOX Sports Net, The Golf Channel, The Outdoor Channel, and the Speed Channel.

**Figure 1: Average Monthly License Fees per Subscriber—Sports Networks v. Nonsports Networks, 1999-2002**



Source: GAO analysis of Kagan World Media data.

The cable network executives we interviewed cited several reasons for increasing programming costs. We were told that competition among networks to produce and show content that will attract viewers has become more intense. This competition, we were told, has bid up the cost of key inputs (such as talented writers and producers) and has sparked more investment in programming. Most notably, these executives told us that networks today are increasing the amount of original content and improving the quality of programming generally.

Although programming is a major expense for cable operators, several cable network executives we interviewed also pointed out that cable operators offset some of the cost of programming through advertising revenues. Local advertising dollars account for about 7 percent of the total revenues in the 1999 to 2002 time frame for the 9 cable operators that supplied us with financial data. For these 9 cable operators, gross local advertising revenues—before adjusting for the cost of inserting and selling

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advertising—amounted to about \$55 per subscriber in 2002 and offset approximately 31 percent of their total programming expenses.<sup>12</sup>

In addition to higher programming costs, the cable industry has spent over \$75 billion between 1996 and 2002 to upgrade its infrastructure by replacing degraded coaxial cable with fiber optics and adding digital capabilities. As a result of these expenditures, FCC reported that there have been increases in channel capacity; the deployment of digital transmissions; and nonvideo services, such as Internet access and telephone service.<sup>13</sup> Many cable operators, cable networks, and financial analysts we interviewed said investments in system upgrades contributed to increases in consumer cable rates.

Programming expenses and infrastructure investment appear to be the primary cost factors that have been increasing in recent years. On the basis of financial data from 9 cable operators, we found that annual subscriber video-based revenues increased approximately \$79 per subscriber from 1999 to 2002. During this same period, programming expenses increased approximately \$57 per subscriber. Depreciation expenses on cable-based property, plant, and equipment—an indicator of expenses related to infrastructure investment—increased approximately \$80 per subscriber during the same period. However, because these infrastructure-related expenses are associated with more than one service, it is unclear how much of this cost should be attributed to video-based services. Moreover, cable operators are enjoying increased revenues from nonvideo sources. For example, revenues from Internet-based services increased approximately \$74 per subscriber during the same period.

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<sup>12</sup>Advertising sales revenues net of expenses incurred to insert and sell local advertising would offset a lower percentage of cable operators' programming expenses.

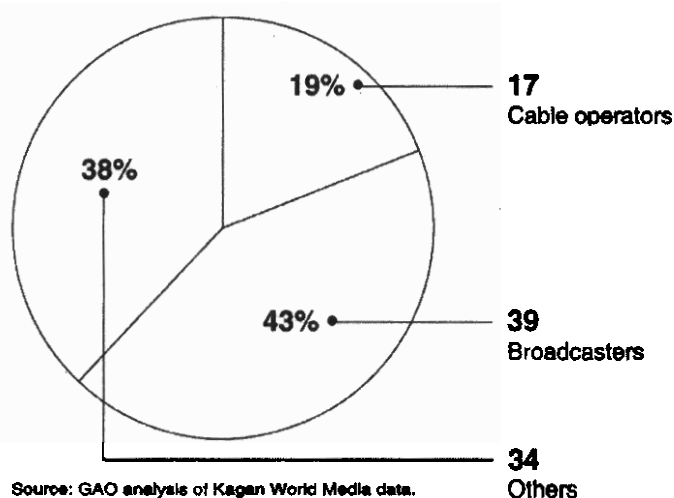
<sup>13</sup>For example, FCC reported that approximately 74 percent of cable systems had system capacity of at least 750 MHz, and that approximately 70 percent of cable subscribers were offered high-speed Internet access by their cable operator in 2002.



## Some View Ownership Affiliations as an Important Indirect Influence on Cable Rates

Several industry representatives and experts we interviewed told us that they believe ownership affiliation may also influence the cost of programming and thus, indirectly, the rates for cable service. Of the 90 cable networks that are carried most frequently on cable operators' basic or expanded-basic tiers, we found that approximately 19 percent were majority-owned (i.e., at least 50 percent owned) by a cable operator, approximately 43 percent were majority-owned by a broadcaster, and the remaining 38 percent of the networks are not majority-owned by broadcasters or cable operators (see fig. 2).

**Figure 2: Ownership Affiliation of the 90 Most Carried Cable Networks**



Source: GAO analysis of Kagan World Media data.

Note: Cable networks were assumed affiliated if the ownership interest was 50 percent or greater.

Despite the view held by some industry representatives with whom we spoke that license fees for cable networks owned by either cable operators or broadcasters tend to be higher than fees for other cable networks, we did not find this to be the case. We found that cable networks that have an ownership affiliation with a broadcaster did not have, on average, higher license fees (i.e., the fee the cable operator pays to the cable network) than cable networks that were not majority-owned by broadcasters or cable operators. We did find that license fees were statistically higher for cable networks owned by cable operators than was the case for cable networks that were not majority-owned by broadcasters or cable operators. However, when using a regression analysis (our cable license fee model) to hold constant other factors that could influence the level of the license fee, we found that ownership affiliations—with

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broadcasters or with cable operators—had no influence on cable networks' license fees.<sup>14</sup> We did find that networks with higher advertising revenues per subscriber (a proxy for popularity) and sports networks received higher license fees.

Industry representatives we interviewed also told us that cable networks owned by cable operators or broadcasters are more likely to be carried by cable operators than other cable networks. On the basis of our cable network carriage model—a model designed to examine the likelihood of a cable network being carried—we found that cable networks affiliated with broadcasters or with cable operators are more likely to be carried than other cable networks. In particular, we found that networks owned by a broadcaster or by a cable operator were 46 percent and 31 percent, respectively, more likely to be carried than a network without majority ownership by either of these types of companies. Additionally, we found that cable operators were much more likely to carry networks that they themselves own. A cable operator is 64 percent more likely to carry a cable network it owns than to carry a network with any other ownership affiliation.

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## Several Factors Generally Lead Cable Operators to Offer Large Tiers of Networks Instead of Providing À La Carte or Minitier Service

Using data from FCC's 2002 cable rate survey, we found that with basic tier service, subscribers receive, on average, approximately 25 channels, which include the local broadcast stations. The expanded-basic tier provides, on average, an additional 36 channels. In general, to have access to the most widely distributed cable networks—such as ESPN, TNT, and CNN—most subscribers must purchase the expanded-basic tier of service. Because subscribers must buy all of the networks offered on a tier that they choose to purchase, they have little choice regarding the individual networks they receive.

If cable operators were to offer all networks on an à la carte basis—that is, if consumers could select the individual networks they wish to purchase—additional technology upgrades would be necessary in the near term. In particular, subscribers would need to have an addressable converter box on every television set attached to the cable system to unscramble the signals of the networks that the subscriber has agreed to purchase.

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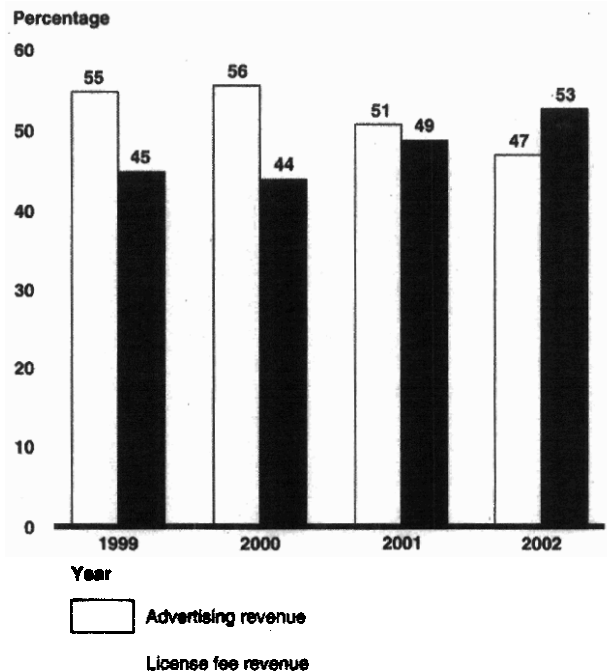
<sup>14</sup>In the cable license fee model, we regressed the average monthly license fee for 90 cable networks on a series of variables that might influence the license fee. See GAO-04-8 for a list of variables included in that model.

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According to FCC's 2002 survey data, the average monthly rental price for an addressable converter box is approximately \$4.39. Although cable operators have been placing addressable converter boxes in the homes of customers who subscribe to scrambled networks, many homes do not currently have addressable converter boxes or do not have them on all of the television sets attached to the cable system. Since cable operators may move toward having a greater portion of their networks provided on a digital tier in the future, these boxes will need to be deployed in greater numbers, although it is unclear of the time frame over which this will occur. Also, consumer electronic manufactures have recently submitted plans to FCC regarding specifications for new television sets that will effectively have the functionality of an addressable converter box within the television set. Once most customers have addressable converter boxes or these new televisions in place, the technical difficulties of an à la carte approach would be mitigated.

If cable subscribers were allowed to choose networks on an à la carte basis, the economics of the cable network industry could be altered. If this were to occur, it is possible that cable rates could actually increase for some consumers. In particular, we found that cable networks earn much of their revenue from the sale of advertising that airs during their programming. Our analysis of information on 79 networks from Kagan World Media indicates that these cable networks received nearly half of their revenue from advertising in 2002; the majority of the remaining revenue is derived from the license fees that cable operators pay networks for the right to carry their signal (see fig. 3).

**Figure 3: Percentage of Cable Network Advertising Revenue Compared with License Fee Revenues for 79 Cable Networks, 1999 – 2002**



Source: GAO analysis of Kagan World Media data.

Note: Although cable networks have other sources of revenues, advertising and license fee revenues comprise the vast majority of cable network revenues.

To receive the maximum revenue possible from advertisers, cable networks strive to be on cable operators' most widely distributed tiers because advertisers will pay more to place an advertisement on a network that will be viewed, or have the potential to be viewed, by the greatest number of people.<sup>16</sup> According to cable network representatives we interviewed, any movement of networks from the most widely distributed tiers to an à la carte format could result in a reduced amount that advertisers are willing to pay for advertising time. To compensate for any decline in advertising revenue, network representatives contend that cable

<sup>16</sup>Most contracts negotiated between cable networks and cable operators specify the tier that the network must appear on. We were told that cable networks include these provisions in their contracts because their business models are developed on the basis of a wide distribution of their network.

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networks would likely increase the license fees they charge to cable operators. Because increased license fees, to the extent that they occur, are likely to be passed on to subscribers, it appears that subscribers' monthly cable bills would not necessarily decline under an à la carte system. Moreover, most cable networks we interviewed also believe that programming diversity would suffer under an à la carte system because some cable networks, especially small and independent networks, would not be able to gain enough subscribers to support the network.

The manner in which an à la carte approach might impact advertising revenues, and ultimately the cost of cable service, rests on assumptions regarding customer choice and pricing mechanisms. In particular, the cable operators and cable networks that discussed these issues with us appeared to assume that many customers, if faced with an à la carte selection of networks, would choose to receive only a limited number of networks, which is consistent with the data on viewing habits. In fact, some industry representatives had different views on the degree to which consumers place value on networks they do not typically watch. While two experts suggested that it is not clear whether more networks are a benefit to subscribers, others noted that subscribers place value in having the opportunity to occasionally watch networks they typically do not watch. Additionally, the number of cable networks that customers choose to purchase will also be influenced by the manner in which cable operators price services under an à la carte scenario. Thus, there are a variety of factors that make it difficult to ascertain how many consumers would be made better off and how many would be made worse off under an à la carte approach. These factors include how cable operators would price their services under an à la carte system; the distribution of consumers' purchasing patterns; whether niche networks would cease to exist, and, if so, how many would exit the industry; and consumers' true valuation of networks they typically do not watch.

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## Industry Participants Have Cited Certain Options That May Address Factors Contributing to Rising Cable Rates

Industry participants have suggested the following options for addressing the cable rate issue. This discussion is an overview, and we are not making any specific recommendations regarding the adoption of any of these options.

- Some consumer groups have pointed to the lack of competition as evidence that reregulation needs to be considered because it might be the only alternative to mitigate increasing cable rates and cable operators' market power. However, some experts expressed concerns about cable regulation after the 1992 Act, including lowering of the quality of

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programming, discouragement of investment in new facilities, and imposition of administrative burdens on the industry and regulators.

- The 1992 Act included provisions to ensure that cable networks that have ownership relationships with cable operators (i.e., vertically integrated cable operators) generally make their satellite-delivered programming available to competitors. Some have expressed concern that the law is too narrow because it applies only to *the satellite-delivered programming* of vertically integrated cable operators and it does not prohibit exclusive contracts between a cable operator and an independent cable network. Given these concerns, some have suggested that changes in the statutory program access provisions might enhance the ability of other providers to compete with the incumbent cable operators while others have noted that altering these provisions could reduce the incentive for companies to develop innovative programming.
- DBS operators have stated that they are currently not able to provide local broadcast stations in all 210 television markets in the United States because they do not have adequate spectrum to do so while still providing a wide variety of national networks. As part of the so-called carry one, carry all provisions, these companies are required to provide all local broadcast stations in markets where they provide any of those stations. Some suggest modifying the *carry one, carry all* provisions to promote carriage of local stations in more markets. However, any modifications to the DBS carry one, carry all rules would need to be examined in the context of why those rules were put into place—that is, to ensure that all broadcast stations are available in markets where DBS providers choose to provide local stations.
- In the 1992 Act, the Congress created a mechanism, known as retransmission consent, through which local broadcast station owners (such as local ABC, CBS, Fox, and NBC affiliates) could receive compensation from cable operators in return for the right to carry their broadcast stations. Today, few retransmission consent agreements include cash payment for carriage of the local broadcast station. Rather, agreements between some large broadcast groups and cable operators generally include provisions for carriage of broadcaster-owned cable networks. As a result, cable operators sometimes carry cable networks they otherwise might not have carried. Alternatively, representatives of the broadcast networks told us that they did not believe that cable networks had been dropped and that they accept cash payment for carriage of the broadcast signal, but that cable operators tend to prefer carriage options in lieu of a cash payment. Certain industry participants with whom we met advocated the removal of the retransmission consent provisions and told

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us that this may have the effect of lowering cable rates, but others have stated that such provisions serve to enable television stations to obtain a fair return for the retransmitted content they provide and that retransmission rules help to ensure the continued availability of free television for all Americans.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

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## Contact and Acknowledgments

For questions regarding this testimony, please contact Mark L. Goldstein on (202) 512-2834 or [goldsteinm@gao.com](mailto:goldsteinm@gao.com). Individuals making key contributions to this testimony included Amy Abramowitz, Stephen Brown, Julie Chao, Michael Clements, Andy Clinton, Keith Cunningham, Bert Japikse, Sally Moino, Mindi Weisenbloom, and Carrie Wilks.

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# Appendix I: Scope and Methodology

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To respond to the first issue—examine the impact of competition on cable rates—we used an empirical model (our cable-satellite model) that we previously developed that examines the effect of competition on cable rates and services.<sup>1</sup> Using data from the Federal Communications Commission's (FCC) 2001 cable rate survey, the model considers the effect of various factors on cable rates, the number of cable subscribers, the number of channels that cable operators provide to subscribers, and direct broadcast satellite (DBS) penetration rates for areas throughout the United States. We further developed the model to more explicitly examine whether varied forms of competition—such as wire-based, DBS, multipoint multichannel distribution systems (MMDS) competition—have differential effects on cable rates. In addition, we spoke with an array of industry stakeholders and experts (see below) to gain further insights on these issues.

The second issue consists of two parts. To respond to part one—assess the reliability of the cost justifications for rate increases provided by cable operators to FCC, we conducted a telephone survey (our cable franchise survey), from January 2003 through March 2003, of cable franchises that responded to FCC's 2002 cable rate survey. We drew a random sample of 100 of these cable franchises; the sample design was intended to be representative of the 755 cable franchises that responded to FCC's survey. We used data from FCC, and conversations with company officials, to determine the most appropriate staff person at the franchise to complete our survey. To ensure that our survey gathered information that addressed this objective, we conducted telephone pretests with several cable franchises and made the appropriate changes on the basis of the pretests. We asked cable franchises a series of open-ended questions regarding how the franchise staff calculated cost and noncost factors on FCC's 2002 cable rate survey, how well the franchise staff understood what FCC wanted for those factors, and franchise staff's suggestions for improving FCC's cable rate survey. All 100 franchises participated in our survey, for a 100 percent response rate. In conducting this survey, we did not independently verify the answers that the franchises provided to us.

Additionally, to address part two of the second issue—assess FCC's classifications of effective competition—we examined FCC's classification of cable franchises regarding whether they face effective competition.

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<sup>1</sup>See U.S. General Accounting Office, *Telecommunications: Issues in Providing Cable and Satellite Television Services*, GAO-03-130 (Washington, D.C.: Oct. 15, 2002).



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Using responses to FCC's 2002 cable rate survey, we tested whether the responses provided by cable franchises were consistent with the various legal definitions of effective competition, such as the low-penetration test. Further, we reviewed documents from FCC proceedings addressing effective competition filings and contacted franchises to determine whether the conditions present at the time of the filing remain in effect today.

To address the third, fourth, fifth, and sixth issues (examine reasons for recent rate increases, examine whether ownership relationships between cable networks and cable operators and/or broadcasters influence the level of license fees for the cable networks or the likelihood that a cable network will be carried, examine why cable operators group networks into tiers rather than sell networks individually, and discuss options to address factors that could be contributing to cable rate increases), we took several steps, as follows:

- We conducted semistructured interviews with a variety of industry participants. We interviewed officials and obtained documents from FCC and the Bureau of Labor Statistics. We interviewed 15 cable networks—12 national and 3 regional—from a listing published by the National Cable and Telecommunications Association (NCTA), striving for a mixture of networks that have a large and small number of subscribers and that provide varying content, such as entertainment, sports, music, and news. We interviewed 11 cable operators, which included the 10 largest publicly traded cable operators and 1 medium-sized, privately held cable operator. In addition, we interviewed the four largest broadcast networks, one DBS operator, representatives from three major professional sports leagues, and five financial analysts that cover the cable industry. Finally, we interviewed officials from NCTA, Consumers Union, the National Association of Broadcasters, the National Association of Telecommunications Officers and Advisors, the American Cable Association, the National Cable Television Cooperative, and the Cable Television Advertising Bureau.
- We solicited the 11 cable operators we interviewed to gather financial and operating data and reviewed relevant Securities and Exchange Commission filings for these operators. Nine of the 11 cable operators provided the financial and operating data we sought for the period 1999 to 2002. We also acquired data from Kagan World Media, which is a private communications research firm that specializes in the cable industry. These data provided us with revenue and programming expenses for over 75 cable networks.

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- We compared the average license fees among three groups of networks: those that are majority-owned by a broadcaster, those that are majority-owned by a cable operator, and all others. We performed t-tests on the significance of these differences. We also ran a regression (our cable license fee model) in which we regressed the license fee across 90 cable networks on the age of the network, the advertising revenues per subscriber (a measure of network popularity), dummy variables for sports and news programming, and a variety of factors about each franchise.
  - We conducted several empirical tests on the channel lineups of cable operators as reported to FCC in its 2002 cable rate survey. We developed an empirical model (our cable network carriage model) that examined the factors that influence the probability of a cable network being carried on a cable franchise, including factors such as ownership affiliations and the popularity of the network. Further, we developed descriptive statistics on the characteristics of various tiers of service and the channels included in the various tiers.

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**Tab 4**

**BY HAND**

March 27, 2007

The Honorable Edward P. Zugibe, Mayor  
The Honorable Joseph Denise, Deputy Mayor/Trustee  
The Honorable Frances Nardi, Trustee  
The Honorable Robert R. D'Amelio, Trustee  
The Honorable Robert LaGrow, Trustee  
c/o O. Fred Miller, Village Clerk  
Village of West Haverstraw  
Village Hall  
130 Samsondale Avenue  
West Haverstraw, New York 10993

**Re: Cable Franchise Agreement by and between the Village of  
West Haverstraw and Verizon New York Inc. (the "Verizon Franchise")**

Dear Mr. Mayor and Village Trustees:

On behalf of Verizon New York Inc. ("Verizon"), thank you for affording Verizon the opportunity to appear before you at the upcoming April 10, 2007 public hearing (the "Public Hearing") regarding its application to the Village of West Haverstraw ("West Haverstraw" or the "Village") for a cable television franchise.

**EXECUTIVE SUMMARY**

- *The Village and Verizon have worked diligently to introduce the benefits of cable competition to West Haverstraw residents. The incumbent cable service provider will lobby to protect its pecuniary interest by asking the Board to delay West Haverstraw residents' ability to choose an alternate cable provider.*
- *A level playing field analysis requires a review of competitive franchises "taken as a whole." Cablevision continues to raise level playing field objections despite the NY PSC's consistent repudiation of same.*
- *Verizon has decades of independent authority to conduct activities in the public rights-of-way. By contrast, Cablevision's sole authority to conduct*

*activities in the public rights-of-way derives exclusively through its franchise with the Village.*

- *Verizon's "Gross Revenue" definition is comprehensive and unambiguous.*
- *Verizon cannot abandon cable service without the Village's prior written consent.*
- *Verizon is required to comply with the stringent customer service regulations that the NY PSC imposes on cable service providers. Further, as a competitive provider, Verizon will be held to a higher standard by consumers seeking improved customer service.*
- *The Verizon Franchise is the result of a substantial negotiation.*

### **INTRODUCTION AND BACKGROUND**

*The Village and Verizon have worked diligently to introduce the benefits of cable competition to West Haverstraw residents. The incumbent cable service provider will lobby to protect its pecuniary interest by asking the Board to delay West Haverstraw residents' ability to choose an alternate cable provider.*

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

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

While the Village and Verizon have worked closely to advance the public interest by introducing the benefits of cable competition, the incumbent cable service provider Cablevision has unfortunately engaged in a vigorous campaign designed to thwart the creation of a competitive market in the Village and elsewhere. This campaign is designed to intimidate the Village in order to prevent, or at least delay, the introduction of cable competition and to deprive

your constituents of the opportunity to choose a real alternative video service provider. This is a self-serving effort *designed solely* to protect Cablevision's pecuniary interest and market dominance. Cablevision's objections are not offered in the spirit of championing the Village's interests but rather to preclude West Haverstraw residents from having the opportunity to switch providers. It is essential that the Village evaluate the merits of Cablevision's complaints and objections against this backdrop.

Cablevision's tactics violate the spirit of the fundamentally pro-competitive federal and state law, which are designed to reduce regulatory barriers to market entry and to *encourage* companies like Verizon to make the significant capital investments necessary to deliver a new generation of services.

### DISCUSSION

Verizon anticipates that Cablevision will propound the same arguments to the Village that it has repeatedly propounded throughout the process in each municipality where Verizon jeopardizes its monopoly position. Cablevision insinuates, contrary to multiple NY PSC orders, that the Verizon Franchise violates the level playing field requirement due to perceived deficiencies in the following primary areas -- rights of way management and local authority, build out, force majeure, indemnification, enforceability, and customer service. Cablevision further intimates that the "gross revenue" definition contained in the Verizon Franchise is deficient. Although Verizon maintains the position that Cablevision's arguments are wholly without merit, to assist in your analysis, Verizon respectfully provides the following information and enclosed chart in support of the Village's commitment to deliver competition to its residents. This information includes discussion to address any level playing field concerns that the Village may have.

### LEVEL PLAYING FIELD

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

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

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



providers. The regulation does not propose a side-by-side comparison of discrete provisions that are immaterial and/or inconsequential to the day-to-day operations of a business that delivers video and other services to subscribers. As the NY PSC observed in adopting the regulation,

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

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

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

In each case in which the NY PSC addressed Cablevision's level playing field claim, the NY PSC modified the Verizon franchises by imposing certain conditions and found that, with respect to a comparison between the Cablevision and Verizon franchises,

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

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

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

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

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

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

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

*Verizon has decades of independent authority to conduct activities in the public rights-of-way. By contrast, Cablevision's sole authority to conduct activities in the public rights-of-way derives exclusively through its franchise with the Village.*

In an attempt to create an appearance of inequality between the Verizon Franchise and its current (but expired) franchise<sup>6</sup>, Cablevision will likely insinuate that the Verizon Franchise somehow shields Verizon's facilities from the type of local oversight and control that is required by law and in Cablevision's Expired Franchise. This argument is plainly wrong and ignores the numerous telecommunications regulations applicable to Verizon's facilities. Verizon's activities are governed by a substantial body of federal, state and local law. For more than 100 years, Verizon has been constructing, accessing and maintaining facilities in the public rights of way throughout New York State pursuant to a comprehensive regulatory regime. The NY PSC explicitly acknowledged this fact in its February 8, 2006 orders conditionally confirming the Nyack and South Nyack franchises:

Local governments have presumably been able to manage the telephone facilities that have utilized the public rights-of-way and need not attempt to exercise additional authority in the cable franchise to govern the construction, placement, and operation of mixed-use facilities that will be used to provide video services.<sup>7</sup>

In these confirmation orders, the Commission cited its Declaratory Ruling<sup>8</sup> in which it recognized that local governments have oversight authority for facilities in the public rights-of-way, even if they are used exclusively for telephone services. Therefore, the NY PSC concluded, "[b]y subjecting Verizon's mixed-use facilities to the Commission's minimum franchise standards and local government's police power, we do not believe that local governments have been granted broad new authority over the construction, placement and operation of Verizon's mixed-use facilities."<sup>9</sup> Consistent with this regulatory guidance, Section 2.2 of the Verizon Franchise provides:

*The FTTP Network:* Upon delivery of Cable Service, by subjecting Franchisee's mixed-use facilities to the NY PSC's minimum franchise standards and the LFA's police power, the

<sup>6</sup> April 5, 1993 Franchise Agreement – Village of West Haverstraw, NY ("Cablevision's Expired Franchise").

<sup>7</sup> *Nyack Order* at 8 and *South Nyack Order* at 8.

<sup>8</sup> Cases 05-M-0250 and 05-M-0247, "Declaratory Ruling on Verizon Communications, Inc.'s Build-Out of its Fiber to the Premises Network, NY Public Service Commission" (issued and effective June 15, 2005) ("Declaratory Ruling").

<sup>9</sup> *Nyack Order* at 7-8, *South Nyack Order* at 7-8.

LFA has not been granted broad new authority over the construction, placement and operation of the Franchisee's mixed-use facilities.

Cablevision will doubtlessly object to this language, as it has objected to nearly identical language in other municipalities (without success).<sup>10</sup> For example, in the case of the Town of Hempstead, the NY PSC emphatically rejected Cablevision's position with respect to Section 2.2 as a non-issue:

as it relates to the right-of-way management provision in 2.2 of the proposed agreement, we *do not agree* with Cablevision that the language limits local police powers and violates our prior orders. *Provision 2.2 is merely the parties' effort to incorporate our prior rulings in the Nyack and South Nyack confirmations. The language does not create a significant limitation and will be construed consistent with our prior rulings.*<sup>11</sup>

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

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

Verizon has already obtained the legal right to use the rights-of-way to upgrade and maintain its existing telephone system. Verizon has maintained its telecommunications network for years under its existing authorizations and consents. The record here suggests that Verizon has the requisite authority from local governments to use the public rights-of-way and that municipalities have sufficient legal authority over Verizon's upgrade activities as a telephone company to properly manage their rights-of-way. Verizon has represented in its pleadings that it is subject to municipal oversight. Municipal governance over rights-of-way is still in effect and Verizon must adhere to those requirements.<sup>12</sup>

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<sup>10</sup> See, e.g., Section 2.2 of Verizon's franchise with the Town of Hempstead, which provides: "2.2 *The FTTP Network*: Upon delivery of Cable Service, by subjecting the Franchisee's mixed-use facilities to the NY PSC's minimum franchise standards and the LFA's police power local governments have not been granted broad new authority over the construction, placement and operation of the Franchisee's mixed-use facilities."

<sup>11</sup> Case 06-V-0427, "Order and Certificate of Confirmation" (Issued and Effective May 18, 2006) (the "*Hempstead Order*") at 6-7 (emphasis added)

<sup>12</sup> *Declaratory Ruling* at 20-21.

Further, the NY PSC established in the *Nyack* and *South Nyack Orders* that “[a]ttempts by municipal governments to impose construction or operating requirements in cable franchises that would apply to mixed-use facilities that go beyond its traditional police powers or minimum cable requirements could unduly inhibit competition and may well be deemed unreasonable under the Public Service Law and federal law.”<sup>13</sup>

Unlike Cablevision, which has authority to utilize the public rights of way exclusively through its expired cable franchise, Verizon’s construction and maintenance of the FTTP Network is undertaken pursuant to its decades of independent authority as a common carrier under Title II of the Communications Act of 1934, as amended, and pursuant to Section 27 of the New York State Transportation Corporations Law. The NY PSC affirmed Verizon’s independent authority to upgrade and maintain its existing telecommunications network in the *Declaratory Ruling*. As stated in the Verizon Franchise, construction of the FTTP Network in the Village is significant. Verizon maintains the network routinely. Cablevision’s anticipated proposal represents an unseemly and deceitful attempt to ensnare the full range of activities related to the FTTP Network in the Verizon Franchise. Cablevision’s suggestion will likely be artfully designed to imply that Verizon’s indemnification obligation is deficient by failing to adequately protect the Village; a transparent objective to create a level playing field violation where none exists.<sup>14</sup> Verizon’s indemnification obligations exceed the NY PSC’s minimum indemnification requirements and fully protect the Village. Any argument by Cablevision to the contrary is disingenuous.

### **BUILDOUT**

Consistent with its practice in other municipalities, Cablevision will probably challenge Verizon’s commitment to serve every Village resident with false allegations that the Verizon Franchise does not require Verizon to provide ubiquitous service. This argument has no basis in fact. A complete construction schedule is included in the Verizon Franchise providing detailed construction percentages in six month intervals. Once the franchise is approved by the Village and confirmed by the NY PSC, Verizon will offer cable television service to each Village resident within the built out area. Additional construction consists of feeder lines to individual properties that require permits or are the ongoing subject of property access negotiations with third parties (such as multiple dwelling unit owners), a process over which Verizon has little control.

Verizon complies with the law and does not engage in redlining or other illegal discriminatory practices. Verizon makes this unequivocal commitment to the Village in Section

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<sup>13</sup> *Nyack Order* at 8, *South Nyack Order* at 8.

<sup>14</sup> We note further that, unlike the Verizon Franchise, which defines the Cable System using the federal definition, Cablevision’s Expired Franchise does not. Instead, Cablevision’s Expired Franchise defines a “Cable System” or “System” as “a system of antenna, cables, amplifiers, towers, microwave links, fiber optics, cablecasting studios, and any other conductors, converters, equipment or facilities, designed and constructed for the primary purpose of distributing video programming to Subscribers, or other users, and the secondary purpose of producing, receiving, amplifying, storing, processing, or distributing audio, video, digital, or other forms of electronic or electrical signals sold or distributed to Subscribers or other users in the Village.” *Cablevision’s Expired Franchise* § 1(d).

3.2 of the Verizon Franchise. Discriminatory conduct violates Verizon's deployment practices. Moreover, it only makes financial sense for Verizon to exercise its best efforts to serve every Village resident as soon as possible. Toward that end, Verizon is actively seeking access to all private and public multi-dwelling units in the Village and other locations where property access must be negotiated. Once property access negotiations are successfully concluded and all required permits and easements have been granted, subject to the conditions set forth in the Verizon Franchise, Verizon will be able to offer service to each Village resident. Verizon is committed to ensuring that the benefits of cable competition will be made available to *all* Village residents.

### **FORCE MAJEURE**

*Verizon's "force majeure" definition is entirely appropriate and is significantly narrower than the "force majeure" provision contained in Cablevision's Expired Franchise.*

"Force Majeure" is very narrowly defined in Section 1.12 of the Verizon Franchise as:

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

Cablevision may urge the Village to revise the "Force Majeure" definition by deleting the phrase "or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary." Nevertheless, such descriptive circumstances are highly appropriate.

First, utility poles in Rockland County are shared by Verizon and the power company Orange and Rockland Utilities, Inc. ("O&R"), with maintenance responsibilities allocated among the parties. If O&R fails to service, monitor or maintain one or more poles for which it bears responsibility, there is a possibility that Verizon may face work delays as a result.

Second, Verizon is a telecommunications company, not an equipment manufacturer. As last year's merger announcement regarding Nokia Corp. and Siemens AG suggests, there is a wave of consolidation in the electronics equipment manufacturing industry. As a result of changes in the industry, it may be possible that materials become unavailable from time to time.

Additionally, the FTTP Network is cutting-edge technology, so there is likelihood that, as the technology evolves, the industry may experience temporary shortages of materials.

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

Finally, and in contrast to the Verizon Franchise, Cablevision's Expired Franchise contains a broad, open-ended force majeure provision, which reads: "Franchisee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by force majeure, strikes, acts of God, or other events beyond its reasonable ability to control." *Cablevision's Expired Franchise* §29. Since "force majeure" is not defined, *practically any event* can fall into this category at Cablevision's sole discretion.

#### GROSS REVENUE

*Verizon's "Gross Revenue" definition is comprehensive and unambiguous.*

Cablevision will likely try to manufacture a level playing field violation by claiming that the definition of "Gross Revenue" in the Verizon Franchise is lacking. This argument is incorrect and misleading.

Consistent with federal law, Verizon defines "Gross Revenue" as "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." *Verizon Franchise* § 1.16.

Additionally, unlike Cablevision's Expired Franchise, the Verizon Franchise unequivocally provides that:

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

This provision provides the Village with substantial revenue protections in the event of future changes in law. *Cablevision's Expired Franchise provides the Village with absolutely zero protection regarding such re-classifications.*

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

#### **EVASION OF PERFORMANCE**

*Verizon cannot abandon cable service without the Village's prior written consent.*

Cablevision will likely imply that the Verizon Franchise contains provisions that could be used by Verizon to avoid inconvenient franchise obligations. This is a veiled insinuation that the Verizon Franchise places lesser economic and regulatory burdens on Verizon than those imposed on Cablevision.

Section 11.7 of the Verizon Franchise provides "[f]ranchisee shall not abandon any Cable Service or portion thereof without the LFA's prior written consent as provided in the Cable Law." The Village has no comparable protection in Cablevision's Expired Franchise.

As it has done in the case of each effective Verizon Franchise, Cablevision will predictably campaign for the deletion of Verizon Franchise § 12.4.1. Cablevision has raised this issue at both the local level and during NY PSC confirmation proceedings, alleging that this provision is an "escape clause" that Verizon may use to avoid inconvenient franchise obligations. Cablevision wrongly asserts that Verizon is exempt from monetary sanctions or possible termination due to its failure to comply with franchise obligations that would cause Verizon "practical difficulties" or "hardship." Cablevision presents this provision in a purposefully misleading and deceptive manner.

The referenced section, 12.4.1, is hardly an 'escape clause.' Instead, it only protects Verizon from a situation in which the Village attempts to rely on a minor failure as a basis for imposing the ultimate sanction of "forfeiture or revocation of the Franchise." Section 12.4.1 of the Verizon Franchise provides:

[f]urthermore, 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.

The Village may still avail itself of the remedy of revocation in the event of “substantial noncompliance with a material provision of” the Verizon Franchise pursuant to § 11.4.4:

*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 . . .

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.  
*Verizon Franchise §§11.4 and 11.4.4.*

As a practical matter, § 12.4.1 is unlikely to be a significant factor in the overall burdens imposed upon Verizon by the franchise. It is difficult to imagine a circumstance severe enough to warrant Village action under § 11.4.4, which would nevertheless be insignificant enough to warrant a Verizon claim to relief under § 12.4.1. Thus, although § 12.4.1 may provide some benefit to Verizon in rare circumstances, the likelihood that such circumstances will materialize during the term of the franchise is *de minimis*, and the provision does not materially alleviate Verizon’s burdens under the franchise.

Most significantly, however, and not disclosed by Cablevision, the NY PSC rejected Cablevision’s objection to Section 12.4.1, ordering that “no modification or conditioning” of this provision was required “because no Commission rule prevents the parties from agreeing to such a provision.”<sup>15</sup>

#### CUSTOMER SERVICE

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

Cablevision will probably recommend that the Village seek to include a provision stating that “[t]he LFA shall have the right to promulgate new, revised or additional consumer protection standards, and penalties for Franchisee’s failure to comply therewith, consistent with the authority granted under Section 632 of the Cable Act (47 U.S.C Sec. 552).” This additional provision is entirely unnecessary. First, Section 2.5 of the Verizon Franchise clearly states that the franchise is “subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.” Second, West Haverstraw already has the rights under 47 U.S.C § 552 to establish and enforce customer service requirements and to enact and enforce consumer protection laws.

Finally, as a competitive market entrant, Verizon will be held to a higher standard by consumers seeking improved customer service. If Verizon’s customer service is not exemplary,

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<sup>15</sup> *Hempstead Order* at 6.



March 27, 2007

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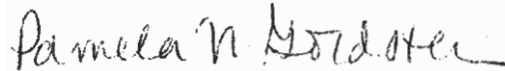
subscribers will return to the incumbent. At the present time, Village residents are left with no choice. As a result of competition, customer service will improve across the board, and all Village consumers will benefit.

#### CONCLUSION

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

Verizon anticipates the Village's award of a cable franchise at the Public Hearing and is excited to benefit Village residents through the introduction of cable competition. In the meantime, we remain available at any time to answer any questions that you may have. John Harrington is available at (617) 628-5068 and I am available at (212) 548-2136.

Respectfully submitted,



Pamela N. Goldstein

cc: John S. Edwards, Esq., Village Attorney  
O. Fred Miller, Village Clerk  
Verizon New York Inc.

**Verizon New York Inc. ("Verizon") Response to  
Cablevision's Anticipated Objections to the  
Cable Franchise Agreement by and between the Village of West Haverstraw and Verizon  
(the "Verizon Franchise")**

Issue	Likely Cablevision Claim	Verizon Response
<p><b>Service to Everyone in the Village on Request</b></p>	<p>Cablevision will likely claim that Verizon is attempting to evade its obligation to serve every Village resident.</p>	<p>Consistent with the requirements of Sections 895.1(b) and 895.5 of the New York Public Service Commission ("NY PSC") rules and regulations, Verizon must offer cable service to significant numbers of subscribers within twelve months and to all residential areas of West Haverstraw within five years. Section 3.1 of the Verizon Franchise essentially mirrors the language in these regulations.</p> <p>In addition, and contrary to Cablevision's assertions, <u>Exhibit B</u> of the Verizon Franchise clearly states that "[t]he Service Area shall be the Franchise Area," which is defined in Section 1.13 of the Verizon Franchise as the incorporated area (entire existing territorial limits) of West Haverstraw and such additional areas as may be annexed or acquired.</p>
<p><b>Maximizing Franchise Fees</b></p>	<p>Cablevision will likely argue that the Village will lose revenue based on Verizon's definition of gross revenue.</p> <p>Cablevision will likely assert, among other things, that Verizon's definition of "non-cable services" deviates from federal law.</p>	<p>Verizon's "Gross Revenue" definition covers a broad, clearly-defined range of revenue sources and ensures clarity with respect to Verizon's financial obligations to the Village: "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."</p> <p>Additionally, Verizon's "gross revenue" definition provides the Village with substantial protection in the event of future changes in law regarding classifications of non-cable services as cable services. The Verizon Franchise distinctly provides: "Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the</p>

**Verizon New York Inc. ("Verizon") Response to  
Cablevision's Anticipated Objections to the  
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Issue	Likely Cablevision Claim	Verizon Response
<b>Maximizing Franchise Fees</b> (continued)		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." <i>There is absolutely no equivalent protection for the Village in Cablevision's expired franchise.</i>
<b>Protection of Rights of Way</b>	Cablevision will likely represent that Verizon's agreement impedes the Village's authority to protect its rights-of-way and enforce its local laws.	<p>Unlike Cablevision, which has authority to utilize the public rights of way <i>exclusively</i> through its <i>expired cable franchise</i>, Verizon's construction and maintenance of its "Fiber to the Premises Network" is undertaken pursuant to (a) its pre-existing independent authority as a common carrier under Title II of the Communications Act and (b) Section 27 of the New York State Transportation Corporations Law.</p> <p>Both cable franchise agreements comply with NY PSC rules and regulations with respect to police powers provisions; <u>however</u>, because Verizon is a common carrier regulated under Title II of the Communications Act of 1934, as amended (the "Communications Act"), the Village has <i>two</i> regulatory regimes under which it can oversee Verizon's activities and facilities in the public rights-of-way.</p> <p>Conversely, Cablevision's provision of telephone service in the Village is <i>wholly unregulated</i>.</p>

**Verizon New York Inc. ("Verizon") Response to  
Cablevision's Anticipated Objections to the  
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Issue	Likely Cablevision Claim	Verizon Response
<b>Force Majeure</b>	Cablevision will likely claim, despite the language contained in its expired franchise with the Village, that "force majeure" provisions are typically reserved for very unusual events outside of party's control.	<p>First, unlike most contractual "force majeure" provisions, Verizon's "force majeure" definition imposes a "reasonableness" standard <u>and</u> includes Verizon's ability to "<i>anticipate and control</i>" a situation.</p> <p>Second, Cablevision's expired franchise with the Village provides that "Franchisee shall not be held in default or noncompliance with the provisions of this Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by force majeure, strikes, acts of God, or other events reasonably beyond its ability to control." Since "force majeure" is not a defined term, <i>practically any event can fall into this category</i>, making it substantially broader than Verizon's "force majeure" provisions.</p> <p>Finally, unlike Cablevision's employees, Verizon's employees are represented by organized labor unions, and work is allocated pursuant to Verizon's obligations under collective bargaining agreements. Therefore, even absent the event of a strike, there may be situations involving labor disputes or Verizon may face an unavailability of qualified labor to perform essential work.</p>
<b>Enforcement</b>	Cablevision will likely insinuate that Verizon has planted an "escape clause" within its franchise agreement.	Verizon Franchise Section 12.4.1 is limited and merely recognizes that the Village does not intend to revoke the agreement for minor delays in performance of <i>non-material</i> provisions. For situations that would actually create a hardship for either the Village or subscribers, the Village has multiple remedies available, including a \$7,500 security provision, and, for most egregious violations, revocation of the franchise.

**Verizon New York Inc. (“Verizon”) Response to  
Cablevision’s Anticipated Objections to the  
Cable Franchise Agreement by and between the Village of West Haverstraw and Verizon  
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Issue	Likely Cablevision Claim	Verizon Response
<b>Senior Discount</b>	Cablevision will likely argue that senior subscribers will receive no discount from Verizon.	<p>Cablevision’s expired franchise with the Village is silent with respect to the provision of a senior discount.</p> <p>With the introduction of unprecedented competition in the area of cable television, the market will dictate pricing and each cable provider will be required to respond accordingly in order to secure or maintain consumers’ business. In fact, the Federal Communications Commission (the “FCC”) reported in its 2005 assessment of video programming competition that increased competition in the multichannel video programming distributor market has led to improvements in cable television services, and, <i>in the case of facilities-based competition – lower prices for customers</i>. Moreover, studies by the General Accounting Office in 2004 and the FCC in 2005 show that prices are <i>15 – 16% lower</i> when two wireline cable providers compete in the same market. FCC Chairman Kevin Martin proclaimed just last year that “competition in the market for video programming serves to improve quality and customer service, increase consumer choice, decrease prices, and promote innovation.” Competitive pricing can beat a situation where a regulated floor has been established.</p> <p><i>All Village consumers will benefit by the arrival of competition.</i></p>

**Verizon New York Inc. ("Verizon") Response to  
Cablevision's Anticipated Objections to the  
Cable Franchise Agreement by and between the Village of West Haverstraw and Verizon  
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Issue	Likely Cablevision Claim	Verizon Response
<b>Level Playing Field</b>	<p>Cablevision will likely claim that the measure of the level playing field is Verizon's agreement with other New York State municipalities.</p> <p>Cablevision will likely also argue that Cablevision, <i>rather than the Village or the NY PSC</i>, is the sole arbiter of a level playing field determination.</p>	<p>The NY PSC has repeatedly ordered the following in conducting a level field analysis:</p> <p><i>"[T]his 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."</i></p> <p>The NY PSC's level playing field analysis requires Verizon's agreement with the Village to be compared in its totality to Cablevision's agreement with the Village, <u>not</u> to its agreements with other municipalities. Cablevision's franchise with the Village expired years ago, and the Village has been engaged in unfruitful franchise renewal discussions with Cablevision for a significant period.</p> <p>Finally, <i>the NY PSC</i> has repeatedly ordered that Cablevision's contractual level playing field provisions <i>must be read in a manner consistent with the NY PSC's level playing field requirement set forth in Section 895.3</i> (of the NY PSC rules and regulations).</p>

## Tab 5



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

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

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monica.f.azare@verizon.com

April 6, 2007

The Honorable Edward P. Zugibe  
Village of West Haverstraw  
Village Hall  
130 Samsondale Avenue  
West Haverstraw, New York 10993

Dear Mayor Zugibe:

Verizon is looking forward to the public hearing on April 10, 2007 in the Village of West Haverstraw 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 the Village of West Haverstraw.

I respect and thank you and those who negotiated on behalf of the Village of West Haverstraw 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 West Haverstraw. 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 West Haverstraw.

Sincerely,

A handwritten signature in black ink, appearing to read "Monica F. Azare", written in a cursive style.

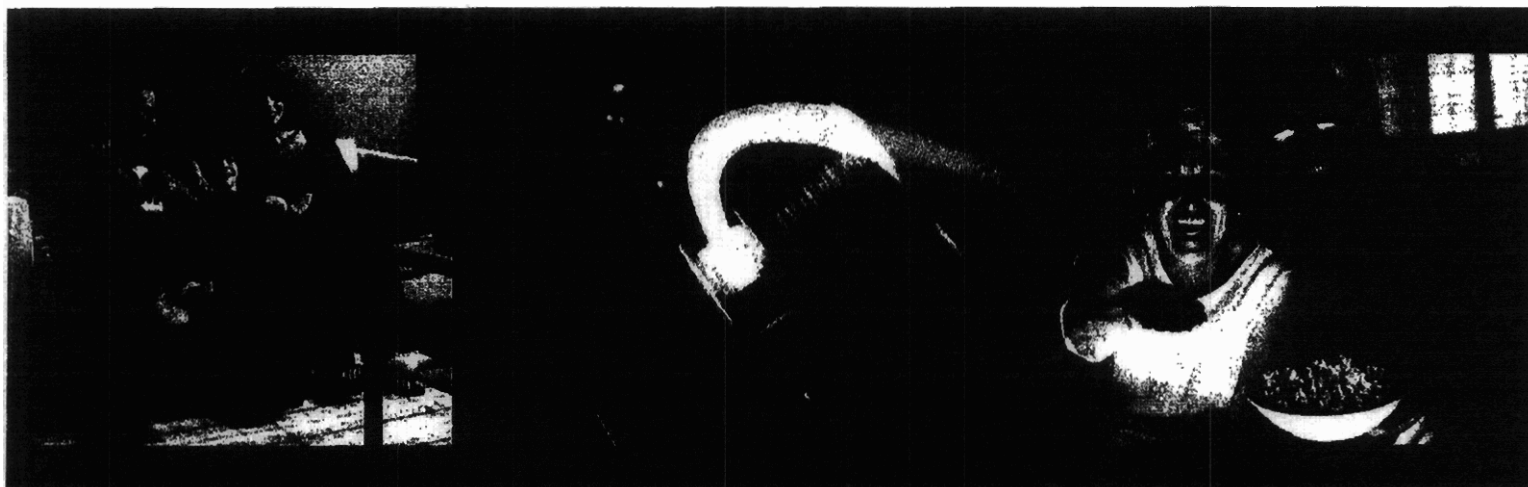
Monica Azare

cc: The Honorable Joseph Denise  
The Honorable Frances Nardi  
The Honorable Robert R. D'Amelio  
The Honorable Robert LaGrow  
O. Fred Miller, Village Clerk



# Verizon FiOS TV

**Village of West Haverstraw, NY**



[www.verizon.com/ny](http://www.verizon.com/ny)



*We never stop working for you.*

## **The Village of West Haverstraw Can Advance New York's Broadband Revolution.**

**Favorable action on Verizon's proposed cable franchise agreement positions West Haverstraw 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 West Haverstraw** – 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 West Haverstraw is among the first.**

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

**Broadband. The Village of West Haverstraw has a lot riding on it.**



# 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.

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

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

## Verizon FiOS TV – New York Area Channel Lineup

Local		Movies	
2	CBS — WCBS-TV 2	24	Paragon Channel
4	NBC — WNBC-TV 4	25	History Channel
5	FOX — WNYW-TV 5	26	History Channel
6	WRNN-TV 48	27	History Channel
7	ABC — WABC-TV 7	28	History Channel
8	Superstation — WGN-TV	29	Discovery Channel
9	My WWOR-TV 9	30	Animal Planet
10	WLNY-TV 55	31	ABC (The Learning Channel)
11	CW — WPIX-TV 11	32	Women
12	Telemundo — WNLJ-TV 47	33	Shopping
13	PBS — WNET-TV 13	34	Home & Leisure
17	WFTV-TV 67	35	Religion
18	WMBC-TV 63	36	Sports
21	PBS — WLWV-TV 21	37	Music
23	PBS — WLJN-TV 50	38	Information
25	NYC-TV	39	Children
29	PBS — WFME-TV 66	40	People & Culture
31	WUPXN-TV 31	41	Religion
32	Local Programming	42	Sports
33	Local Programming	43	Music
34	Local Programming	44	Information
37	Local Programming	45	Children
38	Local Programming	46	People & Culture
40	Local Programming	47	Religion
41	Univision — WXTV-TV 41	48	Sports
48	TV Guide	49	Music
49	Weathercan Local	50	Information
Entertainment		Movies	
51	Local Programming	51	Local Programming
52	Local Programming	52	Local Programming
53	Local Programming	53	Local Programming
54	Local Programming	54	Local Programming
55	Local Programming	55	Local Programming
56	Local Programming	56	Local Programming
57	Local Programming	57	Local Programming
58	Local Programming	58	Local Programming
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90	Local Programming	90	Local Programming
91	Local Programming	91	Local Programming
92	Local Programming	92	Local Programming
93	Local Programming	93	Local Programming
94	Local Programming	94	Local Programming
95	Local Programming	95	Local Programming
96	Local Programming	96	Local Programming
97	Local Programming	97	Local Programming
98	Local Programming	98	Local Programming
99	Local Programming	99	Local Programming
100	Local Programming	100	Local Programming

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

**\*\*Subscription to corresponding premium channels and packages required.**

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

# Verizon FiOS TV — New York Area Channel Lineup

Spanish Language	Other Premiums**		La Conexión	514 Fox Soccer Channel	Religion	588 TBN Enlace	HD	612 ESPN 2 HD				
	430 Playboy TV			516 GoTV		589 EWTN Español		614 NFL Network HD				
	431 Playboy TV en Español			518 CNN en Español		Music Choice		616 YES HD				
	435 here!			519 CNN		600 Showcase		617 HD Net				
	En Español**			520 CNN Headline News		601 Today's Country		618 HD Net Movies				
	440 Galavieón			521 Fox News		602 Classic Country		619 Universal HD				
	442 ESPN Deportes			522 CNBC		603 Bluegrass		620 Discovery HD				
	443 Fox Sports en Español			524 C-SPAN		604 R&B and Hip-Hop		621 Wealth TV HD				
	444 GoTV			525 Canal SUR		605 Classic R&B		622 National Geographic Channel HD				
	446 CNN en Español			529 TVE Internacional		606 Smooth R&B		623 MTV HD				
Spanish Language	447 Canal SUR		La Conexión	530 History Español	Music Choice	607 R&B Hits	Local Plus	HD Premium**				
	448 TVE Internacional			531 Discovery Channel		608 Rap		630 HBO HD				
	452 History Español			532 Discovery en Español		609 Metal		631 Cinemax HD				
	453 Discovery en Español			534 Animal Planet		610 Rock		632 Showtime HD				
	454 Viajar y Vivir			535 TLC (The Learning Channel)		611 Arena Rock		633 TMC HD				
	456 Infinito			Women		612 Classic Rock		634 Starz HD				
	457 MTV Tr3s			537 Lifetime		613 Alternative		Local Plus				
	458 VH Uno			538 Lifetime Movie Network		614 Retro-Active		650 NBC Weather Plus				
	459 Telehit			Shopping		615 Electronica		651 Tube Music Network				
	462 De Pelicula			540 QVC		616 Dance		654 WNBC 4.4-Multicast				
Spanish Language	463 De Pelicula Clásico		La Conexión	541 HSN	Music Choice	617 Adult Alternative	Local Plus	660 PBS — WJW 21				
	464 Cine Latino			543 Shop NBC		618 Soft Rock		661 PBS — WJW CRTG				
	465 Cine Mexicano			Home & Leisure		619 Hit List		662 13 Kids				
	468 La Familia			545 Discovery Health		620 Party Favorites		663 13 WORLD				
	469 TV Chile			546 Viajar y Vivir		621 90s		FIOS ON DEMAND**				
	470 TV Colombia			549 Infinito		622 80s		Kids FREE				
	472 Sorpresa			550 Food Network		623 70s		ALL FREE				
	473 Toon Disney Español			551 HGTV (Home & Garden Television)		624 Solid Gold Oldies		Home & Leisure				
	474 Boomerang (ESP)*			552 Travel Channel		625 Singers & Standards		Info & Education				
	475 Discovery Kids en Español			Pop Culture		626 Big Band & Swing		Kids				
	477 TBN Enlace			555 El Entertainment Television		627 Easy Listening		Music				
	478 EWTN Español			556 A&E		628 Smooth Jazz		News				
	International Premiums**			557 Si TV		629 Jazz		Pop Culture				
	480 SBTN (Vietnamese)			558 Mun2		630 Blues		Shopping				
Spanish Language	481 CCTV-4 (Mandarin Chinese)		La Conexión	559 Comedy Central	Music Choice	631 Reggae	Local Plus	Sports				
	482 CTI — Zhong Tian Channel (Chinese)			560 Sci-Fi Channel		632 Soundscapes		Movies				
	483 TV Japan			Music		633 Classical Masterpieces		New Movies				
	484 MBC (Korean)			562 MTV Tr3s		634 Opera		New by Category				
	485 The Filipino Channel			563 MTV2		635 Light Classical		All Movies				
	486 TV Asia			564 Telehit		636 Show Tunes		All Movies by Category				
	487 ART (Arabic)			565 VH Uno		637 Contemporary Christian		In Theaters				
	488 Rai (Italian)			566 CMT		638 Gospel		En Español				
	489 TV 5 (French)			Movies		639 Radio Disney		Subscriptions				
	490 TV Polonia			569 De Pelicula		640 Sounds of the Seasons		Cinemax				
Spanish Language	491 Rang A Rang (Farsi)		La Conexión	570 De Pelicula Clásico	Music Choice	641 Música Urbana	Local Plus	HBO				
	492 RTN Russian			571 Cine Mexicano		642 Salsa y Merengue		Showtime				
	493 Channel 1 Russian			572 Cine Latino		643 Rock en Español		Starz				
	496 Bridges TV**			Family		644 Pop Latino		Sundance				
	497 MTV K			574 ABC Family		645 Mexicana		The Movie Channel				
	498 MTV Chi			575 La Familia		646 Americana		WWE				
	499 MTV Deel			576 TV Chile		HD Broadcast		Karaoke				
	Entertainment			577 TV Colombia		801 CW — WPIX HD		Playboy				
	500 USA Network			578 TV Land		802 CBS — WCBS HD		Adult				
	501 TNT			Children		803 PBS — WNET HD		Events				
Spanish Language	502 TBS		La Conexión	580 Nickelodeon	Music Choice	804 NBC — WNBC HD		Hustler				
	503 Galavieón			581 Disney en Español		805 FOX — WNYW HD		Spice				
	504 FX			582 Toon Disney Español		806 ABC — WABC HD		TEN				
	505 Spike TV			583 Boomerang (ESP)*		807 ABC — WABC HD		Playboy Subscribers				
	Sports			584 Cartoon Network (ESP)*		808 My WWOR HD		Fios TV Help				
	508 ESPN Deportes			585 Sorpresa		HD National**						
	510 YES			586 Discovery Kids en Español		810 TNT HD						
	511 MSG			Local Plus		811 ESPN HD						
	512 Fox Sports Net NY			Local Plus		Local Plus						
	513 Fox Sports en Español			Local Plus		Local Plus						
	Local Plus			Local Plus		Local Plus						
	Local Plus			Local Plus		Local Plus						
	Local Plus			Local Plus		Local Plus						
	Local Plus			Local Plus		Local Plus						

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

\*\*Subscription to corresponding premium channels and packages required.

\*\*\*Subscription not 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.

- Lifestyle ● Premiums ● Arts & Entertainment ● Sports ○ Local Plus
- News & Information ● Music Choice PPV ● HD ● Fios On Demand



We never stop working for you.

NY-1pg-12/06

VEFITV70019

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

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

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

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

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

### **FIOS TV with HDTV programming offers:**

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

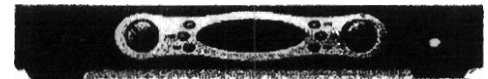
To get started with HDTV, you'll need a HD ready television and a FIOS TV HD Set Top Box.

### **Finally, regularly scheduled programs for your irregularly scheduled life.**

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

### **With a FIOS TV DVR you can:**

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



### **Home Media DVR with Media Manager**

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

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.

Service Tiers	Channels	Monthly Price
FiOS TV Local	15 - 35	\$12.99
FiOS TV Premier *	160 + Local	\$42.99
La Conexión *	115 + Local	\$32.99

Packages *	Channels	Monthly Price
Sports	15	\$ 7.99
Movies	44	\$12.99
Sports / Movies Combo	59	\$15.99
Spanish-Language	25	\$11.99

Premium Channels *	Channels	Monthly Price
HBO	14	\$15.99
Cinemax	12	\$15.99
HBO / Cinemax Combo	26	\$25.99
Playboy / Playboy en Español	2	\$14.95
here!	1	\$ 7.99

International Premiums *	Channels	Monthly Price
International Channels	17	Individually Priced

Video on Demand (VOD) *		
New Releases		\$ 3.99
Library Title		\$ 2.99

#### Pay Per View (PPV) \*

WWE (Wrestling)	\$ 7.99 / month
PPV Movies	\$ 3.95 each
PPV Events	Prices Vary
PPV Sports	Prices Vary
Karaoke	\$ 7.99 / month

Verizon FIOS TV Service is provided by Verizon and Verizon Online and is not available in all areas. Service availability subject to final confirmation by Verizon. Verizon installation required. Programming and prices are subject to change. Refer to the channel lineup for a complete listing of channels included in each package.

Set Top Box	Monthly Rental
Standard	\$ 4.99
High Definition (HD)	\$ 9.99
DVR (includes HD)	\$12.99
Home Media DVR **	\$19.99

Installation and Service Fees	One-Time Charge
Install Up To 3 Existing Outlets	No Charge
Additional Outlet / STB Hookup	\$19.99
New Outlet Install / Existing	\$54.99 per outlet
Outlet Rewire	
Outlet Relocation	\$54.99 per outlet
STB Addition/Upgrade/Downgrade	\$24.99
Premises Visit	\$49.99
Setup of TV Equipment	\$49.99 (New TV w/ STB)
STB Disconnect	\$24.99 + \$ 5.00 / STB
Downgrade from Digital to Analog	\$50.00 + \$ 5.00 / STB
Service Disconnect	No Charge
Service Reconnect	\$49.99 (Up to 3 outlets)
Seasonal Service Suspension	\$24.99 (1-6 months)
Replacement Remote	\$ 5.00 + S&H

Unreturned / Damaged STB	\$240.00 Standard
	\$350.00 HD
	\$550.00 DVR

\* FIOS TV Premier and La Conexión service tiers, as well as Packages, Premium Channels, International Premium Channels, VOD and PPV require a set top box.

\*\* A Set Top Box is required to view recorded programming and a monthly fee of \$3.95 per Set Top Box applies. Multi-room features are supported on standard Model 2500 Set Top Boxes only and will support up to six additional televisions, with simultaneous viewing of up to three recorded shows.



We never stop working for you.

# 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)

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

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





# **ATTACHMENT E**

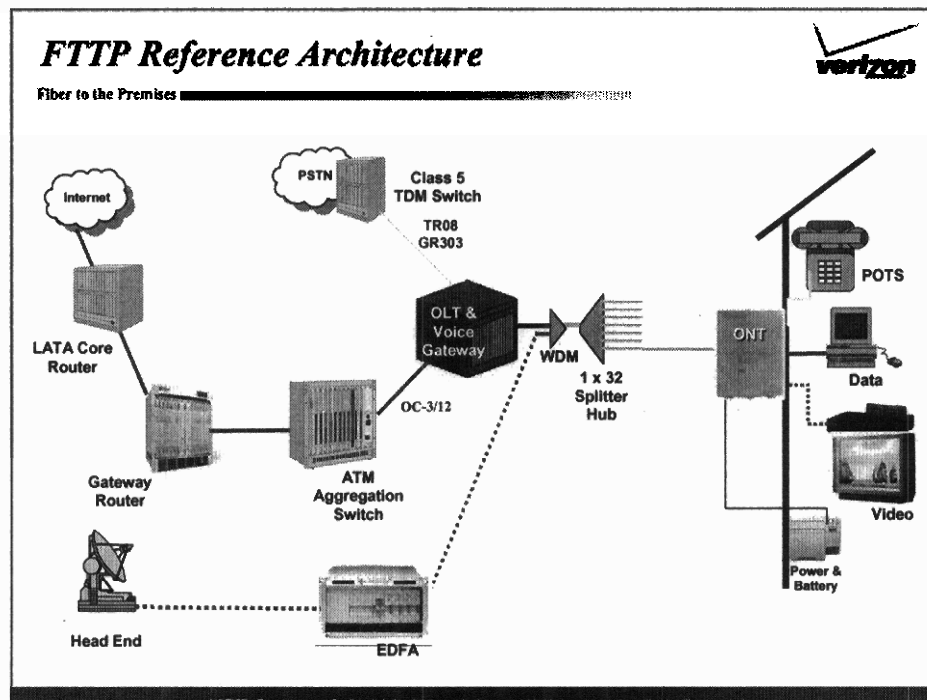
## **FTTP System Architecture**

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

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

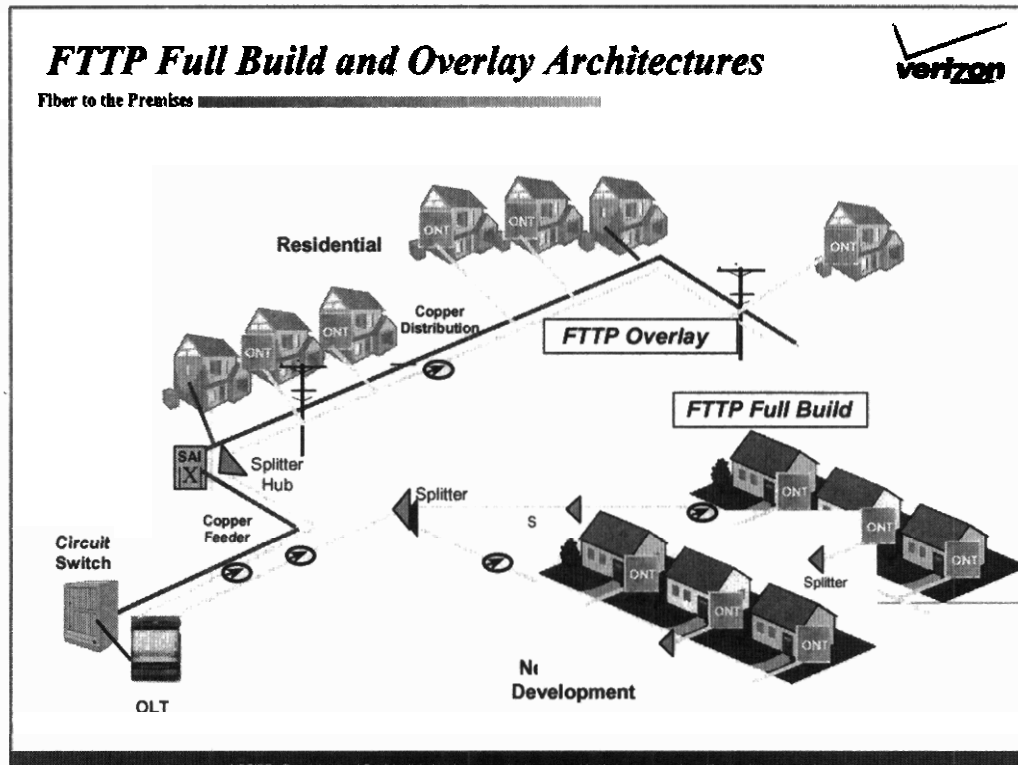
Figure 2 shows full build and overlay architecture. FTTP will be built instead of copper facilities in new communities. In existing communities, the existing copper network will continue to serve those customers who have not migrated to the FTTP network. The fiber is deployed from a Central Office location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

Figure 1-High Level End to End Architecture



**EXHIBIT 1**  
**APPLICATION FOR A CABLE TELEVISION FRANCHISE**  
**VILLAGE OF WEST HAVERSTRAW/VERIZON NEW YORK INC.**

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).

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***VILLAGE OF WEST HAVERSTRAW/VERIZON NEW YORK INC.***

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

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

**Super Headend (SHE)**

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

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

The key functions of the SHE include:

Content Reception

Signal Processing

Encoding

Network Interface

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

**Wide Area Transport**

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

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

**EXHIBIT 1**  
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***VILLAGE OF WEST HAVERSTRAW/VERIZON NEW YORK INC.***

**Video Hub Office (VHO)**

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

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

WAN Interface for Cable television Transport

Ad Insertion

PEG Content

Signal Grooming and Multiplexing

Emergency Alert Service

Interactive Program Guide

Conditional Access

Local Content

The VHO shall aggregate three basic sources of content: national broadcast channels, local broadcast channels, and public, educational, & government (PEG) channels. The national content is the traffic sent from the SHE and is delivered via an OC48c SONET interface from the SONETPOP. The local broadcast channels shall be received off-air via antennas or terrestrial fiber transport located at the VHO site. The PEG channels shall be collected via terrestrial connections from each local franchising area (LFA) served by the VHO.

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

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

**Metro Area Transport**

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

**EXHIBIT 1**  
***APPLICATION FOR A CABLE TELEVISION FRANCHISE***  
***VILLAGE OF WEST HAVERSTRAW/VERIZON NEW YORK INC.***

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

The Video Serving Office (VSO) is a location within the central office containing FTTP equipment. The VSO that will serve the Village of West Haverstraw is located in West Haverstraw, 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.

# **ATTACHMENT F**

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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

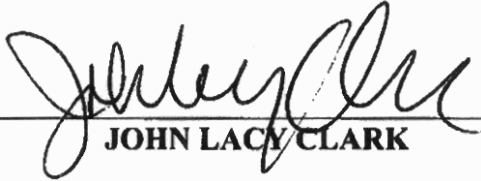
**Case 07-V-\_\_\_\_\_**

**AFFIDAVIT OF SERVICE**

**STATE OF NEW YORK    )  
                                  )  
COUNTY OF NEW YORK)    ss.:**

**JOHN LACY CLARK, being duly sworn, deposes and says:**

I certify that a complete copy of Verizon New York Inc.'s Petition for Confirmation will be sent to O. Fred Miller, Village Clerk, on May 18, 2007, by overnight mail addressed to him at Village of West Haverstraw, 130 Samsondale Avenue, West Haverstraw, New York 10993.

  
\_\_\_\_\_  
**JOHN LACY CLARK**

**Sworn to before me  
this 18<sup>th</sup> day of May, 2007**

  
\_\_\_\_\_  
**Notary Public**

**MIGUEL A. ROSA  
Notary Public, State of New York  
No. 43-4771951, Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires Nov. 30, 2012**



# **ATTACHMENT G**

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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

Case 07-V-\_\_\_\_

**AFFIDAVIT OF PUBLICATION**

**STATE OF NEW YORK                    )**  
  )  
**COUNTY OF NEW YORK                )**       **ss.:**


**JOHN LACY CLARK**, being duly sworn, deposes and says:

I certify that a notice with the following text will be published on May 22, 2007 in The Journal News. The Journal News is a newspaper of general circulation in the Village of West Haverstraw. Verizon has submitted the notice to that newspaper, has arranged for payment for such publication, and has been assured that the notice will appear in the newspaper on the specified date.

**PLEASE TAKE NOTICE** that Verizon New York Inc. ("Verizon") has filed a Petition with the New York State Public Service Commission ("Commission") seeking confirmation and approval of a cable television franchise awarded to Verizon by the Village of West Haverstraw, New York. Copies of the Petition are available from the Commission or from Verizon. Interested parties may file comments on the Petition with the Commission within ten days of the date of publication of this notice. Comments should be addressed to Hon. Jaclyn A. Brilling, Secretary, New York State Public Service Commission, Three Empire State Plaza, Albany, New York 12223.

  
\_\_\_\_\_  
**JOHN LACY CLARK**

**Sworn to before me  
this 18<sup>th</sup> day of May, 2007**

  
\_\_\_\_\_  
**Notary Public  
MIGUEL A. ROSA**  
Notary Public, State of New York  
No. 43-4771951, Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires Nov. 30, 2012

# **ATTACHMENT H**

## EXPLANATORY NOTES TO ATTACHMENT H

1. This Attachment H consists of: (a) a Department of Environmental Conservation “Full Environmental Assessment Form” (“EAF”) for Verizon’s offering of cable service in West Haverstraw, New York, with Part 1 filled in; (b) an EAF Addendum providing certain additional background information; and (c) exhibits to the Addendum, including maps showing environmentally relevant features of the franchise area and a list of state and federal historic sites within that area.

2. The Attachment is submitted without prejudice to Verizon’s positions that: (a) the activities for which it seeks approval in this proceeding are not “actions” under the State Environmental Quality Review Act (“SEQRA”), and that therefore no EAF is required; and (b) if an EAF is required in this case, a short-form EAF will suffice.

3. The EAF and the EAF Addendum are based on information in Verizon’s possession or available to us through research in readily available sources. Beyond such sources, we have not undertaken any “new studies, research or investigation.”<sup>1</sup>

4. Historic site information was derived from the SPHINX database of the New York State Historic Preservation Office (*see* [http://www.nysparks.state.ny.us/shpo\\_resources/index.htm](http://www.nysparks.state.ny.us/shpo_resources/index.htm)). Coastal area information was obtained from the New York State Geographic Information Systems Clearinghouse website (*see* <http://www.nysgis.state.ny.us/gisdata/inventories/details.cfm?DSID=317>), as was flood plain data (*see* <http://www.nysgis.state.ny.us/gisdata/inventories/details.cfm?DSID=246>). Information on wetlands locations was obtained from the U.S. Fish & Wildlife Service National Wetlands Inventory (*see* <http://www.fws.gov/nwi/>) and the Cornell University Geospatial Information Repository (*see* <http://cugir.mannlib.cornell.edu/mapbrowse.jsp?series=counties>). Information on agricultural districts was obtained from the Cornell University Geospatial Information Repository (*see* <http://cugir.mannlib.cornell.edu/mapbrowse.jsp?series=counties>). Information on “critical environmental areas” was obtained from the website of the State Department of Environmental Conservation (<http://www.dec.state.ny.us/website/dcs/seqr/cea/index.html>). Information on National Natural Landmarks was obtained from the website of the National Park Service (*see* [http://www.nature.nps.gov/nnl/Registry/USA\\_Map/States/NewYork/new\\_york.cfm](http://www.nature.nps.gov/nnl/Registry/USA_Map/States/NewYork/new_york.cfm)).

5. In response to several questions in Part 1, Verizon has indicated that the question is “Not Applicable” (“N/A”) to the confirmation that is the subject of the Petition. The activities to be undertaken pursuant to the franchise for which confirmation is sought involve the delivery of video programming and, thus, do not have a definite location or “area.” To the extent any construction — including line extensions, placement of drop wires, extensions, and repairs — takes place after the franchise becomes effective, all of the locations within the franchise area at which such activity will occur cannot be known in advance.

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<sup>1</sup> See Full Environmental Assessment Form at 2.

The information provided for contiguity to historic sites, etc., has been provided with respect to Verizon's FTTP facilities in the franchise area, even though it is Verizon's position that such facilities have been constructed pursuant to independent permissions and authorities.

**617.20**  
**Appendix A**  
**State Environmental Quality Review**  
**FULL ENVIRONMENTAL ASSESSMENT FORM**

**Purpose:** The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

**Full EAF Components:** The full EAF is comprised of three parts:

- Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3:** If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

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**THIS AREA FOR LEAD AGENCY USE ONLY**

**DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions**

Identify the Portions of EAF completed for this project:

☐ Part 1

☐ Part 2

☐ Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- ☐ A. The project will not result in any large and important impact(s) and, therefore, is one which will not have a significant impact on the environment, therefore a **negative declaration** will be prepared.
- ☐ B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore a **CONDITIONED negative declaration** will be prepared.\*
- ☐ C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore a **positive declaration** will be prepared.

\*A Conditioned Negative Declaration is only valid for Unlisted Actions

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Name of Action

---

Name of Lead Agency

---

Print or Type Name of Responsible Officer in Lead Agency

---

Title of Responsible Officer

---

Signature of Responsible Officer in Lead Agency

---

Signature of Preparer (If different from responsible officer)

---

Date

**PART 1--PROJECT INFORMATION**  
**Prepared by Project Sponsor**

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action Award of Cable Television Franchise to Verizon

Location of Action (include Street Address, Municipality and County)

Discrete Areas within the Village of West Haverstraw, NY

Name of Applicant/Sponsor Verizon New York Inc. ("Verizon")

Address c/o Thomas McCarroll, 158 State Street

City / PO Albany State NY Zip Code 12207

Business Telephone (518) 396-1001

Name of Owner (if different) N/A

Address \_\_\_\_\_

City / PO \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Business Telephone \_\_\_\_\_

Description of Action:

Activities undertaken by Verizon pursuant to the authority awarded by the franchise.

Please Complete Each Question--Indicate N.A. if not applicable

## A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas

1. Present Land Use: ☐ Urban ☐ Industrial ☒ Commercial ☒ Residential (suburban) ☒ Rural (non-farm)  
☐ Forest ☐ Agriculture ☐ Other \_\_\_\_\_

\* Although Verizon does not believe that this question applies to the activities at issue here, it has determined at Staff's request that its FFTP facilities constructed in the franchise area to date have an approximate length of 17 miles. The width of the right-of-way varies by location, and Verizon cannot readily determine at this time the average width (and therefore the area) of the right-of-way used by Verizon.

2. Total acreage of project area: \_\_\_\_\_ acres.\*

### APPROXIMATE ACREAGE

Meadow or Brushland (Non-agricultural)	_____ acres	_____ acres
Forested	_____ acres	_____ acres
Agricultural (Includes orchards, cropland, pasture, etc.)	_____ acres	_____ acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	_____ acres	_____ acres
Water Surface Area	_____ acres	_____ acres
Unvegetated (Rock, earth or fill)	_____ acres	_____ acres
Roads, buildings and other paved surfaces	_____ acres	_____ acres
Other (Indicate type) _____	_____ acres	_____ acres

3. What is predominant soil type(s) on project site? N/A

- a. Soil drainage: ☐ Well drained \_\_\_\_\_% of site ☐ Moderately well drained \_\_\_\_\_% of site  
☐ Poorly drained \_\_\_\_\_% of site

- b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? \_\_\_\_\_ acres (see 1 NYCRR 370).

4. Are there bedrock outcroppings on project site? ☐ Yes ☐ No N/A

- a. What is depth to bedrock \_\_\_\_\_ (in feet)

\*\* Parts of Verizon's FFTP network in the franchise area pass historic sites. See Addendum.

5. Approximate percentage of proposed project site with slopes: N/A

☐ 0-10% \_\_\_\_\_% ☐ 10-15% \_\_\_\_\_% ☐ 15% or greater \_\_\_\_\_%

6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? ☒ Yes \*\* ☐ No

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? ☐ Yes ☒ No

8. What is the depth of the water table? \_\_\_\_\_ (in feet) N/A

9. Is site located over a primary, principal, or sole source aquifer? ☒ Yes ☐ No

10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? ☐ Yes ☐ No N/A



11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? ☐ Yes ☐ No N/A

According to:

Identify each species

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

☐ Yes ☐ No N/A

Describe:

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

☐ Yes ☐ No N/A

If yes, explain:

14. Does the present site include scenic views known to be important to the community? ☐ Yes ☐ No N/A

15. Streams within or contiguous to project area N/A

a. Name of Stream and name of River to which it is tributary

16. Lakes, ponds, wetland areas within or contiguous to project area: See Addendum.

b. Size (in acres):

17. Is the site served by existing public utilities? ☒ Yes ☐ No
- a. If YES, does sufficient capacity exist to allow connection? ☒ Yes ☐ No
- b. If YES, will improvements be necessary to allow connection? ☐ Yes ☒ No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐ Yes ☒ No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? ☐ Yes ☒ No
20. Has the site ever been used for the disposal of solid or hazardous wastes? ☐ Yes ☐ No N/A

#### B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate).
- a. Total contiguous acreage owned or controlled by project sponsor: N/A acres.
- b. Project acreage to be developed: N/A acres initially; N/A acres ultimately.
- c. Project acreage to remain undeveloped: N/A acres.
- d. Length of project, in miles: \_\_\_\_\_ \* (if appropriate) \* See response to Item 2 on Page 3.
- e. If the project is an expansion, indicate percent of expansion proposed. N/A %
- f. Number of off-street parking spaces existing N/A ; proposed N/A
- g. Maximum vehicular trips generated per hour: N/A (upon completion of project)?
- h. If residential: Number and type of housing units: N/A
- |            | One Family | Two Family | Multiple Family | Condominium |
|------------|------------|------------|-----------------|-------------|
| Initially  | _____      | _____      | _____           | _____       |
| Ultimately | _____      | _____      | _____           | _____       |
- i. Dimensions (in feet) of largest proposed structure: N/A height; N/A width; N/A length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? N/A ft.
2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? N/A tons/cubic yards.
3. Will disturbed areas be reclaimed ☐ Yes ☐ No ☒ N/A
- a. If yes, for what intended purpose is the site being reclaimed?
- 
- b. Will topsoil be stockpiled for reclamation? ☐ Yes ☐ No
- c. Will upper subsoil be stockpiled for reclamation? ☐ Yes ☐ No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? \_\_\_\_\_ acres. N/A

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

☐ Yes ☒ No

6. If single phase project: Anticipated period of construction: \_\_\_\_\_ months, (including demolition) \*

7. If multi-phased: N/A

a. Total number of phases anticipated \_\_\_\_\_ (number)

b. Anticipated date of commencement phase 1: \_\_\_\_\_ month \_\_\_\_\_ year, (including demolition)

c. Approximate completion date of final phase: \_\_\_\_\_ month \_\_\_\_\_ year.

d. Is phase 1 functionally dependent on subsequent phases? ☐ Yes ☒ No

8. Will blasting occur during construction? ☐ Yes ☒ No

9. Number of jobs generated: during construction N/A; after project is complete N/A

10. Number of jobs eliminated by this project N/A.

11. Will project require relocation of any projects or facilities? ☐ Yes ☒ No

If yes, explain:

12. Is surface liquid waste disposal involved? ☐ Yes ☒ No

a. If yes, indicate type of waste (sewage, industrial, etc) and amount \_\_\_\_\_

b. Name of water body into which effluent will be discharged \_\_\_\_\_

13. Is subsurface liquid waste disposal involved? ☐ Yes ☒ No Type \_\_\_\_\_

14. Will surface area of an existing water body increase or decrease by proposal? ☐ Yes ☒ No

If yes, explain:

15. Is project or any portion of project located in a 100 year flood plain? ☒ Yes ☐ No

16. Will the project generate solid waste? ☐ Yes ☒ No

a. If yes, what is the amount per month? \_\_\_\_\_ tons

b. If yes, will an existing solid waste facility be used? ☐ Yes ☐ No

c. If yes, give name \_\_\_\_\_; location \_\_\_\_\_

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? ☐ Yes ☐ No

\* Although it is Verizon's position that any further FFTP construction activity in the franchise area is being undertaken pursuant to independent authority, rather than pursuant to the franchise, Verizon expects to complete its build out as required by the franchise.

e. If yes, explain:

17. Will the project involve the disposal of solid waste? ☐ Yes ☒ No

a. If yes, what is the anticipated rate of disposal? \_\_\_\_\_ tons/month.

b. If yes, what is the anticipated site life? \_\_\_\_\_ years.

18. Will project use herbicides or pesticides? ☐ Yes ☒ No

19. Will project routinely produce odors (more than one hour per day)? ☐ Yes ☒ No

20. Will project produce operating noise exceeding the local ambient noise levels? ☐ Yes ☒ No

21. Will project result in an increase in energy use? ☐ Yes ☒ No

If yes, indicate type(s)

22. If water supply is from wells, indicate pumping capacity N/A gallons/minute.

23. Total anticipated water usage per day N/A gallons/day.

24. Does project involve Local, State or Federal funding? ☐ Yes ☒ No

If yes, explain:

**25. Approvals Required:**

		Type	Submittal Date
City, Town, Village Board	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>Village of West Haverstraw</u>	<u>05/16/07*</u>
		<u>Award Franchise</u>	<u>05/16/07*</u>
		* Franchise was awarded on this date.	
City, Town, Village Planning Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
City, Town Zoning Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
City, County Health Department	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Other Local Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Other Regional Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
State Agencies	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>Public Service Commission</u>	
		<u>Confirmation</u>	<u>05/18/07</u>
Federal Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

**C. Zoning and Planning Information**

1. Does proposed action involve a planning or zoning decision? ☐ Yes ☒ No

If Yes, indicate decision required:

<input type="checkbox"/> Zoning amendment	<input type="checkbox"/> Zoning variance	<input type="checkbox"/> New/revision of master plan	<input type="checkbox"/> Subdivision
<input type="checkbox"/> Site plan	<input type="checkbox"/> Special use permit	<input type="checkbox"/> Resource management plan	<input type="checkbox"/> Other

2. What is the zoning classification(s) of the site? N/A

3. What is the maximum potential development of the site if developed as permitted by the present zoning? N/A

4. What is the proposed zoning of the site? N/A

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning? N/A

6. Is the proposed action consistent with the recommended uses in adopted local land use plans? ☐ Yes ☐ No N/A

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action? N/A

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? ☐ Yes ☐ No N/A

9. If the proposed action is the subdivision of land, how many lots are proposed? N/A

a. What is the minimum lot size proposed? \_\_\_\_\_

10 Will proposed action require any authorization(s) for the formation of sewer or water districts? ☐ Yes ☒ No

11 Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?

☐ Yes ☒ No

a. If yes, is existing capacity sufficient to handle projected demand? ☐ Yes ☐ No

12 Will the proposed action result in the generation of traffic significantly above present levels? ☐ Yes ☒ No

a. If yes, is the existing road network adequate to handle the additional traffic. ☐ Yes ☐ No

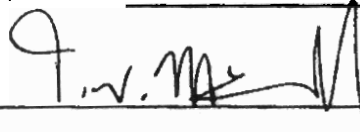
D. Informational Details

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them

E. Verification

I certify that the information provided above is true to the best of my knowledge

Applicant/Sponsor Name Verizon New York Inc. Date 5/18/07

Signature 

Title Vice President Regulatory Affairs, NY & CT

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

## PART 2 - PROJECT IMPACTS AND THEIR MAGNITUDE

Responsibility of Lead Agency

### General Information (Read Carefully)

- I In completing the form the reviewer should be guided by the question: Have my responses and determinations been reasonable? The reviewer is not expected to be an expert environmental analyst.
- I The Examples provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.
- I The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.
- I The number of examples per question does not indicate the importance of each question.
- I In identifying impacts, consider long term, short term and cumulative effects.

### Instructions (Read carefully)

- a. Answer each of the 20 questions in PART 2. Answer Yes if there will be any impact.
- b. Maybe answers should be considered as Yes answers.
- c. If answering Yes to a question then check the appropriate box(column 1 or 2)to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. Identifying that an Impact will be potentially large (column 2) does not mean that it is also necessarily significant. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- e. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- f. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the Yes box in column 3. A No response indicates that such a reduction is not possible. This must be explained in Part 3.

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

### Impact on Land

1. Will the Proposed Action result in a physical change to the project site?

NO ☐ YES ☐

#### Examples that would apply to column 2

Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction on land where the depth to the water table is less than 3 feet.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Construction of paved parking area for 1,000 or more vehicles.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Construction that will continue for more than 1 year or involve more than one phase or stage.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No



	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Construction or expansion of a sanitary landfill.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction in a designated floodway.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

2. Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.)

☐ NO ☐ YES

• Specific land forms:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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#### Impact on Water

3. Will Proposed Action affect any water body designated as protected? (Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)

☐ NO ☐ YES

Examples that would apply to column 2

• Developable area of site contains a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Dredging more than 100 cubic yards of material from channel of a protected stream.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Extension of utility distribution facilities through a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction in a designated freshwater or tidal wetland.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

4. Will Proposed Action affect any non-protected existing or new body of water?

☐ NO ☐ YES

Examples that would apply to column 2

• A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction of a body of water that exceeds 10 acres of surface area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

1  
Small to  
Moderate  
Impact

2  
Potential  
Large  
Impact

3  
Can Impact Be  
Mitigated by  
Project Change

5. Will Proposed Action affect surface or groundwater quality or quantity?

☐ NO ☐ YES

Examples that would apply to column 2

- |  |                          |                          |  |
|--|--------------------------|--------------------------|--|
| • Proposed Action will require a discharge permit.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action requires use of a source of water that does not have approval to serve proposed (project) action.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action requires water supply from wells with greater than 45 gallons per minute pumping capacity.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Construction or operation causing any contamination of a water supply system.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will adversely affect groundwater.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action would use water in excess of 20,000 gallons per day.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will require the storage of petroleum or chemical products greater than 1,100 gallons.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will allow residential uses in areas without water and/or sewer services.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities.                              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
-------------------------------------	-----------------------------------	--

6. Will Proposed Action alter drainage flow or patterns, or surface water runoff?

☐ NO ☐ YES

Examples that would apply to column 2

- |  |                          |                          |                              |                             |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action would change flood water flows                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action may cause substantial erosion.                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action is incompatible with existing drainage patterns. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow development in a designated floodway. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

#### IMPACT ON AIR

7. Will Proposed Action affect air quality?

☐ NO ☐ YES

Examples that would apply to column 2

- |   |                          |                          |                              |                             |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action will induce 1,000 or more vehicle trips in any given hour.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in the incineration of more than 1 ton of refuse per hour.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the amount of land committed to industrial use.                                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Proposed Action will allow an increase in the density of industrial development within existing industrial areas.                 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

#### IMPACT ON PLANTS AND ANIMALS

8. Will Proposed Action affect any threatened or endangered species?

☐ NO ☐ YES

Examples that would apply to column 2

- |   |                          |                          |                              |                             |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site, or found on the site. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|

- |   | 1<br>Small to<br>Moderate<br>Impact | 2<br>Potential<br>Large<br>Impact | 3<br>Can Impact Be<br>Mitigated by<br>Project Change     |
|---|-------------------------------------|-----------------------------------|--|
| • Removal of any portion of a critical or significant wildlife habitat.                               | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Application of pesticide or herbicide more than twice a year, other than for agricultural purposes. | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |

9. Will Proposed Action substantially affect non-threatened or non-endangered species?

☐ NO ☐ YES

Examples that would apply to column 2

- |  |                          |                          |  |
|--|--------------------------|--------------------------|--|
| • Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.                          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

**IMPACT ON AGRICULTURAL LAND RESOURCES**

10. Will Proposed Action affect agricultural land resources?

☐ NO ☐ YES

Examples that would apply to column 2

- |  |                          |                          |  |
|--|--------------------------|--------------------------|--|
| • The Proposed Action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)                                 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Construction activity would excavate or compact the soil profile of agricultural land.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • The Proposed Action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• The Proposed Action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other Impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

#### IMPACT ON AESTHETIC RESOURCES

11. Will Proposed Action affect aesthetic resources? (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)  
☐ NO ☐ YES

##### Examples that would apply to column 2

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| • Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.                            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Project components that will result in the elimination or significant screening of scenic views known to be important to the area.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

#### IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES

12. Will Proposed Action impact any site or structure of historic, prehistoric or paleontological importance?  
☐ NO ☐ YES

##### Examples that would apply to column 2

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of historic places. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Any impact to an archaeological site or fossil bed located within the project site.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

- |                  | 1<br>Small to<br>Moderate<br>Impact | 2<br>Potential<br>Large<br>Impact | 3<br>Can Impact Be<br>Mitigated by<br>Project Change     |
|------------------|-------------------------------------|-----------------------------------|--|
| • Other impacts: | <input type="checkbox"/>            | <input type="checkbox"/>          | <input type="checkbox"/> Yes <input type="checkbox"/> No |

#### IMPACT ON OPEN SPACE AND RECREATION

13. Will proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?

☐ NO ☐ YES

**Examples that would apply to column 2**

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| • The permanent foreclosure of a future recreational opportunity. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • A major reduction of an open space important to the community.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

#### IMPACT ON CRITICAL ENVIRONMENTAL AREAS

14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6NYCRR 617.14(g)?

☐ NO ☐ YES

List the environmental characteristics that caused the designation of the CEA.

**Examples that would apply to column 2**

- |   |                          |                          |  |
|---|--------------------------|--------------------------|--|
| • Proposed Action to locate within the CEA?                                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will result in a reduction in the quantity of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will result in a reduction in the quality of the resource?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will impact the use, function or enjoyment of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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Small to  
Moderate  
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Potential  
Large  
Impact

3  
Can Impact Be  
Mitigated by  
Project Change

#### IMPACT ON TRANSPORTATION

15. Will there be an effect to existing transportation systems?

☐ NO ☐ YES

Examples that would apply to column 2

Alteration of present patterns of movement of people and/or goods.

☐☐☐

Yes

☐ No

- Proposed Action will result in major traffic problems.

☐☐☐

Yes

☐ No

- Other impacts:

☐☐☐

Yes

☐ No

#### IMPACT ON ENERGY

16. Will Proposed Action affect the community's sources of fuel or energy supply?

☐ NO ☐ YES

Examples that would apply to column 2

- Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality.

☐☐☐

Yes

☐ No

Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use.

☐☐☐

Yes

☐ No

- Other impacts:

☐☐☐

Yes

☐ No

#### NOISE AND ODOR IMPACT

17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action?

☐ NO ☐ YES

Examples that would apply to column 2

Blasting within 1,500 feet of a hospital, school or other sensitive facility.

☐☐☐

Yes

☐ No

- Odors will occur routinely (more than one hour per day)

☐☐☐

Yes

☐ No

Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures.

☐☐☐

Yes

☐ No

- Proposed Action will remove natural barriers that would act as a noise screen.

☐☐☐

Yes

☐ No

Other impacts:

☐☐☐

Yes

☐ No

1  
Small to  
Moderate  
Impact

2  
Potential  
Large  
Impact

3  
Can Impact Be  
Mitigated by  
Project Change

#### IMPACT ON PUBLIC HEALTH

18. Will Proposed Action affect public health and safety?

☐ NO ☐ YES

- Proposed Action may cause a risk of explosion or release of hazardous substances (i.e. oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission.

☐
☐

☐ Yes

☐ No

Proposed Action may result in the burial of "hazardous wastes" in any form (i.e. toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.)

☐
☐

☐ Yes

☐ No

- Storage facilities for one million or more gallons of liquefied natural gas or other flammable liquids.

☐
☐

☐ Yes

☐ No

- Proposed Action may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste

☐
☐

☐ Yes

☐ No

- Other impacts:

☐
☐

☐ Yes

☐ No

#### IMPACT ON GROWTH AND CHARACTER OF COMMUNITY OR NEIGHBORHOOD

19. Will Proposed Action affect the character of the existing community?

☐ NO ☐ YES

Examples that would apply to column 2

- The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%.

☐
☐

☐ Yes

☐ No

The municipal budget for capital expenditures or operating services will increase by more than 5% per year as a result of this project.

☐
☐

☐ Yes

☐ No

- Proposed Action will conflict with officially adopted plans or goals.

☐
☐

☐ Yes

☐ No

- Proposed Action will cause a change in the density of land use.

☐
☐

☐ Yes

☐ No

- Proposed Action will replace or eliminate existing facilities, structures or areas of historic importance to the community.

☐
☐

☐ Yes

☐ No

- Development will create a demand for additional community services (e.g. schools, police and fire, etc.)

☐
☐

☐ Yes

☐ No



	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Proposed Action will set an important precedent for future projects	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action will create or eliminate employment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

20. Is there, or is there likely to be, public controversy related to potential adverse environment impacts?  
☐ NO ☐ YES

**If Any Action in Part 2 Is Identified as a Potential Large Impact or If you Cannot Determine the Magnitude of Impact, Proceed to Part 3.**

## Part 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS

### Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

**Instructions.** (If you need more space, attach additional sheets)

Discuss the following for each impact identified in Column 2 of Part 2:

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is **important**.

To answer the question of importance, consider:

- ! The probability of the impact occurring
- ! The duration of the impact
- ! Its irreversibility, including permanently lost resources of value
- ! Whether the impact can or will be controlled
- ! The regional consequence of the impact
- ! Its potential divergence from local needs and goals
- ! Whether known objections to the project relate to this impact.

**ADDENDUM TO ENVIRONMENTAL ASSESSMENT FORM RELATING TO  
CONFIRMATION OF A CABLE TELEVISION FRANCHISE FOR THE  
VILLAGE OF WEST HAVERSTRAW (ROCKLAND COUNTY), NEW YORK**

***Setting***

The Village of West Haverstraw is located in the northeast portion of the Town of Haverstraw in Rockland County. As of the 2000 Census, the Village had a population of 10,295 within a total area of 1.55 square miles.

The Village is: (1) not within an agricultural district, (2) not in or substantially contiguous to a Critical Environmental Area, and (3) not substantially contiguous to a National Natural Landmark. A list of historic sites, historic districts, and national historic landmarks in the Village is attached. It is Verizon's policy to conform to all applicable laws and regulations in placing its facilities, including any special requirements that may be applicable to historic sites, districts, or landmarks.

The Village is located above an aquifer. The Village is within a coastal area. It has no designated wetlands areas, but does have designated 100-year flood plains. Verizon's FTTP extensions and drop wires will be placed only to serve existing or future residences and businesses and will be consistent with physical arrangements for the provision of non-video communications services (voice, data), and other types of utility service, to such areas. Video programming will be delivered over existing distribution routes and supporting structures. Moreover, cable service is already provided within the franchise area by the incumbent, Cablevision. Thus, Verizon's construction activities would not impact otherwise undeveloped areas.

Three maps are included with this addendum. The first map shows the franchise area, historical sites and districts, nearby wetlands, and the coastal area boundary. The second map shows the 100-year flood plains in this area. The third map shows the aquifers in this area.

***Description of Potential Construction Activities***

The Commission is being asked to approve the Village's award of a cable television franchise to Verizon. The franchise will enable Verizon to deliver video programming to subscribers over its FTTP network, which is also used for the provision of voice and data services. It is Verizon's position that the construction, extension, modification, and repair of the facilities comprising the FTTP network are independently authorized, do not require franchise authority, and are thus not included within any "action" (within the meaning of SEQRA) for which approval is sought in this proceeding. Nevertheless, at Staff's request, Verizon is providing the following information concerning work on Verizon's FTTP facilities that may be undertaken in the Village subsequent to the Commission's approval of the franchise.

Extensions of Verizon's FTTP network may take place in the Village of West Haverstraw following the award of the franchise. FTTP construction in the Village's rights-of-way would relate to facilities that will also be used for Verizon's voice and data services. (Any equipment

that is utilized exclusively for the provision of cable services in the Village will be located in Verizon's central offices.) Verizon has completed the construction of its FTTP network to approximately 26% of the current households in the franchise area.

When a Verizon subscriber requests the FiOS<sup>SM</sup> voice, data, and/or video services that are available over the FTTP network, fiber drop wire is run to the subscriber's home. There are 3,483 households within the Village of West Haverstraw that could potentially be served with fiber drops.<sup>1</sup> In terms of the potential environmental impact of drop placement activities, the fiber drops that are associated with FTTP do not differ in any significant respect from the copper drops that Verizon routinely installs, maintains and on occasion replaces in connection with its current services. Moreover, fiber drops will be deployed to customers who request other FiOS services even if such customers do not elect to purchase FiOS video.

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<sup>1</sup> In general, Verizon's outside plant may include both aerial and underground facilities. Some of the work related to the extension of FTTP facilities and the placement of drops may therefore be underground.

USN	Class.	BF	Street Address/Location/Bldg. Name	Deter.	NR Ref. No.	SR Date	NR Date	NHL Date
08744.000016			1 Cosgrove Ave Railroad Avenue School	Individually Eligible				
08744.000003			18 RAILROAD AVE GARNER MANSION	Listed	90NR02417	6/23/1980	8/14/1973	
08744.000007			US RTE 9W FRASER-HOYER HOUSE ON TREASON HILL OFF US RTE 9W	Listed	90NR02418	6/23/1980	4/22/1976	
			US 9W at HELEN HAYES HOSPITAL HENRY M. PECK HOUSE	Listed	00NR01648	7/5/2000	11/2/2000	