



Technology and Communications Commission
January 2, 2024, 7:00 p.m.
Council Chamber, Town Hall
Agenda

- Call to Order
- Establish Quorum
- Pledge of Allegiance
- Approval of Minutes
 - December 5, 2023, Meeting Minutes
- Petitioners
- Election of Officers
- Meeting Calendar

- Old Business
 - Digital Town Hall Technology and Communications Commission Public Input – Russell Seymour Economic Development Director
 - Verizon Franchise Agreement - Final Discussion
 - AI Use Policy - Information

- New Business

- Commissioner Comments

- Council Member Comments

- Information Technology Director Comments

- Adjourn

If you require any type of reasonable accommodation as a result of a physical, sensory or mental disability, to attend and/or participate in this meeting, please contact Jakub Jedrzejczak, Director of Information Technology, 703-771-2708. Three days' advance notice is requested.

Technology & Communications Commission
Draft MINUTES
December 5, 2023

Commission Members Present: John Binkley, Chair
Richard Jackson, Vice Chair
Aaron Nadler
Katherine Johnson
Chris Grandjean
Eric Whyne

Commission Members Absent: Brandon Garay

Council Liaison Present: Neil Steinberg

Staff Present: Jakub Jedrzejczak
John Callahan

1. Call to Order 7:01PM
2. Establish Quorum
 - a. Quorum present.
3. Pledge of Allegiance
4. Approval of Minutes – November 7, 2023.
Motion to approve Jackson, 2nd Johnson Passes 6-0.
5. Petitioners – None
6. Old Business
Verizon Franchise Agreement – Matt Ames Hubacher, Ames & Taylor, PLC
Mr. Ames explains that the town has limited authority over cable and no authority over broadband issues. The cable franchise renewal process is designed to allow the operator to continue unless the town goes through a specific sequence of steps. The town's requests to the company have been relatively limited, and there haven't been major issues. The negotiation process has been slow, but the town hopes to move forward in the next couple of months. Mr. Ames is open to answering questions about the process.
Mr. Binkley asked if there is also a state level default franchise agreement?
Mr. Ames explains that there is an ordinance franchise governed by the General Assembly's set times. If the operator requests, the Council must adopt an ordinance including terms from the statute, with some flexibility on non-service quality matters. The statutory terms have become the baseline, rarely relied upon since Verizon's entry.
Mr. Steinberg asked if channel 35 is available through streaming services as well as the cable.
Mr. Jedrzejczak mentions that the town uses Granicus to stream content and differs from what's on cable. The main focus is upgrading the cable feed to HD, but there's a limitation imposed by Verizon from their end, affecting the quality. The hope is that, during the renewal, they can address this limitation and improve the stream quality.
Mr. Jedrzejczak asks that the franchise process was established in 1994.
Mr. Ames replied in 1984.

Mr. Jedrzejczak's question for Matt revolves around whether anyone in the state of Virginia acknowledges the contemporary importance of internet services. He emphasizes that people today prioritize internet services, and he wonders if the town can collaborate with others to enhance these services. He questions whether recognition of this importance extends beyond historically limiting agreements to cable TV, suggesting the need for a broader perspective.

Mr. Ames addresses the issue at different levels. At the local government level, there's a universal interest in using broadband to serve residents and expanding franchise processes. However, at the state level, the General Assembly has not shown interest, likely due to the federal stance on net neutrality. The ongoing debate at the FCC and the legal process don't currently allow for local regulation. Mr. Ames suggests that within the next five years, legislation may clarify these issues, providing an opportunity for lobbying Congress through organizations like the National Association of Counties and the National League of Cities. Congressional action is deemed necessary to address the matter.

Mr. Jedrzejczak also mention having internet is like a electric utility. That there should be alternative providers as people need to have internet access. There need to be an update in the law regarding internet services.

Mr. Binkley asked about the status of the common carrier versus telecommunication service? He rephrases the question to what is the current status of the designation of ISP's as telecommunications?

Mr. Ames explains that the FCC is currently considering a return to the previous net neutrality order, treating internet services as a common carrier telecommunication service. This may not have a significant impact at the local level, as many provisions in the cable act related to common carrier regulation may be waived for broadband providers. He anticipates the FCC to release an order, possibly in spring, detailing their decision on this matter.

Mr. Grandjean asks if the Town knows how many people in Town subscribe to cable?

Mr. Jedrzejczak indicates that we have that information as we get PEG funding and that is based off of the number of subscribers.

Digital Town Hall and Communications Commission Public Input – Discussion

Mr. Jedrzejczak discusses the ongoing survey, emphasizing that it's not the final version and there may be additional questions or ideas. He highlights a section regarding services for businesses and residents, noting the valuable insights gathered from regular meetings with local businesses. He suggests inviting someone involved in economic development, who meets with every business in town, to the meeting to provide additional perspectives on the experiences of businesses in the town. Mr. Jedrzejczak believes that incorporating feedback from this person could enhance the survey and discussion, bringing in valuable insights from a technology perspective and experiences in other localities. He expresses openness to having a guest at the meeting to enrich the discussion.

Mr. Binkley had no issues with the questions.

Mr. Grandjean there were some that were radio button answers and if people want to select more than one they will not be able to.

Mr. Jedrzejczak asked for that feedback with screen shots and suggestions and reply to all and he can make some adjustments.

Ms. Johnson wanted to have multiple choice and combine some and that she will provide some feedback.

Mr. Binkley would like to have everyone take the survey and time yourselves. This is a human factor engineering aspect to the survey.

Mr. Jedrzejczak suggests submitting all survey responses for a quick review of the results. He expresses satisfaction with the information gathered and hopes to extract value from it. He encourages everyone to submit their responses by the next meeting. Mr. Jedrzejczak is willing to bring Russell Seymour to the next meeting, particularly concerning business-related matters.

Mr. Binkley proposes inviting Russell and asks everyone to review the investment being requested from people regarding the Digital Town Hall technology and Communications Commission public input discussion.

2023 Annual Report for Technology and Communications Commission – Planning

Mr. Binkley moving on to the 2023 annual report, he mentions receiving feedback, making some changes based on comments, fixing formatting issues, and standardizing language. Mr. Binkley notes that the final version needs to be sent to John by the end of tomorrow, encouraging people to provide comments quickly if they have any significant concerns.

Mr. Binkley suggests providing the Council with a more definitive understanding of the Commission's expertise. He proposes each member share their years of experience in their respective fields. For example, he mentions having 20 years of consulting experience in cybersecurity and risk. The idea is to communicate to the Council that the Commission is a valuable resource with a diverse range of expertise, providing a cost-effective option compared to external alternatives. Mr. Binkley encourages members to email him their years of experience in their specific IT fields, such as programming, SAS, cloud, etc. This information will help highlight the Commission's collective industry experience and readiness to assist with any IT-related questions or concerns.

Mr. Binkley will bring up our relationship with CISA but will defer to Mr. Jedrzejczak for details.

Mr. Jedrzejczak agreed and mentioned that we have a draft of the report and that we are working on making changes and returning to CISA.

Mr. Binkley would like to have a closed session in the next meeting to discuss the CISA report.

Mr. Jedrzejczak agrees and there are other items to discuss in a closed session.

Mr. Binkley asked what our timeframe is to respond to CISA.

Mr. Jedrzejczak has indicated soon but needs to have a meeting to answer some of the questions and will do his best to have a final version.

Mr. Jedrzejczak offers to update the version of the report and send it to Mr. Binkley and then back to Mr. Jedrzejczak.

Mr. Binkley agrees to Mr. Jedrzejczak suggestion.

Mr. Binkley asks who will be attending the Council meeting on the 12th.

Mr. Binkley mentions another point under old business not on the agenda. He is working on suggesting a template for an AI usage policy for the town. He emphasizes the growing importance of such a policy, given the increasing integration of AI in various aspects of town operations.

Mr. Binkley is working on an AI usage policy for the town and is utilizing the NIST AI framework and playbook as references. He aims to align the AI policy with the Cybersecurity Framework (CSF), emphasizing the importance of aligning the policy framework with recognized industry standards.

Mr. Jedrzejczak offered to share some templates he has from other localities for the AI policy.

Mr. Jedrzejczak talks about a new policy for remote participation policy for commissions for remote meetings.

Mr. Steinberg indicates that there are changes 2 per or 25% of can be completely remote.

Mr. Jedrzejczak indicates this new policy allows remote meetings could increase public participation.

Mr. Binkley asked what it means exactly.

Mr. Jedrzejczak indicated that we would have to provide a link and be able to join. There would be two options, one a regular link with the waiting room and second provide a phone number.

Mr. Binkley asked if the commission had to provide every person that wanted a certain number of minutes.

Mr. Steinberg indicated that is done in the petitioner's section of the meeting, to speak and maintain the overall format of the meeting.

7. Council Rep Comments

Mr. Jackson indicated that the meeting for the annual report will be Tuesday in the Council Chamber at 7PM.

Mr. Binkley offered happy holidays and happy new year.

8. Commissioners Comments

Mr. Steinberg did offer a happy holiday and that the presentation will be at the beginning of the Council Meeting.

9. IT Director Comments

Mr. Jedrzejczak offered a thank you for 2023 and that the meetings mean a lot and that we are a good commission. That he appreciates the support of the commission for all the projects that are worked on together.

10. Adjourn 7:42 PM Motion to adjourn Jackson, 2nd Nadler Passes 6-0

Next Meeting, December 5, 2023, 7:00 pm.

Cable Franchise Renewal Agreement
by and between
Town of Leesburg, Virginia
and
Verizon Virginia LLC

Effective Date: _____, 2023

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THIS CABLE FRANCHISE RENEWAL AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the Town of Leesburg, Virginia (the “Town”) and Verizon Virginia LLC, a limited liability company duly organized under the applicable laws of the State of Virginia (the “Franchisee”).

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

WHEREAS, the Town 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 the Code of Virginia, Va. Code Ann. § 15.2-2108 and Chapter 5.1 of the Code of the Town of Leesburg, Ord. No. 2000-0-03, § II, 10-31-00;

WHEREAS, the Franchisee is a “cable operator” in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(5));

WHEREAS, the Town granted to Franchisee’s predecessor, Verizon Virginia Inc., effective as of June 28, 2006, a nonexclusive initial Franchise to install, maintain, extend, and operate a Cable System in the Town for a term of fifteen (15) years (the “Initial Franchise”), which has been extended by mutual agreement to December 27, 2023;

WHEREAS, Franchisee installed a Fiber to the Premise Telecommunications Network (“FTTP Network”) in the Franchise Area (as hereinafter defined) for the transmission of Non-Cable Services pursuant to authority granted by the Commonwealth of Virginia;

WHEREAS, the FTTP Network occupies the Public Rights-of-Way within the Town, and Franchisee desires to continue using portions of the FTTP Network to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, pursuant to and in accordance with applicable federal and state law, the Town undertook a process to determine whether it should renew the Initial Franchise and the terms for such renewal;

WHEREAS, the Town has identified the future cable-related needs and interest of the Town and its community, and has considered the financial, technical, and legal qualifications of Franchisee;

WHEREAS, following good faith negotiations between the parties, the Town and Franchisee have agreed on the terms for a renewal Franchise under which Franchisee will continue to operate its Cable System in the Franchise Area; and,

NOW, THEREFORE, in consideration of the Town Council’s grant of a renewal franchise to Franchisee, Franchisee’s promise to continue to provide Cable Service to residents of the Franchise/Service Area of the Town pursuant to and consistent with the Cable Law (as hereinafter defined, pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

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

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

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

1.3. *Cable Law*: Chapter 5.1 of the Code of the Town of Leesburg, Ord. No. 2000-0-03, § II, 10-31-00, to the extent authorized under and consistent with federal and state law.

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

1.5. *Cable System* or *System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), meaning Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area. The 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.

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

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

1.8. *Cable Administrator*: The Town Director of Information Technology, or designee.

1.9. *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of corporate affairs.

1.10. *County*: Loudoun County, Virginia, or the lawful successor, transferee, or assignee thereof.

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

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

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

1.14. *Franchise Area*: The territorial boundaries of the Town and any area added thereto during the Franchise Term.

1.15. *Franchisee*: Verizon Virginia LLC, and its lawful and permitted successors, assigns and transferees.

1.16. *Government Access Channel*: Any Channel required by this Agreement to be provided by the Franchisee to the Town on the Cable System for government use.

1.17. *Gross Revenue*: Any and all cash, credits, property or consideration of any kind or nature that constitute revenue in accordance with Generally Accepted Accounting Principles derived directly or indirectly from the operation of the Cable System to provide Cable Services in the Franchise Area; provided, however, that any service provided by Franchisee over the FTTP Network that is a Cable Service shall be considered to be provided over the Cable System for purposes of this definition. Gross Revenues will be calculated on bundled services in accordance with Section 7.4. Consistent with the foregoing, the following, without limitation, shall be included in Gross Revenues to the extent derived from the operation of the Cable System to provide Cable Services in the Franchise Area: monthly fees collected from Subscribers for any basic, optional, premium, per-channel, per-program service, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; revenues from rentals or sales of converters or other equipment used to provide Cable Service over the Cable System; studio rental, production equipment rental, and personnel fees; fees from third party unaffiliated programmers for leased access programming; advertising revenues after deducting agency commissions; revenues from the sale or carriage of other Cable Services over the Cable System in the Franchise Area; and revenues that Franchisee receives from home shopping channels for the use of the Cable System to sell merchandise. However, Gross Revenue shall not include:

1.17.1. 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;

1.17.2. 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;

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

1.17.4. Any revenues generated from the provision of Non-Cable Services as defined herein, including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; and, any other revenues attributable to the provision of Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders;

1.17.5. 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; provided, however, that the 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 shall be included in Gross Revenue;

1.17.6. 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;

1.17.7. The sale of Cable Services to customers, which are exempt, as required or allowed by the Town including, without limitation, the provision of Cable Services to public institutions as required or permitted herein;

1.17.8. Any taxes, fees, or surcharges on services furnished by the Franchisee which are imposed directly on any Subscriber or User (but not on Franchisee) by the City or another governmental unit and which are collected by the Franchisee on behalf of said governmental unit. Sales/use taxes are such a tax; the cable Franchise fee is not such a tax;

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

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

1.17.11. Program launch fees;

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

1.17.13. Any fees or charges collected from Subscribers or other third parties for PEG Grant.

1.18. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20); provided, however, that any reference to Information Services herein shall not include any Cable Services over the Cable System in the Franchise Area.

1.19. *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet; provided, however, that any reference to Internet Access herein does not include any Cable Services over the Cable System in the Franchise Area.

1.20. *Non-Cable Services*: Any service that does not constitute a Cable Service as defined herein, including, but not limited to, Information Services and Telecommunications Services.

1.21. *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.

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

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

1.24. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity, but such term does not include the Town.

1.25. *Public Access Channel*: Any Channel required by this Agreement to be provided by the Franchisee to the Town on the Cable System and set aside by the Franchisee for use by the general public who are residents of the Franchise Area.

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

1.27. *Service Area*: The Franchise Area as it exists on the Effective Date.

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

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

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

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

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

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

1.34. *Town*: The Town of Leesburg, Virginia, or the lawful successor, transferee, or assignee thereof.

1.35. *Town Council*: The Town Council of the Town of Leesburg, Virginia.

1.36. *Town Manager*: The chief executive officer of the Town, of his designee or successor.

1.37. *Transfer of the Franchise*:

1.37.1. Any transaction in which:

1.37.1.1. 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

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

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

1.39. *Video Service Provider or VSP*: Any entity to which the Town has expressly granted a franchise (permit, order, contract, or agreement) as defined in the Cable Act. A VSP shall include, but is not limited to, any entity that provides Cable Services, wireless services, and internet-protocol based services within the territorial boundaries of the Town.

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, the Town Council hereby grants the Franchisee the right to own, construct, operate and maintain the Cable System in the Public Rights-of-Way within the Franchise Area, for the sole purpose of providing Cable Service. This franchise grants no authority for Franchisee to use the Town's Public Rights-of-Way for any other purpose unless otherwise expressly provided herein. However, nothing in this Agreement shall be construed to prohibit Franchisee from offering any service over the Cable System that is not prohibited by Federal or State law provided any requirements for Town authorization or registration not inconsistent with federal and state law are satisfied. The Town Council makes no representation or guarantee that its interest in or right to control any Public Right-of-Way is sufficient to permit Franchisee's use, and Franchisee shall gain only those rights to use that are within the Town Council's power to convey. 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. *Town Does Not Regulate Telecommunications*: The Town's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance or operation of the Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending the Franchisee's existing Telecommunications Facilities for the provision of Non-Cable Services.

2.3. *Term*: This renewal Franchise shall become effective December 31, 2023 (the "Effective Date"). The term of this Franchise shall be five (5) years from the Effective Date unless the Franchise is earlier surrendered or revoked as provided herein.

2.4. *Termination Generally*: Notwithstanding any provision herein to the contrary, Franchisee may terminate this Franchise and all obligations hereunder at any time during the term of this Franchise for any reason, in Franchisee's sole discretion, provided that (i) Franchisee shall give the Town twelve (12) months' notice of termination, and (ii) Franchisee shall not deliver such notice before the first anniversary of the Effective Date.

2.5. *Modification/Termination Based on VSP Requirements*:

2.5.1. If the Town enters into any franchise, agreement, license, or grant of authorization to a VSP to specifically provide Cable Service to residential subscribers in the Town with terms or conditions materially less burdensome than those imposed by this Franchise, Franchisee and the Town shall, within sixty (60) days of the Town's receipt of Franchisee's written notice, commence negotiations to modify this Franchise to create reasonable competitive equity between Franchisee and such other VSPs.

2.5.2. Franchisee's notice pursuant to Section 2.5.1 shall specify the change in law and the resulting change in obligations. Franchisee shall respond to reasonable information requests from the Town, as may be necessary to review the change in obligations resulting from the cited law.

2.5.3. In the event the parties do not reach mutually acceptable agreement on a modification requested by Franchisee, Franchisee shall, at any time, have the option of exercising either of the following actions:

(a) in its sole discretion, to commence franchise renewal proceedings in accordance with Section 626 of the Communications Act, 47 U.S.C. § 546, with the Franchise term being accelerated, thus being deemed to expire thirty-six (36) months from the date of Franchisee's written notice to seek relief hereunder; or,

(b) in its sole discretion, to terminate the Franchise within two (2) years from notice to the Town; or,

(c) if agreed by both parties, submitting the matter to binding commercial arbitration by a mutually selected arbitrator in accordance with the rules of the American Arbitration Association; or,

(d) if agreed by both parties, submitting the matter to mediation by a mutually acceptable mediator.

2.6. Grant Not Exclusive: The Franchise and the right it grants to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the Town 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.

2.7. 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.

2.8. No Waiver:

2.8.1. The failure of the Town 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 the Town, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.8.2. The failure of the 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 the Town from performance, unless such right or performance has been specifically waived in writing.

2.9. *Construction of Agreement:*

2.9.1. 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.

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

2.9.3. Should any change to state law have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the Town in the event the Franchisee determines (in its sole discretion, reasonably exercised) that the change in state law significantly impairs the Franchisee's ability to provide Cable Service in the Franchise Area.

2.10. *Police Powers:* Nothing in the Franchise shall be construed to prohibit the exercise of the Town's police powers. However, if the exercise of the Town'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 the Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the Town in the event the Franchisee determines (in its sole discretion) that the Town's exercise of its police power significantly impairs the Franchisee's ability to provide Cable Service in the Franchise Area.

2.11. *Compliance with Federal and State Privacy Laws:* Franchisee shall comply with the privacy provisions of Section 631 of the Communications Act, 47 U.S.C. §551, and all other applicable federal and state privacy laws and regulations. The parties agree that, during the term hereof, Franchisee shall not be subject to any local laws or ordinances which conflict with such applicable federal and/or state privacy laws, or which would impose additional or distinct requirements upon Franchisee with respect to Subscriber privacy other than those which are expressly set forth in applicable federal and/or state privacy laws.

3. **PROVISION OF CABLE SERVICE**

3.1. *Service Area:*

3.1.1. *Service Area:* Franchisee shall offer Cable Service to all residential dwelling units in the Service Area and may make Cable Service available to businesses in the Service Area, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the Town; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Franchise Area; (D) in areas where developments, buildings, or other residential dwelling units are subject to exclusive arrangements with other providers; (E) in areas,

developments, buildings, or other residential dwelling units where the Franchisee cannot obtain access under reasonable terms and conditions after good faith negotiation, as reasonably determined by Franchisee; (F) in areas, developments, buildings, or other residential dwelling units to which 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, including, but not limited to, circumstances where Franchisee cannot access the areas, developments, buildings or other residential dwelling units by using Franchisee's existing network pathways and which would thus require the construction of new trunk, feeder, or distribution lines (with distribution lines not meaning service connections described in Section 3.2 below); (G) in areas where the occupied residential household density does not meet the density requirement set forth in Sub-subsection 3.1.1.1; (H) in residential subdivisions that have not been constructed as of the Effective Date; and/or (I) to Subscribers who fail to abide by Franchisee's terms and conditions of service.

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 thirty (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.

3.1.1.2.*Annexation; New Subdivisions:* If the corporate boundary of the Town is extended beyond the limit existing on the Effective Date through annexation, or if any new subdivision is established within the Town, the Town may request that the Franchisee extend its Cable System and offer Cable Service to residential dwelling units located within the area annexed by the Town or the new subdivision. If the Franchisee agrees to extend the Cable System, the annexed area or subdivision shall thereafter be deemed part of the Service Area.

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 in accordance 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 two hundred (200) 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 two hundred (200) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings:*

3.3.1. Subject to Section 3.1, Franchisee shall provide the following, without charge within the Service Area, at each fire station, public school, police station, public library, and such buildings used for public purposes as designated initially by the Town in Exhibit A and thereafter during the Franchise Term in writing to the Franchisee; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than three hundred (300) feet from the serving terminal whichever is less, solely to provide service to any such school or public building, the Town shall have the option of paying Franchisee's direct costs for such extension in excess of three hundred (300) feet, or of releasing Franchisee from the obligation, or postponing Franchisee's obligation to provide service to such building:

3.3.1.1. The first service drop for each site;

3.3.1.2. One Subscriber digital converter activated for the most commonly subscribed to digital tier per site;

3.3.1.3. One service outlet activated for the most commonly subscribed to digital tier. The Parties recognize that this only pertains to the flat rate digital tier offered by Franchisee and does not include any pay per view services or similar services.

3.3.2. The Town shall be responsible for the cost of any “terminal equipment,” including TV monitors, VCRs, and/or computers.

3.3.3. The 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 three hundred (300) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed.

3.3.4. The cost of inside wiring, additional drops or outlets and additional converters requested by the Town within these specified facilities, including those drops or outlets in excess of those currently installed, are the responsibility of the Town. If the Town requests the Franchisee to provide such services or equipment, the Town will pay the Franchisee for those costs.

3.3.5. If the Town makes a request to the Franchisee in writing, the Franchisee shall rewire public buildings, move drops or entrance links, and make other changes to installations of inside wiring. The Town will be responsible for the cost of all such work, and the Town will pay the Franchisee for its direct cost plus ten percent (10%) to offset the Franchisee’s project administration.

3.3.6. If there is a change in the Franchisee’s technology that affects the ability of the Town’s public buildings to receive the most commonly subscribed to digital tier, the Franchisee shall be required to replace, at the Franchisee’s expense, all the digital converters provided to the Town’s public buildings as required in subsection 3.3.1.2 in order to ensure that these public buildings receive the most commonly subscribed to digital tier.

3.3.7. Cable Service may not be resold or otherwise used in contravention of Franchisee’s rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at a price equal to Franchisee’s cost if lost, stolen or damaged

3.4. *In-Kind Service:* The Town and Franchisee agree that Franchisee’s provision of Cable Service to public buildings provided pursuant to Section 3.3 and the maintenance of the PEG Channel transport links provided pursuant to Section 6.1 are, for purposes of this Agreement, defined as “In-Kind Service.” Any construction of fiber optic PEG Channel transport links provided pursuant to Section 6.1 is not deemed In-Kind Service. In the event the Virginia Communications Sales and Use Tax (Va. Code §§ 58.1-645 – 662) is found by a court or agency of competent jurisdiction to be a franchise fee as defined by 47 U.S. Code § 542, such In-Kind Service may be terminated by Franchisee, at its sole discretion, upon sixty (60) days’ written notice to the Town, subject to the Town’s right to continue to receive any or all of the In-Kind Services at a cost not to exceed Franchisee’s marginal cost, as provided in Section 3.6.

3.5. *Franchisee Options:* In the event Franchisee is legally permitted, in accordance with applicable law, to offset the value of additional elements of Cable Service against

franchise fees payable to the Town, the Franchisee reserves its rights to do so. Should the Franchisee choose to offset any or all of such Cable Service against franchise fees payable to the Town, it agrees to provide the Town with thirty (30) days' prior written notice. Such offsets shall be calculated in the same fashion as In-Kind Services.

3.6. *Town Options:* The Town shall have the right to discontinue receipt of all or any portion of In-Kind Service provided by Franchisee in the event Franchisee elects to offset or impose a charge against the Town for the value of such services as provided in Section 3.4. The Town also shall have the option of (1) requesting that Franchisee apply a nondiscriminatory charge, not to exceed the greater of (i) Franchisee's marginal cost or (ii) another amount expressly permitted by applicable law, to the fullest extent permissible under applicable law, of providing the respective In-Kind Service (the "Applicable Cost Charge"), as an offset against its franchise fee payments; or (2) paying Franchisee the Applicable Cost Charge directly. The Franchisee shall provide the Town with supporting information as may be reasonably necessary to substantiate Franchisee's calculation of the Applicable Cost Charge of any In-Kind Service at least thirty (30) days before imposing any such charge, and shall respond promptly to requests for information from the Town regarding such calculations and information. Franchisee and the Town do not waive any rights under applicable law regarding In-Kind Service.

3.7. *FCC 621 Order:* If there is (i) a future ruling or order of the FCC, or (ii) applicable legislation, that has the effect of reversing the FCC's 2019 Third Report and Order In the Matter of Implementation of Section 621 of the Cable Act, so that the provision of the In-Kind Services pursuant to a cable franchise should no longer be included in the calculation of franchise fees subject to the five percent (5%) statutory cap under the Communications Act, then, subject to Section 3.1 and within sixty (60) days from Franchisee's receipt of written notice from the Town, Franchisee shall provide the In-Kind Services to the Town without charge on a prospective basis.

4. **SYSTEM OPERATION**

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

5. **SYSTEM FACILITIES**

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

5.1.1. Shall make available, at a minimum, one hundred eight (108) activated Channels of service some of which may be carried on the Franchisee's digital tier;

5.1.2. Shall be designed with an initial analog and digital carrier passband between 57 and 861 MHz;

5.1.3. Shall be designed to be an active two-way plant for Subscriber interaction, if any, required for selection or use of Cable Service;

5.1.4. Shall have a modern design when built, utilizing an architecture

that will permit additional improvements necessary for high quality and reliable service throughout the term of this Franchise. The FTTP Network shall utilize the ITU G.983 Passive Optical Network standard and have no active elements so as to make it more reliable;

5.1.5. Shall have protection against outages due to power failures, so that back-up power is available at a minimum for at least twenty-four (24) hours at each headend, and conforming to industry standards, but in no event rated for less than four (4) hours, at each power supply site;

5.1.6. Shall comprise facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design;

5.1.7. Shall have facilities and equipment sufficient to cure violations of any applicable FCC technical standards and to ensure that the Cable System remains in compliance with the standards specified in Subsection 5.1.19;

5.1.8. Shall have facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such standards may be amended from time to time;

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

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

5.1.11. Shall have facilities and equipment designed, built and operated in such a manner as to protect the safety of the Cable System workers and the public;

5.1.12. Shall have available sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable the Franchisee to substantially comply with applicable law, including applicable customer service standards and including requirements for responding to System outages;

5.1.13. Shall have all facilities and equipment required to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve System problems;

5.1.14. Shall be designed to be capable of interconnecting with other cable systems in the Franchise Area as set forth in Section 5.6 of this Agreement;

5.1.15. Shall (if applicable) have antenna supporting structures (i.e., towers) designed in accordance with all applicable state and local building codes, as amended, and shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the FCC, and all other applicable codes and

regulations;

5.1.16. Shall have all facilities and equipment at the headend allowing the Franchisee to transmit or cablecast signals in substantially the same form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted over the Cable System shall include the closed-captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning;

5.1.17. Shall transmit in high definition any signal, which is received in high definition format;

5.1.18. Shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Cable Services on the System. Such equipment will at a minimum offer as an option that a Person ordering programming must provide a personal identification number or other means provided by the Franchisee only to a Subscriber, provided, however, that the Franchisee shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls;

5.1.19. Shall conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, which the Town is permitted by a change in law to enforce, and shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures:

5.1.19.1. Occupational Safety and Health Administration (OSHA) Safety and Health Standards;

5.1.19.2. National Electrical Code;

5.1.19.3. National Electrical Safety Code (NESC);

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

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

5.1.19.6. The Uniform Statewide Building Code.

5.1.20. Shall be so constructed and operated that each PEG Channel shall be delivered over the System with transmission quality the same as or better than the transmission quality of any other Channel on the Franchisee's Basic Service within the Town;

5.1.21. Shall include optional equipment so that any pay-per-view programming can only be activated by the positive action of a Subscriber using, for example, a

private identification number or other individual selection procedure; and

5.1.22. Shall comply with all requirements of applicable law, including, but not limited to, the Americans with Disabilities Act. Franchisee shall comply with FCC rules on transmission of closed captioning for the hearing-impaired. For hearing-impaired Subscribers, the Franchisee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, the Franchisee must provide information (upon request) regarding TDD/TTY (or equivalent) equipment, and a publicly listed telephone number for such equipment, that will allow hearing impaired Subscribers to contact the Franchisee.

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

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

6. PEG SERVICES

6.1 PEG Set Aside:

6.1.1. In order to ensure universal availability of public, educational and government programming, Franchisee agrees to provide access channels for the following:

6.1.1.1. All PEG Channels that are transmitted within Loudoun County, Virginia (“County”) as authorized and required by a cable franchise agreement between the Franchisee and the County; and,

6.1.1.2. One (1) dedicated downstream channel solely for the Town of Leesburg governmental access.

6.1.2. The Town authorizes Franchisee to transmit the governmental access programming provided by the Town to Verizon within and without the Town. For the purposes of transmitting the governmental access Channel to the Cable System headend, Franchisee shall provide and maintain at its sole expense the transport network, the necessary encoding and decoding equipment, and the support necessary to provide for the transmission of the governmental access Channel video signals from the PEG origination point (the “PEG Origination Point”): Town Hall, 25 W Market Street, Leesburg, Virginia 20176. There shall be a demarcation point at the PEG Origination Point at which the parties agree that responsibility for the signal quality and transmission and the operation and maintenance of equipment transfers from the Town to the Franchisee. The Town shall be solely responsible for operating its switching equipment and for the picture and audio quality of the governmental access Channel programming up to the demarcation point. Notwithstanding the foregoing, the Franchisee shall not be obligated to provide the Town with either cablecast equipment and facilities or the personnel responsible for maintaining and operating equipment and facilities on the Town’s side of the demarcation point

and used to generate or administer any governmental access Channel signals, except as necessary to implement the Franchisee's responsibilities specified herein.

6.1.3. Within ninety (90) days after receipt of written notice from the Town stating that an HD-SDI signal handoff is ready for pickup at the PEG Origination Point, the Town's governmental access Channel shall be converted to a high-definition display format for digital television transmissions with video transmitted in a 16:9 aspect ratio with a resolution of up to 1080i or such higher resolution as determined by the Franchisee in its sole discretion. If the governmental access Channel provided under Section 6.1.1 is not being utilized by the Town, Franchisee may utilize such governmental access Channel, in its sole discretion, until such time as Town elects to utilize the governmental access Channel for its intended purpose by providing Franchisee with at least two hundred and seventy (270) days prior written notice.

6.1.4. The Town's government access Channel shall be grouped together with other PEG Channels of like format and resolution. In the event that any PEG Channel is reassigned to a different channel number, the Franchisee shall provide the Town with at least ninety (90) days' notice before reassigning such Channel.

6.1.5. Changes in Technology: If the Town desires to implement additional functionality on the Town's government access Channel comparable to an Additional Functionality available on a majority of other channels on the Basic Service Tier, the Franchisee shall meet with the Town to discuss the possibility of making such functionality available, provided that implementation of such functionality does not require the use of additional capacity on the Cable System, or impose any out-of-pocket cost, or create any other burden, on Franchisee. For purposes of this Section 6.1.5, "Additional Functionality" shall mean any function that permits greater or improved subscriber interaction with video programming delivered by the Cable System or access to information regarding the content of such video programming. If the Franchisee makes changes to the Cable System that require improvements to access facilities or equipment to maintain the then-existing signal quality or picture quality, or other then-existing functions or capabilities, the Franchisee shall make any necessary changes to the Franchisee's headend and distribution facilities or equipment within thirty (30) days so that PEG facilities and equipment may be used as intended in this Agreement at no cost to the Town.

6.2. *PEG Grant:*

6.2.1. Franchisee shall provide grants to the Town to be used for PEG capital expenses as determined by the Town (the "PEG Grant").

6.2.2. In support of the Town's needs for PEG programming, the Franchisee shall provide the Town with a PEG Grant that shall be equal to the product of (a) 1.7%; times (b) the amount that results from subtracting from Gross Revenues for that quarter the Franchise fee due to the Town for that quarter. The PEG Grant shall be paid annually. The annual PEG Grant payment shall be delivered to the Town within sixty (60) days after the beginning of each calendar year during the Franchise Term.

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

6.3. To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs of the PEG Grant or any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's

bill. Without limiting the forgoing, to the extent consistent with state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection costs to Subscribers.

7. **FRANCHISE FEES**

7.1. *Payment to Town:* The parties shall comply with all applicable requirements of the provisions of Section 58.1-645 of the Code of Virginia (the “Communications Sales and Use Tax”) in its current form and as it may be amended. In accordance with Section 15.2-2108.1:1(C) of the Code of Virginia, notwithstanding the provisions of 47 U.S.C. § 542, the Franchisee shall not be required to pay a franchise fee, except as otherwise provided in Sections 7.2 through 7.5 of this Agreement.

7.2. *Reinstatement of Franchise Fee:* In the event that Section 15.2-2108.1:1(C) of the Code of Virginia is repealed or amended, held to be invalid by a final decision of a court of competent jurisdiction, or the Virginia General Assembly otherwise authorizes the Town to assess a franchise fee during the term of this Agreement, and a franchise fee continues to be allowed pursuant to 47 U.S.C. § 542, and further provided that all other franchised cable operators in the Franchise Area are required to pay a franchise fee in the equivalent amount as Franchisee, Franchisee shall pay to the Town a franchise fee of up to five percent (5%) of annual Gross Revenue, or such other amount as may then be allowed under federal law and imposed upon all other franchised cable operators in the Franchise Area, beginning on the effective date of the reinstatement of the Town’s authority to assess a franchise fee (the “Reinstatement Date”). Beginning on the Reinstatement Date, the terms of Sections 7.2 through 7.5 of this Agreement shall take effect on a prospective basis (i.e., Gross Revenues accrued prior to the Reinstatement Date shall not be subject to the franchise fee reinstatement as contemplated in this Section 7.2). In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under this Agreement 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.

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.

7.3.1. The Town may audit or conduct a review of the Franchisee’s books and records pertaining directly to the Franchisee’s payment of the Franchise fee (if applicable) and the PEG Grant to the Town (an “Audit”). Such an Audit shall be conducted no more than once every three (3) years during the Term. Any Audit shall be initiated through written notice to the Franchisee by the Town, and the Town or any auditor employed by the Town shall submit its complete request for records within sixty (60) days of the Town’s initial notice; provided, however, that the parties shall work cooperatively on an ongoing basis during the Audit in the event the Town or its designated auditor identifies reasonable follow-up records requests to the extent necessary to complete the audit. Subject to the confidentiality provisions of Section 9.2, and execution of a non-disclosure agreement with the Town or an auditor employed by the Town, all records reasonably necessary for any such audit shall be made available by the Franchisee to the Town, in accordance with Section 9.2 hereof, at a designated office of the Franchisee or such other location in the Town as may be mutually agreed upon by the parties.

7.3.2. The Franchisee shall provide the records reasonably necessary for the Audit and requested by the Town in a timely manner. Any such Audit conducted by the Town or auditor employed by the Town shall be completed in a timely manner. If upon completion of the Audit, the Town does not make a claim for additional payments, then the Town shall provide

the Franchisee with written documentation of closure of the Audit. The Town's claim for additional Franchise Fee payments or its written notice of the Audit closure shall be provided to the Franchisee within sixty (60) days from the date on which the Audit is completed by the Town or its auditor in accordance subsection 7.7, above, or by such other date as is mutually agreed to by the parties.

7.3.3. The Franchisee shall maintain such records for three (3) years. The Town's Audit expenses shall be borne by the Town unless the Audit determines the payment to the Town should be increased by more than five percent (5%) in the audited period, in which case the costs of the Audit shall be paid by the Franchisee to the Town within sixty (60) days following written notice to the Franchisee of the underpayment, which notice shall include a copy of the audit report. If re-computation results in addition revenue to be paid by Franchisee to the Town such amount shall be subject to an interest charge at the prime rate to be calculated from the date the original payment(s) were due until paid in full.

7.3.4. Any entity employed by the Town that performs an Audit shall be a professional firm with recognized expertise in auditing franchise fees and shall not be permitted to be compensated on a success-based formula e.g. payment based on an underpayment of fees, if any.

7.4. *Limitation on Franchise Fee Actions:* The period of limitation for recovery of any Franchise fee payable hereunder shall be three (3) 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.

8. **CUSTOMER SERVICE**

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

9. **REPORTS AND RECORDS**

9.1. *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the Town shall have the right to inspect and copy Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as reasonably necessary to ensure compliance with the terms of this Franchise. Such notice 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 the Town. Franchisee shall make such books and records available for inspection and copying at a location within Loudoun County. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. 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 (except that Franchisee shall make available to the Town all information reasonably necessary for the Town to conduct an audit of the Franchise fee payments and the parties shall cooperate to take all lawful actions and audit procedure steps to protect the confidentiality of such information to the

fullest extent possible), nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. To the extent permitted by applicable law, the Town 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.

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

9.2.1. Records of all written complaints for a period of three 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;

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

9.2.3. Records of service calls for repair and maintenance for a period of three 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; and

9.2.4. 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.

9.3. *Copies of Records:* Upon written request of the Town, Franchisee shall provide the Town copies of the records required by Section 9.2 and/or a report in a mutually agreeable format listing by street address all locations in the Town where Franchisee's Cable Services are available. The Franchisee shall submit the requested records within thirty (30) days after receiving the request. The Town may submit such a request no more than once in any twelve-month period.

10. **INSURANCE AND INDEMNIFICATION**

10.1. *Insurance:*

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

10.1.1.1. Commercial General Liability Insurance with limits of two million dollars (\$2,000,000) per occurrence for bodily injury and property damage and four million dollars (\$4,000,000) general aggregate including premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual liability, and personal and advertising injury, for claims or incidents arising out of, or resulting from the construction, operation and maintenance of the Cable System, and the conduct of the Cable Service business;

10.1.1.2. Commercial Automobile Liability insurance in an amount of four million dollars (\$4,000,000) combined single limit each accident for bodily injury and property damage covering all owned, non-owned and hired vehicles;

10.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the Commonwealth of Virginia and Employers' Liability Insurance in the following amounts: (A) bodily injury by Accident: one hundred thousand dollars (\$100,000) bodily injury by accident/each accident; and (B) one hundred thousand dollars (\$100,000) bodily injury by disease each employee and five hundred thousand dollars (\$500,000) disease-policy limit; and,

10.1.1.4. Telecommunications, Media & Technology Errors and Omissions insurance, including a Cyber Liability policy with a limit of liability of three million dollars (\$3,000,000) per claim and aggregate, including coverage for breach response costs, that includes but is not limited to notification and credit monitoring expenses, as well as coverage for regulatory fines and penalties. If the Cyber policy is written on a claims-made basis, coverage will need to be maintained for at least three years beyond the expiration date of the policy in force at the time of this agreement.

10.1.2. Upon receipt of notice from its insurer(s) Franchisee shall provide the Town with thirty (30) days' prior written notice of cancellation of any required coverage.

10.1.3. Each of the required insurance policies shall be with insurers qualified to do business in the Commonwealth of Virginia, with an *A-VII* or better rating by Best's Key Rating Guide, Property/Casualty Edition.

10.1.4. Upon written request, Franchisee shall deliver to the Town Certificates of Insurance showing evidence of the required coverage including blanket additional insureds endorsements to the commercial general liability and commercial automobile liability coverage including the Town as an additional insured as their interest may appear under this Agreement.

10.1.5. All Commercial General Liability Insurance policies shall include the Town, its elected and appointed officials, officers, boards, commissions, commissioners, agents (not including contractors and subcontractors), and employees as additional insureds as their interest may appear under this Agreement.

10.1.6. A waiver of subrogation shall be endorsed to each of the insurance policies required in this Section 10.1.

10.1.7. The Town shall be included as additional insured as its interest may appear under this Agreement on a primary and non-contributory basis to include its employees, Council members, officers, agents (not including contractors and sub-contractors) and volunteers as their interest may appear under this Agreement under each of the insurance policies required in this Section 10.1 except Workers' Compensation and Employers' Liability, and Errors & Omissions Insurance.

10.2. *Indemnification:*

10.2.1. Subject to the provisions below, the Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Town, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees, against any and all claims,

suits, causes of action, proceedings, and judgments, whether for damages or otherwise arising out of or alleged to arise out of the installation, construction, operation, or maintenance of the Cable System, including but not limited to any claim against the Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other intellectual property right of any Person, firm, or corporation.

10.2.2. This indemnity does not apply to programming carried on any Channel set aside for PEG use, or Channels leased pursuant to 47 U.S.C. § 532, or to operations of the PEG Channels to the extent such operations are carried out by a person other than the Franchisee or its agents. Further, the Franchisee shall not be required to indemnify the Town for acts of the Town which constitute willful misconduct or negligence, on the part of the Town, its officers, employees, agents, 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, or EAS.

10.2.3. In no event shall the Franchisee be responsible for indemnifying the Town under Section 10.2 for any act or omission by the Franchisee that has been specifically approved by the Town, or for any act or omission by the Town or its elected and appointed officers, boards, commissions, commissioners, agents, or employees that causes personal injury or property damage.

10.2.4. The Town shall give the Franchisee written notice of its obligation to indemnify the Town under Section 10.2 within thirty (30) days of receipt of a claim, suit, cause of action, or proceeding for which the Franchisee is obligated to indemnify the Town. The Town shall take action necessary to avoid entry of a default judgment if such action is needed before the Town provides the Franchisee notice; provided, however, that no such action shall in anyway prejudice or harm the Franchisee.

10.2.5. With respect to Franchisee's indemnity obligations set forth in Section 10.2, Franchisee shall provide the defense of any claims, suits, causes of action, or proceedings brought against the Town by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the Town, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the Town from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the Town, Franchisee shall have the right to defend, settle or compromise any claim, suit, cause of action, or proceeding arising hereunder, so long as the settlement includes a full release of the Town, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the Town does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the Town shall in no event exceed the amount of such settlement. In the event that Franchisee fails, after notice pursuant to subsection 10.2.4, to undertake the Town's defense of any claims encompassed within this Section 10.2, Franchisee's indemnification shall include, but is not limited to, the Town's reasonable attorneys' fees, including fees for outside counsel hired to defend the Town, incurred in defending against any such claim, suit, cause of action, or proceeding, any interest charges arising from any claim, suit, cause of action, or proceeding arising under this Agreement or the Cable Law, the Town's out-of-pocket expenses, and the reasonable value of any services rendered by the Town Attorney, or the Town staff or its employees.

10.2.6. Neither the provisions of this Section nor any damages recovered by the Town shall be construed to limit the liability of the Franchisee or its subcontractors for damages under the Agreement or the Cable Law or to excuse the faithful performance of obligations required by the Agreement, except to the extent that any monetary damages suffered by the Town have been satisfied by a financial recovery under this section or other provisions of the Agreement or the Cable Law.

10.2.7. The Town shall at no time be liable for any injury or damage occurring to any Person or property from any acts or omissions of Franchisee in the construction, maintenance, use, operation or condition of the Cable System. It is a condition of this Agreement that the Town shall not and does not by reason of this Agreement assume any liability whatsoever of the Franchisee for injury to Persons or damage to property; provided, however, that the Town shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the Town for which the Town is legally responsible, subject to any and all defenses and limitations of liability provided by law.

11. **TRANSFER OF FRANCHISE**

11.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the Town, provided that such consent shall not be unreasonably withheld, delayed or conditioned.

11.2. *No Consent Required For Transfers Securing Indebtedness:* The Franchisee shall not be required to obtain the consent or approval of the Town for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness. However, upon request by the Town, the Franchisee shall provide the Town with the Franchisee's audited financial statements prepared for the Franchisee's bondholders in order to notify the Town if there is a mortgage or security interest granted on substantially all of the assets of the Cable System.

11.3. *No Consent Required For Any Affiliate Transfers:* The Franchisee shall not be required obtain the consent or approval of the Town for any transfer of an ownership or other interest in Franchisee, the Cable System, or the Cable System assets to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the 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 the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee. However, the Franchisee will notify the Town within thirty (30) days if at any time a transfer of the Franchise or the Franchisee's assets to an Affiliate occurs, and any such Affiliate shall agree in writing to assume and be bound by the term of this Agreement.

12. **RENEWAL OF FRANCHISE**

12.1. The Town and Franchisee agree that any proceedings undertaken by the Town 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. Notwithstanding anything to the contrary set forth herein, Franchisee and the Town agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Town and Franchisee may agree to

undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Town may grant a renewal thereof.

12.3. Franchisee and the Town consider the terms set forth in this Article 12 to be consistent with the express provisions of Section 626.

13. ENFORCEMENT AND TERMINATION OF FRANCHISE

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

13.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the written notice described in Section 13.1 to: (i) respond to the Town, 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 the Town of the steps being taken and the projected date that they will be completed.

13.3. *Public Hearing:* In the event that Franchisee fails to respond to the written notice described in Section 13.1 pursuant to the procedures set forth in Section 13.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to Section 13.2(iii) above, if it intends to continue its investigation into the default, then the Town shall schedule a public hearing. The Town shall provide Franchisee at least thirty (30) business days prior written notice of such hearing, which will specify the time, place and purpose of such hearing, and provide Franchisee the opportunity to be heard.

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

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

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

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

13.5. *Revocation:* Should the Town seek to revoke the Franchise after following the procedures set forth in Sections 13.1 through 13.4 above, the Town shall give written notice to Franchisee of its intent. The notice shall set forth the exact nature of the noncompliance. The Franchisee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Town has not received a satisfactory response from Franchisee, the Town may then seek termination of the Franchise at a public hearing. The Town shall cause to be served upon the Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.5.1. At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including, without limitation of all legal rights available to

Franchisee for compelling evidence, the right to be represented by legal counsel and to introduce all relevant evidence. A complete verbatim record and transcript shall be made of such hearing.

13.5.2. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the Town 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 the Franchisee. The Town shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the Town determines that the Franchise shall be revoked, the Town shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of the Town to an appropriate court, which shall have the power to review the decision of the Town *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the franchising authority.

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

13.6. *Letter of Credit:*

13.6.1. The Franchisee shall provide to the Town a letter of credit in the amount of ten thousand dollars (\$10,000) (the "Letter of Credit"), in substantially the same form as that attached hereto as Exhibit C. The Letter of Credit shall be provided by a third party agent ("Third Party Agent") approved by the Town. The Franchisee shall maintain such Letter of Credit at all times throughout the term of the Agreement.

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

13.6.3. If at the time of a withdrawal from the Letter of Credit by the Town, the amount available with the Third Party Agent is insufficient to provide the total payment of the claim asserted in the Town's notice of withdrawal, the balance of such claim shall not be discharged or waived, but the Town may continue to assert the same as an obligation of the Franchisee to the Town.

13.6.4. No later than thirty (30) days after mailing of notification to the Franchisee by certified mail, return receipt requested, of a withdrawal under the Letter of Credit, the Franchisee shall restore the amount of the Letter of Credit to ten thousand dollars (\$10,000).

13.6.5. In the event the Third Party Agent serves notice to the Town that it elects not to renew the Letter of Credit, the Town may withdraw the entire amount of the Letter of Credit unless the Franchisee provides a substitute Letter of Credit, in substantially the same

form as that attached hereto as Exhibit C, from a Third Party Agent approved by the Town, before the effective Letter of Credit expires.

13.7. *Liquidated Damages:*

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

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

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

13.7.4. On an annual basis from the Effective Date, the Franchisee shall not be liable for liquidated damages that exceed ten thousand (\$10,000) (the "Liquidated Damages Cap"). The liquidated damages shall be assessed in the following manner:

13.7.4.1. For each day during which the Town determines that the Franchisee has violated customer service standards pursuant to Exhibit B, except for those standards set forth in Subsection 13.7.4.2 below: \$200 per violation, treating each failure to comply as a separate violation, following a seven (7) day cure period, except that such cure period does not apply to customer service standards that themselves provide a time to act or a specific cure period;

13.7.4.1.1. a separate violation under Subsection 13.7.4.1 shall be deemed to occur whenever the Town reasonably determines that a separate customer service standard violation has occurred on one day. Thus, for example, if the Franchisee fails to provide Cable Service to one subscriber for two days pursuant to Exhibit B, there would be two violations; if the Franchisee fails to keep an appointment pursuant to Exhibit B with one Subscriber on one day and on that same day, independent of the missed appointment, the Franchisee fails to disclose price terms to that same Subscriber, then there would be two violations. However, the Franchisee shall not be charged with multiple violations for a single act or event affecting a single Subscriber or for a single act or event affecting multiple Subscribers on the same day. For example, the failure of the Franchisee to send out its annual notice to multiple Subscribers would constitute a single violation.

13.7.4.2. For failure to meet customer service standards with regard to telephone answering time, time to transfer a call to a customer service representative, or excessive busy signals: if such standards are not met according to the terms in which such standards are established in Exhibit B: \$100 for each quarter in which such standards were not met if the failure was by less than 5%; \$200 for each quarter in which such standards were not

met if the failure was by 5% or more but less than 15%; and \$300 for each quarter in which such standards were not met if the failure was by 15% or more;

13.7.4.3. For failure to pay any Franchisee Fees pursuant to Article 7 or PEG Grants pursuant to Section 6.2: \$100 per day after a seven day cure period;

13.7.4.4. For failure to file, obtain or maintain the required letter of credit pursuant to Section 13.6 in a timely fashion: \$200 per day, following a fourteen (14) day cure period; and

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

14. **MISCELLANEOUS PROVISIONS**

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

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

14.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the Town.

14.3.1. If, subsequent to the Effective Date, there is a change in federal law or state law that eliminates the authority of local governments to require or grant cable television franchises for the provision of Cable Service, then to the extent permitted by law this Franchise shall survive such legislation and remain in effect for the term of this Franchise.

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.

14.5. *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:

Kwame Trotman

Regional President – Consumer & Mass Business Markets
Verizon
935 V Street N.E.
Washington DC 20018

14.5.2. with a copy to:

Tonya Rutherford
Vice President & Deputy General Counsel
1300 I Street, N.W., 5th Floor
Washington, DC 20005
20005

14.5.3. Notices to the Town shall be mailed to:

Cable Administrator
Town of Leesburg, Virginia
25 West Market Street
Leesburg, Virginia 20178

14.6. *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the Town, and it supersedes all prior or contemporaneous agreements, representations or understanding of the parties regarding the subject matter hereof.

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 Town and the Franchisee recognize and agree that certain provisions of the Cable Law are not applicable to the Franchisee, including, but not limited to the following sections: 5.1-17(e) – 5.1-17(g); 5.1-18(2)-(3); 5.1-20 – 5.1-22; 5.1-24; 5.1-26; 5.1-32; 5.1-33; 5.1-35; 5.1-40; and, 5.1-41.

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

14.13. *FTTP Network Transfer Prohibition*: Provided that and for so long as Franchisee retains its right under applicable law to use the Public Rights-of-Way to provide Telecommunications Services, under no circumstances including without limitation, upon

expiration, revocation, termination, or denial of renewal of the Franchise or any 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, any capacity on that network that has been or could be used to provide Cable Service or otherwise, to the Town or any third party. Provided that and for so long as Franchisee retains its right under applicable law to use the Public Rights-of-Way to provide Telecommunications Services, Franchisee shall not be required to remove the FTTP Network(s) or to relocate the FTTP Network(s) as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. However, the foregoing FTTP Network Transfer Prohibition shall be ineffective if for any reason in the future the Franchise ceases to provide Telecommunication Services over its FTTP Network and the Franchisee lacks the authority to use the Public Rights-of-Way to provide any such Telecommunications Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

14.14. Town 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 THIS _____ DAY OF _____, 2023.

Town of Leesburg, Virginia

By: _____
Town Manager

Verizon Virginia LLC

By: _____
Kwame Trotman
Regional President – Consumer & Mass Business Markets

EXHIBITS

Exhibit A: Town Buildings to be Provided Free Cable Service

Exhibit B: Customer Service Standards

Exhibit C: Letter of Credit

EXHIBIT A

TOWN BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

| <u>Site Name</u> | <u>Street #</u> | <u>Street</u> |
|--|-----------------|---------------------------|
| Leesburg Public Works Warehouse and Maintenance Facility | 1393 | Russell Branch Parkway SE |
| Leesburg Town Hall | 25 | West Market Street |
| Leesburg Public Safety Center | 65 | Plaza St N.E. |
| Ida Lee Park Recreation Center | 60 | Ida Lee Drive N.W. |
| Ida Lee Administrative Building | 50 | Ida Lee Drive N.W. |
| Thomas Balch Library | 208 | W. Market St. |
| Leesburg Water Treatment Plant | 43234 | Edwards Ferry Road |
| Leesburg Water Pollution Control Facility | 1391 | Russell Branch Parkway |
| Leesburg Airport | 1001 | Sycolin Road Southeast |
| Utilities Maintenance Building | 1385 | Russell Branch Parkway |

EXHIBIT B

CUSTOMER SERVICE STANDARDS

This Section sets forth the minimum customer service standards that the Franchisee must satisfy. In addition, and subject to the provisions of this Agreement, the Franchisee shall at all times satisfy any additional requirements established by applicable federal and state or regulation, as the same may be amended from time to time, including, without limitation, consumer protection laws.

I. DEFINITIONS

The Town and the Franchisee agree that the following definitions shall govern the Town's enforcement of and the Franchisee's obligations under the customer service standard requirements under this Exhibit B:

- *As Soon As Possible*: As used in 47 C.F.R. § 76.1603(b), means no sooner than thirty (30) days in advance of such change.
- *Customer Service Center*: As used in 47 C.F.R. § 76.309(c)(1)(v), means that the Franchisee must provide for the pick up or drop off of equipment in one of the following manners: (i) by having a Franchisee representative going to the Subscriber's residence, (ii) by using a mailer, or (iii) by establishing a local business office in the Town.
- *Customer Service Representative*: As used in 47 C.F.R. § 76.309(c)(1)(ii), means a live representative, an Automated Response Unit ("ARU"), or a Voice Response Unit ("VRU"). If an ARU or VRU is used, then the Franchisee must make every effort to assure that the device provides customer service similar to that provided by a qualified live representative.
- *Next Billing Cycle*: As used in 47 C.F.R. § 76.309(c)(3)(i)-(ii) and in this Agreement, means the Subscriber's next available billing cycle.
- *Resolution of the Request*: As used in 47 C.F.R. § 76.309(c)(3)(i)(A), means the Subscriber's Next Billing Cycle following determination by the Franchisee of the Subscriber's right to a refund.
- *Respond (or Begin Working On* as used in 47 C.F.R § 76.309(c)(2)(ii): Franchisee's investigation of a Service Interruption by receiving a Subscriber call and placing the Subscribers service repair request into the Franchisee's automated repair response system and, if required, taking action.
- *Return of the Equipment*: As used in 47 C.F.R. § 76.309(c)(3)(i)(B), a Subscriber's equipment is considered returned when the Franchisee has accepted the condition of the equipment and billed for any outstanding charges, all of which shall be completed no later than the Subscriber's Next Billing Cycle.

- *Standard Installation*: Installations where the customer's premises are within two hundred (200) feet of the serving terminal, or the edge of the property, whichever is less, and where an ONT is already present.
- *System Malfunctions*: Service impacting event originating at the Franchisee's video hub offices or super-headend.

II. CUSTOMER SERVICE STANDARDS

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

B. Measurement of the standard in 47 C.F.R. § 76.309(c)(1)(ii) may include all calls received by the Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting.

C. The Franchisee shall employ an operator or maintain a telephone answering device twenty-four hours per day, each day of the year, to receive Subscriber complaints and answer inquiries during Normal Business Hours.

D. The Franchisee shall establish maintenance service capable of promptly locating and correcting System Malfunctions.

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

F. If requested by a mobility-limited customer, the Franchisee shall arrange for pickup and/or replacement of converters or other Franchisee equipment at the Subscriber's address or by a satisfactory equivalent.

G. In the event that Franchisee fails to provide service to Subscribers for more than twenty-four hours, the Franchisee shall provide the affected Subscribers with a pro rata credit or rebate of the Subscriber's fees paid or payable, upon request by a Subscriber.

H. The failure of the Franchisee to hire sufficient staff or to properly train its staff shall not justify a Franchisee's failure to comply with the provisions in Exhibit B.

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

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

K. The Franchisee shall provide an initial response to a complaint within five (5) days of its receipt and a final response within thirty (30) days after a written complaint is received. At the time of installation, upon request, and annually, the Franchisee shall provide all Subscribers the Communications Administrator's contact information.

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

EXHIBIT C

LETTER OF CREDIT

**JPMorgan
JPMorgan Chase Bank
Global Trade Services**

IRREVOCABLE STANDBY LETTER OF CREDIT

Issue Date:

L/C No.:

Amount: USD \$10,000 (Ten Thousand Dollars and 00/100 United States Dollars)

Beneficiary:

Town of Leesburg
25 Market Street
Leesburg, VA 20178

Applicant:

Verizon Communications Inc.
d/b/a Verizon Virginia Inc.
One Verizon Way
MC: VC53S459
Basking Ridge, NJ 07920

TO:

Town of Leesburg

We hereby establish this irrevocable standby Letter of Credit No. _____ in your favor, for an aggregate amount not to exceed the amount indicated above, expiring at JPMorgan Treasury Services, Tampa, Florida, at our close of business on _____.

This Letter of Credit is available with JPMorgan Chase Bank against presentation of your draft at sight drawn on JPMorgan Chase Bank when accompanied by the documents indicated herein.

Beneficiary's dated statement purportedly signed by the Communications Administrator or the Director of the Department of Finance reading as follows:

"The amount of this drawing USD \$ _____, under JPMorgan Chase Bank Letter of Credit No. _____ represents funds due us as Verizon Virginia, Inc. has failed to perform its duties pursuant to the Cable Franchise Agreement By and Between the Town of Leesburg, Virginia, and Verizon Virginia Inc., dated _____, 2005."

It is a condition of this Irrevocable Letter of Credit that it shall be automatically extended without amendment for additional one year periods from the present or each future expiration

date, unless at least 30 days prior to such date, we send you notice in writing by registered mail return receipt requested or hand delivery at the above address that we elect not to renew this Letter of Credit for such additional period.

Upon such notice to you, you may draw drafts on us at sight for an amount not to exceed the balance remaining in this Letter of Credit within the then applicable expiry date, accompanied by your dated statement purportedly signed by the Communications Administrator or the Director of the Department of Finance reading as follows:

“The amount of this drawing USD \$_____ under JPMorgan Chase Bank Letter of Credit number _____ represents funds due us as we have received notice from JPMorgan Chase Bank of their decision not to extend Letter of Credit Number _____ for an additional year.”

All correspondence and any drawings hereunder are to be directed to JPMorgan Treasury Services, Standby Letter of Credit Dept., 4th Fl., 10420 Highland Manor Drive, Tampa, Florida 33610. Customer Inquiry Number is 1-866-632-5101 and choose option No. 3.

We hereby agree with you that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored.

This Letter of Credit is subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication No. 590.

This Letter of Credit shall be governed by, and construed in accordance with, the laws of Virginia without regard to principles of conflict of laws.

Authorized Signature (Bank)