

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

(a) *Grant of Authority.* Subject to the terms and conditions of this Agreement and the Communications Ordinance, the County hereby grants the Grantee the right to own, install, construct, reconstruct, operate, maintain, dismantle, test, upgrade, repair, use and remove a Cable System along, under, over, above, through or across or in any manner connected with the Public Rights-of-Way or public land within the Franchise Area. The Cable System shall be used and operated only for the purpose of providing Cable Services, except that nothing in this Franchise Agreement shall be construed to prohibit the Grantee from offering any service over the Cable System that is not prohibited by Federal or State law, provided all lawful requirements for County authorization or registration requirements are satisfied, nor shall anything in this Franchise Agreement be construed as a limitation on the County's right to exercise its lawful authority with respect to providers of cable, telecommunications and information services. The consideration provided by Grantee under this Agreement shall be the only consideration due or required from the Grantee to the County for the right to use and occupy the Public Rights-of-Way and public land. No reference herein to a Public Right-of-Way shall be deemed to be a representation or guarantee by the County that its interest or other right to control the use of such property is sufficient to permit the Grantee's use for specific purposes, and the Grantee shall be deemed to gain only those rights to use that are within the County's power to convey. No privilege or power of eminent domain is bestowed by this grant or by this Agreement. This Agreement does not confer any rights other than as expressly provided herein or as implied under federal, state or local law.

(b) *Area Served.*

(1) The Franchise is granted for the Franchise Area defined herein.

(2) The Grantee shall build Grantee's Cable System so that it is able to provide service to all Subscribers and potential Subscribers passed by the Grantee's Cable System as of the Effective Date of this Agreement and to other areas in accordance with the line extension policy attached hereto as Appendix 1 (the "Line Extension Policy"). It must build Grantee's Cable System so that it can extend service to all residents geographically located within the Franchise Area, including residents located in areas which may be added to the County's jurisdiction in the future subject to the Line Extension Policy, in accordance with the provisions of this Agreement, unless this requirement is waived in writing by the County.

(c) *Term.* The Franchise and this Franchise Agreement shall extend for a term of fifteen years, commencing on the Effective Date, unless the Franchise is earlier revoked or its term shortened as provided herein or in the Communications Ordinance, or unless the Franchise is renewed or extended by mutual agreement, including but not limited to an extension pursuant to Section 6(k) herein.

(d) *Grant Not Exclusive.* The Franchise and the right it grants to use and occupy the Public Rights-of-Way and public land shall not be exclusive. The County reserves the right to grant other franchises, as consistent with state and federal law, for other uses of the Public Rights-of-Way and public land, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise Agreement, with or without a franchise, but in no event inconsistent with the rights granted herein.

(e) *Franchise Agreement Subject to Other Laws.* This Franchise Agreement is subject to and shall be governed by all applicable provisions of federal, state, and local law, except that any local ordinance or regulation enacted subsequent to the Effective Date shall be subject to the provisions of subsection (f) of this Section.

(f) *Franchise Agreement Subject to Exercise of Police Powers.* All rights and privileges granted herein are subject to the exercise of the police powers of the County and its rights under applicable laws and regulations to reasonably exercise its police powers to their full extent and to regulate the Grantee and the construction, operation and maintenance of the Grantee's Cable System, including, but not limited to, the right to adopt and enforce additional generally applicable ordinances and regulations as the County shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing Public Rights-of-Way, telecommunications, utility and cable television consumer protection and service standards and rate regulation provisions.

(g) *Approval and Effective Date.* Subject to the conditions set forth in Appendix H to the Fairfax County Code, this Franchise Agreement shall become effective on July 1, 2005.

(h) *Effect of Acceptance.* By accepting the Franchise and executing this Franchise Agreement, the Grantee, relying upon its own investigation and understanding of the power and authority of the County to grant said Franchise:

(1) Accepts and agrees to comply with the Fairfax County Code, including each provision of the Communications Ordinance and this Agreement;

(2) Acknowledges and accepts the County's legal right to grant the Franchise and to enter into this Franchise Agreement;

(3) Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law; and

(4) Agrees that the County retains the absolute right to terminate this Agreement for material violation by the Grantee of this Franchise or pursuant to Section 9.1-5-4 of the Fairfax County Code.

(i) *Claims Related to a Prior Franchise.*

(1) The Grantee shall remain liable for payments of all franchise fees owed to the County, and operating grants owed to the County and other parties, under the Prior Franchise that are accrued but unpaid prior to the Effective Date; provided, however, that unless such payments were in dispute between the Grantee and the County during the Prior Franchise and such dispute remains unresolved, the County's ability to question Franchise Fee payments made by the Grantee and Grantee's liability for payment of additional Franchise Fees shall be limited to three years from the time the payment was delivered, consistent with Section 8(d)(4) hereof. The grant of the Franchise shall have no effect on the Grantee's duty under the Prior Franchise to indemnify or insure the County against acts and omissions occurring during the period that the Prior Franchise was in effect; to return any overcharges that are determined to be due to Subscribers for the period that the Prior Franchise was in effect; and to correct any construction violations for which (i) written notice identifying the nature and location of the violation with sufficient specificity to allow the Grantee to correct the violation has been given to Grantee prior to the Effective Date of this Agreement and (ii) the violation has not been cured by the Effective Date of this Agreement.

(2) Except as provided in paragraph (1) above or in Section 7(h)(3) herein, as of the Effective Date of this Franchise Agreement, the Prior Franchise is superseded and is of no further force and effect, and the County and the Grantee mutually release each other from any claims each had, has or may have against the other under the Prior Franchise.

(j) *No Waiver.*

(1) The failure of the County on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Communications Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the County, nor to excuse the Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by the Communications Administrator or designee.

(2) The failure of the Grantee on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Communications Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the Grantee, nor to excuse the County from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by the Grantee.

(3) No waiver by the County of any breach or violation of any provision of this Franchise Agreement or the Communications Ordinance shall be deemed to be a waiver or a continuing waiver by the County of any subsequent breach or violation of the same or any other provision. Neither the granting of the Franchise, nor any provision herein, nor any action by the County hereunder shall constitute a waiver of or a bar to the exercise of any police right or power of the County, including without limitation, the right of eminent domain.

(4) No waiver by the Grantee of any breach or violation of any provision of this Franchise shall be deemed to be a waiver or a continuing waiver by the Grantee of any subsequent breach or violation of the same or any other provision. By its execution of this Franchise Agreement, the Grantee does not waive any rights it may have under federal or state

law, in the event that the County grants a franchise or other authorization to any other multichannel video programming provider after the Effective Date, as the result of a grant of such franchise or other authorization.

(k) *Amendment of Franchise Agreement.* This Agreement may only be amended by mutual written consent of the County and the Grantee.