

**5. CONSTRUCTION AND MAINTENANCE**

*(a) Construction Schedule.*

(1) The Grantee shall construct and activate Grantee's Cable System in accordance with the requirements of the Fairfax County Code and the specifications contained in this Agreement.

(2) The Grantee agrees that it will make no charge or claim whatsoever to the County for hindrance or delay of the work from any cause during the progress of the same, except this limitation shall not prevent the Grantee from raising a defensive charge or claim asserting failure or delay as a result of the County, the Virginia Department of Transportation or any government instrumentality, agency or any utility to issue permits or permission upon a timely request submitted by the Grantee or its contractor representative and tender any required permit fee.

*(b) Construction Standards.*

(1) The construction, operation, maintenance, and repair of Grantee's Cable System shall be substantially in accordance in all material respects with all applicable sections of the following standards and regulations, to the extent that such standards and regulations remain in effect and are applicable to Grantee's Cable System or to the construction, operation, maintenance and repair of a Cable System: the Occupational Safety and Health Act of 1970, as amended; the most current edition of the National Electrical Safety Code and National Electrical Code; Obstruction Marking and Lighting, AC 70/7460 *i.e.*, Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17; the Virginia Uniform Statewide Building Code; conditions embodied in Virginia Department of Transportation permits; County-mandated Department of

Environmental Management permits and procedures; the National Cable Television Association Standards of Good Engineering Practices; Grantee's Construction Procedures Manual; any common shared easement or joint trenching arrangements to which the Grantee is a party; and other applicable federal, state, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, local zoning and construction codes and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, accepted cable industry practices shall control (except insofar as such practices, if followed, would result in a Cable System that could not meet express requirements of federal, state or local law, or in instances in which such practices are expressly preempted by other standards). Consistent with the foregoing, the County may ensure that work continues to be performed in an orderly and workmanlike manner, reflecting any changes that may occur over the Franchise term.

(2) In the event of any deregulation of technical or other standards for construction, installation, operation or maintenance of Grantee's Cable System, such standards shall remain in force and effect until the Communications Administrator or his designee and the Grantee agree to new standards.

(3) All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located consistent with cable industry practices, and where feasible without additional cost to Grantee, in such a manner as to cause minimum interference with the rights and convenience of property owners (including the County) and users of the Public Rights-of-Way and other public property. The County may from time to time issue reasonable rules and regulations, after notice to Grantee and opportunity for Grantee to

participate, concerning the construction, operation and repair of Grantee's Cable System as appropriate to ensure compliance with this Section.

(4) Without limiting the foregoing, antennae and their supporting structures (towers) shall be designed in accordance with the Virginia Uniform Statewide Building Code as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local laws, codes, and regulations, all as hereafter may be amended or adopted.

(5) Without limiting the foregoing, all of the Grantee's plant and equipment, including, but not limited to, the antennae site, headend and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel.

(6) The Grantee shall maintain all wires, conduits, cables, and other real and personal property and facilities comprising Grantee's Cable System in good condition, order and repair. Consistent with subsection (1) above, all safety practices required by law shall be used during construction, maintenance, and repair of Grantee's Cable System. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents.

(7) No construction, upgrade, rebuild, reconstruction, maintenance, or relocation of Grantee's Cable System, or any part thereof, within any Public Rights-of-Way or public land shall be commenced unless permits have been obtained from proper officials, except that in case of emergency, the Grantee may carry out such work to the extent necessary pending

the issuance of such permits, as long as the Grantee acts to secure such permits as soon as possible. The County shall pay the County fees associated with such permits.

(8) Prior to commencing any (i) significant alteration of the cable plant, (ii) other work that would require a construction permit, or (iii) any work on other public property, the Grantee shall provide the County with 24 hours' prior notice of such work, when practicable, so that the County may perform appropriate inspections to ascertain compliance with applicable construction codes and standards. If 24 hours' prior notice cannot be furnished, the Grantee shall provide the County with the maximum amount of notice feasible under the circumstances. If prior notice cannot be provided before commencing such work in the Public Rights-of-Way or other public property, the Grantee shall notify the County as soon as practicable thereafter. For purposes of this provision, notice shall where appropriate include the map location of the work proposed or performed, and the date such work will begin, using the most recent edition of the ADC map or its equivalent, as specified by the County.

(9) Except in emergency situations, neither the Grantee nor any other Person acting as agent for Grantee shall open or otherwise disturb or damage any street, sidewalk, driveway, Public Rights-of-Way or public land, public property or private property for any purpose whatsoever without obtaining required authorization to do so, and shall, at its own cost and expense, restore, repair and replace any property disturbed, damaged or in any way injured by or on account of its activities to its condition immediately prior to the disturbance, damage or injury (including appropriate landscape restoration); provided, however, that with respect to landscape restoration efforts, Grantee shall not be responsible for the maintenance and watering thereof, and Grantee shall not be required to resod lawns where reseeding would, within a reasonable period of time, restore the lawn substantially to its condition immediately prior to the

disturbance. Grantee shall not be required to repave all or a substantial portion of a driveway if patching would be consistent with normal road repair requirements. Under Normal Operating Conditions, such repair or restoration shall be completed at the later of thirty days from the date the damage is incurred or thirty days from when the work causing such damage is completed. Any restoration of private property by Grantee shall be done in accordance with Grantee's contractual obligation to affected landowners. The Grantee shall guarantee such restoration (other than landscaping restoration) for at least one year against defective materials and workmanship. In the event of a failure by the Grantee to complete any work required for the protection or restoration of the Public Rights-of-Way, public land, or any other property as required by this subsection 5(b)(9), within the time specified in this Franchise Agreement, the County, following adequate written notice and a reasonable opportunity to cure, may cause such work to be done, and the County shall submit an itemized list of such costs to Grantee as well as any materials reasonably requested by Grantee to verify such costs. Following the Grantee's receipt of such itemized list and supporting materials, the Grantee shall reimburse the County the cost thereof within thirty days, or the County may recover such costs through the performance bond provided by Grantee.

(10) Upon the County's request, the Grantee agrees to submit disputes or disagreements between itself and a Subscriber to the County's Department of Cable Communications and Consumer Protection, or to such other similar service as may, from time to time, be offered by the County, for mediation. If mediation is unsuccessful, and upon further staff recommendation, the Grantee will seriously consider said recommendation for independent arbitration pursuant to the Virginia Uniform Arbitration Act, to the extent permitted by law.

(11) The Grantee shall cooperate with all gas, electric, telephone, water, sewer and other utilities in the placement of facilities, equipment, or fixtures, to minimize the costs and disruption caused by any construction activities.

(12) The Grantee shall seek to shore up, sling, support, protect and make good, as directed, all water pipes, gas pipes, service pipes, sewers and sewer connections, conduits, ducts, manholes, drains, vaults, buildings, tracks or other structures, or sub-structures of public utility companies, and all service lines and structures, including sub-structures of private abutting owners, that are located within the lines of Grantee's Cable System construction that may be liable to disturbance or injury during the progress of the construction. All necessary supports and all labor and material necessary to reconnect and restore all such structures that become disturbed or damaged to substantially their original condition shall be provided by the Grantee at its own cost and expense.

(13) If the County becomes aware of any relocation projects that may require the Grantee to protect, support, temporarily disconnect, relocate, or remove any of Grantee's property, then the County shall promptly notify the Grantee of the extent and likelihood of any such projects. Upon reasonable notice in accordance with the preceding sentence (except in the case of emergency repairs), the Grantee shall, by a time specified by the County, protect, support, temporarily disconnect, relocate, or remove any of its property when reasonably required by the County by reason of traffic conditions; public safety; Public Rights-of-Way or public land construction; Public Rights-of-Way or public land maintenance or repair (including resurfacing or widening); change of Public Rights-of-Way or public land grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other

type of government-owned communications system, public work or improvement or any government-owned utility. Grantee shall be entitled to reimbursement of its costs and expenses.

(14) If the Grantee abandons any portion of Grantee's Cable System located in Public Rights-of-Way or on public land (*i.e.*, permanently deactivates and leaves it in place), the County may require that such plant be removed at the Grantee's expense, at any time (i) if necessary, to make room for other facilities or (ii) if required by sound engineering practices, or (iii) to remove potential safety hazards. If Grantee requests to leave such an underground portion of Grantee's Cable System in place, the County shall grant such request upon a showing by the Grantee that its existing arrangements are safe and consistent with accepted underground utility practices as well as any other obligations it may have (such as pole attachment agreements).

(15) If any Person that is authorized to place facilities in the Public Rights-of-Way or on public land requests the Grantee to remove, relocate, protect, support, or temporarily disconnect its facilities to accommodate the construction, operation or repair of the facilities of such other Person at any time during the term of the Agreement, then the Grantee shall, upon request and reasonable notice from such party and consistent with applicable law, remove, relocate, protect, or alter the Grantee's Cable System, or any part thereof, and such Person shall reimburse the Grantee for the Grantee's costs and expenses; provided, however, that Grantee may require such payment in advance when its prior payment history with the requesting Person has been unfavorable.

(16) In the event of an emergency, or where the Grantee's Cable System creates or is contributing to an imminent danger to health, safety, or property, or an unauthorized use of property, the Grantee shall remove or relocate any or all parts of Grantee's Cable System at the request of the County. If the Grantee fails to comply with the County's request, the

County may remove or relocate any or all parts of the Grantee's Cable System upon reasonable notice to Grantee. If Grantee's compliance with the County's request pursuant to this subsection results in the breach of any of Grantee's obligations under this Agreement, and Grantee has so notified the County before complying with the County's request, Grantee shall not be liable for its failure to satisfy such obligations.

(17) The Grantee shall, on the request of any Person holding a valid building moving permit issued by the County, or on request of the County, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance, except in the case where the requesting person is the County, in which case the Grantee will invoice the County, and the County will pay, following completion of work. The Grantee shall be given reasonable advance notice in writing to arrange for such temporary wire changes.

(18) The Grantee shall have the authority to trim trees and shrubs, at its own expense, so as to prevent the branches of such trees or shrubs from coming in contact with the facilities, wires and cables of the Grantee.

(19) The Grantee shall use, with the owner's permission, existing poles, conduits and other facilities whenever feasible and consistent with the design of Grantee's Cable System. The Grantee may not erect or emplace poles, conduits, or other facilities in Public Rights-of-Way or on public land without obtaining appropriate permits. Any permits from the County shall not be unreasonably withheld and shall be free of charge to the Grantee.

(20) Grantee's Cable System's cable and facilities may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead, but

where no overhead poles exist all cables and facilities, excluding passive or active electronics of Grantee's Cable System that may be housed in low-profile, above-ground pedestals, shall be constructed underground. Whenever and wherever a property owner causes or requests electric lines and telephone lines to be moved from overhead to underground placement, all Grantee's Cable System cables shall likewise be moved underground and the cost of movement of its cable shall be paid for by the requesting party. Whenever and wherever the County causes or requests electric lines and telephone lines to be moved from overhead to underground placement, all Grantee's Cable System cables shall likewise be moved underground, and the County shall pay for the cost of movement of such cable. Except as federal law may otherwise require, in any area where the Grantee would be entitled to install a drop above-ground, the Grantee shall provide a homeowner with the option of having the drop installed underground, and may charge the homeowner the difference between the actual cost of the above-ground installation and the actual cost of the underground installation. Notwithstanding the foregoing, all underground new or replacement wiring installed after the Effective Date of this Agreement on County public land not part of the Public Rights-of-Way must be located in conduit composed of concrete or in PVC pipe or polyethylene pipe, or may be directly buried if enclosed in armored cable. New buried cable and facilities shall be capable of location using locating devices commonly available at the time of installation.

(21) The Grantee shall make available to other users of the Public Rights-of-Way and public land at a reasonable, non-discriminatory rental rate any of its excess conduits, so long as such conduits are in excess of any current or any future projected needs of operation of Grantee or its affiliates.

(22) The Grantee shall be a member of the regional notification center for subsurface installations, which shall field mark the locations of its underground facilities upon request.

(23) Prior to erection or placement of any towers, poles, or conduits, the Grantee shall first submit to the County a description of Grantee's Cable System facilities proposed to be erected or installed, indicating the proposed location of such facilities.

(24) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of system equipment must be properly licensed under the laws of the Commonwealth of Virginia and all local ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as the Grantee would have if the work were performed by the Grantee. The Grantee must ensure that contractors, subcontractors and employees who will perform work for it are trained and experienced and that one member of each work crew is responsible for communicating in the official language of the Commonwealth with County and other governmental personnel at the work site. The Grantee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with this Agreement and applicable laws, regulations, policies and procedures, be responsible for all acts or omissions of contractors or subcontractors acting within the scope of their employment; be responsible for promptly correcting acts or omissions by any contractor or subcontractor; and have a quality control program to ensure that the work is properly performed.

(25) The County does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures.

(26) Prior to the beginning of any construction under the Franchise, but in any case within six months after the Effective Date of this Agreement, the Grantee shall update its Construction Procedures Manual (the “Manual”), addressing matters including but not limited to changes in technology and construction, maintenance procedures, and acceptance practices and procedures for cutover to any new portions of Grantee’s Cable System. The updated Manual shall include, without limitation, procedures for building aerial and underground plant and the acceptance criteria for the HSN and the I-Net. The Grantee shall provide the County with a copy of the updated Manual forty-five days before beginning construction. Grantee shall also provide the County with a current copy of the Manual at execution of this Agreement and shall provide the County with copies of any updates as such updates are added to the Manual.

(27) Except for emergency maintenance or repairs, the Grantee shall provide reasonable notice to residents in any construction area prior to first entering onto their property to perform any work in conjunction with system construction or rebuild, and shall provide reasonable notice to affected residents in advance of any work which will involve excavation, or replacement of poles. The Grantee shall provide affected residents with a local name and phone number they can call to discuss the Grantee’s actions.

(c) *System Tests and Inspections.*

(1) The Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise, and to ensure that the HSN system components are operating as expected. All tests shall be conducted in accordance with federal rules and any relevant edition of the National Cable Television Association’s “Recommended Practices for Measurements on Cable Television Systems,” or if no relevant edition exists, such other appropriate manual as the Grantee may propose and the County approve. In the event that the

FCC's technical performance standards are repealed or are no longer applicable to the Grantee's Cable System, such standards shall remain in force and effect until the Communications Administrator or his designee and the Grantee agree to new standards.

(2) The Grantee shall conduct tests as follows:

(A) Acceptance tests, as approved by the County, on each newly constructed or rebuilt segment of significant size prior to Subscriber connection or activation, but not later than ninety days after any newly constructed or substantially rebuilt segment is made available for service to Subscribers;

(B) Proof of performance tests on the Grantee's Cable System at least once every six months or as required by FCC rules, whichever is more often, except as federal law otherwise limits the Grantee's obligation; and

(C) Special proof of performance tests, as limited by the County, of Grantee's Cable System or a segment thereof when Subscriber or User complaints indicate tests are warranted.

(3) At any time after commencement of service to Subscribers, the County may require additional reasonable tests, including full or partial repeat tests, different test procedures, or tests involving a specific Subscriber's terminal, at the Grantee's expense, to the extent such tests are in accordance with FCC rules and may be performed by the Grantee's employees utilizing its existing facilities and equipment. The County may conduct independent tests upon reasonable notice to the Grantee and if noncompliance is found, the expense thereof shall be borne by the Grantee. The County will endeavor to arrange its request for such tests so as to minimize hardship or inconvenience to the Grantee or to Subscribers.

(4) System monitor test points shall be established in accordance with good engineering practices and shall be approved in advance by the County.

(5) Tests shall be supervised by the Grantee's senior engineer, who shall sign all records of tests provided to the County.

(6) The County shall have the right to witness and/or review all required tests on newly constructed or rebuilt segments of Grantee's Cable System. The Grantee shall provide the County with at least two business days' notice of, and opportunity to observe, any such tests performed on Grantee's System.

(7) A written report of all test results shall be filed with the County within seven days of each test. Such reports shall, at a minimum, describe test results, instrumentation, calibration and test procedures. In addition, the Grantee shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the County upon the County's request. The County shall have the same rights the FCC has to inspect the Grantee's performance test data.

(8) If any test indicates that any part or component of a system fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the County, shall take corrective action, retest the locations and advise the County of the action taken and results achieved, and supply the County with a copy of the results within thirty days from the date corrective action was completed.

(9) The County may also conduct inspections of construction areas and Subscriber installations, including but not limited to inspections to assess compliance with the Grantee's construction and installation requirements. The County shall notify the Grantee of any violations found during the course of inspections, identifying the locations with particularity and

stating the specific nature of the violation. The Grantee must bring violations specified in the notice that are within Grantee's control into compliance as follows: (i) safety violations must be made safe within forty-eight hours of receiving notice of the violation; (ii) Virginia Department of Transportation violations must be brought into compliance within five days of receiving notice of the violation; and all other violations must be brought into compliance within thirty days of receiving notice of the violation. After the specified time period, the Grantee must submit a report to the County describing the steps it has taken to bring itself into compliance. Inspection does not relieve the Grantee of its obligation to build in compliance with all provisions of a Franchise.

(10) The Communications Administrator may, for good cause shown, waive or limit the system test and inspection provisions in this Section.

(d) *Publicizing Proposed Construction Work.* The Grantee shall notify the general public prior to commencing any proposed construction that will significantly disturb or disrupt public property or Public Rights-of-Way or public land or have the potential to present a danger or affect the safety of the public generally. Where possible, the Grantee shall publicize proposed construction work at least one week prior to commencement of that work by notifying those residents and others in the immediate vicinity of where work is to be done and most likely to be affected by the work in at least one of the following ways: by telephone, in person, by mail, by distribution of door hangers or flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice. Notice to affected Persons must include the name and local telephone number of the Grantee representative who is qualified to answer questions concerning proposed construction. In addition, before entering onto any

Person's property for proposed construction work, the Grantee shall contact the property owner or (in the case of residential property) the resident at least two days in advance, when possible.

(e) *System Maintenance.* The Grantee shall, when practicable, schedule and conduct maintenance on Grantee's Cable System so that interruption of service is minimized and occurs during periods of minimum Subscriber use of Grantee's Cable System. The Grantee shall provide reasonable prior notice to Subscribers and the County before interrupting service for planned maintenance or construction, except where such interruption is expected to be two hours or less in duration. Such notice shall be provided by methods reasonably calculated to give Subscribers actual notice of the planned interruption.