

## 1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in Title 47 of the United States Code, as amended, Va. Code Ann. § 15.2-2108, and, if not in conflict, the Communications Ordinance, are incorporated herein and shall apply in this Agreement. The words “shall” and “will” are mandatory, and the word “should” expresses an expectation, but is not mandatory, and the word “may” is permissive. In addition, the following definitions shall apply:

1.1. *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.

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

1.3. *Board*: The Board of Supervisors of the County of Fairfax, Virginia.

1.4. *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). If during the course of this Agreement any service is classified to be or not to be a “Cable Service” by a court of competent jurisdiction in a decision that constitutes a binding legal precedent on the County, or by the FCC in a decision that is binding on the County, then the term “Cable Service” as used in this Agreement shall be interpreted in accordance with such decision.

1.5. *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).

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

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

1.8. *Communications Administrator*: The present or succeeding employee of the County designated as the Communications Administrator, who shall have the duties prescribed in the Communications Ordinance and otherwise prescribed by the Board.

1.9. *Communications Ordinance*: The Fairfax County Communications Ordinance, Chapter 9.1 of the Fairfax County Code.

1.10. *County*: The County of Fairfax, Virginia.

1.11. *Educational Access Channel*: Any Channel required by this Agreement to be designated by the Franchisee for use by the County on the Cable System for educational purposes.

1.12. *Extended Service Area*: The Franchise Area, including the Initial Service Area.

1.13. *FCC*: The Federal agency as presently constituted by the Communications Act, its designee, or any successor agency.

1.14. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to control. This includes, but is not limited to, severe or unusual weather conditions, strike, labor disturbance, lockout, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, action or inaction of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other act of God, sabotage, work delays because utility providers denied or delayed the Franchisee access to utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary if such acquisition of qualified labor would be commercially impracticable as defined in 47 U.S.C. § 545(f).

1.15. *Franchise Area*: The Reston Franchise Area, the North County Franchise Area, and the South County Franchise Area, each of which is defined at Section 9.1-7-1 of the Communications Ordinance and any area added thereto during the term of the Franchise that the Franchisee agrees to serve.

1.16. *Franchisee*: Verizon Virginia Inc. and its lawful and permitted successors, assigns and transferees.

1.17. *Government Access Channel*: Any Channel required by this Agreement to be designated by the Franchisee for use by the County on the Cable System for governmental purposes.

1.18. *Gross Revenue*: Any and all cash, credits, property or consideration of any kind or nature that constitute revenue in accordance with Generally Accepted Accounting Principles derived directly or indirectly from the operation of the Cable System to provide Cable Services in the Franchise Area. Gross Revenues will be calculated on bundled services in accordance with Section 7.3. Consistent with the foregoing, the following, without limitation, shall be included in Gross Revenues to the extent derived from the operation of the Cable System to provide Cable Services in the Franchise Area: monthly fees collected from Subscribers for any basic, optional, premium, per-channel, per-program service, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; revenues from rentals or sales of converters or other equipment used to provide Cable Service over the Cable System; studio rental, production equipment rental, and personnel fees; fees from third party unaffiliated programmers for leased access programming; advertising revenues after deducting agency commissions; revenues from the sale or carriage of other Cable Services over the Cable System in the Franchise Area; and revenues that Franchisee receives from home shopping channels for the use of the Cable System to sell merchandise. However, Gross Revenue shall not include:

1.18.1. Revenues received by any Affiliate or other Person from Franchisee in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System;

1.18.2. 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;

1.18.3. Revenues later refunded or rebated to Subscribers or other third parties;

1.18.4. Revenues wholly generated by services that are defined herein as Non-Cable Services.

1.18.5. Third-party revenues derived from the sale of merchandise over home shopping channels carried on the Cable System, regardless of whether the revenues are collected by the third party or collected by the Franchisee on behalf of, and remitted back to, the third party; and revenue of the Franchisee from its sale of merchandise over home shopping channels carried on the Cable System if the merchandise is unrelated to the operation of Franchisee's Cable System to provide Cable Service in the Franchise Area;

1.18.6. Revenues from the sale of Cable Services on the Cable System to a reseller, when the reseller is required by the County to pay cable Franchise Fees on the resale of the Cable Services;

1.18.7. Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and that Franchisee is required to collect and remit 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 franchise fees for Non-Cable Services);

1.18.8. Any revenue foregone because Franchisee provides free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee; provided, however, that if Franchisee receives trades, barter, services or other items of value instead of cash revenue, such items shall be included in Gross Revenue;

1.18.9. Any revenue foregone as a result of the Franchisee's provision of Cable Service or other services as required by this Agreement including, but not limited to, Cable Service to public institutions or other institutions as designated in the Franchise;

1.18.10. Revenues from sales of capital assets or sales of surplus equipment;

1.18.11. Program launch fees not paid directly to Franchisee;

1.18.12. Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; and

1.18.13. Any fees or charges collected from Subscribers or other third parties for PEG Grants and remitted to the PEG entities in accordance with this Agreement.

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

1.20. *Initial Service Area*: The portion of the Franchise Area as outlined in Exhibit A.

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

1.22. *Non-Cable Services*: Any service that does not constitute Cable Service(s) as defined herein over the Cable System in the Franchise Area, including, but not limited to, Telecommunication Services and Information Services (which includes, but is not limited to, Internet Access Service).

1.23. *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.

1.24. *Normal Operating Conditions*: Those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, Force Majeure events. Those conditions which are within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. *See* 47 C.F.R. § 76.309(c)(4)(ii).

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

1.26. *PEG Channels*: Refers collectively to all Public Access Channels, Educational Access Channels, and Government Access Channels that Franchisee is required to provide under this Agreement.

1.27. *Person*: An individual, partnership, association, joint stock company, trust, or corporation, but such term does not include the County.

1.28. *Public Access Channel*: Any Channel required by this Agreement to be designated by the Franchisee on the Cable System for use by the general public who are residents of the County, including groups and individuals, and which is available for such use on a non-discriminatory basis for public access purposes.

1.29. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System.

1.30. *Service Area*: All portions of the Franchise Area where Cable Service shall be offered.

1.31. *Service Interruption*: The loss of picture or sound on one or more cable Channels.

1.32. *Subscriber*: A Person who lawfully receives Cable Service on the Cable System.

1.33. *Telecommunications Facilities*: Franchisee's existing facilities used for Telecommunications Services and Information Services and its FTTP Network.

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

1.35. *Title II*: Title II of the Communications Act.

1.36. *Title VI*: Title VI of the Communications Act.

1.37. *User*: A Person or organization using a PEG Channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.

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