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The Verizon logo, consisting of a checkmark symbol above the word "verizon" in a bold, lowercase, sans-serif font.

November 7, 2006

BY HAND

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

Re: Case 06-V-_____

Dear Secretary Brilling:

Enclosed please find an original and three 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 Ardsley, New York.

The cable service that Verizon proposes to offer in Ardsley is a key component of the suite of advanced services (known as "Verizon FiOSSM") that will be provided through the use of innovative Fiber-to-the-Premises ("FTTP") technology. Verizon FiOS will provide the residents of Ardsley 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
November 7, 2006

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

Respectfully submitted,

Joseph A. Post

cc: Village of Ardsley
Honorable Debbie Henneberry
Village Clerk/Deputy Village Manager
Village of Ardsley
507 Ashford Avenue
Ardsley, New York 10502

New York State Department of Public Service
Peter McGowan, Esq.
Peter Catalano, Esq.
Maureen Farley, Esq.
Brian Ossias, Esq.
Mr. Robert Mayer
Mr. Chad G. Hume
Mr. John A. Figliozzi

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
Ardsley, New York (Westchester
County)**

Case 06-V-_____

PETITION FOR CONFIRMATION

**JOSEPH A. POST
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(212) 321-8126**

Counsel for Verizon New York Inc.

November 7, 2006

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**STATE OF NEW YORK
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**In the Matter of the Petition of Verizon
New York Inc. Pursuant to Section 221
of the Public Service Law for
Confirmation of a Cable Television
Franchise Awarded by the Village of
Ardsley, New York (Westchester
County)**

Case 06-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 Ardsley, a municipality located in Westchester County (the “Franchisor”).

The Franchise, and Verizon’s proposed offering of cable service in Ardsley 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 FiOSSM”) 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:¹

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 August 7, 2006, at Village Hall, 507 Ashford Avenue, Ardsley, New York, starting at approximately 9:00 P.M. The hearing continued on September 5, 2006, September 18, 2006, October 3, 2006, October 16, 2006, and November 6, 2006, and was concluded on November 6, 2006. A true

¹ 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.

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 November 10, 2006 in The Journal News. The Journal News is a newspaper of general circulation in the Village of Ardsley. 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))

9. Verizon further certifies that the outside plant facilities necessary to provide cable service are deployed to approximately 93% of the current households in the franchise area. At present, Verizon's anticipated schedule calls for 93% deployment by February 2007, 94% deployment by August 2007, 94% deployment by February 2008, 96% deployment by August 2008, 96% deployment by February 2009, 97% deployment by August 2009, 97% deployment by February 2010, 99% deployment by August 2010, 99% deployment by February 2011, and 100% deployment by August 2011. This build-out schedule, however, is subject to further review and modification over the five-year build-out period.

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

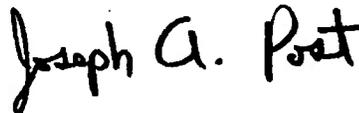
III. CONCLUSION

The Franchise, and Verizon’s proposed offering of FiOS video services in Ardsley 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

² 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).

significant adverse environmental impact, and it should accordingly include a negative declaration under SEQRA in its confirmation order.

Respectfully submitted,

Handwritten signature of Joseph A. Post in black ink.

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

Counsel for Verizon New York Inc.

November 7, 2006

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 Ardsley

and

Verizon New York Inc.

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EXHIBITS

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

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Ardsley, 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 found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the character and 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 determined that the Franchise complies with the provisions of the Cable Law and with NY PSC's franchise standards, and that 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. *Agreement*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.4. *Annual PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

1.5. *Basic Service*: The tier of Cable Service which includes, at a minimum, the retransmission of all local television broadcast signals provided to any Subscriber and any PEG Channels required by this Franchise or NY PSC rules, and which may also include any additional video programming signals as determined by Franchisee.

1.6. *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.

1.7. *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.

1.8. *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.

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

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

1.11. *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.

1.12. *EAS*: Shall be defined herein as it is set forth in Section 4.4.

1.13. *Educational Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use 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.

1.14. *Effective Date*: Shall be defined herein as it is set forth in Section 2.3.

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

1.16. *FOIL*: Shall be defined herein as it is set forth in Section 7.1.

1.17. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control that directly or indirectly results in Franchisee's non-compliance with, or delay in the performance of, any obligation hereunder. This may include, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays resulting from unaffiliated utility providers' failure to service, monitor or maintain utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.18. *Franchise*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.19. *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA.

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

1.21. *Franchise Fee*: Shall be defined herein as it is set forth in Section 6.1.

1.22. *FTTP Network*: Shall be defined herein as it is set forth in the third recital.

1.23. *Government Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use of the LFA.

1.24. *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, including revenues from services provided to Subscribers in the Service Area that are Cable Services or are classified or will be classified by federal law, the FCC or a court of competent jurisdiction as Cable Services subject to Franchise Fees.

Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; (iv) video on demand, including pay-per-view; 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.

Gross Revenue shall not include: revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or NY PSC rules, regulations, standards or orders, as may be amended from time to time; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of

general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; or any fees or charges collected from Subscribers or other third parties for any PEG Grant payments.

1.25. *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.

1.26. *Initial PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

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

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

1.29. *Material Provision or Material Provisions*: Shall be defined herein as it is set forth in Section 12.9.

1.30. *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.

1.31. *Noncompliance Notice*: Shall be defined herein as it is set forth in Section 11.1.

1.32. *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.

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

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

1.35. *PEG Access Interconnection Site*: Shall be defined herein as it is set forth in Subsection 5.2.1.

1.36. *PEG Channel* or *PEG Channels*: Shall be defined herein as it is set forth in Subsection 5.1.1.

1.37. *PEG Channel Assignment Grant*: Shall be defined herein as it is set forth in Subsection 5.4.7.

1.38. *PEG Grants*: Shall be defined herein as it is set forth in Subsection 5.4.9.

1.39. *Performance Review*: Shall be defined herein as it is set forth in Section 12.17.

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

1.41. *Primary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.

1.42. *Primary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.

1.43. *Public Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use by the residents in the Franchise Area on a first-come, first-served, nondiscriminatory basis.

1.44. *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.

1.45. *Secondary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.

1.46. *Secondary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.

1.47. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, as described in Exhibit B to this Agreement.

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

1.49. *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.

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

1.51. *TOA*: Shall be defined herein as it is set forth in Subsection 5.4.3.

1.52. *Transfer of the Franchise*:

1.52.1. Any transaction in which:

1.52.1.1. 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

1.52.1.2. 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.

1.52.2. However, notwithstanding Sub-sections 1.52.1.1 and 1.52.1.2 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.

1.53. *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*: Notwithstanding that, upon delivery of Cable Service, Franchisee's mixed-use facilities become subject to the NY PSC's minimum franchise standards and the LFA's police power, the parties acknowledge that the LFA is not granted, as a consequence thereof, any broad new authority over the construction, placement and operation of Franchisee's mixed-use facilities.

2.3. *Term:* This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise. If subsequent to the Effective Date, there is a change in federal or state law that eliminates the authority of the LFA to require, grant or maintain this Franchise, then to the extent permitted under law this Franchise shall survive such legislation and remain in effect for the term 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 be non-exclusive, and the LFA has granted and reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable lawful provisions of federal law and state law and FCC and NY PSC rules, regulations, standards and orders, as amended from time to time, 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 at Franchisee's expense.

2.10. *Restoration of Subscriber Premises:* The Franchisee shall ensure, at Franchisee's expense, 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 Commitment:* 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 developments or buildings that 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 dwelling unit 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. If, as a result of new construction, an area within the Service Area

meets the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, then 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:*

3.2.1. *Availability of Cable Service Generally:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such costs shall be submitted to said Subscriber in writing, before installation is begun.

3.2.2. *No Discrimination in the Availability of Cable Service:* Franchisee shall not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides.

3.3. *Contribution in Aid:* Notwithstanding the foregoing Sections 3.1 and 3.2, Franchisee shall comply at a minimum with the requirements of Section 895.5 of the NY PSC rules and regulations; provided, however, that the density requirement shall be as set forth in Sub-subsection 3.1.1.1.

3.4. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public library and educational institution chartered or licensed by the New York State Department of Education or Board of Regents, and such other buildings used for municipal purposes, as designated initially by the LFA in Exhibit A to this Agreement, and, thereafter, during the Franchise term, as designated in writing upon the earlier to occur of (a) thirty (30) business days prior written notice to Franchisee or (b) approval of any amendment to Exhibit A to this Agreement in accordance with NY PSC rules; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of five hundred (500) feet, or of releasing

Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such 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; provided, however, that if such equipment becomes defective, Franchisee shall replace it at no charge.

4. SYSTEM FACILITIES

4.1. *Quality of Materials:* 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 Cable 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 Cable 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 the New York EAS Plan, as amended from time to time, 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 meet the ascertained cable-related needs established by the LFA and to ensure universal availability of public, educational and government access programming, Franchisee shall provide capacity on its Basic Service tier for:

- (i) one (1) full time shared Public Access Channel;
- (ii) one (1) full-time, shared primary Educational Access Channel (the "Primary Educational Access Channel");
- (iii) one (1) additional shared Educational Access Channel (the "Secondary Educational Access Channel");
- (iv) one (1) full-time, shared primary Government Access Channel (the "Primary Government Access Channel"); and
- (v) one (1) additional shared Government Access Channel (the "Secondary Government Access Channel");

provided, however, that the Secondary Educational Access Channel and Secondary Government Access Channel shall be controlled by the LFA for the purpose of simulcasting educational access programming on the Secondary Educational Access Channel and simulcasting government access programming on the Secondary Government Access Channel (each of the aforementioned Channels in this Subsection 5.1.1 individually, a "PEG Channel" and, collectively, "PEG Channels").

5.1.2. The PEG programming to be carried on each of the PEG Channels set aside by Franchisee is reflected in Exhibit C to this Agreement. The LFA hereby authorizes Franchisee to transmit such programming within and outside LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

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

5.2. *PEG Access Interconnection:*

5.2.1. LFA shall designate in its sole discretion not more than five (5) sites within the Franchise Area for the interconnection of PEG access facilities with the Cable System (each, a "PEG Access Interconnection Site"), as designated on Exhibit D to this Agreement.

5.2.2. Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, Franchisee shall, without charge to the LFA, provide upstream PEG Channel transmission connections between its video channel aggregation point and each PEG Access Interconnection Site in order to permit the signals to be correctly routed from the PEG Access Interconnection Sites to the appropriate PEG Access Channel for distribution to Subscribers as follows: (i) one (1) PEG Access Interconnection Site shall be operable within ninety (90) days of the Effective Date; (ii) one (1) PEG Access Interconnection Site shall be operable on or before the eight (8) month anniversary of the Effective Date; (iii) two (2) PEG Access Interconnection Sites shall be operable on or before the one (1) year anniversary of the Effective Date; and (iv) one (1) PEG Access Interconnection Site shall be operable on or before the two (2) year anniversary of the Effective Date, each as designated on Exhibit D to this Agreement.

5.2.3. The LFA shall provide to Franchisee at each PEG Access Interconnection Site a suitable video signal and a suitable audio signal for each PEG Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and other facilities and such cooperation of the LFA as is reasonably necessary for Franchisee to fulfill such obligations. Should Franchisee determine that it cannot fulfill such obligations as a result of LFA's failure to cooperate or to provide suitable required space, environmental conditions, electrical power supply, access, pathway, or other facilities, it shall so notify LFA in a writing detailing the requirements of Franchisee that will enable it to fulfill its obligations hereunder.

5.2.4. Such upstream PEG Channel transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of signals to Subscribers.

5.2.5. If Franchisee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment and facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.3 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

5.3. *PEG Facilities:* Subject to Section 5.2, Franchisee shall design, build, and maintain all PEG upstream feeds, connections, and distribution facilities in order that such feeds function as reliably as Franchisee's Cable System as a whole within the Franchise Area, and are no more likely to fail than is Franchisee's Cable System as a whole within the Franchise Area.

5.4. *PEG Grants:*

5.4.1. Franchisee shall provide to the LFA financial contributions for use in support of the production of local PEG programming. The financial contributions shall consist of the following two grants: (a) a one-time grant in the amount of TWENTY-FOUR THOUSAND SEVEN HUNDRED NINETY THREE DOLLARS (\$24,793.00) (the "Initial PEG Grant"); and (b) an annual grant of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00) (the "Annual PEG Grant"), each payable as set forth below.

5.4.2. The Initial PEG Grant shall become due and payable sixty (60) days after the Effective Date. In the event that the LFA does not require all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions, then Franchisee shall offset any Franchise Fees due to the LFA hereunder by any greater amount of the Initial PEG Grant that has been paid to the LFA.

5.4.3. Franchisee shall pay the Annual PEG Grant to the LFA as follows: (i) the first Annual PEG Grant payment shall be due and payable to the LFA within sixty (60) days of the third anniversary of the Effective Date; and (ii) the remaining Annual PEG Grant payments shall be due and payable to the LFA within sixty (60) days after the fourth through ninth anniversaries of the Effective Date. If the Franchise is extended by means of a Temporary Operating Authority ("TOA") consistent with New York law and NY PSC rules and regulations, Franchisee shall continue payment of the Annual PEG Grant for a period of up to three (3) years, or until renewal of the Franchise, so long as the LFA imposes a substantially similar obligation on all other cable service providers in the Service Area. The continued Annual PEG Grant payment shall be due within sixty (60) days of any applicable anniversary of the Effective Date.

5.4.4. The Initial PEG Grant and the Annual 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.

5.4.5. Franchisee shall provide to the LFA an additional one-time grant in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) (the "PEG Channel Assignment Grant"). The PEG Channel Assignment Grant shall be payable to the LFA solely in the event that Franchisee makes a PEG Channel assignment change pursuant to Subsection 5.1.2.

5.4.6. Consistent with Section 895.3 of the NY PSC rules, notwithstanding the foregoing Subsections 5.4.3 and 5.4.7, no PEG Channel Assignment Grant or Annual PEG Grant shall be payable by Franchisee unless and until the LFA requires all cable

service providers in the Service Area to provide substantially equivalent PEG financial contributions.

5.4.7. The grants identified above in this Section 5.4, specifically, the Initial PEG Grant, the Annual PEG Grant, and the PEG Channel Assignment Grant shall be collectively referred to as the "PEG Grants."

5.4.8. The LFA shall provide Franchisee with an annual report setting forth a summary of all expenditures for PEG access equipment and facilities from the PEG Grants paid to the LFA and the amounts, if any, reserved for future capital expenditures for such purposes.

5.5. *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.

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

6. FRANCHISE FEES

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

6.2. *Supporting Information:* Each Franchise Fee payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail 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, copying 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 at a location within the state, 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 thirty (30) 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 a rate of nine percent (9%) 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; provided, however, that in the event of an underpayment of five percent (5%) or more in an audited period this limitation shall not apply to the subsequent two (2) audit periods.

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.

6.5. *Bundled Services:* If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate any discount associated with purchasing bundled services for the purposes of evading the Franchise Fee payments under this Franchise. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for

any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

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 in a manner so as not to unreasonably interfere with Franchisee's normal business operations, 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 location within the state or at another mutually agreed upon site. 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*: Subject to the requirements of Section 895.1(t) of the NY PSC rule and regulations, any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. INSURANCE AND INDEMNIFICATION

8.1. *Insurance*:

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

8.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit for property damage and bodily injury per occurrence and five million dollars (\$5,000,000) in the aggregate. 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: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) per employee limit; five hundred thousand dollars (\$500,000) policy limit.

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

8.1.2. The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 8 except Worker's Compensation Insurance, Employer's Liability Insurance and excess liability or umbrella coverage. Such additional insured requirement shall be indicated on the original Certificates of Insurance.

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. Franchisee shall deliver to LFA original Certificates of Insurance showing evidence of all required coverages under this Agreement on or before the Effective Date and providing for at least thirty (30) days prior written notice to be given to LFA of cancellation, intent not to renew or any adverse material change.

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels as provided in Section 5.5, provided that the LFA shall give Franchisee timely written notice of its obligation to indemnify the LFA, but in any event, the LFA shall provide such notice to Franchisee within a sufficient period of time from receipt of a claim or action pursuant to this Subsection to enable Franchisee to timely answer complaints, raise defenses and defend all claims. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties acting in their official capacity on behalf of the LFA or for any activity or function conducted by any Person other than Franchisee on behalf of the LFA 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, subject to federal and state law, 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 acting in their official capacity on behalf of the LFA.

9. TRANSFER OF FRANCHISE

9.1. *LFA Consent Required:* 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.

9.2. *LFA Consent Not Required for Certain Transactions:* No prior consent of the LFA shall be required 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 1.52 above.

9.3. *Each Transfer of the Franchise Subject to this Article:* Each Transfer of the Franchise shall be governed by and comply with the provisions of this Article 9.

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 12.12 below, the Cable Law, and Section 626 of the Communications Act, 47 U.S.C. § 546, as amended.

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

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

10.4. *Consistent Terms:* Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law.

11. ENFORCEMENT AND TERMINATION OF FRANCHISE

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

11.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to 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 or commenced to remedy 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 12.12 below and applicable federal and state law, in the event that the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

11.4.3. In the case of a substantial noncompliance with a Material Provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.

11.5. *Revocation:* If the LFA seeks to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, then 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 timely cured by the Franchisee. The LFA shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the LFA determines that it will revoke the Franchise, the LFA shall promptly provide Franchisee with a written determination setting forth the LFA's reasoning for such revocation. Franchisee may appeal such written determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA de novo. The parties shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the LFA.

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

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

12. MISCELLANEOUS PROVISIONS

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

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

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

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

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

12.4.1. Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers and was timely cured by Franchisee, 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 Manager
Village of Ardsley
Ardsley Village Hall

507 Ashford Avenue
Ardsley, New York 10502

12.5.3. with a copy to:

Robert J. Ponzini, Esq.
Village Attorney
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

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 after the adoption of proper authorizing resolution by the governing body of the LFA and as approved by the NY PSC.

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. For purposes of this Agreement, the term "Material Provision" or "Material Provisions" shall mean the terms set forth in Article 5 (PEG Services), Article 6 (Franchise Fees), and Article 8 (Insurance and Indemnification).

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. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement. 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.

12.12. *NY PSC Approval:* This Franchise and any amendment or modification hereof 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:* Franchisee shall 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-month period, hold a performance evaluation session (the "Performance Review") to review Franchisee's compliance with the terms and conditions of this Franchise. 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 setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise.

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

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

12.20. *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.

AGREED TO THIS 10 DAY OF November, 2006.

LFA:
VILLAGE OF ARDSLEY

By: [Signature]
Title: Mayor

FRANCHISEE:
VERIZON NEW YORK INC.

By: [Signature]
Title: Vice President
Capital Market Area

FORM APPROVED

Attorney
Date 11/9/06

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: PEG Access Interconnection Sites

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

Ardsley Public Library
9 American Legion Drive
Ardsley, New York 10502

Community Center
18 Center Street
Ardsley, New York 10502

Ardsley Firehouse
505 Ashford Avenue
Ardsley, New York 10502

Highway Garage
3 Elm Street
Ardsley, New York 10502

Concord Road School
2 Concord Road
Ardsley, New York 10502

Ardsley High School
300 Farm Road
Ardsley, New York 10502

EXHIBIT B

SERVICE AREA

The Service Area shall be the Franchise Area. The construction of the Franchisee's FTTP Network has been substantially completed throughout the Franchise Area subject only to Subsection 3.1.1. and Section 3.2 of the Franchise, and accordingly it is not necessary to provide any additional details concerning the construction and/or deployment time tables and areas within the Service Area. A map of the Service Area is attached hereto.

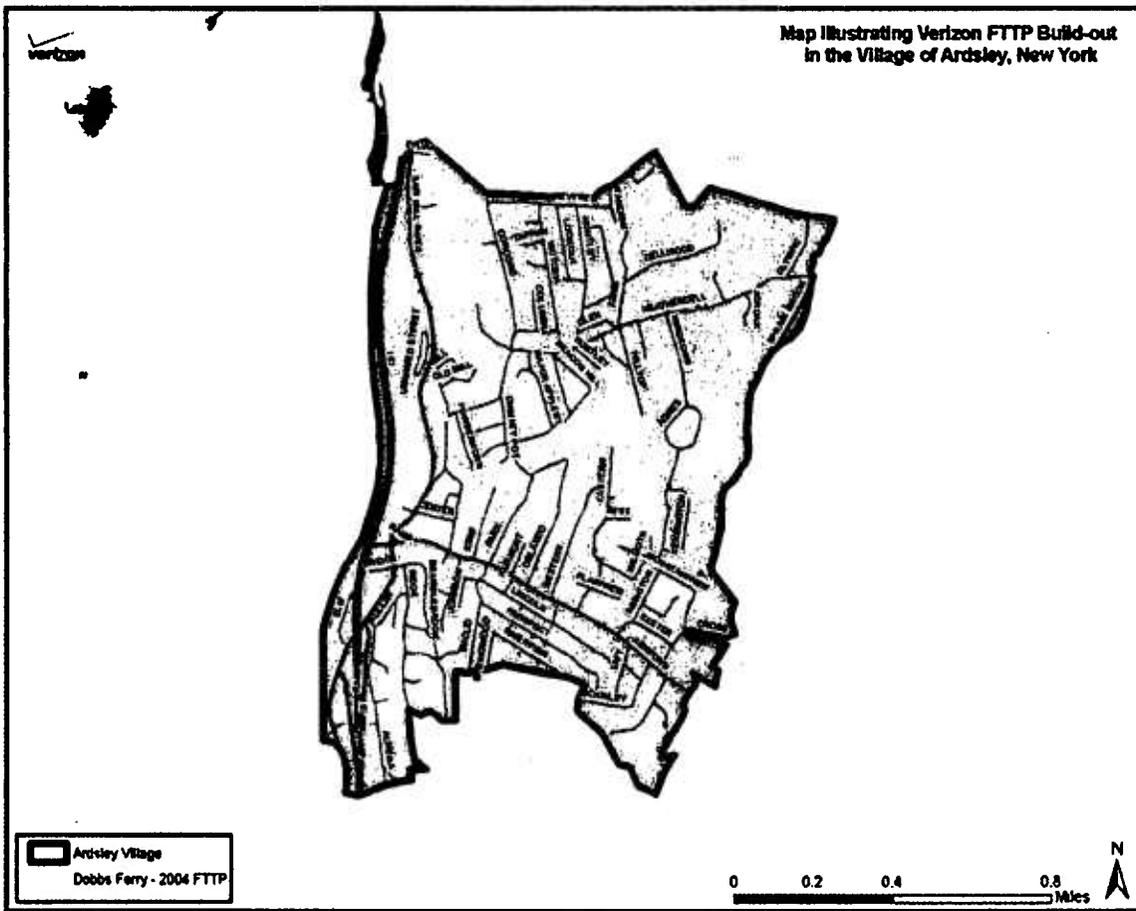


Exhibit B
Page 2 of 2

Ardsley/Verizon New York Inc.
Franchise Agreement/November 2006

EXHIBIT C

PEG CHANNELS

The Franchisee will transmit PEG programming as provided by the LFA and the public, as directed.

EXHIBIT D

PEG ACCESS INTERCONNECTION SITES

Subject to the requirements set forth in Subsection 5.2.2 of the Agreement, the following Government Access Channel PEG Access Interconnection Site shall be operable within ninety (90) days of the Effective Date:

Ardasley Village Hall, 507 Ashford Avenue, Ardsley, New York 10502

This PEG Access Interconnection Site shall serve as the aggregation point for the three Government Access Channel PEG Access Interconnection Sites listed below.

Subject to the requirements set forth in Subsection 5.2.2 of the Agreement, the following Government Access Channel PEG Access Interconnection Site shall be operable on or before the eight (8) month anniversary of the Effective Date:

Ardasley Public Library, 9 American Legion Drive, Ardsley, New York 10502

Subject to the requirements set forth in Subsection 5.2.2 of the Agreement, the following Government Access Channel PEG Access Interconnection Site shall be operable on or before the one (1) year anniversary of the Effective Date:

Ardasley Community Center, 18 Center Street, Ardsley, New York 10502

Subject to the requirements set forth in Subsection 5.2.2 of the Agreement, the following Government Access Channel PEG Access Interconnection Site shall be operable on or before the two (2) year anniversary of the Effective Date:

McDowell Park, Heatherdell Road, Ardsley, New York 10502

Subject to the requirements set forth in Subsection 5.2.2 of the Agreement, the following Educational Access Channel PEG Access Interconnection Site shall be operable on or before the one (1) year anniversary of the Effective Date:

Ardasley High School, 300 Farm Road, Ardsley, New York 10502

ATTACHMENT B

Village of Ardsley

Mayor
JAY S. LEON

Trustees
LARRY J. NARDECCHIA, JR. - Deputy Mayor
MICHAEL J. KOLESAR
GARY J. MALONE
PETER R. PORCINO



507 Ashford Avenue
Ardsley, New York 10502
(914) 693-1550
Fax (914) 693-3706
www.ardsleyvillage.com

Village Manager
GEORGE F. CALVI

Village Treasurer
MARION DE MAIO

Village Clerk
Asst. Village Manager
DEBBIE HENNEBERRY

APPROVAL OF A FRANCHISE AGREEMENT WITH VERIZON NEW YORK, INC. TO PROVIDE CABLE TELEVISION SERVICES WITHIN THE VILLAGE OF ARDSLEY

Whereas, the Village of Ardsley (the "Village") is a "franchising authority" in accordance with Title VI of the Communications Act of 1934 (the "Communications Act"), and is authorized to grant one or more cable television franchises pursuant to Article 11 of the New York State Public Service Law (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 Laws 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 July 21, 2006 (the "Verizon Application"), which the Village has had an opportunity to thoroughly review; and

Whereas, negotiations between the Village and Verizon have resulted in a proposed agreement entitled "Cable Franchise Agreement by and between the Village of Ardsley and Verizon New York Inc.", which proposed agreement was filed with the Village on July 21, 2006 ("Verizon Franchise Agreement"); and

Whereas, on August 7, 2006, at a regularly scheduled meeting of the Village Board of Trustees (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 franchisee, 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 public hearing was continued to the regularly scheduled meetings of the Village Board held on September 5, 2006, September 18, 2006, October 3, 2006, October 16, 2006 and November 6, 2006; 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 Board 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 finding, and alternative determination with respect to the environmental impact of the proposed Verizon Franchise Agreement:

- a. 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 serve 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 pre-determined that adoption of the proposed Franchise Agreement will not result in a significant impact on the environment, and no further action is required relative to this matter under SEQRA.
- c. That notwithstanding that the Village Board's finding that the grant of a Cable Television Franchise is a Type II action not subject to the requirements of SEQRA, the Village Board is in possession of all information reasonably necessary to make the determination as to the environmental significance of the proposed Verizon Franchise Agreement; and be it further

Resolved, that the Village approves the character of Verizon; and be it further

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

Resolved, that the Village 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 concludes that Verizon will meet statutory and regulatory non-discrimination requirements; and be it further

Resolved, that the Village concludes, based on the presentation by Verizon, that the cable service offered by Verizon will include competitive offerings with its existing competition; and be it further

Resolved, that the Village concludes that although the terms of the proposed Verizon Franchise Agreement are not identical to those of the existing franchise agreement with Cablevision, that the terms of both agreements are reasonably comparable in their totality and contain no economic or regulatory 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 subjects either franchise to any unfair competitive disadvantage; and be it further;

Resolved, that the Village 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 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 proposed Verizon Franchise Agreement is hereby approved, and the Village Mayor is hereby authorized and directed to execute it and any other documents necessary to effectuate the granting of the franchise of behalf of the Village.

Certification

The above resolution was adopted by the Board
of Trustees of the Village of Ardsley on
November 6, 2006

Debbie Henneberry *DH*
Village Clerk

ATTACHMENT C

Village of Ardsley

Mayor
JAY S. LEDN

Trustees
LARRY J. NARDECCHIA, JR. - Deputy Mayor
MICHAEL J. KOLESAR
GARY J. MALONE
PETER R. PORCINO



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www.ardsleyvillage.com

Village Manager
GEORGE F. CALVI

Village Treasurer
MARION DE MAIO

Village Clerk
Asst. Village Manager
DEBBIE HENNEBERRY

NOTICE OF PUBLIC HEARING VILLAGE OF ARDSLEY

Please take Notice that a public hearing will be held by the Board of Trustees of the Village of Ardsley on August 7, 2006 at 9:00 PM at Ardsley Village Hall, 507 Ashford Avenue, concerning the application of Verizon New York Inc. for an initial cable television franchise. At such time and place, all persons interested in the subject matter of the application shall be given opportunity to participate and be heard concerning the same. Copies of the aforesaid application are available for public review during regular business hours at the Office of the Village Clerk, Village of Ardsley, 507 Ashford Avenue.

Debbie Henneberry
Village Clerk
Dated: July 21, 2006

Affidavit of Publication

STATE OF NEW YORK }
County of Westchester } USA

KATHLEEN D. PIERPONT being
duly sworn says *(s)he is Principal Clerk of

Enterprise

a newspaper published in the Village of
Hastings-on-Hudson, County of Westchester,
and State of New York, and that a notice of which the
annexed printed notice is a copy, has been published in

Enterprise 1 times, once
each week for one successive weeks,
that such publication was made in the issues of:

July 21, 2006

Kathleen D. Pierpont
Principal Clerk

Sworn before me this 20th day
of JULY, 2006

Andrea Hegarty
Notary Public

ANDREA HEGARTY
NOTARY PUBLIC STATE OF NEW YORK
NO: 6186800000
QUALIFIED IN WESTCHESTER COUNTY
TERM EXPIRES APRIL 9, 2007

NOTICE OF PUBLIC HEARING
VILLAGE OF ARDLEY

These said Article and a public hearing will be held by the Board of Trustees of the Village of Ardley on August 7, 2006 at 9:00 PM at Ardley Village Hall, 807 Ardley Avenue, concerning the application of Verizon New York Inc. for an initial cable television franchise. At such time and place all persons interested in the subject matter of the application shall be given opportunity to participate and be heard concerning the same. Copies of the aforesaid application are available for public review during regular business hours at the Office of the Village Clerk, Village of Ardley, 807 Ardley Avenue.

DeAnn Hamberry
Village Clerk

Dated July 14, 2006
A/P

ATTACHMENT D

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

1. 7/21/06 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village Clerk, Debbie Henneberry, enclosing Verizon's application for a cable television franchise and Verizon's proposed franchise agreement
2. 7/24/06 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village Attorney, Robert Ponzini, regarding Short Environmental Assessment Form
3. 7/28/06 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village officials regarding the August 7 public hearing and Cablevision's anticipated claims
4. 8/2/06 Correspondence from Verizon's Senior Vice President, State Public Policy and Government Affairs - NY/CT, Monica Azare, to Village Mayor, Jay Leon, regarding the August 7 public hearing and enclosing an information sheet outlining the Verizon FiOS TV service
5. 8/11/06 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village Attorney, Robert Ponzini, regarding continuation of hearing
6. 10/4/06 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village officials, enclosing revised franchise agreement and blackline comparison
7. 11/1/06 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village officials, enclosing revised franchise agreement and blackline comparison
8. 11/2/06 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village officials, enclosing revised franchise agreement and blackline comparison
9. 11/6/06 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village officials, enclosing revised franchise agreement and blackline comparison
10. 11/6/06 Correspondence from Verizon's outside counsel, Pamela Goldstein of McGuireWoods LLP, to Village officials, enclosing revised franchise agreement

Tab 1

McGuireWoods LLP
1345 Avenue of the Americas
New York, NY 10105-0106
Phone: 212.548.2100
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Pamela N. Goldstein
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BY HAND DELIVERY

July 21, 2006

Ms. Debbie Henneberry
Village Clerk/Deputy Village Manager
Village of Ardsley
507 Ashford Avenue
Ardsley, New York 10502

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

Dear Ms. Henneberry:

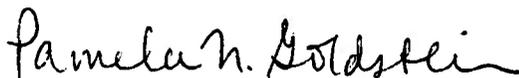
Pursuant to the requirements of 16 N.Y.C.R.R. Section 894.5, enclosed please find the application of Verizon New York Inc. to the Village of Ardsley for a cable television franchise.

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

Please contact Mac Kerbey at (617) 628-3436 or me at (212) 548-2136 should you have any questions.

Best regards.

Very truly yours,



Pamela N. Goldstein

Enclosure

cc: Robert J. Ponzini, Esq.
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 Ardsley ("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 93% 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); and (10) Village of Lynbrook (Nassau 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; and (7) Oyster Bay - June 23, 2006.

Furthermore, other subsidiaries of Verizon Communications Inc. were awarded cable television franchises by the following franchising authorities:

California:	City of Beaumont; City of Murietta; Town of Apple Valley; City of Hermosa Beach; City of Lake Elsinore; City of Temecula; City of Manhattan Beach; City of Perris; City of Camarillo
Delaware:	Town of Bellefonte; Town of Odessa; City of Delaware; Town of Townsend; City of Newark
Florida:	City of Temple Terrace; Manatee County; Hillsborough County; City of Bradenton; Pasco County; City of Tampa; City of Oldsmar; Sarasota County
Maryland:	Howard County; City of Bowie; City of Laurel; Anne Arundel County
Massachusetts:	City of Woburn; Town of Reading; Town of Lynnfield; Town of Wakefield; Town of Hamilton; Town of Wenham; Town of Tewksbury; Town of Winchester; Town of Burlington; Town of North Reading; Town of Stoneham
Pennsylvania:	Hulmeville Borough; Valley Township; Schwenksville Borough; East Marlborough Township; Worcester Township; Modena Borough; Lansdale Borough; Perkiomen Township;

Texas: Hatfield Township; West Goshen Township; Westtown Township; Lower Frederick Township; Uwchlan Township; Colledgeville Borough; Skippack Township; Lower Gwynedd Township; Thornbury Township; West Chester Township; City of Keller; City of Westlake; City of Sachse; City of Wylie; Public Utility Commission of Texas – State-Issued Certificate of Franchise Authority for all or portions of the following 21 municipalities: Allen; Carrollton; Colleyville; Coppell; Denton (City); Double Oak; Flower Mound; Ft. Worth; Garland; Grapevine; Hebron; Highland Village; Irving; Lewisville; Lucas; Murphy; Parker; Plano; Rowlett; Southlake; and St. Paul (*See Public Utility Commission of Texas Notice of Approval regarding Project No. 31817 dated October 21, 2005*); Collin County; Dallas County; Denton County; Tarrant County

Virginia: Quantico Marine Corps Base; Town of Herndon; Fairfax County; City of Fairfax; Fort Belvoir Army Base; City of Falls Church; Town of Dumfries; Prince William County; Arlington County; Henrico County; Loudon County; Town of Leesburg

- (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.

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 three million homes with FTTP in sixteen states by the end of 2005, and the Company has announced that it intends to pass an additional three million homes in 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:

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

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

Product Offers

For residential customers, Verizon will initially offer Broadcast Television, High Definition TV (HDTV), Digital Video Recorders (DVR), Interactive Programming Guide (IPG) and Pay Per View (PPV) Movies and Events. The Broadcast Television offering will consist of both analog and digital channels. The analog tier will be carried "in the clear" (i.e. will not require the use of a set-top-box (STB) for receipt of service) and will include local, educational/government (EG) channels and select cable channels. The digital channel line-up will duplicate the analog line-up (so called "dual carry") and will include 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. For digital tiers, a STB will be required for receipt of service. Customers will be charged a monthly recurring fee for each box 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. Verizon will notify the Municipality of the final channel line-up prior to service offering.

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: Analog

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.

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Connection Method: Digital - New Install

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

This process will be followed for any boxes installed.

Connection Method: Digital - Set Top Box

When a set top box is installed the technician will call the service center at which point the digital 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: Digital - PPV

Customers must have at least one set top box to have access to the service. The customer 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.

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

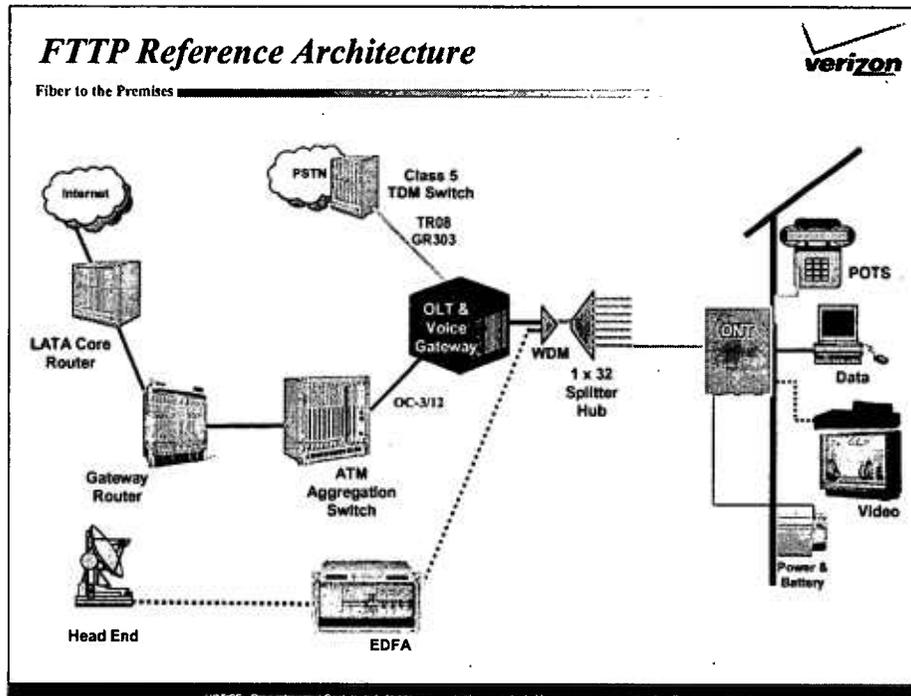
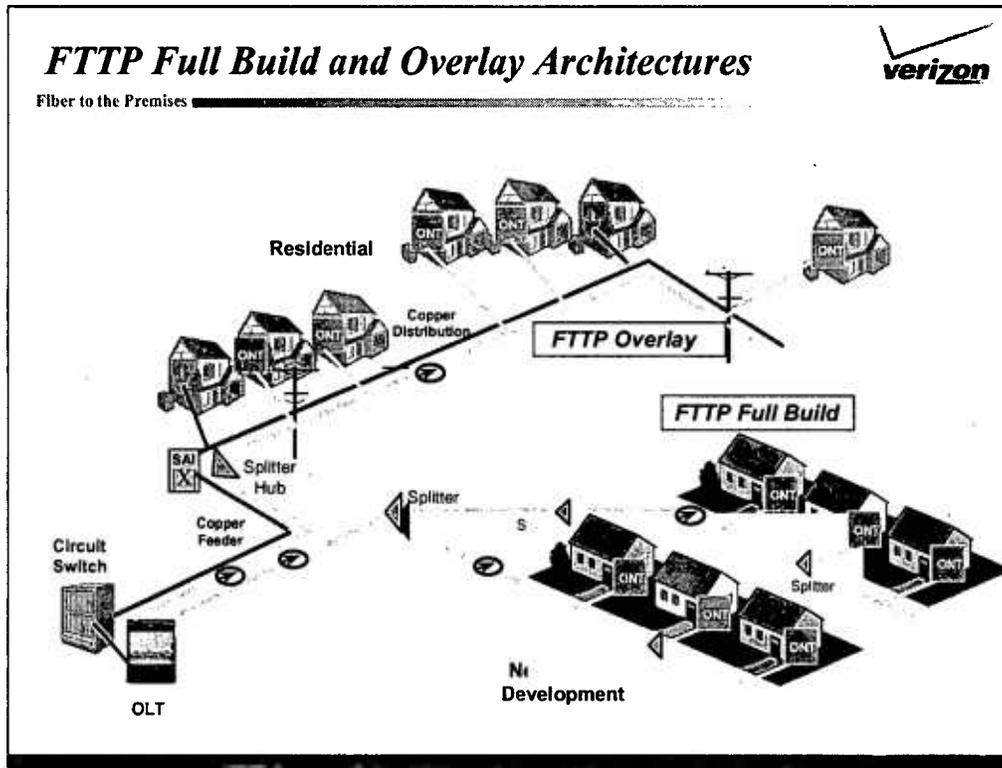


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Figure 2-FTTP Full Build and Overlay Architectures



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, education, 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 (STB).

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, education, & 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. Finally, based on Verizon service tiering requirements to support an analog tier, a certain subset of channels shall be converted from digital to analog signals at the VHO (or kept in analog format if local or PEG).

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.

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Metro Area Transport

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

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

The Video Serving Office (VSO) is a location within the central office containing FTTP equipment. The VSO that will serve the Village of Ardsley is located in Dobbs Ferry, New York. If technically feasible or otherwise appropriate, PEG insertion may occur at this location 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.

It is expected that, in many cases, standard home wiring practices, using coaxial cables, will distribute the signal to cable ready televisions (for analog-only subscribers) and to STBs for digital subscribers.

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LEGAL AUTHORITY TO CONSTRUCT FIBER TO THE PREMISES

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

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

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

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

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

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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
VERIZON NEW YORK INC.
APPLICATION FOR A CABLE TELEVISION FRANCHISE
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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	UPN — WWOR-TV 9
10	WLNY-TV 55
11	WB — WPIX-TV 11
12	Telemundo — WNUJ-TV 47
13	PBS — WNET-TV 13
18	WMBC-TV 63
20	PBS — WNJN-TV 50
21	PBS — WLIV-TV 21
23	WFTY-TV 67
25	PBS — WNYE-TV 25
29	PBS — WFME-TV 66
31	IND — WPXN-TV 31
38	Local Programming
41	Univision — WXTV-TV 41
47	TV Guide

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
67	SportsNet NY
68	Speed Channel

News & Information	
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

Lifestyle	
90	Discovery Channel
91	National Geographic Channel
92	Science Channel
93	Discovery Times
94	Pentagon Channel
95	Military Channel
96	Military 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
122	Shop at Home
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

Culture	
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

Music	
170	MTV
171	MTV2
173	MTV Jams
174	MTV Hits
175	VH1
176	VH1 Classic
177	VH1 Soul
179	BET J
180	GMT
181	VH1 Country
182	Great American Country
183	Gospel Music Channel
184	BET Gospel
185	Soundtrack Channel

Movies	
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

People & Culture	
230	BET
231	TV One
232	Black Family Channel
233	MTV Español
234	Galavisión
235	Mun2
236	Si TV
237	AZN Television

Religion	
240	EWTN
241	INSP
242	I-Life
243	Church
244	JCTV

Sports	
300	Fox College Sports — Atlantic
301	Fox College Sports — Central
302	Fox College Sports — Pacific
303	Tennis Channel
304	NFL Network
307	Outdoor Channel
308	The Sportsman Channel
311	Fox Sports en Español
312	Fox Soccer Channel
313	Go!TV
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
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 WAMI

Movies	
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	Q Television Network

*A Spanish-language Secondary Audio Program (SAP) is available for selection.
 **Subscription to corresponding premium channels and packages required.
 FiOS TV is frequently changing its channel offerings. Please call 1-800-293-9139 for our latest published channel lineup.

Verizon FiOS TV – New York Area Channel Lineup

Spanish Language

En Español**

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

International Premiums**

- 480 SBTN (Vietnamese)
- 481 CCTV-4 (Mandarin Chinese)
- 482 CTI — Zhong Tian Channel (Chinese)
- 483 TV Japan
- 484 MBC (Korean)
- 485 The Filipino Channel
- 486 TV Asia
- 487 ART (Arabic)
- 488 RAI (Italian)
- 489 TV 5 (French)
- 491 Rang A Rang (Farsi)
- 492 RTN Russian
- 493 Channel 1 Russian
- 496 Bridges TV
- 498 MTV Chi
- 499 MTV Desi

Entertainment

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

Sports

- 508 ESPN Deportes
- 512 SportsNet NY
- 513 Fox Sports en Español
- 514 Fox Soccer Channel
- 516 Go!TV

News

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

Information

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

Women

- 537 Lifetime
- 538 Lifetime Movie Network

Shopping

- 540 QVC
- 541 HSN
- 542 Shop at Home
- 543 Shop NBC

Home & Leisure

- 545 Discovery Health
- 549 Infinito
- 550 Food Network
- 551 HGTV (Home & Garden Television)
- 552 Travel Channel

Pop Culture

- 555 E! Entertainment Television
- 556 A&E
- 557 SI TV
- 558 Mun2
- 559 Comedy Central
- 560 Sci-Fi Channel

Music

- 562 MTV Español
- 563 MTV2
- 564 Telehit
- 565 VH Uno
- 566 CMT

Movies

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

Family

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

Children

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

Religion

- 588 TBN Entace
- 589 EWTN Español

Digital Music

- 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

Digital Music

- 609 Metal
- 610 Rock
- 611 Arena Rock
- 612 Classic Rock
- 613 Alternative
- 614 Retro-Active
- 615 Electronica
- 616 Dance
- 617 Adult Alternative
- 618 Soft Rock
- 619 Hit List
- 620 Party Favorites
- 621 90s
- 622 80s
- 623 70s
- 624 Solid Gold Oldies
- 625 Singers & Standards
- 626 Big Band & Swing
- 627 Easy Listening
- 628 Smooth Jazz
- 629 Jazz
- 630 Blues
- 631 Reggae
- 632 Soundscapes
- 633 Classical Masterpieces
- 634 Opera
- 635 Light Classical
- 636 Show Tunes
- 637 Contemporary Christian
- 638 Gospel
- 639 Radio Disney
- 640 Sounds of the Seasons
- 641 Música Urbana
- 642 Salsa y Merengue
- 643 Rock en Español
- 644 Pop Latino
- 645 Mexicana
- 646 Americana

701 TVN Events

HD Broadcast

- 801 WB — WPIX
- 802 CBS — WCBS
- 803 PBS — WNET
- 804 NBC — WNBC
- 805 FOX — WNYW
- 807 ABC — WABC
- 809 UPN — WWOR

HD National**

- 810 TNT-HD
- 811 ESPN HD
- 812 ESPN 2 HD
- 817 HD Net
- 818 HD Net Movies
- 819 Universal HD
- 820 Discovery HD
- 821 Wealth TV HD
- 822 National Geographic Channel HD
- 823 MTV-HD

HD Premium**

- 814 NFL Network HD
- 830 HBO HD
- 831 Cinemax HD
- 832 Showtime HD
- 833 TMC HD
- 834 Starz HD

Local Plus

- 850 NBC Weather Plus

VIDEO ON DEMAND**

On Demand Access Menu

Kids FREE

ALL FREE

- Home & Leisure
- Info & Education
- Kids
- Movies
- Music
- News
- Pop Culture
- Shopping
- Sports

Movies

- New Movies
- New by Category
- All Movies
- All Movies by Category
- In Theaters
- En Español

Subscriptions

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

Adult

- Events
- Hustler
- Spice
- TEN
- Playboy Subscribers

FIOS® TV Help

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

**Subscription to corresponding premium channels and packages required.

Programming services offered within each package are subject to change, and not all programming services will be available at all times. Blackout restrictions also apply.

- Lifestyle
- Premiums
- Arts & Entertainment
- Sports
- Local Plus
- News & Information
- Digital Music
- PPV
- HD
- VOD



We never stop working for you.

EXHIBIT 3
VERIZON NEW YORK INC.
APPLICATION FOR A CABLE TELEVISION FRANCHISE
VILLAGE OF ARDSLEY, NEW YORK

Verizon FiOS TV

Rates & Packages

Customer
Service

1-888-553-1555



Rates &
Packages



We never stop working for you.

VEFOS50356 10/05

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We never stop working for you.

Refer to the Channel Lineup for a complete listing of the channels included in each package.
 *First choice your service. Then add it to your 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
Basic*	15-35	\$12.95
Digital Service (Requires Set Top Box (STB) and Router ¹)		
Expanded Basic*	160 - Basic	\$39.95
La Conexión*	115 - Basic	\$32.95

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

Package* (Requires STB)	Number of Channels	Monthly Price
Sports Package	15	\$5.95
Movie Package	41	\$11.95
Sports/Movie Package Combination	69	\$14.95
Spanish Language Package	25	\$11.95

Premium Channels* (Requires STB)	Number of Channels	Monthly Price
HBO*	14	\$14.95
Cinemax*	12	\$14.95
HBO/Cinemax Combination	26	\$24.95
Playboy TV/Playboy TV en Español	2	\$14.95

International Premium* (Requires STB)	Number of Channels	Monthly Price
International Premium Channels	15	Individually Priced

Video On Demand (VOD) and Pay Per View (PPV) (Requires STB)	Price
On Demand Movies	
New Releases	\$3.95
Library	\$2.95
On Demand Subscriptions	
WWE	\$7.95/mo.
On Demand Adult	\$11.95
PPV Movies	\$3.95
PPV Events	Varies
PPV Sports	Varies

Save \$5 per month when qualifying voice or data services are bundled with FIOS TV Digital Service.

¹In order to be eligible for the Movie Package or Sports Package, Expanded Basic or La Conexión is required. The Spanish Language Package may be added to Basic service, but requires a Set Top Box for service. The addition of a Set Top Box with Basic service provides access to Video on Demand and Pay Per View, as well as the ability to order Premium Channels and International Premiums.

²Router provided will be a new or fully inspected, tested and warranted return unit. Its service is cancelled within the first 12 months; router must be returned to \$49.99 equipment fee applies. If you maintain service for twelve (12) consecutive months, ownership of the router shall transfer to you, after which 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.

³Expanded Basic includes all Basic channels, additional all-digital programming, digital music channels and access to Pay Per View and Video on Demand (VOD).

⁴La Conexión includes all Basic 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.

Standard Definition	\$3.05
High Definition (includes HDTV channels)	\$9.95
Digital Video Recorder (includes HDTV channels)	\$12.95

Outlet Installation	Existing Circuitry
Existing Outlet Hookup (up to 3)	\$50.00
Additional Outlet/Set Top Box Hookup (existing outlet)	\$19.95
New Outlet Installation (per outlet)	\$54.95
Outlet Relocation	\$54.95

Subscription & Installation Charges	Customer Service
Set Top Box Addition or Upgrade/Downgrade	\$24.95
Premises Visit*	\$50.00
New Outlet Installation (per outlet)	\$54.95
Outlet Relocation (per outlet)	\$54.95
Setup of TV Equipment (new TV with existing STB)	\$50.00
Disconnect of Set Top Box*	\$24.95 + \$5.00/STB
Downgrade of Service from Digital to Analog	\$50.00 + \$5.00/STB
FIOS TV Service Disconnect	No Charge
FIOS TV Service Reconnect (up to 3 outlets)*	\$50.00

Other Services and Charges	One-Time Charges
Seasonal Service Suspension (charged at initiation, 2-6 months) ¹⁰	\$24.95
Replacement Remote	\$5.00 + Shipping & Handling
Unreturned/Damaged Receiver — Standard Definition	\$240.00
Unreturned/Damaged Receiver — High Definition	\$550.00
Unreturned/Damaged Receiver — Digital Video Recorder (DVR)	\$550.00

*Expanded Basic or La Conexión required for purchase of Movie Package or Sports Package. The Spanish Language Package may be added to Basic service, 30-day minimum billing period required for all digital packages.

¹⁰Subscription/Video on Demand is included with all Premium Channels at no extra charge (where applicable), 30-day minimum billing period required for all Premium Channels and International Premiums.

¹¹A premises visit charge is assessed when relocating or installing new outlets, or when a technician installation is required to set up a new or additional TV with an existing FIOS TV STB. A premises visit charge is not assessed when adding new equipment/programming or adding or disconnecting STB receivers.

¹²The STB disconnect charge is assessed only when the customer maintains at least one FIOS TV STB. If all STB receivers are disconnected, the Service disconnect charge applies.

¹³The receiver fee applies when installing service after a service disconnect.

¹⁴Seasonal service suspension requires a minimum suspension of two months and a maximum suspension of six months.

Programming services offered with each package are subject to change, and the number of channels within each package are approximations. Not all programming services will be available at all times. All stated 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 the FIOS TV Terms of Service is necessary 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. ©2005 Verizon. All Rights Reserved.

Cable Franchise Agreement
by and between
the Village of Ardsley
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

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Ardsley, 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 found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the character and 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 determined that the Franchise complies with the provisions of the Cable Law and with NY PSC's franchise standards, and that 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*: The tier of Cable Service which includes, at a minimum, the retransmission of all local television broadcast signals provided to any Subscriber, any PEG Channels required by this Franchise or NY PSC rules, and any additional video programming signals as determined by Franchisee.

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 required by this Agreement and Title 16, Chapter VIII, Section 894.5, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, to be designated by the Franchisee for noncommercial use 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 that directly or indirectly results in Franchisee's non-compliance with, or delay in the performance of, any obligation hereunder. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays resulting from unaffiliated utility providers' failure to service, monitor or maintain 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.

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

1.15. *Government Access Channel*: An Access Channel required by this Agreement and Title 16, Chapter VIII, Section 894.5, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, to be designated by the Franchisee for noncommercial use of the LFA.

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

Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; and (iv) 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.

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

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 Ardsley, 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 required by this Agreement and Title 16, Chapter VIII, Section 895.4, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, to be designated by the Franchisee for noncommercial use 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 to this Agreement.

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

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

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

1.31. *Transfer of the Franchise:*

1.31.1. Any transaction in which:

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

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

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

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

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

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

2.2. *The FTTP Network:* Notwithstanding that, upon delivery of Cable Service, Franchisee's mixed-use facilities become subject to the NY PSC's minimum franchise standards and the LFA's police power, the parties acknowledge that the LFA is not granted, as a consequence thereof, any new, additional or broader authority over the construction, placement and operation of Franchisee's mixed-use facilities.

2.3. *Term:* This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise.

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

2.5. *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable lawful provisions of federal law and state law and FCC and NY PSC rules, regulations, standards and orders, as amended from time to time, including, but not limited to, the Communications Act.

2.6. *No Waiver:*

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

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

2.7. *Construction of Agreement:*

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

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

2.7.3. The LFA and the Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

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 and not materially in conflict with applicable federal and state laws, rules, regulations and orders, and this Agreement.

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

2.10. *Restoration of Subscriber Premises:* The Franchisee shall ensure that Subscriber 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 developments or buildings that 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 dwelling unit 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. If, as a result of new construction, an area within the Service Area meets the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, then 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:*

3.2.1. *Availability of Cable Service Generally:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such costs shall be submitted to said Subscriber in writing, before installation is begun.

3.2.2. *No Discrimination in the Availability of Cable Service:* Franchisee shall not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides.

3.3. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public library and educational institution chartered or licensed by the New York State Department of Education or Board of Regents, and such other buildings used for municipal purposes as designated initially by the LFA in Exhibit A to this Agreement ("Exhibit A") and, thereafter, during the Franchise term, as designated in writing upon the earlier to occur of (a) thirty (30) business days prior written notice to Franchisee or (b) approval of any amendment to Exhibit A in accordance with NY PSC rules; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such 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:* 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 Cable 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 Cable 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 the New York EAS Plan, as amended from time to time, 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 one (1) full time, dedicated Public Access Channel, one (1) full-time, dedicated Educational Access Channel, and one (1) full-time, dedicated Government Access Channel (each, individually, a "PEG Channel" and, collectively, "PEG Channels").

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

Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

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

5.2. *PEG Access Interconnection:*

5.2.1. LFA shall designate in its sole discretion not more than three (3) sites within the Franchise Area for the interconnection of PEG access facilities with the Cable System (each, a "PEG Access Interconnection Site").

5.2.2. Franchisee shall, without charge to the LFA, provide links between its video channel aggregation point and each PEG Access Interconnection Site in order to permit the signals to be correctly routed from the PEG Access Interconnection Sites to the appropriate PEG access channel for distribution to Subscribers.

5.2.3. The LFA shall provide to Franchisee at each PEG Access Interconnection Site a suitable video signal for each PEG Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and other facilities and such cooperation of the LFA as is reasonably necessary for Franchisee to fulfill such obligations.

5.2.4. Such upstream transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of PEG signals to Subscribers.

5.2.5. If Franchisee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment and facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.3 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

5.3. *Backup Facilities and Equipment:* Subject to Section 5.2, Franchisee shall design, build, and maintain all PEG upstream feeds, connection, and distribution facilities in order that such feeds function as reliably as Franchisee's Cable System as a whole within the Franchise Area, and are no more likely to fail than is Franchisee's Cable System as a whole within the Franchise Area.

5.4. *PEG Grants:*

5.4.1. Franchisee shall provide to the LFA financial contributions for use in support of the production of local PEG programming. The financial contributions shall consist of the following two grants: (a) a one-time grant in the amount of TWENTY-FOUR THOUSAND SEVEN HUNDRED NINETY THREE DOLLARS (\$24,793.00) (the "Initial PEG Grant"); and (b) an annual grant in the amount of FIFTY-SEVEN CENTS (\$.57) per month, per Subscriber to Franchisee's Basic Service tier in the Service Area (the "Annual PEG Grant").

5.4.2. The Initial PEG Grant shall become due and payable sixty (60) days after the Effective Date. In the event that the LFA does not require all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions, then Franchisee shall offset any Franchise Fees due to the LFA hereunder by any greater amount of the Initial PEG Grant that has been paid to the LFA.

5.4.3. The Annual PEG Grant shall become due and payable on the date (the "First Annual PEG Grant Payment Date") that the earlier of the following events occurs: either (i) Franchisee has recovered from Subscribers pursuant to Section 5.6 an amount equal to the full amount of the Initial PEG Grant; or (ii) the third anniversary of the Effective Date. The amount of the first Annual PEG Grant shall be determined by calculating the total number of Subscribers from the Effective Date to the First Annual PEG Grant Payment Date multiplied by the number of months elapsed from the Effective Date to the First Annual PEG Grant Payment Date. After the First Annual PEG Grant Payment Date, Annual PEG Grant payments shall be due and payable on each anniversary of the Effective Date until the Franchise expires.

5.4.4. For purposes of determining the First Annual PEG Grant Payment Date, Franchisee's rate of recovery from Subscribers to its Basic Service Tier in the Service Area shall be no less than FIFTY-SEVEN CENTS (\$.57) per Subscriber per month, without regard to Franchisee's right to pass through such amount to Subscribers in accordance with Section 5.6.

5.4.5. Each Annual PEG Grant payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail the Subscriber information upon which it is based, including, but not limited to, the number of Subscribers to Franchisee's Basic Service tier in the Service Area for each period for which an Annual PEG Grant Payment was calculated and the amount of such payment attributable to each such period.

5.4.6. The Initial PEG Grant and the Annual 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.

5.4.7. Franchisee shall provide to the LFA an additional one-time grant in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (2,500.00) (the "PEG Channel Assignment Grant"). The PEG Channel Assignment Grant shall be payable to the LFA solely in the event that Franchisee makes a PEG Channel assignment change pursuant to Subsection 5.1.2.

5.4.8. Notwithstanding the foregoing Subsections 5.4.3 and 5.4.7, no Annual PEG Grant or PEG Channel Assignment Grant shall be payable by Franchisee unless and until the LFA requires all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions.

5.4.9. The grants identified above in this Section 5.4, specifically, the Initial PEG Grant, the Annual PEG Grant and the PEG Channel Assignment Grant shall be collectively referred to as the "PEG Grants."

5.4.10. The LFA shall provide Franchisee with an annual report setting forth a summary of all expenditures for PEG access equipment and facilities from the PEG Grants paid to the LFA and the amounts, if any, reserved for future capital expenditures for such purposes.

5.5. *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.

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

6. FRANCHISE FEES

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of five percent (5%) of annual Gross Revenue (the "Franchise Fee"). In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any

payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were made.

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

6.3. *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be three (3) years from the date on which payment by Franchisee is due.

6.4. *Bundled Services:* If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate any discount associated with purchasing bundled services for the purposes of evading the Franchise Fee payments under this Franchise. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

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 location within the state or at another mutually agreed upon site. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) 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 three (3) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

7.2.2. Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

7.2.3. Records of service calls for repair and maintenance for a period of three (3) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

7.2.4. Records of installation/reconnection and requests for service extension for a period of three (3) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

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

7.3. *System-Wide Statistics:* Subject to the requirements of Section 895.1(t) of the NY PSC rule and regulations, any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. **INSURANCE AND INDEMNIFICATION**

8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit for property damage and bodily injury per occurrence and five million dollars (\$5,000,000) in the aggregate. 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: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) per employee limit; five hundred thousand dollars (\$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. Such additional insured requirement shall be indicated on the original Certificates of Insurance.

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. Franchisee shall deliver to LFA original Certificates of Insurance showing evidence of all required coverages under this Agreement on or before the Effective Date and providing for at least thirty (30) days prior written notice to be given to LFA of cancellation, intent not to renew or any adverse material change.

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees or infringement of patent rights

arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels as provided in Section 5.5, provided that the LFA shall give Franchisee written notice of the LFA's request for indemnification within ten (10) days of receipt of a claim or action pursuant to this Subsection. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

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

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

9. TRANSFER OF FRANCHISE

9.1. *LFA Consent Required:* 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.

9.2. *LFA Consent Not Required for Certain Transactions:* No prior consent of the LFA shall be required 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.

9.3. *Each Transfer of the Franchise Subject to this Article:* Each Transfer of the Franchise shall be governed by and comply with the provisions of this Article 9.

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 12.12 below, the Cable Law, and Section 626 of the Communications Act, 47 U.S.C. § 546, as amended.

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

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

10.4. *Consistent Terms:* Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law.

11. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

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

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

11.3. *Public Hearing:* The LFA shall schedule a public hearing if the LFA seeks to continue its investigation into the alleged noncompliance (i) if Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (ii) if Franchisee has not remedied the alleged noncompliance within sixty (60) days or the date

projected pursuant to Section 11.2(iii) above. The LFA shall provide Franchisee at least sixty (60) business days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

11.4. *Enforcement:* Subject to Section 12.12 below and applicable federal and state law, in the event that the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

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

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

11.5.1. At the designated public hearing, Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the LFA, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

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

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

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

12. MISCELLANEOUS PROVISIONS

12.1. *Actions of Parties:* In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

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

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

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

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

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

12.5.1. Notices to Franchisee shall be mailed to:

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

12.5.2. Notices to the LFA shall be mailed to:

Debbie Henneberry
Assistant Village Manager
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

12.5.3. with a copy to:

Robert J. Ponzini, Esq.
Village Attorney
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

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:* Amendments to this Franchise shall be mutually agreed to in writing by the parties.

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. *Modification:* This Franchise shall not be modified except by written instrument executed by both parties.

12.12. *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.

12.13. *NY PSC Approval:* This Franchise and any amendment or modification hereof 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.

12.14. *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.

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

12.16. *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.

12.17. *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.

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

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

12.20. *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.

AGREED TO THIS ____ DAY OF _____, 2006.

LFA:
VILLAGE OF ARDSLEY

By: _____
Title:

FRANCHISEE:
VERIZON NEW YORK INC.

By: _____
Title:

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

Ardsley Public Library
9 American Legion Drive
Ardsley, New York 10502

Community Center
18 Center Street
Ardsley, New York 10502

Ardsley Firehouse
505 Ashford Avenue
Ardsley, New York 10502

Highway Garage
3 Elm Street
Ardsley, New York 10502

Concord Road School
2 Concord Road
Ardsley, New York 10502

Ardsley High School
300 Farm Road
Ardsley, New York 10502

Ardsley Middle School
700 Ashford Avenue
Ardsley, New York 10502

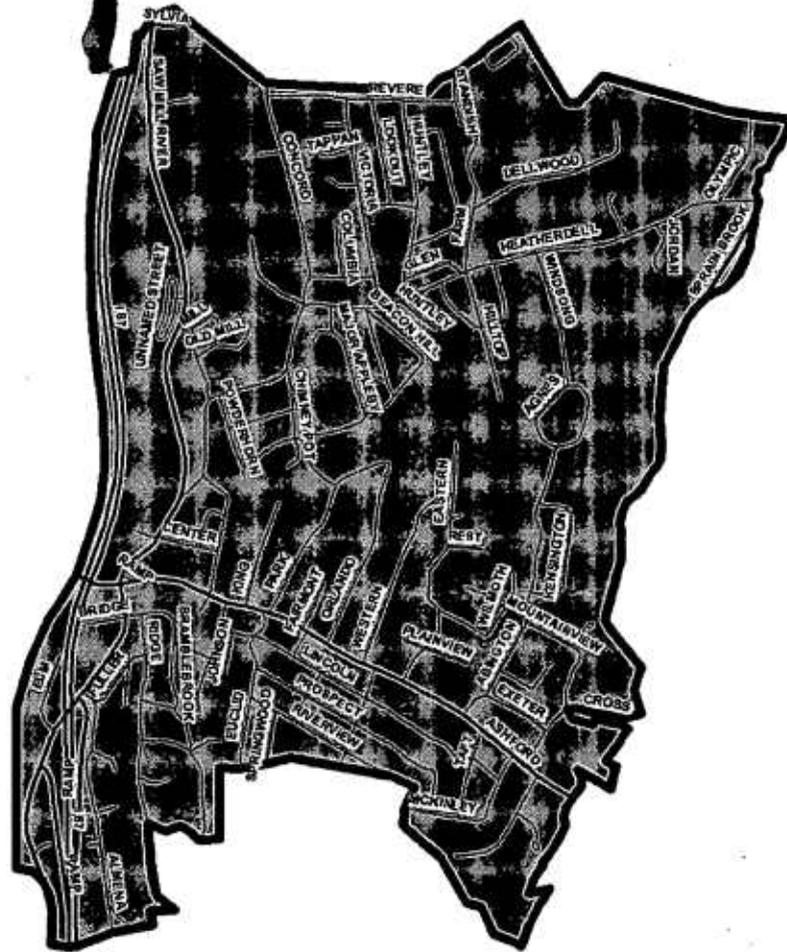
EXHIBIT B

SERVICE AREA

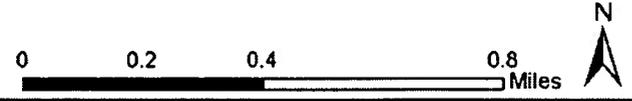
The Service Area shall be the Franchise Area. The construction of the Franchisee's FTTP Network has been substantially completed throughout the Franchise Area subject only to Subsection 3.1.1. and Section 3.2 of the Franchise, and accordingly it is not necessary to provide any additional details concerning the construction and/or deployment time tables and areas within the Service Area. A map of the Service Area is attached hereto.



Map Illustrating Verizon FTTN Build-out in the Village of Ardsley, New York



- Ardsley Village
- Dobbs Ferry - 2004 FTTN



July 2006 - V1

EXHIBIT C

PEG CHANNELS

The Franchisee will transmit PEG programming as provided by the LFA and the public, as directed.

Tab 2

McGuireWoods LLP
1345 Avenue of the Americas
New York, NY 10105-0106
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www.mcguirewoods.com

Pamela N. Goldstein
Direct: 212.548.2136

McGUIREWOODS

pngoldstein@mcguirewoods.com
Direct Fax: 212.548.2173

BY FEDERAL EXPRESS

July 24, 2006

Robert J. Ponzini, Esq.
Village Attorney
Village of Ardsley
Village Hall
507 Ashford Avenue
Ardsley, New York 10502

Re: Verizon New York Inc. Short Environmental Assessment Form

Dear Mr. Ponzini:

As you requested in connection with the application (the "Application") of Verizon New York Inc. ("Verizon") to the Village of Ardsley ("Ardsley" 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.¹ Although further construction may be required in the future to extend FTTP facilities to other customers within the Ardsley 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 involve

¹ 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).

July 24, 2006

Page 2

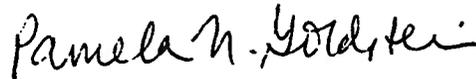
any physical alteration of the environment. Thus, the Village's approval of the Franchise is not subject to SEQRA.²

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.³ Type II actions do not require the submission of an EAF, or indeed any action on the part of the Village pursuant to SEQRA.⁴ 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: Debbie Henneberry, Village Clerk/Assistant Village Manager, Village of Ardsley
Verizon New York Inc.

² 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.

³ 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.").

⁴ 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)

1. APPLICANT/SPONSOR Verizon New York Inc.	2. PROJECT NAME Provision of cable service in Ardsley, NY
3. PROJECT LOCATION: Municipality <u>Village of Ardsley (the "Village")</u> County <u>Westchester County, NY</u>	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) There is no precise location. The project entails the provision of cable service throughout the Village.	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: Cable service will be provided within the territorial limits of the Village, utilizing Fiber to the Premises ("FTTP") facilities. See cover letter.	
7. AMOUNT OF LAND AFFECTED: Initially <u>zero or minimal</u> acres Ultimately <u>zero or minimal</u> acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly No such restrictions are applicable to the Project.	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <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.	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <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.	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: See Item 10 above.	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <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: <u>VERIZON NEW YORK INC</u> Date: <u>2/20</u> , 2006 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

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McGUIREWOODS

pngoldstein@mcguirewoods.com
Direct Fax: 212.548.2173

BY FEDERAL EXPRESS

July 28, 2006

The Honorable Jay Leon, Mayor
The Honorable Larry Nardecchia, Deputy Mayor/Trustee
The Honorable Michael Kolesar, Trustee
The Honorable Gary Malone, Trustee
The Honorable Peter Porcino, Trustee
c/o Debbie Henneberry, Village Clerk/Deputy Village Manager
Village of Ardsley
Village Hall
507 Ashford Avenue
Ardsley, New York 10502

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

Dear Mr. Mayor and Members of the Board of Trustees:

On behalf of Verizon New York Inc. ("Verizon"), thank you for affording Verizon the opportunity to appear before you at the upcoming August 7, 2006 public hearing (the "Public Hearing") regarding its application (the "Application") to the Village of Ardsley ("Ardsley" or the "Village") for a cable television franchise.

INTRODUCTION AND BACKGROUND

The Village and Verizon have worked diligently to introduce the benefits of cable competition to Ardsley residents. The incumbent cable service provider will lobby to protect its pecuniary interest by denying Ardsley residents the ability to choose an alternate cable provider.

The Public Hearing represents the culmination of a multi-year effort on the part of the Village and Verizon to introduce cable competition and its attendant benefits to Ardsley. 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 data services, including video service, to Ardsley residents over a "fiber to the premises" network (the "FTTP Network"). FTTP 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 Ardsley 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. On December 20, 2004, the Village Board of Trustees voted unanimously to expedite the cable franchising process by seeking relief from the New York Public Service Commission (the "NY PSC" or the "Commission") of certain franchising procedures. For more than a year, your negotiator on the Greenburgh Consortium labored industriously with Verizon to reach an agreement that is legally sound, fulfills Ardsley'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 Ardsley 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

Cablevision's franchise with the Village expired on August 31, 2005.¹ Cablevision's current operations in the Village are authorized pursuant its Expired Franchise and the NY PSC's Temporary Operating Authority which was granted despite the objections raised by the Village, along with the Town of Greenburgh, the Village of Hastings-on-Hudson and the Village of Irvington earlier this year. In these objections, the municipalities asserted, among other things, that

"Cablevision's recalcitrance has placed the Municipalities at a distinct disadvantage. By failing to proceed in a fashion that would have permitted timely renewal of their franchises and by attempting to force the Municipalities to agree to unfair terms in order to receive the PEG access payments to which the Municipalities are entitled and which are necessary to continue

¹ "A Franchise Renewal Agreement between the Village of Ardsley, Westchester County, State of New York and UA-Columbia Cablevision of Westchester, Inc. dba TCI Cable of Westchester" (the "Expired Franchise").

PEG access operations, plainly Cablevision has abused the Commission's process of granting Temporary Operating Authority to incumbent system operators."²

Notwithstanding Cablevision's Expired Franchise, 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 definition of "gross revenues" contained in the Verizon Franchise is deficient. Although Verizon maintains the position that Cablevision's arguments are wholly without merit, to assist in your analysis, Verizon respectfully provides the following information in support of the Village's commitment to deliver competition to its residents. This information also 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 recent multiple repudiations of same. Moreover, since Cablevision's franchise has expired, the Verizon Franchise establishes the level playing field standard for the Village.

The NY PSC renumbered and amended cable television rules last year, intending to "reflect a more competitive environment and changes in federal law that occurred in 1984 and 1996."³ 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 (emphasis added). See 16 NYCRR § 895.3. The central question in a level playing field analysis is not whether there is a perceived disparity between the burdens imposed by specific franchise provisions considered in isolation, but whether the burdens on the two franchises, when taken as a whole, are so materially disproportionate as to preclude fair competition between providers. The regulation does not permit 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,

² Case 05-V-0898, "Joint Objections of the Town of Greenburgh, the Village of Ardsley, the Village of Hastings-on-Hudson and the Village of Irvington to the Renewal of the Temporary Operating Authorities of Cablevision Systems Westchester Corp." (February 3, 2006) at 8-9 (the "Joint Objections"). The municipalities expressed their concern about Cablevision's "delaying, imposing unreasonable conditions upon the Municipalities' entitlement to receive PEG access payments in amounts commensurate with their future cable-related needs and interests, and failing to negotiate in good faith." *Id.* at 8.

³ Case 01-V-0381, "Memorandum and Resolution Adopting 16 NYCRR Parts 890 Through 899" (Issued and Effective April 4, 2005) at 1.

“[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.”⁴ (emphasis added).

Cablevision will likely assert that NY PSC regulations contemplate a role for the incumbent cable operator because it is entitled to a level playing field.”⁵ Most significantly, however, the NY PSC has overruled Cablevision’s identical claim by holding on multiple occasions that Verizon’s proposed franchise agreement for various municipalities “does not violate the Commission’s level playing field rule.”⁶ 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.”⁷

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.”⁸

Notwithstanding the foregoing, Cablevision attempts to muddy the waters by conveniently ignoring the NY PSC’s level playing field analyses and conclusions. Cablevision

⁴ *Id.* at 4.

⁵ *See, e.g.*, Transcript of Grand View-on-Hudson Public Hearing on Proposed Verizon Franchise Agreement at 95 (June 19, 2006)

⁶ 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 and Case 05-V-1571, “Order and Certificate of Confirmation” (Issued and Effective February 8, 2006) (the “*South Nyack Order*”) at 13.

⁷ *Id.*

⁸ *Nyack Order* at 13 and *South Nyack Order* at 13. *See also Massapequa Park Order* at 23.

merely tries to couch its objections in a different light so as not to implicate the NY PSC's dispositive determinations on this issue.

Finally, as noted in the Joint Objections, Cablevision began its renewal discussions with the Village well in advance of Verizon approaching the Village in the fall of 2004. Nevertheless, according to the Joint Objections, Cablevision advised the Village and the other objecting municipalities "that they should finalize their franchises with Verizon before proceeding with negotiations on the renewal franchise with Cablevision" and "thereby indicating Cablevision's willingness to proceed with negotiations was dependent upon the Municipalities' first reaching agreement with Verizon."⁹ Subject to your approval, Verizon and the Village have reached that goal, and the Verizon Franchise establishes the level playing field standard for the Village.

LOCAL RIGHT OF WAY AUTHORITY

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

In an attempt to create an appearance of inequality between the Verizon Franchise and its Expired Franchise, 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."¹⁰

In these confirmation orders, the Commission cited its Declaratory Ruling¹¹ 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

⁹ *Id.*

¹⁰ *Nyack Order* at 8 and *South Nyack Order* at 8.

¹¹ Cases 05-M-0520 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*").

governments have been granted broad new authority over the construction, placement and operation of Verizon's mixed-use facilities."¹² Consistent with this regulatory guidance, Section 2.2 of the Verizon Franchise provides:

"The FTTP Network: Notwithstanding that, upon delivery of Cable Service, Franchisee's mixed-use facilities become subject to the NY PSC's minimum franchise standards and the LFA's police power, the parties acknowledge that the LFA is not granted, as a consequence thereof, any new, additional or broader authority over the construction, placement and operation of Franchise's mixed-use facilities."

Cablevision will doubtlessly object to this language, as it has objected to similar language in other municipalities (without success).¹³ 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."¹⁴ (emphasis added)

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 will likely 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

¹² *Nyack Order* at 7-8, *South Nyack Order* at 7-8.

¹³ *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.*"

¹⁴ Case 06-V-0427, "Order and Certificate of Confirmation" (Issued and Effective May 18, 2006) (the "*Hempstead Order*") at 6-7.

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.¹⁵

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."¹⁶

Unlike Cablevision, which has authority to utilize the public rights of way exclusively through its cable franchise, Verizon's construction and maintenance of the FTTP Network is undertaken pursuant to its 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 Verizon noted in its Application, construction of the FTTP Network in the Village is almost complete. Verizon maintains the network routinely. Cablevision's anticipated proposal represents an unseemly, deceitful and unlawful 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.¹⁷ 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.

¹⁵ *Declaratory Ruling* at 20-21.

¹⁶ *Nyack Order* at 8, *South Nyack Order* at 8.

¹⁷ We note further that, unlike the Verizon Franchise which defines the Cable System using the federal definition, Cablevision's Expired Franchise does not contain a "cable system" definition. Instead, Cablevision's Expired Franchise defines a "cable communications system" (or the "system") as "a facility, consisting of antennae, wire, coaxial cable, amplifiers, towers, microwave links, wave guide, optical fibers, optical transmitters and receivers, satellite receive/transmit antennae, and/or other equipment designed and constructed for the purpose of producing, receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electronic, electromechanical, optical, radio frequency, or electrical signals to multiple subscribers within the Village. When used in this Agreement in the context of the subject facilities of the Franchisee, the phrase "the Cable Communications System," or "the Franchisee's Cable Communications System" shall mean that System that is now or hereafter erected and used by the Franchisee for the provision of Cable Service within the Village." *Cablevision's Expired Franchise* § 1.6.

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. Verizon has already constructed its FTTP Network to serve the *entire* Village and has installed 100% of its aerial trunk lines throughout the footprint of the Village. Once the franchise is confirmed by the NY PSC, Verizon will offer cable television service to each Village resident within the built out area. Any 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 has made this commitment to the Village *twice* in the Verizon Franchise – Section 3.2 and Subsection 3.2.2. 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 narrower than Cablevision's description of "force majeure" events.

Verizon's "force majeure" definition is narrower than Cablevision's description of "force majeure" events in its Expired Franchise. Section 43.1 of Cablevision's Expired Franchise states:

"The 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 strikes, acts of God, power outages, or other events beyond its reasonable ability to control. No provision herein is intended to excuse the Franchisee from compliance with any otherwise applicable provisions of the rules and regulations of the NYSCCT."

By contrast, Section 1.12 of the Verizon Franchise narrowly defines "force majeure" as:

An event or events reasonably beyond the ability of Franchisee to *anticipate and control* that directly or indirectly results in Franchisee's non-compliance with, or delay in performance of, any obligation hereunder. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays resulting from unaffiliated utility providers' failure to service, monitor or maintain utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary. (emphasis added)

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

Cablevision may urge the Village to revise the "force majeure" definition by deleting the phrase "or work delays resulting from unaffiliated utility providers' failure to service, monitor or maintain 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, the majority of utility poles in Westchester County are owned by the power company Con Edison ("Con Ed"). If Con Ed fails to service, monitor or maintain its poles, there is a possibility that Verizon may encounter work delays. Second, Verizon is a telecommunications company, not an equipment manufacturer. As the June 2006 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 the sea change in the industry, it may be possible that materials become unavailable from time to time. Moreover, the FTTP Network is *bleeding-edge* technology, so there is likelihood that, as the technology evolves, the industry may experience temporary shortages of materials. 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 events of strike, labor disturbance or lockout, there may be situations where Verizon faces an unavailability of qualified labor to perform the work necessary.

GROSS REVENUES

Verizon's "gross revenues" definition protects the Village in the event of changes in law regarding classification of services.

Verizon's "gross revenues" definition includes a protection regarding future classifications of non-cable services as "cable service." By contrast, the "gross revenues" definition in Cablevision's Expired Franchise contains no similar protection.

Moreover, Cablevision will likely suggest to the Village that the exclusions to "Gross Revenue" in the Verizon Franchise be deleted. Although this list may appear at first glance to be daunting, Verizon is attempting to eliminate any ambiguity by setting forth this exhaustive list of exclusions. By contrast, Cablevision's "gross receipts" definition contains a very limited – and therefore deceptive – range of exclusions: "(i) any taxes on Cable Service which are imposed directly or indirectly on any subscriber thereof by any government unit or agency; (ii) revenues due and owing to the Franchisee which remain unpaid after Franchisee has made reasonable efforts to collect them; (iii) refunds or credits to subscribers by the Franchisee." *Expired Franchise* § 1.15. Cablevision does not specify, however, that it does not pay franchise fees on non-cable services such as data service and telephone service. By contrast, Verizon demonstrates good faith by conspicuously detailing the exclusions from gross revenue.

EVASION OF PERFORMANCE

Neither company can 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 11.6 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." This language is substantially similar to Section 8.4 of Cablevision's Expired Franchise, which provides: "[t]he Franchisee shall not abandon any service or portion thereof required to be provided pursuant to the terms of this Agreement nor cease to operate the System or any portion thereof required to be operated pursuant to the terms of this Agreement without the prior written consent of the Village."

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 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 § 11.4.3:

“Enforcement: Subject to Section 12.12 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 11.4.3.

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 § 11.4.3, 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 recently 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."¹⁸

CONSTRUCTION OF AGREEMENT

The Verizon Franchise is the result of a lengthy, rigorous negotiation.

Cablevision will likely encourage the Village to delete the second sentence of Section 2.7.3 regarding the inapplicability of the doctrine calling for ambiguities to be construed against the drafter of the agreement. The entire Latin expression of this rule is "verba chartarum fortius accipiuntur contra proferentem," which translates into English as "contract terms will be most strongly interpreted against the drafter."

The United States Court of Appeals for the Second Circuit (New York, Connecticut and Vermont) has asserted that "New York applies this rule 'only as a matter of last resort after all aids to construction have been employed without a satisfactory result.'" Albany Savings Bank, FSB v. Halpin, 117 F.3d 669, 674 (2d Cir. 1997) (quoting Herzog v. Williams, 139 Misc. 2d 18, 526 N.Y.S.2d 329, 330 (Just. Ct. 1988); see also Prudential Lines, Inc. v. American Steamship Owners Mutual Protection and Indemnity Association, Inc., 158 F.3d 65, 77 n.6 (2d Cir. 1998); O'Neil v. Retirement Plan for Salaried Employees of RKO General, Inc., 37 F.3d 55, 61 (2d Cir. 1994); Record Club of America, Inc. v. United Artists Records, Inc., 890 F.2d 1264, 1271 (2d Cir. 1989); United States Naval Institute v. Charter Communications, Inc., 875 F.2d 1044, 1050 (2d Cir. 1989); Schering Corp. v. Home Insurance Co., 712 F.2d 4, 10 (2d Cir. 1983). Additionally, the Second Circuit has acknowledged that "a number of courts have recognized that *in cases involving bargained-for contracts, negotiated by sophisticated parties, the underlying adhesion contract rationale for the [contra proferentem] doctrine is inapposite.*" Schering Corp. v. Home Insurance Co., 712 F.2d at 10 (citing Eagle Leasing Corp. v. Hartford Fire Insurance Co., 540 F.2d 1257, 1261 (5th Cir. 1976)) (emphasis added). Another case held "no brightline rules exist in this circuit respecting which factual scenarios are appropriate for the contra proferentem doctrine. Rather, whether or not to apply the doctrine, or instruct a jury on it, is left to the reflection and considered judgment of the trial court." Webb v. Gaff Corp., 936 F. Supp. 1109 (1996).

The Verizon Franchise was rigorously negotiated for a full year as an arms-length transaction. As the Village is well aware, the Greenburgh Consortium has a particular expertise in negotiating and drafting cable television franchise agreements. During the course of negotiations, the Greenburgh Consortium proposed language that was ultimately incorporated into the Verizon Franchise.

The NY PSC *routinely* states in all cable television franchise confirmation orders that

"[t]he proposed franchise agreement contains additional provisions not required by Part 895 of our rules. We approve these provisions

¹⁸ *Hempstead Order* at 6.

to the extent that they are consistent with Article 11 and its regulations. In the event of an ambiguity in any such provision, the provision will be construed in a manner most favorable to the LFA."¹⁹

Additionally, in two recent orders approving the applications of Cablevision and Time Warner for renewal franchises, the NY PSC determined:

"[t]he franchise agreement contains additional provisions not required by Part 895 of the Commission's rules. Our approval of these provisions will be granted to the extent that they pertain to the provision of cable television service and are, and remain, consistent with Article 11, our regulations, policies, and orders and applicable federal statutes and regulations. In the event of an ambiguity in any such provision, or among separate provisions, the provision will be construed in the manner most favorable to the franchisor."²⁰

To support its position that Verizon Franchise § 2.7.3 be revised, Cablevision will likely cite the NY PSC's related language in its orders confirming Verizon's franchises. Cablevision will not further advise that such language is included in the NY PSC's standard approval language and not specific to Verizon Franchise § 2.7.3. The NY PSC *has not* conditioned approval of *any* effective Verizon franchise on striking the second sentence of Section 2.7.3.

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 new § 12.17.1 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 lawful provisions of federal law and state law and FCC and NY PSC rules, regulations, standards and orders, as amended from time to time, including but not limited to the Communications Act." Ardsley 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.

¹⁹ *Id.* at 7-8.

²⁰ Case 06-V-0028, "Order Approving Renewal" (Issued and Effective June 1, 2006) at 2 and Case 02-V-1063, "Order Approving Renewal" (Issued and Effective June 1, 2006) at 3.

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Second, as a competitive market entrant, Verizon will be held to a higher standard by consumers seeking improved customer service. If Verizon's customer service is not exemplary, subscribers will return to the incumbent. At the present time, 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 Ardsley and to offer Ardsley 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 Ardsley residents the benefits of a competitive alternative. The self-serving assertions relate not to the inherent fairness of permitting Verizon to compete head-to-head for video subscribers in Ardsley, 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 Board's approval of its franchise at the Public Hearing and is excited to benefit Village residents through the introduction of cable competition. In the meantime, we remain available to answer any questions that you may have.

Respectfully submitted,



Pamela N. Goldstein

cc: Robert J. Ponzini, Esq., Village Attorney
George Calvi, Village Manager
Debbie Henneberry, Village Clerk/Assistant Village Manager
Verizon New York Inc.

Tab 4



Monica F. Azare
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August 2, 2006

The Honorable Jay Leon, Mayor
Village of Ardsley
507 Ashford Avenue
Ardsley, New York 10502

Dear Mayor Leon:

Verizon is looking forward to the public hearing on August 7, 2006 in the Village of Ardsley 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 Ardsley.

I respect and thank you for the time and effort demanded of you and your trustees to reach this critical point. 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 finalize preparation 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 the Village of Ardsley. I trust that the franchising team has answered all of your questions. Please feel free to contact me at the above number if there is additional information that you need.

I have enclosed an information sheet with this letter that outlines the extraordinary benefits of Verizon FIOS TV that awaits the approval of you and your trustees.

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

Sincerely,

Monica F. Azare

cc: The Honorable Michael Kolesar, Trustee
The Honorable Gary Malone, Trustee
The Honorable Larry Nardecchia, Trustee
The Honorable Peter Porcino, Trustee

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 consumers benefit from competition. In fact, when we rolled out the service in Keller, Texas, our price was so competitive that Charter Communications slashed its Internet access and cable TV prices by 50% for new customers.
- 9 It's state-of-the-art.** Verizon's programming rides over an all-digital fiber-optic network – with the fastest connections available in the industry.
- 8 You get a choice.** Customers want a genuine choice for cable TV services. In a survey of Long Island residents, 93% said they believe that competition leads to lower prices and better service.
- 7 It comes with other great services.** Customers in New York are already surfing the web at some of the fastest speeds available – up to 30 Mbps a second – 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 More HDTV.** There's nearly unlimited high-definition channel capacity on the FiOS TV network. FiOS TV customers today have access to more than 20 HD channels with extraordinary clarity and theater-quality sound.
- 4 It's diverse.** Verizon's FiOS TV offers more channels in more languages than any other provider.
- 3 Lots of channels.** Verizon's channel lineup offers more than 330 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 the incumbent'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.** Verizon offers the most advanced and reliable network in the country. Our employees have carried on the proud tradition of serving New Yorkers 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 which company you use to access the Internet. You should be free to choose your video provider. It's cable choice and competition that benefit you the most.

Cable rates increased less in places where cable operators faced effective competition.

(Source: FCC Report on Cable Industry Prices, Feb 2005)

Delaying video entry by one year would cost New Yorkers \$458M in 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% - only in areas where FiOS TV is available.

(Source: Bank of America Equity Research: Consumer Wireline Services Pricing, Jan 23, 2006)

Please support our campaign to bring true cable TV competition to the residents of New York. Let your voice be heard. Urge your local elected officials to vote "YES" in favor of choice and competition!

For more information, visit:
www.nytvchoice.com



verizon

We never stop working for you.

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 the alternative to cable and satellite you've been waiting for. It's all about simple packages and competitive prices. At \$39.95, FiOS TV Premier delivers an unmatched lineup with more than 200 channels of television and music entertainment. It's an even better value - \$34.95 - 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. These advantages add up to a vast new dimension of bandwidth, speed and power.

More On Demand

With FiOS TV, you have instant access to a library of more than 2,500 of the latest titles; blockbuster movies, kids' shows, sports programs and much more, all at a touch of a button.

More HDTV

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

Superior Video and Audio

You'll experience spectacular picture quality, hyper real color and incredibly flawless sound that satisfy even the most discerning home theater buff.

Dual-tuner DVR

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.

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 like, RAI (Italian), TV5 (French), ART (Arabic), TV Japan (Japanese) you stay connected to the world.

More channels. More choices. That's what Verizon FiOS TV offers you. Take a look at the range of channels available with our Expanded Basic and La Conexión packages. Plus, access a library of On Demand titles whenever you want with our digital service.

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

Scroll through a library of more than 2,400 movies and shows that are waiting for you to watch. Use your remote and the Interactive Programming Guide to browse, then make your selection - it's that easy. Need to pause to get more popcorn? Fast forward to skip the scary part or rewind to see it again? No problem! You can do it all from your remote any time you want, day or night.

Free On Demand

Choose from a selection of over 1,000 titles from sports, home & leisure, music, pop culture and more with our FIOS TV library. Channels include Disney, Discovery, ESPN, Home & Garden, MTV and many others.

Movies On Demand

Find the blockbuster movies and your old favorites at the press of a button for a fraction of the cost of a movie ticket.

Premium On Demand

When you subscribe to HBO, Cinemax or the Movie Package, you automatically have access to all past and present episodes of original programming and shows. Not to mention, the hottest movie releases - anytime you want.

Pay Per View

Get a front row seat (your couch) to the most anticipated sporting events, concerts, movies and much more in entertainment with our Pay Per View listings.

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

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

FIOS TV with HDTV programming offers:

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

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

Finally, regularly scheduled programs for your irregularly scheduled life.

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

With a FIOS TV DVR you can:

- Rewind, pause or record live TV
- Record up to 85 hours of standard definition programming
- Set your DVR to record your favorite show when you're not home
- Record one show while watching another or record two shows at the same time while watching a third recorded show



Verizon FIOS TV

Tab 5

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BY FACSIMILE AND FEDERAL EXPRESS

August 11, 2006

Robert J. Ponzini, Esq.
Gaines Gruner Ponzini & Novick LLP
1 North Broadway, 12th Floor
White Plains, New York 10601

**Re: Application of Verizon New York Inc. ("Verizon")
to the Village of Ardsley for a Cable Television Franchise**

Dear Mr. Ponzini:

It was a pleasure to finally meet you on Monday night at the public hearing (the "Public Hearing") conducted by the Village of Ardsley ("Ardsley" or the "Village") regarding Verizon's application for a cable television franchise (the "Application") and the proposed Cable Franchise Agreement by and between the Village and Verizon (the "Verizon Franchise").

The purpose of this letter is to alert you to an issue that is causing some concern as I review the Public Hearing transcript. At the conclusion of the Public Hearing, the Village Board of Trustees unanimously passed a resolution to "continue the public hearing with respect to the franchise proposal from Verizon until September 5th at 9 p.m." Mayor Leon stated "Okay. So, we're going to continue the public hearing until the next meeting. Anybody who wants to submit written comments is welcome to, including the Petitioner and, also, Cablevision, and we're open to what everybody has to say, and I don't want this to go on forever, but I think a period like that is a prudent thing to do."

It has now come to Verizon's attention that the Village appears to need more time than the period specified by Mayor Leon for consideration of the Verizon Franchise. Specifically, the Mayor has suggested to Verizon the possibility of continuing the September 5, 2006 continuation of the Public Hearing until September 18, 2006 and inviting Verizon to participate in a workshop during the intervening period. We are concerned that by taking any actions that are inconsistent with what was stated at the Public Hearing, the Village will create a conflict between what the Mayor stated on the record by indicating that the matter would be resolved within the period specified (i.e. no later than September 5, 2006). This may create some confusion regarding notice to the public and conflict with the minutes of the August 7, 2006 Board meeting.

August 11, 2006

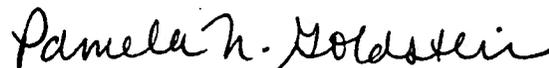
Page 2

Verizon wants to ensure that the franchise approval process fully complies with all procedural requirements and does not want the Village or Verizon to be exposed to any accusations of procedural irregularities or unnecessary delays or arguments. For example, last fall Cablevision initiated a lawsuit against the Village of Massapequa Park seeking to void its resolution approving its franchise with Verizon based on, among other arguments, a failure of the Village to strictly comply with applicable procedural rules and requirements. Although the Court dismissed this suit and granted the Massapequa Park Board's summary judgment motion, we would not want the Village to be exposed to a similar suit. A copy of the decision in this case is enclosed for your reference.

I hope that we can arrange for a time to meet and address the Village's outstanding concerns regarding franchise issues prior to the September 5th scheduled continuation of the Public Hearing. I understand this may be difficult due to summer schedules of Village authorities. Mac Kerbey and I are available *at any time* before September 5th to meet with you, the Mayor and the Board. Please let me know how you and the Village wish to proceed. I look forward to hearing from you.

Best regards.

Sincerely,



Pamela N. Goldstein

Enclosure

cc: Verizon New York Inc.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

-----X PART 15

Application of CABLEVISION SYSTEMS
LONG ISLAND CORPORATION,

INDEX NO. 16555/05
X X X

Petitioner,

For a Judgment pursuant to Article 78

MOTION DATE: 12/20/05
SEQUENCE NO. 001,002,003

-against-

VILLAGE OF MASSAPEQUA PARK,
BOARD OF TRUSTEES OF MASSAPEQUA
PARK and VERIZON NEW YORK, INC.,

Respondent.

-----X
CABLEVISION SYSTEMS LONG ISLAND
CORPORATION,

Plaintiff,

-against-

VILLAGE OF MASSAPEQUA PARK,
BOARD OF TRUSTEES OF MASSAPEQUA
PARK and VERIZON NEW YORK, INC.,

Defendants.

-----X

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Notice of Motion, Affs. & Exs..... 2
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Upon the foregoing papers, it is ordered that in this hybrid Article 78 proceeding/declaratory judgement action the petitioner/plaintiff's Cablevision Systems Long Island Corporation ("Cablevision") petition/complaint are dismissed and request for expedited discovery is denied.

The motion by respondent/defendant Verizon New York, Inc. ("Verizon") for judgment dismissing the petition/complaint pursuant to CPLR 7804 and 3211 (1) and (7) is granted.

The cross-motion of respondent/defendant Village of Massapequa Park and Board of Trustees of Massapequa Park (hereinafter collectively referred to as "the Board") pursuant to CPLR 7804 and 3216 for judgment dismissing the petition/complaint is granted.

At the conclusion of the second of two public hearings, the Board passed the September 26, 2005 Resolution ("the Resolution") pursuant to which a nonexclusive franchise to own, construct, operate and maintain a cable system within the Village of Massapequa Park ("the Village") was granted to Verizon. Cablevision seeks judgment voiding that Resolution on the grounds that in the time period leading up to

the Resolution, the Board violated the Open Meetings Law (N.Y. Public Officers Law §100 et seq.) and Village Code §30-1 (the Village ordinance equivalent to the Open Meetings Law), and deprived Cablevision of due process. In furtherance of its pursuit of a judgment voiding the Resolution, Cablevision seeks emergency discovery, while the Board and Verizon seek dismissal of this proceeding/action at this time.

At the outset the Court notes that the Village has had a cable television franchise agreement with Cablevision for many years. The Resolution at issue granted Verizon a nonexclusive franchise to offer competitive cable service in the Village. Apparently the Village is the first municipality in the State of New York to award Verizon a franchise agreement enabling it to compete with Cablevision.

According to the petition/complaint, if a municipality votes to approve a cable franchise application, the applicant then applies for a certificate of confirmation from the Public Service Commission, and the franchise becomes effective upon issuance of the certificate of confirmation (Petition/complaint, par. 19). Although Cablevision's prayer for relief in the petition/complaint requests, *inter alia*, injunctive relief enjoining any efforts to seek confirmation by the Public Service Commission, Verizon has submitted a copy of the Order and Certificate of Confirmation by the Public Service Commission, issued and effective December 15, 2005, pursuant to which the Public Service Commission approved the franchise awarded to Verizon. Furthermore, to the extent Cablevision complains that the Verizon franchise violates the "level playing field" rule (see Petition/complaint, par. 24), this rule is enforced by the Public Service Commission, which in fact expressly addressed and rejected Cablevision's challenge before it on the basis of this rule (Order and Certification of Confirmation, par. 12).

Although on a motion to dismiss the complaint pursuant to CPLR 3211(a)(7) the narrow question is whether the complaint states a cognizable cause of action, the allegations in the complaint cannot be conclusory (*Stoianoff v Gahona*, 248 AD2d 525, app. dsmd 92 NY2d 844, cert. den. sub. nom. *Stoianoff v New York Times*, 525 US 953; *Hart v Scott*, 8 AD3d 532). The provisions of the Open Meetings Law are to be liberally construed in accordance with the statutory purpose that the citizens of this state be fully aware of the performance of public officials (*Matter of Gordon v Village of Monticello, Inc.*, 87 NY2d 124, 127). Nevertheless, allegations of private meetings held in violation of the Open Meetings Law, that are not supported by specific facts, are merely conclusory and speculative in nature and fail to state a cause of action for violation of the Open Meetings Law (*Residents For a More Beautiful Port Washington v Town of North Hempstead*, 153 AD2d 727, app. den. 75 NY2d 703). In addition, enforcement sanctions under the Open Meetings Law require a showing and therefore an allegation of "good cause" to declare any action taken in violation of the Open Meetings Law void (see Public Officers Law §107(1) and *Matter of New York University v Whalen*, 46 NY2d 734).

Here, Cablevision's allegations of violations of the Open Meetings Law are threefold. First, Cablevision alleges private meetings by the trustees, wherein a quorum was present, between the public hearings on September 12 and September 26, 2005, (Petition/complaint par. 31) Second, Cablevision alleges private meetings of the trustees, where a quorum was present, "on previous occasions" (Petition/complaint, par. 41). Third, Cablevision alleges that during the second public hearing the Mayor and the Trustees took a recess during which a private "caucus" took place. Cablevision alleges that during the "caucus" the trustees

engaged in deliberations on the critical question of whether Verizon responded to Cablevision's questions (Petition/complaint pars. 37-40).

The allegations of private meetings between September 12 and 26, 2005, and on unspecified previous occasions are wholly conclusory and speculative in nature. Consequently, these allegations fail to state a cause of action for violation of the Open Meetings Law (*Residents For a More Beautiful Port Washington v Town of North Hempstead, supra*). In contrast, the "caucus" incident, which took place in the course of the second public hearing, does not suffer from the same lack of specificity. Assuming the truth of Cablevision's allegations with respect to the "caucus," the question presented is whether the requisite "good cause" for overturning the Board's Resolution is alleged or can be gleaned from within the four corners of the petition/complaint.

The petition/complaint contains no express allegation of "good cause." The alleged improper "caucus" was of limited duration, and admittedly preceded by two public hearings during which Cablevision had and used the opportunity to give input into Verizon's application. In addition the "caucus" was followed by a public vote. In similar cases, "good cause" under the Open Meetings Law has not been found [see generally *Matter of Center Square Assn. v City of Albany Bd. of Zoning Appeals*, 19 AD3d 968 (unnoticed informal meeting did not warrant relief where determination was adopted at publicized public meeting); *Matter of Griswald v Village of Penn Yan*, 244 AD2d 950 (Request to void Board resolution, adopted at a regular and public session after improper discussion at executive session, denied); *Matter of MCI Telecommunications Corp v Public Service Commission of the State of New York*, 231 AD2d 284 (discussions outside of public meetings did not warrant nullification of PSC

determination where there was extensive public input at every stage of proceeding); *Town of Moriah v Cole-Layer-Trumble Co.*, 200 AD2d 879 (vote in executive session did not warrant relief where subsequent resolution passed at regular meeting)]. Under these circumstances the Court is compelled to find that Cablevision has failed to allege sufficient factual allegations in its pleading to support the "good cause" necessary to warrant enforcement sanctions pursuant to the Open Meetings Law [*Matter of Concerned Citizens to Review the Jefferson Valley Mall v Town Board of the Town of Yorktown*, 83 AD2d 612, app dsmd 54 NY2d 957, app den. 55 NY2d 604 (dismissal of petition alleging Open Meetings Law violations granted in absence of facts alleging good cause)]. Consequently the first and second causes of action are dismissed in their entirety for failure to state a cause of action.

The third cause of action in the petition/complaint purports to allege a claim that the Board deprived Cablevision of its right to due process. The petition/complaint fails to state a cause of action for substantive due process because Cablevision does not, and cannot, allege a cognizeable property interest in Verizon's application for a cable system franchise (*Bower Assoc. v Town of Pleasant Valley*, 2 NY3d 617, 627; *Ward v City of New York*, 15 AD3d 392), nor can it show that the Board's action was wholly without legal justification (*Bower*). Procedural due process is not triggered in the absence of a cognizable property interest not present here (*Cadman Plaza North Inc. v New York City Dept. of Housing Preservation and Development*, 290 AD2d 344), and even if it were, the basic requisites of procedural due process, namely, notice and the opportunity to be heard (*In re Vellella v The New York City Local Conditional Release Commission*, 13 AD3d 201, lv app den 4 NY3d 702) were met. Cablevision was given, and used, notice and an opportunity to be heard with respect to Verizon's application

(see generally *Ward*);). To the extent that Cablevision discusses in passing alleged violations of the Freedom of Information Law (Petition/complaint par. 27-30) or Public Service Law (Petition/complaint par. 35), those conclusory allegations do not state claims and are not properly before this Court.

Based on the foregoing, Verizon's motion for judgment dismissing the petition/complaint for failure to state a cause of action is granted. This Court declares that in connection with the application by Verizon for a nonexclusive cable franchise in the Village of Massapequa Park Cablevision has failed to state a cause of action for violation of the Open Meetings Law and/or Village Code §30-1, and any deprivation of due process.

In the interest of completeness, the Court will further consider the Board's motion for summary judgment. As the Board has answered the petition/complaint, and Cablevision is on notice that the Board seeks summary dispositive relief, the Court may properly entertain the Board's motion.

On a motion for summary judgment the proponent must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320; *Zuckerman v City of New York*, 49 NY2d 557). Once the movant makes its *prima facie* showing, the burden shifts to the opponent, who must produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial (*Alvarez*; *Zuckerman*). Mere conclusions, expressions of hope or unsubstantiated allegations are insufficient (*Zuckerman*).

Here, the Board's motion expands the record to include the voluminous documentation submitted, including affidavits of the mayor and trustees, and the

complete record of the public hearings. This documentation establishes a *prima facie* case that Cablevision has no actionable claim for violation of the Open Meetings Law, Village Code §30-1, or due process.

In opposition, Cablevision has failed to establish an issue of fact warranting a trial. Although Cablevision argues that the "caucus" lasted for 30 rather than 15 minutes, and the parties vigorously dispute what happened during the "caucus" in the private room, the Court has assumed the truth of Cablevision's version of events for the purposes of this motion only. Assuming *arguendo*, that the Board improperly conducted deliberations during the brief private "caucus," no evidence of any "good cause" to void the Resolution has been presented (*Matter of Center Square Assn v City of Albany Board of Appeals*; *Matter of Griswald v Village of Penn Yan*; *Matter of MCI Telecommunications Corp. v Public Service Commission of the State of New York*; *Town of Moriah v Cole-Layer-Trumble Co.*).

In addition the Court has assumed *arguendo*, the truth of Attorney Bee's claims he was misled by the Village Attorney as to the agenda of the "work sessions" that preceded the two public hearings. Nevertheless Cablevision's input at the public hearings more than suffices to establish Cablevision's opportunity to be heard on Verizon's application to the Board.

Cablevision's argument, that notice of agendas for work sessions must be publicized, is not supported by case law. For the record, an advisory opinion by the Committee on Open Government indicates that the notice of public meetings required by the Open Meetings Law does not include notice of agendas for the meetings [Comm. on Open Govt Advisory Op. No. 2852 (March 11, 1998)]

Cablevision argues that summary judgment is premature, as discovery is necessary. Cablevision in its motion seeks depositions of the Mayor, the Village Administrator, and each of the Trustees. In addition Cablevision seeks production of "all documents, including electronic documents, relating to the cable franchise awarded to Verizon on September 26, 2005" (Tracey emergency affirmation and Exhibit A thereto).

Discovery is inconsistent with the summary nature of a special proceeding and is therefore only granted where there is a demonstrated need for such relief (see generally *Matter of Town of Pleasant Valley v New York State Bd. of Real Property Services*, 253 AD2d 8). Discovery in opposition to a summary judgment motion in a plenary action will be denied unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence (*Lambert v Bracco*, 18 AD3d 619). Here no demonstrated need or evidentiary basis has been shown for the overbroad discovery sought. Cablevision's mere hope that evidence sufficient to defeat the motion might be uncovered during the discovery process is insufficient to defeat the motion for summary judgment (*Rinzler v Jafco Associates*, 21 AD3d 360; *Gomez v Sammy's Transport, Inc.*, 19 AD3d 544).

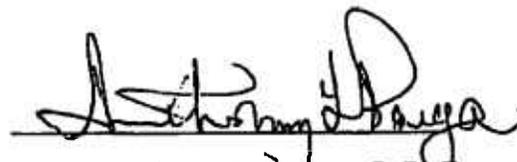
Overall, the record as a whole fails to establish any basis to declare the Resolution void. Competition is the hallmark of our economy, and the Board's action merely served to bring competition to the residents of Massapequa Park in the cable services available.

Based on the forgoing, the defendant Board's cross-motion for summary judgment dismissing the petition/complaint as a matter of law is granted. The Court declares that in connection with the application by Verizon for a nonexclusive cable

franchise in the Village of Massapequa Park, Cablevision has no cause of action for violation of the Open Meetings Law and/or Village Code §30-1, and any deprivation of due process.

Finally, plaintiff Cablevision's emergency application for discovery is denied as moot, and this proceeding/action is dismissed.

Dated: January 23, 2006.



Anthony L. Parga, J. S. C.

Tab 6

Goldstein, Pamela N.

From: Goldstein, Pamela N.
Sent: Wednesday, October 04, 2006 3:04 PM
To: 'manager@ardsleyvillage.com'; 'dhenneberry@optonline.net'; 'ArdleyMayor@aol.com'
Cc: mkerbey@telecominsightgroup.com; Goldstein, Pamela N.; sean.kulka@agg.com
Subject: 10.4.06 Cable Franchise Agreement by and between the Village of Ardsley and Verizon New York Inc.

Dear Mr. Mayor, Mr. Calvi and Ms. Henneberry:

Please find attached a revised version of the proposed Cable Franchise Agreement by and between the Village of Ardsley and Verizon New York Inc.

Also attached for your reference is a blackline comparing this revised draft against the draft filed with the Village prior to the August 7, 2006 public hearing.

Please call Mac Kerbey at (617) 628-3436, Sean Kulka at (404) 423-4166 or me at (212) 548-2136 should you have any questions.

We look forward to working with you to conclude this process successfully.

Best regards,
Pamela

Pamela N. Goldstein
Associate

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*ATTORNEY/CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
PRIVILEGED AND CONFIDENTIAL*

Cable Franchise Agreement

by and between

the Village of Ardsley

and

Verizon New York Inc.

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EXHIBITS

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

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Ardsley, 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 found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the character and 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 determined that the Franchise complies with the provisions of the Cable Law and with NY PSC's franchise standards, and that 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. *Agreement*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.4. *Annual PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

1.5. *Basic Service*: The tier of Cable Service which includes, at a minimum, the retransmission of all local television broadcast signals provided to any Subscriber and any PEG Channels required by this Franchise or NY PSC rules, and which may also include any additional video programming signals as determined by Franchisee.

1.6. *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.

1.7. *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.

1.8. *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.

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

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

1.11. *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.

1.12. *EAS*: Shall be defined herein as it is set forth in Section 4.4.

1.13. *Educational Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use 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.

1.14. *Effective Date*: Shall be defined herein as it is set forth in Section 2.3.

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

1.16. *First Annual PEG Grant Payment Date*: Shall be defined herein as it is set forth in Subsection 5.4.3.

1.17. *FOIL*: Shall be defined herein as it is set forth in Section 7.1.

1.18. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control that directly or indirectly results in Franchisee's non-compliance with, or delay in the performance of, any obligation hereunder. This may include, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays resulting from unaffiliated utility providers' failure to service, monitor or maintain utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.19. *Franchise*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.20. *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA.

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

1.22. *Franchise Fee*: Shall be defined herein as it is set forth in Section 6.1.

1.23. *FTTP Network*: Shall be defined herein as it is set forth in the third recital.

1.24. *Government Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use of the LFA.

1.25. *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, including revenues from services provided to Subscribers in the Service Area that are Cable Services or are classified or will be classified by federal law, the FCC or a court of competent jurisdiction as Cable Services subject to Franchise Fees.

Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; (iv) video on demand, including pay-per-view; 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.

Gross Revenue shall not include: revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or NY PSC rules, regulations, standards or orders, as may be amended from time to time; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services

to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; or any fees or charges collected from Subscribers or other third parties for any PEG Grant payments.

1.26. *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.

1.27. *Initial PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

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

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

1.30. *Material Provision or Material Provisions*: Shall be defined herein as it is set forth in Section 12.9.

1.31. *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.

1.32. *Noncompliance Notice*: Shall be defined herein as it is set forth in Section 11.1.

1.33. *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.

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

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

- 1.36. *PEG Access Interconnection Site*: Shall be defined herein as it is set forth in Subsection 5.2.1.
- 1.37. *PEG Channel or PEG Channels*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.38. *PEG Channel Assignment Grant*: Shall be defined herein as it is set forth in Subsection 5.4.7.
- 1.39. *PEG Grants*: Shall be defined herein as it is set forth in Subsection 5.4.9.
- 1.40. *Performance Review*: Shall be defined herein as it is set forth in Section 12.17.
- 1.41. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- 1.42. *Primary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.43. *Primary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.44. *Public Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use by the residents in the Franchise Area on a first-come, first-served, nondiscriminatory basis.
- 1.45. *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.
- 1.46. *Secondary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.47. *Secondary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.48. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, as described in Exhibit B to this Agreement.
- 1.49. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.50. *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.

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

1.52. *Transfer of the Franchise*:

1.52.1. Any transaction in which:

1.52.1.1. 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

1.52.1.2. 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.

1.52.2. However, notwithstanding Sub-subsections 1.52.1.1 and 1.52.1.2 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.

1.53. *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*: Notwithstanding that, upon delivery of Cable Service, Franchisee's mixed-use facilities become subject to the NY PSC's minimum franchise standards and the LFA's police power, the parties acknowledge that the LFA is not granted, as a consequence thereof, any broad new authority over the construction, placement and operation of Franchisee's mixed-use facilities.

2.3. *Term*: This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by

the Franchisee. The term of this Franchise shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise. If subsequent to the Effective Date, there is a change in federal or state law that eliminates the authority of the LFA to require, grant or maintain this Franchise, then to the extent permitted under law this Franchise shall survive such legislation and remain in effect for the term 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 be non-exclusive, and the LFA has granted and reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable lawful provisions of federal law and state law and FCC and NY PSC rules, regulations, standards and orders, as amended from time to time, 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 at Franchisee's expense.

2.10. *Restoration of Subscriber Premises:* The Franchisee shall ensure, at Franchisee's expense, 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 Commitment:* 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 developments or buildings that 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 dwelling unit 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. If, as a result of new construction, an area within the Service Area meets the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, then 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:*

3.2.1. *Availability of Cable Service Generally:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such costs shall be submitted to said Subscriber in writing, before installation is begun.

3.2.2. *No Discrimination in the Availability of Cable Service:* Franchisee shall not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides.

3.3. *Contribution in Aid:* Notwithstanding the foregoing Sections 3.1 and 3.2, Franchisee shall comply at a minimum with the requirements of Section 895.5 of the NY PSC rules and regulations; provided, however, that the density requirement shall be as set forth in Sub-subsection 3.1.1.1.

3.4. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public library and educational institution chartered or licensed by the New York State Department of Education or Board of Regents, and such other buildings used for municipal purposes, as designated initially by the LFA in Exhibit A to this Agreement, and, thereafter, during the Franchise term, as designated in writing upon the earlier to occur of (a) thirty (30) business days prior written notice to Franchisee or (b) approval of any amendment to Exhibit A to this Agreement in accordance with NY PSC rules; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet

of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such 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; provided, however, that if such equipment becomes defective, Franchisee shall replace it at no charge.

4. **SYSTEM FACILITIES**

4.1. *Quality of Materials:* 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 Cable 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 Cable 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 the New York EAS Plan, as amended from time to time, 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 meet the ascertained cable-related needs established by the LFA and to ensure universal availability of public, educational and government access programming, Franchisee shall provide capacity on its Basic Service tier for:

- (i) one (1) full time shared Public Access Channel;

(ii) one (1) full-time, shared primary Educational Access Channel (the "Primary Educational Access Channel");

(iii) one (1) additional shared Educational Access Channel (the "Secondary Educational Access Channel");

(iv) one (1) full-time, shared primary Government Access Channel (the "Primary Government Access Channel"); and

(v) one (1) additional shared Government Access Channel (the "Secondary Government Access Channel");

provided, however, that the Secondary Educational Access Channel and Secondary Government Access Channel shall be controlled by the LFA for the purpose of simulcasting educational access programming on the Secondary Educational Access Channel and simulcasting government access programming on the Secondary Government Access Channel (each of the aforementioned Channels in this Subsection 5.1.1 individually, a "PEG Channel" and, collectively, "PEG Channels").

5.1.2. The PEG programming to be carried on each of the PEG Channels set aside by Franchisee is reflected in Exhibit C to this Agreement. The LFA hereby authorizes Franchisee to transmit such programming within and outside LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

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

5.2. *PEG Access Interconnection:*

5.2.1. LFA shall designate in its sole discretion not more than three (3) sites within the Franchise Area for the interconnection of PEG access facilities with the Cable System (each, a "PEG Access Interconnection Site"), as designated on Exhibit D to this Agreement.

5.2.2. Franchisee shall, without charge to the LFA, provide upstream PEG Channel transmission connections between its video channel aggregation point and each PEG Access Interconnection Site in order to permit the signals to be correctly routed from the

PEG Access Interconnection Sites to the appropriate PEG Access Channel for distribution to Subscribers.

5.2.3. The LFA shall provide to Franchisee at each PEG Access Interconnection Site a suitable video signal and a suitable audio signal for each PEG Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and other facilities and such cooperation of the LFA as is reasonably necessary for Franchisee to fulfill such obligations. Should Franchisee determine that it cannot fulfill such obligations as a result of LFA's failure to cooperate or to provide suitable required space, environmental conditions, electrical power supply, access, pathway, or other facilities, it shall so notify LFA in a writing detailing the requirements of Franchisee that will enable it to fulfill its obligations hereunder.

5.2.4. Such upstream PEG Channel transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of signals to Subscribers.

5.2.5. If Franchisee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment and facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.3 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

5.3. *PEG Facilities:* Subject to Section 5.2, Franchisee shall design, build, and maintain all PEG upstream feeds, connections, and distribution facilities in order that such feeds function as reliably as Franchisee's Cable System as a whole within the Franchise Area, and are no more likely to fail than is Franchisee's Cable System as a whole within the Franchise Area.

5.4. *PEG Grants:*

5.4.1. Franchisee shall provide to the LFA financial contributions for use in support of the production of local PEG programming. The financial contributions shall consist of the following two grants: (a) a one-time grant in the amount of TWENTY-FOUR THOUSAND SEVEN HUNDRED NINETY THREE DOLLARS (\$24,793.00) (the "Initial PEG Grant"); and (b) an annual grant in the amount of FIFTY-SEVEN CENTS (\$.57) per month, per Subscriber in the Service Area (the "Annual PEG Grant").

5.4.2. The Initial PEG Grant shall become due and payable sixty (60) days after the Effective Date. In the event that the LFA does not require all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions,

then Franchisee shall offset any Franchise Fees due to the LFA hereunder by any greater amount of the Initial PEG Grant that has been paid to the LFA.

5.4.3. The Annual PEG Grant shall accrue beginning on the Effective Date and shall become due and payable on the date (the "First Annual PEG Grant Payment Date") that the earlier of the following events occurs: either (i) Franchisee has recovered from Subscribers pursuant to Section 5.6 an amount equal to the full amount of the Initial PEG Grant; or (ii) the third anniversary of the Effective Date. The amount of the first Annual PEG Grant shall be determined by calculating the total number of Subscribers from the Effective Date to the First Annual PEG Grant Payment Date multiplied by the number of months elapsed from the Effective Date to the First Annual PEG Grant Payment Date. After the First Annual PEG Grant Payment Date, Annual PEG Grant payments shall be due and payable on each anniversary of the Effective Date until the Franchise expires.

5.4.4. For purposes of determining the First Annual PEG Grant Payment Date, Franchisee's rate of recovery from Subscribers in the Service Area shall be no less than FIFTY-SEVEN CENTS (\$.57) per Subscriber per month, without regard to Franchisee's right to pass through such amount to Subscribers in accordance with Section 5.6.

5.4.5. Each Annual PEG Grant payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail the Subscriber information upon which it is based, including, but not limited to, the number of Subscribers in the Service Area for each period for which an Annual PEG Grant Payment was calculated and the amount of such payment attributable to each such period.

5.4.6. The Initial PEG Grant and the Annual 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.

5.4.7. Franchisee shall provide to the LFA an additional one-time grant in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) (the "PEG Channel Assignment Grant"). The PEG Channel Assignment Grant shall be payable to the LFA solely in the event that Franchisee makes a PEG Channel assignment change pursuant to Subsection 5.1.2.

5.4.8. Consistent with Section 895.3 of the NY PSC rules, notwithstanding the foregoing Subsections 5.4.3 and 5.4.7, no PEG Channel Assignment Grant or accrued Annual PEG Grant shall be payable by Franchisee unless and until the LFA requires all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions.

5.4.9. The grants identified above in this Section 5.4, specifically, the Initial PEG Grant, the Annual PEG Grant and the PEG Channel Assignment Grant shall be collectively referred to as the "PEG Grants."

5.4.10. The LFA shall provide Franchisee with an annual report setting forth a summary of all expenditures for PEG access equipment and facilities from the PEG Grants paid to the LFA and the amounts, if any, reserved for future capital expenditures for such purposes.

5.5. *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.

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

6. FRANCHISE FEES

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

6.2. *Supporting Information:* Each Franchise Fee payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail 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, copying 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 at a location within the state, 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 thirty (30) 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 a rate of nine percent (9%) 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; provided, however, that in the event of an underpayment of five percent (5%) or more in an audited period this limitation shall not apply to the subsequent two (2) audit periods.

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.

6.5. *Bundled Services:* If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate any discount associated with purchasing bundled services for the purposes of evading the Franchise Fee payments under this Franchise. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

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 in a manner so as not to unreasonably interfere with Franchisee's normal business operations, 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 location within the state or at another mutually agreed upon site. 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:* Subject to the requirements of Section 895.1(t) of the NY PSC rule and regulations, any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. INSURANCE AND INDEMNIFICATION

8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit for property damage and bodily injury per occurrence and five million dollars (\$5,000,000) in the aggregate. 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: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) per employee limit; five hundred thousand dollars (\$500,000) policy limit.

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

8.1.2. The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 8 except Worker's Compensation Insurance,

Employer's Liability Insurance and excess liability or umbrella coverage. Such additional insured requirement shall be indicated on the original Certificates of Insurance.

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. Franchisee shall deliver to LFA original Certificates of Insurance showing evidence of all required coverages under this Agreement on or before the Effective Date and providing for at least thirty (30) days prior written notice to be given to LFA of cancellation, intent not to renew or any adverse material change.

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels as provided in Section 5.5, provided that the LFA shall give Franchisee timely written notice of its obligation to indemnify the LFA, but in any event, the LFA shall provide such notice to Franchisee within a sufficient period of time from receipt of a claim or action pursuant to this Subsection to enable Franchisee to timely answer complaints, raise defenses and defend all claims. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties acting in their official capacity on behalf of the LFA or for any activity or function conducted by any Person other than Franchisee on behalf of the LFA 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, subject to federal and state law, 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 acting in their official capacity on behalf of the LFA.

9. TRANSFER OF FRANCHISE

9.1. *LFA Consent Required:* 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.

9.2. *LFA Consent Not Required for Certain Transactions:* No prior consent of the LFA shall be required 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 1.52 above.

9.3. *Each Transfer of the Franchise Subject to this Article:* Each Transfer of the Franchise shall be governed by and comply with the provisions of this Article 9.

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 12.12 below, the Cable Law, and Section 626 of the Communications Act, 47 U.S.C. § 546, as amended.

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

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

and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the LFA may grant a renewal thereof.

10.4. *Consistent Terms:* Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law.

11. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

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

11.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to 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 or commenced to remedy 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 12.12 below and applicable federal and state law, in the event that the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

11.4.3. In the case of a substantial noncompliance with a Material Provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.

11.5. *Revocation:* If the LFA seeks to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, then 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 timely cured by the Franchisee. The LFA shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the LFA determines that it will revoke the Franchise, the LFA shall promptly provide Franchisee with a written determination setting forth the LFA's reasoning for such revocation. Franchisee may appeal such written determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA de novo. The parties shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the LFA.

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

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

12. MISCELLANEOUS PROVISIONS

12.1. *Actions of Parties:* In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

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

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

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

12.4.1. Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers and was timely cured by Franchisee, 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:

Debbie Henneberry
Assistant Village Manager
Village of Ardsley
Ardsley Village Hall

507 Ashford Avenue
Ardsley, New York 10502

12.5.3. with a copy to:

Robert J. Ponzini, Esq.
Village Attorney
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

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 after the adoption of proper authorizing resolution by the governing body of the LFA and as approved by the NY PSC.

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. For purposes of this Agreement, the term "Material Provision" or "Material Provisions" shall mean the terms set forth in Article 5 (PEG Services), Article 6 (Franchise Fees), and Article 8 (Insurance and Indemnification).

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. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement. 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.

12.12. *NY PSC Approval:* This Franchise and any amendment or modification hereof 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:* Franchisee shall 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-month period, hold a performance evaluation session (the "Performance Review") to review Franchisee's compliance with the terms and conditions of this Franchise. 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 setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise.

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

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

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12.20. *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.

AGREED TO THIS ____ DAY OF _____, 2006.

LFA:
VILLAGE OF ARDSLEY

By: _____
Title:

FRANCHISEE:
VERIZON NEW YORK INC.

By: _____
Title:

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: PEG Access Interconnection Sites

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

Ardsley Public Library
9 American Legion Drive
Ardsley, New York 10502

Community Center
18 Center Street
Ardsley, New York 10502

Ardsley Firehouse
505 Ashford Avenue
Ardsley, New York 10502

Highway Garage
3 Elm Street
Ardsley, New York 10502

Concord Road School
2 Concord Road
Ardsley, New York 10502

Ardsley High School
300 Farm Road
Ardsley, New York 10502

EXHIBIT B

SERVICE AREA

The Service Area shall be the Franchise Area. The construction of the Franchisee's FTTP Network has been substantially completed throughout the Franchise Area subject only to Subsection 3.1.1. and Section 3.2 of the Franchise, and accordingly it is not necessary to provide any additional details concerning the construction and/or deployment time tables and areas within the Service Area. A map of the Service Area is attached hereto.

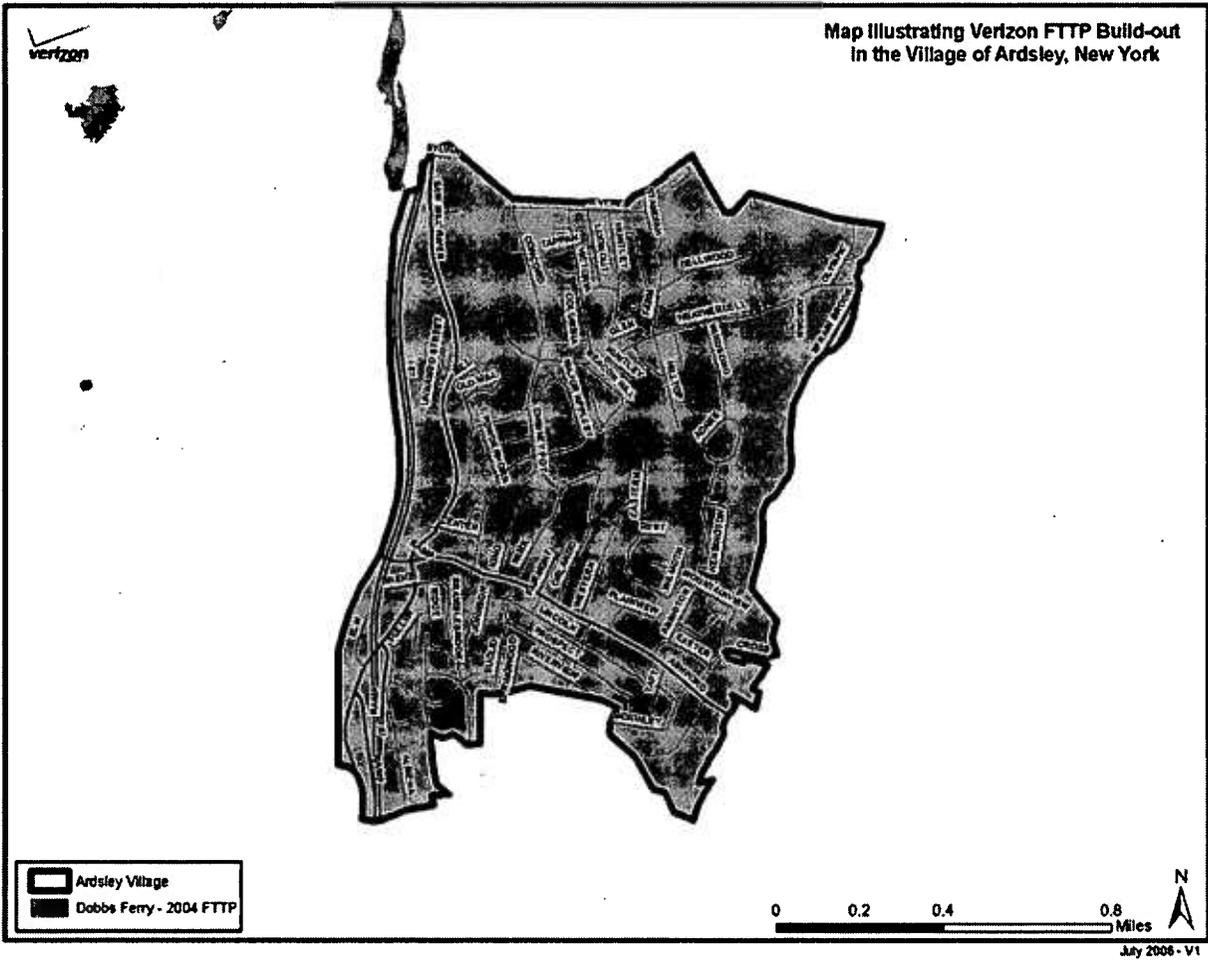


EXHIBIT C
PEG CHANNELS

The Franchisee will transmit PEG programming as provided by the LFA and the public, as directed.

EXHIBIT D
PEG ACCESS INTERCONNECTION SITES

Cable Franchise Agreement

by and between

the Village of Ardsley

and

Verizon New York Inc.

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EXHIBITS

EXHIBIT A: MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

EXHIBIT B: SERVICE AREA

EXHIBIT C: PEG CHANNELS

EXHIBIT D: PEG ACCESS INTERCONNECTION SITES

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Ardsley, 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 found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the character and 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 determined that the Franchise complies with the provisions of the Cable Law and with NY PSC's franchise standards, and that 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.~~ *Agreement*: Shall be defined herein as it is set forth in the first paragraph hereof.

~~1.4.~~ *Annual PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

~~1.5.~~ ~~1.3.~~ *Basic Service*: The tier of Cable Service which includes, at a minimum, the retransmission of all local television broadcast signals provided to any Subscriber; and any PEG Channels required by this Franchise or NY PSC rules, and which may also include any additional video programming signals as determined by Franchisee.

~~1.6.~~ ~~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.

~~1.7.~~ ~~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.

~~1.8.~~ ~~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.

~~1.9.~~ ~~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.

~~1.10.~~ ~~1.8.~~ *Communications Act*: The Communications Act of 1934, as amended.

~~1.11.~~ ~~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.

1.12. EAS: Shall be defined herein as it is set forth in Section 4.4.

1.13. ~~4.10-Educational Access Channel:~~ An Access Channel required by this Agreement and Title 16, Chapter VIII, Section 894.5, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, to be designated by the Franchisee for noncommercial use 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.

1.14. Effective Date: Shall be defined herein as it is set forth in Section 2.3.

1.15. ~~4.11-FCC:~~ The United States Federal Communications Commission, or successor governmental entity thereto.

1.16. First Annual PEG Grant Payment Date: Shall be defined herein as it is set forth in Subsection 5.4.3.

1.17. FOIL: Shall be defined herein as it is set forth in Section 7.1.

1.18. ~~4.12-Force Majeure:~~ An event or events reasonably beyond the ability of Franchisee to anticipate and control that directly or indirectly results in Franchisee's non-compliance with, or delay in the performance of, any obligation hereunder. This ~~includes~~**may include**, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, ~~lockouts~~**and disputes**, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays resulting from unaffiliated utility providers' failure to service, monitor or maintain utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.19. Franchise: Shall be defined herein as it is set forth in the first paragraph hereof.

1.20. ~~4.13-Franchise Area:~~ The incorporated area (entire existing territorial limits) of the LFA.

1.21. ~~4.14-Franchisee:~~ Verizon New York Inc. and its lawful and permitted successors, assigns and transferees.

1.22. Franchise Fee: Shall be defined herein as it is set forth in Section 6.1.

1.23. FTTP Network: Shall be defined herein as it is set forth in the third recital.

~~1.24. 1.15.~~ *Government Access Channel:* An Access Channel required by this Agreement and Title 16, Chapter VIII, Section 894.5, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, to be designated by the Franchisee for noncommercial use of the LFA.

~~1.25. 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, including revenues from services provided to Subscribers in the Service Area that are Cable Services or are classified or will be classified by federal law, the FCC or a court of competent jurisdiction as Cable Services subject to Franchise Fees.

Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; (iv) video on demand, including pay-per-view; and ~~(iv)~~ 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.

Gross Revenue shall not include: revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or NY PSC rules, regulations, standards or orders, as may be amended from time to time; any revenue of Franchisee or any other Person which is received directly from

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

1.26. ~~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.

1.27. *Initial PEG Grant:* Shall be defined herein as it is set forth in Subsection 5.4.1.

1.28. ~~1.18.~~ *Internet Access:* Dial-up or broadband access service that enables Subscribers to access the Internet.

1.29. ~~1.19.~~ *Local Franchise Authority (LFA):* The Village of ~~Arsdsley~~**Arsdsley**, New York, or the lawful successor, transferee, or assignee thereof.

1.30. *Material Provision or Material Provisions:* Shall be defined herein as it is set forth in Section 12.9.

1.31. ~~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.

1.32. *Noncompliance Notice:* Shall be defined herein as it is set forth in Section 11.1.

1.33. ~~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.

1.34. ~~1.22.~~ *NY PSC:* The New York Public Service Commission.

1.35. ~~1.23.~~ *PEG:* Public, Educational, and Governmental.

1.36. *PEG Access Interconnection Site:* Shall be defined herein as it is set forth in Subsection 5.2.1.

1.37. *PEG Channel or PEG Channels:* Shall be defined herein as it is set forth in Subsection 5.1.1.

1.38. *PEG Channel Assignment Grant:* Shall be defined herein as it is set forth in Subsection 5.4.7.

1.39. *PEG Grants:* Shall be defined herein as it is set forth in Subsection 5.4.9.

1.40. *Performance Review:* Shall be defined herein as it is set forth in Section 12.17.

1.41. ~~1.24.~~ *Person:* An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.42. *Primary Educational Access Channel:* Shall be defined herein as it is set forth in Subsection 5.1.1.

1.43. *Primary Government Access Channel:* Shall be defined herein as it is set forth in Subsection 5.1.1.

1.44. ~~1.25.~~ *Public Access Channel:* An Access Channel required by this Agreement and Title 16, Chapter VIII, Section 895.4, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, to be designated by the Franchisee for noncommercial use by the residents in the Franchise Area on a first-come, first-served, nondiscriminatory basis.

1.45. ~~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.

1.46. Secondary Educational Access Channel: Shall be defined herein as it is set forth in Subsection 5.1.1.

1.47. Secondary Government Access Channel: Shall be defined herein as it is set forth in Subsection 5.1.1.

1.48. 1.27. Service Area: All portions of the Franchise Area where Cable Service is being offered, as described in Exhibit B to this Agreement.

1.49. 1.28. Subscriber: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.50. 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.

1.51. 1.30. Title VI: Title VI of the Communications Act, Cable Communications, as amended.

1.52. 1.31. Transfer of the Franchise:

1.52.1. 1.31.1. Any transaction in which:

1.52.1.1. 1.31.1.1. a fifty percent ownership or ~~other~~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

1.52.1.2. 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.

1.52.2. 1.31.2. However, notwithstanding Sub-subsections ~~1.31.1.1~~1.52.1.1 and ~~1.31.1.2~~1.52.1.2 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.

1.53. 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:* Notwithstanding that, upon delivery of Cable Service, Franchisee's mixed-use facilities become subject to the NY PSC's minimum franchise standards and the LFA's police power, the parties acknowledge that the LFA is not granted, as a consequence thereof, any broad new, ~~additional or broader~~ authority over the construction, placement and operation of Franchisee's mixed-use facilities.

2.3. *Term:* This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise. **If subsequent to the Effective Date, there is a change in federal or state law that eliminates the authority of the LFA to require, grant or maintain this Franchise, then to the extent permitted under law this Franchise shall survive such legislation and remain in effect for the term 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 be non-exclusive, and the LFA has granted and reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable lawful provisions of federal law and state law and FCC and NY PSC rules, regulations, standards and orders, as amended from time to time, including, but not limited to, the Communications Act.

2.6. *No Waiver:*

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

2.6.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise, the Cable Law, or other applicable state or federal law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or a

waiver of performance of this Agreement, nor shall it excuse the LFA from performance, unless such right or such performance has been specifically waived in writing.

2.7. *Construction of Agreement:*

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

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

~~2.7.3. The LFA and the Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.~~

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 ~~and~~, not materially in conflict with the privileges granted in this Franchise and consistent with all applicable federal and state laws, rules, regulations and orders, ~~and this Agreement.~~

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

2.10. *Restoration of Subscriber Premises:* The Franchisee shall ensure, at Franchisee's expense, 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 ~~Commitment~~:* 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 developments or buildings that 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 dwelling unit 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. If, as a result of new construction, an area within the Service Area meets the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, then 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:*

3.2.1. *Availability of Cable Service Generally:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such costs shall be submitted to said Subscriber in writing, before installation is begun.

3.2.2. *No Discrimination in the Availability of Cable Service:* Franchisee shall not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides.

3.3. Contribution in Aid: Notwithstanding the foregoing **Sections 3.1 and 3.2,** **Franchisee shall comply at a minimum** with the requirements of Section 895.5 of the NY PSC rules and regulations; **provided, however, that the density requirement shall be as set forth in Sub-subsection 3.1.1.1.**

3.4. 3.3-Cable Service to Public Buildings: Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public library and educational institution chartered or licensed by the New York State Department of Education or Board of Regents, and such other buildings used for municipal purposes, as designated initially by the LFA in Exhibit A to this Agreement (~~“Exhibit A”~~), and, thereafter, during the Franchise term, as designated in writing upon the earlier to occur of (a) thirty (30) business days prior written notice to Franchisee or (b) approval of any amendment to Exhibit A to this Agreement in accordance with NY PSC rules; provided, however, that if it is necessary to extend Franchisee’s trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee’s direct costs for such extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee’s actual cost. Such 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;~~ **provided, however, that if such equipment becomes defective, Franchisee shall replace it at no charge.**

4. **SYSTEM FACILITIES**

4.1. *Quality of Materials:* 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 Cable 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 Cable 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 the New York EAS Plan, as amended from time to time, 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 meet the ascertained cable-related needs established by the LFA and to ensure universal availability of public, educational and government access programming, Franchisee shall provide capacity on its Basic Service tier for :

(i) one (1) full time, dedicated Public Access Channel, one (1) full time, dedicated shared Public Access Channel;

(ii) one (1) full-time, shared primary Educational Access Channel, and one (1) full-time, dedicated (the "Primary Educational Access Channel");

(iii) one (1) additional shared Educational Access Channel (the "Secondary Educational Access Channel");

(iv) one (1) full-time, shared primary Government Access Channel (the "Primary Government Access Channel"); and

(v) one (1) additional shared Government Access Channel (the "Secondary Government Access Channel");

provided, however, that the Secondary Educational Access Channel and Secondary Government Access Channel shall be controlled by the LFA for the purpose of simulcasting educational access programming on the Secondary Educational Access Channel and simulcasting government access programming on the Secondary Government Access Channel (each, of the aforementioned Channels in this Subsection 5.1.1 individually, a "PEG Channel" and, collectively, "PEG Channels").

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

boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

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

5.2. *PEG Access Interconnection:*

5.2.1. LFA shall designate in its sole discretion not more than three (3) sites within the Franchise Area for the interconnection of PEG access facilities with the Cable System (each, a "PEG Access Interconnection Site"), **as designated on Exhibit D to this Agreement.**

5.2.2. Franchisee shall, without charge to the LFA, provide ~~links~~ **upstream PEG Channel transmission connections** between its video channel aggregation point and each PEG Access Interconnection Site in order to permit the signals to be correctly routed from the PEG Access Interconnection Sites to the appropriate PEG access channel **Access Channel** for distribution to Subscribers.

5.2.3. The LFA shall provide to Franchisee at each PEG Access Interconnection Site a suitable video **signal and a suitable audio** signal for each PEG Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and other facilities and such cooperation of the LFA as is reasonably necessary for Franchisee to fulfill such obligations. **Should Franchisee determine that it cannot fulfill such obligations as a result of LFA's failure to cooperate or to provide suitable required space, environmental conditions, electrical power supply, access, pathway, or other facilities, it shall so notify LFA in a writing detailing the requirements of Franchisee that will enable it to fulfill its obligations hereunder.**

5.2.4. Such upstream **PEG Channel** transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of PEG signals to Subscribers.

5.2.5. If Franchisee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment

and facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.3 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

5.3. ~~Backup~~ PEG Facilities and Equipment: Subject to Section 5.2, Franchisee shall design, build, and maintain all PEG upstream feeds, ~~connection~~ connections, and distribution facilities in order that such feeds function as reliably as Franchisee's Cable System as a whole within the Franchise Area, and are no more likely to fail than is Franchisee's Cable System as a whole within the Franchise Area.

5.4. *PEG Grants:*

5.4.1. Franchisee shall provide to the LFA financial contributions for use in support of the production of local PEG programming. The financial contributions shall consist of the following two grants: (a) a one-time grant in the amount of TWENTY-FOUR THOUSAND SEVEN HUNDRED NINETY THREE DOLLARS (\$24,793.00) (the "Initial PEG Grant"); and (b) an annual grant in the amount of FIFTY-SEVEN CENTS (\$.57) per month, per Subscriber to Franchisee's ~~Basic Service tier~~ in the Service Area (the "Annual PEG Grant").

5.4.2. The Initial PEG Grant shall become due and payable sixty (60) days after the Effective Date. In the event that the LFA does not require all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions, then Franchisee shall offset any Franchise Fees due to the LFA hereunder by any greater amount of the Initial PEG Grant that has been paid to the LFA.

5.4.3. The Annual PEG Grant shall accrue beginning on the Effective Date and shall become due and payable on the date (the "First Annual PEG Grant Payment Date") that the earlier of the following events occurs: either (i) Franchisee has recovered from Subscribers pursuant to Section 5.6 an amount equal to the full amount of the Initial PEG Grant; or (ii) the third anniversary of the Effective Date. The amount of the first Annual PEG Grant shall be determined by calculating the total number of Subscribers from the Effective Date to the First Annual PEG Grant Payment Date multiplied by the number of months elapsed from the Effective Date to the First Annual PEG Grant Payment Date. After the First Annual PEG Grant Payment Date, Annual PEG Grant payments shall be due and payable on each anniversary of the Effective Date until the Franchise expires.

5.4.4. For purposes of determining the First Annual PEG Grant Payment Date, Franchisee's rate of recovery from Subscribers to its ~~Basic Service Tier~~ in the Service Area shall be no less than FIFTY-SEVEN CENTS (\$.57) per Subscriber per month, without regard to Franchisee's right to pass through such amount to Subscribers in accordance with Section 5.6.

5.4.5. Each Annual PEG Grant payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail the Subscriber information upon which it is based, including, but not limited to, the number of Subscribers to Franchisee's ~~Basic~~

Service tier in the Service Area for each period for which an Annual PEG Grant Payment was calculated and the amount of such payment attributable to each such period.

5.4.6. The Initial PEG Grant and the Annual 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.

5.4.7. Franchisee shall provide to the LFA an additional one-time grant in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) (the "PEG Channel Assignment Grant"). The PEG Channel Assignment Grant shall be payable to the LFA solely in the event that Franchisee makes a PEG Channel assignment change pursuant to Subsection 5.1.2.

5.4.8. ~~Notwithstanding~~ Consistent with Section 895.3 of the NY PSC rules, notwithstanding the foregoing Subsections 5.4.3 and 5.4.7, no ~~Annual PEG Grant or PEG Channel Assignment Grant or accrued Annual PEG~~ Grant shall be payable by Franchisee unless and until the LFA requires all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions.

5.4.9. The grants identified above in this Section 5.4, specifically, the Initial PEG Grant, the Annual PEG Grant and the PEG Channel Assignment Grant shall be collectively referred to as the "PEG Grants."

5.4.10. The LFA shall provide Franchisee with an annual report setting forth a summary of all expenditures for PEG access equipment and facilities from the PEG Grants paid to the LFA and the amounts, if any, reserved for future capital expenditures for such purposes.

5.5. *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.

5.6. *Recovery of Costs:* To the extent permitted by federal law, the Franchisee shall be allowed to recover from Subscribers the costs of PEG Grants or any other costs arising from the provision of PEG services ~~from Subscribers~~ and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if and to the extent

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

6. FRANCHISE FEES

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

6.2. *Supporting Information:* Each Franchise Fee payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail 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, copying 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 at a location within the state, 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 thirty (30) 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 a rate of nine percent (9%) 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; provided, however, that in the event of an underpayment of five percent (5%) or more in an audited period this limitation shall not apply to the subsequent two (2) audit periods.

~~6.4.~~ ~~6.3.~~ *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be ~~threesix~~ (36) years from the date on which payment by Franchisee is due.

~~6.5.~~ ~~6.4.~~ *Bundled Services:* If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate any discount associated with purchasing bundled services for the purposes of evading the Franchise Fee payments under this Franchise. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

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 non-disruptive basis~~ in a manner so as not to unreasonably interfere with Franchisee's normal business operations, 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 location within the state or at another mutually agreed upon site. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than ~~threesix~~ (36) 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 ~~threesix~~ (36) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

7.2.2. Records of outages for a period of ~~threesix~~ (36) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

7.2.3. Records of service calls for repair and maintenance for a period of ~~threesix~~ (36) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

7.2.4. Records of installation/reconnection and requests for service extension for a period of ~~threesix~~ (36) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

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

7.3. *System-Wide Statistics:* Subject to the requirements of Section 895.1(t) of the NY PSC rule and regulations, any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. INSURANCE AND INDEMNIFICATION

8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit for property damage and bodily injury per occurrence and five million dollars (\$5,000,000) in the aggregate. 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: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) per employee limit; five hundred thousand dollars (\$500,000) policy limit.

8.1.1.5. Excess liability or umbrella coverage of not less than ~~five~~ten million dollars (~~\$5,000,000~~10,000,000).

8.1.2. The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 8 except Worker's Compensation Insurance, Employer's Liability Insurance and excess liability or umbrella coverage. Such additional insured requirement shall be indicated on the original Certificates of Insurance.

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. Franchisee shall deliver to LFA original Certificates of Insurance showing evidence of all required coverages under this Agreement on or before the Effective Date and providing for at least thirty (30) days prior written notice to be given to LFA of cancellation, intent not to renew or any adverse material change.

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels as provided in Section 5.5, provided that the LFA shall give Franchisee timely written notice of the LFA's request for indemnification within ten (10) days of its obligation to indemnify the LFA, but in any event, the LFA shall provide such notice to Franchisee within a sufficient period of time from receipt of a claim or action pursuant to this Subsection to enable Franchisee to timely answer complaints, raise defenses and defend all claims. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties acting in their official capacity on behalf of the LFA or for any activity or function conducted by any Person other than Franchisee on behalf of the LFA 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, subject to federal and state law, 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 acting in their official capacity on behalf of the LFA.

9. TRANSFER OF FRANCHISE

9.1. *LFA Consent Required:* 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.

9.2. *LFA Consent Not Required for Certain Transactions:* No prior consent of the LFA shall be required 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 ~~4.34~~1.52 above.

9.3. *Each Transfer of the Franchise Subject to this Article:* Each Transfer of the Franchise shall be governed by and comply with the provisions of this Article 9.

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 12.12 below, the Cable Law, and Section 626 of the Communications Act, 47 U.S.C. § 546, as amended.

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

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

10.4. *Consistent Terms:* Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law.

11. ENFORCEMENT AND TERMINATION OF FRANCHISE

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

11.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to 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 or commenced to remedy the alleged noncompliance within sixty (60) days or the date projected pursuant to Section 11.2(iii) above. The LFA shall provide Franchisee at least sixty (60) business 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 12.12 below and applicable federal and state law, in the event that the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

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

11.5. *Revocation:* If the LFA seeks to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, then 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 timely cured by the Franchisee. The LFA shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the LFA determines that it will revoke the Franchise, the LFA shall promptly provide Franchisee with a written determination setting forth the LFA's reasoning for such revocation. Franchisee may appeal such written determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA de novo. ~~Franchisee~~The parties shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the LFA.

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

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

12. MISCELLANEOUS PROVISIONS

12.1. *Actions of Parties:* In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

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

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

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

12.4.1. Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers and was timely cured by Franchisee, 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:

Debbie Henneberry
Assistant Village Manager
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

12.5.3. with a copy to:

Robert J. Ponzini, Esq.
Village Attorney
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

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 after the adoption of proper authorizing resolution by the governing body of the LEA and as approved by the NY PSC.

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. For purposes of this Agreement, the term "Material Provision" or "Material Provisions" shall mean the terms set forth in Article 5 (PEG Services), Article 6 (Franchise Fees), and Article 8 (Insurance and Indemnification).

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. *Modification:* This Franchise shall not be modified except by written instrument executed by both parties.~~

~~12.11. 12.12.—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. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement. 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. 12.13.—NY PSC Approval:~~ This Franchise and any amendment or modification hereof 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.~~ ~~12.14.~~ *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.~~ ~~12.15.~~ *Publishing Information:* LFA hereby requests that Franchisee shall omit publishing information specified in 47 C.F.R. § 76.952 from Subscriber bills.

~~12.15.~~ ~~12.16.~~ *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.~~ ~~12.17.~~ *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-month period, hold a performance evaluation session (the "Performance Review") to review Franchisee's compliance with the terms and conditions of this Franchise. 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 setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise.

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

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

[balance of page intentionally left blank]

12.20. *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.

AGREED TO THIS ____ DAY OF _____, 2006.

LFA:
VILLAGE OF ARDSLEY

By: _____
Title:

FRANCHISEE:
VERIZON NEW YORK INC.

By: _____
Title:

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: PEG Access Interconnection Sites

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

Ardsley Public Library
9 American Legion Drive
Ardsley, New York 10502

Community Center
18 Center Street
Ardsley, New York 10502

Ardsley Firehouse
505 Ashford Avenue
Ardsley, New York 10502

Highway Garage
3 Elm Street
Ardsley, New York 10502

Concord Road School
2 Concord Road
Ardsley, New York 10502

Ardsley High School
300 Farm Road
Ardsley, New York 10502

~~Ardsley Middle School
700 Ashford Avenue
Ardsley, New York 10502~~

EXHIBIT B

SERVICE AREA

The Service Area shall be the Franchise Area. The construction of the Franchisee's FTTP Network has been substantially completed throughout the Franchise Area subject only to Subsection 3.1.1. and Section 3.2 of the Franchise, and accordingly it is not necessary to provide any additional details concerning the construction and/or deployment time tables and areas within the Service Area. A map of the Service Area is attached hereto.

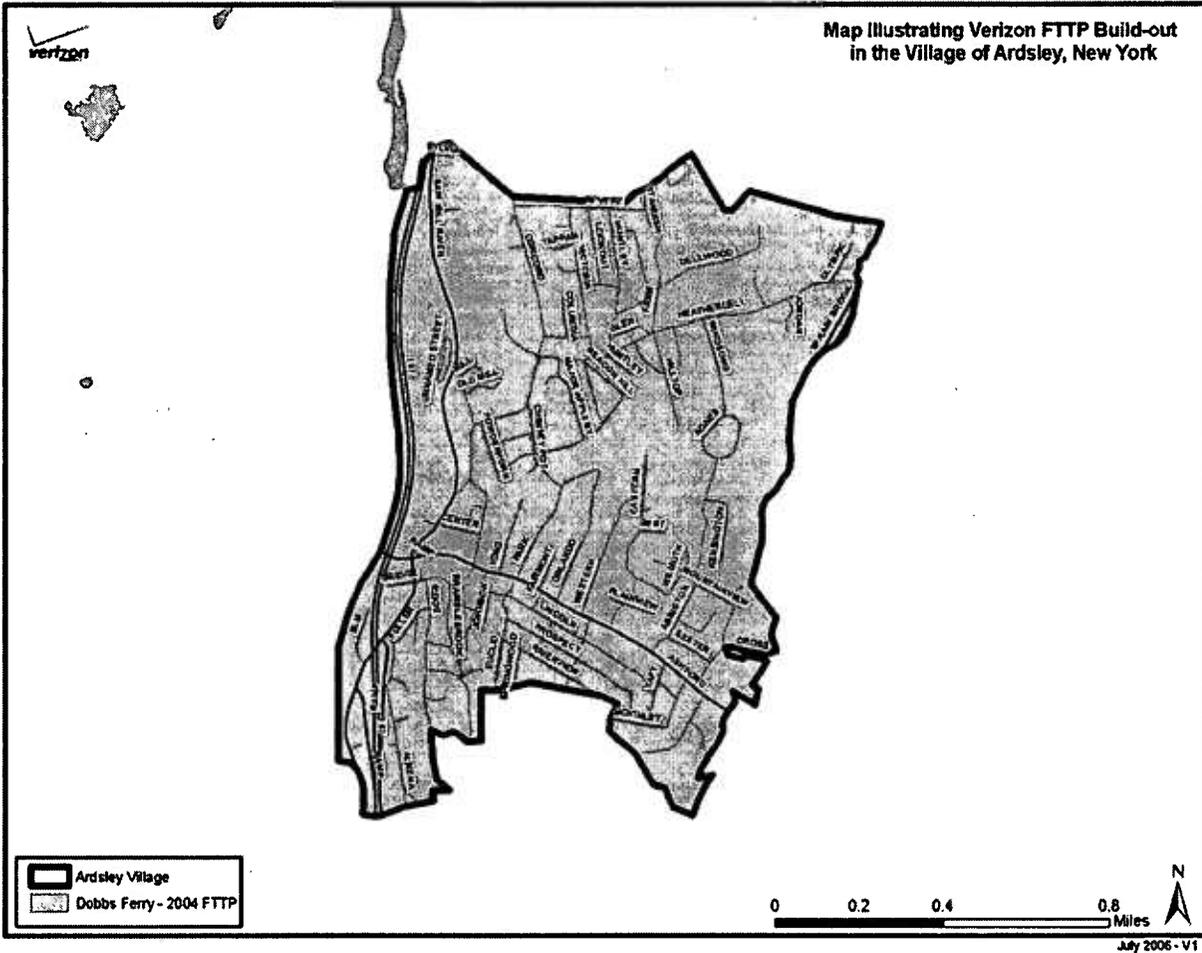


EXHIBIT C
PEG CHANNELS

The Franchisee will transmit PEG programming as provided by the LFA and the public, as directed.

EXHIBIT D

PEG ACCESS INTERCONNECTION SITES

Tab 7

Goldstein, Pamela N.

From: Goldstein, Pamela N.
Sent: Wednesday, November 01, 2006 7:04 PM
To: 'manager@ardsleyvillage.com'; 'dhenneberry@optonline.net'; 'ArdsleyMayor@aol.com'
Cc: 'mkerbey@telecominsightgroup.com'; Goldstein, Pamela N.; 'Kulka, Sean C.'
Subject: 11.1.06 Cable Franchise Agreement by and between the Village of Ardsley and Verizon New York Inc.

Dear Mr. Mayor, Mr. Calvi and Ms. Henneberry:

Attached please find a revised version of the proposed Cable Franchise Agreement by and between the Village of Ardsley and Verizon New York Inc. Also attached for your reference is a blackline comparing this revised draft against the 10/4/06 draft.

Please call Mac Kerbey at (617) 628-3436 or me should you have any questions.

We look forward to seeing you on Monday.

Best regards,
Pamela

Pamela N. Goldstein
Associate

McGUIREWOODS
McGuireWoods LLP
1345 Avenue of the Americas
Seventh Floor
New York, NY 10105-0106
212.548.2136 (Direct Line)
212.548.2173 (Direct FAX)
pngoldstein@mcguirewoods.com

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

*ATTORNEY/CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
PRIVILEGED AND CONFIDENTIAL*

Cable Franchise Agreement

by and between

the Village of Ardsley

and

Verizon New York Inc.

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EXHIBITS

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

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Ardsley, 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 found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the character and 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 determined that the Franchise complies with the provisions of the Cable Law and with NY PSC's franchise standards, and that 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. *Agreement*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.4. *Annual PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

1.5. *Basic Service*: The tier of Cable Service which includes, at a minimum, the retransmission of all local television broadcast signals provided to any Subscriber and any PEG Channels required by this Franchise or NY PSC rules, and which may also include any additional video programming signals as determined by Franchisee.

1.6. *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.

1.7. *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.

1.8. *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.

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

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

1.11. *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.

1.12. *EAS*: Shall be defined herein as it is set forth in Section 4.4.

1.13. *Educational Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use 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.

1.14. *Effective Date*: Shall be defined herein as it is set forth in Section 2.3.

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

1.16. *FOIL*: Shall be defined herein as it is set forth in Section 7.1.

1.17. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control that directly or indirectly results in Franchisee's non-compliance with, or delay in the performance of, any obligation hereunder. This may include, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays resulting from unaffiliated utility providers' failure to service, monitor or maintain utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.18. *Franchise*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.19. *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA.

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

1.21. *Franchise Fee*: Shall be defined herein as it is set forth in Section 6.1.

1.22. *FTTP Network*: Shall be defined herein as it is set forth in the third recital.

1.23. *Government Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use of the LFA.

1.24. *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, including revenues from services provided to Subscribers in the Service Area that are Cable Services or are classified or will be classified by federal law, the FCC or a court of competent jurisdiction as Cable Services subject to Franchise Fees.

Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; (iv) video on demand, including pay-per-view; 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.

Gross Revenue shall not include: revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or NY PSC rules, regulations, standards or orders, as may be amended from time to time; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of

general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; or any fees or charges collected from Subscribers or other third parties for any PEG Grant payments.

1.25. *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.

1.26. *Initial PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

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

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

1.29. *Material Provision or Material Provisions*: Shall be defined herein as it is set forth in Section 12.9.

1.30. *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.

1.31. *Noncompliance Notice*: Shall be defined herein as it is set forth in Section 11.1.

1.32. *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.

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

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

- 1.35. *PEG Access Interconnection Site*: Shall be defined herein as it is set forth in Subsection 5.2.1.
- 1.36. *PEG Channel* or *PEG Channels*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.37. *PEG Channel Assignment Grant*: Shall be defined herein as it is set forth in Subsection 5.4.7.
- 1.38. *PEG Grants*: Shall be defined herein as it is set forth in Subsection 5.4.9.
- 1.39. *Performance Review*: Shall be defined herein as it is set forth in Section 12.17.
- 1.40. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- 1.41. *Primary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.42. *Primary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.43. *Public Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use by the residents in the Franchise Area on a first-come, first-served, nondiscriminatory basis.
- 1.44. *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.
- 1.45. *Secondary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.46. *Secondary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.47. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, as described in Exhibit B to this Agreement.
- 1.48. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.49. *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.

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

1.51. *Transfer of the Franchise*:

1.51.1. Any transaction in which:

1.51.1.1. 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

1.51.1.2. 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.

1.51.2. However, notwithstanding Sub-sections 1.51.1.1 and 1.51.1.2 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.

1.52. *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*: Notwithstanding that, upon delivery of Cable Service, Franchisee's mixed-use facilities become subject to the NY PSC's minimum franchise standards and the LFA's police power, the parties acknowledge that the LFA is not granted, as a consequence thereof, any broad new authority over the construction, placement and operation of Franchisee's mixed-use facilities.

2.3. *Term*: This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by

the Franchisee. The term of this Franchise shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise. If subsequent to the Effective Date, there is a change in federal or state law that eliminates the authority of the LFA to require, grant or maintain this Franchise, then to the extent permitted under law this Franchise shall survive such legislation and remain in effect for the term 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 be non-exclusive, and the LFA has granted and reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable lawful provisions of federal law and state law and FCC and NY PSC rules, regulations, standards and orders, as amended from time to time, 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 at Franchisee's expense.

2.10. *Restoration of Subscriber Premises:* The Franchisee shall ensure, at Franchisee's expense, 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 Commitment:* 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 developments or buildings that 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 dwelling unit 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. If, as a result of new construction, an area within the Service Area meets the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, then 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:*

3.2.1. *Availability of Cable Service Generally:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such costs shall be submitted to said Subscriber in writing, before installation is begun.

3.2.2. *No Discrimination in the Availability of Cable Service:* Franchisee shall not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides.

3.3. *Contribution in Aid:* Notwithstanding the foregoing Sections 3.1 and 3.2, Franchisee shall comply at a minimum with the requirements of Section 895.5 of the NY PSC rules and regulations; provided, however, that the density requirement shall be as set forth in Sub-subsection 3.1.1.1.

3.4. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public library and educational institution chartered or licensed by the New York State Department of Education or Board of Regents, and such other buildings used for municipal purposes, as designated initially by the LFA in Exhibit A to this Agreement, and, thereafter, during the Franchise term, as designated in writing upon the earlier to occur of (a) thirty (30) business days prior written notice to Franchisee or (b) approval of any amendment to Exhibit A to this Agreement in accordance with NY PSC rules; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet

of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such 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; provided, however, that if such equipment becomes defective, Franchisee shall replace it at no charge.

4. **SYSTEM FACILITIES**

4.1. *Quality of Materials:* 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 Cable 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 Cable 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 the New York EAS Plan, as amended from time to time, 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 meet the ascertained cable-related needs established by the LFA and to ensure universal availability of public, educational and government access programming, Franchisee shall provide capacity on its Basic Service tier for:

- (i) one (1) full time shared Public Access Channel;

(ii) one (1) full-time, shared primary Educational Access Channel (the "Primary Educational Access Channel");

(iii) one (1) additional shared Educational Access Channel (the "Secondary Educational Access Channel");

(iv) one (1) full-time, shared primary Government Access Channel (the "Primary Government Access Channel"); and

(v) one (1) additional shared Government Access Channel (the "Secondary Government Access Channel");

provided, however, that the Secondary Educational Access Channel and Secondary Government Access Channel shall be controlled by the LFA for the purpose of simulcasting educational access programming on the Secondary Educational Access Channel and simulcasting government access programming on the Secondary Government Access Channel (each of the aforementioned Channels in this Subsection 5.1.1 individually, a "PEG Channel" and, collectively, "PEG Channels").

5.1.2. The PEG programming to be carried on each of the PEG Channels set aside by Franchisee is reflected in Exhibit C to this Agreement. The LFA hereby authorizes Franchisee to transmit such programming within and outside LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

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

5.2. *PEG Access Interconnection:*

5.2.1. LFA shall designate in its sole discretion not more than four (4) sites within the Franchise Area for the interconnection of PEG access facilities with the Cable System (each, a "PEG Access Interconnection Site"), as designated on Exhibit D to this Agreement.

5.2.2. Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, Franchisee shall, without charge to the LFA, provide upstream PEG Channel transmission connections between its video channel aggregation point and each PEG Access

Interconnection Site in order to permit the signals to be correctly routed from the PEG Access Interconnection Sites to the appropriate PEG Access Channel for distribution to Subscribers as follows: (i) one (1) PEG Access Interconnection Site shall be operable within ninety (90) days of the Effective Date; (ii) one (1) PEG Access Interconnection Site shall be operable on or before the eight (8) month anniversary of the Effective Date; (iii) one (1) PEG Access Interconnection Site shall be operable on or before the one (1) year anniversary of the Effective Date; and (iv) one (1) PEG Access Interconnection Site shall be operable on or before the two (2) year anniversary of the Effective Date, each as designated on Exhibit D to this Agreement.

5.2.3. The LFA shall provide to Franchisee at each PEG Access Interconnection Site a suitable video signal and a suitable audio signal for each PEG Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and other facilities and such cooperation of the LFA as is reasonably necessary for Franchisee to fulfill such obligations. Should Franchisee determine that it cannot fulfill such obligations as a result of LFA's failure to cooperate or to provide suitable required space, environmental conditions, electrical power supply, access, pathway, or other facilities, it shall so notify LFA in a writing detailing the requirements of Franchisee that will enable it to fulfill its obligations hereunder.

5.2.4. Such upstream PEG Channel transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of signals to Subscribers.

5.2.5. If Franchisee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment and facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.3 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

5.3. *PEG Facilities:* Subject to Section 5.2, Franchisee shall design, build, and maintain all PEG upstream feeds, connections, and distribution facilities in order that such feeds function as reliably as Franchisee's Cable System as a whole within the Franchise Area, and are no more likely to fail than is Franchisee's Cable System as a whole within the Franchise Area.

5.4. *PEG Grants:*

5.4.1. Franchisee shall provide to the LFA financial contributions for use in support of the production of local PEG programming. The financial contributions shall consist of the following two grants: (a) a one-time grant in the amount of TWENTY-FOUR THOUSAND SEVEN HUNDRED NINETY THREE DOLLARS (\$24,793.00) (the "Initial PEG

Grant"); and (b) an annual grant of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00) (the "Annual PEG Grant"), each payable as set forth below.

5.4.2. The Initial PEG Grant shall become due and payable sixty (60) days after the Effective Date. In the event that the LFA does not require all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions, then Franchisee shall offset any Franchise Fees due to the LFA hereunder by any greater amount of the Initial PEG Grant that has been paid to the LFA.

5.4.3. Franchisee shall pay the Annual PEG Grant to the LFA as follows: (i) the first Annual PEG Grant Payment shall be due and payable to the LFA within sixty (60) days of the third anniversary of the Effective Date; and (ii) the remaining Annual PEG Grant payments shall be due and payable to the LFA within sixty (60) days after the fourth through ninth anniversaries of the Effective Date.

5.4.4. The Initial PEG Grant and the Annual 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.

5.4.5. Franchisee shall provide to the LFA an additional one-time grant in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) (the "PEG Channel Assignment Grant"). The PEG Channel Assignment Grant shall be payable to the LFA solely in the event that Franchisee makes a PEG Channel assignment change pursuant to Subsection 5.1.2.

5.4.6. Consistent with Section 895.3 of the NY PSC rules, notwithstanding the foregoing Subsections 5.4.3 and 5.4.7, no PEG Channel Assignment Grant or accrued Annual PEG Grant shall be payable by Franchisee unless and until the LFA requires all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions.

5.4.7. The grants identified above in this Section 5.4, specifically, the Initial PEG Grant, the Annual PEG Grant and the PEG Channel Assignment Grant shall be collectively referred to as the "PEG Grants."

5.4.8. The LFA shall provide Franchisee with an annual report setting forth a summary of all expenditures for PEG access equipment and facilities from the PEG Grants paid to the LFA and the amounts, if any, reserved for future capital expenditures for such purposes.

5.5. *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.

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

6. FRANCHISE FEES

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

6.2. *Supporting Information:* Each Franchise Fee payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail 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, copying 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 at a location within the state, 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 thirty (30) 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 a rate of nine percent (9%) 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; provided, however, that in the event of an underpayment of five percent (5%) or more in an audited period this limitation shall not apply to the subsequent two (2) audit periods.

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.

6.5. *Bundled Services:* If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate any discount associated with purchasing bundled services for the purposes of evading the Franchise Fee payments under this Franchise. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

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 in a manner so as not to unreasonably interfere with Franchisee's normal business operations, 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 location within the state or at another mutually agreed upon site. 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*: Subject to the requirements of Section 895.1(t) of the NY PSC rule and regulations, any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. INSURANCE AND INDEMNIFICATION

8.1. *Insurance*:

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

8.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit for property damage and bodily injury per occurrence and five million dollars (\$5,000,000) in the aggregate. 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: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) per employee limit; five hundred thousand dollars (\$500,000) policy limit.

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

8.1.2. The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 8 except Worker's Compensation Insurance, Employer's Liability Insurance and excess liability or umbrella coverage. Such additional insured requirement shall be indicated on the original Certificates of Insurance.

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. Franchisee shall deliver to LFA original Certificates of Insurance showing evidence of all required coverages under this Agreement on or before the Effective Date and providing for at least thirty (30) days prior written notice to be given to LFA of cancellation, intent not to renew or any adverse material change.

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels as provided in Section 5.5, provided that the LFA shall give Franchisee timely written notice of its obligation to indemnify the LFA, but in any event, the LFA shall provide such notice to Franchisee within a sufficient period of time from receipt of a claim or action pursuant to this Subsection to enable Franchisee to timely answer complaints, raise defenses and defend all claims. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties acting in their official capacity on behalf of the LFA or for any activity or function conducted by any Person other than Franchisee on behalf of the LFA 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, subject to federal and state law, 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 acting in their official capacity on behalf of the LFA.

9. **TRANSFER OF FRANCHISE**

9.1. *LFA Consent Required:* 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.

9.2. *LFA Consent Not Required for Certain Transactions:* No prior consent of the LFA shall be required 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 1.51 above.

9.3. *Each Transfer of the Franchise Subject to this Article:* Each Transfer of the Franchise shall be governed by and comply with the provisions of this Article 9.

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 12.12 below, the Cable Law, and Section 626 of the Communications Act, 47 U.S.C. § 546, as amended.

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

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

10.4. *Consistent Terms:* Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law.

11. ENFORCEMENT AND TERMINATION OF FRANCHISE

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

11.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to 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 or commenced to remedy 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 12.12 below and applicable federal and state law, in the event that the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

11.4.3. In the case of a substantial noncompliance with a Material Provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.

11.5. *Revocation:* If the LFA seeks to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, then 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 timely cured by the Franchisee. The LFA shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the LFA determines that it will revoke the Franchise, the LFA shall promptly provide Franchisee with a written determination setting forth the LFA's reasoning for such revocation. Franchisee may appeal such written determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA de novo. The parties shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the LFA.

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

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

12. MISCELLANEOUS PROVISIONS

12.1. *Actions of Parties:* In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

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

12.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision

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

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

12.4.1. Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers and was timely cured by Franchisee, 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:

Debbie Henneberry
Assistant Village Manager
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

12.5.3. with a copy to:

Robert J. Ponzini, Esq.
Village Attorney

Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

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 after the adoption of proper authorizing resolution by the governing body of the LFA and as approved by the NY PSC.

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. For purposes of this Agreement, the term "Material Provision" or "Material Provisions" shall mean the terms set forth in Article 5 (PEG Services), Article 6 (Franchise Fees), and Article 8 (Insurance and Indemnification).

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. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement. 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.

12.12. *NY PSC Approval:* This Franchise and any amendment or modification hereof 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:* Franchisee shall 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-month period, hold a performance evaluation session (the "Performance Review") to review Franchisee's compliance with the terms and conditions of this Franchise. 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 setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise.

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

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

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12.20. *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.

AGREED TO THIS ____ DAY OF _____, 2006.

LFA:
VILLAGE OF ARDSLEY

By: _____
Title:

FRANCHISEE:
VERIZON NEW YORK INC.

By: _____
Title:

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: PEG Access Interconnection Sites

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

Ardsley Public Library
9 American Legion Drive
Ardsley, New York 10502

Community Center
18 Center Street
Ardsley, New York 10502

Ardsley Firehouse
505 Ashford Avenue
Ardsley, New York 10502

Highway Garage
3 Elm Street
Ardsley, New York 10502

Concord Road School
2 Concord Road
Ardsley, New York 10502

Ardsley High School
300 Farm Road
Ardsley, New York 10502

EXHIBIT B

SERVICE AREA

The Service Area shall be the Franchise Area. The construction of the Franchisee's FTTP Network has been substantially completed throughout the Franchise Area subject only to Subsection 3.1.1. and Section 3.2 of the Franchise, and accordingly it is not necessary to provide any additional details concerning the construction and/or deployment time tables and areas within the Service Area. A map of the Service Area is attached hereto.

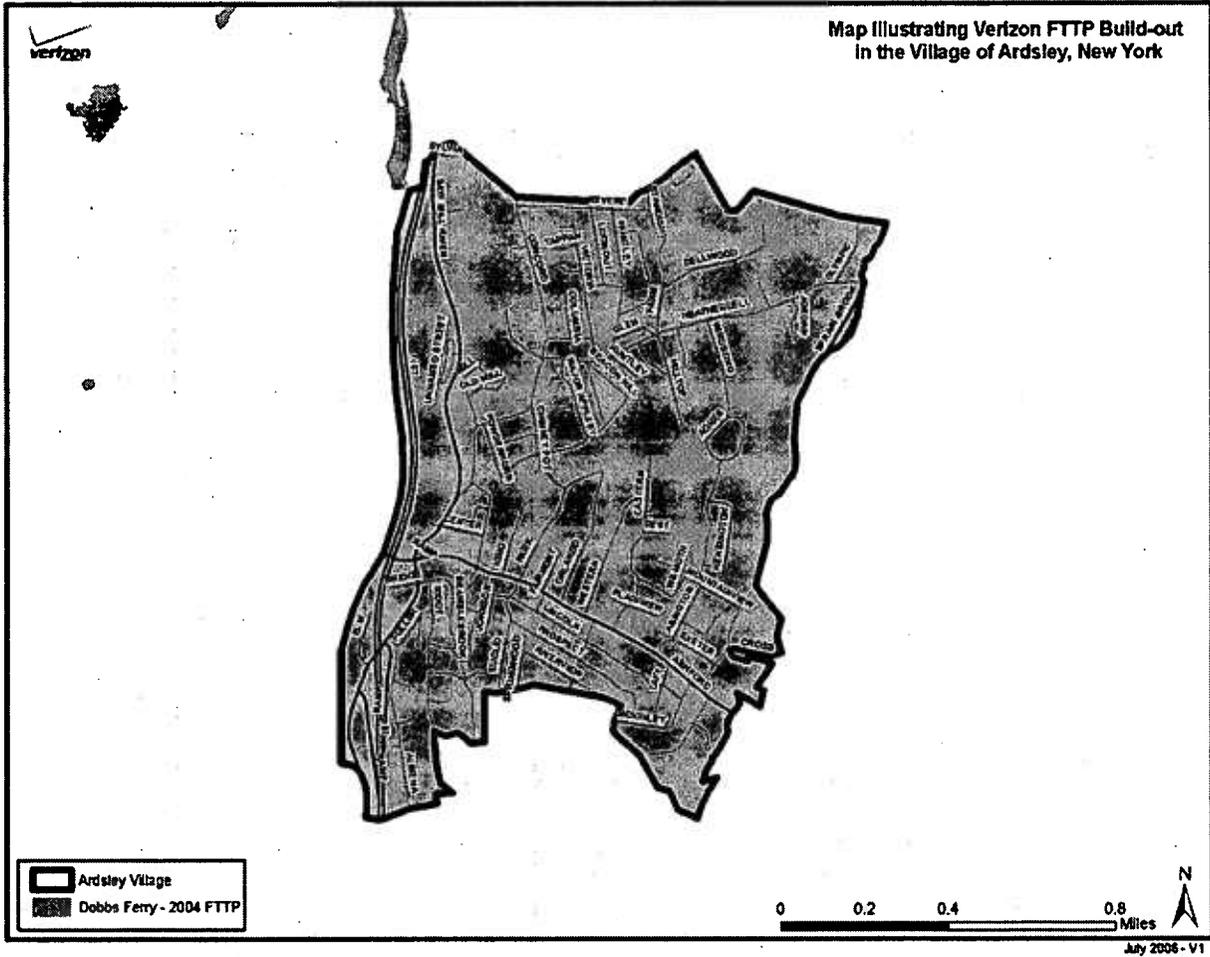


EXHIBIT C

PEG CHANNELS

The Franchisee will transmit PEG programming as provided by the LFA and the public, as directed.

EXHIBIT D

PEG ACCESS INTERCONNECTION SITES

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable within ninety (90) days of the Effective Date:

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

This PEG Access Interconnection Site shall serve as the aggregation point for the PEG Access Interconnection Sites listed below.

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable on or before the eight (8) month anniversary of the Effective Date:

Ardsley Public Library
9 American Legion Drive
Ardsley, New York 10502

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable on or before the one (1) year anniversary of the Effective Date:

Ardsley Community Center
18 Center Street
Ardsley, New York 10502

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable on or before the two (2) year anniversary of the Effective Date:

McDowell Park
Heatherdell Road
Ardsley, New York 10502

Cable Franchise Agreement
by and between
the Village of Ardsley
and
Verizon New York Inc.

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EXHIBITS

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

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Ardsley, 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 found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the character and 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 determined that the Franchise complies with the provisions of the Cable Law and with NY PSC's franchise standards, and that 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. *Agreement*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.4. *Annual PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

1.5. *Basic Service*: The tier of Cable Service which includes, at a minimum, the retransmission of all local television broadcast signals provided to any Subscriber and any PEG Channels required by this Franchise or NY PSC rules, and which may also include any additional video programming signals as determined by Franchisee.

1.6. *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.

1.7. *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.

1.8. *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.

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

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

1.11. *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.

1.12. *EAS*: Shall be defined herein as it is set forth in Section 4.4.

1.13. *Educational Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use 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.

1.14. *Effective Date*: Shall be defined herein as it is set forth in Section 2.3.

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

~~1.16. *First Annual PEG Grant Payment Date*: Shall be defined herein as it is set forth in Subsection 5.4.3.~~

1.16. ~~1.17.~~ *FOIL*: Shall be defined herein as it is set forth in Section 7.1.

1.17. ~~1.18.~~ *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control that directly or indirectly results in Franchisee's non-compliance with, or delay in the performance of, any obligation hereunder. This may include, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays resulting from unaffiliated utility providers' failure to service, monitor or maintain utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.18. ~~1.19.~~ *Franchise*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.19. ~~1.20.~~ *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA.

1.20. ~~1.21.~~ *Franchisee*: Verizon New York Inc. and its lawful and permitted successors, assigns and transferees.

1.21. ~~1.22.~~ *Franchise Fee*: Shall be defined herein as it is set forth in Section 6.1.

1.22. ~~1.23.~~ *FTTP Network*: Shall be defined herein as it is set forth in the third recital.

~~1.23.~~ ~~1.24.~~ *Government Access Channel:* An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use of the LFA.

~~1.24.~~ ~~1.25.~~ *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, including revenues from services provided to Subscribers in the Service Area that are Cable Services or are classified or will be classified by federal law, the FCC or a court of competent jurisdiction as Cable Services subject to Franchise Fees.

Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; (iv) video on demand, including pay-per-view; 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.

Gross Revenue shall not include: revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or NY PSC rules, regulations, standards or orders, as may be amended from time to time; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a

payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; or any fees or charges collected from Subscribers or other third parties for any PEG Grant payments.

1.25. ~~1.26.~~ *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.

1.26. ~~1.27.~~ *Initial PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

1.27. ~~1.28.~~ *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.28. ~~1.29.~~ *Local Franchise Authority (LFA)*: The Village of Ardsley, New York, or the lawful successor, transferee, or assignee thereof.

1.29. ~~1.30.~~ *Material Provision or Material Provisions*: Shall be defined herein as it is set forth in Section 12.9.

1.30. ~~1.31.~~ *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.

1.31. ~~1.32.~~ *Noncompliance Notice*: Shall be defined herein as it is set forth in Section 11.1.

1.32. ~~1.33.~~ *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.

- 1.33.** ~~1.34.~~ *NY PSC*: The New York Public Service Commission.
- 1.34.** ~~1.35.~~ *PEG*: Public, Educational, and Governmental.
- 1.35.** ~~1.36.~~ *PEG Access Interconnection Site*: Shall be defined herein as it is set forth in Subsection 5.2.1.
- 1.36.** ~~1.37.~~ *PEG Channel* or *PEG Channels*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.37.** ~~1.38.~~ *PEG Channel Assignment Grant*: Shall be defined herein as it is set forth in Subsection 5.4.7.
- 1.38.** ~~1.39.~~ *PEG Grants*: Shall be defined herein as it is set forth in Subsection 5.4.9.
- 1.39.** ~~1.40.~~ *Performance Review*: Shall be defined herein as it is set forth in Section 12.17.
- 1.40.** ~~1.41.~~ *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- 1.41.** ~~1.42.~~ *Primary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.42.** ~~1.43.~~ *Primary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.43.** ~~1.44.~~ *Public Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use by the residents in the Franchise Area on a first-come, first-served, nondiscriminatory basis.
- 1.44.** ~~1.45.~~ *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.
- 1.45.** ~~1.46.~~ *Secondary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.46.** ~~1.47.~~ *Secondary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.47.** ~~1.48.~~ *Service Area*: All portions of the Franchise Area where Cable Service is being offered, as described in Exhibit B to this Agreement.

1.48. ~~1.49.~~ *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.49. ~~1.50.~~ *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.

1.50. ~~1.51.~~ *Title VI*: Title VI of the Communications Act, Cable Communications, as amended.

1.51. ~~1.52.~~ *Transfer of the Franchise*:

1.51.1. ~~1.52.1.~~ Any transaction in which:

1.51.1.1. ~~1.52.1.1.~~ 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

1.51.1.2. ~~1.52.1.2.~~ 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.

1.51.2. ~~1.52.2.~~ — However, notwithstanding Sub-subsections ~~1.52.1.1.~~ 1.51.1.1 and ~~1.52.1.2.~~ 1.51.1.2 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.

1.52. ~~1.53.~~ *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*: Notwithstanding that, upon delivery of Cable Service, Franchisee's mixed-use facilities become subject to the NY PSC's minimum franchise standards and the LFA's police power, the parties acknowledge that the LFA is not granted, as a consequence thereof, any broad new authority over the construction, placement and operation of Franchisee's mixed-use facilities.

2.3. *Term:* This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise. If subsequent to the Effective Date, there is a change in federal or state law that eliminates the authority of the LFA to require, grant or maintain this Franchise, then to the extent permitted under law this Franchise shall survive such legislation and remain in effect for the term 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 be non-exclusive, and the LFA has granted and reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable lawful provisions of federal law and state law and FCC and NY PSC rules, regulations, standards and orders, as amended from time to time, 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 at Franchisee's expense.

2.10. *Restoration of Subscriber Premises:* The Franchisee shall ensure, at Franchisee's expense, 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 Commitment:* 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 developments or buildings that 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 dwelling unit 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. If, as a result of new construction, an area within the Service Area

meets the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, then 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:*

3.2.1. *Availability of Cable Service Generally:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such costs shall be submitted to said Subscriber in writing, before installation is begun.

3.2.2. *No Discrimination in the Availability of Cable Service:* Franchisee shall not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides.

3.3. *Contribution in Aid:* Notwithstanding the foregoing Sections 3.1 and 3.2, Franchisee shall comply at a minimum with the requirements of Section 895.5 of the NY PSC rules and regulations; provided, however, that the density requirement shall be as set forth in Sub-subsection 3.1.1.1.

3.4. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public library and educational institution chartered or licensed by the New York State Department of Education or Board of Regents, and such other buildings used for municipal purposes, as designated initially by the LFA in Exhibit A to this Agreement, and, thereafter, during the Franchise term, as designated in writing upon the earlier to occur of (a) thirty (30) business days prior written notice to Franchisee or (b) approval of any amendment to Exhibit A to this Agreement in accordance with NY PSC rules; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of five hundred (500) feet, or of releasing

Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such 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; provided, however, that if such equipment becomes defective, Franchisee shall replace it at no charge.

4. SYSTEM FACILITIES

4.1. *Quality of Materials:* 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 Cable 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 Cable 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 the New York EAS Plan, as amended from time to time, 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 meet the ascertained cable-related needs established by the LFA and to ensure universal availability of public, educational and government access programming, Franchisee shall provide capacity on its Basic Service tier for:

- (i) one (1) full time shared Public Access Channel;
- (ii) one (1) full-time, shared primary Educational Access Channel (the "Primary Educational Access Channel");
- (iii) one (1) additional shared Educational Access Channel (the "Secondary Educational Access Channel");
- (iv) one (1) full-time, shared primary Government Access Channel (the "Primary Government Access Channel"); and
- (v) one (1) additional shared Government Access Channel (the "Secondary Government Access Channel");

provided, however, that the Secondary Educational Access Channel and Secondary Government Access Channel shall be controlled by the LFA for the purpose of simulcasting educational access programming on the Secondary Educational Access Channel and simulcasting government access programming on the Secondary Government Access Channel (each of the aforementioned Channels in this Subsection 5.1.1 individually, a "PEG Channel" and, collectively, "PEG Channels").

5.1.2. The PEG programming to be carried on each of the PEG Channels set aside by Franchisee is reflected in Exhibit C to this Agreement. The LFA hereby authorizes Franchisee to transmit such programming within and outside LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

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

5.2. *PEG Access Interconnection:*

5.2.1. LFA shall designate in its sole discretion not more than ~~three~~four (34) sites within the Franchise Area for the interconnection of PEG access facilities with the

Cable System (each, a "PEG Access Interconnection Site"), as designated on Exhibit D to this Agreement.

5.2.2. Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning. Franchisee shall, without charge to the LFA, provide upstream PEG Channel transmission connections between its video channel aggregation point and each PEG Access Interconnection Site in order to permit the signals to be correctly routed from the PEG Access Interconnection Sites to the appropriate PEG Access Channel for distribution to Subscribers as follows: (i) one (1) PEG Access Interconnection Site shall be operable within ninety (90) days of the Effective Date; (ii) one (1) PEG Access Interconnection Site shall be operable on or before the eight (8) month anniversary of the Effective Date; (iii) one (1) PEG Access Interconnection Site shall be operable on or before the one (1) year anniversary of the Effective Date; and (iv) one (1) PEG Access Interconnection Site shall be operable on or before the two (2) year anniversary of the Effective Date, each as designated on Exhibit D to this Agreement.

5.2.3. The LFA shall provide to Franchisee at each PEG Access Interconnection Site a suitable video signal and a suitable audio signal for each PEG Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and other facilities and such cooperation of the LFA as is reasonably necessary for Franchisee to fulfill such obligations. Should Franchisee determine that it cannot fulfill such obligations as a result of LFA's failure to cooperate or to provide suitable required space, environmental conditions, electrical power supply, access, pathway, or other facilities, it shall so notify LFA in a writing detailing the requirements of Franchisee that will enable it to fulfill its obligations hereunder.

5.2.4. Such upstream PEG Channel transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of signals to Subscribers.

5.2.5. If Franchisee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment and facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.3 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

5.3. *PEG Facilities:* Subject to Section 5.2, Franchisee shall design, build, and maintain all PEG upstream feeds, connections, and distribution facilities in order that such feeds

function as reliably as Franchisee's Cable System as a whole within the Franchise Area, and are no more likely to fail than is Franchisee's Cable System as a whole within the Franchise Area.

5.4. *PEG Grants:*

5.4.1. Franchisee shall provide to the LFA financial contributions for use in support of the production of local PEG programming. The financial contributions shall consist of the following two grants: (a) a one-time grant in the amount of TWENTY-FOUR THOUSAND SEVEN HUNDRED NINETY THREE DOLLARS (\$24,793.00) (the "Initial PEG Grant"); and (b) an annual grant ~~in the amount of FIFTY SEVEN CENTS (\$.57) per month, per Subscriber in the Service Area~~ of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00) (the "Annual PEG Grant"), each payable as set forth below.

5.4.2. The Initial PEG Grant shall become due and payable sixty (60) days after the Effective Date. In the event that the LFA does not require all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions, then Franchisee shall offset any Franchise Fees due to the LFA hereunder by any greater amount of the Initial PEG Grant that has been paid to the LFA.

5.4.3. ~~The Franchisee shall pay the~~ Annual PEG Grant shall ~~accrue beginning on the Effective Date and shall become due and payable on the date (the "First to the LFA as follows: (i) the first Annual PEG Grant Payment Date") that the earlier of the following events occurs: either (i) Franchisee has recovered from Subscribers pursuant to Section 5.6 an amount equal to the full amount of the Initial PEG Grant; or (ii) shall be due and payable to the LFA within sixty (60) days of the third anniversary of the Effective Date. The amount of the first Annual PEG Grant shall be determined by calculating the total number of Subscribers from the Effective Date to the First Annual PEG Grant Payment Date multiplied by the number of months elapsed from the Effective Date to the First Annual PEG Grant Payment Date. After the First Annual PEG Grant Payment Date,; and (ii) the remaining~~ Annual PEG Grant payments shall be due and payable ~~on each anniversary of the Effective Date until the Franchise expires.~~

5.4.4. ~~For purposes of determining the First Annual PEG Grant Payment Date, Franchisee's rate of recovery from Subscribers in the Service Area shall be no less than FIFTY SEVEN CENTS (\$.57) per Subscriber per month, without regard to Franchisee's right to pass through such amount to Subscribers in accordance with Section 5.6.~~

5.4.5. ~~Each Annual PEG Grant payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail the Subscriber information upon which it is based, including, but not limited to, the number of Subscribers in the Service Area for each period for which an Annual PEG Grant Payment was calculated and the amount of such payment attributable to each such period~~ to the LFA within sixty (60) days after the fourth through ninth anniversaries of the Effective Date.

~~5.4.4.~~ 5.4.6. The Initial PEG Grant and the Annual 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.

5.4.5. ~~5.4.7.~~ Franchisee shall provide to the LFA an additional one-time grant in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) (the "PEG Channel Assignment Grant"). The PEG Channel Assignment Grant shall be payable to the LFA solely in the event that Franchisee makes a PEG Channel assignment change pursuant to Subsection 5.1.2.

5.4.6. ~~5.4.8.~~ Consistent with Section 895.3 of the NY PSC rules, notwithstanding the foregoing Subsections 5.4.3 and 5.4.7, no PEG Channel Assignment Grant or accrued Annual PEG Grant shall be payable by Franchisee unless and until the LFA requires all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions.

5.4.7. ~~5.4.9.~~ The grants identified above in this Section 5.4, specifically, the Initial PEG Grant, the Annual PEG Grant and the PEG Channel Assignment Grant shall be collectively referred to as the "PEG Grants."

5.4.8. ~~5.4.10.~~ The LFA shall provide Franchisee with an annual report setting forth a summary of all expenditures for PEG access equipment and facilities from the PEG Grants paid to the LFA and the amounts, if any, reserved for future capital expenditures for such purposes.

5.5. *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.

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

6. **FRANCHISE FEES**

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

6.2. *Supporting Information:* Each Franchise Fee payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail 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, copying 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 at a location within the state, 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 thirty (30) 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 a rate of nine percent (9%) 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; provided, however, that in the event of an

underpayment of five percent (5%) or more in an audited period this limitation shall not apply to the subsequent two (2) audit periods.

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.

6.5. *Bundled Services:* If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate any discount associated with purchasing bundled services for the purposes of evading the Franchise Fee payments under this Franchise. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

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 in a manner so as not to unreasonably interfere with Franchisee's normal business operations, 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 location within the state or at another mutually agreed upon site. 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:* Subject to the requirements of Section 895.1(t) of the NY PSC rule and regulations, any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. **INSURANCE AND INDEMNIFICATION**

8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit for property damage and bodily injury per occurrence and five million dollars (\$5,000,000) in the aggregate. 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: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) per employee limit; five hundred thousand dollars (\$500,000) policy limit.

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

8.1.2. The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 8 except Worker's Compensation Insurance, Employer's Liability Insurance and excess liability or umbrella coverage. Such additional insured requirement shall be indicated on the original Certificates of Insurance.

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. Franchisee shall deliver to LFA original Certificates of Insurance showing evidence of all required coverages under this Agreement on or before the Effective Date and providing for at least thirty (30) days prior written notice to be given to LFA of cancellation, intent not to renew or any adverse material change.

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels as provided in Section 5.5, provided that the LFA shall give Franchisee timely written notice of its obligation to indemnify the LFA, but in any event, the LFA shall

provide such notice to Franchisee within a sufficient period of time from receipt of a claim or action pursuant to this Subsection to enable Franchisee to timely answer complaints, raise defenses and defend all claims. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties acting in their official capacity on behalf of the LFA or for any activity or function conducted by any Person other than Franchisee on behalf of the LFA 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, subject to federal and state law, 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 acting in their official capacity on behalf of the LFA.

9. TRANSFER OF FRANCHISE

9.1. *LFA Consent Required:* 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.

9.2. *LFA Consent Not Required for Certain Transactions:* No prior consent of the LFA shall be required 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 ~~4-521~~51 above.

9.3. *Each Transfer of the Franchise Subject to this Article:* Each Transfer of the Franchise shall be governed by and comply with the provisions of this Article 9.

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 12.12 below, the Cable Law, and Section 626 of the Communications Act, 47 U.S.C. § 546, as amended.

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

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

10.4. *Consistent Terms:* Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law.

11. ENFORCEMENT AND TERMINATION OF FRANCHISE

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

11.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to 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 or commenced to remedy 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 12.12 below and applicable federal and state law, in the event that the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

11.4.3. In the case of a substantial noncompliance with a Material Provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.

11.5. *Revocation:* If the LFA seeks to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, then 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 timely cured by the Franchisee. The LFA shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the LFA determines that it will revoke the

Franchise, the LFA shall promptly provide Franchisee with a written determination setting forth the LFA's reasoning for such revocation. Franchisee may appeal such written determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA de novo. The parties shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the LFA.

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

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

12. MISCELLANEOUS PROVISIONS

12.1. *Actions of Parties:* In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

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

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

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

12.4.1. Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers and was timely cured by Franchisee, 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:

Debbie Henneberry
Assistant Village Manager
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

12.5.3. with a copy to:

Robert J. Ponzini, Esq.
Village Attorney
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

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 after the adoption of proper authorizing resolution by the governing body of the LFA and as approved by the NY PSC.

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. For purposes of this Agreement, the term "Material Provision" or "Material Provisions" shall mean the terms set forth in Article 5 (PEG Services), Article 6 (Franchise Fees), and Article 8 (Insurance and Indemnification).

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. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement. 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.

12.12. *NY PSC Approval*: This Franchise and any amendment or modification hereof 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*: Franchisee shall 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-month period, hold a performance evaluation session (the "Performance Review") to review Franchisee's compliance with the terms and conditions of this Franchise. 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 setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise.

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

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

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12.20. *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.

AGREED TO THIS ____ DAY OF _____, 2006.

LFA:
VILLAGE OF ARDSLEY

By: _____
Title:

FRANCHISEE:
VERIZON NEW YORK INC.

By: _____
Title:

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: PEG Access Interconnection Sites

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

Ardsley Public Library
9 American Legion Drive
Ardsley, New York 10502

Community Center
18 Center Street
Ardsley, New York 10502

Ardsley Firehouse
505 Ashford Avenue
Ardsley, New York 10502

Highway Garage
3 Elm Street
Ardsley, New York 10502

Concord Road School
2 Concord Road
Ardsley, New York 10502

Ardsley High School
300 Farm Road
Ardsley, New York 10502

EXHIBIT B

SERVICE AREA

The Service Area shall be the Franchise Area. The construction of the Franchisee's FTTP Network has been substantially completed throughout the Franchise Area subject only to Subsection 3.1.1. and Section 3.2 of the Franchise, and accordingly it is not necessary to provide any additional details concerning the construction and/or deployment time tables and areas within the Service Area. A map of the Service Area is attached hereto.

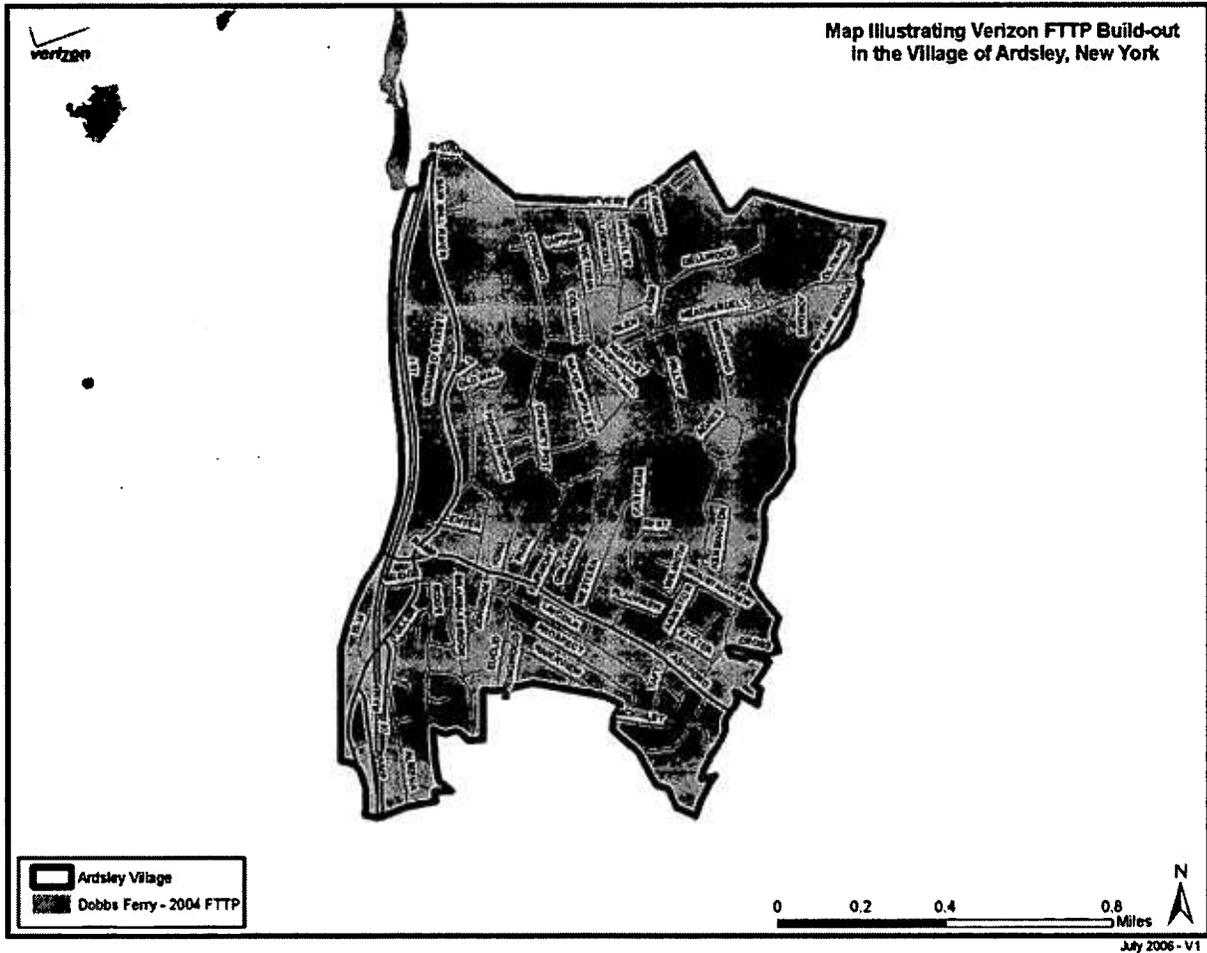


EXHIBIT C

PEG CHANNELS

The Franchisee will transmit PEG programming as provided by the LFA and the public, as directed.

EXHIBIT D

PEG ACCESS INTERCONNECTION SITES

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable within ninety (90) days of the Effective Date:

Ardsey Village Hall
507 Ashford Avenue
Ardsey, New York 10502

This PEG Access Interconnection Site shall serve as the aggregation point for the PEG Access Interconnection Sites listed below.

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable on or before the eight (8) month anniversary of the Effective Date:

Ardsey Public Library
9 American Legion Drive
Ardsey, New York 10502

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable on or before the one (1) year anniversary of the Effective Date:

Ardsey Community Center
18 Center Street
Ardsey, New York 10502

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable on or before the two (2) year anniversary of the Effective Date:

McDowell Park
Heatherdell Road
Ardsey, New York 10502

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Document comparison done by DeltaView on Wednesday, November 01, 2006 5:23:57 PM

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Document 1	interwovenSite://NYCDMS/Active/4071973/3
Document 2	interwovenSite://NYCDMS/Active/4071973/4
Rendering set	MW Standard

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

Statistics:	
	Count
Insertions	41
Deletions	70
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	113

Tab 8

Goldstein, Pamela N.

From: Goldstein, Pamela N.
Sent: Thursday, November 02, 2006 8:16 PM
To: 'manager@ardsleyvillage.com'; 'dhenneberry@optonline.net'; 'ArdleyMayor@aol.com'
Cc: 'mkerbey@telecominsightgroup.com'; Goldstein, Pamela N.; 'Kulka, Sean C.'
Subject: 11.2.06 Cable Franchise Agreement by and between the Village of Ardsley and Verizon New York Inc.

Dear Mr. Mayor, Mr. Calvi and Ms. Henneberry:

Attached please find a further revised version of the proposed Cable Franchise Agreement by and between the Village of Ardsley and Verizon New York Inc.

Also attached for your reference is a blackline comparing this revised draft against the 10/4/06 draft.

Please call Mac Kerbey at (617) 628-3436 or me should you have any questions.

We look forward to seeing you on Monday night.

Best regards,
Pamela

Pamela N. Goldstein
Associate

McGUIREWOODS
McGuireWoods LLP
1345 Avenue of the Americas
Seventh Floor
New York, NY 10105-0106
212.548.2136 (Direct Line)
212.548.2173 (Direct FAX)
pngoldstein@mcguirewoods.com

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*ATTORNEY/CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
PRIVILEGED AND CONFIDENTIAL*

Cable Franchise Agreement
by and between
the Village of Ardsley
and
Verizon New York Inc.

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EXHIBITS

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

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Ardsley, 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 found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the character and 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 determined that the Franchise complies with the provisions of the Cable Law and with NY PSC's franchise standards, and that 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. *Agreement*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.4. *Annual PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

1.5. *Basic Service*: The tier of Cable Service which includes, at a minimum, the retransmission of all local television broadcast signals provided to any Subscriber and any PEG Channels required by this Franchise or NY PSC rules, and which may also include any additional video programming signals as determined by Franchisee.

1.6. *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.

1.7. *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.

1.8. *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.

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

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

1.11. *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.

1.12. *EAS*: Shall be defined herein as it is set forth in Section 4.4.

1.13. *Educational Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use 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.

1.14. *Effective Date*: Shall be defined herein as it is set forth in Section 2.3.

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

1.16. *FOIL*: Shall be defined herein as it is set forth in Section 7.1.

1.17. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control that directly or indirectly results in Franchisee's non-compliance with, or delay in the performance of, any obligation hereunder. This may include, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays resulting from unaffiliated utility providers' failure to service, monitor or maintain utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.18. *Franchise*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.19. *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA.

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

1.21. *Franchise Fee*: Shall be defined herein as it is set forth in Section 6.1.

1.22. *FTTP Network*: Shall be defined herein as it is set forth in the third recital.

1.23. *Government Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use of the LFA.

1.24. *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, including revenues from services provided to Subscribers in the Service Area that are Cable Services or are classified or will be classified by federal law, the FCC or a court of competent jurisdiction as Cable Services subject to Franchise Fees.

Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; (iv) video on demand, including pay-per-view; 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.

Gross Revenue shall not include: revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or NY PSC rules, regulations, standards or orders, as may be amended from time to time; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of

general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; or any fees or charges collected from Subscribers or other third parties for any PEG Grant payments.

1.25. *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.

1.26. *Initial PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

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

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

1.29. *Material Provision or Material Provisions*: Shall be defined herein as it is set forth in Section 12.9.

1.30. *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.

1.31. *Noncompliance Notice*: Shall be defined herein as it is set forth in Section 11.1.

1.32. *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.

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

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

- 1.35. *PEG Access Interconnection Site*: Shall be defined herein as it is set forth in Subsection 5.2.1.
- 1.36. *PEG Channel* or *PEG Channels*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.37. *PEG Channel Assignment Grant*: Shall be defined herein as it is set forth in Subsection 5.4.7.
- 1.38. *PEG Grants*: Shall be defined herein as it is set forth in Subsection 5.4.9.
- 1.39. *Performance Review*: Shall be defined herein as it is set forth in Section 12.17.
- 1.40. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- 1.41. *Primary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.42. *Primary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.43. *Public Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use by the residents in the Franchise Area on a first-come, first-served, nondiscriminatory basis.
- 1.44. *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.
- 1.45. *Secondary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.46. *Secondary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.47. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, as described in Exhibit B to this Agreement.
- 1.48. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.49. *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.

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

1.51. *TOA*: Shall be defined herein as it is set forth in Subsection 5.4.3.

1.52. *Transfer of the Franchise*:

1.52.1. Any transaction in which:

1.52.1.1. 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

1.52.1.2. 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.

1.52.2. However, notwithstanding Sub-sections 1.52.1.1 and 1.52.1.2 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.

1.53. *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*: Notwithstanding that, upon delivery of Cable Service, Franchisee's mixed-use facilities become subject to the NY PSC's minimum franchise standards and the LFA's police power, the parties acknowledge that the LFA is not granted, as a consequence thereof, any broad new authority over the construction, placement and operation of Franchisee's mixed-use facilities.

2.3. *Term:* This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise. If subsequent to the Effective Date, there is a change in federal or state law that eliminates the authority of the LFA to require, grant or maintain this Franchise, then to the extent permitted under law this Franchise shall survive such legislation and remain in effect for the term 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 be non-exclusive, and the LFA has granted and reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable lawful provisions of federal law and state law and FCC and NY PSC rules, regulations, standards and orders, as amended from time to time, 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 at Franchisee's expense.

2.10. *Restoration of Subscriber Premises:* The Franchisee shall ensure, at Franchisee's expense, 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 Commitment:* 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 developments or buildings that 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 dwelling unit 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. If, as a result of new construction, an area within the Service Area

meets the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, then 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:*

3.2.1. *Availability of Cable Service Generally:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such costs shall be submitted to said Subscriber in writing, before installation is begun.

3.2.2. *No Discrimination in the Availability of Cable Service:* Franchisee shall not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides.

3.3. *Contribution in Aid:* Notwithstanding the foregoing Sections 3.1 and 3.2, Franchisee shall comply at a minimum with the requirements of Section 895.5 of the NY PSC rules and regulations; provided, however, that the density requirement shall be as set forth in Sub-subsection 3.1.1.1.

3.4. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public library and educational institution chartered or licensed by the New York State Department of Education or Board of Regents, and such other buildings used for municipal purposes, as designated initially by the LFA in Exhibit A to this Agreement, and, thereafter, during the Franchise term, as designated in writing upon the earlier to occur of (a) thirty (30) business days prior written notice to Franchisee or (b) approval of any amendment to Exhibit A to this Agreement in accordance with NY PSC rules; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of five hundred (500) feet, or of releasing

Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such 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; provided, however, that if such equipment becomes defective, Franchisee shall replace it at no charge.

4. SYSTEM FACILITIES

4.1. *Quality of Materials:* 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 Cable 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 Cable 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 the New York EAS Plan, as amended from time to time, 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 meet the ascertained cable-related needs established by the LFA and to ensure universal availability of public, educational and government access programming, Franchisee shall provide capacity on its Basic Service tier for:

- (i) one (1) full time shared Public Access Channel;
- (ii) one (1) full-time, shared primary Educational Access Channel (the "Primary Educational Access Channel");
- (iii) one (1) additional shared Educational Access Channel (the "Secondary Educational Access Channel");
- (iv) one (1) full-time, shared primary Government Access Channel (the "Primary Government Access Channel"); and
- (v) one (1) additional shared Government Access Channel (the "Secondary Government Access Channel");

provided, however, that the Secondary Educational Access Channel and Secondary Government Access Channel shall be controlled by the LFA for the purpose of simulcasting educational access programming on the Secondary Educational Access Channel and simulcasting government access programming on the Secondary Government Access Channel (each of the aforementioned Channels in this Subsection 5.1.1 individually, a "PEG Channel" and, collectively, "PEG Channels").

5.1.2. The PEG programming to be carried on each of the PEG Channels set aside by Franchisee is reflected in Exhibit C to this Agreement. The LFA hereby authorizes Franchisee to transmit such programming within and outside LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

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

5.2. *PEG Access Interconnection:*

5.2.1. LFA shall designate in its sole discretion not more than four (4) sites within the Franchise Area for the interconnection of PEG access facilities with the Cable System (each, a "PEG Access Interconnection Site"), as designated on Exhibit D to this Agreement.

5.2.2. Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, Franchisee shall, without charge to the LFA, provide upstream PEG Channel transmission connections between its video channel aggregation point and each PEG Access Interconnection Site in order to permit the signals to be correctly routed from the PEG Access Interconnection Sites to the appropriate PEG Access Channel for distribution to Subscribers as follows: (i) one (1) PEG Access Interconnection Site shall be operable within ninety (90) days of the Effective Date; (ii) one (1) PEG Access Interconnection Site shall be operable on or before the eight (8) month anniversary of the Effective Date; (iii) one (1) PEG Access Interconnection Site shall be operable on or before the one (1) year anniversary of the Effective Date; and (iv) one (1) PEG Access Interconnection Site shall be operable on or before the two (2) year anniversary of the Effective Date, each as designated on Exhibit D to this Agreement.

5.2.3. The LFA shall provide to Franchisee at each PEG Access Interconnection Site a suitable video signal and a suitable audio signal for each PEG Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and other facilities and such cooperation of the LFA as is reasonably necessary for Franchisee to fulfill such obligations. Should Franchisee determine that it cannot fulfill such obligations as a result of LFA's failure to cooperate or to provide suitable required space, environmental conditions, electrical power supply, access, pathway, or other facilities, it shall so notify LFA in a writing detailing the requirements of Franchisee that will enable it to fulfill its obligations hereunder.

5.2.4. Such upstream PEG Channel transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of signals to Subscribers.

5.2.5. If Franchisee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment and facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.3 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

5.3. *PEG Facilities:* Subject to Section 5.2, Franchisee shall design, build, and maintain all PEG upstream feeds, connections, and distribution facilities in order that such feeds function as reliably as Franchisee's Cable System as a whole within the Franchise Area, and are no more likely to fail than is Franchisee's Cable System as a whole within the Franchise Area.

5.4. *PEG Grants:*

5.4.1. Franchisee shall provide to the LFA financial contributions for use in support of the production of local PEG programming. The financial contributions shall consist of the following two grants: (a) a one-time grant in the amount of TWENTY-FOUR THOUSAND SEVEN HUNDRED NINETY THREE DOLLARS (\$24,793.00) (the "Initial PEG Grant"); and (b) an annual grant of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00) (the "Annual PEG Grant"), each payable as set forth below.

5.4.2. The Initial PEG Grant shall become due and payable sixty (60) days after the Effective Date. In the event that the LFA does not require all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions, then Franchisee shall offset any Franchise Fees due to the LFA hereunder by any greater amount of the Initial PEG Grant that has been paid to the LFA.

5.4.3. Franchisee shall pay the Annual PEG Grant to the LFA as follows: (i) the first Annual PEG Grant payment shall be due and payable to the LFA within sixty (60) days of the third anniversary of the Effective Date; and (ii) the remaining Annual PEG Grant payments shall be due and payable to the LFA within sixty (60) days after the fourth through ninth anniversaries of the Effective Date. If the Franchise is extended by means of a Temporary Operating Authority ("TOA") consistent with New York law and NY PSC rules and regulations, Franchisee shall continue payment of the Annual PEG Grant for a period of up to three (3) years, or until renewal of the Franchise, so long as the LFA imposes a substantially similar obligation on all other cable service providers in the Service Area. The continued Annual PEG Grant payment shall be due within sixty (60) days of any applicable anniversary of the Effective Date.

5.4.4. The Initial PEG Grant and the Annual 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.

5.4.5. Franchisee shall provide to the LFA an additional one-time grant in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) (the "PEG Channel Assignment Grant"). The PEG Channel Assignment Grant shall be payable to the LFA solely in the event that Franchisee makes a PEG Channel assignment change pursuant to Subsection 5.1.2.

5.4.6. Consistent with Section 895.3 of the NY PSC rules, notwithstanding the foregoing Subsections 5.4.3 and 5.4.7, no PEG Channel Assignment Grant or Annual PEG Grant shall be payable by Franchisee unless and until the LFA requires all cable

service providers in the Service Area to provide substantially equivalent PEG financial contributions.

5.4.7. The grants identified above in this Section 5.4, specifically, the Initial PEG Grant, the Annual PEG Grant, and the PEG Channel Assignment Grant shall be collectively referred to as the "PEG Grants."

5.4.8. The LFA shall provide Franchisee with an annual report setting forth a summary of all expenditures for PEG access equipment and facilities from the PEG Grants paid to the LFA and the amounts, if any, reserved for future capital expenditures for such purposes.

5.5. *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.

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

6. **FRANCHISE FEES**

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

6.2. *Supporting Information:* Each Franchise Fee payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail 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, copying 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 at a location within the state, 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 thirty (30) 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 a rate of nine percent (9%) 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; provided, however, that in the event of an underpayment of five percent (5%) or more in an audited period this limitation shall not apply to the subsequent two (2) audit periods.

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.

6.5. *Bundled Services:* If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate any discount associated with purchasing bundled services for the purposes of evading the Franchise Fee payments under this Franchise. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for

any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

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 in a manner so as not to unreasonably interfere with Franchisee's normal business operations, 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 location within the state or at another mutually agreed upon site. 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:* Subject to the requirements of Section 895.1(t) of the NY PSC rule and regulations, any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. INSURANCE AND INDEMNIFICATION

8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit for property damage and bodily injury per occurrence and five million dollars (\$5,000,000) in the aggregate. 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: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) per employee limit; five hundred thousand dollars (\$500,000) policy limit.

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

8.1.2. The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 8 except Worker's Compensation Insurance, Employer's Liability Insurance and excess liability or umbrella coverage. Such additional insured requirement shall be indicated on the original Certificates of Insurance.

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. Franchisee shall deliver to LFA original Certificates of Insurance showing evidence of all required coverages under this Agreement on or before the Effective Date and providing for at least thirty (30) days prior written notice to be given to LFA of cancellation, intent not to renew or any adverse material change.

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels as provided in Section 5.5, provided that the LFA shall give Franchisee timely written notice of its obligation to indemnify the LFA, but in any event, the LFA shall provide such notice to Franchisee within a sufficient period of time from receipt of a claim or action pursuant to this Subsection to enable Franchisee to timely answer complaints, raise defenses and defend all claims. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties acting in their official capacity on behalf of the LFA or for any activity or function conducted by any Person other than Franchisee on behalf of the LFA 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, subject to federal and state law, 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 acting in their official capacity on behalf of the LFA.

9. TRANSFER OF FRANCHISE

9.1. *LFA Consent Required:* 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.

9.2. *LFA Consent Not Required for Certain Transactions:* No prior consent of the LFA shall be required 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 1.52 above.

9.3. *Each Transfer of the Franchise Subject to this Article:* Each Transfer of the Franchise shall be governed by and comply with the provisions of this Article 9.

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 12.12 below, the Cable Law, and Section 626 of the Communications Act, 47 U.S.C. § 546, as amended.

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

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

10.4. *Consistent Terms:* Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law.

11. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

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

11.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to 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 or commenced to remedy 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 12.12 below and applicable federal and state law, in the event that the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

11.4.3. In the case of a substantial noncompliance with a Material Provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.

11.5. *Revocation:* If the LFA seeks to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, then 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 timely cured by the Franchisee. The LFA shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the LFA determines that it will revoke the Franchise, the LFA shall promptly provide Franchisee with a written determination setting forth the LFA's reasoning for such revocation. Franchisee may appeal such written determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA de novo. The parties shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the LFA.

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

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

12. MISCELLANEOUS PROVISIONS

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

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

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

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

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

12.4.1. Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers and was timely cured by Franchisee, 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:

Debbie Henneberry
Assistant Village Manager
Village of Ardsley

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

12.5.3. with a copy to:

Robert J. Ponzini, Esq.
Village Attorney
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

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 after the adoption of proper authorizing resolution by the governing body of the LFA and as approved by the NY PSC.

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. For purposes of this Agreement, the term "Material Provision" or "Material Provisions" shall mean the terms set forth in Article 5 (PEG Services), Article 6 (Franchise Fees), and Article 8 (Insurance and Indemnification).

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. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in

this Agreement. 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.

12.12. *NY PSC Approval:* This Franchise and any amendment or modification hereof 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:* Franchisee shall 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-month period, hold a performance evaluation session (the "Performance Review") to review Franchisee's compliance with the terms and conditions of this Franchise. 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 setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise.

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

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

12.20. *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.

AGREED TO THIS ____ DAY OF _____, 2006.

LFA:
VILLAGE OF ARDSLEY

By: _____
Title:

FRANCHISEE:
VERIZON NEW YORK INC.

By: _____
Title:

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: PEG Access Interconnection Sites

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

Ardsley Public Library
9 American Legion Drive
Ardsley, New York 10502

Community Center
18 Center Street
Ardsley, New York 10502

Ardsley Firehouse
505 Ashford Avenue
Ardsley, New York 10502

Highway Garage
3 Elm Street
Ardsley, New York 10502

Concord Road School
2 Concord Road
Ardsley, New York 10502

Ardsley High School
300 Farm Road
Ardsley, New York 10502

EXHIBIT B

SERVICE AREA

The Service Area shall be the Franchise Area. The construction of the Franchisee's FTTP Network has been substantially completed throughout the Franchise Area subject only to Subsection 3.1.1. and Section 3.2 of the Franchise, and accordingly it is not necessary to provide any additional details concerning the construction and/or deployment time tables and areas within the Service Area. A map of the Service Area is attached hereto.

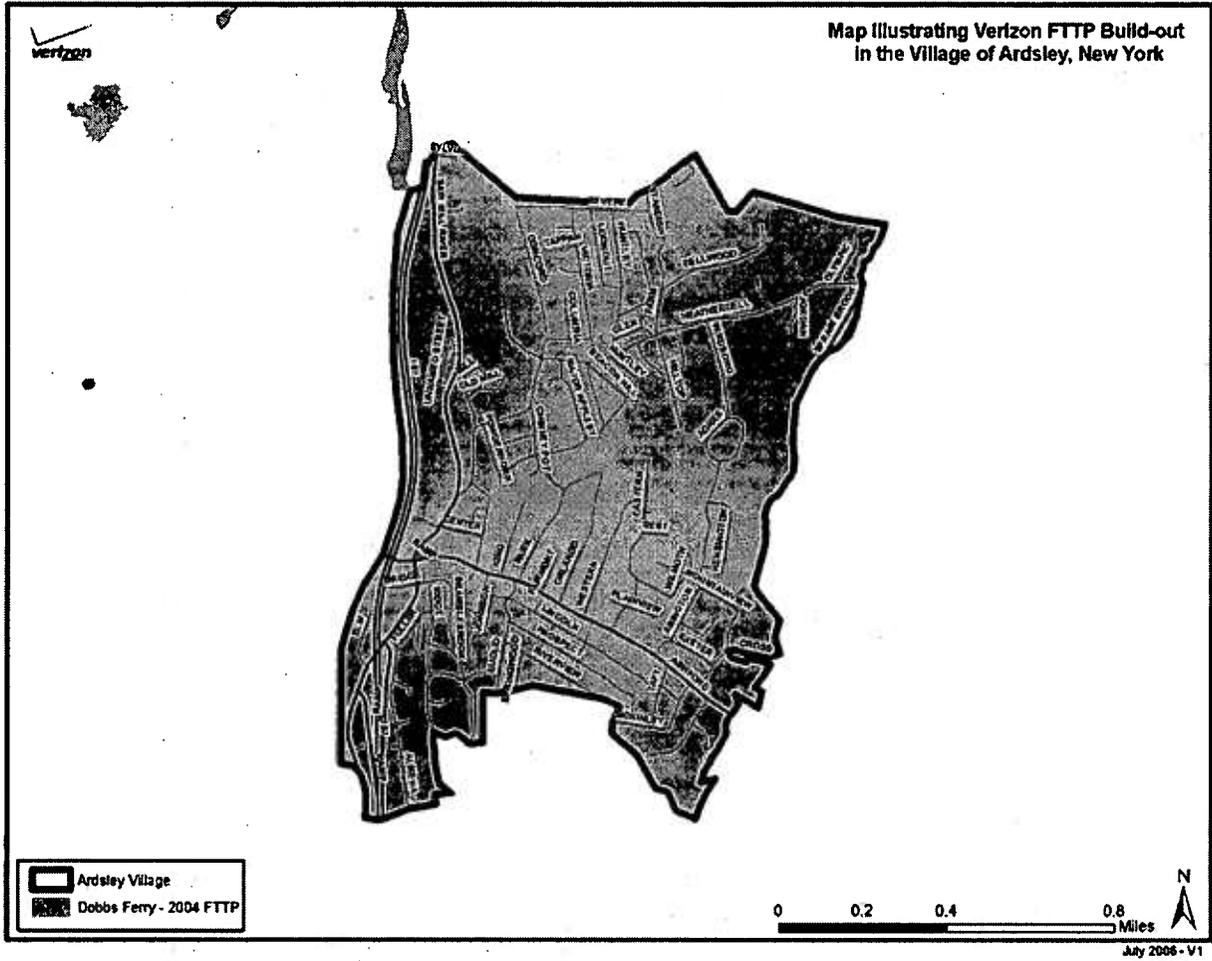


EXHIBIT C

PEG CHANNELS

The Franchisee will transmit PEG programming as provided by the LFA and the public, as directed.

EXHIBIT D

PEG ACCESS INTERCONNECTION SITES

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable within ninety (90) days of the Effective Date:

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

This PEG Access Interconnection Site shall serve as the aggregation point for the PEG Access Interconnection Sites listed below.

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable on or before the eight (8) month anniversary of the Effective Date:

Ardsley Public Library
9 American Legion Drive
Ardsley, New York 10502

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable on or before the one (1) year anniversary of the Effective Date:

Ardsley Community Center
18 Center Street
Ardsley, New York 10502

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable on or before the two (2) year anniversary of the Effective Date:

McDowell Park
Heatherdell Road
Ardsley, New York 10502

Cable Franchise Agreement

by and between

the Village of Ardsley

and

Verizon New York Inc.

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EXHIBITS

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

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Ardsley, 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 found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the character and 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 determined that the Franchise complies with the provisions of the Cable Law and with NY PSC's franchise standards, and that 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. *Agreement*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.4. *Annual PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

1.5. *Basic Service*: The tier of Cable Service which includes, at a minimum, the retransmission of all local television broadcast signals provided to any Subscriber and any PEG Channels required by this Franchise or NY PSC rules, and which may also include any additional video programming signals as determined by Franchisee.

1.6. *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.

1.7. *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.

1.8. *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.

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

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

1.11. *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.

1.12. *EAS*: Shall be defined herein as it is set forth in Section 4.4.

1.13. *Educational Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use 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.

1.14. *Effective Date*: Shall be defined herein as it is set forth in Section 2.3.

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

~~1.16. *First Annual PEG Grant Payment Date*: Shall be defined herein as it is set forth in Subsection 5.4.3.~~

1.16. ~~1.17.~~ *FOIL*: Shall be defined herein as it is set forth in Section 7.1.

1.17. ~~1.18.~~ *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control that directly or indirectly results in Franchisee's non-compliance with, or delay in the performance of, any obligation hereunder. This may include, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays resulting from unaffiliated utility providers' failure to service, monitor or maintain utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.18. ~~1.19.~~ *Franchise*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.19. ~~1.20.~~ *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA.

1.20. ~~1.21.~~ *Franchisee*: Verizon New York Inc. and its lawful and permitted successors, assigns and transferees.

1.21. ~~1.22.~~ *Franchise Fee*: Shall be defined herein as it is set forth in Section 6.1.

1.22. ~~1.23.~~ *FTTP Network*: Shall be defined herein as it is set forth in the third recital.

1.23. ~~1.24.~~ *Government Access Channel:* An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use of the LFA.

1.24. ~~1.25.~~ *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, including revenues from services provided to Subscribers in the Service Area that are Cable Services or are classified or will be classified by federal law, the FCC or a court of competent jurisdiction as Cable Services subject to Franchise Fees.

Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; (iv) video on demand, including pay-per-view; 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.

Gross Revenue shall not include: revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or NY PSC rules, regulations, standards or orders, as may be amended from time to time; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a

payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; or any fees or charges collected from Subscribers or other third parties for any PEG Grant payments.

1.25. ~~1.26.~~ *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.

1.26. ~~1.27.~~ *Initial PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

1.27. ~~1.28.~~ *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.28. ~~1.29.~~ *Local Franchise Authority (LFA)*: The Village of Ardsley, New York, or the lawful successor, transferee, or assignee thereof.

1.29. ~~1.30.~~ *Material Provision or Material Provisions*: Shall be defined herein as it is set forth in Section 12.9.

1.30. ~~1.31.~~ *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.

1.31. ~~1.32.~~ *Noncompliance Notice*: Shall be defined herein as it is set forth in Section 11.1.

1.32. ~~1.33.~~ *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.

- 1.33.** ~~1.34.~~ *NY PSC*: The New York Public Service Commission.
- 1.34.** ~~1.35.~~ *PEG*: Public, Educational, and Governmental.
- 1.35.** ~~1.36.~~ *PEG Access Interconnection Site*: Shall be defined herein as it is set forth in Subsection 5.2.1.
- 1.36.** ~~1.37.~~ *PEG Channel or PEG Channels*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.37.** ~~1.38.~~ *PEG Channel Assignment Grant*: Shall be defined herein as it is set forth in Subsection 5.4.7.
- 1.38.** ~~1.39.~~ *PEG Grants*: Shall be defined herein as it is set forth in Subsection 5.4.9.
- 1.39.** ~~1.40.~~ *Performance Review*: Shall be defined herein as it is set forth in Section 12.17.
- 1.40.** ~~1.41.~~ *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- 1.41.** ~~1.42.~~ *Primary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.42.** ~~1.43.~~ *Primary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.43.** ~~1.44.~~ *Public Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use by the residents in the Franchise Area on a first-come, first-served, nondiscriminatory basis.
- 1.44.** ~~1.45.~~ *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.
- 1.45.** ~~1.46.~~ *Secondary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.46.** ~~1.47.~~ *Secondary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.47.** ~~1.48.~~ *Service Area*: All portions of the Franchise Area where Cable Service is being offered, as described in Exhibit B to this Agreement.

1.48. ~~1.49.~~ *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.49. ~~1.50.~~ *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.

1.50. ~~1.51.~~ *Title VI*: Title VI of the Communications Act, Cable Communications, as amended.

1.51. *TOA*: Shall be defined herein as it is set forth in Subsection 5.4.3.

1.52. *Transfer of the Franchise*:

1.52.1. Any transaction in which:

1.52.1.1. 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

1.52.1.2. 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.

1.52.2. However, notwithstanding Sub-sections 1.52.1.1 and 1.52.1.2 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.

1.53. *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*: Notwithstanding that, upon delivery of Cable Service, Franchisee's mixed-use facilities become subject to the NY PSC's minimum franchise standards and the LFA's police power, the parties acknowledge that the LFA is not granted, as a

consequence thereof, any broad new authority over the construction, placement and operation of Franchisee's mixed-use facilities.

2.3. *Term:* This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise. If subsequent to the Effective Date, there is a change in federal or state law that eliminates the authority of the LFA to require, grant or maintain this Franchise, then to the extent permitted under law this Franchise shall survive such legislation and remain in effect for the term 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 be non-exclusive, and the LFA has granted and reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable lawful provisions of federal law and state law and FCC and NY PSC rules, regulations, standards and orders, as amended from time to time, 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 at Franchisee's expense.

2.10. *Restoration of Subscriber Premises:* The Franchisee shall ensure, at Franchisee's expense, 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 Commitment:* 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 developments or buildings that 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 dwelling unit 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. If, as a result of new construction, an area within the Service Area meets the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, then 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:*

3.2.1. *Availability of Cable Service Generally:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such costs shall be submitted to said Subscriber in writing, before installation is begun.

3.2.2. *No Discrimination in the Availability of Cable Service:* Franchisee shall not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides.

3.3. *Contribution in Aid:* Notwithstanding the foregoing Sections 3.1 and 3.2, Franchisee shall comply at a minimum with the requirements of Section 895.5 of the NY PSC rules and regulations; provided, however, that the density requirement shall be as set forth in Sub-subsection 3.1.1.1.

3.4. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public library and educational institution chartered or licensed by the New York State Department of Education or Board of Regents, and such other buildings used for municipal purposes, as designated initially by the LFA in Exhibit A to this Agreement, and, thereafter, during the Franchise term, as designated in writing upon the earlier to occur of (a) thirty (30) business days prior written notice to Franchisee or (b) approval of any amendment to Exhibit A to this Agreement in accordance with NY PSC rules; provided, however, that if it is necessary to

extend Franchisee's trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such 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; provided, however, that if such equipment becomes defective, Franchisee shall replace it at no charge.

4. SYSTEM FACILITIES

4.1. *Quality of Materials:* 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 Cable 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 Cable 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 the New York EAS Plan, as amended from time to time, 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 meet the ascertained cable-related needs established by the LFA and to ensure universal availability of public, educational and government access programming, Franchisee shall provide capacity on its Basic Service tier for:

- (i) one (1) full time shared Public Access Channel;
- (ii) one (1) full-time, shared primary Educational Access Channel (the "Primary Educational Access Channel");
- (iii) one (1) additional shared Educational Access Channel (the "Secondary Educational Access Channel");
- (iv) one (1) full-time, shared primary Government Access Channel (the "Primary Government Access Channel"); and
- (v) one (1) additional shared Government Access Channel (the "Secondary Government Access Channel");

provided, however, that the Secondary Educational Access Channel and Secondary Government Access Channel shall be controlled by the LFA for the purpose of simulcasting educational access programming on the Secondary Educational Access Channel and simulcasting government access programming on the Secondary Government Access Channel (each of the aforementioned Channels in this Subsection 5.1.1 individually, a "PEG Channel" and, collectively, "PEG Channels").

5.1.2. The PEG programming to be carried on each of the PEG Channels set aside by Franchisee is reflected in Exhibit C to this Agreement. The LFA hereby authorizes Franchisee to transmit such programming within and outside LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

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

5.2. *PEG Access Interconnection:*

5.2.1. LFA shall designate in its sole discretion not more than ~~three~~**four** (34) sites within the Franchise Area for the interconnection of PEG access facilities with the Cable System (each, a "PEG Access Interconnection Site"), as designated on Exhibit D to this Agreement.

5.2.2. Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, Franchisee shall, without charge to the LFA, provide upstream PEG Channel transmission connections between its video channel aggregation point and each PEG Access Interconnection Site in order to permit the signals to be correctly routed from the PEG Access Interconnection Sites to the appropriate PEG Access Channel for distribution to Subscribers as follows: (i) one (1) PEG Access Interconnection Site shall be operable within ninety (90) days of the Effective Date; (ii) one (1) PEG Access Interconnection Site shall be operable on or before the eight (8) month anniversary of the Effective Date; (iii) one (1) PEG Access Interconnection Site shall be operable on or before the one (1) year anniversary of the Effective Date; and (iv) one (1) PEG Access Interconnection Site shall be operable on or before the two (2) year anniversary of the Effective Date, each as designated on Exhibit D to this Agreement.

5.2.3. The LFA shall provide to Franchisee at each PEG Access Interconnection Site a suitable video signal and a suitable audio signal for each PEG Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and other facilities and such cooperation of the LFA as is reasonably necessary for Franchisee to fulfill such obligations. Should Franchisee determine that it cannot fulfill such obligations as a result of LFA's failure to cooperate or to provide suitable required space, environmental conditions, electrical power supply, access, pathway, or other facilities, it shall so notify LFA in a writing detailing the requirements of Franchisee that will enable it to fulfill its obligations hereunder.

5.2.4. Such upstream PEG Channel transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of signals to Subscribers.

5.2.5. If Franchisee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment and facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.3 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

5.3. *PEG Facilities:* Subject to Section 5.2, Franchisee shall design, build, and maintain all PEG upstream feeds, connections, and distribution facilities in order that such feeds function as reliably as Franchisee's Cable System as a whole within the Franchise Area, and are no more likely to fail than is Franchisee's Cable System as a whole within the Franchise Area.

5.4. *PEG Grants:*

5.4.1. Franchisee shall provide to the LFA financial contributions for use in support of the production of local PEG programming. The financial contributions shall consist of the following two grants: (a) a one-time grant in the amount of TWENTY-FOUR THOUSAND SEVEN HUNDRED NINETY THREE DOLLARS (\$24,793.00) (the "Initial PEG Grant"); and (b) an annual grant in the amount of FIFTY SEVEN CENTS (\$.57) per month, per Subscriber in the Service Area of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00) (the "Annual PEG Grant"), each payable as set forth below.

5.4.2. The Initial PEG Grant shall become due and payable sixty (60) days after the Effective Date. In the event that the LFA does not require all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions, then Franchisee shall offset any Franchise Fees due to the LFA hereunder by any greater amount of the Initial PEG Grant that has been paid to the LFA.

5.4.3. ~~The Annual PEG Grant shall accrue beginning on the Effective Date and shall become due and payable on the date (the "First Annual PEG Grant Payment Date") that the earlier of the following events occurs: either (i) Franchisee has recovered from Subscribers pursuant to Section 5.6 an amount equal to the full amount of the Initial PEG Grant; or (ii) Franchisee shall pay the Annual PEG Grant to the LFA as follows: (i) the first Annual PEG Grant payment shall be due and payable to the LFA within sixty (60) days of the third anniversary of the Effective Date. The amount of the first Annual PEG Grant shall be determined by calculating the total number of Subscribers from the Effective Date to the First Annual PEG Grant Payment Date multiplied by the number of months elapsed from the Effective Date to the First Annual PEG Grant Payment Date. After the First Annual PEG Grant Payment Date; and (ii) the remaining Annual PEG Grant payments shall be due and payable on each anniversary of the Effective Date until the Franchise expires.~~

5.4.4. ~~For purposes of determining the First Annual PEG Grant Payment Date, Franchisee's rate of recovery from Subscribers in the Service Area shall be no less than FIFTY SEVEN CENTS (\$.57) per Subscriber per month, without regard to Franchisee's right to pass through such amount to Subscribers in accordance with Section 5.6.~~

5.4.5. ~~Each Annual PEG Grant payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail the Subscriber information upon which it is based, including, but not limited to, the number of Subscribers in the Service Area for each period for which an Annual PEG Grant Payment was calculated and the amount of such payment attributable to each such period to the LFA within sixty (60) days after the fourth through ninth anniversaries of the Effective Date. If the Franchise is extended by means of a Temporary Operating Authority ("TOA") consistent with New York law and NY PSC~~

rules and regulations, Franchisee shall continue payment of the Annual PEG Grant for a period of up to three (3) years, or until renewal of the Franchise, so long as the LFA imposes a substantially similar obligation on all other cable service providers in the Service Area. The continued Annual PEG Grant payment shall be due within sixty (60) days of any applicable anniversary of the Effective Date.

5.4.4. ~~5.4.6.~~—The Initial PEG Grant and the Annual 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.

5.4.5. ~~5.4.7.~~—Franchisee shall provide to the LFA an additional one-time grant in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) (the “PEG Channel Assignment Grant”). The PEG Channel Assignment Grant shall be payable to the LFA solely in the event that Franchisee makes a PEG Channel assignment change pursuant to Subsection 5.1.2.

5.4.6. ~~5.4.8.~~—Consistent with Section 895.3 of the NY PSC rules, notwithstanding the foregoing Subsections 5.4.3 and 5.4.7, no PEG Channel Assignment Grant or ~~accrued~~ Annual PEG Grant shall be payable by Franchisee unless and until the LFA requires all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions.

5.4.7. ~~5.4.9.~~—The grants identified above in this Section 5.4, specifically, the Initial PEG Grant, the Annual PEG Grant, and the PEG Channel Assignment Grant shall be collectively referred to as the “PEG Grants.”

5.4.8. ~~5.4.10.~~—The LFA shall provide Franchisee with an annual report setting forth a summary of all expenditures for PEG access equipment and facilities from the PEG Grants paid to the LFA and the amounts, if any, reserved for future capital expenditures for such purposes.

5.5. *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.

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

6. FRANCHISE FEES

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

6.2. *Supporting Information:* Each Franchise Fee payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail 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, copying 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 at a location within the state, 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 thirty (30) 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 a rate of nine percent (9%) 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; provided, however, that in the event of an underpayment of five percent (5%) or more in an audited period this limitation shall not apply to the subsequent two (2) audit periods.

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.

6.5. *Bundled Services:* If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate any discount associated with purchasing bundled services for the purposes of evading the Franchise Fee payments under this Franchise. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

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 in a manner so as not to unreasonably interfere with Franchisee's normal business operations, 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 location within the state or at another mutually agreed upon site. 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:* Subject to the requirements of Section 895.1(t) of the NY PSC rule and regulations, any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. **INSURANCE AND INDEMNIFICATION**

8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit for property damage and bodily injury per occurrence and five million dollars (\$5,000,000) in the aggregate. 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: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) per employee limit; five hundred thousand dollars (\$500,000) policy limit.

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

8.1.2. The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 8 except Worker's Compensation Insurance, Employer's Liability Insurance and excess liability or umbrella coverage. Such additional insured requirement shall be indicated on the original Certificates of Insurance.

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. Franchisee shall deliver to LFA original Certificates of Insurance showing evidence of all required coverages under this Agreement on or before the Effective Date and providing for at least thirty (30) days prior written notice to be given to LFA of cancellation, intent not to renew or any adverse material change.

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels as provided in Section 5.5, provided that the LFA shall give Franchisee timely written notice of its obligation to indemnify the LFA, but in any event, the LFA shall provide such notice to Franchisee within a sufficient period of time from receipt of a claim or action pursuant to this Subsection to enable Franchisee to timely answer complaints, raise defenses and defend all claims. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties acting in their official capacity on behalf of the LFA or for any activity or function conducted by any Person other than Franchisee on behalf of the LFA 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, subject to federal and state law, 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 acting in their official capacity on behalf of the LFA.

9. TRANSFER OF FRANCHISE

9.1. *LFA Consent Required:* 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.

9.2. *LFA Consent Not Required for Certain Transactions:* No prior consent of the LFA shall be required 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 1.52 above.

9.3. *Each Transfer of the Franchise Subject to this Article:* Each Transfer of the Franchise shall be governed by and comply with the provisions of this Article 9.

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 12.12 below, the Cable Law, and Section 626 of the Communications Act, 47 U.S.C. § 546, as amended.

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

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

10.4. *Consistent Terms:* Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law.

11. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

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

11.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to 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 or commenced to remedy 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 12.12 below and applicable federal and state law, in the event that the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

11.4.3. In the case of a substantial noncompliance with a Material Provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.

11.5. *Revocation:* If the LFA seeks to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, then 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 timely cured by the Franchisee. The LFA shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the LFA determines that it will revoke the Franchise, the LFA shall promptly provide Franchisee with a written determination setting forth the LFA's reasoning for such revocation. Franchisee may appeal such written determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA de novo. The parties shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the LFA.

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

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

12. MISCELLANEOUS PROVISIONS

12.1. *Actions of Parties:* In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

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

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

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

12.4.1. Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers and was timely cured by Franchisee, 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:

Debbie Henneberry
Assistant Village Manager
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

12.5.3. with a copy to:

Robert J. Ponzini, Esq.
Village Attorney
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

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 after the adoption of proper authorizing resolution by the governing body of the LFA and as approved by the NY PSC.

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. For purposes of this Agreement, the term "Material Provision" or "Material Provisions" shall mean the terms set forth in Article 5 (PEG Services), Article 6 (Franchise Fees), and Article 8 (Insurance and Indemnification).

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. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement. 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.

12.12. *NY PSC Approval:* This Franchise and any amendment or modification hereof 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:* Franchisee shall 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-month period, hold a performance evaluation session (the "Performance Review") to review Franchisee's compliance with the terms and conditions of this Franchise. 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 setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise.

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

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

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12.20. *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.

AGREED TO THIS ____ DAY OF _____, 2006.

LFA:
VILLAGE OF ARDSLEY

By: _____
Title:

FRANCHISEE:

VERIZON NEW YORK INC.

By: _____
Title:

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: PEG Access Interconnection Sites

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

Ardsley Public Library
9 American Legion Drive
Ardsley, New York 10502

Community Center
18 Center Street
Ardsley, New York 10502

Ardsley Firehouse
505 Ashford Avenue
Ardsley, New York 10502

Highway Garage
3 Elm Street
Ardsley, New York 10502

Concord Road School
2 Concord Road
Ardsley, New York 10502

Ardsley High School
300 Farm Road
Ardsley, New York 10502

EXHIBIT B

SERVICE AREA

The Service Area shall be the Franchise Area. The construction of the Franchisee's FTTP Network has been substantially completed throughout the Franchise Area subject only to Subsection 3.1.1. and Section 3.2 of the Franchise, and accordingly it is not necessary to provide any additional details concerning the construction and/or deployment time tables and areas within the Service Area. A map of the Service Area is attached hereto.

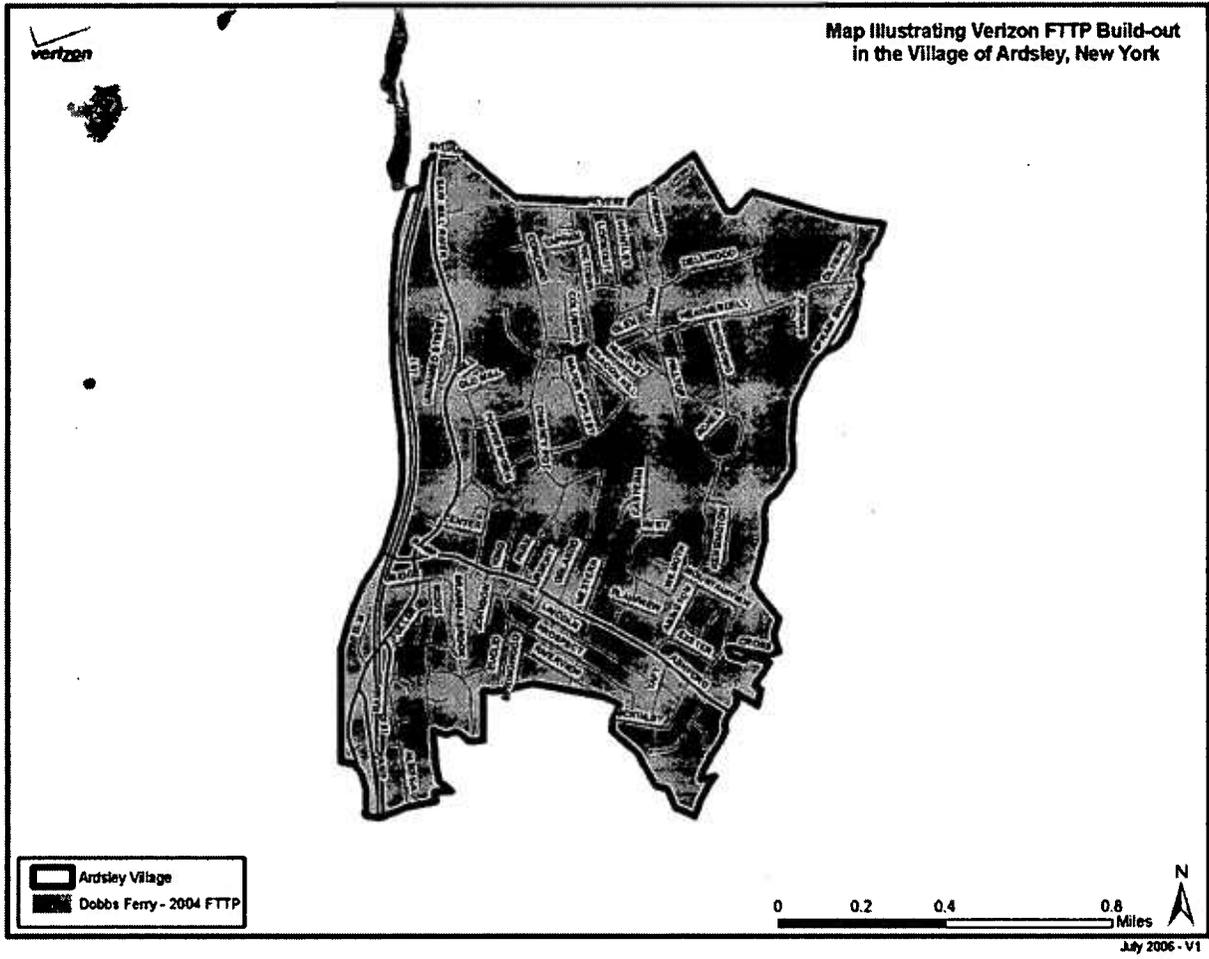


EXHIBIT C
PEG CHANNELS

The Franchisee will transmit PEG programming as provided by the LFA and the public, as directed.

EXHIBIT D

PEG ACCESS INTERCONNECTION SITES

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable within ninety (90) days of the Effective Date:

Ardsey Village Hall
507 Ashford Avenue
Ardsey, New York 10502

This PEG Access Interconnection Site shall serve as the aggregation point for the PEG Access Interconnection Sites listed below.

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable on or before the eight (8) month anniversary of the Effective Date:

Ardsey Public Library
9 American Legion Drive
Ardsey, New York 10502

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable on or before the one (1) year anniversary of the Effective Date:

Ardsey Community Center
18 Center Street
Ardsey, New York 10502

Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, the following PEG Access Interconnection Site shall be operable on or before the two (2) year anniversary of the Effective Date:

McDowell Park
Heatherdell Road
Ardsey, New York 10502

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Document comparison done by DeltaView on Thursday, November 02, 2006 8:09:13 PM

Input:	
Document 1	interwovenSite://NYCDMS/Active/4071973/3
Document 2	interwovenSite://NYCDMS/Active/4071973/5
Rendering set	MW Standard

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

Statistics:	
	Count
Insertions	41
Deletions	63
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	108

Tab 9

Goldstein, Pamela N.

From: Goldstein, Pamela N.
Sent: Monday, November 06, 2006 3:41 PM
To: 'manager@ardsleyvillage.com'; 'dhenneberry@optonline.net'; 'ArdleyMayor@aol.com'
Cc: Mac Kerbey; Goldstein, Pamela N.; Kulka, Sean C.
Subject: 11.6.06 Cable Franchise Agreement by and between the Village of Ardsley and Verizon New York Inc.

Dear Mr. Mayor, Mr. Calvi and Ms. Henneberry:

Please find attached the referenced document and a blackline against the version submitted to the Village last Thursday, 11/2.

Please call Mac Kerbey at (617) 823-9890 or me at (212) 548-2136 or (646) 872-1934 should you have any questions.

We are looking forward to seeing you tonight.

Best regards,
Pamela

Pamela N. Goldstein
Associate

McGUIREWOODS
McGuireWoods LLP
1345 Avenue of the Americas
Seventh Floor
New York, NY 10105-0106
212.548.2136 (Direct Line)
212.548.2173 (Direct FAX)
pngoldstein@mcguirewoods.com

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*ATTORNEY/CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
PRIVILEGED AND CONFIDENTIAL*

Cable Franchise Agreement

by and between

the Village of Ardsley

and

Verizon New York Inc.

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EXHIBITS

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

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Ardsley, 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 found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the character and 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 determined that the Franchise complies with the provisions of the Cable Law and with NY PSC's franchise standards, and that 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. *Agreement*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.4. *Annual PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

1.5. *Basic Service*: The tier of Cable Service which includes, at a minimum, the retransmission of all local television broadcast signals provided to any Subscriber and any PEG Channels required by this Franchise or NY PSC rules, and which may also include any additional video programming signals as determined by Franchisee.

1.6. *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.

1.7. *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.

1.8. *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.

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

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

1.11. *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.

1.12. *EAS*: Shall be defined herein as it is set forth in Section 4.4.

1.13. *Educational Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use 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.

1.14. *Effective Date*: Shall be defined herein as it is set forth in Section 2.3.

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

1.16. *FOIL*: Shall be defined herein as it is set forth in Section 7.1.

1.17. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control that directly or indirectly results in Franchisee's non-compliance with, or delay in the performance of, any obligation hereunder. This may include, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays resulting from unaffiliated utility providers' failure to service, monitor or maintain utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.18. *Franchise*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.19. *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA.

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

1.21. *Franchise Fee*: Shall be defined herein as it is set forth in Section 6.1.

1.22. *FTTP Network*: Shall be defined herein as it is set forth in the third recital.

1.23. *Government Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use of the LFA.

1.24. *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, including revenues from services provided to Subscribers in the Service Area that are Cable Services or are classified or will be classified by federal law, the FCC or a court of competent jurisdiction as Cable Services subject to Franchise Fees.

Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; (iv) video on demand, including pay-per-view; 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.

Gross Revenue shall not include: revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or NY PSC rules, regulations, standards or orders, as may be amended from time to time; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of

general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; or any fees or charges collected from Subscribers or other third parties for any PEG Grant payments.

1.25. *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.

1.26. *Initial PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

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

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

1.29. *Material Provision or Material Provisions*: Shall be defined herein as it is set forth in Section 12.9.

1.30. *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.

1.31. *Noncompliance Notice*: Shall be defined herein as it is set forth in Section 11.1.

1.32. *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.

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

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

- 1.35. *PEG Access Interconnection Site*: Shall be defined herein as it is set forth in Subsection 5.2.1.
- 1.36. *PEG Channel or PEG Channels*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.37. *PEG Channel Assignment Grant*: Shall be defined herein as it is set forth in Subsection 5.4.7.
- 1.38. *PEG Grants*: Shall be defined herein as it is set forth in Subsection 5.4.9.
- 1.39. *Performance Review*: Shall be defined herein as it is set forth in Section 12.17.
- 1.40. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- 1.41. *Primary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.42. *Primary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.43. *Public Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use by the residents in the Franchise Area on a first-come, first-served, nondiscriminatory basis.
- 1.44. *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.
- 1.45. *Secondary Educational Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.46. *Secondary Government Access Channel*: Shall be defined herein as it is set forth in Subsection 5.1.1.
- 1.47. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, as described in Exhibit B to this Agreement.
- 1.48. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.49. *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.

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

1.51. *TOA*: Shall be defined herein as it is set forth in Subsection 5.4.3.

1.52. *Transfer of the Franchise*:

1.52.1. Any transaction in which:

1.52.1.1. 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

1.52.1.2. 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.

1.52.2. However, notwithstanding Sub-sections 1.52.1.1 and 1.52.1.2 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.

1.53. *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*: Notwithstanding that, upon delivery of Cable Service, Franchisee's mixed-use facilities become subject to the NY PSC's minimum franchise standards and the LFA's police power, the parties acknowledge that the LFA is not granted, as a consequence thereof, any broad new authority over the construction, placement and operation of Franchisee's mixed-use facilities.

2.3. *Term:* This Franchise shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise. If subsequent to the Effective Date, there is a change in federal or state law that eliminates the authority of the LFA to require, grant or maintain this Franchise, then to the extent permitted under law this Franchise shall survive such legislation and remain in effect for the term 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 be non-exclusive, and the LFA has granted and reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable lawful provisions of federal law and state law and FCC and NY PSC rules, regulations, standards and orders, as amended from time to time, 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 at Franchisee's expense.

2.10. *Restoration of Subscriber Premises:* The Franchisee shall ensure, at Franchisee's expense, 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 Commitment:* 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 developments or buildings that 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 dwelling unit 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. If, as a result of new construction, an area within the Service Area

meets the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, then 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:*

3.2.1. *Availability of Cable Service Generally:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided; however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual cost. Such costs shall be submitted to said Subscriber in writing, before installation is begun.

3.2.2. *No Discrimination in the Availability of Cable Service:* Franchisee shall not deny access to Cable Service to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides.

3.3. *Contribution in Aid:* Notwithstanding the foregoing Sections 3.1 and 3.2, Franchisee shall comply at a minimum with the requirements of Section 895.5 of the NY PSC rules and regulations; provided, however, that the density requirement shall be as set forth in Sub-subsection 3.1.1.1.

3.4. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public library and educational institution chartered or licensed by the New York State Department of Education or Board of Regents, and such other buildings used for municipal purposes, as designated initially by the LFA in Exhibit A to this Agreement, and, thereafter, during the Franchise term, as designated in writing upon the earlier to occur of (a) thirty (30) business days prior written notice to Franchisee or (b) approval of any amendment to Exhibit A to this Agreement in accordance with NY PSC rules; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of five hundred (500) feet, or of releasing

Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual cost. Such 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; provided, however, that if such equipment becomes defective, Franchisee shall replace it at no charge.

4. SYSTEM FACILITIES

4.1. *Quality of Materials:* 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 Cable 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 Cable 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 the New York EAS Plan, as amended from time to time, 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 meet the ascertained cable-related needs established by the LFA and to ensure universal availability of public, educational and government access programming, Franchisee shall provide capacity on its Basic Service tier for:

- (i) one (1) full time shared Public Access Channel;
- (ii) one (1) full-time, shared primary Educational Access Channel (the "Primary Educational Access Channel");
- (iii) one (1) additional shared Educational Access Channel (the "Secondary Educational Access Channel");
- (iv) one (1) full-time, shared primary Government Access Channel (the "Primary Government Access Channel"); and
- (v) one (1) additional shared Government Access Channel (the "Secondary Government Access Channel");

provided, however, that the Secondary Educational Access Channel and Secondary Government Access Channel shall be controlled by the LFA for the purpose of simulcasting educational access programming on the Secondary Educational Access Channel and simulcasting government access programming on the Secondary Government Access Channel (each of the aforementioned Channels in this Subsection 5.1.1 individually, a "PEG Channel" and, collectively, "PEG Channels").

5.1.2. The PEG programming to be carried on each of the PEG Channels set aside by Franchisee is reflected in Exhibit C to this Agreement. The LFA hereby authorizes Franchisee to transmit such programming within and outside LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

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

5.2. *PEG Access Interconnection:*

5.2.1. LFA shall designate in its sole discretion not more than five (5) sites within the Franchise Area for the interconnection of PEG access facilities with the Cable System (each, a "PEG Access Interconnection Site"), as designated on Exhibit D to this Agreement.

5.2.2. Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment installation and provisioning, Franchisee shall, without charge to the LFA, provide upstream PEG Channel transmission connections between its video channel aggregation point and each PEG Access Interconnection Site in order to permit the signals to be correctly routed from the PEG Access Interconnection Sites to the appropriate PEG Access Channel for distribution to Subscribers as follows: (i) one (1) PEG Access Interconnection Site shall be operable within ninety (90) days of the Effective Date; (ii) one (1) PEG Access Interconnection Site shall be operable on or before the eight (8) month anniversary of the Effective Date; (iii) two (2) PEG Access Interconnection Sites shall be operable on or before the one (1) year anniversary of the Effective Date; and (iv) one (1) PEG Access Interconnection Site shall be operable on or before the two (2) year anniversary of the Effective Date, each as designated on Exhibit D to this Agreement.

5.2.3. The LFA shall provide to Franchisee at each PEG Access Interconnection Site a suitable video signal and a suitable audio signal for each PEG Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and other facilities and such cooperation of the LFA as is reasonably necessary for Franchisee to fulfill such obligations. Should Franchisee determine that it cannot fulfill such obligations as a result of LFA's failure to cooperate or to provide suitable required space, environmental conditions, electrical power supply, access, pathway, or other facilities, it shall so notify LFA in a writing detailing the requirements of Franchisee that will enable it to fulfill its obligations hereunder.

5.2.4. Such upstream PEG Channel transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of signals to Subscribers.

5.2.5. If Franchisee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment and facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.3 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

5.3. *PEG Facilities:* Subject to Section 5.2, Franchisee shall design, build, and maintain all PEG upstream feeds, connections, and distribution facilities in order that such feeds function as reliably as Franchisee's Cable System as a whole within the Franchise Area, and are no more likely to fail than is Franchisee's Cable System as a whole within the Franchise Area.

5.4. *PEG Grants:*

5.4.1. Franchisee shall provide to the LFA financial contributions for use in support of the production of local PEG programming. The financial contributions shall consist of the following two grants: (a) a one-time grant in the amount of TWENTY-FOUR THOUSAND SEVEN HUNDRED NINETY THREE DOLLARS (\$24,793.00) (the "Initial PEG Grant"); and (b) an annual grant of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00) (the "Annual PEG Grant"), each payable as set forth below.

5.4.2. The Initial PEG Grant shall become due and payable sixty (60) days after the Effective Date. In the event that the LFA does not require all cable service providers in the Service Area to provide substantially equivalent PEG financial contributions, then Franchisee shall offset any Franchise Fees due to the LFA hereunder by any greater amount of the Initial PEG Grant that has been paid to the LFA.

5.4.3. Franchisee shall pay the Annual PEG Grant to the LFA as follows: (i) the first Annual PEG Grant payment shall be due and payable to the LFA within sixty (60) days of the third anniversary of the Effective Date; and (ii) the remaining Annual PEG Grant payments shall be due and payable to the LFA within sixty (60) days after the fourth through ninth anniversaries of the Effective Date. If the Franchise is extended by means of a Temporary Operating Authority ("TOA") consistent with New York law and NY PSC rules and regulations, Franchisee shall continue payment of the Annual PEG Grant for a period of up to three (3) years, or until renewal of the Franchise, so long as the LFA imposes a substantially similar obligation on all other cable service providers in the Service Area. The continued Annual PEG Grant payment shall be due within sixty (60) days of any applicable anniversary of the Effective Date.

5.4.4. The Initial PEG Grant and the Annual 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.

5.4.5. Franchisee shall provide to the LFA an additional one-time grant in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) (the "PEG Channel Assignment Grant"). The PEG Channel Assignment Grant shall be payable to the LFA solely in the event that Franchisee makes a PEG Channel assignment change pursuant to Subsection 5.1.2.

5.4.6. Consistent with Section 895.3 of the NY PSC rules, notwithstanding the foregoing Subsections 5.4.3 and 5.4.7, no PEG Channel Assignment Grant or Annual PEG Grant shall be payable by Franchisee unless and until the LFA requires all cable

service providers in the Service Area to provide substantially equivalent PEG financial contributions.

5.4.7. The grants identified above in this Section 5.4, specifically, the Initial PEG Grant, the Annual PEG Grant, and the PEG Channel Assignment Grant shall be collectively referred to as the "PEG Grants."

5.4.8. The LFA shall provide Franchisee with an annual report setting forth a summary of all expenditures for PEG access equipment and facilities from the PEG Grants paid to the LFA and the amounts, if any, reserved for future capital expenditures for such purposes.

5.5. *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.

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

6. **FRANCHISE FEES**

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

6.2. *Supporting Information:* Each Franchise Fee payment shall be accompanied by a report prepared by a representative of Franchisee showing in detail 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, copying 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 at a location within the state, 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 thirty (30) 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 a rate of nine percent (9%) 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; provided, however, that in the event of an underpayment of five percent (5%) or more in an audited period this limitation shall not apply to the subsequent two (2) audit periods.

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.

6.5. *Bundled Services:* If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate any discount associated with purchasing bundled services for the purposes of evading the Franchise Fee payments under this Franchise. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or regulation are to be excluded from the bundled discount allocation basis. Where pro rata allocation of bundled discounts is commercially practical for

any bundled offering, the Franchisee will allocate the bundled discount such that the discount allocated to Cable Service revenues will not exceed the amount which would be allocated to Cable Service revenue on a pro rata basis.

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 in a manner so as not to unreasonably interfere with Franchisee's normal business operations, 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 location within the state or at another mutually agreed upon site. 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:* Subject to the requirements of Section 895.1(t) of the NY PSC rule and regulations, any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. INSURANCE AND INDEMNIFICATION

8.1. *Insurance:*

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

8.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit for property damage and bodily injury per occurrence and five million dollars (\$5,000,000) in the aggregate. 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: one hundred thousand dollars (\$100,000); and (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) per employee limit; five hundred thousand dollars (\$500,000) policy limit.

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

8.1.2. The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 8 except Worker's Compensation Insurance, Employer's Liability Insurance and excess liability or umbrella coverage. Such additional insured requirement shall be indicated on the original Certificates of Insurance.

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. Franchisee shall deliver to LFA original Certificates of Insurance showing evidence of all required coverages under this Agreement on or before the Effective Date and providing for at least thirty (30) days prior written notice to be given to LFA of cancellation, intent not to renew or any adverse material change.

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels as provided in Section 5.5, provided that the LFA shall give Franchisee timely written notice of its obligation to indemnify the LFA, but in any event, the LFA shall provide such notice to Franchisee within a sufficient period of time from receipt of a claim or action pursuant to this Subsection to enable Franchisee to timely answer complaints, raise defenses and defend all claims. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties acting in their official capacity on behalf of the LFA or for any activity or function conducted by any Person other than Franchisee on behalf of the LFA 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, subject to federal and state law, 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 acting in their official capacity on behalf of the LFA.

9. TRANSFER OF FRANCHISE

9.1. *LFA Consent Required:* 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.

9.2. *LFA Consent Not Required for Certain Transactions:* No prior consent of the LFA shall be required 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 1.52 above.

9.3. *Each Transfer of the Franchise Subject to this Article:* Each Transfer of the Franchise shall be governed by and comply with the provisions of this Article 9.

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 12.12 below, the Cable Law, and Section 626 of the Communications Act, 47 U.S.C. § 546, as amended.

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

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

10.4. *Consistent Terms:* Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law.

11. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

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

11.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to 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 or commenced to remedy 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 12.12 below and applicable federal and state law, in the event that the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

11.4.3. In the case of a substantial noncompliance with a Material Provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.

11.5. *Revocation:* If the LFA seeks to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, then 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 timely cured by the Franchisee. The LFA shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the LFA determines that it will revoke the Franchise, the LFA shall promptly provide Franchisee with a written determination setting forth the LFA's reasoning for such revocation. Franchisee may appeal such written determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA de novo. The parties shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the LFA.

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

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

12. MISCELLANEOUS PROVISIONS

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

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

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

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

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

12.4.1. Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers and was timely cured by Franchisee, 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:

Debbie Henneberry
Assistant Village Manager
Village of Ardsley

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

12.5.3. with a copy to:

Robert J. Ponzini, Esq.
Village Attorney
Village of Ardsley
Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

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 after the adoption of proper authorizing resolution by the governing body of the LFA and as approved by the NY PSC.

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. For purposes of this Agreement, the term "Material Provision" or "Material Provisions" shall mean the terms set forth in Article 5 (PEG Services), Article 6 (Franchise Fees), and Article 8 (Insurance and Indemnification).

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. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in

this Agreement. 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.

12.12. *NY PSC Approval:* This Franchise and any amendment or modification hereof 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:* Franchisee shall 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-month period, hold a performance evaluation session (the "Performance Review") to review Franchisee's compliance with the terms and conditions of this Franchise. 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 setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise.

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

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

12.20. *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.

AGREED TO THIS ____ DAY OF _____, 2006.

LFA:
VILLAGE OF ARDSLEY

By: _____
Title:

FRANCHISEE:
VERIZON NEW YORK INC.

By: _____
Title:

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

Exhibit D: PEG Access Interconnection Sites

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Ardsley Village Hall
507 Ashford Avenue
Ardsley, New York 10502

Ardsley Public Library
9 American Legion Drive
Ardsley, New York 10502

Community Center
18 Center Street
Ardsley, New York 10502

Ardsley Firehouse
505 Ashford Avenue
Ardsley, New York 10502

Highway Garage
3 Elm Street
Ardsley, New York 10502

Concord Road School
2 Concord Road
Ardsley, New York 10502

Ardsley High School
300 Farm Road
Ardsley, New York 10502

EXHIBIT B

SERVICE AREA

The Service Area shall be the Franchise Area. The construction of the Franchisee's FTTP Network has been substantially completed throughout the Franchise Area subject only to Subsection 3.1.1. and Section 3.2 of the Franchise, and accordingly it is not necessary to provide any additional details concerning the construction and/or deployment time tables and areas within the Service Area. A map of the Service Area is attached hereto.

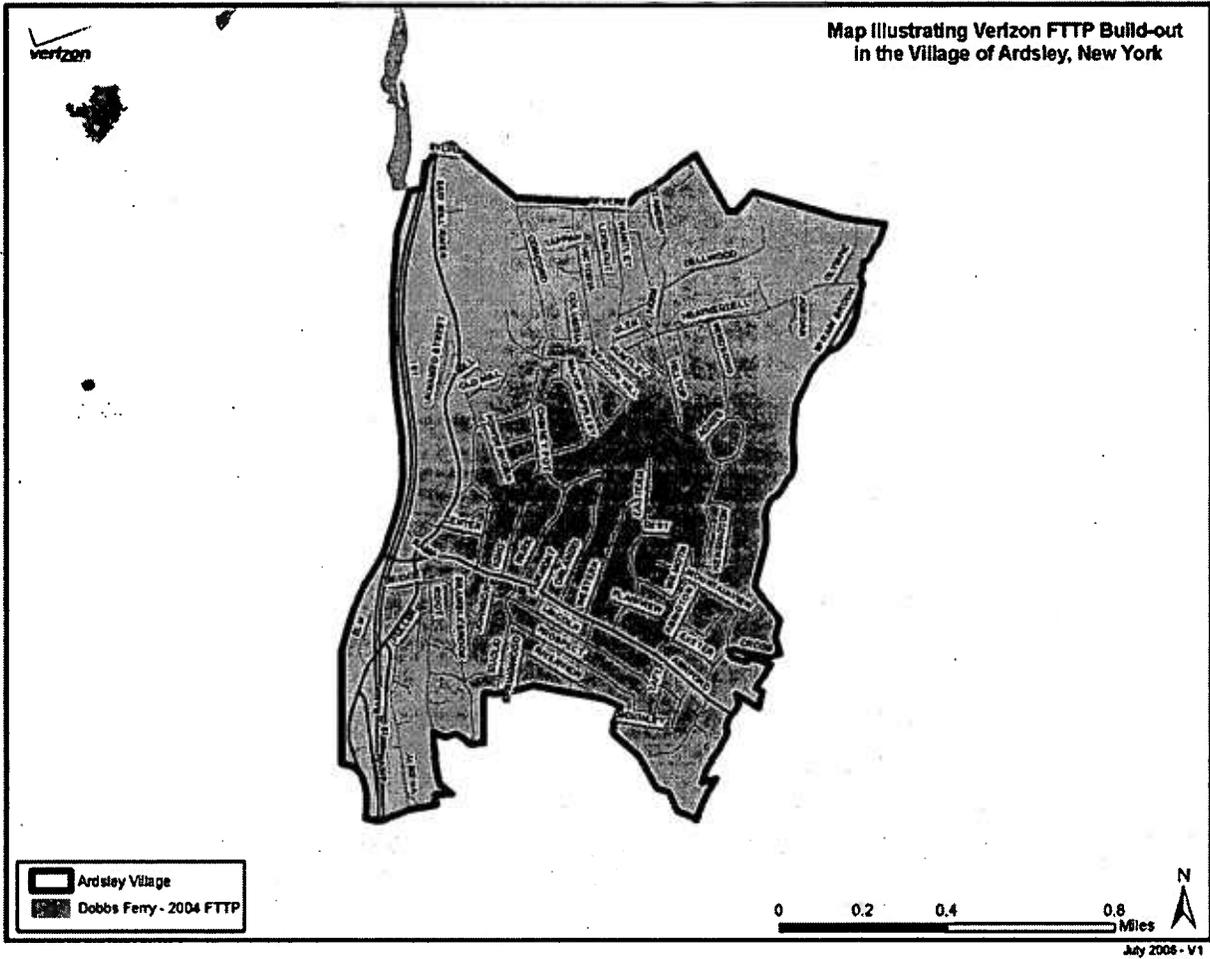


EXHIBIT C
PEG CHANNELS

The Franchisee will transmit PEG programming as provided by the LFA and the public,
as directed.

EXHIBIT D

PEG ACCESS INTERCONNECTION SITES

Subject to the requirements set forth in Subsection 5.2.2 of the Agreement, the following Government Access Channel PEG Access Interconnection Site shall be operable within ninety (90) days of the Effective Date:

Ardsley Village Hall, 507 Ashford Avenue, Ardsley, New York 10502

This PEG Access Interconnection Site shall serve as the aggregation point for the three Government Access Channel PEG Access Interconnection Sites listed below.

Subject to the requirements set forth in Subsection 5.2.2 of the Agreement, the following Government Access Channel PEG Access Interconnection Site shall be operable on or before the eight (8) month anniversary of the Effective Date:

Ardsley Public Library, 9 American Legion Drive, Ardsley, New York 10502

Subject to the requirements set forth in Subsection 5.2.2 of the Agreement, the following Government Access Channel PEG Access Interconnection Site shall be operable on or before the one (1) year anniversary of the Effective Date:

Ardsley Community Center, 18 Center Street, Ardsley, New York 10502

Subject to the requirements set forth in Subsection 5.2.2 of the Agreement, the following Government Access Channel PEG Access Interconnection Site shall be operable on or before the two (2) year anniversary of the Effective Date:

McDowell Park, Heatherdell Road, Ardsley, New York 10502

Subject to the requirements set forth in Subsection 5.2.2 of the Agreement, the following Educational Access Channel PEG Access Interconnection Site shall be operable on or before the one (1) year anniversary of the Effective Date:

Ardsley High School, 300 Farm Road, Ardsley, New York 10502

Cable Franchise Agreement

by and between

the Village of Ardsley

and

Verizon New York Inc.

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EXHIBITS

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

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Ardsley, 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 found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the character and 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 determined that the Franchise complies with the provisions of the Cable Law and with NY PSC's franchise standards, and that 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. *Agreement*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.4. *Annual PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

1.5. *Basic Service*: The tier of Cable Service which includes, at a minimum, the retransmission of all local television broadcast signals provided to any Subscriber and any PEG Channels required by this Franchise or NY PSC rules, and which may also include any additional video programming signals as determined by Franchisee.

1.6. *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.

1.7. *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.

1.8. *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.

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

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

1.11. *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.

1.12. *EAS*: Shall be defined herein as it is set forth in Section 4.4.

1.13. *Educational Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use 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.

1.14. *Effective Date*: Shall be defined herein as it is set forth in Section 2.3.

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

1.16. *FOIL*: Shall be defined herein as it is set forth in Section 7.1.

1.17. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control that directly or indirectly results in Franchisee's non-compliance with, or delay in the performance of, any obligation hereunder. This may include, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays resulting from unaffiliated utility providers' failure to service, monitor or maintain utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.18. *Franchise*: Shall be defined herein as it is set forth in the first paragraph hereof.

1.19. *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA.

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

1.21. *Franchise Fee*: Shall be defined herein as it is set forth in Section 6.1.

1.22. *FTTP Network*: Shall be defined herein as it is set forth in the third recital.

1.23. *Government Access Channel*: An Access Channel required by this Agreement to be designated by the Franchisee for noncommercial use of the LFA.

1.24. *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, including revenues from services provided to Subscribers in the Service Area that are Cable Services or are classified or will be classified by federal law, the FCC or a court of competent jurisdiction as Cable Services subject to Franchise Fees.

Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; (iv) video on demand, including pay-per-view; 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.

Gross Revenue shall not include: revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or NY PSC rules, regulations, standards or orders, as may be amended from time to time; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of

general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; or any fees or charges collected from Subscribers or other third parties for any PEG Grant payments.

1.25. *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.

1.26. *Initial PEG Grant*: Shall be defined herein as it is set forth in Subsection 5.4.1.

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

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

1.29. *Material Provision or Material Provisions*: Shall be defined herein as it is set forth in Section 12.9.

1.30. *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.

1.31. *Noncompliance Notice*: Shall be defined herein as it is set forth in Section 11.1.

1.32. *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.

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

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