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**Joseph A. Post**  
Assistant General Counsel



May 29, 2007

**BY HAND**

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

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

Dear Secretary Brilling:

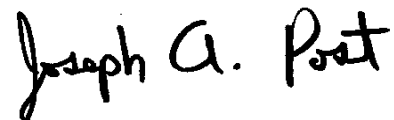
Enclosed please find an original and four (4) copies of the Petition of Verizon New York Inc. ("Verizon") for confirmation, pursuant to § 221 of the Public Service Law, of a cable franchise awarded to Verizon by the Village of Bayville, New York.

The cable service that Verizon proposes to offer in Bayville is a key component of the suite of advanced services (known as "Verizon FiOS<sup>SM</sup>") that will be provided through the use of innovative Fiber-to-the-Premises ("FTTP") technology. Verizon FiOS will provide the residents of Bayville 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. Brilling  
May 29, 2007

Verizon's proposed offering of FiOS video service in Bayville complies in all respects with the requirements of New York and federal law, and will provide valuable benefits to consumers in the franchise area. Moreover, Verizon is already technically and operationally capable of offering cable service in significant portions of the franchise area. (See Petition ¶ 9.) Accordingly, Verizon respectfully requests that the Commission promptly review the Petition and approve it at its June 20, 2007 session.

Respectfully submitted,

Handwritten signature of Joseph A. Post in black ink.

cc: Village of Bayville

Ms. Maria Alfano-Hardy  
Village Administrator  
Village of Bayville  
34 School Street  
Bayville, New York 11709

Ms. Joanne Banco  
Deputy Village Clerk Treasurer  
Village of Bayville  
34 School Street  
Bayville, New York 11709

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  
Bayville, New York (Nassau County)**

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

**PETITION FOR CONFIRMATION**

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

**Counsel for Verizon New York Inc.**

**May 29, 2007**

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

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

**PETITION FOR CONFIRMATION**

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

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

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

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

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

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

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

1. The applicant for confirmation and approval of the Franchise is Verizon.

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

2. True copies of the Franchise and the resolution authorizing the Franchise are provided as Attachments A and B, respectively, to this Petition. A public hearing (the "Hearing") on Verizon's application for a franchise was held by the Franchisor on May 21, 2007, at Village Hall, 34 School Street, Bayville, New York, starting at approximately 8:00 P.M. A true copy of the affidavit of publication of the notice of public hearing is provided as Attachment C to this petition. (16 NYCRR § 897.2(b))

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

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

(16 NYCRR § 897.2(c))

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

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

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

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

(16 NYCRR § 897.2(e))

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

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

8. A notice of this Petition will be published on May 31, 2007 in Newsday.

Newsday is a newspaper of general circulation in the Village of Bayville. 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 already has the technical and operational ability to offer cable service in significant portions of the franchise area, and intends to begin offering such service shortly after the Franchise is confirmed. In order to ensure the earliest possible availability of competitive cable service within the franchise area, together with the benefits that such competition will bring, we respectfully request that the Commission rule on this Petition at its June 20, 2007 Session.

## **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 Bayville, together with certain supplemental materials, is provided as Attachment H to this Petition. Verizon has completed Part 1 of the form, which calls for information to be provided by the “Project Sponsor”; Parts 2 and 3 are to be filled out by the Commission.

It is Verizon’s position that submission of an EAF is not required for the activities at issue in this Petition, and that even if such a submission were required, a short-form EAF would



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

### **III. CONCLUSION**

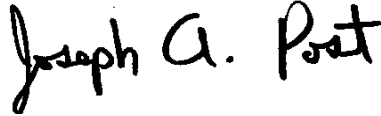
The Franchise, and Verizon’s proposed offering of FiOS video services in Bayville pursuant to the Franchise, comply in all respects with applicable laws. Moreover, the proposed offering of a new alternative to the video services provided by incumbent cable and satellite providers, utilizing Verizon’s 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

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

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

**Respectfully submitted,**

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

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

**Counsel for Verizon New York Inc.**

**May 29, 2007**

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**In the Matter of the Petition of Verizon  
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Bayville, New York (Nassau County)**


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

## VERIFICATION

STATE OF NEW JERSEY )  
 )  
COUNTY OF SOMERSET ) SS.:

**VERONICA C. GLENNON, being duly sworn, deposes and says:**

I am an officer — specifically, an Assistant Secretary — of Verizon New York Inc., the Petitioner in this proceeding. I have read the foregoing Petition and I know its contents. To the best of my knowledge, based on information provided to me by employees of the Petitioner, the foregoing Petition is true.

  
VERONICA C. GLENNON

Sworn to before me  
this 28 day of May, 2007

  
Notary Public

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

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

- A. True copy of the Franchise
- B. True copy of the resolution authorizing the Franchise
- C. True copy of the affidavit of publication of the 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 Bayville**

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

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

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

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

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

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

NOW, THEREFORE, in consideration of the LFA's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of the LFA pursuant to and consistent with the Cable Law (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,



THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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: Franchise Fees imposed on Franchisee by the LFA that are passed through from Franchisee as a line item paid by Subscribers; revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to

Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders; 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 Bayville, New York, or the lawful successor, transferee, or assignee thereof.

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

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

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

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

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

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

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

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

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

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

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

1.31. *Transfer of the Franchise*:

1.31.1. Any transaction in which:

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

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

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

parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

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

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

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

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

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

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

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

2.6. *No Waiver:*

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

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

2.7. *Construction of Agreement:*

2.7.1. 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.

2.7.2. Should any change to state law, rules or regulations have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modification to this Franchise shall be in writing and shall be subject to Section 222 of the New York Public Service Law and Title 16, Chapter VIII, Part 892, Subpart 892-1, Section 892-1.4 of the Official Compilation of Codes, Rules and Regulations of the State of New York requiring application to the NY PSC and approval of any modification. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.8. *Local Authority:* The LFA shall not enact any local laws that are inconsistent with this Franchise, provided, however, that nothing in this Franchise shall be construed to prohibit the 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 its pre-existing condition.

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

### 3. PROVISION OF CABLE SERVICE

#### 3.1. *Service Area:*

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

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

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

3.3. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as may be designated by the LFA as provided in **Exhibit A** attached hereto; provided, however, that if it is necessary to extend Franchisee's aerial trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such aerial extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, the Franchisee shall charge the recipient the 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 NY PSC rules and regulations.

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

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

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

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

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

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

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



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

## 5. **PEG SERVICES**

### 5.1. *PEG Set Aside:*

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

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

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

5.2. *Franchise Grant:* Franchisee shall pay the LFA the sum of EIGHT THOUSAND DOLLARS (\$8,000.00) (the "Franchise Grant"), payable in ten installments. The first Franchise Grant payment in the amount of FIVE THOUSAND THREE HUNDRED DOLLARS (\$5,300) shall be payable within (90) days after the Effective Date. The second Franchise Grant payment in the amount of THREE HUNDRED DOLLARS (\$300) shall be payable within sixty (60) days from the first anniversary after the Effective Date, and each of the eight (8) subsequent Franchise Grant payments, each in the amount of THREE HUNDRED DOLLARS (\$300), shall be payable within sixty (60) days after each subsequent anniversary of the Effective Date.

5.3. *Indemnity for PEG:* The LFA shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the LFA from and against any and all liability or other injury, including the reasonable cost of

defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. The LFA shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. §531.

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

## 6. **FRANCHISE FEES**

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

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

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

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

## **7. REPORTS AND RECORDS**

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

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

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

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

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

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

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

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

8. **INSURANCE AND INDEMNIFICATION**

8.1. *Insurance:*

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

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

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

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

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

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

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

8.1.3. Each of the required insurance policies shall be noncancellable except upon thirty (30) days prior written notice to the LFA. Franchisee shall not cancel any required insurance policy without submitting documentation to the LFA verifying that the Franchisee has obtained alternative insurance in conformance with this Agreement.

8.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

8.1.5. Upon written request, Franchisee shall deliver to the LFA Certificates of Insurance showing evidence of the required coverage.

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA, its officers, agents, elected officials and employees for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties,

programming license fees, or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels, provided that the LFA shall give Franchisee by reason of any conduct undertaken pursuant to the Franchise, provided that the LFA shall give Franchisee timely written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

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

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

## **9. TRANSFER OF FRANCHISE**

9.1. *Transfer:* Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, as amended, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the LFA may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.31 above.

## 10. **RENEWAL OF FRANCHISE**

10.1. *Governing Law:* The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 12.12 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 the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

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

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

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

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

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

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

## 12. MISCELLANEOUS PROVISIONS

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

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

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

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

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

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



12.5.1. Notices to Franchisee shall be mailed to:

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

12.5.2. Notices to the LFA shall be mailed to:

Village of Bayville  
34 School Street  
Bayville, NY 11709

12.5.3. with a copy to:

James A. Reilly, Esq.  
One Old Country Road  
Carle Place, NY 11514

12.6. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the LFA and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof. Any local laws or parts of local laws that materially conflict with the provisions of this Agreement are superseded by this Agreement.

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

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

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

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

12.11. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the LFA or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

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

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

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

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

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

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

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

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

12.19.1 The Franchisee shall make reasonable effort to account for all identification cards at all times.

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

12.19.3 The Franchisee shall require that all service vehicles of the Franchisee and its contractors and subcontractors be clearly identified as such to the public. Specifically, the Franchisee vehicles shall be required to have the Franchisee's logo plainly visible. The Franchisee shall require that all contractors and subcontractors working for the Franchisee shall have the contractor's/subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

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

AGREED TO THIS 22 DAY OF MAY, 2007.

LFA: Village of Bayville

By: Victoria Siegel  
[Title] Mayor

Verizon New York Inc.

By: Sharon Schuchman  
[Title] Island Metro

FORM APPROVED  
Attorney [Signature]  
Date 5/24/07

### **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**

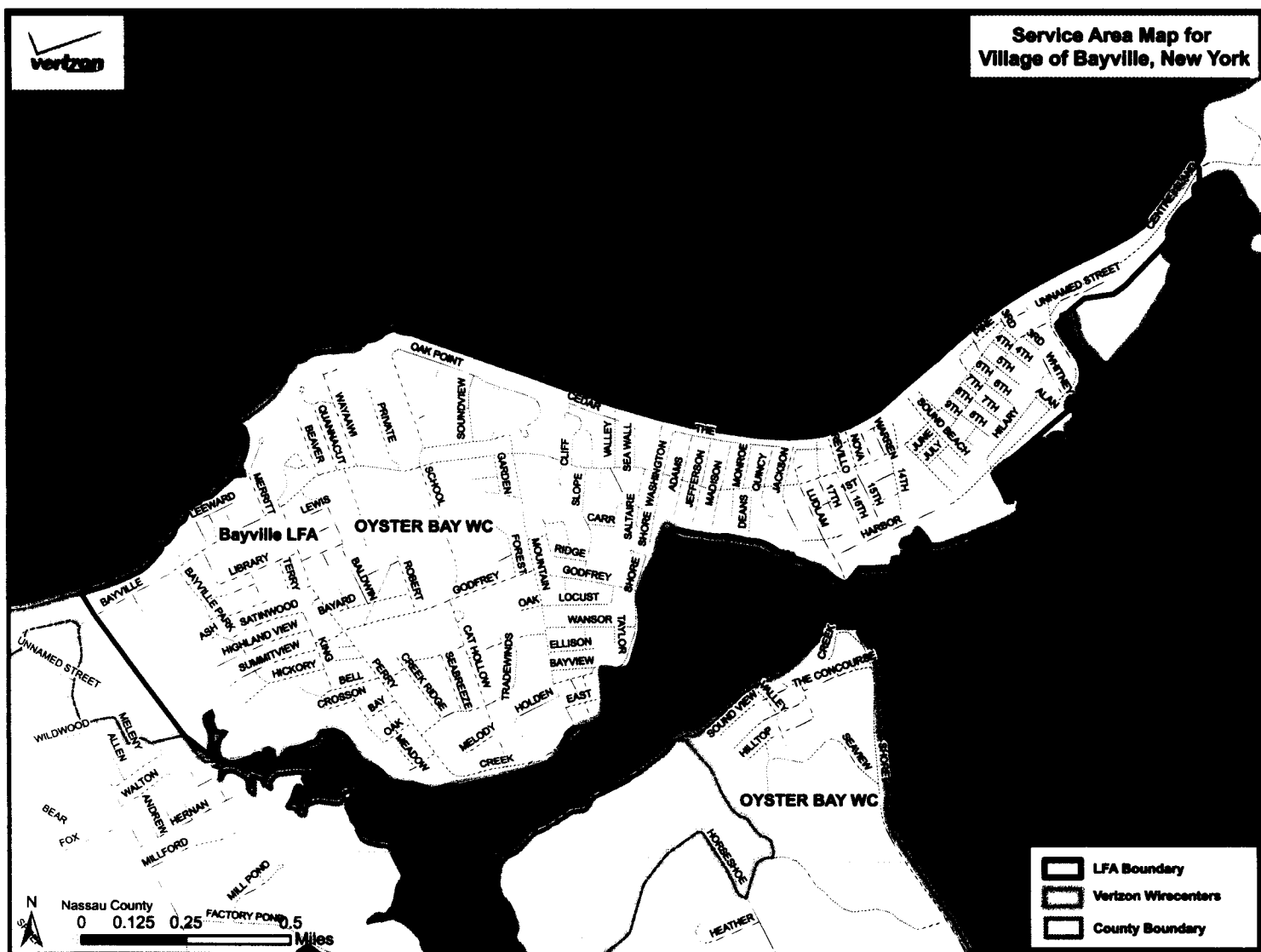
1. Bayville Village Hall, 34 School Street, Bayville, NY
2. Bayville Historical Museum, 34 School Street, Bayville, NY
3. Bayville Free Library, 34 School Street, Bayville, NY
4. Bayville Elementary School, 50 Godfrey Avenue, Bayville, NY
5. Bayville Intermediate School, 50 Mountain Avenue, Bayville, NY
6. Bayville Fire Department, 258 Bayville Avenue, Bayville, NY
7. St. Gertrude's Pre-school, 28 School Street, Bayville, NY

## **EXHIBIT B**

### **SERVICE AREA**

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

The construction of the Franchisee's FTTP Network has been completed to approximately 90% of the current households in the Franchise Area. At present, Franchisee's anticipated schedule calls for 91% deployment by June 2007, 91% deployment by December 2007, 92% deployment by June 2008, 93% deployment by December 2008, 94% deployment by June 2009, 95% deployment by December 2009, 96% deployment by June 2010, 97% deployment by December 2010, 98% deployment by June 2011, 99% deployment by December 2011, and 100% deployment by June 2012. This schedule is subject to further review and modification by the Franchisee consistent with Section 895.5(b)(1) of the NY PSC rules and regulations; provided, however, that Franchisee shall provide notice to the LFA and the NY PSC of any material change in this schedule.



## **EXHIBIT C**

### **PEG CHANNELS**

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

# **ATTACHMENT B**



On a motion made by Trustee Watson and seconded by Trustee Horgan, the following resolution was adopted.

**CONSIDERING AN AGREEMENT WITH VERIZON NEW YORK INC.  
FOR CABLE TELEVISION SERVICES WITHIN THE VILLAGE OF  
BAYVILLE**

WHEREAS, the Village of Bayville (the "Village") is a "franchising authority" in accordance with Title IV of the Communications Act of 1934 (the "Communication 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 Telecommunications 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, negotiations between the Village and Verizon have resulted in a proposed agreement entitled "Cable Franchise Agreement by and between the Village of Bayville, New York and Verizon New York, Inc."; and

WHEREAS, on May 21, 2007, 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, who made a presentation in response thereto, were given notice and the opportunity to comment on Verizon's presentation and ask questions to be addressed by Verizon's representatives; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Village 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 in accordance with the presentation made by the representatives of Verizon, 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, based upon 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 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 Right-of-Way within the Village, in order to provide cable service, which authorization is made in accordance with the applicable provisions of Title IV 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 on behalf of the Village.

TRUSTEE LAURINE	AYE
TRUSTEE MCBRIDE	AYE
TRUSTEE WATSON	AYE
TRUSTEE HORGAN	AYE
MAYOR SIEGEL	AYE

State of New York  
County of Nassau  
Village of Bayville

} ss:

I hereby certify that this is the Resolution adopted by the Board of Trustees of the Village of Bayville which was duly passed by said Board on May 21, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affirmed the Seal of the Village of Bayville, this 22<sup>h</sup> day of May, 2007.

Maria Alfano-Hardy  
Maria Alfano-Hardy, Village Clerk

# **ATTACHMENT C**

## Affidavit of Publication

County of Nassau  
State of New York,

SS

I, Ise Hirseland, being duly sworn, deposes and says that she is the principal Clerk of the Publisher of

The OYSTER BAY ENTERPRISE PILOT  
a weekly newspaper published at Mineola in the county of Nassau, in the State of New York, and that a notice, a printed copy of which is hereunto annexed, has been published in said newspapers once in each week for

1 weeks, viz:

May 10, 2007

**LEGAL NOTICE**  
**INCORPORATED**  
**VILLAGE OF BAYVILLE**  
**PUBLIC HEARING**  
NOTICE IS HEREBY GIVEN PURSUANT TO LAW that the Board of Trustees of the Village of Bayville will conduct a public hearing on May 21, 2007 at 8:00 a.m. at the Village Hall, 24 School Street, Bayville, New York 11709, concerning the application of Patricia New York Inc. for an initial cable television franchise. At such time and place all persons interested in the Village Council's decision will be given an opportunity to present and discuss their comments on the application. Copies of the application of Patricia New York Inc. may be obtained upon request from the Village Clerk, 24 School Street, Bayville, New York 11709. BY ORDER OF THE BOARD OF TRUSTEES  
Ise Hirseland  
Village Clerk  
Village of Bayville  
Dated: May 10, 2007  
5-10-07-11-4436-08

Sworn to me this 10 day of  
May-2007

Ise Hirseland  
Notary Public

Shari M. Egnasko  
Notary Public, State of New York  
No. 01EG6119807  
Qualified in Nassau County  
Commission Expires Dec. 31, 2011

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INCORPORATED VILLAGE  
OF BAYVILLE  
MAY 11 2007  
ID: 26  
CLERK

**INCORPORATED VILLAGE OF BAYVILLE**

**LEGAL NOTICE**

**PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN PURSUANT TO LAW, that the Board of Trustees of the Village of Bayville will conduct a public hearing on May 21, 2007 at 8:00 p.m. at the Village Hall, 34 School Street, Bayville, New York 11709, 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 thereof shall be given full opportunity to participate and be heard concerning the same.**

**Copies of the application of Verizon New York Inc. for an initial cable television franchise are available for public inspection during normal business hours at the office of the Village of Bayville Village Clerk, 34 School Street, Bayville, New York, 11709**

**BY ORDER OF THE  
BOARD OF TRUSTEES  
Maria Alfano-Hardy  
Village Clerk  
Village of Bayville**

**Dated: May 10, 2007**

# **ATTACHMENT D**

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

1. 5/9/07 Correspondence from Verizon's outside counsel, Gabrielle Stormo of McGuireWoods LLP, to Village Administrator, Maria Alfano-Hardy, enclosing Verizon's application for a cable television franchise
2. 5/10/07 Correspondence from Verizon's outside counsel, Gabrielle Stormo of McGuireWoods LLP, to Village Attorney, James Reilly, enclosing revisions to the franchise agreement
3. 5/10/07 Correspondence from Verizon's outside counsel, Gabrielle Stormo of McGuireWoods LLP, to Village Administrator, Maria Alfano-Hardy, enclosing Verizon's proposed franchise agreement
4. 5/16/07 Correspondence from Verizon's Senior Vice President, Monica Azare, to Village Mayor, Victoria Siegel, regarding the May 21 public hearing and enclosing an information sheet outlining the Verizon FiOS TV service
5. 5/18/07 Correspondence from Verizon's outside counsel, Gabrielle Stormo of McGuireWoods LLP, to Village Administrator, Maria Alfano-Hardy, enclosing a revised franchise agreement in clean and blackline formats
6. 5/18/07 Correspondence from Verizon's outside counsel, Gabrielle Stormo of McGuireWoods LLP, to Village Administrator, Maria Alfano-Hardy, enclosing a sample resolution
7. 5/22/07 Correspondence from Verizon's outside counsel, Gabrielle Stormo of McGuireWoods LLP, to Village Administrator, Maria Alfano-Hardy, enclosing a revised franchise agreement



# Tab 1

Gabrielle S. Stormo  
Direct: 312.750.5737

McGUIREWOODS

gstormo@mcguirewoods.com  
Direct Fax: 312.698.4563

May 9, 2007

**Via Federal Express**

Ms. Maria Alfano-Hardy  
Village Administrator  
Village of Bayville  
34 School Street  
Bayville, NY 11709

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

Dear Ms. Alfano-Hardy:

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 Bayville for a cable television franchise. Also enclosed is an additional copy of the Application; please file stamp and return the additional copy to my attention in the enclosed self-addressed, prepaid Federal Express envelope.

Please contact Ed Butts at (630) 645-3802 or me at (312) 750-5737 if you have any questions.

Very truly yours,

  
Gabrielle S. Stormo

GSS/gsk

Enclosures

cc: Verizon New York Inc.  
James Reilly, Esq.

**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 Bayville ("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.**

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OF BAYVILLE  
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Village of Bayville, NY/Verizon New York Inc.  
Application for a Cable Television Franchise

- (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 90% of the households in the Municipality. A full discussion of the construction requirements and central office conversion requirements to bring FTTP and cable television service to the Municipality is contained in Exhibit 1.

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

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

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

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

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

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

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

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

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

The NY PSC granted the following Orders and Certificates of Confirmation for Verizon NY's approved franchises: (1) Massapequa Park - December 14, 2005; (2) Nyack - February 8, 2006; (3) South Nyack - February 8, 2006; (4) Upper Nyack - May 18, 2006; (5) Hempstead - May 18, 2006; (6) Cedarhurst - June 22, 2006; (7) Oyster Bay - June 23, 2006; (8) Laurel Hollow - August 24, 2006; (9) Grand View-on-Hudson - August 24, 2006; (10) Lynbrook - September 21, 2006; (11) Clarkstown - September 21, 2006; (12) Mineola - September 21, 2006; (13) East Rockaway - October 19, 2006; (14) Greenburgh - October 19, 2006; (15) Smithtown - November 10, 2006; (16) Irvington - November 10, 2006; (17) Valley Stream - November 10, 2006; (18) Huntington - November 10, 2006; (19) Farmingdale - November 10, 2006; (20) Ardsley - December 15, 2006; (21) Dobbs Ferry - December 15, 2006; (22) Freeport - December 15, 2006; (23) Tarrytown - December

15, 2006; (24) Eastchester – January 19, 2007; (25) Mount Kisco – January 19, 2007; (26) Elmsford – February 16, 2007; (27) Port Chester – March 23, 2007; (28) Tuckahoe – March 23, 2007; (29) Orangetown – April 20, 2007; and (30) Piermont – April 20, 2007.

Furthermore, other subsidiaries of Verizon Communications Inc. were awarded cable television franchises by 741 franchising authorities in California, Delaware, Florida, Maryland, Massachusetts, New Jersey, Pennsylvania, Texas, and Virginia.

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

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

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

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

**[http://investor.verizon.com/sec/sec\\_frame.aspx?FilingID=5002107](http://investor.verizon.com/sec/sec_frame.aspx?FilingID=5002107)**

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

**[http://investor.verizon.com/financial/quarterly/pdf/06\\_annual\\_report.pdf](http://investor.verizon.com/financial/quarterly/pdf/06_annual_report.pdf)**

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

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

**PROPOSED SERVICE OVERVIEW, PRODUCT OFFERS AND ARCHITECTURE**

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

**Overview of Fiber To The Premises (FTTP) Deployment**

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

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

**Service Overview**

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

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



- Interactive programming guide (IPG)
- Inside coax cable wire installation

### **Product Offers**

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

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

### **Service Delivery/Connection Method**

#### **Connection Method**

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

#### **Connection Method – Set Top Box**

The technician will have a set top box that will need to be installed near the TV. The technician will connect a coaxial cable from the wall outlet to the set top and another coaxial cable from the set top box to the TV. The technician will also connect the customer's VCR and/or DVD device and check for proper operation. A fee may be charged for non-standard installations involving

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multiple components such as surround sound systems or other electronic equipment. This process will be followed for any boxes installed.

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

**Connection Method: - PPV**

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

**Equipment Changes and Re-Configurations**

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

*[balance of page intentionally left blank]*

## **FTTP System Architecture**

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

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

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

Figure 1-High Level End to End Architecture

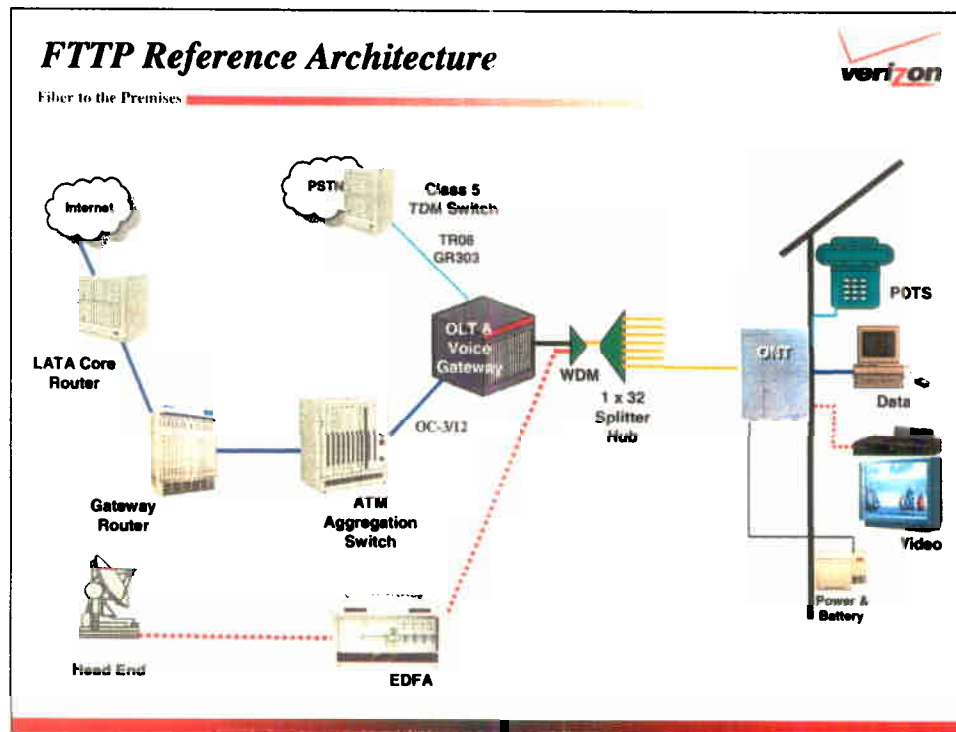
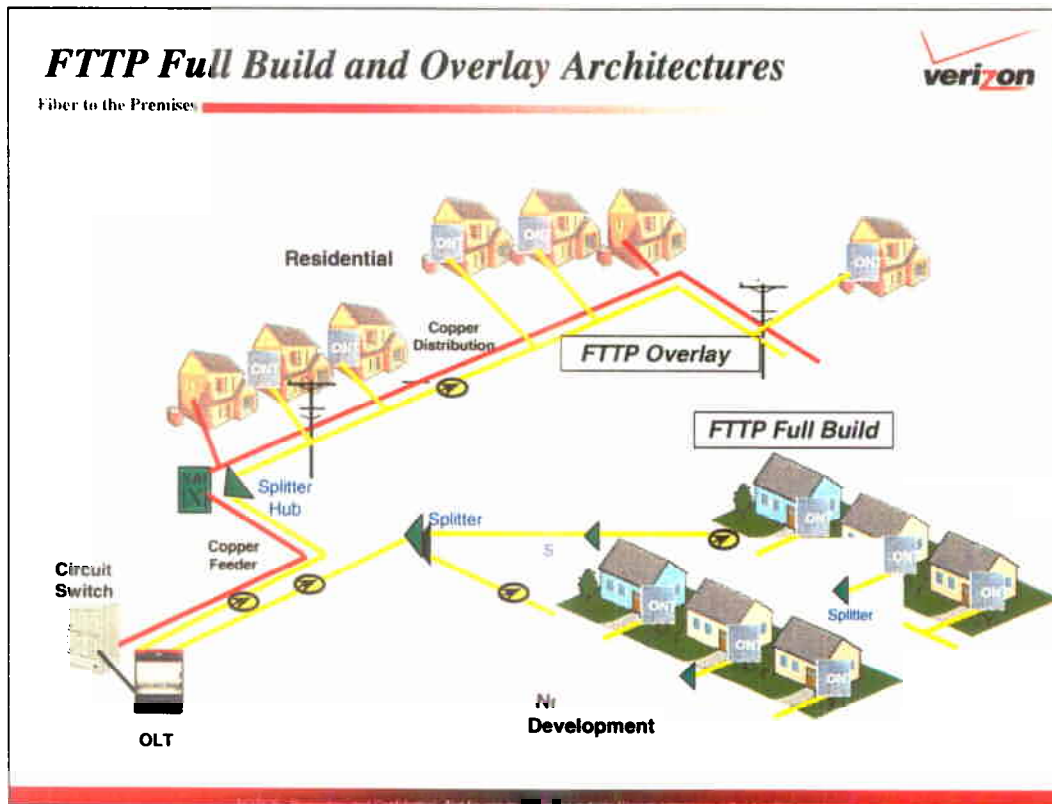


Figure 2-FTTP Full Build and Overlay Architectures



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

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

Cable television traffic is converted to optical signals at the VHO and transported over Verizon’s metro area, inter-office facilities (IOF) to Video Serving Offices (VSOs). Voice and high-speed

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data signals are combined with the cable television at this location for final transport to the subscriber premises over Verizon's FTTP Passive Optical Network (PON).

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

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

**Super Headend (SHE)**

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

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

The key functions of the SHE include:

Content Reception

Signal Processing

Encoding

Network Interface

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

**Wide Area Transport**

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

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

**Video Hub Office (VHO)**

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

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

WAN Interface for Cable television Transport

Ad Insertion

PEG Content

Signal Grooming and Multiplexing

Emergency Alert Service

Interactive Program Guide

Conditional Access

Local Content

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

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

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

**Metro Area Transport**

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

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

The Video Serving Office (VSO) is a location within the central office containing FTTP equipment. The VSO that will serve the Village of Bayville is located in Oyster Bay, New York. If technically feasible or otherwise appropriate, PEG insertion may occur at these locations in the network.

The key function of the VSO is to combine Broadcast Cable television into the Voice and High Speed Data FTTP Network.

Once in the VSO, the optical cable television signal is sent through an EDFA and then to a Wave Division Multiplexer (WDM) combiner and splitter, which is used to add the cable signal to the voice and high-speed data signals' wavelength (1490nm) – coming from the Optical Line Terminal (OLT) – together with the cable wavelength onto a single optical source. This optical signal is then sent towards the subscriber premises via a PON. The VSO will also play a role in supporting upstream signals from the customer premises for pay-per-view services. Pay-per-view usage data uses the data service's 1310nm upstream wavelength. The upstream data communications shall be sent back to a subscriber database located in the Operations Center located in the VHO.

**Customer Premises**

At the premise, an Optical Network Terminal (ONT) de-multiplexes the 1550nm optical signal and simply converts it to a voice, data and cable television electrical signal, which meets cable television industry standards for cable services.

*[balance of page intentionally left blank]*



**LEGAL AUTHORITY TO CONSTRUCT FIBER TO THE PREMISES**

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

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

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

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

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



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

**EXHIBIT 2**  
**APPLICATION FOR A CABLE TELEVISION FRANCHISE**  
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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**

[illegible]

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

## FIOS TV PREMIER (continued)

### Children

220	Disney
221	Toon Disney
222	Nickelodeon
223	Nick To
224	Nick Toons
225	GAS
226	Noggin
227	Cartoon Network (ESP)*
228	Boomerang (ESP)*
229	Discovery Kids
230	Variety
231	FUNimation
232	PBS KIDS Sprout
233	PBS KIDS Sprout
<b>People &amp; Culture</b>	
240	BET
241	TV One
242	Black Family Channel
243	MTV Tr3s
244	Galelón
245	Mun2
246	SI TV
247	AZN Television
248	Bridges TV
<b>Religion</b>	
260	EWTN
261	INSP
262	I-Life
263	Church
264	JCTV
265	BYU
266	Three Angels
267	The Word Network
268	Diyar
269	Smile of a Child
270	Trinity Broadcast Network

### SPORTS\*\*

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

## MOVIES\*\*

340	Starz
341	Starz West
342	Starz Edge
343	Starz Edge West
344	Starz in Black
345	Starz Kids & Family
346	Starz Cinema
347	Starz Comedy
348	Encore
349	Encore West
350	Encore Love
351	Encore Love West
352	Encore Westerns
353	Encore Westerns West
354	Encore Mystery
355	Encore Mystery West
356	Encore Drama
357	Encore Drama West
358	Encore Action
359	Encore Action West
360	Encore WAM!
361	Showtime
362	Showtime West
363	Showtime Showcase
364	Showtime Showcase West
365	Showtime Too
366	Showtime Too West
367	Showtime Beyond
368	Showtime Beyond West
369	Showtime Extreme
370	Showtime Extreme West
371	Showtime Women
372	Showtime Women West
373	Showtime Next
374	Showtime Next West
375	Showtime Family Zone
376	Showtime Family Zone West
377	The Movie Channel
378	The Movie Channel West
379	The Movie Channel Xtra
380	The Movie Channel Xtra West
381	Flix
382	Flix West
383	Sundance
385	Independent Film Channel

### PREMIUMS\*\*

400	HBO
401	HBO West
402	HBO 2
403	HBO 3 West
404	HBO Signature
405	HBO Signature West

## INTERNATIONAL PREMIUMS\*\*

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

## LA CONEXIÓN

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

### SPORTS

508	ESPN Deportes
511	YES
512	SportsNet NY
513	Fox Sports en Español
514	Fox Soccer Channel
515	MSG
516	GoTV
517	Fox Sports Net NY

### Movies

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

### International

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

### Women

### Shopping

540	QVC
541	H&N
543	Shop NBC
<b>Home &amp; Lifestyle</b>	
545	Discovery Health
546	Viajar y Vivir
549	Elitio
550	Food Network
551	HGTV (Home & Garden Television)
552	Travel Channel

### Pop Culture

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

### Musical

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

### Movies

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

### Family

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

### Children

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

### Religion

588	TBN Enlace
589	EWTN Español

## MUSIC CHOICE

### 600 Showcase

601	Today's Country
602	Classic Country
603	Bluegrass
604	R&B and Hip-Hop
605	Classic R&B
606	Smooth R&B
607	R&B Hits
608	Rap
609	Metal
610	Rock
611	Arena Rock
612	Classic Rock
613	Alternative
614	Retro-Active
615	Electronica
616	Dance
617	Adult Alternative
618	Soft Rock
619	Hit List
620	Party Favorites
621	90s
622	80s
623	70s
624	Solid Gold Classics
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

## PAY PER VIEW

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

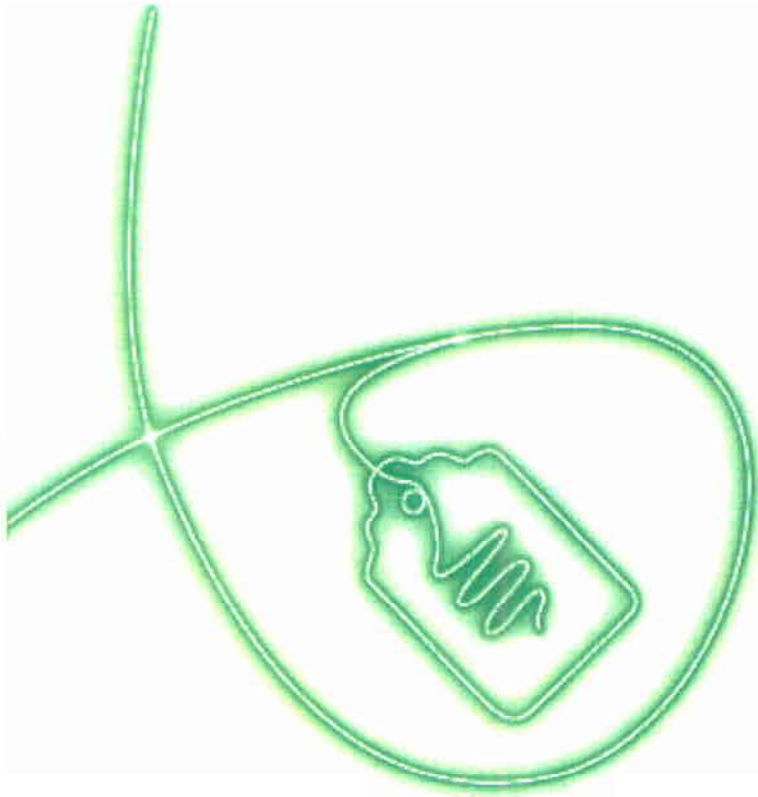
\*A Spanish-language Secondary Audio Program (SAP) is available for selection.  
 \*\*Subscription to corresponding premium channels and packages required.  
 Programming services offered within each package are subject to change, and not all programming services will be available at all times. Blackout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

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



Verizon **FIOS** TV

Rates & Packages



Get more from your  
fiber-optic experience.

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

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

Service	Number of Channels	Monthly Price
FiOS TV Local <sup>1</sup>	15-35	\$12.99
Digital Service (Requires Set Top Box [STB] and Router <sup>2</sup> )		
FiOS TV Premier <sup>3</sup>	160 + FiOS TV Local	\$42.99
La Conexión <sup>4</sup>	115 + FiOS TV Local	\$32.99

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

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

Premiums <sup>5</sup> (Requires STB)	Number of Channels	Monthly Price
HBO <sup>6</sup>	14	\$15.99
Cinemax <sup>7</sup>	12	\$15.99
HBO/Cinemax Combination	26	\$25.99
Playboy TV <sup>8</sup> /Playboy TV en Español	2	\$15.99
here!	1	\$7.99

International Premiums <sup>9</sup> (Requires STB)	Number of Channels	Monthly Price
International Premium Channels	17	Individually Priced

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

#### On Demand Movies

New Releases	\$3.99
Library	\$2.99

#### On Demand Subscriptions

WWE	\$7.99/mo.
Karaoke	\$7.99/mo.

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

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

Initial Installation	One-Time Charges
Existing Outlet Hookup (up to 3)	No Charge
Additional Outlet/Set Top Box Hookup (existing outlet)	\$19.99
New Outlet Install/Existing Outlet Rewire (per outlet)	\$54.99
Outlet Relocation	\$54.99

Subsequent Installations/Charges	One-Time Charges
Set Top Box Addition or Upgrade/Downgrade	\$24.99
Premise Visit*	\$49.99
New Outlet Installation (per outlet)	\$54.99
Outlet Relocation (per outlet)	\$54.99
Setup of TV Equipment (new TV with existing STB)	\$49.99
Disconnect of Set Top Box <sup>7</sup>	\$24.99 + \$5.00/STB
Downgrade of Service from Digital to Analog	\$49.99 + \$5.00/STB
FiOS TV Service Disconnect	No Charge

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

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





*We never stop working for you.*

- 1 In order to be eligible for Movies or Sports, FIOS TV Premier or La Conexión is required. The Spanish Language package may be added to FIOS TV Local service, but requires a Set Top Box for access. The addition of a Set Top Box with FIOS TV Local service provides access to Video On Demand (VOD) and Pay Per View (PPV), as well as the ability to order Premiums and International Premiums.
- 2 Router provided will be a new or fully inspected, tested and warranted return unit. If service is cancelled within the first 12 months, router must be returned or \$99.99 equipment fee applies. If you maintain service for twelve (12) consecutive months, ownership of the router shall transfer to you, after which time all maintenance of the router shall be at your sole cost and expense, and the risk of loss will be yours should the router be damaged or stolen.
- 3 FIOS TV Premier includes all FIOS TV Local channels, additional all-digital programming, digital music channels and access to Pay Per View and Video On Demand. 30-day minimum billing period required for all digital packages.
- 4 La Conexión includes all FIOS TV Local channels, digital programming including popular English-language networks and Spanish-language networks, digital music channels, and access to PPV and VOD. La Conexión cannot be combined with the Spanish Language package. 30-day minimum billing period required for all digital packages.
- 5 Subscription VOD is included with all Premiums at no extra charge (where applicable). 30-day minimum billing period required for all Premiums.
- 6 A premise visit charge is assessed when a technician installation is required to set up a new or additional TV with an existing FIOS TV Set Top Box. A premise visit charge is not assessed when adding new, upgrading/downgrading existing, or disconnecting Set Top Box receivers.
- 7 The Set Top Box disconnect charge is assessed only when the customer maintains at least one FIOS TV Set Top Box. If all Set Top Box receivers are disconnected, the service downgrade charge applies.
- 8 Seasonal service suspension requires a minimum suspension of one month and a maximum suspension of six months.

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

VEFIFF60157-307

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## Tab 2

# MCGUIREWOODS

No. of Pages (including cover ): 03

Date: Thursday, May 10, 2007 2:21:48 PM

If all pages are not received, please call the Fax Operator indicated below.

To: James Reilly

Office/Company/Firm: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: 516-873-3956

From: Gabrielle S. Stormo, Esq.

Office: Chicago Direct Fax Number: 312-750-8600

Sender's Direct Dial Phone Number: 312-750-5737

**Remarks:**

Dear James:

As discussed several minutes ago, following, in a blackline version, is the revised bundled language for Section 6.4, and the revised indemnification language for Section 8.2.1. Please review and call me to discuss. I can be reached at 312.750.5737. Thank you!

OFFICE	GENERAL FAX NUMBER	SWITCHBOARD	FAX OPERATOR
CHICAGO, IL	312/849-3690	312/849-8100	312/849-8100

This Fax is intended for the recipient indicated above. It may be confidential or protected from disclosure by the attorney-client privilege or work-product doctrine. If you have received this Fax in error, please destroy it immediately. Thank you.

# **VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**VERIZON PROPRIETARY AND CONFIDENTIAL**

**MCGUIREWOODS LLP DRAFT DATED ~~APRIL 25~~ MAY 10, 2007**

any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. The LFA shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. §531.

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

## **6. FRANCHISE FEES**

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

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

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

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

**VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**VERIZON PROPRIETARY AND CONFIDENTIAL**

**MCGUIREWOODS LLP DRAFT DATED ~~APRIL 25~~ MAY 10, 2007**

8.1.5. Upon written request, Franchisee shall deliver to the LFA Certificates of Insurance showing evidence of the required coverage.

**8.2. Indemnification:**

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees, or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels, provided that the LFA shall give Franchisee by reason of any conduct undertaken pursuant to the Franchise, provided that the LFA shall give Franchisee timely written notice of the LFA's request a claim or action for which it seeks indemnification—within ten (10) days of receipt of a claim or action pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

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

8.2.3. The LFA shall hold harmless and defend Franchisee from and against and shall be responsible for damages, liability or claims resulting from or arising out of the willful misconduct or negligence of the LFA.

8.2.4. The LFA shall be responsible for its own acts of willful misconduct, negligence, or breach, subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify the LFA for acts of the LFA

## Tab 3

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McGUIREWOODS

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Direct Fax: 312.698.4563

May 10, 2007

**Via Federal Express**

Ms. Maria Alfano-Hardy  
Village Administrator  
Village of Bayville  
34 School Street  
Bayville, NY 11709


**Re: Verizon New York, Inc. Cable Television Franchise**

Dear Ms. Alfano-Hardy:

Enclosed, please find a copy of the cable franchise agreement by and between the Village of Bayville, NY, and Verizon New York Inc.

Please contact Ed Butts at (630) 645-3802 or me at (312) 750-5737 if you have any questions.

Very truly yours,

  
Gabrielle S. Stormo

GSS/gsk

Enclosures

cc: Verizon New York Inc.  
James Reilly, Esq.

***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

**Cable Franchise Agreement**

**by and between**

**the Village of Bayville, NY**

**and**

**Verizon New York Inc.**



***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

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**EXHIBITS**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

# ***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Village of Bayville, 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 has substantially completed the upgrading of its existing telecommunications and information services network through the installation of a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area which transmits the Non-Cable Services pursuant to authority granted by Section 27 of the New York Transportation Corporations Law, as amended, and Title II of the Communications Act, which Non-Cable Services are not subject to the Cable Law or Title VI of the Communications Act;

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

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

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

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

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

NOW, THEREFORE, in consideration of the LFA's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of the

## ***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

LFA pursuant to and consistent with the Cable Law (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

### **1. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

## ***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

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

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

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

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

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

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

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.

## ***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

Gross Revenue shall not include: Franchise Fees imposed on Franchisee by the LFA that are passed through from Franchisee as a line item paid by Subscribers; revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders; 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 Bayville, New York, or the lawful successor, transferee, or assignee thereof.

## ***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

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

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

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

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

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

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

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

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

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

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

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

1.31. *Transfer of the Franchise*:

1.31.1. Any transaction in which:

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

## **VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY 10, 2007**

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

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

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

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

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

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

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

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

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

## ***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

### **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. 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.

2.7.2. Should any change to state law, rules or regulations have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modification to this Franchise shall be in writing and shall be subject to Section 222 of the New York Public Service Law and Title 16, Chapter VIII, Part 892, Subpart 892-1, Section 892-1.4 of the Official Compilation of Codes, Rules and Regulations of the State of New York requiring application to the NY PSC and approval of any modification. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.8. *Local Authority:* The LFA shall not enact any local laws that are inconsistent with this Franchise, provided, however, that nothing in this Franchise shall be construed to prohibit the 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 its pre-existing condition.



## ***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

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

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

#### **3.1. *Service Area:***

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

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

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however,

## ***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

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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, the Franchisee shall charge the recipient the Franchisee's actual cost. Such costs shall be submitted to said recipient in writing before installation is begun.

3.3. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as may be designated by the LFA as provided in Exhibit A attached hereto; provided, however, that if it is necessary to extend Franchisee's aerial trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such aerial extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, the Franchisee shall charge the recipient the 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 NY PSC rules and regulations.

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

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

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

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

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

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

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

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

### **5. PEG SERVICES**

#### **5.1. *PEG Set Aside:***

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

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

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

5.2. *Franchise Grant:* Franchisee shall pay the LFA the sum of EIGHT THOUSAND DOLLARS (\$8,000.00) (the "Franchise Grant"), payable in ten installments. The first Franchise Grant payment in the amount of FIVE THOUSAND THREE HUNDRED DOLLARS (\$5,300) shall be payable within (90) days after the Effective Date. The second

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Franchise Grant payment in the amount of THREE HUNDRED DOLLARS (\$300) shall be payable within sixty (60) days from the first anniversary after the Effective Date, and each of the eight (8) subsequent Franchise Grant payments, each in the amount of THREE HUNDRED DOLLARS (\$300), shall be payable within sixty (60) days after each subsequent anniversary of the Effective Date.

5.3. *Indemnity for PEG:* The LFA shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the LFA from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. The LFA shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. §531.

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

### **6. FRANCHISE FEES**

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

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

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

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

### **7. REPORTS AND RECORDS**

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

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

7.2.1. Records of all written complaints for a period of three (3) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

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

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the date and time service was provided, and (if different) the date and time the problem was resolved;

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

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

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

### **8. INSURANCE AND INDEMNIFICATION**

#### **8.1. *Insurance*:**

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

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

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

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

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

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

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

8.1.3. Each of the required insurance policies shall be noncancellable except upon thirty (30) days prior written notice to the LFA. Franchisee shall not cancel any

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required insurance policy without submitting documentation to the LFA verifying that the Franchisee has obtained alternative insurance in conformance with this Agreement.

8.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

8.1.5. Upon written request, Franchisee shall deliver to the LFA Certificates of Insurance showing evidence of the required coverage.

### ***8.2. Indemnification:***

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees, or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels, provided that the LFA shall give Franchisee by reason of any conduct undertaken pursuant to the Franchise, provided that the LFA shall give Franchisee timely written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

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

8.2.3. The LFA shall hold harmless and defend Franchisee from and against and shall be responsible for damages, liability or claims resulting from or arising out of the willful misconduct or negligence of the LFA.

8.2.4. The LFA shall be responsible for its own acts of willful misconduct, negligence, or breach, subject to any and all defenses and limitations of liability

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provided by law. The Franchisee shall not be required to indemnify the LFA for acts of the LFA which constitute willful misconduct or negligence on the part of the LFA, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

### **9. TRANSFER OF FRANCHISE**

9.1. *Transfer:* Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, as amended, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the LFA may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.31 above.

### **10. RENEWAL OF FRANCHISE**

10.1. *Governing Law:* The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 12.12 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



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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 the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

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

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

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

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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.

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

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

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

12.5.1. Notices to Franchisee shall be mailed to:

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

12.5.2. Notices to the LFA shall be mailed to:

Village of Bayville  
34 School Street  
Bayville, NY 11709

12.5.3. with a copy to:

James A. Reilly, Esq.  
One Old Country Road  
Carle Place, NY 11514

12.6. *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the LFA and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof. Any local laws or parts of local laws that materially conflict with the provisions of this Agreement are superseded by this Agreement.

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

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

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

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

12.11. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the LFA or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

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

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

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

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

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

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

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

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

12.19.1 The Franchisee shall make reasonable effort to account for all identification cards at all times.

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

12.19.3 The Franchisee shall require that all service vehicles of the Franchisee and its contractors and subcontractors be clearly identified as such to the public. Specifically, the Franchisee vehicles shall be required to have the Franchisee's logo plainly visible. The Franchisee shall require that all contractors and subcontractors working for the Franchisee shall have the contractor's/subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

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

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

LFA:

\_\_\_\_\_

By: \_\_\_\_\_  
[Title]

Verizon New York Inc.

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

***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

[Title]

**EXHIBITS**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

**EXHIBIT A**

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

1. Bayville Village Hall, 34 School Street, Bayville, NY
2. Bayville Historical Museum, 34 School Street, Bayville, NY
3. Bayville Free Library, 34 School Street, Bayville, NY
4. Bayville Elementary School, 50 Godfrey Avenue, Bayville, NY
5. Bayville Intermediate School, 50 Mountain Avenue, Bayville, NY
6. Bayville Fire Department, 258 Bayville Avenue, Bayville, NY
7. St. Gertrude's Pre-school, 28 School Street, Bayville, NY

***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

**EXHIBIT B**

**SERVICE AREA**

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

The construction of the Franchisee's FTTP Network has been completed to approximately 90% of the current households in the Franchise Area. At present, Franchisee's anticipated schedule calls for 91% deployment by June 2007, 91% deployment by December 2007, 92% deployment by June 2008, 93% deployment by December 2008, 94% deployment by June 2009, 95% deployment by December 2009, 96% deployment by June 2010, 97% deployment by December 2010, 98% deployment by June 2011, 99% deployment by December 2011, and 100% deployment by June 2012. This schedule is subject to further review and modification by the Franchisee consistent with Section 895.5(b)(1) of the NY PSC rules and regulations; provided, however, that Franchisee shall provide notice to the LFA and the NY PSC of any material change in this schedule.





***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 10, 2007**

**EXHIBIT C**

**PEG CHANNELS**

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

## Tab 4



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

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

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

May 16, 2007

The Honorable Victoria Siegel, Mayor  
Village of Bayville  
34 School Street  
Bayville, NY 11709

Dear Mayor Siegel:

Verizon is looking forward to the public hearing on May 21 in the Village of Bayville 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 Bayville.

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

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

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

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

Sincerely,

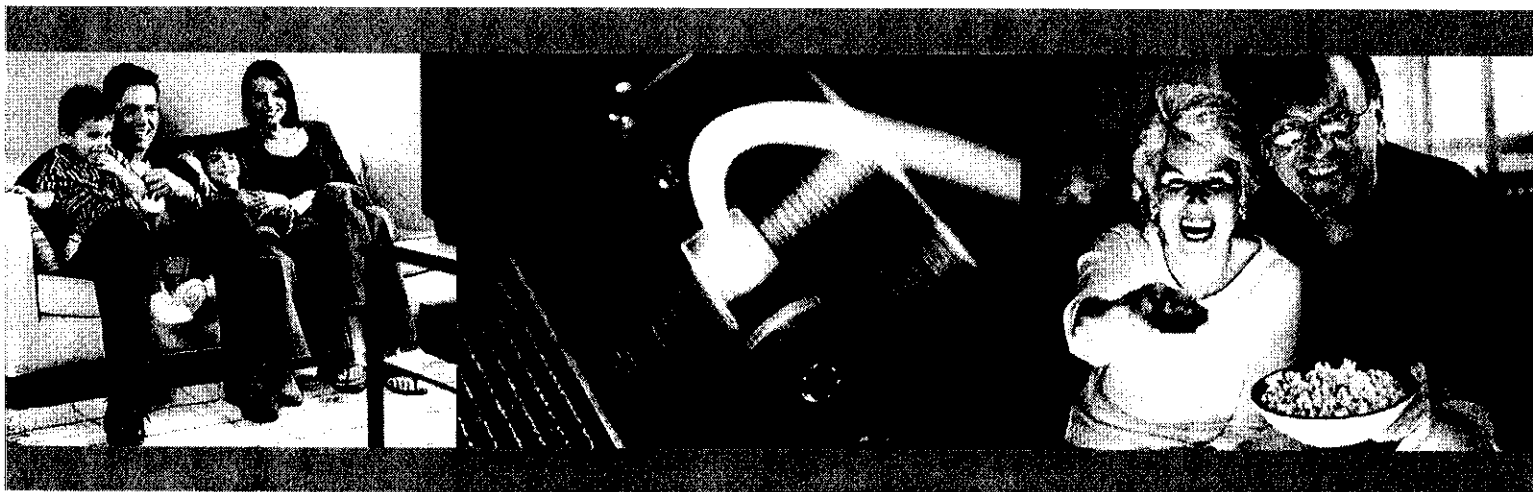
A handwritten signature in black ink, appearing to read "Monica Azare", written over a large, stylized circular flourish.

Monica Azare

cc: The Honorable Douglas Watson, Deputy Mayor  
The Honorable John Laurine, Trustee  
The Honorable Paul McBride, Trustee  
The Honorable Timothy Horgan, Trustee  
The Honorable Paul Rupp, Trustee  
The Honorable Carol Kennedy, Trustee

# Verizon FiOS TV

Village of Bayville, NY



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



*We never stop working for you.*

## The Village of Bayville Can Advance New York's Broadband Revolution.

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

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

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

**The Village of Bayville is among the first.**

- **Deployment Commitment:** Bayville is among the first communities in New York to benefit from Verizon's fiber-to-the-premises (FTTP) initiative. Today, this network offers Bayville the largest ever voice, data, and video pipeline into the home, resulting in clearer, more reliable voice connections and lightning-fast Internet connections - far faster than the most powerful cable modem connections.
- **Personnel and Resource Commitment:** Verizon has hired new full-time employees and contractors to deliver fiber to the home in the area.
- **Quality Commitment:** Verizon is delivering the best video offering on the market to downstate New York – and intends to do the same for the residents of Bayville.

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



*We never stop working for you.*

# More Choices. Right Before Your Eyes.

## Top 10 Reasons Why New Yorkers Want FiOS TV

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

## Competition Works!

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

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

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

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

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

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



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

### **A Superior Network**

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

### **On Demand**

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

### **HDTV**

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

### **More Control**

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

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

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

### **Global Reach**

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

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

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



# Verizon FiOS TV — New York Channel Lineup

Effective 2/07

Local	
2	CBS — WCBS-TV 2
4	NBC — WNBC-TV 4
5	FOX — WNYW-TV 5
6	WRNN-TV 62
7	ABC — WABC-TV 7
8	Superstation — WGN-TV
9	My WWOV-TV 9
10	WLNY-TV 55
11	CW — WPIX-TV 11
12	Telemundo — WNUJ-TV 47
13	PBS — WNET-TV 13
17	WFTY-TV 67
18	WMBC-TV 63
21	PBS — WLIW-TV 21
23	PBS — WNJN-TV 50
25	NYC-TV
29	PBS — WFME-TV 66
31	iWPIXN-TV 31
32	Local Programming
33	Local Programming
34	Local Programming
37	Local Programming
38	Local Programming
40	Local Programming
41	Univision — WXTV-TV 41
48	TV Guide
49	WeatherScan Local
Fios TV Premier	
50	USA Network
51	TNT
52	TBS
53	FX
54	Spike TV
60	ESPN
61	ESPN Classic Sports
62	ESPNNews
63	ESPNU
64	ESPN 2
66	YES
67	SportsNet NY
68	MSG
69	Fox Sports Net NY
71	Speed Channel
72	NFL Network
75	VERSUS
80	CNN
81	CNN Headline News
82	Fox News
83	CNBC
85	Bloomberg TV
86	CNN International
87	CNN World
88	ABC News Now
89	C-SPAN
90	C-SPAN 2
91	C-SPAN 3
99	The Weather Channel
100	Discovery Channel
101	National Geographic Channel
102	Science Channel
103	Discovery Times
104	Pentagon Channel
105	Military Channel
106	Military History Channel
107	History Channel International

Fios TV Premier	
108	History Channel
109	Biography Channel
110	Animal Planet
119	TLC (The Learning Channel)
120	Lifetime
121	Lifetime Movie Network
122	Lifetime Real Women
123	SoapNet
124	Oxygen
129	Women's Entertainment
130	QVC
131	HSN
133	America's Store
135	Jewelry
137	Shop NBC
140	Style
141	Discovery Health
142	LIME
143	Fit TV
144	Food Network
145	HGTV (Home & Garden Television)
146	Fine Living
147	DIY (Do It Yourself)
148	Discovery Home
149	Wealth TV
150	Travel Channel
160	Sci-Fi Channel
161	A&E
162	Crime & Investigation Network
163	Court TV
164	GSN
165	Bravo
166	Sleuth
167	Logo
168	Ovation
169	BBC America
170	Comedy Central
171	G4
176	E! Entertainment Television
177	Fox Reality
178	Fuel
179	ABC Family
180	MTV
181	MTV2
183	MTV Jams
184	MTV Hits
185	IMF (International Music Feed)
186	FUSE
187	VH1
188	VH1 Classic
189	VH1 Soul
190	BET Jazz
191	CMT
192	CMT Pure Country
193	Great American Country
194	Gospel Music Channel
195	BET Gospel
199	Soundtrack Channel
200	Turner Classic Movies
201	AMC
202	Fox Movie Channel

Fios TV Premier	
210	Hallmark Channel (East)
212	Family Net
213	AmericanLife TV
214	TV Land
220	Disney
221	Toon Disney
222	Nickelodeon
223	Nick Too
224	Nick Toons
225	GAS
226	Noggin
227	Cartoon Network (ESP)*
228	Boomerang (ESP)*
229	Discovery Kids
230	Varsity
231	FUNimation
232	PBS KIDS Sprout
240	BET
241	TV One
242	Black Family Channel
243	MTV Tr3s
244	Galavisión
245	Mun2
246	Si TV
247	AZN Television
248	Bridges TV
260	EWTN
261	INSP
262	i-Life
263	Church
264	JCTV
265	BYU
266	Three Angels
268	Daystar
269	Smile of a Child
270	Trinity Broadcast Network
Sports	
300	Fox College Sports — Atlantic
301	Fox College Sports — Central
302	Fox College Sports — Pacific
303	Tennis Channel
305	Golf Channel
307	Outdoor Channel
308	The Sportsman Channel
311	Fox Sports en Español
312	Fox Soccer Channel
313	Go!TV
315	TVG (Horse Racing)
316	Horse Racing TV
318	Mav TV
319	Blackbelt TV
321	MSG 2
322	Fox Sports Net NY 2
Movies	
340	Starz
341	Starz West
342	Starz Edge
343	Starz Edge West
344	Starz in Black
345	Starz Kids & Family
346	Starz Cinema
347	Starz Comedy
348	Encore

Movies	
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
361	Showtime
362	Showtime West
363	Showtime Showcase
364	Showtime Showcase West
365	Showtime Too
366	Showtime Too West
367	Showtime Beyond
368	Showtime Beyond West
369	Showtime Extreme
370	Showtime Extreme West
371	Showtime Women
372	Showtime Women West
373	Showtime Next
374	Showtime Next West
375	Showtime Family Zone
376	Showtime Family Zone West
377	The Movie Channel
378	The Movie Channel West
379	The Movie Channel Xtra
380	The Movie Channel Xtra West
381	Flix
382	Flix West
384	Sundance
385	Independent Film Channel
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 on Español
435	here!

\*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. To view our latest published channel lineup, please visit [verizon fios.com/tv](http://verizon fios.com/tv).

# Verizon FiOS TV — New York Channel Lineup

Spanish Language	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
	454	Viajar y Vivir
	456	Infinito
	457	MTV Tr3s
	458	VH Uno
	459	Telehit
	462	De Película
	463	De Película Clásico
	464	Cine Latino
	465	Cine Mexicano
	468	La Familia
	469	TV Chile
International Premiums	470	TV Colombia
	472	Sorpresa
	473	Toon Disney Español
	474	Boomerang (ESP)*
	475	Discovery Kids en Español
	477	TBN Enlace
	478	EWTN Español
	480	SBTN (Vietnamese)
	481	OCTV-4 (Mandarin Chinese)
	482	CTI — Zhong Tian Channel (Chinese)
	483	TV Japan
	484	MBC (Korean)
	485	The Filipino Channel
	486	TV Asia
	487	ART (Arabic)
	488	RAI (Italian)
	489	TV 5 (French)
	490	TVP Polonia (Polish)
	491	Rang A Rang (Farsi)
	492	RTN Russian
La Conexión	493	Channel 1 Russian
	497	MTV K
	498	MTV Chi
	499	MTV Desi
	500	USA Network
	501	TNT
	502	TBS
	503	Galavisión
	504	FX
	505	Spike TV
	508	ESPN Deportes
	511	YES
	512	SportsNet NY
	513	Fox Sports en Español
	514	Fox Soccer Channel
	515	MSG
	516	Go!TV
	517	Fox Sports Net NY

La Conexión	518	CNN en Español
	519	CNN
	520	CNN Headline News
	521	Fox News
	522	CNBC
	524	C-SPAN
	525	Canal SUR
	529	TVE Internacional
	530	History Español
	531	Discovery Channel
	532	Discovery en Español
	534	Animal Planet
	535	TLC (The Learning Channel)
	537	Lifetime
	538	Lifetime Movie Network
	540	QVC
	541	HSN
	543	Shop NBC
	545	Discovery Health
	546	Viajar y Vivir
Music Choice	549	Infinito
	550	Food Network
	551	HGTV (Home & Garden Television)
	552	Travel Channel
	555	E! Entertainment Television
	556	A&E
	557	Si TV
	558	Mun2
	559	Comedy Central
	560	Sci-Fi Channel
	562	MTV Tr3s
	563	MTV2
	564	Telehit
	565	VH Uno
	566	CMT
	569	De Película
	570	De Película Clásico
	571	Cine Mexicano
	572	Cine Latino
Music Choice	574	ABC Family
	575	La Familia
	576	TV Chile
	577	TV Colombia
	578	TV Land
	580	Nickelodeon
	581	Disney en Español
	582	Toon Disney Español
	583	Boomerang (ESP)*
	584	Cartoon Network (ESP)*
	585	Sorpresa
	586	Discovery Kids en Español
	588	TBN Enlace
	589	EWTN Español

Music Choice	600	Showcase
	601	Today's Country
	602	Classic Country
	603	Bluegrass
	604	R&B and Hip-Hop
	605	Classic R&B
	606	Smooth R&B
	607	R&B Hits
	608	Rap
	609	Metal
	610	Rock
	611	Arena Rock
	612	Classic Rock
	613	Alternative
	614	Retro-Active
	615	Electronica
	616	Dance
	617	Adult Alternative
	618	Soft Rock
	619	Hit List
Music Choice	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
Music Choice	640	Sounds of the Seasons
	641	Música Urbana
	642	Salsa y Merengue
	643	Rock en Español
	644	Pop Latino
	645	Mexicana
	646	Americana
	701	Events
	702-707	ESPN-NCAA Sports/ GamePlan/Full Court
	701	CW — WPXI HD
	702	CBS — WCBS HD
	703	PBS — WNET HD
	704	NBC — WNBC HD
	705	FOX — WNYW HD
	707	ABC — WABC HD
	709	My WWOR HD
	825	TNT HDTV
	826	ESPN HDTV
	827	ESPN 2 HDTV
	828	NFL Network HDTV
	830	YES HD

HD	831	SportsNet New York HD
	833	HD Net
	834	HD Net Movies
	835	Universal HDTV
	836	Discovery HDTV
	837	Wealth TV HD
	838	National Geographic Channel HD
	839	MTV HD
	851	HBO HDTV
	852	Cinemax HDTV
	853	Showtime HDTV
	854	TMC HDTV
	855	Starz HDTV
	860	NBC Weather Plus
	861	The Tube Music Network
	864	WNBC 4.4
	870	WLIW 21
	871	WLIW Create
	872	13 Kids
	873	13 World
Local Plus	880	FIOS On Demand
	Kids FREE	
	ALL FREE	
	Home & Leisure	
	Info & Education	
	Kids	
	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	
Video On Demand	Adult	
	Hustler	
	Spice	
	TEN	
	Uncensored	
	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.



We never stop working for you.

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

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

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

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

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

**FiOS TV with HDTV programming offers:**

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

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

Finally, regularly scheduled programs for your irregularly scheduled life.

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

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

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



**Home Media DVR with Media Manager**

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

# Verizon FiOS TV

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

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

Service	Number of Channels	Monthly Price
FiOS TV Local <sup>1</sup>	15-35	\$12.99
Digital Service (Requires Set Top Box [STB] and Router <sup>2</sup> )		
FiOS TV Premier <sup>3</sup>	160 + FiOS TV Local	\$42.99
La Conexión <sup>4</sup>	115 + FiOS TV Local	\$32.99

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

Channel/Service	Number of Channels	Monthly Price
Sports	15	\$7.99
Movies	44	\$12.99
Sports/Movies Combination	59	\$15.99
Spanish Language	25	\$11.99

Channel/Service	Number of Channels	Monthly Price
HBO <sup>5</sup>	14	\$15.99
Cinemax <sup>6</sup>	12	\$15.99
HBO/Cinemax Combination	26	\$25.99
Playboy TV <sup>7</sup> /Playboy TV en Español	2	\$15.99
here!	1	\$7.99

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

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

## On Demand Movies

New Releases	\$3.99
Library	\$2.99

## On Demand Subscriptions

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

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

Initial Installation	One-Time Charges
Existing Outlet Hookup (up to 3)	No Charge
Additional Outlet/Set Top Box Hookup (existing outlet)	\$19.99
New Outlet Install/Existing Outlet Rewire (per outlet)	\$54.99
Outlet Relocation	\$54.99

Service/Installation/Charges	One-Time Charges
Set Top Box Addition or Upgrade/Downgrade	\$24.99
Premise Visit <sup>9</sup>	\$49.99
New Outlet Installation (per outlet)	\$54.99
Outlet Relocation (per outlet)	\$54.99
Setup of TV Equipment (new TV with existing STB)	\$49.99
Disconnect of Set Top Box <sup>7</sup>	\$24.99 + \$5.00/STB
Downgrade of Service from Digital to Analog	\$49.99 + \$5.00/STB
FiOS TV Service Disconnect	No Charge
FiOS TV Service Reconnect (up to 3 outlets) <sup>8</sup>	\$49.99

Other Services and Charges	One-Time Charges
Seasonal Service Suspension (charged at initiation, 1-6 months) <sup>9</sup>	\$24.99
Replacement Remote — Basic Universal	\$5.00 + Shipping & Handling
Replacement Remote — FiOS TV Universal	\$6.99 + Shipping & Handling
Unreturned/Damaged STB — Standard Definition	\$240.00
Unreturned/Damaged STB — High Definition	\$350.00
Unreturned/Damaged STB — Digital Video Recorder (DVR)	\$550.00

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



We never stop working for you.

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

<sup>2</sup> Router provided will be a new or fully inspected, tested and warranted return unit. If service is cancelled within the first 12 months, router must be returned or \$99.99 equipment fee applies. If you maintain service for twelve (12) consecutive months, ownership of the router shall transfer to you, after which time all maintenance of the router shall be at your sole cost and expense, and the risk of loss will be yours should the router be damaged or stolen.

<sup>3</sup> FiOS TV Premier includes all FiOS TV Local channels, additional all-digital programming, digital music channels and access to Pay Per View and Video On Demand. 30-day minimum billing period required for all digital packages.

<sup>4</sup> La Conexión includes all FiOS TV Local channels, digital programming including popular English-language networks and Spanish-language networks, digital music channels, and access to PPV and VOD. La Conexión cannot be combined with the Spanish Language package. 30-day minimum billing period required for all digital packages.

<sup>5</sup> Subscription VOD is included with all Premiums at no extra charge (where applicable). 30-day minimum billing period required for all Premiums.

<sup>6</sup> A premise visit charge is assessed when a technician installation is required to set up a new or additional TV with an existing FiOS TV Set Top Box. A premise visit charge is not assessed when adding new, upgrading/downgrading existing, or disconnecting Set Top Box receivers.

<sup>7</sup> The Set Top Box disconnect charge is assessed only when the customer maintains at least one FiOS TV Set Top Box. If all Set Top Box receivers are disconnected, the service downgrade charge applies.

<sup>8</sup> The reconnect fee applies when establishing service after a service disconnect.

<sup>9</sup> Seasonal service suspension requires a minimum suspension of one month and a maximum suspension of six months.

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

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VEIFF70013-1/07

# Tab 5

**From:** Stormo, Gabrielle S.  
**Sent:** Friday, May 18, 2007 12:20 PM  
**To:** 'MAlfanohardy@bayvillevillagehall.com'  
**Cc:** edward.a.butts@verizon.com  
**Subject:** Revised Bayville Franchise Agreement - dated May 18, 2007  
Maria:


Attached, please find a revised Bayville Franchise Agreement, which includes the revisions in Sections 7.2. and 8.2.3 that James Reilly and I discussed. Also included is a blackline document comparing the Bayville Franchise Agreement dated May 10, 2007 to the Bayville Franchise Agreement dated May 18, 2007.

Kindly forward copies of these documents to Mayor Siegel and James Reilly.

We look forward to seeing you on Monday evening. In the meantime, if you have any questions or comments, please do not hesitate to contact Ed Butts at 630.645.3802 or me at 312.750.5737.

Gabrielle

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Attorney at Law

  
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77 West Wacker Drive  
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*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.*

**VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY 18, 2007**

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**EXHIBITS**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

**VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY 18, 2007**

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the Village of Bayville, 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 has substantially completed the upgrading of its existing telecommunications and information services network through the installation of a Fiber to the Premise Telecommunications Network (“FTTP Network”) in the Franchise Area which transmits the Non-Cable Services pursuant to authority granted by Section 27 of the New York Transportation Corporations Law, as amended, and Title II of the Communications Act, which Non-Cable Services are not subject to the Cable Law or Title VI of the Communications Act;

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

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

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

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

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

NOW, THEREFORE, in consideration of the LFA’s grant of a franchise to Franchisee, Franchisee’s promise to provide Cable Service to residents of the Franchise/Service Area of the



# **VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY 18, 2007**

LFA pursuant to and consistent with the Cable Law (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

## **1. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

## **VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY 18, 2007**

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

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

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

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

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

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

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.

## **VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY 18, 2007**

Gross Revenue shall not include: Franchise Fees imposed on Franchisee by the LFA that are passed through from Franchisee as a line item paid by Subscribers; revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders; 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 Bayville, New York, or the lawful successor, transferee, or assignee thereof.

## **VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY 18, 2007**

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

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

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

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

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

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

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

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

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

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

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

1.31. *Transfer of the Franchise*:

1.31.1. Any transaction in which:

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

## **VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY 18, 2007**

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

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

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

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

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

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

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

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

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

## **VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY 18, 2007**

### **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. 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.

2.7.2. Should any change to state law, rules or regulations have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modification to this Franchise shall be in writing and shall be subject to Section 222 of the New York Public Service Law and Title 16, Chapter VIII, Part 892, Subpart 892-1, Section 892-1.4 of the Official Compilation of Codes, Rules and Regulations of the State of New York requiring application to the NY PSC and approval of any modification. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.8. *Local Authority:* The LFA shall not enact any local laws that are inconsistent with this Franchise, provided, however, that nothing in this Franchise shall be construed to prohibit the 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 its pre-existing condition.

## ***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 18, 2007**

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

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

#### **3.1. *Service Area:***

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

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

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however,

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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, the Franchisee shall charge the recipient the Franchisee's actual cost. Such costs shall be submitted to said recipient in writing before installation is begun.

3.3. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as may be designated by the LFA as provided in **Exhibit A** attached hereto; provided, however, that if it is necessary to extend Franchisee's aerial trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such aerial extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, the Franchisee shall charge the recipient the 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 NY PSC rules and regulations.

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

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

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

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

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



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

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

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

### **5. PEG SERVICES**

#### **5.1. *PEG Set Aside:***

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

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

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

5.2. *Franchise Grant:* Franchisee shall pay the LFA the sum of EIGHT THOUSAND DOLLARS (\$8,000.00) (the "Franchise Grant"), payable in ten installments. The first Franchise Grant payment in the amount of FIVE THOUSAND THREE HUNDRED DOLLARS (\$5,300) shall be payable within (90) days after the Effective Date. The second

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Franchise Grant payment in the amount of THREE HUNDRED DOLLARS (\$300) shall be payable within sixty (60) days from the first anniversary after the Effective Date, and each of the eight (8) subsequent Franchise Grant payments, each in the amount of THREE HUNDRED DOLLARS (\$300), shall be payable within sixty (60) days after each subsequent anniversary of the Effective Date.

5.3. *Indemnity for PEG:* The LFA shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the LFA from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. The LFA shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. §531.

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

### **6. FRANCHISE FEES**

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

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

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

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

### **7. REPORTS AND RECORDS**

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

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

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

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

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

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date and time service was provided, and (if different) the date and time the problem was resolved;

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

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

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

### **8. INSURANCE AND INDEMNIFICATION**

#### **8.1. *Insurance*:**

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

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

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

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

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

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

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

8.1.3. Each of the required insurance policies shall be noncancellable except upon thirty (30) days prior written notice to the LFA. Franchisee shall not cancel any

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required insurance policy without submitting documentation to the LFA verifying that the Franchisee has obtained alternative insurance in conformance with this Agreement.

8.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

8.1.5. Upon written request, Franchisee shall deliver to the LFA Certificates of Insurance showing evidence of the required coverage.

### **8.2. *Indemnification:***

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees, or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels, provided that the LFA shall give Franchisee by reason of any conduct undertaken pursuant to the Franchise, provided that the LFA shall give Franchisee timely written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

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

8.2.3. The LFA shall 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.

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### **9. TRANSFER OF FRANCHISE**

9.1. *Transfer:* Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, as amended, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the LFA may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.31 above.

### **10. RENEWAL OF FRANCHISE**

10.1. *Governing Law:* The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 12.12 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").

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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 the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

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

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

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

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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.



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

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

12.5.1. Notices to Franchisee shall be mailed to:

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

12.5.2. Notices to the LFA shall be mailed to:

Village of Bayville  
34 School Street  
Bayville, NY 11709

12.5.3. with a copy to:

James A. Reilly, Esq.  
One Old Country Road  
Carle Place, NY 11514

12.6. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the LFA and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof. Any local laws or parts of local laws that materially conflict with the provisions of this Agreement are superseded by this Agreement.

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

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

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

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

12.11. *FTTP Network Transfer Prohibition*: Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the LFA or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

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

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

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

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

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

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

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

**VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY 18, 2007**

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

12.19.1 The Franchisee shall make reasonable effort to account for all identification cards at all times.

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

12.19.3 The Franchisee shall require that all service vehicles of the Franchisee and its contractors and subcontractors be clearly identified as such to the public. Specifically, the Franchisee vehicles shall be required to have the Franchisee's logo plainly visible. The Franchisee shall require that all contractors and subcontractors working for the Franchisee shall have the contractor's/subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

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

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

LFA:

\_\_\_\_\_

By: \_\_\_\_\_  
[Title]

Verizon New York Inc.

By: \_\_\_\_\_  
[Title]

***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 18, 2007**

**EXHIBITS**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 18, 2007**

**EXHIBIT A**

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

1. Bayville Village Hall, 34 School Street, Bayville, NY
2. Bayville Historical Museum, 34 School Street, Bayville, NY
3. Bayville Free Library, 34 School Street, Bayville, NY
4. Bayville Elementary School, 50 Godfrey Avenue, Bayville, NY
5. Bayville Intermediate School, 50 Mountain Avenue, Bayville, NY
6. Bayville Fire Department, 258 Bayville Avenue, Bayville, NY
7. St. Gertrude's Pre-school, 28 School Street, Bayville, NY

***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 18, 2007**

**EXHIBIT B**

**SERVICE AREA**

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

The construction of the Franchisee's FTTP Network has been completed to approximately 90% of the current households in the Franchise Area. At present, Franchisee's anticipated schedule calls for 91% deployment by June 2007, 91% deployment by December 2007, 92% deployment by June 2008, 93% deployment by December 2008, 94% deployment by June 2009, 95% deployment by December 2009, 96% deployment by June 2010, 97% deployment by December 2010, 98% deployment by June 2011, 99% deployment by December 2011, and 100% deployment by June 2012. This schedule is subject to further review and modification by the Franchisee consistent with Section 895.5(b)(1) of the NY PSC rules and regulations; provided, however, that Franchisee shall provide notice to the LFA and the NY PSC of any material change in this schedule.

***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY 18, 2007**

**EXHIBIT C**

**PEG CHANNELS**

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

**VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY ~~10~~18, 2007**

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**EXHIBITS**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels



***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY ~~10~~18, 2007**

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the Village of Bayville, 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 has substantially completed the upgrading of its existing telecommunications and information services network through the installation of a Fiber to the Premise Telecommunications Network (“FTTP Network”) in the Franchise Area which transmits the Non-Cable Services pursuant to authority granted by Section 27 of the New York Transportation Corporations Law, as amended, and Title II of the Communications Act, which Non-Cable Services are not subject to the Cable Law or Title VI of the Communications Act;

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

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

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

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

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

NOW, THEREFORE, in consideration of the LFA’s grant of a franchise to Franchisee, Franchisee’s promise to provide Cable Service to residents of the Franchise/Service Area of the

**VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY ~~10~~18, 2007**

LFA pursuant to and consistent with the Cable Law (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

**1. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

**VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY ~~10~~18, 2007**

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

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

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

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

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

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

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.

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Gross Revenue shall not include: Franchise Fees imposed on Franchisee by the LFA that are passed through from Franchisee as a line item paid by Subscribers; revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders; 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 Bayville, New York, or the lawful successor, transferee, or assignee thereof.

**VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

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

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

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

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

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

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

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

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

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

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

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

1.31. *Transfer of the Franchise*:

1.31.1. Any transaction in which:

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

## **VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY 10, 18, 2007**

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

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

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

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

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

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

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

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

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

**VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY ~~10~~18, 2007**

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. 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.

2.7.2. Should any change to state law, rules or regulations have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modification to this Franchise shall be in writing and shall be subject to Section 222 of the New York Public Service Law and Title 16, Chapter VIII, Part 892, Subpart 892-1, Section 892-1.4 of the Official Compilation of Codes, Rules and Regulations of the State of New York requiring application to the NY PSC and approval of any modification. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.8. *Local Authority:* The LFA shall not enact any local laws that are inconsistent with this Franchise, provided, however, that nothing in this Franchise shall be construed to prohibit the 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 its pre-existing condition.

## **VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

**DATED MAY 10, 18, 2007**

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

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

#### **3.1. *Service Area:***

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

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

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however,



## **VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT**

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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, the Franchisee shall charge the recipient the Franchisee's actual cost. Such costs shall be submitted to said recipient in writing before installation is begun.

3.3. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as may be designated by the LFA as provided in **Exhibit A** attached hereto; provided, however, that if it is necessary to extend Franchisee's aerial trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such aerial extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, the Franchisee shall charge the recipient the 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 NY PSC rules and regulations.

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

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

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

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

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

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

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

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

### **5. PEG SERVICES**

#### **5.1. *PEG Set Aside:***

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

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

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

5.2. *Franchise Grant:* Franchisee shall pay the LFA the sum of EIGHT THOUSAND DOLLARS (\$8,000.00) (the "Franchise Grant"), payable in ten installments. The first Franchise Grant payment in the amount of FIVE THOUSAND THREE HUNDRED DOLLARS (\$5,300) shall be payable within (90) days after the Effective Date. The second

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Franchise Grant payment in the amount of THREE HUNDRED DOLLARS (\$300) shall be payable within sixty (60) days from the first anniversary after the Effective Date, and each of the eight (8) subsequent Franchise Grant payments, each in the amount of THREE HUNDRED DOLLARS (\$300), shall be payable within sixty (60) days after each subsequent anniversary of the Effective Date.

5.3. *Indemnity for PEG:* The LFA shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the LFA from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. The LFA shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. §531.

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

### **6. FRANCHISE FEES**

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

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

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

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

### **7. REPORTS AND RECORDS**

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

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

7.2.1. Records of all written complaints for a period of ~~threesix~~ (36) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

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

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

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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~~six (~~3~~6) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

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

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

**8. INSURANCE AND INDEMNIFICATION**

**8.1. *Insurance:***

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

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

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

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

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

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

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

8.1.3. Each of the required insurance policies shall be noncancellable except upon thirty (30) days prior written notice to the LFA. Franchisee shall not cancel any

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required insurance policy without submitting documentation to the LFA verifying that the Franchisee has obtained alternative insurance in conformance with this Agreement.

8.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

8.1.5. Upon written request, Franchisee shall deliver to the LFA Certificates of Insurance showing evidence of the required coverage.

**8.2. *Indemnification:***

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties, programming license fees, or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels, provided that the LFA shall give Franchisee by reason of any conduct undertaken pursuant to the Franchise, provided that the LFA shall give Franchisee timely written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

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

~~8.2.3. The LFA shall hold harmless and defend Franchisee from and against and shall be responsible for damages, liability or claims resulting from or arising out of the willful misconduct or negligence of the LFA.~~

**8.2.3.** ~~8.2.4.~~ The LFA shall be responsible for its own acts of willful misconduct, negligence, or breach, subject to any and all defenses and limitations of liability

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provided by law. The Franchisee shall not be required to indemnify the LFA for acts of the LFA which constitute willful misconduct or negligence on the part of the LFA, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

### **9. TRANSFER OF FRANCHISE**

9.1. *Transfer:* Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, as amended, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the LFA may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.31 above.

### **10. RENEWAL OF FRANCHISE**

10.1. *Governing Law:* The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 12.12 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

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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 the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

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

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

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



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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.

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

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

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

12.5.1. Notices to Franchisee shall be mailed to:

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

12.5.2. Notices to the LFA shall be mailed to:

Village of Bayville  
34 School Street  
Bayville, NY 11709

12.5.3. with a copy to:

James A. Reilly, Esq.  
One Old Country Road  
Carle Place, NY 11514

12.6. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the LFA and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof. Any local laws or parts of local laws that materially conflict with the provisions of this Agreement are superseded by this Agreement.

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

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

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

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

12.11. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the LFA or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

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

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

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

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

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

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

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

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

12.19.1 The Franchisee shall make reasonable effort to account for all identification cards at all times.

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

12.19.3 The Franchisee shall require that all service vehicles of the Franchisee and its contractors and subcontractors be clearly identified as such to the public. Specifically, the Franchisee vehicles shall be required to have the Franchisee's logo plainly visible. The Franchisee shall require that all contractors and subcontractors working for the Franchisee shall have the contractor's/subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

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

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

LFA:

\_\_\_\_\_

By: \_\_\_\_\_  
[Title]

Verizon New York Inc.

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

***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY ~~10~~18, 2007**

[Title]

**EXHIBITS**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY ~~10~~18, 2007**

**EXHIBIT A**

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

1. Bayville Village Hall, 34 School Street, Bayville, NY
2. Bayville Historical Museum, 34 School Street, Bayville, NY
3. Bayville Free Library, 34 School Street, Bayville, NY
4. Bayville Elementary School, 50 Godfrey Avenue, Bayville, NY
5. Bayville Intermediate School, 50 Mountain Avenue, Bayville, NY
6. Bayville Fire Department, 258 Bayville Avenue, Bayville, NY
7. St. Gertrude's Pre-school, 28 School Street, Bayville, NY

***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY ~~10~~18, 2007**

**EXHIBIT B**

**SERVICE AREA**

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

The construction of the Franchisee's FTTP Network has been completed to approximately 90% of the current households in the Franchise Area. At present, Franchisee's anticipated schedule calls for 91% deployment by June 2007, 91% deployment by December 2007, 92% deployment by June 2008, 93% deployment by December 2008, 94% deployment by June 2009, 95% deployment by December 2009, 96% deployment by June 2010, 97% deployment by December 2010, 98% deployment by June 2011, 99% deployment by December 2011, and 100% deployment by June 2012. This schedule is subject to further review and modification by the Franchisee consistent with Section 895.5(b)(1) of the NY PSC rules and regulations; provided, however, that Franchisee shall provide notice to the LFA and the NY PSC of any material change in this schedule.

***VILLAGE OF BAYVILLE CABLE FRANCHISE AGREEMENT***

**DATED MAY ~~10~~18, 2007**

**EXHIBIT C**

**PEG CHANNELS**

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



Document comparison done by DeltaView on Friday, May 18, 2007 12:04:33 PM

Input:	
Document 1	interwovenSite://CHIDMS/Active/4566872/2
Document 2	interwovenSite://CHIDMS/Active/4582126/1
Rendering set	MW Standard

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

Statistics:	
	Count
Insertions	10
Deletions	12
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	22

# Tab 6

-----Original Message-----

**From:** Stormo, Gabrielle S.

**Sent:** Friday, May 18, 2007 2:36 PM

**To:** 'MAlfanohardy@bayvillevillagehall.com'

**Cc:** edward.a.butts@verizon.com

**Subject:** Sample Resolution Granting Cable Franchise

Maria:

Following up on my voice message to you, attached, please find an example authorizing resolution to grant Verizon a cable franchise (this particular resolution is from Rye Brook, NY).

Please do not hesitate to contact Ed Butts at 630.645.3802 or me at 312.750.5737 with any questions or comments you may have.

Gabrielle

Gabrielle S. Stormo  
Attorney at Law



McGuireWoods LLP  
77 West Wacker Drive  
Suite 4100  
Chicago, IL 60601-1818  
312.750.5737 (Direct Line)  
312.698.4563 (Direct FAX)  
gstormo@mcguirewoods.com

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Authorizing Resolution.p

On a motion made by Trustee Feinstein and seconded by Trustee Sanders Romano, the following resolution was adopted.

**CONSIDERING AN AGREEMENT WITH VERIZON NEW YORK, INC. FOR CABLE TELEVISION SERVICES WITHIN THE VILLAGE OF RYE BROOK**

**WHEREAS**, the Village of Rye Brook (the "Village") is a "franchising authority" in accordance with Title IV 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 Telecommunications 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**, negotiations between the Village and Verizon have resulted in a proposed agreement entitled "Cable Franchise Agreement by and between the Village of Rye Brook, New York and Verizon New York, Inc."; and

**WHEREAS**, on April 24, 2007, 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 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, based upon 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 IV 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 on behalf of the Village.

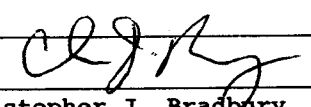
TRUSTEE BROWN	AYE
TRUSTEE FEINSTEIN	AYE
TRUSTEE SANDERS ROMANO	AYE
TRUSTEE ROSENBERG	AYE
MAYOR RAND	AYE

State of New York  
County of Westchester  
Village of Rye Brook

} ss.:

I hereby certify that this is the Resolution adopted by the Board of Trustees of the Village of Rye Brook which was duly passed by said Board on April 24, 20 07.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Village of Rye Brook, this 24 day of April, 20 07.

  
Christopher J. Bradbury, Village Clerk

# Tab 7

-----Original Message-----

**From:** Stormo, Gabrielle S.

**Sent:** Tuesday, May 22, 2007 2:23 PM

**To:** 'MAlfanohardy@bayvillevillagehall.com'

**Subject:** Final Franchise Agreement - Bayville/Verizon

Maria:

Attached is the full franchise agreement with the revised language in Section 8.2.1. as agreed upon last night. This revision affects pages 13 and 14 of the Franchise, which you will need to change in the Agreements I gave you yesterday evening. Please let me know if you have any questions.

Thank you again for all your assistance!

Best regards,  
Gabrielle

Gabrielle S. Stormo  
Attorney at Law

The logo for McGuireWoods LLP, featuring the name in a serif font with a vertical line to the left of the 'M'.

McGuireWoods LLP  
77 West Wacker Drive  
Suite 4100  
Chicago, IL 60601-1818  
312.750.5737 (Direct Line)  
312.698.4563 (Direct FAX)  
gstormo@mcguirewoods.com

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**Cable Franchise Agreement**

**by and between**

**the Village of Bayville**

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

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

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

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

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

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

NOW, THEREFORE, in consideration of the LFA’s grant of a franchise to Franchisee, Franchisee’s promise to provide Cable Service to residents of the Franchise/Service Area of the LFA pursuant to and consistent with the Cable Law (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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: Franchise Fees imposed on Franchisee by the LFA that are passed through from Franchisee as a line item paid by Subscribers; revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to

Subscribers or other third parties; any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders; 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 Bayville, New York, or the lawful successor, transferee, or assignee thereof.

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

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

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

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

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

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

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

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

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

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

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

1.31. *Transfer of the Franchise*:

1.31.1. Any transaction in which:

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

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

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

parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

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

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

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

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

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

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

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

2.6. *No Waiver:*

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

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

2.7. *Construction of Agreement:*

2.7.1. 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.

2.7.2. Should any change to state law, rules or regulations have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modification to this Franchise shall be in writing and shall be subject to Section 222 of the New York Public Service Law and Title 16, Chapter VIII, Part 892, Subpart 892-1, Section 892-1.4 of the Official Compilation of Codes, Rules and Regulations of the State of New York requiring application to the NY PSC and approval of any modification. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.8. *Local Authority:* The LFA shall not enact any local laws that are inconsistent with this Franchise, provided, however, that nothing in this Franchise shall be construed to prohibit the 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 its pre-existing condition.

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



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

#### 3.1. *Service Area:*

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

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

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

3.3. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as may be designated by the LFA as provided in **Exhibit A** attached hereto; provided, however, that if it is necessary to extend Franchisee's aerial trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such aerial extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, the Franchisee shall charge the recipient the 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 NY PSC rules and regulations.

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

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

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

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

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

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

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

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

## 5. **PEG SERVICES**

### 5.1. *PEG Set Aside:*

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

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

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

5.2. *Franchise Grant:* Franchisee shall pay the LFA the sum of EIGHT THOUSAND DOLLARS (\$8,000.00) (the "Franchise Grant"), payable in ten installments. The first Franchise Grant payment in the amount of FIVE THOUSAND THREE HUNDRED DOLLARS (\$5,300) shall be payable within (90) days after the Effective Date. The second Franchise Grant payment in the amount of THREE HUNDRED DOLLARS (\$300) shall be payable within sixty (60) days from the first anniversary after the Effective Date, and each of the eight (8) subsequent Franchise Grant payments, each in the amount of THREE HUNDRED DOLLARS (\$300), shall be payable within sixty (60) days after each subsequent anniversary of the Effective Date.

5.3. *Indemnity for PEG:* The LFA shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the LFA from and against any and all liability or other injury, including the reasonable cost of

defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. The LFA shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. §531.

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

## 6. **FRANCHISE FEES**

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

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

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

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

## 7. **REPORTS AND RECORDS**

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

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

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

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

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

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

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

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

## 8. **INSURANCE AND INDEMNIFICATION**

### 8.1. *Insurance:*

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

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

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

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

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

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

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

8.1.3. Each of the required insurance policies shall be noncancellable except upon thirty (30) days prior written notice to the LFA. Franchisee shall not cancel any required insurance policy without submitting documentation to the LFA verifying that the Franchisee has obtained alternative insurance in conformance with this Agreement.

8.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

8.1.5. Upon written request, Franchisee shall deliver to the LFA Certificates of Insurance showing evidence of the required coverage.

### 8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA, its officers, agents, elected officials and employees for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, or by reason of any suit or claim for royalties,

programming license fees, or infringement of patent rights arising out of Franchisee's provision of Cable Services over the Cable System other than PEG facilities and Channels, provided that the LFA shall give Franchisee by reason of any conduct undertaken pursuant to the Franchise, provided that the LFA shall give Franchisee timely written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access or EAS.

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

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

## **9. TRANSFER OF FRANCHISE**

9.1. *Transfer:* Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, as amended, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the LFA may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.31 above.

## 10. **RENEWAL OF FRANCHISE**

10.1. *Governing Law:* The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 12.12 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 the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

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

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

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

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

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

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

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

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

## 12. **MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

12.5.1. Notices to Franchisee shall be mailed to:

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

12.5.2. Notices to the LFA shall be mailed to:

Village of Bayville  
34 School Street  
Bayville, NY 11709

12.5.3. with a copy to:

James A. Reilly, Esq.  
One Old Country Road  
Carle Place, NY 11514

12.6. *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the LFA and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof. Any local laws or parts of local laws that materially conflict with the provisions of this Agreement are superseded by this Agreement.

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

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

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

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

12.11. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the LFA or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

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

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

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

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

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

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

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

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

12.19.1 The Franchisee shall make reasonable effort to account for all identification cards at all times.

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

12.19.3 The Franchisee shall require that all service vehicles of the Franchisee and its contractors and subcontractors be clearly identified as such to the public. Specifically, the Franchisee vehicles shall be required to have the Franchisee's logo plainly visible. The Franchisee shall require that all contractors and subcontractors working for the Franchisee shall have the contractor's/subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

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

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

LFA:

\_\_\_\_\_

By: \_\_\_\_\_  
[Title]

Verizon New York Inc.

By: \_\_\_\_\_  
[Title]

### **EXHIBITS**

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Service Area

Exhibit C: PEG Channels

## **EXHIBIT A**

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

1. Bayville Village Hall, 34 School Street, Bayville, NY
2. Bayville Historical Museum, 34 School Street, Bayville, NY
3. Bayville Free Library, 34 School Street, Bayville, NY
4. Bayville Elementary School, 50 Godfrey Avenue, Bayville, NY
5. Bayville Intermediate School, 50 Mountain Avenue, Bayville, NY
6. Bayville Fire Department, 258 Bayville Avenue, Bayville, NY
7. St. Gertrude's Pre-school, 28 School Street, Bayville, NY

## **EXHIBIT B**

### **SERVICE AREA**

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

The construction of the Franchisee's FTTP Network has been completed to approximately 90% of the current households in the Franchise Area. At present, Franchisee's anticipated schedule calls for 91% deployment by June 2007, 91% deployment by December 2007, 92% deployment by June 2008, 93% deployment by December 2008, 94% deployment by June 2009, 95% deployment by December 2009, 96% deployment by June 2010, 97% deployment by December 2010, 98% deployment by June 2011, 99% deployment by December 2011, and 100% deployment by June 2012. This schedule is subject to further review and modification by the Franchisee consistent with Section 895.5(b)(1) of the NY PSC rules and regulations; provided, however, that Franchisee shall provide notice to the LFA and the NY PSC of any material change in this schedule.

## **EXHIBIT C**

### **PEG CHANNELS**

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



# **ATTACHMENT E**

## **FTTP System Architecture**

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

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

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

Figure 1-High Level End to End Architecture

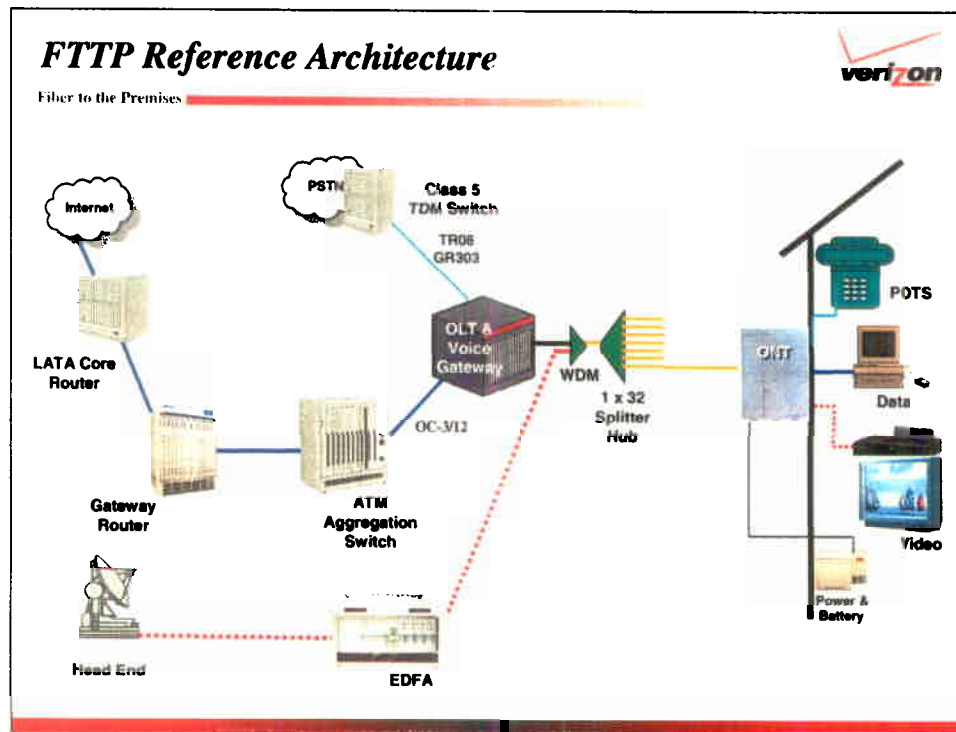
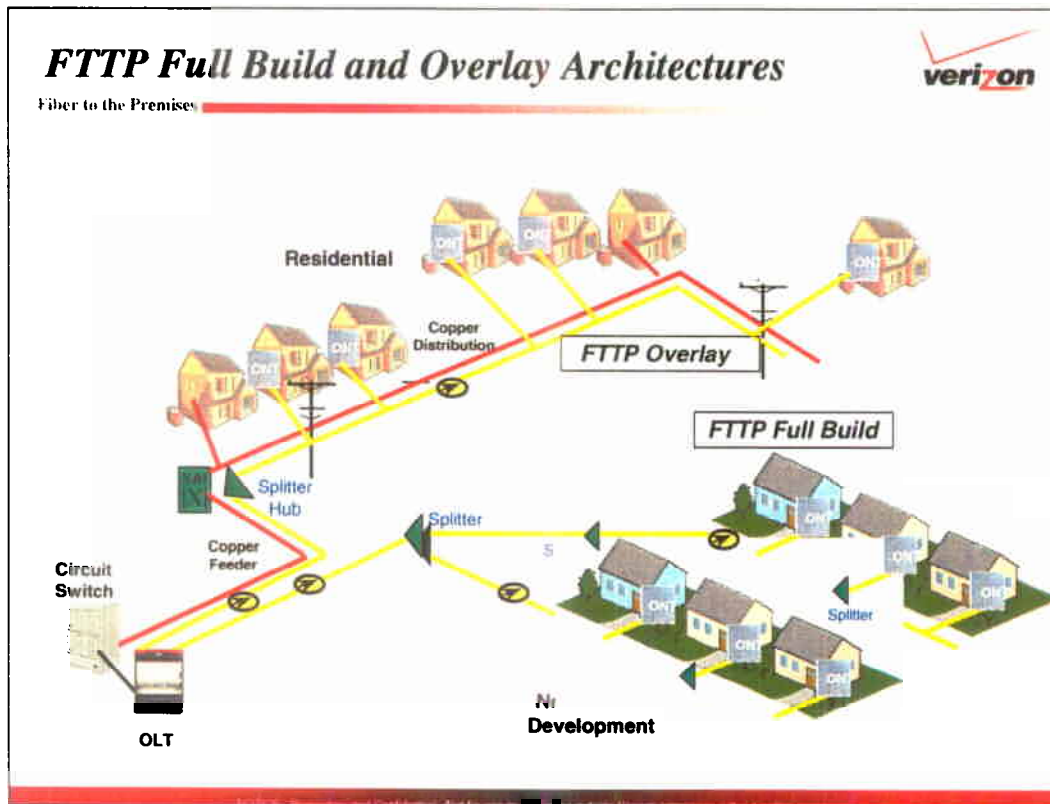


Figure 2-FTTP Full Build and Overlay Architectures



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

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

Cable television traffic is converted to optical signals at the VHO and transported over Verizon’s metro area, inter-office facilities (IOF) to Video Serving Offices (VSOs). Voice and high-speed

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

data signals are combined with the cable television at this location for final transport to the subscriber premises over Verizon's FTTP Passive Optical Network (PON).

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

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

**Super Headend (SHE)**

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

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

The key functions of the SHE include:

Content Reception

Signal Processing

Encoding

Network Interface

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

**Wide Area Transport**

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

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

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

**Video Hub Office (VHO)**

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

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

WAN Interface for Cable television Transport

Ad Insertion

PEG Content

Signal Grooming and Multiplexing

Emergency Alert Service

Interactive Program Guide

Conditional Access

Local Content

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

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

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

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

**Metro Area Transport**

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

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

The Video Serving Office (VSO) is a location within the central office containing FTTP equipment. The VSO that will serve the Village of Bayville is located in Oyster Bay, New York. If technically feasible or otherwise appropriate, PEG insertion may occur at these locations in the network.

The key function of the VSO is to combine Broadcast Cable television into the Voice and High Speed Data FTTP Network.

Once in the VSO, the optical cable television signal is sent through an EDFA and then to a Wave Division Multiplexer (WDM) combiner and splitter, which is used to add the cable signal to the voice and high-speed data signals' wavelength (1490nm) – coming from the Optical Line Terminal (OLT) – together with the cable wavelength onto a single optical source. This optical signal is then sent towards the subscriber premises via a PON. The VSO will also play a role in supporting upstream signals from the customer premises for pay-per-view services. Pay-per-view usage data uses the data service's 1310nm upstream wavelength. The upstream data communications shall be sent back to a subscriber database located in the Operations Center located in the VHO.

**Customer Premises**

At the premise, an Optical Network Terminal (ONT) de-multiplexes the 1550nm optical signal and simply converts it to a voice, data and cable television electrical signal, which meets cable television industry standards for cable services.

*[balance of page intentionally left blank]*

# **ATTACHMENT F**

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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

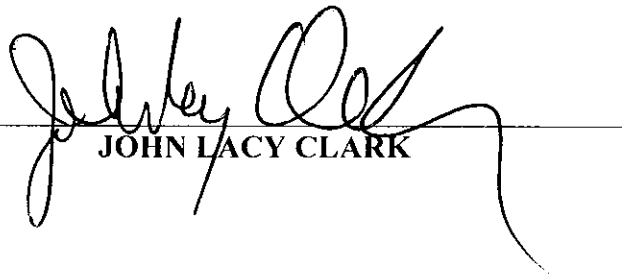
**Case 07-V-\_\_\_\_\_**

**AFFIDAVIT OF SERVICE**

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

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

I certify that a complete copy of Verizon New York Inc.'s Petition for Confirmation will be sent to Maria Alfano-Hardy, Village Administrator, and Joanne Banco, Deputy Village Clerk Treasurer, on May 29, 2007, by overnight mail addressed to them at Village of Bayville, 34 School Street, Bayville, New York 11709.

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

**Sworn to before me  
this 29<sup>th</sup> day of May, 2007**

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

**MIGUEL A. ROSA  
Notary Public, State of New York  
No. 43-4771951, Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires Nov. 30, 2010**



# **ATTACHMENT G**

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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

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

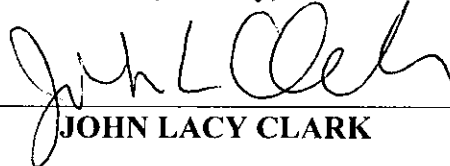
**AFFIDAVIT OF PUBLICATION**

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

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

I certify that a notice with the following text will be published on May 31, 2007 in Newsday. Newsday is a newspaper of general circulation in the Village of Bayville. Verizon has submitted the notice to that newspaper, has arranged for payment for such publication, and has been assured that the notice will appear in the newspaper on the specified date.

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

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

**Sworn to before me  
this 29<sup>th</sup> day of May, 2007**

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

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

# **ATTACHMENT H**

## EXPLANATORY NOTES TO ATTACHMENT H

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

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

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

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

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

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<sup>1</sup> See Full Environmental Assessment Form at 2.

The information provided for contiguity to historic sites, etc., has been provided with respect to Verizon's FTTP facilities in the franchise area, even though it is Verizon's position that such facilities have been constructed pursuant to independent permissions and authorities.

**617.20**  
**Appendix A**  
**State Environmental Quality Review**  
**FULL ENVIRONMENTAL ASSESSMENT FORM**

**Purpose:** The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

**Full EAF Components:** The full EAF is comprised of three parts:

- Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3:** If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

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**THIS AREA FOR LEAD AGENCY USE ONLY**

**DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions**

Identify the Portions of EAF completed for this project:

☐

Part 1

☐

Part 2

☐

Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

☐

A. The project will not result in any large and important impact(s) and, therefore, is one which **will not** have a significant impact on the environment, therefore **a negative declaration will be prepared.**

☐

B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore **a CONDITIONED negative declaration will be prepared.\***

☐

C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore **a positive declaration will be prepared.**

\*A Conditioned Negative Declaration is only valid for Unlisted Actions

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Name of Action

---

Name of Lead Agency

---

Print or Type Name of Responsible Officer in Lead Agency

---

Title of Responsible Officer

---

Signature of Responsible Officer in Lead Agency

---

Signature of Preparer (If different from responsible officer)

## PART 1--PROJECT INFORMATION

### Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action Award of Cable Television Franchise to Verizon

Location of Action (include Street Address, Municipality and County)

Discrete Areas within the Village of Bayville, NY

Name of Applicant/Sponsor Verizon New York Inc. ("Verizon")

Address c/o Thomas McCarroll, 158 State Street

City / PO Albany State NY Zip Code 12207

Business Telephone (518) 396-1001

Name of Owner (if different) N/A

Address \_\_\_\_\_

City / PO \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Business Telephone \_\_\_\_\_

Description of Action:

Activities undertaken by Verizon pursuant to the authority awarded by the franchise.

Please Complete Each Question--Indicate N.A. if not applicable

## A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: ☐ Urban ☐ Industrial ☒ Commercial ☒ Residential (suburban) ☐ Rural (non-farm)  
☐ Forest ☐ Agriculture ☐ Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* Although Verizon does not believe that this question applies to the activities at issue here, it has determined at Staff's request that its FFTP facilities constructed in the franchise area to date have an approximate length of 39 miles. The width of the right-of-way varies by location, and Verizon cannot readily determine at this time the average width (and therefore the area) of the right-of-way used by Verizon.

2. Total acreage of project area: \_\_\_\_\_ acres.\*

### APPROXIMATE ACREAGE

Meadow or Brushland (Non-agricultural)	_____ acres	_____ acres
Forested	_____ acres	_____ acres
Agricultural (Includes orchards, cropland, pasture, etc.)	_____ acres	_____ acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	_____ acres	_____ acres
Water Surface Area	_____ acres	_____ acres
Unvegetated (Rock, earth or fill)	_____ acres	_____ acres
Roads, buildings and other paved surfaces	_____ acres	_____ acres
Other (Indicate type) _____	_____ acres	_____ acres

3. What is predominant soil type(s) on project site? N/A

- a. Soil drainage: ☐ Well drained \_\_\_\_\_ % of site ☐ Moderately well drained \_\_\_\_\_ % of site.  
☐ Poorly drained \_\_\_\_\_ % of site

- b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? \_\_\_\_\_ acres (see 1 NYCRR 370).

4. Are there bedrock outcroppings on project site? ☐ Yes ☐ No N/A

- a. What is depth to bedrock \_\_\_\_\_ (in feet)

5. Approximate percentage of proposed project site with slopes: N/A

☐ 0-10% \_\_\_\_\_ % ☐ 10- 15% \_\_\_\_\_ % ☐ 15% or greater \_\_\_\_\_ %

6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? ☐ Yes ☒ No

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? ☐ Yes ☒ No

8. What is the depth of the water table? \_\_\_\_\_ (in feet) N/A

9. Is site located over a primary, principal, or sole source aquifer? ☒ Yes ☐ No

10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? ☐ Yes ☐ No N/A



11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? ☐ Yes ☐ No N/A

According to:

Identify each species:

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

☐ Yes ☐ No N/A

Describe:

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

☐ Yes ☐ No N/A

If yes, explain:

14. Does the present site include scenic views known to be important to the community? ☐ Yes ☐ No N/A

15. Streams within or contiguous to project area: N/A

a. Name of Stream and name of River to which it is tributary

16. Lakes, ponds, wetland areas within or contiguous to project area: See Addendum.

b. Size (in acres):

17. Is the site served by existing public utilities? ☒ Yes ☐ No
- a. If **YES**, does sufficient capacity exist to allow connection? ☒ Yes ☐ No
- b. If **YES**, will improvements be necessary to allow connection? ☐ Yes ☒ No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐ Yes ☒ No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? ☐ Yes ☒ No
20. Has the site ever been used for the disposal of solid or hazardous wastes? ☐ Yes ☐ No ☐ N/A

## B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate).
- a. Total contiguous acreage owned or controlled by project sponsor: N/A acres.
- b. Project acreage to be developed: N/A acres initially; N/A acres ultimately.
- c. Project acreage to remain undeveloped: N/A acres.
- d. Length of project, in miles: \_\_\_\_\_ \* (if appropriate) \* See response to Item 2 on Page 3.
- e. If the project is an expansion, indicate percent of expansion proposed. N/A %
- f. Number of off-street parking spaces existing N/A ; proposed N/A
- g. Maximum vehicular trips generated per hour: N/A (upon completion of project)?
- h. If residential: Number and type of housing units: N/A
- |            | One Family | Two Family | Multiple Family | Condominium |
|------------|------------|------------|-----------------|-------------|
| Initially  | _____      | _____      | _____           | _____       |
| Ultimately | _____      | _____      | _____           | _____       |
- i. Dimensions (in feet) of largest proposed structure: N/A height; N/A width; N/A length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? N/A ft.
2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? N/A tons/cubic yards.
3. Will disturbed areas be reclaimed ☐ Yes ☐ No ☒ N/A
- a. If yes, for what intended purpose is the site being reclaimed?
- 
- b. Will topsoil be stockpiled for reclamation? ☐ Yes ☐ No
- c. Will upper subsoil be stockpiled for reclamation? ☐ Yes ☐ No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? \_\_\_\_\_ acres. N/A

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

☐ Yes ☒ No

6. If single phase project: Anticipated period of construction: \_\_\_\_\_ months, (including demolition) \*

7. If multi-phased: N/A

a. Total number of phases anticipated \_\_\_\_\_ (number)

b. Anticipated date of commencement phase 1: \_\_\_\_\_ month \_\_\_\_\_ year, (including demolition)

c. Approximate completion date of final phase: \_\_\_\_\_ month \_\_\_\_\_ year.

d. Is phase 1 functionally dependent on subsequent phases? ☐ Yes ☐ No

8. Will blasting occur during construction? ☐ Yes ☒ No

9. Number of jobs generated: during construction N/A ; after project is complete N/A

10. Number of jobs eliminated by this project N/A .

11. Will project require relocation of any projects or facilities? ☐ Yes ☒ No

If yes, explain:

12. Is surface liquid waste disposal involved? ☐ Yes ☒ No

a. If yes, indicate type of waste (sewage, industrial, etc) and amount \_\_\_\_\_

b. Name of water body into which effluent will be discharged \_\_\_\_\_

13. Is subsurface liquid waste disposal involved? ☐ Yes ☒ No Type \_\_\_\_\_

14. Will surface area of an existing water body increase or decrease by proposal? ☐ Yes ☒ No

If yes, explain:

15. Is project or any portion of project located in a 100 year flood plain? ☒ Yes ☐ No

16. Will the project generate solid waste? ☐ Yes ☒ No

a. If yes, what is the amount per month? \_\_\_\_\_ tons

b. If yes, will an existing solid waste facility be used? ☐ Yes ☐ No

c. If yes, give name \_\_\_\_\_ ; location \_\_\_\_\_

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? ☐ Yes ☐ No

\* Although it is Verizon's position that any further FTTP construction activity in the franchise area is being undertaken pursuant to independent authority, rather than pursuant to the franchise, Verizon expects to complete its build out as required by the franchise.

e. If yes, explain:

17. Will the project involve the disposal of solid waste? ☐ Yes ☒ No

a. If yes, what is the anticipated rate of disposal? \_\_\_\_\_ tons/month.

b. If yes, what is the anticipated site life? \_\_\_\_\_ years.

18. Will project use herbicides or pesticides? ☐ Yes ☒ No

19. Will project routinely produce odors (more than one hour per day)? ☐ Yes ☒ No

20. Will project produce operating noise exceeding the local ambient noise levels? ☐ Yes ☒ No

21. Will project result in an increase in energy use? ☐ Yes ☒ No

If yes, indicate type(s)


22. If water supply is from wells, indicate pumping capacity N/A gallons/minute.

23. Total anticipated water usage per day N/A gallons/day.

24. Does project involve Local, State or Federal funding? ☐ Yes ☒ No

If yes, explain:

**25. Approvals Required:**

		Type	Submittal Date
City, Town, Village Board	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Village of Bayville Award Franchise	05/21/07* 
		* Franchise was awarded on this date.	
City, Town, Village Planning Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
City, Town Zoning Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
City, County Health Department	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Other Local Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Other Regional Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
State Agencies	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Public Service Commission Confirmation	05/29/07
Federal Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

### C. Zoning and Planning Information

1. Does proposed action involve a planning or zoning decision? ☐ Yes ☒ No

If Yes, indicate decision required:

☐ Zoning amendment
 ☐ Zoning variance
 ☐ New/revision of master plan
 ☐ Subdivision

☐ Site plan
 ☐ Special use permit
 ☐ Resource management plan
 ☐ Other

2. What is the zoning classification(s) of the site? N/A

3. What is the maximum potential development of the site if developed as permitted by the present zoning? N/A

4. What is the proposed zoning of the site? N/A

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning? N/A

6. Is the proposed action consistent with the recommended uses in adopted local land use plans? ☐ Yes ☐ No N/A

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action? N/A

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? ☐ Yes ☐ No N/A

9. If the proposed action is the subdivision of land, how many lots are proposed? N/A

a. What is the minimum lot size proposed? \_\_\_\_\_

10. Will proposed action require any authorization(s) for the formation of sewer or water districts? ☐ Yes ☒ No

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)? ☐ Yes ☒ No

a. If yes, is existing capacity sufficient to handle projected demand? ☐ Yes ☐ No

12. Will the proposed action result in the generation of traffic significantly above present levels? ☐ Yes ☒ No

a. If yes, is the existing road network adequate to handle the additional traffic. ☐ Yes ☐ No

**D. Informational Details**

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

**E. Verification**

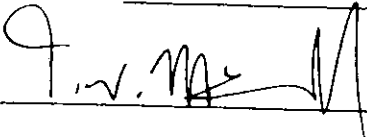
I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name Verizon New York Inc.

Date

5/29/07

Signature



Title Vice President Regulatory Affairs, NY & CT

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

## PART 2 - PROJECT IMPACTS AND THEIR MAGNITUDE

### Responsibility of Lead Agency

#### General Information (Read Carefully)

- ! In completing the form the reviewer should be guided by the question: Have my responses and determinations been **reasonable**? The reviewer is not expected to be an expert environmental analyst.
- ! The **Examples** provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.
- ! The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.
- ! The number of examples per question does not indicate the importance of each question.
- ! In identifying impacts, consider long term, short term and cumulative effects.

#### Instructions (Read carefully)

- a. Answer each of the 20 questions in PART 2. Answer **Yes** if there will be **any** impact.
- b. **Maybe** answers should be considered as **Yes** answers.
- c. If answering **Yes** to a question then check the appropriate box(column 1 or 2)to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. Identifying that an Impact will be potentially large (column 2) does not mean that it is also necessarily **significant**. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- e. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- f. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the **Yes** box in column 3. A **No** response indicates that such a reduction is not possible. This must be explained in Part 3.

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

#### Impact on Land

1. Will the Proposed Action result in a physical change to the project site?

NO ☐ YES ☐

#### Examples that would apply to column 2

- |                                                                                                                                                    |                          |                          |                              |                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction on land where the depth to the water table is less than 3 feet.                                                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction of paved parking area for 1,000 or more vehicles.                                                                                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface.                                             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction that will continue for more than 1 year or involve more than one phase or stage.                                                    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year.                         | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |



	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
--	-------------------------------------	-----------------------------------	------------------------------------------------------

- |                                                     |                          |                          |                                                          |
|-----------------------------------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| • Construction or expansion of a sanitary landfill. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Construction in a designated floodway.            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:                                    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

2. Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.)

☐ NO ☐ YES

- |                        |                          |                          |                                                          |
|------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| • Specific land forms: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|------------------------|--------------------------|--------------------------|----------------------------------------------------------|

### Impact on Water

3. Will Proposed Action affect any water body designated as protected? (Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)

☐ NO ☐ YES

**Examples** that would apply to column 2

- |                                                                                      |                          |                          |                                                          |
|--------------------------------------------------------------------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| • Developable area of site contains a protected water body.                          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Dredging more than 100 cubic yards of material from channel of a protected stream. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Extension of utility distribution facilities through a protected water body.       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Construction in a designated freshwater or tidal wetland.                          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:                                                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

4. Will Proposed Action affect any non-protected existing or new body of water?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |                                                                                                                    |                          |                          |                                                          |
|--------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| • A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Construction of a body of water that exceeds 10 acres of surface area.                                           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:                                                                                                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

5. Will Proposed Action affect surface or groundwater quality or quantity?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |                                                                                                                                                                                    |                          |                          |                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| • Proposed Action will require a discharge permit.                                                                                                                                 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action requires use of a source of water that does not have approval to serve proposed (project) action.                                                                | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action requires water supply from wells with greater than 45 gallons per minute pumping capacity.                                                                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Construction or operation causing any contamination of a water supply system.                                                                                                    | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will adversely affect groundwater.                                                                                                                               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity.                                                            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action would use water in excess of 20,000 gallons per day.                                                                                                             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will require the storage of petroleum or chemical products greater than 1,100 gallons.                                                                           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will allow residential uses in areas without water and/or sewer services.                                                                                        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities.                              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:                                                                                                                                                                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

6. Will Proposed Action alter drainage flow or patterns, or surface water runoff?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |                                                                    |                          |                          |                              |                             |
|--------------------------------------------------------------------|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action would change flood water flows                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action may cause substantial erosion.                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action is incompatible with existing drainage patterns. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow development in a designated floodway. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts:                                                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

#### IMPACT ON AIR

7. Will Proposed Action affect air quality?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |                                                                                                                                   |                          |                          |                              |                             |
|-----------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action will induce 1,000 or more vehicle trips in any given hour.                                                      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in the incineration of more than 1 ton of refuse per hour.                                          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the amount of land committed to industrial use.                                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the density of industrial development within existing industrial areas.               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts:                                                                                                                  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

#### IMPACT ON PLANTS AND ANIMALS

8. Will Proposed Action affect any threatened or endangered species?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |                                                                                                                                         |                          |                          |                              |                             |
|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site, or found on the site. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|------------------------------|-----------------------------|

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Removal of any portion of a critical or significant wildlife habitat.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

9. Will Proposed Action substantially affect non-threatened or non-endangered species?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |                                                                                                                                              |                          |                          |                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| • Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.                          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:                                                                                                                             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

#### IMPACT ON AGRICULTURAL LAND RESOURCES

10. Will Proposed Action affect agricultural land resources?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |                                                                                                                                                                                |                          |                          |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| • The Proposed Action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)                                 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Construction activity would excavate or compact the soil profile of agricultural land.                                                                                       | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • The Proposed Action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• The Proposed Action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

#### IMPACT ON AESTHETIC RESOURCES

11. Will Proposed Action affect aesthetic resources? (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)

☐ NO ☐ YES

**Examples** that would apply to column 2

- |                                                                                                                                                                                               |                          |                          |                                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| • Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.                              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Project components that will result in the elimination or significant screening of scenic views known to be important to the area.                                                          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:                                                                                                                                                                              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

#### IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES

12. Will Proposed Action impact any site or structure of historic, prehistoric or paleontological importance?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |                                                                                                                                                                         |                          |                          |                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| • Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of historic places. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Any impact to an archaeological site or fossil bed located within the project site.                                                                                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.                                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

#### IMPACT ON OPEN SPACE AND RECREATION

13. Will proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?
- ☐ NO ☐ YES

**Examples** that would apply to column 2

- |                                                                   |                          |                          |                                                          |
|-------------------------------------------------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| • The permanent foreclosure of a future recreational opportunity. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • A major reduction of an open space important to the community.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:                                                  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

#### IMPACT ON CRITICAL ENVIRONMENTAL AREAS

14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6NYCRR 617.14(g)?
- ☐ NO ☐ YES

List the environmental characteristics that caused the designation of the CEA.

**Examples** that would apply to column 2

- |                                                                               |                          |                          |                                                          |
|-------------------------------------------------------------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| • Proposed Action to locate within the CEA?                                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will result in a reduction in the quantity of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will result in a reduction in the quality of the resource?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will impact the use, function or enjoyment of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts:                                                              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

1  
Small to  
Moderate  
Impact

2  
Potential  
Large  
Impact

3  
Can Impact Be  
Mitigated by  
Project Change

### IMPACT ON TRANSPORTATION

15. Will there be an effect to existing transportation systems?

☐ NO ☐ YES

**Examples** that would apply to column 2

- Alteration of present patterns of movement of people and/or goods.
- Proposed Action will result in major traffic problems.
- Other impacts:

☐
☐

☐ Yes

☐ No

☐
☐

☐ Yes

☐ No

☐
☐

☐ Yes

☐ No

### IMPACT ON ENERGY

16. Will Proposed Action affect the community's sources of fuel or energy supply?

☐ NO ☐ YES

**Examples** that would apply to column 2

- Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality.
- Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use.
- Other impacts:

☐
☐

☐ Yes

☐ No

☐
☐

☐ Yes

☐ No

☐
☐

☐ Yes

☐ No

### NOISE AND ODOR IMPACT

17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action?

☐ NO ☐ YES

**Examples** that would apply to column 2

- Blasting within 1,500 feet of a hospital, school or other sensitive facility.
- Odors will occur routinely (more than one hour per day).
- Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures.
- Proposed Action will remove natural barriers that would act as a noise screen.
- Other impacts:

☐
☐

☐ Yes

☐ No

☐
☐

☐ Yes

☐ No

☐
☐

☐ Yes

☐ No

☐
☐

☐ Yes

☐ No

☐
☐

☐ Yes

☐ No

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
-------------------------------------	-----------------------------------	------------------------------------------------------

### IMPACT ON PUBLIC HEALTH

18. Will Proposed Action affect public health and safety?

☐ NO ☐ YES

- |                                                                                                                                                                                                                                                                                                  |                          |                          |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Proposed Action may cause a risk of explosion or release of hazardous substances (i.e. oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission.</li> </ul> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Proposed Action may result in the burial of "hazardous wastes" in any form (i.e. toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.)</li> </ul>                                                                               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Storage facilities for one million or more gallons of liquefied natural gas or other flammable liquids.</li> </ul>                                                                                                                                      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Proposed Action may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste.</li> </ul>                                                                                             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Other impacts:</li> </ul>                                                                                                                                                                                                                               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

### IMPACT ON GROWTH AND CHARACTER OF COMMUNITY OR NEIGHBORHOOD

19. Will Proposed Action affect the character of the existing community?

☐ NO ☐ YES

**Examples** that would apply to column 2

- |                                                                                                                                                                                             |                          |                          |                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|----------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%.</li> </ul>                | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• The municipal budget for capital expenditures or operating services will increase by more than 5% per year as a result of this project.</li> </ul> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Proposed Action will conflict with officially adopted plans or goals.</li> </ul>                                                                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Proposed Action will cause a change in the density of land use.</li> </ul>                                                                         | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Proposed Action will replace or eliminate existing facilities, structures or areas of historic importance to the community.</li> </ul>             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <ul style="list-style-type: none"> <li>• Development will create a demand for additional community services (e.g. schools, police and fire, etc.)</li> </ul>                                | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |



	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Proposed Action will set an important precedent for future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action will create or eliminate employment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

20. Is there, or is there likely to be, public controversy related to potential adverse environment impacts?

☐ NO ☐ YES

**If Any Action in Part 2 Is Identified as a Potential Large Impact or If you Cannot Determine the Magnitude of Impact, Proceed to Part 3**

## Part 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS

### Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

**Instructions** (If you need more space, attach additional sheets)

Discuss the following for each impact identified in Column 2 of Part 2:

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is **important**.

To answer the question of importance, consider:

- ! The probability of the impact occurring
- ! The duration of the impact
- ! Its irreversibility, including permanently lost resources of value
- ! Whether the impact can or will be controlled
- ! The regional consequence of the impact
- ! Its potential divergence from local needs and goals
- ! Whether known objections to the project relate to this impact.

**ADDENDUM TO ENVIRONMENTAL ASSESSMENT FORM RELATING TO  
CONFIRMATION OF A CABLE TELEVISION FRANCHISE FOR THE  
VILLAGE OF BAYVILLE (NASSAU COUNTY), NEW YORK**

***Setting***

The Village of Bayville is located in the Town of Oyster Bay in Nassau County. As of the 2000 Census, the Village had a population of 7,135 within a total area of 1.46 square miles.

The Village is (1) not within an agricultural district, (2) not in or substantially contiguous to a Critical Environmental Area, and (3) not substantially contiguous to a National Natural Landmark. There are no historic sites, historic districts, or national historic landmarks in the Village. It is Verizon's policy to conform to all applicable laws and regulations in placing its facilities, including any special requirements that may be applicable to historic sites, districts, or landmarks.

Like much of Long Island, the Village sits atop an aquifer. The Village is not within a coastal area. The Village has designated wetlands areas and designated 100-year flood plains. Verizon's FTTP extensions and drop wires will be placed only to serve existing or future residences and businesses and will be consistent with physical arrangements for the provision of non-video communications services (voice, data), and other types of utility service, to such areas. Video programming will be delivered over existing distribution routes and supporting structures. Moreover, cable service is already provided within the franchise area by the incumbent, Cablevision. Thus, Verizon's construction activities would not impact otherwise undeveloped areas.

Three maps are included with this addendum. The first map shows the franchise area, freshwater wetlands and the nearby coastal boundary. The second map shows tidal wetlands. The third map shows the location of the 100-year flood plains in this area.

***Description of Potential Construction Activities***

The Commission is being asked to approve the Village's award of a cable television franchise to Verizon. The franchise will enable Verizon to deliver video programming to subscribers over its FTTP network, which is also used for the provision of voice and data services. It is Verizon's position that the construction, extension, modification, and repair of the facilities comprising the FTTP network are independently authorized, do not require franchise authority, and are thus not included within any "action" (within the meaning of SEQRA) for which approval is sought in this proceeding. Nevertheless, at Staff's request, Verizon is providing the following information concerning work on Verizon's FTTP facilities that may be undertaken in the Village subsequent to the Commission's approval of the franchise.

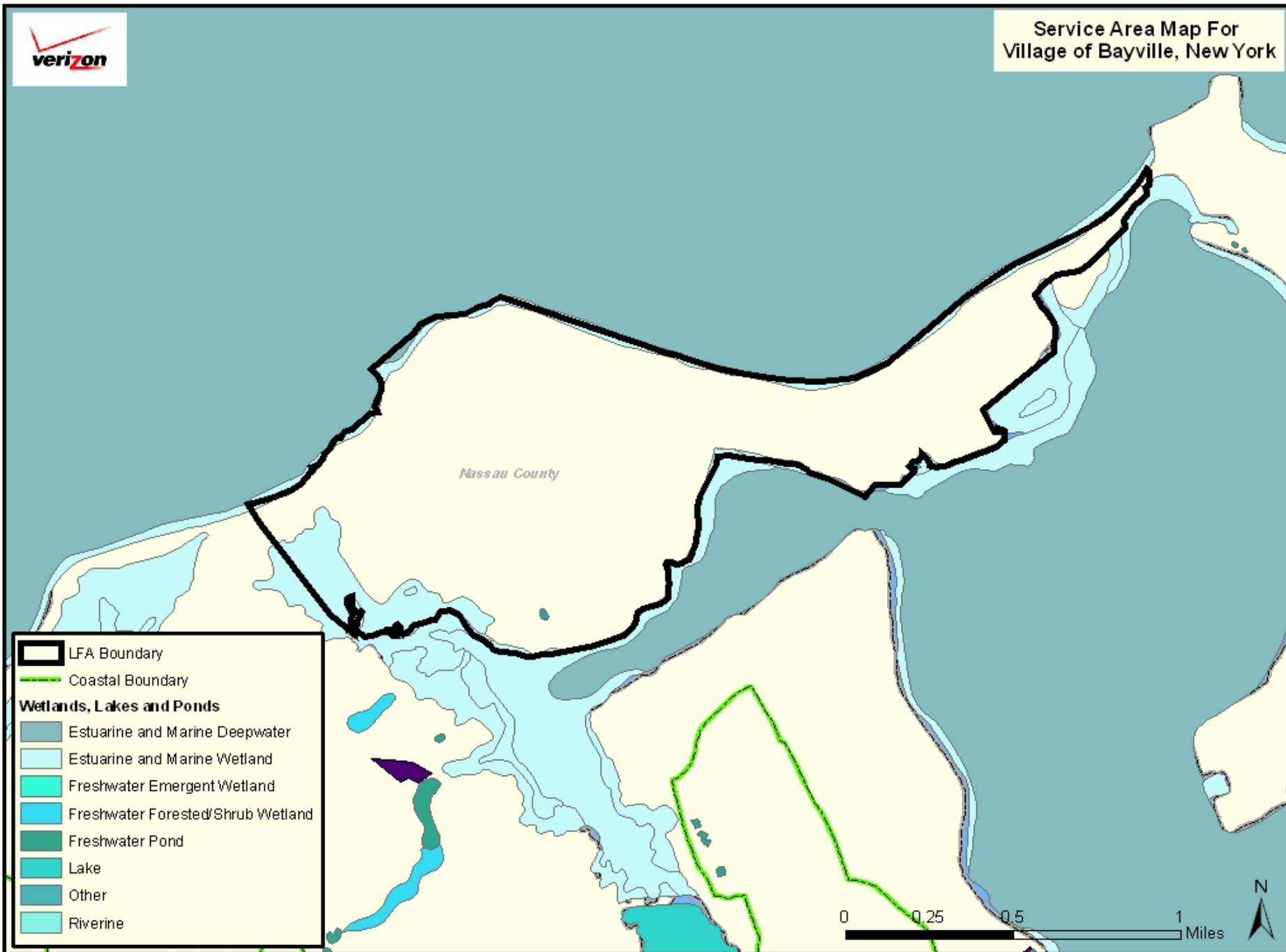
Extensions of Verizon's FTTP network may take place in the Village of Bayville following the award of the franchise. FTTP construction in the Village's rights-of-way would relate to facilities that will also be used for Verizon's voice and data services. (Any equipment that is utilized exclusively for the provision of cable services in the Village will be located in

Verizon's central offices.) Verizon has completed the construction of its FTTP network to approximately 90% of the current households in the franchise area.

When a Verizon subscriber requests the FiOS<sup>SM</sup> voice, data, and/or video services that are available over the FTTP network, fiber drop wire is run to the subscriber's home. There are 2,683 households within the Village of Bayville that could potentially be served with fiber drops.<sup>1</sup> In terms of the potential environmental impact of drop placement activities, the fiber drops that are associated with FTTP do not differ in any significant respect from the copper drops that Verizon routinely installs, maintains and on occasion replaces in connection with its current services. Moreover, fiber drops will be deployed to customers who request other FiOS services even if such customers do not elect to purchase FiOS video.

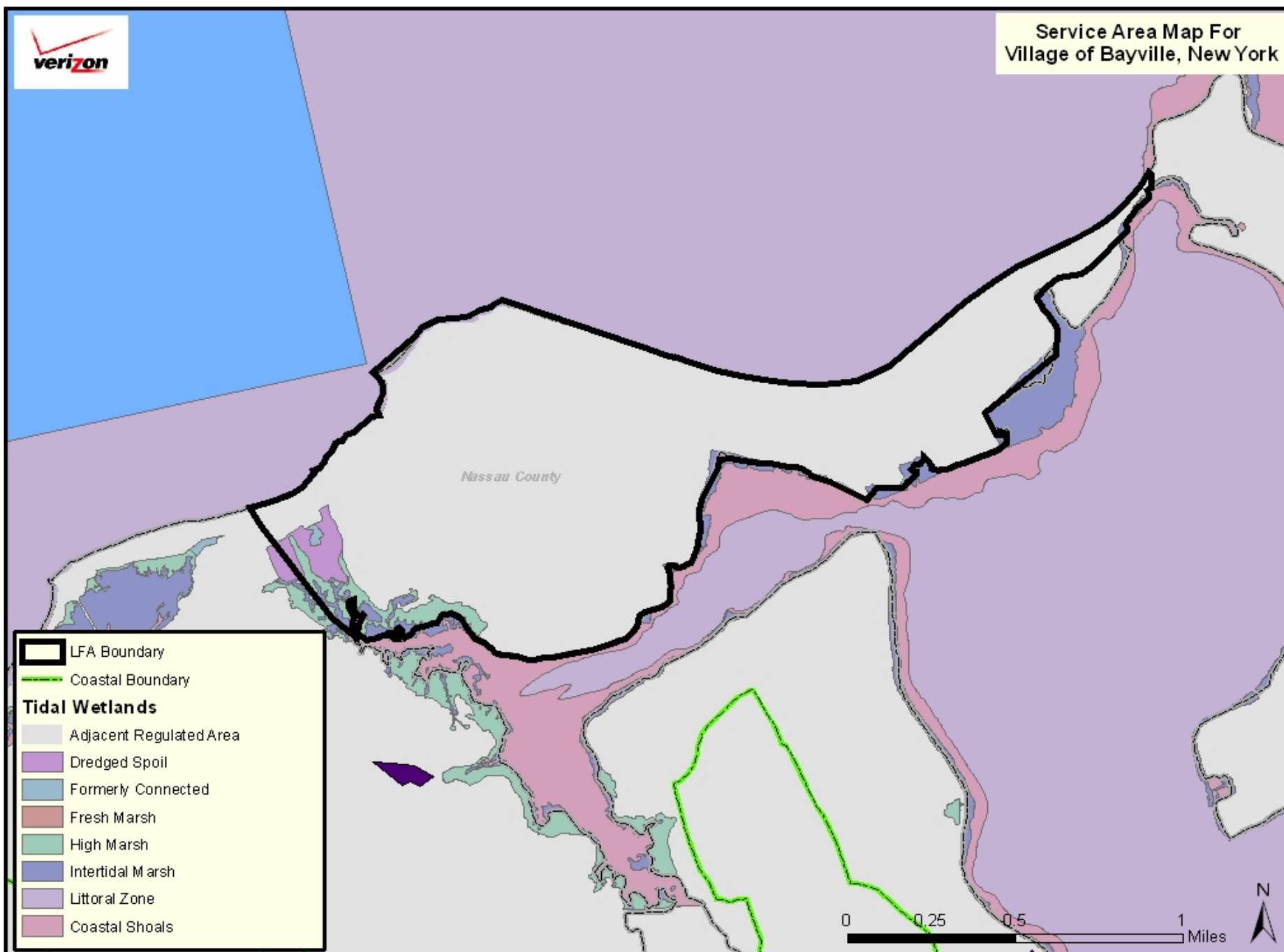
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<sup>1</sup> In general, Verizon's outside plant may include both aerial and underground facilities. Some of the work related to the extension of FTTP facilities and the placement of drops may therefore be underground.





# Service Area Map For Village of Bayville, New York





Service Area Map For  
Village of Bayville, New York

