

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

April 20, 2009

CALL TO PODIUM:

Tony Tomasello,
Assistant City Manager

RESPONSIBLE STAFF:

Tony Tomasello,
Assistant City Manager

Lynn Board,
City Attorney

AGENDA ITEM:
(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input checked="" type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	4-06-09
Advertised	
Hearing Date	4-20-09
Record Held Open	5-01-09
Policy Discussion	

TITLE:
An Ordinance to Award a Cable Franchise to Verizon Maryland, Inc., Pursuant to Section 6-4 of the City Code

SUPPORTING BACKGROUND:
<p>The City Code provides that a cable system may not be installed or operated in the City without obtaining a cable franchise from the Council. Verizon Maryland, Inc. has requested that the City award a franchise to it in accordance with the terms and conditions of the attached Cable Franchise Agreement.</p> <p>The proposed Cable Franchise Agreement with Verizon grants a cable franchise on a nonexclusive basis as required by Section 6-4 of the City Code and is similar to the existing cable franchise approved by the City in terms of costs and services.</p>

DESIRED OUTCOME:
Conduct public hearing and hold record open until May 1, 2009.

NOTICE OF PUBLIC HEARING

The Mayor and City Council of the City of Gaithersburg will hold a public hearing on:

**MONDAY, APRIL 20, 2009
AT 7:30 P.M.**

or as soon thereafter as it can be heard in the Council Chambers at City Hall, 31 South Summit Avenue, Gaithersburg, Maryland on the following:

AN ORDINANCE TO AWARD A CABLE FRANCHISE TO VERIZON MARYLAND, INC., PURSUANT TO SECTION 6-4 OF THE CITY CODE.

Further information may be obtained from the City Managers Office, 31 South Summit Avenue between the hours of 8 a.m. and 5 p.m., Monday through Friday.

Angel L. Jones
City Manager

MC 41039

(4-10-09)

CABLE FRANCHISE AGREEMENT
BETWEEN
THE CITY OF GAITHERSBURG, MARYLAND
AND
VERIZON MARYLAND INC.

DATED: _____, 2009

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between THE CITY OF GAITHERSBURG, a municipal corporation of the State of Maryland (the "Local Franchising Authority" or "LFA"), and Verizon Maryland Inc., a corporation duly organized under the applicable laws of the State of Maryland (the "Franchisee").

WHEREAS, the LFA wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area (as hereinafter defined) designated in this Franchise;

WHEREAS, the LFA is a "franchising authority" in accordance with Title VI of the Communications Act (see 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to Article 23A §2(b)(13) of the Annotated Code of Maryland, as amended;

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the State of Maryland and by the LFA;

WHEREAS, the FTTP Network occupies and will occupy the Public Rights-of-Way within the LFA, and Franchisee desires to use portions of the FTTP Network, once installed, to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee's plans for its Cable System are adequate, in a full public proceeding affording due process to all parties;

WHEREAS, the LFA has found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the LFA has determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, the LFA and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the LFA's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise Area/Service Area of the LFA pursuant to and consistent with the Communications Act (as hereinafter defined), pursuant to 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**

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1 *Access Channel*: A video Channel, which Franchisee shall make available to the LFA without charge for non-commercial public, educational, or governmental use for the transmission of video programming as directed by the LFA.

1.2 *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Franchisee.

1.3 *Basic Service*: Any service tier, which includes the retransmission of local television broadcast signals as well as any PEG Access Channels required by this Franchisee.

1.4 *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6).

1.5 *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), meaning Franchisee's 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 the Service Area. The portion of the FTTP Network used for the Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity to the extent that is used for the transmission of Cable Services directly to Subscribers within the Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or that are used for Information Services.

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

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

1.8 *Control*: The ability to exercise de facto or de jure control over day-to-day policies and operations or the management of Franchisee's affairs.

1.9 *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.10 *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility (other than Franchisee) including condemnation,

accidents for which Franchisee is not primarily responsible, fire, flood, or other act of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.11 *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA and such additional areas as may be included in the corporate (territorial) limits of the LFA by annexation during the term of this Franchise.

1.12 *Franchisee*: Verizon Maryland Inc., and its lawful and permitted successors, assigns and transferees.

1.13 *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee from the operation of the Cable System to provide Cable Service in the Service Area. Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts, including revenue for: (i) Basic Service, other service tiers, pay per view services and video on demand, expanded services and premium services; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; cable franchise fee and FCC regulatory fee pass throughs to Subscribers paid by Subscribers to Franchisee; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; and (iv) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, subject to the exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

1.13.1 Notwithstanding the foregoing, Gross Revenue shall not include:

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

1.13.3 Bad debts written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.13.4 Refunds, rebates or discounts made to Subscribers or other third parties;

1.13.5 Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law, including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders;

1.13.6 Any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, except for that portion of such revenue which is paid to Franchisee as a commission or a fee for cablecasting such programming;

1.13.7 The sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable franchise fees from purchaser's customer;

1.13.8 Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees);

1.13.9 Any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise; provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue;

1.13.10 Sales of capital assets or sales of surplus equipment;

1.13.11 Program launch fees;

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

1.13.13 Any fees or charges collected from Subscribers or other third parties for any PEG or INET grant payments.

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

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

1.16 *Local Franchise Authority (LFA)*: The City of Gaithersburg or the lawful successor, transferee, or assignee thereof.

1.17 *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services and Telecommunications Services.

1.18 *Normal Business Hours*: Those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.19 *Normal Operating Conditions*: Those service conditions which are within the control of Franchisee. Those conditions which are not within the control of Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. See 47 C.F.R. § 76.309(c)(4)(ii).

1.20 *PEG*: Public, educational, and governmental.

1.21 *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.22 *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the LFA. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other non-wire communications or broadcast services.

1.23 *Service Area*: All of the areas within the Franchise Area as of the Effective Date. To the extent that the Franchise Area is expanded due to annexation, the Service Area shall include those portions of the annexed area for which Franchisee's FTTP Network facilities are deployed and in which the Franchisee's FTTP Network has been activated to provide Cable Service.

1.24 *Service Date*: The date that Franchisee first makes Cable Service available on a commercial basis directly to multiple Subscribers in the Franchise Area. Franchisee shall memorialize the Service Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise.

1.25 *Service Interruption*: The loss of picture or sound on one or more cable channels.

1.26 *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

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

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

1.29 *Title II*: Title II of the Communications Act, Common Carriers, as amended.

1.30 *Title VI*: Title VI of the Communications Act, Cable Communications, as amended.

1.31 *Transfer*:

1.31.1 Any transaction in which:

1.31.1.1 Control of Franchisee is transferred whether by a transfer or a grant of an ownership interest or any other interest in Franchisee, directly or indirectly, from one Person or group of Persons to another Person or group of Persons; or

1.31.1.2 the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

1.31.2 However, notwithstanding Subsection 1.31.1 above, a Transfer shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of Franchisee; or any action which is the result of a merger of another Affiliate of Franchisee.

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

2. **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1 *Grant of Authority*: Subject to the terms and conditions of this Agreement, the Communications Act, the LFA hereby grants Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, for the purpose of providing Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2 *LFA's Regulatory Authority*: Franchisee is a Title II common carrier with authority to construct, own, operate and maintain Telecommunications Facilities and to provide Telecommunications Services pursuant to Communications Act and the laws of the State of Maryland. The parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities for the provision of Non-Cable Services. The jurisdiction of the LFA over such Telecommunications Facilities is restricted by federal and state law, and the LFA does not assert jurisdiction over Franchisee's FTTP Network in contravention of those limitations. Therefore, as provided in Section 621 of the Communications Act, 47 U.S.C. §541, the LFA's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance or operation of Franchisee's FTTP Network to the extent

the FTTP Network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending Franchisee's existing Telecommunications Facilities for the provision of Non-Cable Services. This Agreement shall not be construed to limit whatever regulatory authority the LFA may have under state and local law with respect to the FTTP Network facilities as Telecommunications Facilities.

2.3 *Term:* This Franchise shall become effective on _____, 2009 (the "Effective Date"). The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked or terminated as provided herein.

2.4 *Grant Not Exclusive:* The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the LFA reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not by their terms reduce or detract from the authority as granted under this Franchise.

2.5 *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

2.6 *No Waiver:*

2.6.1 The failure of the LFA on one or more occasions to exercise a right or to require compliance or performance under this Agreement, the Communications Act or any other applicable federal or state law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the LFA, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.6.2 The failure of Franchisee on one or more occasions to exercise a right under this Agreement or applicable law, or to require performance under this Agreement, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse the LFA from performance, unless such right or performance has been specifically waived in writing.

2.7 *Construction of Agreement:*

2.7.1 The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.7.2 Nothing herein shall be construed to limit the scope or applicability of Section 625 of the Communications Act, 47 U.S.C. § 545.

2.7.3 Should any change to state law have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modifications shall be in a writing signed by the parties. If the parties

cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.8 *Police Powers:* Nothing in this Agreement shall be construed to prohibit the reasonable, necessary and lawful exercise of LFA's police powers. However, if the reasonable necessary and lawful exercise of LFA's police power results in any material alteration of the terms and conditions of this Agreement, then the parties shall modify this Agreement to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modifications shall be in a writing signed by the parties. If the parties cannot reach agreement on the above-referenced modification to this Agreement, then, in addition to all other legal and equitable remedies, Franchisee may terminate this Agreement without further obligation to the LFA, or, at Franchisee's option, the parties agree to submit the matter of modifications to this Agreement to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

3. PROVISION OF CABLE SERVICE

3.1 *Service Area:* Franchisee shall offer Cable Service to (i) significant numbers of Subscribers in residential areas of the Service Area and may make Cable Service available to businesses in the Service Area, within three (3) years of the Service Date, and (ii) all residential areas of the Service Area within four (4) years of the Service Date, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in areas, developments or buildings where Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; (F) in areas, developments or buildings where Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density and other requirements set forth in Section 3.2 and 3.3.

3.2 *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than 25 occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Section 3.1, Franchisee shall provide Cable Service to such area within twelve (12) months of receiving written notice from the LFA that the density requirements have been met by the existence of the requisite number of residences per mile.

3.3 *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Sections 3.1 and 3.2, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which

Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred seventy-five (175) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred seventy-five (175) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.4 *Line Extension Policy:* Franchisee shall extend Cable Service to potential Subscribers in low density areas within the Service Area in accordance with the terms and conditions of the Line Extension Policy attached hereto as Exhibit E attached hereto.

3.5 *Cable Service to Municipal Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within areas of the Service Area where service is being provided, one service outlet activated for Basic Service to each of the buildings used for municipal purposes as designated by the LFA in Exhibit A and up to five newly constructed or acquired public buildings in the Service Area designated hereafter during the term of this Franchise in writing to Franchisee; provided, however, that, except as provided in Exhibit A, if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred fifty (150) feet solely to provide service to any such public building, the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess one hundred fifty (150) feet, or of releasing Franchisee from the obligation to provide service to such public building. Franchisee shall not be required to provide Cable Service without charge to locations that are not staffed at all or are not fit or designed for occupancy. Furthermore, Franchisee shall be permitted to recover from any public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than one hundred fifty (150) feet of drop cable; provided, however, that Franchisee shall not charge for the Basic Service to the additional service outlets once installed and may charge for additional equipment for any additional outlets. In no event shall Franchisee be required to provide service hereunder to public buildings if the total number served by Franchisee would be more than the number required to be served by any other cable operator in the Franchise Area. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged.

4. **SYSTEM OPERATION**

4.1 *Cable System Tests:* Franchisee shall conduct all applicable tests on the Cable System as required by the FCC. All tests shall be conducted in accordance with applicable federal rules.

4.1.1 Franchisee shall sign all records of tests provided to the LFA.

4.1.2 The LFA shall have the right to witness and/or review all federally mandated tests. Franchisee shall provide the LFA with at least two business days' notice of, and the opportunity to observe, any such tests performed. To the extent the LFA utilizes outside contractors or consultants for these purposes, such contractors and consultants shall sign a

nondisclosure agreement in a form substantially similar to that attached as Exhibit C hereto prior to admittance to Franchisee's facilities and witness of such tests.

4.1.3 Franchisee shall retain written reports of any test results hereunder for a period of five (5) years and shall submit the reports to the LFA upon request. The LFA shall have the same rights the FCC has to verify Franchisee's test data.

5. SYSTEM FACILITIES

5.1 *System Characteristics:* Franchisee's Cable System shall meet or exceed the following requirements:

5.1.1 The System shall be designed to be an active two-way plant for subscriber interaction, if any, required for the selection or use of Cable Service.

5.1.2 Modern design when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the Franchise Term. The FTTP Network shall initially utilize the ITU G.983 Passive Optical Network standard and have no active elements so as to make it more reliable.

5.1.3 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 four hours, at each power supply site.

5.1.4 Facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design.

5.1.5 Facilities and equipment sufficient to cure violations of any applicable FCC technical standards and to ensure that the Cable System remains in compliance with the standards specified in Subsection 5.1.14.

5.1.6 Facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such standards may be amended from time to time.

5.1.7 All facilities and equipment designed to be capable of continuous twenty-four (24) hour daily operation in accordance with applicable FCC standards except as caused by a Force Majeure event.

5.1.8 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.

5.1.9 All facilities and equipment designed, built and operated in such a manner as to protect the safety of the Cable System workers and the public.

5.1.10 Sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel.

5.1.11 All facilities and equipment required to properly test the Cable 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.

5.1.12 Design capable of interconnecting with other cable systems in the Franchise Area as set forth in Section 5.3 of this Agreement.

5.1.13 Shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Cable Services on the System. Such equipment will at a minimum offer as an option that a Person ordering programming must provide a personal identification number or other means provided by Franchisee only to a Subscriber. Provided, however, that Franchisee 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.

5.1.14 The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, which the LFA is permitted by a change in law to enforce, and shall substantially conform 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 industry procedures:

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

5.1.14.2 National Electrical Code;

5.1.14.3 National Electrical Safety Code (NESC);

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

5.1.14.5 Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and

5.1.14.6 The Gaithersburg Building Code.

5.2 *General Description:* The Cable System shall, meet or exceed applicable FCC's technical standards (Subpart K of Part 76 of the FCC's Rules).

5.2.1 The FTTP Network fiber shall be initially designed utilizing splitters of no greater than thirty-two (32) homes per splitter. The FTTP Network shall be pass-through or passive.

5.2.2 Status monitoring capability shall be a feature of the electronics at the customer premises in the FTTP Network. The FTTP Network shall deliver fiber to an Optical Network Terminal ("ONT") at the Subscriber's premises. The ONT shall automatically measure optical signal levels (and other distortion measurements) at the Subscriber's premises.

5.3 *Interconnection*: Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area at suitable locations as determined by Franchisee. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

5.4 *Emergency Alert System*: Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

5.5 *Restoration of Municipal Property*: Any municipal property damaged or destroyed shall be promptly repaired or replaced by Franchisee and restored to pre-existing condition.

6. PEG SERVICES

6.1 *PEG Set Aside*:

6.1.1 Franchisee shall carry the Montgomery County PEG Access Channels on the Basic Service tier of the Cable System in the Service Area. In order to ensure universal availability of public, educational and government programming, Franchisee shall also provide the LFA on the Basic Service tier one dedicated PEG Access Channel (the "PEG Access Channel").

6.1.2 The programming to be carried on the PEG Access Channel set aside by Franchisee will be governmental, educational and public access in nature. LFA hereby authorizes Franchisee to transmit such programming within and outside of LFA jurisdictional boundaries. Franchisee specifically reserves its right to make or change channel assignments in its sole discretion. Franchisee shall not arbitrarily or capriciously change PEG Access Channel assignments, and the Franchisee shall seek to minimize the number of such changes. Any such reassignment must be to a channel of technical quality at least equivalent to that of similar PEG channels on the Cable System. If Franchisee decides to change the Channel designation for the PEG Access Channel, it shall provide not less than forty-five (45) calendar days prior written notice to the LFA. If the PEG Access Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Access Channel, in its sole discretion, until such time as LFA elects to utilize the PEG Access Channel for its intended purposes.

6.2 *PEG Direct Connection with LFA*: The LFA has designated City Hall at 31 South Summit Avenue, Gaithersburg, Maryland 20877, as the single point of interconnection for PEG Access Channel facilities with the Cable System (the "PEG Access Interconnection Site").

6.2.1 Subject to the successful completion of all required site preparation work by the LFA and provision of access to Franchisee for equipment, installation and provisioning, Franchisee shall, without charge to the LFA, provide upstream PEG Access Channel transmission connections between Franchisee's video channel aggregation point and the designated PEG Access Interconnection Site in order to permit the signals to be correctly routed from the PEG Access Interconnection Site for distribution to Subscribers. The LFA shall pay the cost of any facilities required in order to deliver the PEG content from any remote program

origination points to PEG Access Interconnection Site and generate a PEG signal suitable for interconnection.

6.2.2 The LFA shall provide to Franchisee at the PEG Access Interconnection Site a suitable video signal in SDI format and up to two separate audio feeds per PEG channel in an analog format (or other mutually agreed upon video or audio formats) consistent with industry standards and suitable for the PEG Access Channel. The video and audio signals provided to Franchisee shall be obtained directly and exclusively from the LFA's or its designee's facilities at the PEG Access Interconnection Site. Franchisee, upon receipt of the suitable video and audio signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the PEG Access Channel signal, without material reduction in signal quality, to its channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the provision by the LFA, without charge to the Franchisee, of: (1) access to PEG facilities; (2) access to any required PEG equipment within the PEG facilities and suitable required space, environmental conditions, electrical power supply, access, and pathways within the such facilities; (3) video and audio signals in a mutually agreed upon format suitable for PEG Access Channel programming; (4) any third-party consent that may be necessary to transmit PEG signals; and (5) any other cooperation and access to facilities as are reasonably necessary for the Franchisee to fulfill the obligations stated herein. Franchisee shall, within one hundred twenty (120) days of the Service Date or the delivery of a suitable video and audio signal, whichever last occurs, provide, install, and maintain in good working order the equipment necessary for transmitting such signal to Subscribers.

6.2.3 Such upstream transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of PEG Access Channel signals to Subscribers. If Franchisee makes changes to the Cable System that require improvements to PEG Access facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 6.2.1 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

6.3 The LFA shall require all local producers and users of any of the PEG facilities or Channel to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the LFA, from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. LFA shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. § 531.

6.4 *PEG/INET Grant:*

6.4.1 Franchisee shall provide a grant to the LFA to be used in support of the production of local PEG programming and the LFA's institutional network ("INET") (the "PEG/INET Grant"). Such grant shall be used solely by the LFA for PEG access and INET capital costs including equipment, facilities and infrastructure, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access and INET facilities.

6.4.2 The PEG/INET Grant provided by Franchisee hereunder shall be the sum of \$0.25, per month, per Subscriber in the Service Area to Franchisee's Basic Service tier. At any time beginning June 1, 2018, the PEG/INET Grant shall be the lower of either (a) the lowest recurring fee on a per subscriber basis paid at that time by the any other cable operator in the Service Area, or (b) \$0.25, per month, per Subscriber in the Service Area to Franchisee's Basic Service tier. The PEG/INET Grant payment, along with a brief summary of the Subscriber information upon which it is based, shall be delivered to the LFA within forty-five (45) days after the end of each calendar quarter during the term of the Franchise. Calculation of the PEG/INET Grant will commence with the first calendar month during which Franchisee obtains its first Subscriber in the Service Area.

6.4.3 The LFA shall provide Franchisee with a reasonable accounting annually of the distribution of funds granted pursuant to this Section 6.3.

6.5 To the extent permitted by federal law, Franchisee has advised the LFA that it may recover the costs of the PEG/INET Grant or any other costs arising from the provision of PEG services from Subscribers, and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection costs to Subscribers.

7. **FRANCHISE FEES**

7.1 *Payment to LFA:* Franchisee shall pay to the LFA a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Each Franchise fee payment shall be accompanied by a brief, accurate and complete report prepared by a representative of Franchisee showing Gross Revenue and the basis for the computation. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall receive a credit from the LFA for any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within 90 days following the close of the calendar year for which such payments were applicable.

7.2 *Late Payments:* If any Franchise fee payment is not made on or before the due date, Franchisee shall pay as additional compensation an interest charge, computed from the due

date, at an annual rate equal to the commercial prime interest rate of the LFA's primary depository bank during the period such unpaid amount is owed.

7.3 *Audit*: Subject to the confidentiality requirements of Section 9.2 of this Agreement, the LFA may audit or conduct a Franchise fee review of Franchisee's books and records no more than once every three (3) years during the term of this Agreement. All records reasonably necessary for any such audit shall be made available by Franchisee to the LFA. Franchisee shall maintain such records for five (5) years provided that, if the LFA commences an audit within that five year period, Franchisee shall continue to maintain such records for the duration of any audit in progress at the end of that five year period. The LFA shall conduct all audits expeditiously, and the LFA shall not unreasonably delay the completion of an audit. Each party shall bear its own costs of an audit; provided, however, that if the results of any audit indicate that Franchisee underpaid the Franchise fees by five percent (5%) or more, then Franchisee shall pay those costs of the third party audit which are reasonable, documented, out-of-pocket costs up to an aggregate of Five Thousand Dollars (\$5,000). If the results of an audit indicate an overpayment or underpayment of Franchise fees, the parties agree that such overpayment or underpayment shall be returned or offset against future payments if applicable, to the proper party within sixty (60) days, unless audit findings are in dispute; provided, however, that Franchisee shall be required to remit underpayments to the LFA together with interest at the rate provided in Section 7.2 above of the amount correctly due from the date such underpayment would have been due. If the audit determines that there has been an overpayment by Franchisee, such overpayment shall be subject to interest charges computed from the overpayment date at the rate provided above. Any audit shall be conducted by a qualified independent third party. Any entity employed by the LFA that performs the audit or Franchise fee review shall not be permitted to be compensated on a success based formula, e.g., payment based on an underpayment of Franchise fees, if any.

7.4 *Limitation on Franchise Fee Actions*: The parties agree that the period of limitation for recovery of any Franchise fee payable hereunder shall be five (5) years from the date on which the franchise fee payment by Franchisee is due.

7.5 *Bundled Services*: If Cable Services subject to the Franchise fee required under this Article 7 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders. The parties agree that tariffed telecommunication service rates that cannot be discounted by law or regulation are to be excluded from the bundled discount allocation basis.

8. CUSTOMER SERVICE

Customer Service Standards are set forth in Exhibit B, which shall be binding unless amended by written consent of the parties.

9. REPORTS AND RECORDS

9.1 *Open Books and Records*: Upon reasonable written notice to Franchisee and with no less than thirty (30) business days written notice to Franchisee, the LFA shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the records the LFA desires to review, so that Franchisee may organize the necessary books and records for appropriate access by the LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than five (5) years.

9.2 *Confidentiality*: Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to deliver copies of information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Franchise Area. The LFA shall treat any information disclosed by Franchisee as proprietary and confidential and shall only disclose it to employees, representatives, and agents thereof who have a need to know, or in order to enforce the provisions hereof. The LFA shall treat as confidential any books, records and information disclosed pursuant to this Agreement that constitute proprietary or confidential information under federal or state law, to the extent Franchisee makes the LFA aware of such confidentiality. Franchisee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the LFA believes it must disclose any such confidential information in the course of enforcing this Franchise, or for any other reason, it shall advise Franchisee in advance so that Franchisee can take appropriate steps to protect its interests. If the LFA receives a demand from any Person for disclosure of any information designated by Franchisee as confidential, the LFA shall, so far as consistent with applicable law, advise Franchisee and provide Franchisee with a copy of any written request by the party demanding access to such information within a reasonable time. Unless otherwise ordered by a court or agency of competent jurisdiction, the LFA agrees that, to the extent permitted by state and federal law, it shall deny access to any of Franchisee's information marked confidential as set forth above to any Person. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

9.3 *Records Required*: Franchisee shall at all times maintain:

9.3.1 Records of all written complaints for a period of three (3) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.3.2 Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.3.3 Records of service calls for repair and maintenance for a period of three (3) years after resolution by Franchisee, indicating the date and time service was required, 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 resolved;

9.3.4 Records of installation/reconnection and requests for service extension for a period of three (3) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.3.5 A map showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

9.4 *Service Availability Meeting:* Franchisee agrees that, upon the LFA's request and with no less than thirty (30) days written notice, but no more than once per calendar year, a representative of the Franchisee will meet with representatives of the LFA at a service availability meeting to provide additional information, subject to Section 9.2, on the status of the deployment of Cable Services in the Franchise Area. The service availability meeting may be attended only by representatives of the LFA and the Franchisee, and will not be open to the public.

10. **INSURANCE AND INDEMNIFICATION**

10.1 *Insurance:*

10.1.1 Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.1.2 Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA.

10.1.3 Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

10.1.4 Workers' Compensation Insurance meeting all legal requirements of the State of Maryland.

10.1.5 Excess liability or umbrella coverage of not less than three million dollars (\$3,000,000).

10.1.6 The limits required above may be satisfied with a combination of primary and excess coverage.

10.1.7 The LFA shall be included as an additional insured under each of the insurance policies required in this Article 10 except Worker's Compensation Insurance and excess liability/umbrella coverage.

10.1.8 Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

10.1.9 Each of the required insurance policies shall be with insurers qualified to do business in the State of Maryland, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

10.1.10 Franchisee shall deliver to LFA Certificates of Insurance showing evidence of the required coverage within thirty (30) days after the Effective Date.

10.2 *Indemnification:*

10.2.1 Franchisee agrees to indemnify, save and hold harmless, and defend the LFA, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System, including but not limited to any claim against Franchisee 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 intellectual property right of any Person, firm, or corporation, provided that the LFA shall give Franchisee prompt written notice of its obligation to indemnify the LFA as soon as practicable after of receipt of a claim or action pursuant to this Subsection and sufficiently in advance of the time for Franchisee's response to a third party claim in order that Franchisee will be able to timely respond and the defense against such claim will not be prejudiced. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access Channels, use of any INET or EAS, or the distribution of any Cable Service over the Cable System.

10.2.2 With respect to Franchisee's indemnity obligations set forth in Subsection 10.2.1, Franchisee shall provide the defense of any claims brought against the LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the LFA, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the LFA and the LFA does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action, but its obligation to indemnify the LFA shall in no event exceed the amount of such settlement.

10.2.3 The LFA shall hold harmless and defend Franchisee from and against and shall be responsible for damages, liability or claims resulting from or arising out of the willful misconduct or negligence of the LFA.

10.2.4 The LFA shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the LFA for which the LFA is legally responsible, subject to any and all defenses and limitations of liability provided by law. Franchisee shall not be required to indemnify the LFA for acts of the LFA which constitute willful misconduct or negligence, on the part of the LFA or its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

11. TRANSFER OF FRANCHISE

11.1 Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Franchisee in the Franchise or Cable System in order to secure indebtedness, or otherwise for transactions otherwise excluded under Section 1.31 above.

12. RENEWAL OF FRANCHISE

12.1 The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

12.2 In addition to the procedures set forth in said Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. The LFA further agrees that such assessments shall be provided to Franchisee promptly so that Franchisee has adequate time to submit a proposal under 47 U.S.C. 546 and complete renewal of the Franchise prior to expiration of its term.

12.3 Notwithstanding anything to the contrary set forth herein, Franchisee and the LFA agree that at any time during the term of the then-current Franchise, while affording the public appropriate notice and opportunity to comment, the LFA and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then-current Franchise and the LFA may grant a renewal thereof.

12.4 Franchisee and the LFA consider the terms set forth in this Article to be consistent with the express provisions of Section 626 of the Communications Act, 47 U.S.C. 546.

13. ENFORCEMENT AND TERMINATION OF FRANCHISE

13.1 *Notice of Violation:* If at any time the LFA believes that Franchisee has not complied with the terms of the Franchise, the LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem in a reasonable time, the LFA shall then notify Franchisee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article, the "Noncompliance Notice").

13.2 *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in

whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such thirty (30) day period, initiate reasonable steps to remedy such noncompliance and notify the LFA of the steps being taken and the date by which cure is projected to be completed. Upon cure of any noncompliance, LFA shall provide written confirmation that such cure has been effected.

13.3 *Public Hearing*: The LFA shall schedule a public hearing if the LFA seeks to continue its investigation into the alleged noncompliance in the event that: (1) In the event that Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article 13, or (2) in the event that Franchisee has not remedied the alleged noncompliance within thirty (30) days or the date projected pursuant to Section 13.2(iii) above. The LFA shall provide Franchisee at least thirty (30) days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

13.4 *Enforcement*: Subject to applicable federal and state law, in the event the LFA, after the public hearing set forth in Section 13.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

13.4.1 Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

13.4.2 Commence an action at law for monetary damages or seek other equitable relief;

13.4.3 Exercise its rights under the Security Fund described in Section 13.6;

13.4.4 Assess liquidated damages against Franchisee as described in Section 13.7; or

13.4.5 In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.5.

13.5 *Revocation*: Should the LFA seek to revoke this Franchise after following the procedures set forth above in this Article 13, including the public hearing described in Section 13.3., the LFA shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. Franchisee shall have sixty (60) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the LFA has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a second public hearing. The LFA shall cause to be served upon Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.5.1 At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the LFA, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record

and transcript shall be made of such hearing.

13.5.2 Following the second public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing, and thereafter the LFA shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Franchisee. The LFA shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Franchisee to effect any cure. If the LFA determines that the Franchise shall be revoked, the LFA shall promptly provide Franchisee with a written decision setting forth its reasoning. To the extent permitted by law, Franchisee may challenge or appeal such determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA de novo, if permitted by law. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the LFA.

13.5.3 The LFA may, at its sole discretion, take any lawful action that it deems appropriate to enforce the LFA's rights under the Franchise in lieu of revocation of the Franchise.

13.6 *Security Fund*: Prior to the Service Date, Franchisee shall provide to the LFA as security for the performance of its obligations under this Agreement a security fund in the amount of Fifty Thousand Dollars (\$50,000) in cash or in the form of the letter of credit reasonably satisfactory to the LFA or in form of a performance bond (the "Security Fund"). The following procedures shall apply to the Security Fund: (i) the LFA may not draw on the Security Fund until thirty (30) days have passed after the LFA has provided Franchisee with written notice of its intent to make such withdrawal and the amount and the reasons therefor; (ii) in the event that the Security Fund is in the form of cash, amounts withdrawn from the Security Fund pursuant to this Section shall be replenished by Franchisee by delivering to the LFA or its designee for deposit in the Security Fund a cash amount equal to the amount so withdrawn within thirty (30) days of its receipt of notice from the LFA of the date and amount of such withdrawal; (iii) in the event the Security Fund is in the form of a letter of credit, Franchisee shall replenish the Security Fund by establishing a new letter of credit within thirty (30) days of its receipt of notice from the LFA of the date and amount of such withdrawal; and (iv) within thirty (30) days of receipt of the new letter of credit, the LFA shall return the previously issued letter of credit to Franchisee. If Franchisee posts a performance bond ("Performance Bond"), the Performance Bond shall be substantially in the form of Exhibit D attached hereto. In the event that a Performance Bond provided pursuant to this Agreement is not renewed or is cancelled, Franchisee shall provide new security pursuant to this Section within thirty (30) days of such cancellation or failure to renew. Neither cancellation, nor termination nor refusal by surety to extend the Performance Bond, nor inability of Franchisee to file a replacement bond or replacement security for its obligations, shall constitute a loss to the LFA recoverable under the bond. Within five (5) days after a draw, the LFA shall notify Franchisee of the date and amount of the draw from the Performance Bond.

13.7 *Liquidated Damages*: If Franchisee fails to observe in any material respect any material obligation under this Agreement, the LFA may assess Franchisee, and Franchisee agrees

to pay to the LFA liquidated damages in the following amount: as the reasonable damages for the material violation or material breach of any material provision or condition of this Agreement:

13.7.1 For failure to comply with PEG Access requirements: \$125 per day, in addition to any monetary payment due under this Agreement.

13.7.2 For failure to supply information, reports, or filings lawfully required under this Agreement: \$200/day for each day the violation continues;

13.7.3 For violation of customer service standards: \$200 per violation;

13.7.4 For failure to render required payment for reimbursement of any Franchise expenses, or liquidated damages: \$100 per day, in addition to any monetary payment due under this Agreement;

13.7.5 For failure to file, obtain or maintain the Security Fund in a timely fashion: \$50 per day;

13.7.6 For failure to restore damaged property: \$50 per day, in addition to the cost of the restoration as required elsewhere herein; and

13.7.7 For violation of technical standards established by the FCC: \$100 per day.

Upon the LFA's assessing liquidated damages pursuant to Subsection 13.4.4 above, written notice of such assessment shall be sent to Franchisee in accordance with Section 13.5, with a concise statement of the reasons therefore. Franchisee shall pay the full amount of any liquidated damages to the LFA within thirty (30) days after receipt of a written notice. Upon failure of Franchisee to make timely payment of assessed liquidated damages, the LFA may withdraw the amount of such liquidated damages from the Security Fund pursuant to Section 13.6 above. The amount of all liquidated damages per annum shall not exceed \$2,000 in the aggregate. All similar violations or failures from the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any one category. Violations or failures shall not be deemed to have occurred or commenced until they are not cured as provided in this Article 13.

13.8 *Franchisee Termination:* Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of three (3) years from the Service Date, if at the end of such three (3) year period Franchisee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System and it also terminates its other cable franchise agreements in the State of Maryland. Franchisee may consider Subscriber penetration levels outside the Franchise Area in this determination. Notice to terminate under this Section 13.8 shall be given to the LFA in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. Franchisee shall also be required to give its then-current Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

14. MISCELLANEOUS PROVISIONS

14.1 *Actions of Parties*: In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

14.2 *Binding Acceptance*: This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3 *Preemption*: In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, 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 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 thereupon 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 LFA.

14.4 *Force Majeure*: Franchisee shall not be held in default under, or in noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by Force Majeure.

14.4.1 Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by the LFA and/or Subscribers.

14.5 *Notices*: Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

14.5.1 Notices to Franchisee shall be mailed to:

William Roberts
President
Verizon Maryland Inc.
1 East Pratt Street, 8E
Baltimore, MD 21202

with a copy to:

John Raposa
Senior Vice President & General Counsel - Telecom

Verizon
One Verizon Way
VC44E232
Basking Ridge, NJ 07920

14.5.2 Notices to the LFA shall be mailed to:

City Manager
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20877

with a copy to:

City Attorney
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20877

14.6 *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the LFA, and it supersedes all prior or contemporaneous agreements, representations or understandings of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement, and the LFA shall not modify the terms or conditions of this Agreement, abrogate any rights of Franchisee contained herein or impose any new obligations or duties on Franchisee by changes to existing laws or regulations or by the adoption of any new laws or regulations.

14.7 *Amendments*: Amendments and modifications of this Franchise shall be mutually agreed to in writing by the parties.

14.8 *Captions*: The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.9 *Severability*: If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sub section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.10 *Recitals*: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.11 *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the LFA or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

14.12 *Rate Regulation:* The rates and charges for Franchisee's Cable Service shall comply with any applicable provisions of 47 U.S.C. § 543. The parties acknowledge and agree that the rates and charges imposed by Franchisee for Cable Services will not be subject to the approval of or regulation by the LFA since Franchisee will be subject to effective competition as provided in 47 U.S.C. § 543. Therefore, the LFA will not regulate Franchisee's rates at this time, but it reserves any right to regulate Franchisee's rates it may have in the future.

14.13 *LFA Information:* The LFA's name, address and telephone number shall be omitted from Franchisee's bills pursuant to the LFA's request as permitted by 47 CFR 76.952.

14.14 *Independent Review:* The LFA and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

14.15 *Governing Law:* This Agreement shall be governed by and construed under the laws of the State of Maryland and applicable federal law.

14.16 *Jurisdiction and Venue:* Franchisee and the LFA agree that any court action to enforce or interpret the terms of this Agreement shall be brought and maintained exclusively in either the Circuit Court for Montgomery County, Maryland, or the U.S. District Court for the District of Maryland, provided that the chosen forum has subject matter jurisdiction over the action and, in the case of an action originally brought in the Circuit Court, without prejudice to the exercise of any right of removal created by federal law.

14.17 *Performance Review:* The LFA may, at its discretion but not more than once per three (3) year period, hold a performance evaluation session which may be conducted in private, or if required by the LFA, on a public basis (the "Performance Review"), to review Franchisee's compliance with the terms and conditions of this Franchise. The LFA shall provide Franchisee with at least thirty (30) days prior written notice of the Performance Review. Franchisee shall have the opportunity to participate in and be heard at the Performance Review. Franchisee shall not be required to disclose any confidential or proprietary information at any Performance Review held in a public forum. To the extent Franchisee identifies any information addressed at a Performance Review as confidential or proprietary, Franchisee shall cooperate with the LFA to arrange a meeting with designated LFA representatives in an informal non-public forum to

review any such confidential or proprietary information to the extent necessary to effectuate the objectives of this Section; provided, however, that the information disclosed to the LFA by the Franchisee at any such informal non-public meeting shall be treated by the LFA as confidential. Within thirty (30) days after the conclusion of the Performance Review, the LFA shall provide Franchisee written documentation ("Performance Review Report") setting forth its determinations regarding Franchisee's compliance with the terms and conditions of this Franchise. The Performance Review Report shall not contain any confidential information disclosed by the Franchisee during the Performance Review.

14.18 *Point of Contact for City*: Franchisee shall provide the LFA with contact information for an individual who shall be the point of contact for Franchisee on Cable Services in the Franchise Area. Contact information shall include the contact's name, address, business telephone and facsimile numbers, and e-mail address.

[SIGNATURE PAGE FOLLOWS]

AGREED TO THIS _____ DAY OF _____, 2009.

CITY OF GAITHERSBURG, MARYLAND

By: _____

VERIZON MARYLAND INC.

By: _____

William R. Roberts
President

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Facility	Address	Municipality	State	Zip
City Hall	31 S. Summit Avenue	Gaithersburg	MD	20877
Wells Robertson House	1 Wells Avenue	Gaithersburg	MD	20877
Gaithersburg Aquatic Center	2 Teachers Way	Gaithersburg	MD	20877
Olde Towne Youth Center	Under construction	Gaithersburg	MD	20877
Activity Center at Bohrer Park*	506 S. Frederick Avenue	Gaithersburg	MD	20877
Water Park*	512 S. Frederick Avenue	Gaithersburg	MD	20877
Casey Community Center	810 S. Frederick Avenue	Gaithersburg	MD	20877
Gaithersburg Police Department	14 Fulks Corner Avenue	Gaithersburg	MD	20877
Kentlands Mansion	320 Kent Square Road	Gaithersburg	MD	20878
Gaithersburg Arts Barn	311 Kent Square Road	Gaithersburg	MD	20878
Gaithersburg Senior Center	80A Bureau Drive	Gaithersburg	MD	20878
Department of Public Works	800 Rabbitt Road	Gaithersburg	MD	20878
Robertson Park Youth Center	801 Rabbitt Road	Gaithersburg	MD	20878

* Drops beyond 150 feet up to 600 feet will be at no charge.

EXHIBIT B

CUSTOMER SERVICE STANDARDS

These standards shall apply to Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area.

SECTION 1: DEFINITIONS

- A. *Respond*: Franchisee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.
- B. *Significant Outage*: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.
- C. *Service Call*: The action taken by Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.
- D. *Standard Installation*: Installations where the subscriber is within one hundred seventy-five (175) feet of trunk or feeder lines.

SECTION 2: TELEPHONE AVAILABILITY

- A. Franchisee shall maintain a toll-free number available twenty-four (24) hours a day, seven (7) days a week, to receive all calls and inquiries from Subscribers in the Service Area and/or residents regarding Cable Service as follows. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty-five (45) hours per week. Franchisee representatives shall identify themselves by name when answering this number.
- B. Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by Franchisee.
- C. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. Franchisee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

D. Under Normal Operating Conditions, calls received by Franchisee shall be answered within thirty (30) seconds. Franchisee shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.

E. Under Normal Operating Conditions, callers to Franchisee shall receive a busy signal no more than three (3%) percent of the time during any calendar quarter.

F. Commencing with the first calendar quarter or portion thereof ending after six (6) months from the Service Date, upon request from the LFA, but in no event more than once a quarter thirty (30) days following the end of each quarter, Franchisee shall report to the LFA the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

(1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D.

(2) Percentage of time customers received busy signal when calling the Verizon service center as set forth in Subsection 2.E.

Subject to consumer privacy requirements, underlying activity will be made available to the LFA for review upon reasonable request.

G. At Franchisee's option, the measurements and reporting above may be changed from calendar quarters to billing or accounting quarters accounting for all months requiring reporting. Franchisee shall notify the LFA of such a change at least thirty (30) days in advance of any implementation.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Franchisee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after the placement of the Optical Network Terminal ("ONT") on the customer's premises or within seven (7) business days after an order is placed if the ONT is already installed on the customer's premises.

Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding cases in which the customer requested that the connection be made later than seven (7) days after ONT placement or later than seven (7) days after an order is placed if the ONT is already installed on the customer's premises. If the ONT is not present, the Standard Installation shall be performed within fourteen

(14) business days after an order is placed. For other than a Standard Installation, Franchisee shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

C. Commencing with the first calendar quarter or portion thereof ending after six (6) months from the Service Date, Franchisee shall provide the LFA with a report upon request from the LFA, but in no event more than once a quarter thirty (30) days following the end of each quarter, noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to the LFA for review upon reasonable request.

At Franchisee's option, the measurements and reporting of above may be changed from calendar quarters to billing or accounting quarters accounting for all months requiring reporting. Franchisee shall notify the LFA of such a change not less than thirty (30) days in advance.

D. Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. At Franchisee's discretion, Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends.

E. Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day preceding the appointment. If Franchisee's representative is running late for an appointment with a Subscriber and is not able to keep the appointment as scheduled, the Subscriber will be contacted, and the appointment rescheduled as necessary, at a time which is convenient for the Subscriber.

F. With regard to mobility-limited Subscribers, upon Subscriber request, Franchisee shall arrange for pickup and/or replacement of converters or other Franchisee equipment at the Subscriber's address or by a satisfactory equivalent (such as provision of a prepaid mailer).

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

A. Franchisee shall notify the LFA of any Significant Outage of the Cable Service.

B. Franchisee shall exercise commercially reasonable efforts to limit any scheduled Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the LFA and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage. Notwithstanding the forgoing, Franchisee may perform modifications, repairs and upgrades to the System between 12.01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual subscriber notice.

C. Franchisee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

D. Under Normal Operating Conditions, Franchisee shall do the following:

(1) Begin working on a Service Interruption in the Service Area within twenty-four (24) hours, including weekends, of receiving a subscriber call.

(2) Begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the LFA of any other Cable Service problem.

E. Under Normal Operating Conditions, Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

F. Franchisee shall meet the standard in Subsection E. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

G. Commencing with the first calendar quarter or portion thereof ending after six (6) months from the Service Date, Franchisee shall provide the LFA with a report upon request from the LFA, but in no event more than once a quarter within thirty (30) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to the LFA for review upon reasonable request. At Franchisee's option, the above measurements and reporting may be changed from calendar quarters to billing or accounting quarters accounting for all months requiring reporting. Franchisee shall notify the LFA of such a change at least thirty (30) days in advance.

H. Under Normal Operating Conditions, Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow Franchisee to verify the problem if requested by Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

I. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-

discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

J. With respect to service issues concerning cable services provided to LFA facilities, Franchisee shall Respond to all inquiries from the LFA within four (4) hours and shall commence necessary repairs within twenty-four (24) hours under Normal Operating Conditions. If such repairs cannot be completed within twenty-four (24) hours, Franchisee shall notify the LFA in writing as to the reason(s) for the delay and provide an estimated time of repair.

SECTION 5: CUSTOMER COMPLAINTS

Under Normal Operating Conditions, Franchisee shall investigate Subscriber complaints referred by the LFA within five (5) business days. Franchisee shall notify the LFA of those matters that necessitate an excess of five (5) business days to resolve, but those matters must be resolved within fifteen (15) days of the initial complaint. The LFA may require reasonable documentation to be provided by Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

SECTION 6: BILLING

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes and/or other governmentally imposed fees. Franchisee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

- (1) The Subscriber pays all undisputed charges;
- (2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and

(3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

(4) It shall be within Franchisee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the Complaint. Final resolution shall not be unreasonably delayed.

F. No charge may be made for any Cable Service or Cable Service-related product that the Subscriber has not affirmatively indicated it wishes to receive. Payment of the regular monthly bill does not in and of itself constitute such an affirmative indication.

G. Franchisee shall provide a telephone number and address on the bill for Subscribers to contact Franchisee.

H. Franchisee shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the LFA upon request.

I. Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may in the future, at its' discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of Franchisee, the payment alternative may be limited.

SECTION 7: DEPOSITS, REFUNDS AND CREDITS

A. Franchisee may require refundable deposits from Subscribers with 1) a poor credit or poor payment history, 2) who refuse to provide credit history information to Franchisee, or 3) who rent Subscriber equipment from Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit Franchisee may charge for Subscriber equipment is the cost of the equipment which Franchisee would need to purchase to replace the equipment rented to the Subscriber.

B. Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. Franchisee shall pay interest on deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by Franchisee or its' authorized agent. Appropriate time considerations shall be included in Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8: RATES, FEES AND CHARGES

A. Franchisee shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect Franchisee's equipment (for example, a dog chew).

B. Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

SECTION 9: DISCONNECTION/DENIAL OF SERVICE

A. Franchisee may terminate a Subscriber's service if the Subscriber fails to pay his bill within forty-five (45) days after the franchisee mails the applicable bill to the Subscriber if the Franchisee has provided appropriate notice to the Subscriber pursuant to 9.B below.

B. Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement. Franchisee shall provide the customer with at least ten (10) working days written notice prior to disconnection for nonpayment.

C. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

D. Nothing in these standards shall limit the right of Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Franchisee's equipment, abusive and/or threatening behavior toward Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.

SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS

A. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Franchisee shall wear a clearly visible identification card bearing their name and photograph. Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for Franchisee shall have the contractor's / subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to Franchisee.

B. All contact with a Subscriber or potential Subscriber by a Person representing Franchisee shall be conducted in a courteous manner.

C. Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by Franchisee may be referred to the LFA.

D. All notices identified in this Section shall be by either:

- (1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
- (2) A separate electronic notification.

E. Franchisee shall provide reasonable notice to Subscribers of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Franchisee, and Franchisee shall provide a copy of the notice to the LFA including how and where the notice was given to Subscribers.

F. Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Franchisee:

- (1) Products and Cable Service offered;
- (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by Franchisee related to Cable Service;

(3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

(4) Channel positions of Cable Services offered on the Cable System;

(5) Complaint procedures, including the name, address and telephone number of the LFA, but with a notice advising the Subscriber to initially contact Franchisee about all complaints and questions;

(6) Procedures for requesting Cable Service credit;

(7) The availability of a parental control device;

(8) Franchisee practices and procedures for protecting against invasion of privacy;
and

(9) The address and telephone number of Franchisee's office to which complaints may be reported.

A copy of notices required in this Subsection 10.F. will be given to the LFA at least fifteen (15) days prior to distribution to subscribers if the reason for notice is due to a change that is within the control of Franchisee and as soon as possible if not with the control of Franchisee.

G. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

H. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

I. All promotional materials advertising Cable Services to Subscribers and the general public shall be accurate and not misleading. Franchisee shall clearly and accurately disclose to Subscribers prices and terms for all services, including the prices of pay-per-view and pay-per-event programming before an order is accepted.

J. Every notice of termination of Cable Service shall include the following information:

(1) The name and address of the Subscriber whose account is delinquent;

(2) The amount of the delinquency for all services billed;

(3) The date by which payment is required in order to avoid termination of Cable Service; and

(4) The telephone number for Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.

K. Franchisee shall establish a conveniently located customer service center in the City of Gaithersburg within six (6) months of Franchisee attaining a minimum of eight thousand (8,000) Subscribers in the City of Gaithersburg. Prior to attaining this level of Subscribers, Franchisee shall provide convenient alternative means for bill payment, and providing for the pick up or drop off of equipment by any one or more of (i) having a Franchisee representative going to the Subscriber's premises, (ii) using a pre-paid mailer, or (iii) establishing a location(s) for the pick up and drop off equipment.

EXHIBIT C

SAMPLE NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is entered into by and between Verizon Maryland Inc., a corporation duly organized under the applicable laws of Maryland (“Verizon”) and _____, having a place of business in _____ (“Consultant”).

WHEREAS, on or about _____, the _____ (“LFA”) granted a cable franchise (the “Franchise Agreement”) to Verizon; and

WHEREAS, the LFA has contracted with the Consultant as an independent contractor to witness and review tests on behalf of the LFA (the “Consultancy”).

NOW THEREFORE, considering these premises, Verizon and the Consultant agree as follows:

1. For purposes of this Agreement, “Confidential Information” shall mean any and all information, network designs and equipment, documents, data, correspondence, studies or other records or materials (including all information contained therein) which have been or will be provided, produced or made available to the Consultant by Verizon and its affiliates in connection with, or as the result of, the Consultant’s access to Verizon property or otherwise and that are reasonably deemed by Verizon to be proprietary or confidential in nature, including, but not limited to, documents and records identified by, and protected from disclosure by applicable law.

2. Access to Confidential Information shall be limited to those individual representatives of the Consultant who are directly involved in the Consultancy and who have executed this Confidentiality Agreement (“Consultant’s Staff”), and the Consultant assumes responsibility for compliance with the terms of this Confidentiality Agreement by its respective employees.

3. The Consultant and the Consultant’s Staff that are signatories hereto agree not to disclose, publish, or disseminate to the public or to any individual not a signatory hereto any Confidential Information (including notes taken therefrom). The Consultant and the Consultant’s Staff further agree to use any or all of the Confidential Information obtained hereunder only for purposes of the Consultancy.

4. Notwithstanding any other provision of this Agreement, the Consultant may refer to Confidential Information in any report or materials prepared by the Consultant for the LFA, provided that any such report or materials shall disclose such information only to the extent necessary to convey essential information. If the Consultant intends to refer to Confidential Information concerning specific network elements, designs or equipment, or any components thereof, in any such report or materials, the Consultant shall give Verizon at least fifteen (15) calendar days notice of such intent and provide specific identification of the network elements,

designs or equipment to be referenced. Upon receipt of notice, Verizon shall provide the following documentation to the Consultant and the LFA: (i) a statement attesting to the reason(s) Verizon believes the information is confidential; and (ii) a statement that the information is available for review by the LFA at a LFA-designated location. The Consultant shall thereafter redact all references to such any such information in any report or materials prepared by the Consultant for the LFA.

5. Notwithstanding any other provision of this Agreement, this Agreement shall not apply to Confidential Information that:

(a) was previously known to the Consultant or Consultant's Staff without obligation of confidentiality;

(b) is obtained by the Consultant or Consultant's Staff after the date hereof from a third party that is lawfully in possession of such information and is not in violation of any contractual or legal obligation to Verizon or any third party with respect to such information;

(c) is or becomes part of the public domain through no fault of the Consultant or Consultant's Staff;

(d) is ordered to be disclosed by administrative or judicial action, provided that the Consultant, immediately after notice of such request for disclosure, notifies Verizon of such request to give Verizon sufficient time to seek a protective order or utilize other remedies to protect the Confidential Information; or,

(e) is approved for disclosure and release by written authorization by Verizon.

6. The Consultant shall give Verizon at least fifteen (15) business days notice of its desire to disclose, in the course of any judicial or administrative proceeding resulting from the Consultancy, any Confidential Information, including but not limited to any proffer of evidence. If any such disclosure is planned, the Consultant and Verizon shall meet for purposes of attempting, in good faith, to establish procedures that will accommodate the needs of the Consultant while at the same time ensuring the nondisclosure of Confidential Information other than to the extent necessary for purposes of the relevant proceeding. In the event of a failure to agree, the Consultant and Verizon will submit the issue of appropriate protection from disclosure to the appropriate court or administrative tribunal.

7. Nothing in this Confidentiality Agreement shall limit Verizon's right to seek greater protection for particular Confidential Information from a court of competent jurisdiction, including the right to seek to preclude access altogether. Nor shall anything in this Confidentiality Agreement limit or restrict Verizon's right to challenge the admissibility or use of any document or information in any administrative or judicial proceeding resulting from the Consultancy on any legitimate ground.

8. This Confidentiality Agreement shall become effective as of the earliest date on which the parties hereto execute this Confidentiality Agreement and shall, unless the parties hereto agree in writing to an earlier termination date, continue for a period of five (5) years. Once the Consultancy is completed, either party may terminate this Confidentiality Agreement

upon ten (10) days written notice to the other party. However, Verizon may terminate the Confidentiality Agreement for the Consultant's or the Consultant's Staff's failure to comply with the terms and conditions of the Confidentiality Agreement, subject to the following steps:

Verizon shall provide notice to the Consultant, with copy of such notice also provided by Verizon to the LFA, of its intent to terminate the Confidentiality Agreement and indicate the reason or reasons for such termination;

The Consultancy shall be paused and the Consultant shall have reasonable opportunity to assure Verizon, to Verizon's satisfaction, that it is conducting the Consultancy in compliance with the terms and conditions of the Confidentiality Agreement; and,

Should Verizon then determine that the Consultant or Consultant's Staff cannot, will not, or is not complying with the terms and conditions of the Confidentiality Agreement, Verizon may then, following consultation with the LFA, terminate the Confidentiality Agreement.

9. All obligations regarding use and disclosure of Confidential Information shall survive and continue any termination, cancellation or expiration of this Confidentiality Agreement. Upon expiration or termination of this Agreement, the Consultant and Consultant's Staff shall, as may be requested by Verizon, destroy or return to Verizon all Confidential Information.

10. Nothing in this Confidentiality Agreement shall limit Verizon's right to deny access to certain properties or business records on the basis that the information sought is not reasonably related to the subject of the Consultancy, is subject to the attorney-client privilege, or constitutes attorney work product, or otherwise. Nor shall anything in this Confidentiality Agreement be construed to limit or restrict Verizon's right to challenge the admissibility or use of any of its business records in any administrative or judicial proceeding resulting from the Consultancy on any legitimate ground, including but not limited to competence, relevance, materiality, or privilege.

11. All notices or other communications required or permitted to be made or given hereunder shall be in writing and shall be mailed or delivered to the below addresses or at such other address as may be specified by the parties in writing:

For Verizon:

Name: _____

Title: _____

Company: _____

Address: _____

Telephone: _____

Facsimile: _____

For Consultant:

Name: _____
Title: _____
Company: _____
Address: _____

Telephone: _____
Facsimile: _____

12. The individuals executing this Agreement for and on behalf of the parties hereto represent that they are fully authorized and empowered to do so for and on behalf of their respective principals.

Executed on the respective dates set forth below:

VERIZON

Verizon Maryland, Inc.

Name: _____
Title: _____
Date: _____

CONSULTANT

Name: _____
Title: _____
Date: _____

EXHIBIT D

PERFORMANCE BOND

Franchise Bond

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS: That (name & address) (hereinafter called the Principal), and (name and address) (hereinafter called the Surety), a corporation duly organized under the laws of the State of (state), are held and firmly bound unto (name & address) (hereinafter called the Obligee), in the full and just sum of _____ Dollars (\$ _____), the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal and Obligee have entered into a Franchise Agreement dated _____ which is hereby referred to and made a part hereof.

WHEREAS, said Principal is required to perform certain obligations under said Agreement.

WHEREAS, the Obligee has agreed to accept this bond as security against default by Principal of performance of its obligations under said Agreement during the time period this bond is in effect.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall perform its obligations under said Agreement, then this obligation shall be void, otherwise to remain in full force and effect, unless otherwise terminated, cancelled or expired as hereinafter provided.

PROVIDED HOWEVER, that this bond is executed subject to the following express provisions and conditions:

1. In the event of default by the Principal, Obligee shall deliver to Surety a written statement of the details of such default within 30 days after the Obligee shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein.
2. This Bond shall be effective _____, 2009, and shall remain in full force and effect thereafter for a period of one year and will automatically extend for additional one year periods from the expiry date hereof, or any future expiration date, unless the Surety provides to the Obligee not less than sixty (60) days advance written notice of its intent not to renew this Bond or unless the Bond is earlier canceled pursuant to the following. This Bond may be canceled at any time upon sixty (60) days advance written notice from the Surety to the Obligee.

3. Neither cancellation, termination nor refusal by Surety to extend this bond, nor inability of Principal to file a replacement bond or replacement security for its obligations under said Agreement, shall constitute a loss to the Obligee recoverable under this bond.

4. No claim, action, suit or proceeding shall be instituted against this bond unless same be brought or instituted and process served within one year after termination or cancellation of this bond.

5. No right of action shall accrue on this bond for the use of any person, corporation or entity other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.

6. The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond remains in force or the amount or number of claims brought against this bond.

7. This bond is and shall be construed to be strictly one of suretyship only. If any conflict or inconsistency exists between the Surety's obligations as described in this bond and as may be described in any underlying agreement, permit, document or contract to which this bond is related, then the terms of this bond shall supersede and prevail in all respects.

This bond shall not bind the Surety unless it is accepted by the Obligee by signing below.

IN WITNESS WHEREOF, the above bounded Principal and Surety have hereunto signed and sealed this bond effective this _____ day of _____, 2009.

Principal

Surety

By: _____

By: _____

, Attorney-in-Fact

Accepted by Obligee: _____

(Signature & date above - Print Name, Title below)

EXHIBIT E

LINE EXTENSION POLICY

Where potential Subscribers reside in an area of a Service Area with a dwelling density that does not meet the prescribed minimum density requirements set out in Section 3.2 of the Agreement (“Low Density Area”), Franchisee shall extend service to such potential Subscribers in the Low Density Area under the following conditions:

(i) The potential Subscribers agree to pay a one-time up-front charge equivalent to a percentage of Franchisee’s cost of extending the System in order to deliver Cable Service to such Subscribers. Franchisee’s one-time charge will include all costs required to extend the System, including, but not limited to, total construction, engineering, design, capital and administrative costs (“Extension Costs”). The percentage shall be determined by the following formula: The percentage by which the actual number of homes per mile on the extension falls short of the required number of homes per mile specified in Section 3.2 is the percentage of the total construction costs that must be borne by the Subscriber. Thus, for example, to reach a requesting Subscriber requires an extension of two miles. That extension contains ten homes. Because the proposed extension would contain only 20% of the total number of homes specified in Section 3.2 for required service of (25 homes per mile or 50 homes over two miles), the Subscriber, with any other affected Subscribers who wish to contribute, must pay the remaining 80% of the cost; or

(ii) Potential Subscribers representing $\frac{1}{2}$ of the density requirement, that is, 13 residents per proposed cable plant mile as measured in strand footage from the nearest technically feasible point on the active trunk or feeder line, sign agreements to subscribe to Franchisee’s Cable Services for 24 months.

1. Criteria for Extensions

The following criteria apply if a potential Subscriber or group of Subscribers residing in the same area request an extension of Franchisee’s network and/or facilities to a Low Density Area so that they may subscribe to Franchisee Cable Services:

a. The potential Subscriber (or collective group of potential Subscribers) must reside in an area where the planned video serving office has already been constructed and the buildout in the area has been completed or the time for the buildout has expired. This provision may be waived at Franchisee’s sole discretion, if it should complete its buildout sooner than the Agreement allows;

b. The potential Subscriber or group of Subscribers agrees to pay the one-time up-front charge for the Extension Costs. Franchisee will promptly provide the estimate of the Extension Costs for the line extension to the potential Subscriber (or the pro-rata cost estimate to each member of a group of potential Subscribers). Franchisee may require each potential Subscriber requesting service to execute an agreement reasonably reflecting such party’s responsibility for the Extension Costs;

c. If sufficient payments are made to cover Franchisee's Extension Costs and all necessary agreements are returned to Franchisee, then Franchisee will proceed to construct the extension and such extension shall become a part of Franchisee's Service Area in which the density requirement has been satisfied for the provision of Cable Service; and

d. Notwithstanding the above requirements, Franchisee may deny extension requests where significant technical or legal limitations on Franchisee's ability to satisfy the request make a line extension impracticable or unreasonably expensive.

2. Ownership of Facilities

Franchisee shall own and maintain any and all facilities added, constructed or extended as a result of a request for construction pursuant to this line extension policy.