



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Ward and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Sherilyn Lombos, Deputy City Manager
Robert Wadden, City Attorney
Bruce, Moe, Finance Director

DATE: July 5, 2006

SUBJECT: Adoption of an Ordinance Granting a Non-Exclusive Franchise to Provide Cable Service to Verizon California, Inc.

RECOMMENDATION:

Staff recommends that the City Council adopt Ordinance No. 2085, granting a non-exclusive franchise to Verizon California, Inc. to provide cable services to the residents of Manhattan Beach.

FISCAL IMPLICATION:

There are three fiscal implications associated with the proposed franchise agreement:

- 1) *Franchise Fees:* Section 7.1 of the attached agreement requires Verizon to pay 5% of annual gross revenue (as defined in section 1.16, which includes revenue for basic service, fees charged to subscribers for cable service, revenues from the sale or lease of access channels, advertising revenues, and revenues from home shopping channel providers).
- 2) *Public/Education/Government Grants:* Section 6.2.2 requires Verizon to make a one-time payment of \$100,000 to be used in support of the production of local PEG programming. In addition, Verizon is required to pay \$0.70 per month, per subscriber to support PEG programming; that amount may be adjusted each year by \$0.25 per month, per subscriber, up to a maximum payment of \$1.50 per month, per subscriber.
- 3) *Institutional Network (I-NET) Grant:* Section 3.5 requires Verizon to pay \$0.05 per month, per subscriber to support the City's institutional data communications network.

In addition to the above, Verizon paid an application fee of \$20,000 to the City to cover the City's costs of processing and negotiating the franchise agreement.

BACKGROUND:

On June 20, 2006, the City Council conducted a public hearing, waived further reading and introduced Ordinance No. 2085 which would grant a cable franchise to Verizon. The City Council

also made certain findings associated with granting the cable franchise which included the following:

- There will be a positive impact on the community being served.
- There will be no unreasonable adverse economic or aesthetic impact upon public or private property within the area.
- There will be no unreasonable disruption or inconvenience to existing users, or any adverse effect on future use of utility poles, public easements, and the public rights-of-way contract to the interest of § 767.5 of the California Public Utilities Code.
- The franchise applicant has the technical and financial ability to perform.
- Granting of the franchise will have a positive impact on the City's interest in universal cable service.
- Societal interests generally considered by franchising authorities are met.
- It is economically feasible for the community to support a competitive cable service provider.
- PEG requirements as defined by California Government Code § 53066.3(d) are met.
- Non-discrimination requirements are met.
- The franchise is competitively neutral with the provisions contained in the incumbent franchise agreement.

DISCUSSION:

The proposed franchise agreement with Verizon includes the following key provisions:

- A fifteen year term from the effective date (30 days following approval by the City Council) unless the franchise is earlier revoked as provided in the franchise agreement (Article 2.3).
- A commitment by Verizon to honor the agreement for the entire term even if state law permits them to opt out or terminate (Article 2.7.4). We are all aware of the state legislation that is on the horizon. While we do know now how it will ultimately end up and affect the City, we do believe we have negotiated a solid franchise agreement that is in the City's best interest. We believe that it is in the City's best interest to enter into the agreement now, before legislation is passed.
- Provision of cable service to all residential areas of the City within 24 months of the effective date of the agreement (Article 3.1.1).
- Provision of free basic cable to nine City facilities, including the Library, plus the high school, the middle school, and the school district offices (Article 3.3).
- PEG programming and support that is equivalent to those of the incumbent provider in the City, including dedicated public, educational and governmental access channels and interconnection with the existing cable operator in Manhattan Beach for the carriage of PEG programming (Article 6).
- Extensive customer service requirements, including telephone availability for customer inquiries, billing, installation and service calls, requirements for installation and service

appointments, complaint procedures and communications with subscribers, among others (Article 8).

- Liability and insurance and indemnification requirements (Article 10).

Other pertinent provisions of the proposed franchise agreement include:

- Emergency alert system requirements (Article 5.3).
- Reporting and record keeping requirements (Article 9).
- Franchise renewal and transfer procedures (Articles 11 & 12).
- Enforcement and termination procedures (Article 13).

CONCLUSION:

Staff recommends that the City Council adopt Ordinance No. 2085 granting a non-exclusive franchise to provide cable service to Verizon California, Inc. If approved, the ordinance will be effective in 30 days.

Attachments: A. Ordinance No. 2085
B. Cable Franchise Agreement

cc: Verizon California, Inc.

ORDINANCE NO. 2085

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, GRANTING A NON-EXCLUSIVE FRANCHISE TO PROVIDE CABLE SERVICE TO VERIZON CALIFORNIA INC.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach hereby makes the following findings:

A. The City of Manhattan Beach is a "Franchising Authority" as defined by 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 California Government Code § 53066 and Ordinance No. 1876;

B. Verizon California Inc. ("Franchisee") is in the process of planning and installing a Fiber to the Premise Telecommunications Network ("FTTP Network") that will occupy the Public Rights-of-Way within the City of Manhattan Beach for the transmission of non-cable services pursuant to its status as a telecommunications carrier as set forth in Title II of the Communications Act and under authority granted by the State of California;

C. The FTTP Network, once installed, will enable the provision of cable service to the residents of Manhattan Beach;

D. Negotiations between the Franchising Authority and the Franchisee have resulted in a franchise agreement, which agreement comports with the requirements of applicable law;

E. Notice of public hearing before the City Council to consider the proposed cable franchise agreement was properly published in the Beach Reporter on June 1, 2006 and June 14, 2006 in accordance with California Government Code §§ 6066 and 53066.3(a);

F. The Franchising Authority has reviewed the legal, technical and financial qualifications of the Franchisee to operate and provide cable service within the City and Franchising Authority's staff has prepared a Staff Report dated June 20, 2006 ("Staff Report") setting forth those qualifications, the future cable-related needs and interest of the City of Manhattan Beach and its residents, and examining each of the requirements and criteria set forth by federal, state and local law with respect to granting an additional cable television franchise, as well as any applicable provisions in existing franchises; and

G. After receiving the comments of interested parties at a public hearing affording due process to all parties, in deliberation of the entire record regarding this matter before it, including other pertinent information, and specifically considering each of the requirements and criteria enumerated in California Government Code § 53066.3(a), 47 U.S.C. § 541(a), and all other applicable provisions of law, as well as any applicable provisions in existing franchises, the Franchising Authority determines that is in the public interest to approve the proposed cable television franchise agreement and authorize and direct the execution of the proposed Franchise Agreement;

SECTION 2. The City Council concludes that the cable-related needs and interests of the City of Manhattan Beach, California and the Franchisee's legal, technical, and financial qualifications to operate and provide cable service within the City are accurately identified by the attached Staff Report. The Staff Report, as well as the supporting evidence presented at the public hearing on June 20, 2006, is hereby adopted by the Franchising Authority in its entirety as its ascertainment of the cable-related needs and interests of the City, the Franchisee's qualifications to operate and provide cable service within the City, and the Franchisee's qualifications to operate and provide cable service within the City. The Staff Report and evidence also supports the Franchising

Authority's consideration of each of the requirements and criteria enumerated in California Government Code § 53066.3(a), 47 U.S.C. § 541(a), all other applicable provisions of law, as well as any applicable provision in existing franchises.

SECTION 3. The City Council finds that the specific requirements of Government Code section 53066.3 are met by this franchise application. Specifically: approval of the proposed franchise will have a significant positive impact on the community by providing competition; there will be no unreasonable adverse economic or aesthetic impact on the community from the proposed franchise; there will be no unreasonable disruption or inconvenience to existing users of utility poles nor to future uses of said poles or the public right of way or public easements; the franchisee has the necessary technical and financial ability to perform under the proposed agreement; there is no impact on the City's interest in having universal cable service; the award of this franchise shall have other positive social benefits including provision of competition into a previously monopolistic market; the operation of an additional cable franchise is hereby deemed economically feasible.

SECTION 4. The Franchising Authority determines that it is in the public interest to grant a nonexclusive franchise to operate and provide cable service to Verizon California Inc. As evidence of its consideration of each of the factors enumerated in California Government Code § 53066.3(a), 47 U.S.C. § 541(a)(3), all other applicable provisions of law, as well as any applicable provisions in existing franchises, the Franchising Authority hereby adopts the attached Findings of Fact in support of this determination.

SECTION 5. The Franchising Authority authorizes the grant of a nonexclusive franchise to the Franchisee to operate and provide cable service within the City. This authorization is made in accordance with the applicable provisions of California Government Code § 53066.3 and Title VI of the Communications Act. A copy of the Franchise Agreement in the form set forth and presented to public hearing on June 20, 2006, is directed to be retained in the office of the City Clerk for the purpose of public inspection.

SECTION 6. That certain Franchise Agreement in the form set forth and presented to the City Council at this public hearing is approved, and the City Manager is authorized and directed to execute that agreement on behalf of the Franchising Authority following its execution by the Franchisee.

SECTION 7. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 8. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other Ordinance of the City, to the extent that they are inconsistent with this Ordinance, and no further, are hereby repealed.

SECTION 9. The effective date of the Franchise Agreement shall be the date set forth therein.

SECTION 10. Notice of Adoption. The City Clerk of the City of Manhattan Beach shall certify to the adoption of this Ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the City in a manner permitted under Section 36033 of the California Government Code.

SECTION 11. This Ordinance shall become effective thirty (30) days after the date of its adoption.

SECTION 12. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate, posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of

those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED AND ADOPTED this 5th day of July, 2006.

Ayes:
Noes:
Absent:
Abstain:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

Findings of Fact By the City Council of the City of Manhattan Beach, California

June 20, 2006

Following thorough evaluation of Verizon California Inc.'s request to provide cable service in the City of Manhattan Beach, California, after receiving the comments of interested parties at a public hearing affording due process to all parties, in consideration of the entire record regarding this matter before it, including a Staff Report from the City Manager's office dated June 20, 2006 and other pertinent information, and considering each of the factors enumerated in California Government Code § 53066.3(a), 47 U.S.C. § 541(a)(3), all other applicable provisions of law, as well as any applicable provisions in existing franchises, the City Council of the City of Manhattan Beach, California determines that it is in the public interest to grant a nonexclusive franchise to provide cable service to Verizon California Inc. ("Verizon"). In exercise of its discretion and legislative authority, the City Council makes the following findings in support of this determination:

1. Federal, state and local law, and the interests of the residents of Manhattan Beach favor competition in the provision of multichannel video programming services directly to consumers. By fostering competition, granting Verizon a nonexclusive franchise to provide cable services will have a significant positive impact on Manhattan Beach and will not have any negative impact. See, without limitation, Cal. Gov't Code § 53066.3(a)(1).
2. Granting Verizon a nonexclusive franchise to provide cable services will not have an adverse economic impact on Manhattan Beach. See, without limitation, Cal. Gov't Code § 53066.3(a)(2). To the contrary, granting Verizon a franchise will bring substantial economic and developmental benefits to Manhattan Beach.
3. Granting Verizon a nonexclusive franchise to provide cable services will not have an adverse aesthetic impact upon the public or private property within Verizon's service area. See, without limitation, Cal. Gov't Code § 53066.3(a)(2).
4. There will be no unreasonable disruptions or inconvenience to existing users, nor any adverse effects on the future use of utility poles, public easements or public rights-of-way contrary to the intent of Section 767.5 of the Public Utilities Code resulting from the grant of a franchise to Verizon. See, without limitation, Cal. Gov't Code § 53066.3(a)(3); Cal. Pub. Util. Code § 767.5.
5. Verizon has demonstrated the financial, technical and legal qualifications and ability to provide cable service in Manhattan Beach. See, without limitation, Cal. Gov't Code § 53066.3(a)(4).
6. Granting Verizon a nonexclusive franchise to provide cable services will not adversely impact the City's interest in having universal cable service or societal interests. See, without limitation, Cal. Gov't Code §§ 53066.3(a)(5), (6).
7. Granting a nonexclusive franchise to provide cable services within Verizon's proposed service area is economically feasible. See, without limitation, Cal. Gov't Code § 53066.3(a)(7).
8. The franchise agreement with Verizon fully complies with the statutory nondiscrimination requirements. See, without limitation, Cal. Gov't Code § 53066.3(d); 47 U.S.C. § 541(a)(3).
9. The franchise agreement includes provisions that require Verizon to provide adequate public, educational, and governmental access channel capacity, facilities or financial support in the future. See, without limitation, Cal. Gov't Code § 53066.3(d).
10. Verizon's plans for providing cable services in Manhattan Beach meet or exceed the City's cable-related needs and interests. See, without limitation, Cal. Gov't Code § 53066.3(a)(8).
11. Granting Verizon a nonexclusive franchise to provide cable services will enhance competition, further the ubiquitous availability of a wide choice of state-of-the-art services and enhance

the development and deployment of new technologies, consistent with the policies set forth in Public Utilities Code Section 709. See, without limitation, Cal Pub. Util. Code § 709; Cal. Gov't Code § 53066.3(a)(8); accord Telecommunications Act of 1996, § 706, Pub. L. No. 104-104, 110 Stat. 153, reprinted in 47 U.S.C. § 157 note.

12. The material provisions of the franchise agreement between Verizon and the City are competitively neutral with the provisions contained in the incumbent franchise agreement that the City has most recently renewed by a grant of renewal to ML Media Partners, L.P. on September 27, 1994, and provide all parties equal protection under the law. See, without limitation; Cal. Gov't Code § 53066.3(d).

13. Granting a nonexclusive franchise to provide cable services to Verizon is in the public interest. See, without limitation, Cal. Gov't Code § 53066.3(a)(8).

CABLE FRANCHISE AGREEMENT

**BETWEEN THE
CITY OF MANHATTAN BEACH
AND
VERIZON CALIFORNIA INC.**

2006

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THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the City of Manhattan Beach, a duly organized municipal corporation under the applicable laws of the State of California (the Local Franchising Authority or “LFA”) and Verizon California Inc., a corporation duly organized under the applicable laws of the State of California (the “Franchisee”).

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

WHEREAS, 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 Sections 1.302 and 1.308 of Ordinance No. 1876, “An Ordinance of the City Council of the City of Manhattan Beach, California, Relative to the Granting and Operation of Cable Television Franchises”;

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 California;

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

WHEREAS, LFA has identified the future cable-related needs and interests of LFA and its community, considered the financial, technical and legal qualifications of Franchisee, determined that Franchisee’s plans for its Cable System are adequate, and considered, at a duly noticed public hearing and in accordance with Section 53066.3, California Government Code: (a) whether there will be significant positive or negative impacts on the community being served; (b) whether there will be an unreasonable adverse economic or aesthetic impact upon public or private property within the Franchise Area; (c) whether there will be an unreasonable disruption or inconvenience to existing users, or any adverse effect on future use, of utility poles, public easements, and the Public-Rights-of-Way contrary to the intent of Section 767.5 of the Public Utilities Code; (d) whether the franchise applicant has the technical and financial ability to perform; (e) whether there is any impact on LFA’s interest in having universal Cable Service; (f) whether other societal interests generally considered by franchising authorities will be met; (g) whether the operation of an additional cable television system in the community is economically feasible; and (h) such other additional matters, both procedural and substantive, as LFA has determined to be relevant;

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

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

WHEREAS, 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 LFA's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of LFA pursuant to and consistent with the Cable Law, 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 Cable Law 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 LFA without charge for non-commercial public, educational, or governmental use for the transmission of video programming as directed by 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 the PEG Channels required by this Franchise.

1.4. *Cable Law*: Ordinance No. 1876, "An Ordinance of the City Council of the City of Manhattan Beach, California, Relative to the Granting and Operation of Cable Television Franchises," to the extent authorized under and consistent with federal and state law.

1.5. *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).

1.6. *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 Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise/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 of an Information Services provider.

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

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

1.9. *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.

1.10. *Educational Access Channel*: An Access Channel available for the sole use of the local public schools in the Franchise Area.

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

1.12. *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 including condemnation, accidents for which Franchisee is not primarily responsible, fire, flood, or other acts 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.

1.13. *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 during the term of this Franchise.

1.14. *Franchisee*: Verizon California Inc., and its lawful and permitted successors, assigns and transferees.

1.15. *Government Access Channel*: An Access Channel available for the use solely of LFA.

1.16. *Gross Revenue*: All revenue that Franchisee and its Affiliates (to the extent that either is acting as a provider of Cable Service authorized by this Franchise) derives from the operation of Franchisee's Cable System to provide Cable Service in the Service Area, including but not limited to all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related service or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or otherwise (except sale); (iii) revenues from the sale or lease of Access Channel(s) or Channel capacity; (iv) advertising revenues (as described below); and (v) revenues from home shopping Channel providers. Gross Revenue also includes franchise fees imposed on Franchisee by LFA that are passed through from Franchisee as a line item paid by Subscribers. Revenue of an Affiliate derived from the Affiliate's provision of Cable Services shall be Gross Revenue to the extent the treatment of such revenue as revenue of the Affiliate and not of Franchisee has the intentional or unintentional effect of evading the payment of Franchise fees that would otherwise be payable to LFA hereunder. Advertising commissions

paid to third parties shall not be netted against advertising revenue included in Gross Revenue. In no event shall revenue of an Affiliate be Gross Revenue of Franchisee if such revenue is subject to franchise fees to be paid to LFA for Cable Services. Advertising revenue is based upon the ratio of the number of Subscribers as of the last day of the period for which Gross Revenue is being calculated to the number of Franchisee's subscribers within all areas covered by the particular advertising source as of the last day of such period, e.g., Franchisee sells two ads: Ad "A" is broadcast nationwide; Ad "B" is broadcast only within California. Franchisee has 100 Subscribers in LFA, 500 subscribers in California, and 1000 subscribers nationwide. Gross Revenue as to LFA from Ad "A" is 10% of Franchisee's revenue therefrom. Gross Revenue as to LFA from Ad "B" is 20% of Franchisee's revenue therefrom. Gross Revenue shall not include:

1.16.1. 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;

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

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

1.16.4. 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; charges made to the public for commercial or cable television that is used for two-way communication; 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;

1.16.5. 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, notwithstanding that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise, which portion shall be included in Gross Revenue;

1.16.6. 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;

1.16.7. 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);

1.16.8. 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;

1.16.9. Sales of capital assets or sales of surplus equipment;

1.16.10. Reimbursement by programmers of marketing costs incurred by Franchisee for the introduction and promotion of programming;

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

1.16.12. Any fees or charges collected from Subscribers or other third parties for PEG or I-NET Grants.

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

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

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

1.20. *Local Franchise Authority (LFA)*: The City of Manhattan Beach, California or the lawful successor, transferee, or assignee thereof.

1.21. *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.

1.22. *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.

1.23. *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 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).

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

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

1.26. *Public Access Channel*: An Access Channel available for the sole use of the residents in the Franchise Area.

1.27. *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 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.

1.28. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area and any additional service areas.

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

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

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

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

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

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

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

1.36. *Transfer of the Franchise*:

1.36.1. Any transaction in which:

1.36.1.1. an ownership or other interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that control of Franchisee is transferred; or

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

1.36.2. However, notwithstanding Sub-sections 1.36.1.1 and 1.36.1.2 above, a Transfer of the Franchise 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.

1.37. *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 and the Cable Law, 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, in order to provide 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 as a Cable Television Local Franchise Authority*: 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 Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services.

2.3. *Term*: The effective date of this Agreement shall be thirty (30) days following its approval by LFA's governing authority authorized to grant franchises or the date of last signature, whichever date is later ("Effective Date"). The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked 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 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 adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

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 LFA on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Cable Law, or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by 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 Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse 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. In the event of a conflict between the Cable Law and this Agreement, this Agreement shall prevail.

2.7.2. The following Cable Law provisions not addressed by this Agreement do not apply to this Franchise: Sections 1.200(12), 1.200(15), 1.317(2), 1.320, 1.334, 1.402, 1.410, 1.506(2)-(3), 1.516, 1.518, 1.520, 1.522, 1.526, 1.528, 1.535, 1.606, 1.614, 1.702, 1.708, 1.804, 1.808, 1.1002, 1.1102, 1.1104, 1.1106, 1.1108, 1.1112, and 1.1114.

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

2.7.4. 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 Franchisee of the material alteration. Any modifications shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to 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. If there is a change to state law that permits but does not require Franchisee to opt out of or terminate this Agreement, Franchisee agrees to honor this Agreement.

2.8. *Police Powers:* Nothing in the Franchise 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 Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on Franchisee of the material alteration. Any modifications shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to 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.

3. **PROVISION OF CABLE SERVICE**

3.1. *Service Area:*

3.1.1. *Initial Service Area:* Franchisee shall offer Cable Service to all residential areas of the Initial Service Area and may make Cable Service available to businesses

in the Initial Service Area, within twenty-four (24) months of the Effective Date of this Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by 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 developments or buildings where Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; and (F) in developments or buildings that 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 requirements set forth in Sub-section 3.1.1.1.

3.1.1.1. *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 30 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 Initial Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsections 3.1.1 and 3.1.2 respectively, Franchisee shall provide Cable Service to such area within six (6) months of receiving notice from LFA that the density requirements have been met.

3.1.2. *Additional Service Areas:* Except for the Initial Service Area, Franchisee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any Renewals thereof. If Franchisee desires to add additional service areas within the Franchise Area, Franchisee shall notify LFA in writing of such additional service area at least ten (10) days prior to providing Cable Services in such areas.

3.2. *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 Section 3.1 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, all residential dwelling units that are within one hundred fifty (150) 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, actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to the public buildings designated by LFA in Exhibit B; provided, however, that 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 school or public building, LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of one hundred fifty (150) feet, or of releasing Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover, from any school or other 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 provision of Basic Service to the additional service outlets once installed.

3.4. *Institutional Network.* If, during the term of the Franchise, another cable operator agrees to expand LFA's institutional network, as defined in Section 611(c) of the Communications Act (the "I-NET"), then within sixty (60) days of a request from the LFA, Franchisee agrees to enter into good faith negotiations with the LFA for Franchisee's payment of a pro rata, per Subscriber grant to LFA for Franchisee's proportional share (in relation to other cable operators) of the incremental, verifiable cost to the cable operator of providing the expanded I-NET; provided, however, that LFA agrees that it will require all cable operators within the Franchise Area to make pro rata per subscriber contributions toward the construction of the I-NET.

3.5. *I-NET Grant.* Franchisee shall provide an annual grant to the LFA to be used in support of the ongoing costs of operating LFA's existing I-NET (the "I-NET Grant"). As long as the incumbent cable operator in the Franchise Area is paying or providing services equal to at least the same amount, the I-NET Grant provided by Franchisee hereunder shall be the sum of \$0.05 per month, per Subscriber to Franchisee's Basic Service Tier in the Service Area. The I-NET Grant shall be delivered to the LFA within sixty (60) days after the beginning of each calendar year during the Franchise Term.

4. **SYSTEM OPERATION**

4.1. 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. The jurisdiction of LFA over such Telecommunications Facilities is restricted by federal and state law, and LFA does not assert jurisdiction over Franchisee's FTTP Network in contravention of those limitations.

4.2. Franchisee shall perform all tests necessary to determine compliance with applicable FCC technical standards. Upon request, Franchisee shall provide LFA a copy of the test results within thirty (30) days of the completion of the test. Franchisee shall permit LFA to witness the testing. At any time after commencement of service to Subscribers, upon providing Franchisee notice and an opportunity to cure, LFA may order that Franchisee perform additional proof of performance tests required under applicable FCC technical standards on the basis of substantial numbers of complaints received or other evidence indicating significant noncompliance with the applicable technical standards. Such additional tests shall be limited to the particular matter in controversy. The costs of any such tests, and any necessary retests, shall be borne by Franchisee.

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 with an initial analog and digital carrier passband between 50 and 860 MHz.

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

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

5.3. *Emergency Alert System:*

5.3.1. Franchisee shall comply with the Emergency Alert System (“EAS”) requirements of the FCC in order that emergency messages may be distributed over the System.

5.3.2. LFA shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, LFA shall hold harmless and defend Franchisee, its employees, officers and assigns from and against any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys’ fees and costs.

6. **PEG SERVICES**

6.1. *PEG Set Aside:*

6.1.1. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide on the Basic Service Tier one (1) dedicated Public Access Channel, one (1) dedicated Educational Access Channel, and one (1) dedicated Government Access Channel (collectively, “PEG Channels”).

6.1.2. Within ten (10) days after the Service Date of this Agreement, LFA shall notify Franchisee of the programming to be carried on each of the PEG Channels set aside by Franchisee. LFA hereby authorizes Franchisee to transmit such programming within and outside LFA jurisdictional boundaries. Thereafter, Franchisee shall assign the PEG Channels on its channel line-up as set forth in such notice to the extent such channel assignments do not interfere with Franchisee’s existing or planned channel line-up. If a PEG Channel provided under this Article is not being utilized by LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as LFA elects to utilize the PEG Channel for its intended purpose.

6.1.3. *Interconnection Required:* Franchisee shall use reasonable efforts to interconnect its Cable System with the existing cable operator(s). Prior to the Service Date, Franchisee shall initiate interconnection negotiations with the existing cable operator(s) to cablecast, on a live basis, public, educational and governmental access programming consistent with this Franchise. Interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection.

6.1.3.1. *Interconnection Procedure:* Franchisee shall negotiate in

good faith with existing cable operator(s) respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms and conditions. LFA shall require the existing cable operator(s) to provide such interconnection to Franchisee on reasonable terms and conditions. Franchisee and the existing cable operator(s) shall negotiate the precise terms and conditions of an interconnection agreement. LFA shall use its best efforts to facilitate these negotiations.

6.1.3.2. *Relief*. If the parties are unable to reach agreement on the terms of interconnection, including, but not limited to, compensation and timing, the dispute shall be submitted to LFA for resolution. Franchisee shall be granted reasonable extensions of time to interconnect, which shall be granted if Franchisee has negotiated in good faith and has failed to obtain an approval from the existing cable operator(s). If the cost of interconnection would be unreasonable, interconnection is not technically feasible or would cause an unacceptable increase in Subscriber rates, or if an existing cable operator will not agree to reasonable terms and conditions of interconnection, Franchisee's failure to comply with the obligation to carry PEG programming originating on the cable system of the existing cable operator or to interconnect the Cable System will not be deemed a violation of the franchise enforceable under Article 13 of this Agreement.

6.2. *PEG Grant*:

6.2.1. Franchisee shall provide the following grants to LFA to be used in support of the production of local PEG programming. Such grants shall be used by LFA for PEG access equipment, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities.

6.2.2. Within thirty (30) days after the Effective Date of the Agreement, Franchisee shall provide LFA with a one-time payment of one hundred thousand dollars (\$100,000) to be used in support of the production of local PEG programming ("Initial PEG Grant"). Franchisee shall also provide the sum of \$0.70, per month, per Subscriber in the Service Area to Franchisee's Basic Service Tier (the "Annual PEG Grant"). The Annual PEG Grant provided by Franchisee may be adjusted each year by \$.25 per Subscriber, per month, up to a maximum payment of \$1.50 per Subscriber, per month over the term of the Agreement to account for Franchisee's proportional share of any new, additional PEG costs resulting from the conversion of any in-kind PEG services currently provided by the incumbent cable operator to cash payments. Any new, additional PEG costs shall be based upon the verifiable needs of LFA to support the production of local PEG programming. Such proportional share shall be determined by dividing the total increase in PEG support by the total number of cable subscribers in the LFA. The charge to be paid by Franchisee shall be equal to the resulting per Subscriber charge multiplied by the total number of Franchisee's Subscribers. The Annual PEG Grants is subject to Franchisee's verification of the actual cost of the provision of local PEG support and an equitable contribution by all cable operators on a per Subscriber basis. The Annual PEG Grant payment, along with a brief summary of the Subscriber information upon which it is based, shall be delivered to LFA within sixty (60) days after the beginning of each

calendar year during the Franchise Term. Calculation of the Annual PEG Grant will commence with the first calendar month during which Franchisee obtains its first Subscriber in the Service Area.

6.2.3. Upon request, LFA shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 6.2.

6.3. LFA shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and 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.

6.4. To the extent permitted by federal law, Franchisee shall be allowed to recover the Initial PEG Grant, the Annual PEG Grant, any other PEG costs, and I-NET contributions from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the forgoing, 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 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. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable.

7.2. *Late Payments.* Any delinquent Franchise fee payment shall be subject to an annual interest charge equal to the highest bank prime rate during the period of delinquency. In addition, failure to pay a Franchise fee payment that is due and payable within sixty (60) days after receipt of notice from LFA shall subject the quarterly payment to a five percent (5%) penalty. LFA has the discretion to waive the late payment penalty based on Franchisee's good faith payment efforts or circumstances beyond Franchisee's control.

7.3. *Supporting Information:* Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation.

7.4. *Limitation on Franchise Fee Actions:* The period of limitation for recovery of any Franchise fee payable hereunder shall be four (4) years from the date on which 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. Franchisee shall not allocate revenue between Cable Services and Non-Cable Services for the purpose or with the intent of evading or substantially reducing Franchisee's Franchise fee obligations to LFA. Tariffed telecommunication services that cannot be discounted by state and/or federal regulatory rules are excluded from the allocation basis for the bundle discount.

8. **CONSUMER STANDARDS**

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

9. **REPORTS AND RECORDS**

9.1. *Audit of Franchise Fee Payments:*

9.1.1. LFA, or its designee, may conduct an audit or other inquiry in relation to payments made by Franchisee no more than once every three (3) years during the Term. As a part of the audit process, LFA or LFA's designee may inspect Franchisee's books of accounts relative to LFA at any time during regular business hours and after thirty (30) calendar days prior written notice. The scope of such audit shall be limited to the records of the previous four (4) years.

9.1.2. All records deemed by LFA or LFA's designee to be reasonably necessary for such audit shall be made available by Franchisee in a mutually agreeable format and location. Franchisee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of a written request. Franchisee may provide such responses within a reasonable time after the expiration of the response period above so long as Franchisee has made a good faith effort to procure any such tardy response.

9.1.2.1. If the results of any audit indicate that Franchisee (i) paid the correct franchise fee, (ii) overpaid the franchise fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by five percent (5%) or less, then LFA shall pay the costs of the audit. If the results of the audit indicate Franchisee underpaid the franchise fee by more than five percent (5%), then Franchisee shall pay the reasonable, documented, third-party costs of the audit, which costs initially shall be limited to fifteen thousand dollars (\$15,000). Such limit shall increase one thousand dollars (\$1,000) per year for each year of the term up to a maximum of thirty thousand dollars (\$30,000). LFA agrees that any audit shall be performed in good faith.

9.1.2.2. Any auditor employed by LFA shall not be compensated on a success based formula, e.g., payment based on a percentage on underpayment, if any.

9.2. *Access to Books and Records:* Upon reasonable prior written notice to Franchisee and with no less than thirty (30) business days written notice to Franchisee, LFA shall have the right to inspect, during Normal Business Hours and on a non-disruptive basis, all books, financial statements, contracts, service complaint logs, performance test results, records of requests for Cable Services that are directly relevant to Franchisee's compliance with the requirements and obligations imposed upon it by this Agreement, or applicable law as it relates to this Franchise. The right of LFA to inspect under this Section extends to the material identified above that is in the possession or under direct control of Franchisee, and of any other Person designated by Franchisee for managing and administering the Cable System to the extent that Franchisee has the right to require such other Person to make such records available to LFA. LFA's notice of inspection shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than four (4) years.

9.3. No later than forty-five (45) days after the end of the calendar quarter, Franchisee shall provide LFA with a report for the prior calendar quarter including the following measurements: Subscriber service calls by reason; telephone availability performance; on-time performance for installations, maintenance appointments and service interruptions; and technical performance as reflected in dispatched trouble calls and service interruptions.

9.4. *Proprietary Information.*

9.4.1. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose 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 Service Area. LFA agrees to treat any information disclosed by Franchisee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

9.4.2. Upon a request for confidentiality by Franchisee, information obtained by LFA pursuant to this Agreement shall be made available only to persons needing access to the materials in order to perform their responsibilities on behalf of or for LFA and, as to all other persons, shall be treated as confidential to the extent permitted by law. LFA shall promptly notify Franchisee whenever a third party seeks access to Franchisee's confidential information, whether pursuant to the Public Records Act or otherwise. Franchisee agrees and acknowledges that LFA does not have any responsibility or obligation to seek legal or equitable relief to prevent the dissemination of the confidential information, unless required by law. Franchisee may, in its sole discretion and expense, take any steps it deems necessary to protect its rights in the confidential information. Franchisee also maintains the right to require that LFA execute a confidentiality and/or non-appropriation agreement prior to gaining access to any materials under this section. Nothing in this section shall be read to require LFA or Franchisee to violate the Cable Act, 47 U.S.C. §551, or the California Public Records Act.

9.5. *Records Required:* Franchisee shall at all times maintain:

9.5.1. Records of all written complaints for a period of four (4) 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;

9.5.2. Records of outages for a period of four (4) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.5.3. Records of service calls for repair and maintenance for a period of four (4) 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;

9.5.4. Records of installation/reconnection and requests for service extension for a period of three 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

9.5.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

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:

10.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) 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 Franchise Area.

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

10.1.1.3. Workers’ Compensation Insurance meeting all legal requirements of the State of California.

10.1.1.4. Employers’ Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$500,000 policy limit.

10.1.2. LFA shall be designated as additional insured under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance.

10.1.3. Franchisee shall not cancel any required insurance policy without submitting documentation to LFA verifying that Franchisee has obtained alternative insurance in conformance with this Agreement.

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

10.1.5. Upon written request, Franchisee shall deliver to LFA Certificates of Insurance showing evidence of the required coverage.

10.2. *Indemnification:*

10.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend LFA, its officers, agents, boards and employees, 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, provided that LFA shall give Franchisee written notice of its obligation to indemnify LFA within ten (10) days of receipt of a claim or action pursuant to this subsection, or fifteen (15) days provided that Franchisee is not prejudiced by the timing of such notice. Notwithstanding the foregoing, Franchisee shall not indemnify LFA, for any damages, liability or claims resulting from the willful misconduct or negligence of 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, use of the 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 LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of LFA, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent 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 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 LFA and 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 LFA shall in no event exceed the amount of such settlement.

10.2.3. LFA shall hold Franchisee harmless and shall be responsible for damages, liability or claims resulting from willful misconduct or negligence of LFA.

10.2.4. LFA shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by LFA for which LFA is legally responsible,

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

11. **TRANSFER OF FRANCHISE**

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 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 excluded under Section 1.36 above. If Franchisee transfers the Franchise to an Affiliate, Franchisee shall guarantee the obligations and performance of the Franchise. LFA shall release Franchisee from such guaranty upon demonstration of the Affiliate transferee's financial viability, which release shall not be unreasonably delayed, denied or conditioned.

12. **RENEWAL OF FRANCHISE**

12.1. LFA and Franchisee agree that any proceedings undertaken by 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, 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. LFA further agrees to provide Franchisee with a copy of any completed assessments 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 LFA agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, LFA and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and LFA may grant a renewal thereof.

12.4. Franchisee and LFA consider the terms set forth in this Article 12 to be consistent with the express provisions of 47 U.S.C. 546.

13. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

13.1. *Performance Bond:* Prior to the Service Date, Franchisee shall provide to LFA security for the performance of its obligations under this agreement in the amount of ten thousand dollars (\$10,000). The form of this security may, at Franchisee's option, be a

performance bond, letter of credit, cash deposit, cashier's check or any other security acceptable to LFA.

13.1.1. If Franchisee posts a performance bond, it shall be substantially in the form of Exhibit D.

13.1.2. In the event that a performance bond provided pursuant to the Agreement is not renewed or is cancelled, Franchisee shall provide new security pursuant to this Article within 30 days of such cancellation or failure to renew.

13.1.3. Neither cancellation, nor termination nor refusal by surety to extend the bond, nor inability of Franchisee to file a replacement bond or replacement security for its obligations, shall constitute a loss to LFA recoverable under the bond. Franchisee shall provide LFA notice of cancellation or termination of the performance bond.

13.1.4. If Franchisee posts a performance bond, it shall be issued by a surety qualified to do business in the State of California, with an A-VII or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

13.2. *Security Fund:*

13.2.1. *Creation of Security Fund:* Within sixty (60) days following the Effective Date of this Agreement, Franchisee shall establish and provide to LFA a security fund ("Security Fund"), as security for the faithful performance by Franchisee of all material provisions of this Agreement. The Security Fund shall be in the amount of ten thousand dollars (\$10,000) and shall be in the form of a letter of credit payable to the order of LFA with any interest distributable to Franchisee. Franchisee shall provide LFA notice of cancellation or termination of the letter of credit.

13.2.2. *Amount of Security Fund:* The Security Fund shall be maintained at the ten thousand dollar (\$10,000) level throughout the term of the Agreement; provided that Franchisee shall not be required to maintain the ten thousand dollar (\$10,000) level once LFA has begun to assess amounts pursuant to Section 13.2.3 below.

13.2.3. *Procedure for Assessing Security Fund:*

13.2.3.1. If Franchisee fails to perform in a timely manner any material obligation (a "violation") required by this Franchise, and if Franchisee does not take the actions set forth in Section 13.2.3.2, LFA may assess amounts from the Security Fund thirty (30) days after receipt of written notice by Franchisee of LFA's intention to draw upon the Security Fund. LFA's written notice to Franchisee shall specify all such violations alleged to have occurred.

13.2.3.2. In the event LFA determines that a violation exists and that Franchisee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation within the thirty (30) day time period described above,

LFA may elect to assess an amount of up to two hundred dollars (\$200) per day from the Security Fund.

13.2.3.3. If LFA elects to assess amounts from the Security Fund, then such election shall constitute LFA's exclusive remedy for a period of thirty (30) days. Thereafter, LFA may pursue other remedies set forth in this Article 13.

13.2.4. *Other Representations:* If LFA's assessment is found to be improper by any court or agency of competent jurisdiction, Franchisee shall be entitled to a refund of the funds plus interest and any other award that such court or agency shall make.

13.3. *Notice of Violation:* In the event that LFA believes that Franchisee has not complied with the terms of the Franchise and LFA elects not to assess the Security Fund, LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, LFA shall notify Franchisee in writing of the exact nature of the alleged noncompliance.

13.4. *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the written notice described in Section 13.3 to: (i) respond to LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such default; or (iii) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify LFA of the steps being taken and the projected date that they will be completed.

13.5. *Written Notice From LFA:* In the event that Franchisee fails to respond to the written notice described in Section 13.3 pursuant to the procedures set forth in Section 13.4, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to Section 13.4.(iii) above, if it intends to continue its investigation into the default, then LFA shall provide Franchisee with written notice thereof. Such written notice shall set forth the reasons why LFA believes that Franchisee has not cured the default and shall set forth LFA's proposed action, which may include the following:

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

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

13.5.3. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.6.

13.6. *Public Hearing:* Should LFA seek to revoke the Franchise after following the procedures set forth in Sections 13.3 through 13.5 above, LFA shall give written notice to Franchisee of its intent. The notice shall set forth the exact nature of the noncompliance. Franchisee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event LFA has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a public hearing. 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.

13.6.1. 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 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.

13.6.2. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter 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. LFA shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Franchisee to affect any cure. If LFA determines that the Franchise shall be revoked, LFA shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of LFA to an appropriate court, which shall have the power to review the decision of LFA *de novo* to the extent 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 franchising authority.

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

13.7. *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 of this Franchise, 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. Franchisee may consider Subscriber penetration levels outside the Franchise Area in this determination. Notice to terminate under this Section 13.7 shall be given to the City 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 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 LFA.

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

14.4.1. Furthermore, the parties hereby agree that it is not 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 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:

Verizon California Inc.
Attn: Tim McCallion, President - West Region
112 Lakeview Canyon Road
Thousand Oaks, CA 91362

14.5.2. with a copy to:

Mr. Jack H White
Senior Vice President & General Counsel – Verizon Telecom
One Verizon Way
Room VC43E010
Basking Ridge, NJ 07920-1097

14.5.3. Notices to LFA shall be mailed to:

City Manager
The City of Manhattan Beach
1400 Highland Avenue

Manhattan Beach, CA 90266

14.5.4. with a copy to:

City Attorney
The City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

14.6. *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and LFA, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether written or oral) 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.

14.7. *Amendments*: Amendments to 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, subsection, 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. *Franchisee's FTTP Network*: The LFA and the Franchisee recognize and agree that due to the nature of the Franchisee's FTTP Network, certain provisions of the Cable Law are not applicable to the Franchisee.

14.12. *Modification*: This Franchise shall not be modified except by written instrument executed by both parties.

14.13. *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 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.

14.14. *Independent Review*: 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.

SIGNATURE PAGE FOLLOWS

AGREED TO AS OF THE DATE OF LAST SIGNATURE BELOW:

VERIZON CALIFORNIA INC.

By: _____
Tim McCallion, President - West Region

Date: _____

CITY OF MANHATTAN BEACH

ATTEST:

By: _____
City Manager

City Clerk

Date: _____

APPROVED AS TO FORM

City Attorney

EXHIBITS

Exhibit A: Service Area

Exhibit B: Municipal Buildings to be Provided Free Cable Service

Exhibit C: Consumer Service Standards

Exhibit D: Performance Bond

EXHIBIT A
INITIAL SERVICE AREA



EXHIBIT B

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Public Buildings

1. City Hall
1400 Highland Avenue
2. City Library
1320 Highland Avenue
3. Joslyn Community Center
1601 North Valley Drive
4. Police Station
420 15th Street
5. Fire Station #1
400 15th Street
6. Fire Station #2
1400 Manhattan Beach Boulevard
7. Maintenance Yard
3621 Bell Avenue
8. Manhattan Heights Community Center
1600 Manhattan Beach Boulevard
9. Manhattan Heights Annex
1560 Manhattan Beach Boulevard

Public Schools

1. Mira Costa High School
701 South Peck Avenue
2. Manhattan Beach Middle School
1501 Redondo Avenue
3. Manhattan Beach Unified School District Office
325 South Peck

EXHIBIT C

CONSUMER SERVICE STANDARDS

These standards shall, starting six (6) months after the Service Date, 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 fifty (150) feet of trunk or feeder lines.

SECTION 2: TELEPHONE AVAILABILITY

A. Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. 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 thirty (30) seconds of call waiting.

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

F. Upon request from LFA, but in no event more than once a quarter thirty (30) days following the end of each quarter, Franchisee shall report to 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 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. Franchisee shall notify 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 customer requests

for connection 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.

C. Franchisee shall provide LFA with a report upon request from 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 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. Franchisee shall notify 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. If, at any time during the term of the Franchise, "Effective Competition", as defined by the Communications Act, as the term may be reasonably applied to Franchisee, ceases to exist in the Service Area, LFA and Franchisee agree to enter into good faith negotiations to determine if there is a need for additional customer service requirements. LFA and Franchisee shall enter into such negotiations within forty-five (45) days following a request for negotiations by LFA after the cessation of "Effective Competition" as described above.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

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

B. Franchisee shall exercise commercially reasonable efforts to limit any 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 LFA and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage.

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 must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) Within twenty-four (24) hours, including weekends, of receiving subscriber calls respecting Service Interruptions in the Service Area.

(2) Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or LFA of a 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. Franchisee shall provide LFA with a report upon request from 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 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. Franchisee shall notify 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 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 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 LFA within seventy-two (72) hours. Franchisee shall notify LFA of those matters that necessitate an excess of seventy-two (72) hours to resolve, but those matters must be resolved within fifteen (15) days of the initial complaint. 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. Franchisee shall provide a telephone number and address on the bill for Subscribers to contact Franchisee.

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

H. 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 1) with 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 that 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 other deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within the 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 expressly 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 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.

B. 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.

C. 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.

D. Charges for cable service will be discontinued at the time of the requested termination of service by the subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Franchisee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the

effective date of the disconnect request, unless there is a delay in returning Franchisee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by Franchisee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Franchisee and to receive Cable Service or other multi-channel video service from another Person or entity.

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 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 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 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 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 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 within 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. 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.

EXHIBIT D

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 Ten Thousand Dollars (\$10,000), 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 _____, 20____, 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.

Bond No. _____

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 _____, 2006.

Principal

Surety

By: _____

By: _____
 , Attorney-in-Fact

Accepted by Obligee: _____
 (Signature & date above - Print Name, Title below)