13. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

13.1. *Audits and Actions Regarding Fee Payments; Limitations.* The County shall have the right to inspect books and records relating to the Cable System and to audit and recompute any amounts determined to be payable under this Agreement, whether the records are held by Franchisee, an Affiliate, or any other agent of Franchisee.

13.1.1. Franchisee shall be responsible for making available to the County all records necessary to confirm the accurate payment of Franchise fees and PEG Grants, without regard to by whom they are held. Such records shall be made available pursuant to the requirements of Article 9 herein. Franchisee shall maintain such records in accordance with its normal record retention policy, which Franchisee shall provide to the County within thirty (30) days of the execution of this Agreement and shall provide again whenever Franchisee changes that policy over the course of the Franchise Term.

13.1.2. The County's audit expenses shall be borne by the County unless the audit discloses an undisputed underpayment of more than three percent (3%) of any quarterly payment, in which case the County's out-of-pocket costs of the audit shall be borne by Franchisee as a cost incidental to the enforcement of the Franchise. Any additional undisputed amounts due to the County as a result of the audit shall be paid within thirty (30) days following written notice to Franchisee by the County of the underpayment, which notice shall include a copy of the audit report. If recomputation from an undisputed amount results in additional revenue to be paid to the County, Franchisee shall pay any applicable penalties and interest charges computed from such due date, as provided for in the Communications Ordinance under Section 9.1-5-8(i). Any audit fees paid by the County shall not be determined based on a percentage of audit findings basis.

13.1.3. In the event the Franchisee disputes any underpayment discovered as the result of an audit conducted by the County, the Franchisee and the County shall work together in good faith to promptly resolve such dispute. Both parties shall maintain all rights and remedies available at law regarding any disputed amounts.

13.1.4. The County shall have three (3) years from the date Franchisee delivers a Franchise fee payment or PEG Grant payment to question that payment, and if the County fails to question the payment within that three-year period, the County shall be barred from questioning such payment. If the County gives written notice to Franchisee within that three-year period, the three-year period shall be tolled for one year to allow the County to conduct an audit. Any legal action by either party relating to a Franchise fee payment will toll the remaining term, if any, of the three-year time period and the one-year audit period with respect to that payment.

13.2. *End of Franchise Term*: Upon completion of the term of the Franchise granted under this Agreement, if a new, extended, or renewed Franchise is not granted to the Franchisee by the Board, the Franchisee's right to provide Cable Service shall terminate, subject to applicable federal law.

13.3. The Board shall have the right to revoke the Franchise for the Franchisee's material violation of this Agreement pursuant to Sections 13.4 and 13.5 below.

13.4. To revoke the Franchise, the County shall give the Franchisee written notice of the default in its performance. Franchisee shall have sixty (60) calendar days from receipt of this written notice to: (i) cure such default to the reasonable satisfaction of the County; or (ii) in the event that, by the nature of default, such default cannot be cured within the sixty (60) calendar day period, initiate reasonable steps to remedy such default and notify the County of the steps being taken and the projected date that they will be completed, all of which shall be to the reasonable satisfaction of the County. In the event that the Franchisee does not take the foregoing corrective action to the reasonable satisfaction of the County, the County shall give written notice to the Franchisee of its intent to revoke the Franchise Term, stating its reasons. However, the Franchisee shall have no opportunity to cure where the Franchisee is convicted of fraud or attempted fraud on the County or the Subscribers in connection with this Agreement or Cable Service.

13.5. Prior to revoking the Franchise, the Board shall hold a public hearing, after providing thirty (30) days' written notice to the Franchisee, specifying its reasons for revoking the Franchise, at which time the Franchisee and the public shall be given an opportunity to be heard. Following the public hearing, the Board may determine to revoke the Franchise based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to the Franchisee to effect any cure. If the Board determines to revoke the Franchise, it shall adopt an ordinance that revokes the Franchise and sets forth the reasons for its decision. Unless the ordinance specifies a date upon which the revocation shall take effect, the Franchise shall be revoked upon the Board's adoption of the ordinance. A copy of such ordinance shall be promptly transmitted to the Franchisee. Franchisee may appeal such determination of the County to an appropriate court, which shall have the power to review the decision of the County *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 County's ordinance revoking the Franchise.

13.6. *Rights and Remedies*:

13.6.1. The rights and remedies reserved to both parties herein are cumulative and shall be in addition to all other rights and remedies which either party may have with respect to the subject matter of this Agreement, whether reserved herein or authorized by applicable law.

13.6.2. The following violations by the Franchisee of this Agreement are material violations of this Agreement for purposes of this Article:

13.6.2.1. Transfer of the Franchise without approval pursuant to Article 11, or failure to notify pursuant to Sections 11.6 and 11.7;

13.6.2.2. Habitual or persistent failure to provide Cable Service as specified in Article 3;

13.6.2.3. Failure to make Cable Service available to not less than 80.25% of the Franchise Area by the time established in Article 3;

13.6.2.4. Habitual or persistent failure to meet FCC technical standards;

13.6.2.5. Failure to maintain the EAS pursuant to Section 5.4 in the event of an emergency;

13.6.2.6. Habitual or persistent failure to provide PEG Grants pursuant to Section 6.2;

13.6.2.7. Habitual or persistent failure to provide the PEG Channels pursuant to Article 6;

13.6.2.8. Habitual or persistent failure to provide Cable Service to public buildings pursuant to Section 3.3;

13.6.2.9. Habitual or persistent failure to pay Franchise fees pursuant to Article 7;

13.6.2.10. Habitual or persistent failure to meet reports and records requirements in a timely manner pursuant to Article 9;

13.6.2.11. Habitual or persistent failure to satisfy insurance requirements pursuant to Section 10.1;

13.6.2.12. Habitual or persistent failure to maintain a performance bond or letter of credit pursuant to Sections 13.7 and 13.8;

13.6.2.13. Habitual or persistent violation of consumer protection requirements pursuant to applicable law;

13.6.2.14. Habitual or persistent violation of Subscriber privacy requirements pursuant to 47 U.S.C. § 551;

13.6.2.15. Habitual or persistent discrimination among Subscribers in violation of 47 U.S.C. § 541(a)(3); and

13.6.2.16. Habitual or persistent material customer service standard violations other than those for which liquidated damages have been assessed and paid.

13.7. *Performance Bond*:

13.7.1. Except as provided below, the Franchisee shall obtain and maintain during the entire Franchise Term, including any extensions thereof, a performance bond in the

County's favor in the amount of five hundred thousand ($500,000), in substantially the same form attached hereto as Exhibit F and is acceptable to the County, in order to ensure the Franchisee's faithful performance of its obligations under this Agreement. The County may not attempt to collect under this bond unless thirty (30) days have passed since the County provided the Franchisee with written notice of its intent to collect under this bond. If within this thirty (30) day time frame, Franchisee gives written notice it disputes entitlement to payments from Franchisee for which it has refused to make payment, the parties shall promptly meet to attempt to resolve the dispute in good faith amongst themselves.

13.7.2. The performance bond shall provide the following conditions:

13.7.2.1. The bond shall be either (i) written on an annual term and may be extended for additional annual terms at the option of the surety or (ii) the bond shall be cancelable by the surety giving not less than sixty (60) days written notice to the County, stating therein the effective date of such termination or cancellation. Such notice shall not limit or terminate any obligations resulting from default by the Franchisee that may have accrued under this bond as a result of default by the Franchisee prior to the effective date of such termination.

13.7.2.2. Neither cancellation, nor termination nor refusal by the surety to extend this bond, nor inability of the Franchisee to file a replacement bond or replacement security for its obligations, shall constitute a loss to the County recoverable under this bond.

13.7.3. There shall be recoverable by the County from the principal and surety, any and all amounts due to the County and any and all damages, losses, costs, and expenses incurred by the County resulting from the failure of the Franchisee to comply with the material provisions of this Agreement, to comply with all orders, permits and directives of any County agency or body having jurisdiction over its acts or defaults, to pay fees, penalties or liquidated damages due to the County, or to pay any claims, taxes or liens due to the County. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

13.7.4. The total amount of the performance bond required by this Agreement shall be forfeited in favor of the County in the event:

13.7.4.1. the Franchisee abandons the Cable System at any time during the Franchise Term or any extension thereto; or

13.7.4.2. the Franchisee carries out a transfer requiring County approval as stated in Article 11 of this Agreement without obtaining County approval.

13.7.5. The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition.

13.7.6. The Franchisee shall not permit the performance bond to expire or approach less than thirty (30) days prior to expiration without securing and delivering to the County a substitute, renewal or replacement bond in conformance with the provisions of this Agreement.

13.7.7. *Reduction of Bond*: The County may approve a reduction in the amount of the bond upon written application by the Franchisee, which approval shall not be unreasonably withheld. The amount of the bond may be reduced to $250,000.00 when the Cable System has been extended to more than fifty percent (50%) of the occupied dwelling units within the Franchise Area, as certified by the Franchisee to the County, and may be further reduced to the sum of $50,000.00 when the Cable System has been extended to more than ninety percent (90%) of the occupied dwelling units within the Franchise Area, as certified by the Franchisee to the County. Reductions granted or denied upon application by the Franchisee shall be without prejudice to the Franchisee's subsequent applications or to the County's right to require the full bond at any time thereafter. Further, in the event the County approves a reduction of the Franchisee's performance bond, the County may, at any time, increase the amount of the performance bond to reflect any increased risks to the County and the public and/or require the Franchisee to provide additional sureties to any and all bonds or to replace existing bonds with new bonds that satisfy the criteria in this Article; provided, however, that any such performance bonds or additional sureties shall not exceed five hundred thousand dollars ($500,000). The County shall provide the Franchisee written notice at least sixty (60) days in advance of any such increase in the performance bond resulting from this subsection.

13.7.8. In the event the Franchisee is unable to secure a performance bond as required under this Agreement, the Franchisee shall be able to provide either a letter of credit, cashier's check, or other security acceptable to the County.

13.8. *Letter of Credit*:

13.8.1. In addition to the performance bond, the Franchisee shall provide to the County a letter of credit in the amount of $50,000 (the "Letter of Credit"), in substantially the same form as that attached hereto as Exhibit G. The Letter of Credit shall be provided by a third party agent ("Third Party Agent") approved by the County. The Franchisee shall maintain such Letter of Credit at all times throughout the term of the Agreement and for a period of one year following the expiration or termination of the Agreement.

13.8.2. If the County notifies the Franchisee of any amounts due to the County pursuant to this Agreement or applicable law, and the Franchisee does not make such payment within thirty (30) days, the County may withdraw the amount in question, with any applicable interest and penalties, from the Letter of Credit by notice to the Franchisee and the Third Party Agent specifying the amount and purpose of such withdrawal. However, if within this thirty (30) day time frame, Franchisee gives written notice it disputes entitlement to payments from Franchisee for which it has refused to make payment, the parties shall promptly meet to attempt to resolve the dispute in good faith amongst themselves.

13.8.3. If at the time of a withdrawal from the Letter of Credit by the

County, the amount available with the Third Party Agent is insufficient to provide the total payment of the claim asserted in the County's notice of withdrawal, the balance of such claim shall not be discharged or waived, but the County may continue to assert the same as an obligation of the Franchisee to the County.

13.8.4. No later than thirty (30) days after mailing of notification to the Franchisee by certified mail, return receipt requested, of a withdrawal under the Letter of Credit, the Franchisee shall restore the amount of the Letter of Credit to $50,000.

13.8.5. In the event the Third Party Agent serves notice to the County that it elects not to renew the Letter of Credit, the County may withdraw the entire amount of the Letter of Credit unless the Franchisee provides a substitute Letter of Credit, in substantially the same form as that attached hereto as Exhibit G, from a Third Party Agent approved by the County, before the effective Letter of Credit expires.

13.9. *Liquidated Damages*:

13.9.1. Because the Franchisee's failure to comply with provisions of this Agreement will result in injury to the County, and because it will be difficult to estimate the extent of such injury, the County and the Franchisee agree to the liquidated damages provided for in this Section, with such liquidated damages representing both parties' best estimate of the damages resulting from the specified violations. Such damages shall not be a substitute for actual performance by the Franchisee of a financial payment, but shall be in addition to any such actual performance. The failure of a Franchisee to hire sufficient staff or to properly train its staff shall not preclude the application of the provisions in this Section.

13.9.2. The Communications Administrator, or designee, shall have the authority to waive or reduce the liquidated damage amounts herein for good cause.

13.9.3. Cure periods listed below shall begin to run at the time the Franchisee is notified in writing of a violation by the County, unless otherwise specified below. Should the County elect to receive liquidated damages for any of the violations enumerated herein, such liquidated damages shall be the County's sole remedy for the violations occurring during the period of time to which the liquidated damages apply.

13.9.4. On an annual basis from the Effective Date, the Franchisee shall not be liable for liquidated damages that exceed fifty thousand ($50,000) (the "Liquidated Damages Cap"); provided, however, the Franchisee may pay any amount in excess of the Liquidated Damages Cap. The liquidated damages shall be assessed in the following manner:

13.9.4.1. For failure to substantially comply with requirements for PEG use of the Cable System pursuant to Sections 3.3, 6.1.1, 6.1.2, 6.1.4, 6.4, 6.5, 6.6, and 6.7.2: $1000 per day for each day compliance is delayed beyond a fourteen (14) day cure period, if the Franchisee has not undertaken substantial corrective action to cure the violation within that fourteen (14) day cure period;

13.9.4.2. For failure to provide complete and accurate information, reports, or filings lawfully required under this Agreement: $200 per day for each day that each such filing is delayed beyond a thirty (30) day cure period;

13.9.4.3. For each day during which the County determines that the Franchisee has violated customer service standards pursuant to Exhibit E, except for those standards set forth in subsections 13.9.4.4 and 13.9.4.5 below: $200 per violation, treating each failure to comply as a separate violation, following a seven (7) day cure period, except that such cure period does not apply to customer service standards that themselves provide a time to act or a specific cure period;

13.9.4.3.1. a separate violation under subsection 13.9.4.3 shall be deemed to occur whenever the County reasonably determines that a separate customer service standard violation has occurred on one day. Thus, for example, if the Franchisee fails to provide Cable Service to one subscriber for two days pursuant to Exhibit E, there would be two violations; if the Franchisee fails to keep an appointment pursuant to Exhibit E with one Subscriber on one day and on that same day, independent of the missed appointment, the Franchisee fails to disclose price terms to that same Subscriber, then there would be two violations. However, the Franchisee shall not be charged with multiple violations for a single act or event affecting a single Subscriber or for a single act or event affecting multiple Subscribers on the same day. For example, the failure of the Franchisee to send out its annual notice to multiple Subscribers would constitute a single violation.

13.9.4.4. For failure to issue an undisputed refund or credit pursuant to Exhibit E after being directed by the County to do so: $200 per violation, treating each failure to comply as a separate violation, following a seven (7) day cure period;

13.9.4.5. For failure to meet customer service standards with regard to telephone answering time, time to transfer a call to a customer service representative, or excessive busy signals: if such standards are not met according to the terms in which such standards are established in Exhibit E: $500 for each quarter in which such standards were not met if the failure was by less than 5%; $1,000 for each quarter in which such standards were not met if the failure was by 5% or more but less than 15%; and $2,000 for each quarter in which such standards were not met if the failure was by 15% or more;

13.9.4.6. For failure to render payment for Audit Fees pursuant to Section 13.1, or failure to pay capital grants or expenditures, or liquidated damages up to the Liquidated Damages Cap: $100 for each day each such payment is delayed, following a seven (7) day cure period;

13.9.4.7. For failure to file, obtain or maintain the required performance bond or other security instruments in a timely fashion: $200 per day, following a fourteen (14) day cure period; and

13.9.4.8. For violation of applicable technical standards established by the FCC or other lawful authority: $100 per day for each day the violation continues after a thirty (30) day cure period; and

13.9.4.9. For any other significant violations of this Agreement or the Communications Ordinance (if applicable): $50 per day for each violation for each day the violation is not remedied beyond a thirty (30) day cure period.