

**A CABLE FRANCHISE AGREEMENT
BETWEEN FAIRFAX COUNTY, VIRGINIA
AND COMCAST OF VIRGINIA, INC.**

Approved by the Fairfax County Board of Supervisors on _____

CABLE FRANCHISE AGREEMENT
FAIRFAX COUNTY, VIRGINIA

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**CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN FAIRFAX COUNTY, VIRGINIA
AND COMCAST OF VIRGINIA, INC.**

THIS CABLE FRANCHISE AGREEMENT (the “Franchise Agreement”) is entered into by and between Fairfax County, Virginia (“County”), and Comcast of Virginia, Inc., a Colorado Corporation (“Comcast”) as of _____ (the “Effective Date”).

WHEREAS, Comcast has asked the County to renew Comcast’s nonexclusive Franchise (the “Prior Franchise”) to own, construct, reconstruct, install, maintain, operate, dismantle, test, upgrade, repair, use, and remove a Cable System (as hereinafter defined) in the County; and

WHEREAS, the construction, installation, reconstruction, maintenance, operation, dismantling, testing, upgrade, repair, use, and removal of such a system involves the occupation of and placement of private commercial facilities along, under, over, above, through or across the Public Rights-of-Way or public land within the County; and

WHEREAS, the County has reviewed Comcast’s performance under the Prior Franchise and the quality of service during the term of the Prior Franchise, has identified the future cable-related needs and interests of the County and its citizens, has considered the financial, technical and legal qualifications of Comcast, has determined whether Comcast’s plans for constructing, operating and maintaining its Cable System are adequate, and has determined that the foregoing meet the requirements of 47 U.S.C. § 546 in a full public proceeding affording due process to all parties; and

WHEREAS, the County has relied on Comcast’s representations contained in this Franchise Agreement and has considered the information that Comcast has presented to it; and

WHEREAS, based on Comcast’s representations in this Franchise Agreement, the Board has determined that, subject to the terms and conditions set forth herein and the provisions of

Chapter 9.1 of the Code of the County of Fairfax, known as the Fairfax County Communications Ordinance (the “Communications Ordinance” or “Ordinance”), the grant of a new nonexclusive Franchise to Comcast, to supersede the Prior Franchise, is consistent with the public interest; and

WHEREAS, the County and Comcast have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the County’s grant of a new Franchise to Comcast; Comcast’s promise to provide Cable Service to residents of the County pursuant to and consistent with the Communications Ordinance; 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.

When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Unless otherwise expressly stated, words not defined herein or in the Communications Ordinance shall be given the meaning set forth in Va. Code § 15.2-2108 or, if not in conflict, Title 47 of the United States Code, as amended, and if not defined therein, their common and ordinary meaning.

(a) *Affiliate*: Any Person who owns or controls, is owned or controlled by, or is under common ownership or control with the Grantee.

(b) *Basic Cable Service*: The HSN service tier which includes the following: at least (i) all domestic television broadcast signals carried in fulfillment of the requirements of 47 U.S.C.

§§ 534 and 535 (except any signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the Grantee's Cable System); (ii) any public, educational, and governmental access programming required by the Franchise Agreement to be provided to Subscribers as basic service; and (iii) any additional video programming signals or service added to basic service by the Grantee.

(c) *Board*: The Board of Supervisors of the County of Fairfax, Virginia.

(d) *Cable Act*: Title VI of the Communications Act of 1934 (47 U.S.C. § 521, et seq.) and any amendments thereto.

(e) *Communications Ordinance*: Chapter 9.1 of the Code of the County of Fairfax.

(f) *Cable Service*: (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(g) *Cable System*: A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system

that complies with 47 U.S.C. § 573; or (E) any facilities of any electric utility used solely for operating its electric utility system.

(h) *Communications Administrator*: The present or succeeding employee of Fairfax County designated as the Cable Television Administrator or as the Communications Administrator who shall have the duties prescribed in the Communications Ordinance and as otherwise prescribed by the Board.

(i) *Channel*: A portion of the electromagnetic frequency spectrum that is used in Grantee's Cable System and that is capable of delivering a television channel as that term is defined in 47 U.S.C. § 522 as of the Effective Date of this Agreement.

(j) *County*: The County of Fairfax, Virginia.

(k) *Demarcation Point*: For purposes of the HSN, a Demarcation Point shall be as defined in 47 C.F.R. § 76.5(mm) as of the Effective Date or as subsequently amended. For purposes of the I-Net, a Demarcation Point shall have the meaning given that term in Appendix 2. For purposes of PEG upstream feeds, a Demarcation Point shall be the point at which the equipment owned by the PEG origination site operator interconnects with Grantee's wiring and electronics.

(l) *Educational Access Channel or Educational Channel*: Any Channel required by this Franchise Agreement to be designated by the Grantee for use by the County on the HSN for educational purposes.

(m) *Equitable Price*: Fair Market Value adjusted downward for the harm to the County or Subscribers, if any, resulting from the Grantee's breach of this Agreement or violation of the Communications Ordinance which resulted in the revocation of the Franchise, and as further

adjusted to account for any other equitable factors that may be considered consistent with 47 U.S.C. § 547.

(n) Fair Market Value: The price which property will bring when it is offered for sale by one who desires, but is not obligated, to sell it, and is bought by one who is under no necessity of having it.

(o) Federal Communications Commission or FCC: That Federal agency as presently constituted by the Communications Act of 1934, as amended, its designee, or any successor agency.

(p) Franchise: The franchise granted pursuant to this Agreement.

(q) Franchise Agreement or Agreement: This contract and any amendments, exhibits or appendices hereto.

(r) Franchise Area: The Reston Franchise area, as defined in Section 9.1-7-1 of the Communications Ordinance, and any area added thereto during the term of the Franchise that is served by the Grantee as of the Effective Date of this Agreement or which the Grantee agrees to serve.

(s) Franchise Fee: This term shall have the meaning given to it in Section 8(a) herein.

(t) Governmental Access Channel or Governmental Channel: Any Channel required by this Franchise Agreement to be designated by the Grantee for use by the County on the HSN for governmental purposes.

(u) Grantee: Comcast of Virginia, Inc., a Colorado corporation, and its lawful and authorized successors, assigns, and transferees.

(v) Grantee's Cable System: The Cable System of the Grantee in the County, which shall be subject to either the Prior Franchise or the Franchise, as the context requires.

(w) Gross Revenues: 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 Grantee's Cable System to provide Cable Services in the Franchise Area. Consistent with the foregoing, the following, without limitation, shall be included in Gross Revenues to the extent derived from the operation of the Grantee's 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; 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; and revenues from home shopping channels. Gross revenues shall not include any taxes on services furnished by Grantee which are imposed directly on any Subscriber or User by the Commonwealth of Virginia, the County, or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. A Franchise fee is not such a tax. Gross Revenues shall not include (i) any consideration paid by the County to the Grantee for the Institutional Network as set forth in Appendix 2 hereto, or any expense reimbursement paid by the County or its agents, or by PEG users, to the Grantee; (ii) any compensation awarded to Grantee based on the County's condemnation of property of Grantee; (iii) any uncollected receipts (i.e., "bad debt"), provided, however, that all or any part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected.

(x) Home Subscriber Network or HSN: The broadband communications network of Grantee's Cable System serving residential Subscribers in the Franchise Area. The HSN shall include all facilities and equipment provided by Grantee that are designed to provide Cable Service to residential Subscribers, including, but not limited to, converters and other terminal equipment.

(y) Institutional Network or I-Net: An institutional network constructed for the County's use which is not generally available to Subscribers and which is more specifically described in Section 7 herein.

(z) Leased Access Channel or Commercial Access Channel: Any Channel on the Grantee's Cable System designated or dedicated for use by a Person unaffiliated with the Grantee pursuant to 47 U.S.C. § 532.

(aa) Normal Operating Conditions: Those conditions that are within the control of the Grantee. Conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, weather or traffic conditions impairing construction or normal operation activities, vandalism, accidents for which Grantee is not primarily responsible, sabotage, and the action or inaction of any governmental unit. Consistent with the foregoing, conditions that are within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular or reasonably anticipatable peak or seasonal demand periods, and maintenance or upgrade of Grantee's Cable System.

(bb) Department of Cable Communications and Consumer Protection: The Fairfax County Department of Cable Communications and Consumer Protection or any successor agency that is designated by the Board to perform the functions of that Department.

(cc) PEG: Public, educational, and governmental.

(dd) Person: An individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include the County.

(ee) Public Access Channel: Any Channel required by this Franchise Agreement to be designated by the Grantee on the HSN 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.

(ff) Prior Franchise: The cable television franchise dated May 16, 1988 for the Reston Franchise area, as defined in the Communications Ordinance and accepted by Warner Cable Communications of Reston, Inc.

(gg) Public Rights-of-Way: The surface, the air space above the surface, and area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, public water or public easements, or other public way within the County, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System.

(hh) Rate Regulated Services: All services, including related equipment and installation fees, subject to rate regulation by the County pursuant to applicable federal and Virginia law.

(ii) Service Tier: A category of Cable Service or other services provided by the Grantee's Cable System consisting of one or more video programming services that are offered as a package and for which a separate rate is charged by the Grantee.

(jj) Subscriber: Any member of the general public who contracts with Grantee to receive or otherwise lawfully receives (except for resale) Grantee's Basic Service and/or any one or more of such other Cable Services as may be provided on the HSN.

(kk) 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.

(ll) Video Programming: Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

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.

3. TRANSFERS

(a) County Approval Required.

(1) The Grantee shall apply to the County for approval of any transaction in which any change is proposed with respect to ten percent (10%) or more for voting interests or twenty-five percent (25%) or more for non-voting interests of the ownership of the Grantee, the Cable System, the Cable System assets, or the Franchise by submitting FCC Form 394 or such other form as the FCC may prescribe for that purpose. The application shall be made at least one hundred twenty calendar days prior to the contemplated effective date of the transaction and provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application:

(A) All information and forms required under federal law;

(B) Any shareholder reports or filings with the Securities and Exchange Commission that pertain to the transaction;

(C) A report detailing any changes in ownership of voting or non-voting interests of over five percent;

(D) Other information necessary to provide a complete and accurate understanding of the financial position of the Cable System before and after the proposed transaction;

(E) Complete information regarding any potential impact of the transaction on Subscriber rates and service; and

(F) Any contracts that relate to the proposed transaction and, upon request by the County, all documents and information that are related or referred to therein and which are necessary to understand the proposed transaction. Should the Grantee believe that the requested information is confidential, then it must provide the following documentation to the County: (i) specific identification of the information; (ii) statement attesting to the reason(s) Grantee believes the information is confidential; and (iii) statement that the documents are available at the Grantee's Fairfax County offices for inspection by the County.

(G) To the extent consistent with federal law, the County may waive in writing any requirement that information be submitted as part of the application, without thereby waiving any rights the County may have to request such information after the application is filed.

(2) The Board may: (i) grant; (ii) grant subject to conditions directly related to the relevant concerns; (iii) deny any such transactions; or (iv) not take action, in which case the transaction shall be deemed granted pursuant to 47 U.S.C. § 537.

(A) For any transaction that the County determines constitutes an assignment of the franchise, Board action shall be expressed by ordinance.

(B) For any transaction that the County determines constitutes a significant transfer of control of the franchise, Board action shall be expressed by resolution. Significant change in control means any change in the ownership of: (i) twenty percent or more of the voting interests; or (ii) fifty percent or more of the non-voting interests.

(C) For any other transaction for which the Grantee has filed an application pursuant to this section, the Communications Administrator shall inform the Board not less than 30 days before such application would be deemed approved pursuant to 47 U.S.C. § 537.

(b) Subsequent Approvals. The approval of a transaction described in this section in one instance shall not render unnecessary approval of any subsequent transaction.

(c) Approval Does Not Constitute Waiver. Approval by the County of a transaction described in this section does not constitute a waiver or release of the rights of either the Grantee or the County under this Agreement or the Communications Ordinance, whether arising before or after the date of the transaction, nor does such approval constitute a waiver or release of the rights of the County and the public in and to the Public Rights-of-Way or public land, or a release of any police powers.

(d) Notification of Certain Transactions. Grantee will notify the County if at any time there is a mortgage or security interest granted on substantially all of the assets of Grantee's Cable System, and will provide the County with copies of all loan documents with respect to such transaction as soon as such documents become publicly available and, if such documents do not become publicly available within ten business days after loan closing, will make such documents available for inspection pursuant to Section 9(a)(1) herein within ten business days after loan closing.

4. PROVISION OF CABLE SERVICE

(a) Availability of Cable Service. The Grantee shall make Cable Service available on the HSN in accordance with the terms of this Franchise Agreement to all residences, businesses and other structures within the Franchise Area, including multiple dwelling unit buildings, whose owners or occupants request Cable Service, except for multiple dwelling unit buildings and other locations to which the Grantee cannot legally obtain access; provided, however, that Grantee may refuse to provide Cable Service (i) when it is unable pursuant to normal industry practice to obtain necessary programming, real property or other access rights, or (ii) when its prior service, payment, or theft of service history with a Person has been unfavorable, or (iii) pursuant to a written waiver by the Communications Administrator or designee.

(b) Line Extension Requirements. Service drops to residential Subscribers shall be governed by the Line Extension Policy attached hereto as Appendix 1. The line extension policy for commercial properties is based on published commercial rates for construction and installation costs.

(c) Continuity of Service.

(1) It is the right of all Subscribers in the Franchise Area to receive all available Cable Services they request from the Grantee as long as their financial and other obligations to the Grantee are satisfied; provided, however, that Grantee may refuse to provide Cable Service when (i) it is unable pursuant to normal industry practice to obtain necessary programming, real property or access rights, (ii) when its prior service, payment, or theft of service history with a Person has been unfavorable, (iii) when a commercial customer refuses to reimburse the Grantee for the cost of special construction necessary to provide service, or (iv) pursuant to written waiver by the Communications Administrator or designee.

(2) The Grantee shall operate Grantee's Cable System pursuant to this Franchise without interruption, except as otherwise provided in this Franchise Agreement. Following the expiration or revocation of its Franchise, the Grantee may, at the County's request, operate Grantee's Cable System for a temporary period (the "Transition Period") as necessary to maintain service to Subscribers, and shall cooperate with the County to assure an orderly transition from it to the County or another franchise holder.

(3) During the Transition Period, the Grantee shall not make any changes that would materially degrade the quality of services to Subscribers or purposefully decrease Gross Revenues on Cable Service other than through promotions, discounts or bundles ordinarily offered in the due course of business.

(4) The County may seek legal and/or equitable relief to enforce the provisions of this Section.

(5) The Transition Period shall be no longer than the reasonable period required to arrange for an orderly transfer of cable service to the County or to another franchise holder, unless mutually agreed to by the Grantee and the County. During the Transition Period, the Grantee and the County will continue to be obligated to comply with the terms and conditions of this Agreement and applicable laws and regulations.

(6) If the Grantee abandons Grantee's Cable System during the Franchise term, or fails to operate Grantee's Cable System in accordance with the terms of this Agreement during any Transition Period, the County, at its option, may (i) operate Grantee's Cable System; (ii) designate another entity to operate Grantee's Cable System temporarily until the Grantee restores service under conditions acceptable to the County or until the Franchise is revoked and a

new grantee selected by the County is providing service; or (iii) obtain an injunction requiring the Grantee to continue operations.

(7) The County shall be entitled to injunctive relief under the preceding paragraph if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise Agreement or the Communications Ordinance for a portion of the Franchise affecting over ten percent of the Grantee's subscribers for one week, unless the County authorizes a longer interruption of service or the failure is due to *force majeure* as characterized in Section 12 herein; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise Agreement and the Communications Ordinance for a portion of the Franchise Area affecting over ten percent of the County's residents living within the Grantee's Franchise area.

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.

6. SYSTEM FACILITIES, EQUIPMENT AND SERVICES

(a) *System Characteristics.* The HSN generally shall have at least the following characteristics:

(1) Modern design when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the Franchise term;

(2) Protection against outages due to power failures, so that back-up power is available at a minimum for at least 24 hours at each headend, and conforming to industry standards, but in no event rated for less than two hours, at each power supply site;

(3) Facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design;

(4) A system that conforms to or exceeds all applicable FCC technical performance standards, as amended from time to time, and any other technical performance standards lawfully established by the County, and that substantially conforms in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted cable industry procedures for (i) technical standards applicable to Cable Systems or (ii) guidelines for physical plant construction and maintenance applicable to Cable Systems:

(A) Occupational Safety and Health Administration (OSHA) Safety and Health Standards;

(B) National Electrical Code;

(C) National Electrical Safety Code (NESC);

(D) National Cable Television Association Standards of Good Engineering Practices;

(E) Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;

(F) Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17;

(G) County and State Utility Construction Requirements;

(H) The Uniform Statewide Building Code;

(I) Virginia Department of Transportation rules and regulations;

(J) Any common shared easement or joint trenching arrangements to which the Grantee is a party; and,

(K) The Grantee's Construction Procedures Manual.

(5) Facilities and equipment sufficient to cure violations of FCC technical standards and to ensure that Grantee's Cable System remains in compliance with the standards specified in paragraph (4);

(6) Such facilities and equipment as necessary to maintain, operate, and evaluate Grantee's Cable System to comply with FCC technical standards, as such standards may be amended from time to time;

(7) Status monitoring capability in new equipment obtained after the Effective Date to monitor the cable system's performance, including signal level and distortion parameters, and, among other things, alert the Grantee when and where back-up power supplies are being used, which capability shall be activated and used, provided that, if the Grantee can demonstrate that such activation or use would be technically or economically infeasible, the County will waive the requirement of such activation or use until it is technically and economically feasible;

(8) All facilities and equipment designed to be capable of continuous twenty-four hour daily operation in accordance with FCC standards except as caused by *a force majeure* condition;

(9) All facilities and equipment designed, built and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by a subscriber;

(10) All facilities and equipment designed, built and operated in such a manner as to protect the safety of Grantee's Cable System workers and the public;

(11) Sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable the Grantee to substantially comply with applicable law, including applicable customer service requirements and including requirements for responding to system outages;

(12) All facilities and equipment required to properly test the system and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve system problems;

(13) Design capable of interconnecting with other broadband communications networks (including but not limited to wireless systems) as set forth in Section 6(e) of this Agreement;

(14) Antenna supporting structures (towers) designed in accordance with the Virginia Uniform Statewide Building Code, as amended, painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the Federal Communications Commission, and all other applicable codes and regulations;

(15) Facilities and equipment at the headend allowing the Grantee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted on the HSN shall include the closed-captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning;

(16) Grantee shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Grantee's Cable Service. Such a system will

at a minimum offer as an option that a Person ordering programming must provide a personal identification number provided by the Grantee only to a Subscriber. Provided, however, that the Grantee 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.

(b) *Current System.* The Grantee is authorized and required to operate Grantee's existing Institutional Network, and to provide service substantially equivalent to its existing service, within its Franchise Area as of the Effective Date of this Agreement, until such time as the Institutional Network is upgraded, as provided herein.

(c) *Integration of Advancements in Technology.* During the franchise term, the Grantee shall maintain and improve its existing facilities in accordance with accepted cable industry practices.

(d) *Leased Access Channels.* The Grantee shall provide leased access channels as required by federal law.

(e) *Interconnection.*

(1) The Grantee shall design Grantee's Cable System so that it is capable of interconnecting with other broadband communications networks (including but not limited to wireless systems) at suitable locations as determined by the Grantee. Interconnection capabilities shall be provided for the exchange of all PEG signals designated in Section 7 herein carried on the HSN. Interconnection of systems may be made by direct cable connection, microwave link, satellite or other appropriate methods.

(2) At the request of the Communications Administrator, the Grantee shall, to the extent permitted by applicable law and its contractual obligations to third parties, use every reasonable effort to negotiate an interconnection agreement with any other franchised Cable

System in Fairfax County for the PEG channels on the HSN. Grantee shall continue to interconnect with the Cable System in the North and South County franchise areas.

(3) Grantee will interconnect the I-Net with the institutional network of the franchised Cable System in the North and South County franchise areas as long as there is such a North and South County institutional network. Any County I-Net connections to other broadband networks will be the County's sole responsibility and done at the County's expense, but the Grantee will assist in any such effort as reasonably requested.

(4) The Grantee shall notify the County prior to any interconnection of Grantee's Cable System with other broadband communications networks.

(5) The Grantee shall in good faith cooperate with the County in implementing interconnection of PEG Cable Service with communications systems beyond the boundaries of the County.

(f) Emergency Alert System.

(1) The Grantee shall install and thereafter maintain for use by the County an Emergency Alert System ("EAS").

(2) This EAS shall at all times be operated in compliance with FCC requirements. Subject to the foregoing, the EAS shall be remotely activated by telephone and shall allow a representative of the County to override the audio and video on all channels on the Grantee's Cable System that may lawfully be overridden (subject to any contractual or other rights of local broadcasters) without the assistance of the Grantee, for emergency broadcasts from a location designated by the County in the event of a civil emergency or for reasonable tests.

(3) The County will provide reasonable notice to the Grantee prior to any test use of the EAS. The Grantee shall cooperate with the County in any such test to the maximum extent feasible.

(g) *Uses of System.* Grantee will notify the County of all products and services offered over the Grantee's Cable System as promptly as practicable after each such product or service is instituted.

(h) *Home Wiring.* Grantee shall comply with all applicable FCC requirements, including any notice requirements, with respect to home wiring. Prior to a customer's termination of Cable Service, the Grantee will not restrict the ability of a Subscriber to remove, replace, rearrange or maintain any cable wiring located within the interior space of the Subscriber's dwelling unit, so long as such actions are consistent with FCC standards. The Grantee may require a reasonable indemnity and release of liability in favor of the Grantee from a Subscriber for wiring that is installed by such Subscriber.

(i) *Periodic Performance Evaluation.* The County may schedule periodic review sessions to evaluate the performance of the Grantee. The Grantee shall cooperate with the County in any such evaluation to the maximum extent feasible.

(j) *Customer Service Standards and Consumer Protection.* This Section sets forth the minimum customer service standards that the Grantee must satisfy. In addition, the Grantee shall at all times satisfy any additional or stricter minimum requirements established by applicable federal, state, or local law or regulation, as the same may be amended from time to time, including, without limitation, consumer protection laws.

(1) The Grantee shall comply with the customer service standards set forth in 47 C.F.R. §§ 76.309(c), 76.1602, 76.1603, and 76.1619, as such standards may be amended from time to time.

(2) The Grantee shall employ an operator or maintain a telephone answering device twenty-four hours per day, each day of the year, to receive Subscriber complaints.

(3) The Grantee shall maintain a location within the Franchise Area that shall be open and accessible to the public to make payments, pick up or drop off equipment, and make inquiries during normal business hours.

(4) The Grantee shall establish maintenance service capable of promptly locating and correcting system malfunctions. Said maintenance service shall respond at all hours to correct system malfunctions affecting one or more percent of the Grantee's total number of Subscribers.

(5) The Grantee shall maintain a publicly-listed, local toll-free telephone number that shall be available to Subscribers to request service calls, twenty-four hours per day, each day of the year. Under Normal Operating Conditions, corrective action shall be initiated by the Grantee not later than the next business day after a service call is received, and corrective action shall be completed as promptly as practicable. Appropriate records shall be made of service calls, showing when and what corrective action was completed.

(6) The Grantee shall arrange for pickup and/or replacement of converters or other Grantee equipment at the Subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer) if requested by a mobility-limited customer.

(7) In the event that Grantee fails to provide service to Subscribers for more than 24 hours, the Grantee shall provide the affected Subscribers with a pro rata credit or rebate of the Subscriber's fees paid or payable, upon request by a Subscriber.

(8) The Grantee shall maintain a public file containing all notices provided to Subscribers under these customer service standards. The notices shall be placed promptly in the public file and maintained for at least one year from the date of the notice.

(9) The Grantee shall establish a clear procedure for resolving complaints filed by Subscribers. Complaints may be made orally or in writing, at the complainant's option.

(10) The Grantee shall provide an initial response to a complaint within five days of its receipt and a final written response within thirty days after a written complaint is received. The final written response shall include a notice stating that if the complaint has not been resolved to the complainant's satisfaction, the matter may be referred to the Communications Administrator.

(11) The customer service standards set forth herein shall be in addition to the rights and remedies provided by the Virginia Consumer Protection Act of 1977, as amended.

(k) Tenth-Year Anniversary Review.

(1) The provisions of this Section 6(k) shall not apply if, at the time of the review as specified in Section 6(k)(3) or at any time subsequent to such review, the Grantee is subject to effective competition as defined in 47 U.S.C. § 543(l).

(2) As used in this Section 6(k), the term Economically and Technically Feasible and Viable shall mean Cable Services capable of being provided: (i) through technology which has been demonstrated in actual applications (not simply through tests or experiments) to operate in a workable manner; and (ii) in a manner which has a reasonable likelihood of generating acceptable returns on investment for the Grantee's Cable System over the remaining term of the

Franchise that are at a rate that is in no event less than the overall rate of return then earned by Grantee's Cable System.

(3) To the extent authorized pursuant to this Section 6(k), the County may conduct a service review (the "Review") that shall commence not earlier than the 10th anniversary of the Effective Date of this Franchise Agreement. The sole purpose of such Review shall be to ascertain whether the Cable Services offered by Grantee or proposed to be offered by Grantee during the remaining term of the Franchise conform with Cable Services generally available on Cable Systems in communities substantially similar to the County.

(4) The Review conducted by the County pursuant to this section shall be confined solely to a review of the Cable Services generally available in substantially similar communities on the home subscriber network of the Cable Systems of such communities. Based upon the County's evaluation of cable related needs and interests of Fairfax County residents and the County's assessment that it is Economically and Technically Feasible and Viable for the Grantee to satisfy such needs and interests, the County shall issue a determination specifying with particularity (i) the Cable Services that Grantee is not then providing or has not proposed to provide within a reasonable time frame, and (ii) the basis for the County's determination that it is Economically and Technically Feasible and Viable for the Grantee to provide the Cable Services specified, but it shall not include any determination with respect to the specific transmission technology the Grantee must use to provide the Cable Services or the content of such Cable Services. Grantee shall reasonably cooperate with the County in conducting the Review.

(5) Upon receipt of the County's written report of its initial determinations, Grantee shall submit a response within 120 days. Such response shall identify which Cable Services specified in the County's initial review report are Economically and Technically Feasible

and Viable for Grantee to provide, including any changes in technology that Grantee deems necessary to support such Cable Services and any plans or timetables for the implementation of any such Cable Services. Such response shall further identify any Cable Services specified in the County's report that Grantee determines are not Economically and Technically Feasible and Viable for Grantee to provide.

(6) To the extent that Grantee and County are in agreement with respect to all of the Cable Services specified in the County's report on its initial determinations, the Grantee and County shall amend this Franchise Agreement as required to reflect the provision of such Cable Services.

(7) If, after receiving Grantee's response, the County determines to seek amendment to the Franchise to encompass one or more Cable Services that Grantee determines are not Economically and Technically Feasible and Viable for Grantee to provide, the County shall commence an administrative proceeding to determine whether the Cable Services which the County desires the Grantee to provide, but the Grantee is not willing to provide as requested, are in fact necessary to meet the cable-related needs and interests of the County's residents and are Economically and Technically Feasible and Viable for the Grantee to provide.

(8) Any such proceeding shall be public, shall be conducted upon adequate notice to Grantee, and the Grantee and the County shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues of cable-related needs and interests of the County's resident and whether the Cable Services requested are Economically and Technically Feasible and Viable), to require the production of evidence, and to question witnesses. A transcript shall be made of the proceeding.

(9) At the completion of the proceeding, the County shall issue a written order (the “Review Assessment Order”) specifying (i) each additional Cable Service that the County deems appropriate to meet the cable related needs and interests of Fairfax County residents, (ii) the reasons why the provision of each Cable Service specified in (i) is Economically and Technically Feasible and Viable, and (iii) the extent to which each such Cable Service is being provided by any other multi-channel video programming distributor then serving subscribers in the County. Such written order shall be based upon the record of the administrative proceeding and shall state the reasons for its decision.

(10) Upon receipt of the County’s Review Assessment Order, Grantee shall have the following options: (i) Grantee may agree to comply with the Review Assessment Order, in which event the parties shall amend this Franchise Agreement accordingly; (ii) Grantee may accept such Review Assessment Order under protest and seek relief from all or any part of such Review Assessment Order pursuant to 47 U.S.C. § 545(b), and in that event, any timetables or construction schedules specified in the Review Assessment Order shall be deemed tolled until the issuance of a determination on the merits of a petition filed by Grantee pursuant to Section 545(b) by the Court of original jurisdiction and any appeals taken therefrom; or (iii) if, after the passage of 120 days after its receipt of the Review Assessment Order, Grantee has not exercised either option (i) or (ii) above, then the County may notify the Grantee that the County wishes to commence proceedings to renew the Franchise, and such action shall be deemed to be a request by the Grantee to commence renewal proceedings pursuant to 47 U.S.C. § 546, in which event the Franchise term will be deemed to expire 36 months from the date of such notice.

(11) If Grantee accepts the Review Assessment Order or otherwise agrees to provide additional Cable Services, the term of this Franchise Agreement shall be extended for such

additional period of years (commencing with the normal expiration date of this Franchise Agreement) as the parties shall mutually agree, but in no event less than five years.

7. CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

(a) Access Channels.

(1) Grantee will make available to the County up to eighteen PEG channels in the aggregate for use by the County for PEG programming, at channel locations selected by the Grantee. Grantee reserves the right to utilize for its own purposes any portion of such channels not utilized for PEG purposes.

(2) The Grantee shall make available to all Subscribers residing within Fairfax County in those areas where Grantee has authority to provide service at least the following video Channels for public, educational and governmental use:

- (A) Public access: 2 analog and 1 digital
- (B) Fairfax County Public Schools: 3
- (C) George Mason University: 1
- (D) Northern Virginia Community College: 1
- (E) County governmental access: 2

County governmental access channels shall be allocated to specific uses or agencies by the County.

(F) Reston community/public access: 1

(G) Reserved for educational and/or governmental access use as allocated by County: 3

(3) In addition to the 14 PEG channels listed above, the Grantee shall reserve 4 additional channels for potential future educational and/or governmental use in the event that the Grantee's basic service tier is migrated from analog to digital transmissions.

(4) The Board may activate any of the educational and/or governmental access channels to the extent authorized by this subsection. The process for Board consideration shall include, but not be limited to, the following:

(A) The educational or governmental entity shall submit to the Communications Administrator and the Grantee its request to activate one of the channels reserved for allocation by the County in 7(a)(2)(G) ("Channel Request"). The Channel Request shall include: (i) documentation of community need(s) to be served by the requestor on the requested channel, including, but not limited to, programming and hours of operation; (ii) documentation demonstrating that the programming content and hours of use cannot be supported by another channel provided by the Channel Request applicant or, in the case of higher educational access, by another channel designated for such use; (iii) documentation that the Channel Request applicant's current PEG channel(s) carry at least 70 hours per week of Qualified Programming during 16 consecutive weeks that occur between September 1 and June 30; (v) documentation that the requesting entity has the financial, legal, and technical abilities to provide programming, facilities, and equipment to support the Channel Request; and, (vi) any other information the Communications Administrator deems necessary for the Board's consideration of the Channel Request.

(B) The Communications Administrator shall forward to the Board the completed Channel Request and a recommendation for Board action.

(C) Board consideration of the Channel Request shall include a public hearing that provides the opportunity for the Grantee and other interested parties to address the Board.

(D) The Board may direct the Grantee to activate one of the reserved channels identified in 7(a)(2)(G), based on the information provided pursuant to this section and the public interest served, by serving written notice of its decision to the Grantee and the entity originating the Channel Request. The Grantee's activation of such channel shall be implemented within 180 days of County's written notice, unless otherwise delayed by the County. Selection of the channel to be activated shall be made by the Grantee.

(5) The Board may place in reserve, for use by the Grantee, any of the educational and/or governmental access channels to the extent authorized by this subsection. The process for Board consideration shall include, but not be limited to, the following:

(A) The Grantee shall submit to the Communications Administrator and the affected channel User its request for the Board to place in reserve, for use by the Grantee, one of the educational and/or governmental access channels. The Grantee's Request shall include: (i) identifying the affected User and its channel assignment; and (ii) documentation that the User's current channel provides less than 15 hours per week of Qualified Programming during 16 consecutive weeks that occur between September 1 and June 30; and, (iii) any other information the Communications Administrator deems necessary for the Board's consideration of the Grantee's Request.

(B) The Communications Administrator shall forward to the Board the completed Grantee Request and a recommendation for Board action.

(C) Board consideration of the Grantee Request shall include the opportunity for the affected User and other interested parties to address the Board.

(D) The Board may direct the affected User to vacate its previously assigned channel and direct the Grantee to place the affected User channel in the reserved channels identified in 7(a)(2)(G), based on the information provided pursuant to this section and the public interest served, by serving written notice of its decision to the affected User and the Grantee. The affected User shall vacate its previously assigned channel within 180 days of County's written notice, unless otherwise delayed by the County.

(6) The Board shall consider each Channel Request or Grantee Request on its own merits and independent of any other such requests made pursuant to 7(a)(4) or 7(a)(5).

(7) "Qualified Programming" as used in Section 7(a) generally means programming that:

(A) Relates to meeting the educational and/or governmental needs and interests of Fairfax County cable television subscribers, regardless of the producer or point of origin and that;

(B) Is repeated no more than four times during the 16 week period; and,

(C) Does not include bulletin board, text-based material that is broadcast and non-interactive.

(8) To fulfill its obligation to transmit a public access channel on the Grantee's digital tier as set forth in Section 7(a)(2)(A), the Grantee shall provide any services, facilities, equipment and support necessary to convert that analog public access channel to the format necessary for transmission on the Grantee's digital tier.

(9) The Grantee shall have an obligation to provide playback, training, outreach, administrative support and production assistance to public access Users, which obligation shall be discharged so long as Grantee complies with either A or B below.

(A) Grantee continues to operate the Reston Channel, which Grantee currently operates as a hybrid of community and public access, substantially as it does on the Effective Date hereof.

(B) After May 1, 2010, either the Grantee or the County may elect to have the Grantee fulfill its obligations under this Section 7(a)(9) by completing the following: (i) make the Reston channel available as a Public Access Channel to such public access management entity as the County may designate for operation of the channel; (ii) convey to such public access management entity or the County all production and transmission equipment then in use by the Reston Channel and all master copies of programming produced for the Reston Channel; and (iii) provide an additional grant (as set forth in Section 7(c)(2)) to such public access management entity or to the County. The party that elects to have Grantee fulfill its public access obligation under this Section 7(a)(9)(B) shall give at least six months notice of the election, unless both parties agree to shorter notice.

(10) Except as otherwise provided herein, each PEG Channel shall be transmitted in a format so that every Subscriber can receive and display the PEG signals using the same subscriber-owned receiving equipment that is used for other Basic Service Channels.

(11) If the Grantee makes changes to Grantee's Cable System that require improvements to PEG access facilities and equipment, Grantee shall provide any necessary additional headend and distribution facilities or equipment within thirty days so that PEG facilities and equipment may be used as intended with respect to the eighteen PEG channels specified in

Section 7(a)(2) including, among other things, so that live and taped programming can be cablecast efficiently to Subscribers.

(b) Access Channel Assignment.

(1) Each PEG Channel shall be delivered over the HSN with transmission quality the same as or better than the transmission quality of any other Channel on Basic Cable Service, provided that Grantee shall not be responsible for any deficiencies in the source signal it receives from any PEG access provider over which the Grantee has no control.

(2) The Grantee shall minimize the number of changes in access channel assignments. In the event the Grantee elects to change an access channel assignment, it shall (i) give the access channel programmer ninety days' notice of such change, and (ii) provide, free of charge, public announcements of such change that shall include (A) to the extent Grantee has advertising availability, advertising such PEG channel change on its local advertising inserts for up to two minutes per day in prime time for the thirty days prior to such change, and (B) providing prominent prior notice of such change in at least two of the Grantee's monthly cable television service Subscriber billings.

(c) Capital Grants and Expenditures for Access Facilities.

(1) The Grantee shall provide to the County a PEG capital grant in the amount of \$.25 per Basic Service subscriber per month for the first five (5) years of the term hereof; \$.30 per Basic Service subscriber per month for the second five (5) years of the term hereof; and \$.35 per Basic Service subscriber for the remaining years of the term hereof.

(2) Should either the County or the Grantee elect to discontinue the Grantee's operation of the Reston Channel as a public access channel at any time after May 1, 2010, then beginning with the first calendar quarter following such discontinuation, Grantee shall increase the

amount specified in (c)(1) by \$.21 per Basic Service subscriber per month for the remainder of the term hereof.

(3) The amounts specified in (c)(1) and (2) shall be paid to the County (or such other entity as the County may designate) on a quarterly basis with such payments being made no later than thirty days following the end of each quarter.

(4) If the Grantee and the County disagree at any time as to the amounts due under this subsection (c), the Grantee shall continue paying the specified grants in the amounts paid in the last undisputed payment during the period of any such dispute, provided, however, that the County shall return any such amounts paid to the County that are later determined to be in excess of the correct amounts.

(5) Not later than six months after the Effective Date, Grantee agrees to undertake appropriate capital improvements to the studio facility it uses for the Reston Channel in an amount not less than \$150,000.

(6) In support of the PEG channels carried on Grantee's Cable System, the Grantee will provide airtime on its system to inform Subscribers about the PEG channels and programming. Grantee will make available to the County or its PEG designees 1,200 thirty-second advertising spots per month to run cross-channel on Grantee's Cable System on a space-available basis throughout all day parts, 6 AM to midnight, on any of the programming networks on which Grantee inserts ads. The County's spots are subject to preemption by paid advertisements, with Grantee obligated to make good on any preempted spots. Except for make goods, the 1,200 spots do not carry over from month to month. The County and its PEG designees shall provide the completed PEG channel advertisements to Grantee in Beta or digital format, or such other format as may be agreed by the parties, for insertion on Grantee's Cable System. On a quarterly basis,

the Grantee shall provide the County with affidavits which verify the time, date and channel of the insertions made during the quarter. Should the Grantee provide the increased support specified in Section 7(c)(2), then Grantee's obligation under this paragraph shall be reduced from 1,200 thirty-second spots per month to 612 thirty-second advertising spots per month.

(d) Use of PEG Channels, Facilities and Equipment.

(1) The County, or the entity that manages a PEG Channel, shall be able to establish and enforce rules and procedures for use of the PEG Channels pursuant to Section 611(d) of the Cable Act, 47 U.S.C. § 531(d). The County shall resolve any disputes among PEG users regarding allocation of PEG Channels.

(2) The Grantee will provide headend and distribution facilities for downstream transmission of the PEG Channels on the HSN, with respect to the up to eighteen PEG channels specified in Section 7(a), at no charge to the County or other PEG access programmers.

(3) The County or its licensees, assigns, or agents shall not transmit on public, educational or governmental access channels commercial programming or commercial advertisements to the extent that they would constitute competition with the Grantee for such commercial programming or commercial advertisements, subject to the following:

(A) For purposes of this subsection, "commercial programming or commercial advertisements" shall mean programming or advertisements for which the County receives payment from a third party (a party other than the County or the Grantee), but shall not include announcements indicating that programming is underwritten by a commercial entity, such as the underwriting announcements typically displayed by the Public Broadcasting System.

(B) For purposes of this subsection, "the County" shall be deemed to include the Fairfax County Public Schools.

(e) *Cable Drops and Outlets for Government Facilities.*

(1) The Grantee will provide the following, at no charge, at each fire station, public school, police station, public library, and such buildings used for government or educational purposes as may be designated by the County; provided, however, that if it is necessary to extend the Grantee's trunk or feeder lines more than three hundred feet solely to provide service to any such school or public building, the County shall have the option of paying the Grantee's direct costs for such extension in excess of three hundred feet itself, or of releasing the Grantee from or postponing the Grantee's obligation to provide service to such building:

(A) The first service drop of the HSN, for each such site where a drop is not already installed;

(B) One HSN Subscriber converter per site if needed to receive the service; and

(C) Basic Service and Cable Programming Service.

(2) Grantee shall deliver all HSN signals to each such HSN drop in buildings to which service is provided on the Effective Date at the same power level provided there on the Effective Date or better. Grantee shall deliver all HSN signals to each such HSN drop in buildings to which service is provided after the Effective Date at 15 dBmV or better, measured at the Demarcation Point, for each building at which the County advises the Grantee it will use two or more converters.

(3) The County shall be responsible for the cost of any "terminal equipment," including TV monitors, VCRs, and/or computers.

(4) The cost of inside wiring, additional drops or outlets and additional converters requested by the County within these specified facilities, including those drops or outlets in excess of those currently installed, are the responsibility of the County. If the County

requests the Grantee to provide such services or equipment, the County will pay the Grantee for those costs.

(5) If the County makes a request to the Grantee in writing, the Grantee shall rewire buildings, move drops or entrance links, and make other changes to installations of inside wiring. The County will be responsible for the cost of all such work, and the County will pay the Grantee for its direct cost plus ten percent to offset the Grantee's project administration.

(6) Subject to the limitations set forth in this subsection 7(e), whenever necessary, or dictated by changes in the Grantee's technology, the Grantee shall upgrade all equipment provided at Grantee's expense pursuant to this subsection 7(e), in order to ensure that the County can continue to receive the services offered by the Grantee to the County pursuant to this Franchise Agreement.

(f) *Editorial Control.* Except as expressly permitted by federal law, the Grantee shall not exercise any editorial control over the content of programming on the Public, Educational and Governmental Access Channels (except for such programming as the Grantee may cablecast on such Channels).

(g) *Carriage of PEG Programming.* All PEG programming shall be carried on the Grantee's Basic Service tier, except as otherwise agreed upon.

(h) *Institutional Network.*

(1) The Grantee shall construct the I-Net System Upgrade linking public, educational and governmental facilities in the Franchise Area and an interconnect with the grantee of the North and South franchise areas (the "Institutional Network" or "Network" or "I-Net"), in accordance with the conditions set forth in Appendix 2 and this Franchise Agreement. The Grantee shall pay one-half of the actual cost of construction of the I-Net System Upgrade and shall pay for

the full amount of any construction described in Appendix 2 that exceeds \$1,600,000. The County shall pay one-half of the actual cost of construction of the I-Net System Upgrade or \$800,000, whichever ever is less, and shall pay for the full amount of any increase in the actual cost of construction of the I-Net System Upgrade caused solely by changes requested by the County. Any changes requested by the County shall be in writing and authorized by the Communications Administrator, or designee.

(2) The Grantee shall assist the County in the County's migration from the current institutional network to the I-Net System Upgrade as reflected in Appendix 2.

(3) The Grantee shall continue to maintain and operate the existing Institutional Network as it exists as of the Effective Date of this Agreement until the County switches all its current institutional network operations to the I-Net pursuant to Appendix 2. The County shall switch such operations to the I-Net pursuant to Appendix 2 by two years after the completion of construction of the I-Net System Upgrade.

(i) *Costs and Payments Not Franchise Fees.* Grantee agrees that the capital grants and other support provided pursuant to this Section 7 do not constitute franchise fee payments within the meaning of 47 U.S.C. § 542, but may be passed through to Subscribers as a separate line item on their monthly bills pursuant to 47 U.S.C. § 622(c)(2).

8. FRANCHISE FEE

(a) *Payment to County.* Each year during the Franchise term, as compensation for use of Public Rights-of-Way and public land, the Grantee shall pay to the County, on a quarterly basis, a Franchise Fee of five percent of Gross Revenues. Such payments shall be made no later than thirty days following the end of each quarter.

(b) *Supporting Information.* Each Franchise Fee payment shall be submitted with supporting detail and a statement certified by the Grantee's chief financial officer or an independent certified public accountant, reflecting the total amount of monthly Gross Revenues for the payment period. The County shall have the right to reasonably require further supporting information.

(c) *Late Payments.* In the event any Franchise Fee payment due and owing is not made on or before the required date, the Grantee shall pay any applicable penalties and interest charges computed from such due date, as provided for in the Communications Ordinance.

(d) *Audit.*

(1) The County shall have the right to inspect books and records and to audit and recompute any amounts determined to be payable under this Agreement, whether the records are held by the Grantee, an Affiliate, or any other agent of Grantee.

(2) The Grantee shall be responsible for making available to the County all records necessary to confirm the accurate payment of Franchise fees, without regard to by whom they are held. Such records shall be made available pursuant to the requirements of Section 9(a) herein. The Grantee shall maintain such records in accordance with its normal record retention policy, which the Grantee shall provide to the County upon execution of this Agreement and shall update whenever Grantee changes that policy over the course of the Franchise term.

(3) The County's audit expenses shall be borne by the County unless the audit discloses an underpayment of more than three percent of any quarterly payment, in which case the County's out-of-pocket costs of the audit shall be borne by the Grantee 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 days following written notice to the Grantee by the County

of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid to the County, interest will be due pursuant to Section 8(c).

(4) The County shall have three years from the time the Grantee delivers a Franchise Fee payment to question that payment, and if the County fails to question the payment within that time period, the County shall be barred from questioning it after that time period. If the County gives written notice to the Grantee 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.

(e) No Limitation on Taxing Authority.

(1) Nothing in this Agreement shall be construed to limit any authority of the County to impose any tax, fee, or assessment of general applicability.

(2) The Franchise Fee payments required by this section shall be in addition to any and all taxes or other fees or charges of a general nature which the Grantee shall be required to pay to the County or to any state or federal agency or authority, as required herein or by law, all of which shall be separate and distinct obligations of the Grantee. The Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said Franchise Fee payments from or against any of said County taxes or other fees or charges which the Grantee is required to pay to the County, except as required by law or provided for in this Franchise Agreement. The Grantee shall not apply nor seek to apply all or any part of the amount of said Franchise Fee payments as a deduction or other credit from or against any of said County taxes or other fees or charges, each of which shall be deemed to be separate and distinct obligations of Grantee. Nor shall the Grantee apply or seek to apply all or any part of the amount of any of said

taxes or other fees or charges as a deduction or other credit from or against any of its Franchise obligations, each of which shall be deemed to be separate and distinct obligations of the Grantee. Notwithstanding the above provisions of this paragraph, however, the Grantee shall have the right to a credit, in the amount of its Franchise Fee and PEG capital grant payments under this Agreement, against any general utility tax on Cable Services that may be imposed by the County, to the extent such a tax is applicable to the Grantee or its subscribers. The Grantee may designate Franchise Fee(s) as a separate item in any bill to a Subscriber of the Grantee's Cable System, but shall not designate or characterize it as a tax.

(f) *No Accord and Satisfaction.* The acceptance of any payment required hereunder by the County shall not be construed as an acknowledgment or an accord and satisfaction that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release or waiver of any claim which the County may have for additional sums due and payable. However, the County's acceptance of full payment of the amount determined to be due by the County through an audit shall be construed as an accord and satisfaction.

9. REPORTS AND RECORDS

(a) Books and Records.

(1) Subject to applicable law, the County shall have the right to inspect and copy at any time during normal business hours at the Grantee's office, or at another mutually agreed location, all books and records, including all documents in whatever form maintained, including electronic media ("books and records") to the extent that such books and records relate to Grantee's Cable System or to the Grantee's provision of Cable Service. The County shall take reasonable steps to protect the proprietary and confidential nature of any such documents to the extent they are designated as such by the Grantee. The County shall have the right to copy any

such books and records, except to the extent that such books and records are proprietary and/or confidential pursuant to the Virginia Uniform Trade Secrets Act or other applicable law.

(2) The Grantee shall keep complete and accurate books of account and records of its business and operations under and in connection with this Franchise Agreement.

(3) Unless otherwise provided in this Section, all materials and information specified in this Section shall be maintained for a period of five years.

(4) The Grantee shall at all times maintain:

(A) Complete and accurate books of account and records of its business and operations under and in connection with this Franchise Agreement. At a minimum, the Grantee's financial books and records shall be maintained in accordance with generally accepted accounting principles, and shall identify:

(i) gross revenues, by service category;

(ii) operating expenses, at whatever operating level such records are kept, categorized by general and administrative expenses, technical expenses, programming expenses, and overhead, if any;

(iii) capital expenditures, including capitalized interest and overhead, if any; and

(iv) depreciation expenses, by category, at whatever operating level records thereof are kept.

(B) Records of all written complaints received. The term "complaints" as used herein and throughout this Franchise Agreement refers to complaints about any aspect of the Cable system or the Grantee's operations, including, without limitation, complaints about employee courtesy. Complaints recorded may not be limited to complaints requiring an employee service call.

(C) A full and complete set of plans, records, and “as built” maps showing the exact location of all system equipment installed or in use in the County, exclusive of Subscriber service drops.

(D) Records of outages, indicating date, estimated duration, estimated area, and the estimated number of Subscribers affected, type of outage, and cause.

(E) Records of service calls for repair and maintenance indicating the date and time service was requested, 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 solved.

(F) Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

(G) A general plan and schedule for construction of its Cable system available to the public upon request.

(H) Copies of all promotional offers made in writing to potential or current Subscribers.

(5) The County may require additional information, records, and documents from time to time.

(6) The Grantee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations.

(7) The Grantee shall maintain accurate maps and improvement plans which show the location, size and a general description of all facilities installed in the public ways and

any power supply sources, including voltages and connections. Maps shall be based on post-construction inspection to verify location.

(8) The Grantee shall take all reasonable steps required to ensure that it is able to provide the County with all information that must be provided or may be requested under this Franchise Agreement or applicable law, including the issuance of appropriate subscriber privacy notices. The Grantee shall be responsible for redacting any data that applicable law prevents it from providing to the County. Nothing in this Section shall be read to require the Grantee to violate federal or state law protecting subscriber privacy.

(9) If any books, records, maps, plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then the Grantee may request that the inspection take place at a location mutually agreed to by the County and the Grantee, provided that (i) the Grantee must make necessary arrangements for copying documents selected by the County after its review; and (ii) the Grantee must pay all travel and additional copying expenses incurred by the County (above those that would have been incurred had the documents been produced in the County) in inspecting those documents or having those documents inspected by its designee.

(10) The County shall take reasonable steps to protect the proprietary and confidential nature of any books, records, maps, plans, or other County-requested documents that are provided pursuant to this Franchise Agreement to the extent they are designated as such by the Grantee.

(11) The Communications Administrator may, for good cause shown, waive the reporting provisions in this Section.

(b) Communication with Regulatory Agencies.

(1) The Grantee shall file with the County a copy of certain communications with regulatory agencies, as follows:

(A) Any document (other than routine, publicly available agency mailings or publications) the Grantee files with or receives from the FCC, the Securities and Exchange Commission, or the Virginia State Corporation Commission, or any successor agency of any of these agencies, that relates to its Cable System and/or the provision of Cable Services under Chapter 9.1 or this Agreement, within five working days of such filing or receipt;

(B) Any document the Grantee files with or receives from other agencies, upon the County's request;

(C) Any document that any parent of the Grantee files with or receives from any agency that directly and materially relates to the Grantee's Cable System and/or the provision of Cable Services under this Agreement, within five working days of such filing or receipt.

(2) For purposes of this subsection 9(b), documents filed by the Grantee or a parent shall include all documents filed by or on behalf of the Grantee or its parent, but shall not include documents filed by trade associations to which the Grantee or its parent may belong unless the Grantee or a parent has authorized the use of its name by such trade association among the filing parties and its name is used.

(3) To the extent that such documents contain, to the satisfaction of the Communications Administrator, the information required by other reports hereunder, the Communications Administrator may suspend the requirement to file such other reports with the County so as to avoid duplication and the administrative costs attendant thereto.

(c) Annual Report. Unless this requirement is waived in whole or in part by the County, no later than April 30th of each year during the term of this Agreement, the Grantee shall

submit a written report to the County, in a form reasonably satisfactory to the County, which shall include:

(1) A summary of the previous calendar year's activities in development of Grantee's Cable System, including but not limited to descriptions of services begun or dropped;

(2) A summary of complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions, as such records are kept by the Grantee. Where the Grantee has identified recurrent Cable System problems, the nature of any such problems and the corrective measures taken or to be taken shall be identified;

(3) A copy of the Grantee's rules, regulations and policies available to Subscribers of Grantee's Cable system, including but not limited to (i) all Subscriber rates, fees and charges; (ii) copies of the Grantee's contract or application forms for Cable Services; and (iii) a detailed summary of the Grantee's policies concerning the processing of Subscriber complaints; delinquent Subscriber disconnect and reconnect policies; Subscriber privacy and any other terms and conditions adopted by the Grantee in connection with the provision of Cable Service to Subscribers;

(4) A statement of Gross Revenues for the previous calendar or fiscal year, certified by the Grantee's chief financial officer, including a year-end balance sheet; an income statement showing Subscriber revenue and every material category of non-Subscriber revenue; operating expenses by category, at whatever operating level such records are kept; and taxes paid to the County;

(5) A list of Persons, including all entities controlling such Persons, holding five percent or more of the voting stock or interests of Grantee, or its parents, or Grantee's subsidiaries, if any;

(6) A list of officers and members of the Board of Directors of Grantee and its parents and Grantee's subsidiaries, if any, or similar officers if the Grantee is not a corporation;

(7) A copy of any annual reports issued by Grantee, its parents or partners and subsidiaries; and

(8) At least annually, a detailed copy of updated maps for the I-Net depicting the location of all I-Net plant, showing areas served and locations of all I-Net fiber lines, trunk lines and feeder lines in the County, and including changes in all such items for the period covered by the report.

(d) Quarterly Report. Unless this requirement is waived in whole or in part by the County, no later than thirty days after the end of each calendar quarter during the term of this Agreement, the Grantee shall submit a written report to the County, in a form reasonably satisfactory to the County, which shall include:

(1) A report showing the number of service calls received by type during that quarter, including any property damage to the extent such information is available to the Grantee, and any line extension requests received during that quarter;

(2) A report showing the number of outages for that quarter, and identifying separately each planned outage of one or more nodes for more than one hour at a time, the time it occurred, its duration, and the map area (using the most recent edition of the ADC map or its equivalent, as specified by the County) and, when available to the Grantee, number of homes affected; and, when the Grantee can reasonably determine that at least 500 homes were affected, each unplanned outage affecting more than 500 homes for more than one hour, the time it occurred, the reason for the disruption and its causes, its estimated duration and the tax map area and, when available to the Grantee, the number of homes affected; and

(3) A report showing the Grantee's performance with respect to all applicable customer service standards established in 47 C.F.R. §76.309(c) this Franchise Agreement, and the Communications Ordinance, signed by an officer or employee certifying its performance with these customer service standards. If the Grantee is unable to certify full compliance for any calendar quarter, it must indicate in its filing each standard with which it is in compliance and in noncompliance, the dates of noncompliance, the reason for the noncompliance and a remedial plan. The Grantee's failure to file a compliance certificate or noncompliance statement as required herein shall subject the Grantee to the liquidated damages established in this Agreement or the penalty specified for violation of customer service standards in Chapter 9.1. The Grantee shall keep such records as are reasonably required to enable the County to determine whether the Grantee is substantially complying with all such customer service standards, and shall maintain adequate procedures to demonstrate substantial compliance.

(e) Special Reports. Unless this requirement is waived in whole or in part by the County, the Grantee shall deliver the following special reports to the County:

(1) During the course of any construction project undertaken during the term of this Agreement, including a rebuild or upgrade, that lasts longer than 30 days, the Grantee shall submit monthly construction reports and shall either submit weekly status reports or meet weekly with the County until such construction is complete. The Grantee shall provide the County, free of charge, twenty-four hour/seven day a week remote read-only access to the Grantee's as-built system design maps (which the County may print by section, but not in their entirety), including any physical connections and software necessary to provide such access, subject to the County's signing any requisite software license agreement;

(2) The Grantee must submit a copy and full explanation of any notice of deficiency, forfeiture, or other document relating to the Grantee issued by any state or federal agency if such notice or other document would require Securities and Exchange Commission Form 8(k) disclosure or would require footnote disclosure in the annual financial statements of the Grantee or a parent. This material shall be submitted in accordance with the deadlines specified by the Communications Administrator;

(3) The Grantee must submit a copy and brief explanation of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Grantee or by any partnership or corporation that owns or controls the Grantee directly or indirectly. This material shall be submitted in accordance with the deadlines specified by the Communications Administrator;

(4) The Grantee shall summarize the results of any annual opinion surveys it conducts in its annual report, or, if the Grantee considers such results to be proprietary, shall make such results available at its offices for the County's review.

(f) Additional Information. The County may, upon reasonable written notice, require such additional information with respect to the reports to be submitted pursuant to this Franchise Agreement as may be reasonably necessary for the performance of any of the Communications Administrator's or any other County official's duties.

10. INSURANCE, SURETY, AND INDEMNIFICATION

(a) Insurance Required.

(1) The Grantee shall maintain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the County and the Grantee:

(i) commercial general liability insurance with respect to the construction, operation, and maintenance of Grantee's Cable System, and the conduct of the Grantee's business in the County, in the minimum amounts of \$2,000,000 per occurrence; \$2,000,000 aggregate for each occurrence; and (ii) copyright infringement insurance in the minimum amount of \$2,000,000 for copyright infringement occasioned by the operation of Grantee's Cable System.

(2) Such commercial general liability insurance must include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

(3) The County may review these amounts and shall have the right to require reasonable adjustments to them consistent with the public interest.

(4) The Grantee shall be solely responsible for the payment of premiums due for each policy of insurance required pursuant to this Agreement and the Communications Ordinance.

(b) Endorsements. All insurance policies and certificates maintained pursuant to this Agreement shall contain the following endorsement:

It is hereby understood and agreed that this insurance coverage may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until at least 30 days after receipt by the County Communications Administrator, by registered mail, of a written notice of such intention to cancel or not to renew.

(c) *Qualifications of Insurers.* All insurance policies shall be with insurers qualified to do business in the Commonwealth of Virginia, with a rating of at least A-:VII by Best's Key Rating Guide, Property/Casualty Edition.

(d) *Policies Available for Review.* All insurance policies shall be available for review by the County, and the Grantee shall submit to the County certificates of insurance for each policy required herein.

(e) *Additional Insureds; Prior Notice of Policy Modification.* All commercial general liability insurance policies shall name the County, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees as additional insureds.

(f) *Indemnification.*

(1) The Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the County, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of: (i) the construction, maintenance, or operation of Grantee's Cable System (to the extent that Grantee has operation or maintenance responsibilities pursuant to this Agreement or applicable law); (ii) copyright infringements or a failure by the Grantee to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by Grantee's Cable System (other than PEG content or I-Net content); (iii) the conduct of the Grantee's business in the County; or, (iv) in any way arising out of the Grantee's enjoyment or exercise of the Franchise, unless such specific act or omission has been authorized by the County or is the result of any act or omission by the County or its elected and appointed officers, boards, commissions, commissioners, agents, or employees which results in personal injury or property damage. A general statement of

authorization pursuant to the Communications Ordinance or this Agreement shall not be construed to be such an authorization.

(2) Specifically, the Grantee shall fully indemnify, defend, and hold harmless the County, and in their capacity as such, the elected and appointed officials, officers, agents, commissions, commissioners, boards and employees thereof, from and against any and all claims, suits, actions, liability, and judgments, whether for damages or otherwise, subject to 47 U.S.C. § 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of Grantee's Cable System, including but not limited to any claim against the Grantee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or corporation. This indemnity does not apply to programming carried on any Channel set aside for PEG use, or Channels leased pursuant to 47 U.S.C. § 532, or any content on the I-Net, or to operations of the PEG Channels or the I-Net to the extent such operations are carried out by a person other than the Grantee or its agents.

(3) In the event that Grantee fails, after notice, to undertake the County's defense of any claims brought pursuant to subsections (1) and (2) above, Grantee's indemnification shall include, but is not limited to, the County's reasonable attorneys' fees incurred in defending against any such action, claim, suit, or proceeding, any interest charges arising from any action, claim, suit or proceeding arising under this Agreement or the Communications Ordinance, the County's out-of-pocket expenses, and the reasonable value of any services rendered by the County.

(g) *No Limit of Liability.* Neither the provisions of this Section nor any damages recovered by the County shall be construed to limit the liability of the Grantee or its subcontractors for damages under the Franchise Agreement or the Communications Ordinance or to excuse the

faithful performance of obligations required by this Franchise Agreement, except to the extent that any monetary damages suffered by the County have been satisfied by a financial recovery under this section or other provisions of this Franchise Agreement or the Communications Ordinance.

(h) *County to Assume No Liability.* The County shall at no time be liable for any injury or damage occurring to any Person or property from any acts or omissions of Grantee in the construction, maintenance, use, operation or condition of Grantee's Cable System, to the extent that Grantee has responsibilities for such maintenance, use, operation or condition pursuant to this Agreement or applicable law. It is a condition of this Agreement that the County shall not and does not by reason of this Agreement assume any liability whatsoever of the Grantee for injury to Persons or damage to property.

11. PERFORMANCE GUARANTEES AND REMEDIES

(a) Performance Bond.

(1) Grantee shall obtain and maintain during the entire term of the Franchise, and any renewal or extensions thereof a non-cancelable performance bond in the County's favor in the amount of \$500,000, to ensure the Grantee's faithful performance of its obligations. The County may, at its sole discretion, reduce the amount of the bond upon written application by the Grantee. Reductions granted or denied upon application by the Grantee shall not be unreasonably withheld and be without prejudice to the Grantee's subsequent applications or to the County's right to require the full bond at any time thereafter. However, no application for a reduction of bond shall be submitted by the Grantee within one year of any prior application. In no event shall such performance bond or bonds be reduced to less than Fifty Thousand Dollars.

(2) The performance bond shall provide the following conditions:

(A) 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 suffered or incurred by the County resulting from the failure of the Grantee to faithfully comply with the material provisions of this Agreement, the Communications Ordinance, and other applicable law, 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 the County. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

(B) The total amount of the performance bond required by this Agreement shall be forfeited in favor of the County in the event:

(i) the Grantee abandons Grantee's Cable System at any time during the term of its Franchise or any extension thereto; or

(ii) the Grantee carries out a transaction described in Section 3 of this Agreement without County approval.

(3) 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; shall be in a form satisfactory to the County Attorney; shall be subject to the approval of the County; and shall contain the following endorsement:

This bond may not be allowed to lapse until at least ninety days after receipt by the County, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent not to renew.

(4) All performance bonds and insurance policies required herein shall be in a form satisfactory to the County. The County may, at any time, increase the amount of the required performance bond to reflect increased risks to the County and the public and/or require the Grantee to provide additional sureties to any and all bonds or to replace existing bonds with new bonds that satisfy the criteria in this Section. No bond or insurance policy shall be cancelable. Insurance policies written for a period less than the term of a Franchise shall be renewed at least thirty days before the policy's expiration, and the renewed policies and evidence of premium payments shall be promptly delivered to the County.

(5) No Grantee shall permit any insurance policy or performance bond to expire or approach less than thirty days prior to expiration without securing and delivering to the County a substitute, renewal or replacement policy or bond in conformance with the provisions of this Agreement and Chapter 9.1.

(6) Right to Require Additional or Other Bonds. The County shall have the right, at any time that it reasonably deems itself insecure, to require that any bond be replaced by such other bond as the County may reasonably require, notwithstanding the fact that the County may have indicated its acceptance or approval of any bond(s) submitted with this Agreement.

(7) The County may require performance bonds and insurance policies described in this Section to run to the benefit of the County.

(b) Letter of Credit.

(1) In addition to the performance bond, the Grantee 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 Appendix 4. The Letter of Credit shall be provided by a third party agent ("Third Party Agent") approved by the County. The Grantee shall maintain such Letter of Credit

at all times throughout the term of the Franchise Agreement and for a period of one year following the expiration or termination of the Franchise Agreement.

(A) If the County notifies the Grantee of any amounts due to the County pursuant to this Agreement or applicable law, and the Grantee does not make such payment within ten business days, the County may withdraw the amount in question, with any applicable interest and penalties, from the Letter of Credit by notice to the Grantee and the Third Party Agent specifying the amount and purpose of such withdrawal. However, if the Grantee files a legal action disputing the County's claim, the ten-business-day notice period shall be tolled as to that claim until the claim is resolved by order of the trial court.

(B) 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 Grantee to the County.

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

(D) 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 Grantee provides a substitute Letter of Credit, in substantially the same form as that attached hereto as Appendix 4, from a Third Party Agent approved by the County, before the effective Letter of Credit expires.

(c) *Rights Cumulative.* The rights reserved to the County in this Section 11 are in addition to all other rights of the County, whether reserved herein or authorized by applicable law, and no action, proceeding or exercise of a right with respect to a performance bond or the Letter of Credit shall affect any other right the County may have. Neither the making of the Letter of Credit, nor the receipt of any damages recovered by the County thereunder, shall be construed to excuse the faithful performance by the Grantee or limit the liability of the Grantee under the terms of its Franchise for damages, either to the full amount of the Letter of Credit or otherwise; provided, however, that the amount of any damages recovered by the County through the Letter of Credit shall be offset against any damages otherwise recoverable by the County.

(d) *Remedies.* In addition to any other remedies available at law or equity, the County may revoke the Franchise for a material violation as set forth in Section 12(1)(2) of this Agreement pursuant to the procedures specified in this Agreement.

(e) *Liquidated Damages.* Because the Grantee's failure to comply with provisions of the Franchise and this Franchise 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 Grantee agree to the following liquidated damages to be effective during the term of the Franchise for the following violations of the Franchise and of this Agreement, which represent both parties' best estimate of the damages resulting from the specified violation. Such damages shall not be a substitute for actual performance by the Grantee of a financial payment, but shall be in addition to any such actual performance. The failure of the Grantee to hire sufficient staff or to properly train its staff shall not preclude the application of the provisions in this Section. The Communications Administrator, or designee, shall have the authority to waive or reduce the liquidated damage amounts herein for good cause. Cure periods listed below shall begin to run at the time the Grantee 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.

(1) For failure to complete construction and installation of a system in accordance with this Franchise Agreement: \$200 per day for each day the construction or installation is delayed beyond a thirty day cure period if the system is at least 95% complete but less than 100% complete; \$500 per day for each day the construction or installation is delayed beyond a thirty day cure period if the system is at least 85% complete but less than 95% complete; and \$1,000 per day for each day the construction or installation is delayed beyond a thirty day cure period if the system is less than 85% complete;

(2) For failure to comply with requirements of Section 7(a) for PEG use of the system: \$200 per day for each day compliance is delayed beyond a fourteen day cure period;

(3) For failure to provide complete and accurate information, reports, or filings lawfully required under this Franchise Agreement or applicable law or by the County: \$200 per day for each day that each such filing is delayed beyond a thirty day cure period;

(4) For each day during which the County determines that the Grantee has violated customer service standards pursuant to Section 6(j), except for those standards set forth in Subsections 5 and 6 below: \$200 per violation, treating each failure to comply as a separate violation, following a 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;

(5) For failure to issue refunds or credits pursuant to 47 C.F.R. § 76.309(c)(3): \$200 per violation, treating each failure to comply as a separate violation, following a 7 day cure period;

(6) 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 47 C.F.R. § 76.309(c)(1)(ii) and 76.309(c)(1)(iv), as such standards may be amended from time to time: \$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;

(7) For failure to render payment for reimbursement of any franchise expenses, or failure to pay capital grants or expenditures, or liquidated damages: \$100 for each day each such payment is delayed, following written notification by the County;

(8) 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 day cure period;

(9) For failure to bring into compliance any violation of construction standards specified in Section 5(b) within the appropriate time periods as specified in Section 5(c)(9) of this Agreement: \$200 per violation;

(10) For violation of technical standards established by the FCC or other lawful authority: \$100 per day for each day the violation continues after a thirty-day cure period after the County gives the Grantee notice of such violation;

(11) For failure to restore damaged property: \$50 per day for each day such property is not replaced beyond a ten day cure period, in addition to the cost of the restoration as required in the Communications Ordinance or this Franchise Agreement;

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

(f) Revocation or Termination of Franchise

(1) Upon completion of the term of any Franchise granted under this Agreement, if a new, extended, or renewed Franchise is not granted to the Grantee by the County, the Grantee's right to occupy the Public Rights-of-Way and public land shall terminate, subject to applicable federal law.

(2) The County shall have the right to revoke the Franchise for the Grantee's material violation of this Agreement pursuant to Section 12(1)(2).

(3) To revoke the franchise, the County shall give the Grantee written notice of the default in its performance. If within sixty calendar days following such written notice from the County to the Grantee, or such other period as this Franchise Agreement shall require or the Grantee and the County shall agree, the Grantee has not taken corrective action to the reasonable satisfaction of the County, the County may give written notice to the Grantee of its intent to revoke the Franchise, stating its reasons; provided that no opportunity to cure shall be provided where the Grantee is shown to have defrauded or attempted to defraud the County or its Subscribers in connection with this Agreement or Cable Service in any way that has a material adverse effect on Grantee's provision of Cable Services pursuant to this Agreement.

(4) Prior to revoking the Franchise, the County shall hold a public hearing, after providing thirty days' written notice to the Grantee, specifying its reasons for revoking the Franchise, at which time the Grantee and the public shall be given an opportunity to be heard. Following the public hearing, the County may determine whether 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 Grantee to effect any cure. If the County 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 transmitted to the Grantee.

(5) If the County revokes the Franchise, or if for any other reason the Grantee terminates the Franchise, the following procedures and rights are effective:

(A) The County may require the former Grantee to remove its facilities and equipment located in the Public Rights-of-Way or on public land at the former Grantee's expense and to restore such affected sites as required in Section 5(b)(9) or permit the former Grantee to abandon such facilities in place, subject to the provisions of Section 5(b)(14). If the former Grantee fails to remove its facilities within a reasonable period of time after the County orders it to do so, and such removal is necessary to make room for other facilities or to remove potential safety hazards as required by sound engineering practices, then the County may have the removal performed at the former Grantee's and/or surety's expense.

(B) The County may require the former Grantee to continue operating Grantee's Cable System as specified in Section 4(c).

(C) In the event of revocation, the County, in accordance with state law, may acquire ownership of or effect a transfer of Grantee's Cable System at an Equitable Price.

(g) Condemnation. This Franchise Agreement shall not limit any authority of the County in accordance with state law to condemn, in whole or in part, the Franchise and/or any other property of the Grantee, provided that the Grantee shall receive whatever condemnation award the Grantee would normally be entitled to recover as a matter of state law. Partial condemnation of the Grantee's Franchise or property shall not terminate this Agreement except in accordance with the terms of this Agreement.

12. MISCELLANEOUS PROVISIONS

(a) *Binding Acceptance.* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

(b) *Severability.* If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. If the terms of this Agreement are materially altered due to changes in governing law, then the parties shall negotiate in good faith to reconstitute this Agreement in a form that, to the maximum extent possible, is consistent with the original intent of Grantee and the County and preserves the benefits bargained for by each party.

(c) *Preemption.* In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then 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 that any provision of this Agreement is preempted or enforcement limited by any such provision of federal or state law, then the parties shall negotiate in good faith to

reconstitute this Agreement in a form that, to the maximum extent possible, is consistent with the original intent of the Grantee and the County and preserves the benefits bargained for by each party. Finally, 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 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 County.

(d) Equal Treatment.

(1) The Grantee acknowledges and agrees that the County reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area. In the event an application for a new cable television franchise is filed with the County proposing to serve the Franchise Area, in whole or in part, the County shall provide a copy of the application and any proposed franchise agreement to the Grantee by registered or certified mail or via nationally recognized overnight courier service not later than 30 days before the Board of Supervisors conducts a public hearing on the application.

(2) If the County grants a competitive franchise which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise Agreement, the Grantee may notify the Communications Administrator that it wishes to renegotiate certain specified provisions of the Franchise Agreement. Within 30 days after the Grantee provides such notice, both parties must begin to negotiate in good faith, and either party to this Franchise Agreement may request changes to amend this Agreement so that neither the Grantee's Franchise Agreement nor that of the competitor contains terms that are more favorable or less burdensome than the other. For purposes of this section, the franchises must be viewed as

a whole, not on a provision-by-provision basis, and the franchises must be compared with due regard for the circumstances existing at the time each franchise was granted.

(3) If a governmental entity other than the County grants a competitive franchise which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise Agreement, the Grantee may notify the Communications Administrator that it wishes to renegotiate certain specified provisions of the Franchise Agreement. Within 60 days after Grantee provides such notice, both parties must begin to negotiate in good faith, and either party to this Franchise Agreement may request changes to amend this Agreement so that neither the Grantee's Franchise Agreement nor that of the competitor contains terms that are more favorable or less burdensome than the other. For purposes of this section, the franchises must be viewed as a whole, not on a provision-by-provision basis, and the franchises must be compared with due regard for the circumstances existing at the time each franchise was granted. However, if the County initiates litigation challenging the issuance by the other governmental authority of such competitive franchise within 60 days of such issuance, then any such negotiations shall be postponed until after the litigation is concluded, either through withdrawal of the County's complaint or after a final decision is rendered and the time for appeal has expired, whichever is sooner.

(e) *Compliance With Applicable Laws.* The Grantee shall, at all times during the term of this Franchise Agreement, including any extensions thereof, substantially comply with all applicable and material federal, state, and local laws and regulations.

(f) *Force Majeure.* Notwithstanding any other provision of this Agreement, the Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due, directly or indirectly, 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 Grantee is not primarily responsible, fire, flood or other act of God, sabotage or other events to the extent that such causes or other events are beyond the reasonable control of the Grantee. In the event that any such delay in performance or failure to perform affects only part of the Grantee's capacity to perform, the Grantee shall perform to the maximum extent it is able to perform and shall take all reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible.

(g) *Governing Law.* This Franchise Agreement shall be governed in all respects by the law of the Commonwealth of Virginia.

(h) *Notices.* Unless otherwise provided by applicable law or this Agreement, all notices or other written communications required to be given to the County under any provision of this Agreement or the Fairfax County Code shall be deemed served when regularly mailed, postage prepaid or delivered by hand in writing to the Communications Administrator. All notices or written communications required to be given to the Grantee under any provision of this Agreement or the Fairfax County Code shall be deemed served when regularly mailed, postage prepaid or delivered by hand in writing to the Grantee at the Grantee's last known address, to the attention of its President, or to such other Persons or addresses as Grantee may subsequently specify by notice.

(i) *Time of Essence.* In determining whether a party has complied with this Franchise Agreement, the parties agree that time is of the essence.

(j) *Captions and Headings.* The captions and headings of sections set forth herein are intended solely to facilitate reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

(k) *Modifications.* This Franchise Agreement shall not be changed, modified or amended, in whole or in part, unless the Grantee obtains modifications as provided in 47 U.S.C. §545 or the Grantee and the County agree to modifications and an appropriate written instrument is executed by the County and the Grantee.

(l) *Rights and Remedies.*

(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.

(2) The following violations by the Grantee of this Agreement are material for purposes of Section 11(f)(2):

(A) Transfer without approval pursuant to Section 3(a)(2), or failure to notify pursuant to Section 3(d);

(B) Repeated or persistent failure to satisfy line extension requirements pursuant to Section 4(b);

(C) Repeated or persistent failure to provide Cable Service as specified in Section 4(c)(7)(A);

(D) Repeated or persistent failure to satisfy construction standards pursuant to Section 5;

(E) Failure to construct not less than 95% of the I-Net by the time established for Delivery in Appendix 2;

- (F) Repeated or persistent failure to meet FCC technical standards;
- (G) Failure to maintain the Emergency Alert System pursuant to Section 6(f) in the event of an emergency;
- (H) Repeated or persistent failure to provide PEG capital grants pursuant to Section 7(c);
- (I) Repeated or persistent failure to provide PEG facilities or equipment pursuant to Section 7(a);
- (J) Repeated or persistent failure to provide PEG facilities or equipment pursuant to Section 7(d);
- (K) Repeated or persistent failure to provide PEG facilities or equipment pursuant to Section 7(e);
- (L) Repeated or persistent failure to provide I-Net facilities or equipment pursuant to Section 7(h) and Appendix 2;
- (M) Repeated or persistent failure to pay Franchise fees pursuant to Section 8;
- (N) Repeated or persistent failure to meet reports and records requirements in a timely manner pursuant to Section 9;
- (O) Repeated or persistent failure to satisfy insurance requirements pursuant to Section 10(a);
- (P) Repeated or persistent failure to maintain a bond or Letter of Credit pursuant to Section 11;
- (Q) Repeated or persistent violation of consumer protection requirements pursuant to applicable law;

(R) Repeated or persistent violation of Subscriber privacy requirements pursuant to 47 U.S.C. § 551 or other applicable law;

(S) Repeated or persistent discrimination among Subscribers in violation of applicable law.

(m) *Obligations to Continue Throughout Term.* Unless specifically designated otherwise, all of the Grantee's obligations under this Agreement and the Franchise shall continue throughout the entire term specified in Section 2(c) or any extension hereof

(n) *Cooperation in Obtaining and Implementing Grants.* The Grantee and the County agree to cooperate fully with each other in applying for or implementing any federal or state grants or other funds to be applied to the Grantee's Cable System.

(o) *Prohibition Against Discrimination.* The Grantee shall adhere to the Equal Employment Opportunity regulations of the FCC and to all federal, state and local laws, and executive orders pertaining to discrimination, equal employment opportunity and affirmative action that are applicable to the Grantee.

(p) *Connections to the Cable System; Use of Antennas.*

(1) To the extent consistent with federal law, Subscribers shall have the right to attach devices to the Grantee's Cable System to allow them to transmit signals or service to video cassette recorders, receivers and other terminal equipment, and to use their own remote control devices and converters, and other similar equipment, so long as such devices do not interfere with the operation of Grantee's Cable System, or the reception of any cable Subscriber, nor serve to circumvent the Grantee's security procedures, nor for any purpose to obtain services illegally. The Grantee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the Grantee's Cable System.

(2) The Grantee shall not, as a condition of providing Cable Service, require a Subscriber to remove any existing antenna or disconnect an antenna, or prohibit or discourage a Subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable codes and technically able to shield Grantee's Cable System from any interference.

(q) *Parties Bear Their Own Costs.* Unless otherwise expressly provided in this Agreement, all acts that the Grantee is required to perform must be performed at the Grantee's own expense and all acts that the County is required to perform must be performed at the County's own expense.

(r) *Rights of Third Parties.* Nothing herein shall be construed to give any Person other than the Grantee or the County a right to assert any claim or cause of action against the Grantee or the County, its employees, elected or appointed officials, officers, commissions, commissioners, boards or agents, except an entity that has been designated by the County pursuant to Section 7(c)(3).

(s) *Appendices.* The appendices to this Agreement (the "Appendices"), attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in such Appendices, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Appendices shall be the same as those applicable to any amendment or modification hereof, except as specified in such Appendices or elsewhere in this Agreement.

(t) *Entire Agreement.* This Agreement embodies the entire understanding and agreement of the County and the Grantee with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written,

between the County and the Grantee with respect to the subject matter hereof, including, without limitation, any and all written or oral statement or representations by any official, employee, agent, attorney, consultant, or independent contractor of the County or the Grantee.

(u) *Limits on Grantee's recourse.* Except as expressly provided in this Franchise Agreement or the County Code, the Grantee shall have no financial recourse against the County for any loss, expense or damage resulting from the terms and conditions of this Agreement or the County Code, or because of the County's enforcement thereof, nor the County's failure to have the authority to grant the Franchise. The Grantee expressly agrees upon its acceptance of a Franchise that it does so relying upon its own investigation and understanding of the power and authority of the County to grant the Franchise.

IN WITNESS WHEREOF, the parties have set their hands and seals on the date first above written.

THE BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

BY: Chairman, Board of Supervisors

BY: County Executive

GRANTEE: COMCAST OF VIRGINIA, INC., a Colorado Corporation

BY:

Title: