

**Cable Franchise Agreement  
by and between  
County Commission of Jefferson County, West Virginia  
and  
Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC**

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**Jefferson County Commission**

**Dated: April 30, 2009**

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the County Commission of Jefferson County, West Virginia, a duly organized county under the applicable laws of the State of West Virginia (the "County") and Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC, a corporation duly organized under the applicable laws of the Commonwealth of Virginia (the "Franchisee").

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

WHEREAS, the County is a "franchising authority" in accordance with Title VI of the Communications Act (see 47 U.S.C. §522(10)) and West Virginia Code §24D-1-2 (11) and is authorized to grant one or more nonexclusive cable franchises pursuant to Article 1 of Chapter 24D of the West Virginia Code and the Ordinance Enacting Guidelines and Requirements Pertaining to the Granting of a Cable Television Franchise in Jefferson County, West Virginia originally adopted July 12, 1990 and as amended thereafter ("Cable Ordinance");

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

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

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

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

NOW, THEREFORE, in consideration of the County's grant of a renewal franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the County pursuant to and consistent with the Cable Ordinance, 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 Ordinance are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

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

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

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

1.4. *Cable Ordinance*: The Ordinance Enacting Guidelines and Requirements Pertaining to the Granting of a Cable Television Franchise in Jefferson County, West Virginia originally adopted July 12, 1990 and as amended thereafter, to the extent authorized under and consistent with federal and state law.

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

1.6. *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7).

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

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

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

1.10. *County*: Jefferson County, West Virginia organized and existing under the laws of the State of West Virginia, and the area within its territorial limits.

1.11. *Educational Access Channel*: An Access Channel available for the use solely of the local public schools or institutions of higher education in the Franchise Area.

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, acts of God,

incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, and tornadoes.

1.14. *Franchise Area*: The area within the unincorporated territorial limits of the County.

1.15. *Franchisee*: Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC, and its lawful and permitted successors, assigns and transferees.

1.16. *Government Access Channel*: An Access Channel available for the use of the County, or other local governments or agencies.

1.17. *Gross Revenue*: All amounts which are derived, directly or indirectly, by Franchisee from the operation of the Cable System to provide Cable Service in the Franchise Area. The Franchisee shall maintain its books in accordance with generally accepted accounting principles ("GAAP"). Gross Revenue shall include, without limitation, the following:

1.17.1. Any revenue received from Subscribers, including but not limited to revenue for basic service, expanded basic service, other tier services, additional outlets, and pay-per-view service, or for the distribution of any other Cable Service, as defined by federal law, over the System.

1.17.2. Revenue received from Subscribers for installation, change in service and reconnection charges and similar fees;

1.17.3. Revenue received from Subscribers for converters, remote controls or other equipment leased or rented to Subscribers in connection with the delivery of Cable Services to such Subscribers;

1.17.4. Revenue received from Subscribers for service charges and late fees attributable to delinquent accounts;

1.17.5. Revenue received from third parties, including advertising revenue, home shopping commissions, leased access payments (subject to subsection 1.17.12 below), and studio and other facilities or equipment rentals. In computing Gross Revenue from sources other than Franchisee's Subscribers, including without limitation, revenue derived from the sale of advertising, home shopping services, guide sales, the lease of channel capacity on its Cable System, or any other such revenues derived from the operation of the Cable System, the amount of such revenues attributable or allocated to Franchisee in accordance with GAAP shall be the aggregate revenue received by Franchisee from such sources during the period in question multiplied by a fraction, the numerator of which shall be the number of Franchisee's Subscribers in the County as of the last day of such period and the denominator of which shall be the number of regional or national Subscribers as of the last day of such period. For example, Franchisee sells two ads: Ad "A" is broadcast nationwide; Ad "B" is broadcast only within West Virginia. Franchisee has 100 Subscribers in the County, 500 Subscribers in West Virginia, and 1000 Subscribers nationwide. Gross Revenue as to the County from Ad "A" is 10% of

Franchisee's revenue therefrom. Gross Revenue to the County from Ad "B" is 20% of Franchisee's revenue therefrom.

1.17.6. Fees collected from Subscribers for the payment of cable franchise fees to be paid to the County; such cable franchise fees shall not be deemed to be taxes and are not deducted from the total gross revenue figure on which Franchise fees are paid.

Provided, however, that Gross Revenue shall not include:

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

1.17.8. 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;

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

1.17.10. Any revenues from services classified as Non-Cable Services under federal or state law;

1.17.11. Any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, except for that portion of such revenue which 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 (such as the home shopping commission provided for in Section 1.17.5 above), which portion shall be included in Gross Revenue;

1.17.12. 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, Provided, however, revenues from the sale of Cable Services on the Cable System for resale for which the purchaser is not required to collect such fees shall be included as Gross Revenues;

1.17.13. The provision of Cable Services to public institutions as required or permitted herein;

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

1.17.15. 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 employees of Franchisee; 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; and,

1.17.16. Any fees or charges collected from Subscribers or other third parties for PEG Grant or INET payments.

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).

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

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

1.21. *Normal Business Hours*: Those hours during which most businesses in the community are open for business. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours. See 47 C.F.R. § 76.309(c)(4)(i)..

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.

1.25. *Public Access Channel*: An Access Channel available for the use solely by the residents in the Franchise Area.

1.26. *Public Rights-of-Way*: The surface, the air space above the surface, and the area below the surface of any public street, road, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, easement, or similar property in which the County now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining, a Cable System. No reference herein, or in any franchise agreement, to the "Public Rights-of-Way" shall be deemed to be a representation or guarantee by the County that its interest or other right of control to use such property is sufficient to permit its use for such purposes, and a Franchisee shall be deemed to gain only those rights to use as are properly in the County and as the County may have the undisputed right and power to give. 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 Interruption*: The loss of picture or sound on one or more cable channels.

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

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

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

1.31. *Transfer of the Franchise*: Shall mean any transaction in which

1.31.1 The Cable System is sold or assigned;

1.31.2 There is any change, acquisition, or transfer of control of the Franchisee or its direct or indirect parents, whether by merger, consolidation, sale of assets or ownership interests, or by any other means. A Transfer shall be deemed to have occurred whenever there is a change, acquisition or conveyance of control of a general partner, of more than a twenty percent (20%) ownership in the Franchisee or its direct or indirect parents by any entity, or a group of entities acting in concert. However, a Transfer also occurs whenever there is change in actual working control, in whatever manner exercised, over the affairs of the Franchisee or its direct or indirect parents.

1.31.2 The rights and/or obligations held by the Franchisee are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly to another party.

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

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

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

2.2. *Term*: This Franchise Agreement shall become effective on the date when both parties execute the agreement ("Effective Date"), which shall be completed within thirty (30) days following its approval by the County . The term of this Franchise Agreement shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked as provided herein.

2.3. 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 County 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 Agreement.

2.3.1. If the County grants a competitive franchise which, in the reasonable opinion of the Franchisee, contains more favorable or less burdensome terms or conditions than this Franchise Agreement, the Franchisee may notify the County that it wishes to renegotiate certain specified provisions of the Franchise Agreement. Within 30 days after the Franchisee provides such notice, both parties must begin to negotiate in good faith, and either party to this Franchise Agreement may request changes to amend this Agreement so that neither the Franchisee's Franchise Agreement nor that of the competitor contains terms that are more favorable or less burdensome than the other. For purposes of this section, the franchises must be viewed as a whole, not on a provision-by-provision basis, and the franchises must be compared with due regard for the circumstances existing at the time each franchise was granted.

2.3.2. In the event an application for a new cable television franchise is filed with the County proposing to serve the Franchise Area, in whole or in part, the County shall serve or require to be served a copy of such application upon the incumbent Franchisee by registered or certified mail or via nationally recognized overnight courier service.

2.3.3. In the event that a cable operator provides cable service to residents of the County under a franchise issued by the state or federal government that is unavailable to the Franchisee, the Franchisee shall have a right to request Franchise amendments that relieve the Franchisee of regulatory burdens that create a competitive disadvantage to the Franchisee. In requesting amendments, the Franchisee shall file a petition with the County seeking to amend the Franchise. Such petition shall: (1) indicate the presence of a competitor that has a state or federal franchise; (2) identify the basis for Franchisee's belief that certain provisions of the Franchise place Franchisee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The County may hold a public hearing to evaluate the petition and hear the views of interested parties. The County shall not unreasonably withhold consent to the Franchisee's petition.

2.4. *Franchise Agreement Subject to Applicable Law:* Notwithstanding any provision to the contrary herein, this Franchise Agreement is subject to and shall be governed by all applicable provisions of state and federal law as they may be amended, including but not limited to the Communications Act and the West Virginia Cable Television Systems Act (West Virginia Code §24D-1-1 et seq.).

2.5. *No Waiver:*

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

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

2.6. *Construction of Franchise Agreement:*

2.6.1. The provisions of this Franchise Agreement shall be liberally construed to effectuate their objectives. In the event of a conflict between the Cable Ordinance and this Agreement, the Cable Ordinance shall prevail except to the extent that relief from the Cable Ordinance is provided for through the waivers provided for at Section 14.14 of this Agreement.

2.6.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545 or the West Virginia Cable Television Systems Act.

2.7. *Police Powers:* Nothing in the Franchise Agreement shall be construed to prohibit the reasonable, necessary and lawful exercise of the County's police powers. However, once the Franchise grant is effective, the Franchise is a contract and except to those changes which are the result of the County's actions in the exercise of its police and other powers, neither party may take any unilateral action which materially changes the explicit mutual promises in this Agreement.

2.8. *Acceptance of Franchise:* Franchisee hereby accepts the Franchise, warrants and represents that it has examined all of the provisions of the Cable Ordinance, subject to Section 2.7 above, and this Agreement, accepts and agrees to be bound by all of the provisions contained in the Cable Ordinance and this Agreement.

2.9. *Nature of Authority:* The authority granted herein, subject to the terms and conditions of this Agreement and Cable Ordinance, shall be known as the "Franchise".

## 2.10. *Commitments by Franchisee*

2.10.1. The Franchisee agrees to use its good faith efforts, at its own expense, actively and diligently to conduct the prosecution of all applications to the FCC, other governmental regulatory bodies or private parties necessary to permit the continuation and extension of its operations in accordance with this Agreement and the Cable Ordinance. Franchisee is not required to extend its System or construct plant within private rights-of-way for which Franchisee is unable to secure easements or other rights of access on reasonable terms and conditions after good faith, active and diligent efforts at application for such agreements or rights of access.

2.10.2. The Franchisee shall not apply for any waivers, exceptions, or declaratory rulings from the FCC or any other federal or state regulatory agency specifically regarding the Franchise with the County without providing the County with copies of such applications.

## 3. PROVISION OF CABLE SERVICE

### 3.1. Service Area:

3.1.1. Franchisee shall make Cable Services available to residential dwelling units in all areas of the Franchise 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 signal source on the Cable System. The Franchisee agrees to use commercially reasonable efforts to inform itself of all newly planned developments within the County and to work with developers to cooperate in pre-installation of facilities to support Cable Service. The County agrees to cooperate with the Franchisee to provide such information as it has available regarding such developments.

3.1.2. Where potential Subscribers reside in an area where an average density is below the above density limitation in Subsection 3.1.1.1, the Franchisee shall extend Cable Service to such potential Subscribers if the potential Subscribers are willing to pay a one-time charge equivalent to the Franchisee's cost of extending service, including, but not limited to, total construction, engineering, capital and administrative costs.

3.1.3. As an alternative to Section 3.1.2., Franchisee shall extend the System and make Cable Service available in areas with less than thirty (30) homes per mile upon receipt of binding agreements from an average of at least fifteen (15) homes per mile (as measured using the formula in Section 3.1.1), each of which commits the residents of such homes to purchase Cable Service for a minimum of two (2) years.

3.2. Availability of Cable Service: Franchisee shall make Cable Service available to all residential dwelling units, and may make Cable Service available to businesses, within the Franchise Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any Persons in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect all residential dwelling units and business units that are within two hundred (200) feet of trunk

or feeder lines not otherwise already served by the Cable System. 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.

3.2.1. Franchisee shall make Cable Service available to any Subscriber within the County upon Subscriber's request and at the standard connection charge if the connection requires a standard drop, defined as no more than two hundred (200) foot aerial or underground drop, measured from the new Subscriber's residence or place of business to the Franchisee's nearest activated distribution line, and includes one (1) outlet and standard materials.

3.2.2. With respect to requests for connection requiring an aerial or underground drop line in excess of two hundred (200) feet from the nearest activated distribution lines, the Franchisee must extend and make available Cable Service to such Subscribers at a connection fee not to exceed the Franchisee's standard connection fee, if any, plus the actual installation costs incurred by the Franchisee for the distance exceeding two hundred (200) feet. Actual installation costs include reasonable actual labor or hourly service charges (including wages, benefits and payroll taxes) and material costs incurred by Franchisee for the additional work beyond two hundred (200) feet, together with a reasonable charge for overhead.

3.2.3. As is consistent with federal and state law, the Franchisee shall assure that access to its Cable Services is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides. Franchisee reserves the right to refuse or terminate service for nonpayment, theft of service, damage to equipment, abusive conduct directed towards Franchisee's employees or agents, or for any other lawful basis for withholding service.

3.3. *Voluntary Extension:* Nothing in this Section 3 shall be construed to prevent the Franchisee from serving areas not covered under this Section upon agreement with developers, property owners or residents under terms no less favorable than set forth in this Section 3.

3.4. *Service to Public Buildings:* Franchisee shall provide without charge within the Franchise Area, and subject to the provisions of Sections 3.1, one service outlet activated for Basic Service to each existing County-owned and used public building listed in Exhibit B. During the term of this Agreement, the County may, to the extent reasonably accessible and agreed to by the Franchisee, designate additional County locations to receive one service outlet activated for Basic Service. For all service outlets, if it is necessary to extend Franchisee's trunk or feeder lines more than two hundred (200) feet solely to provide service to any such school or public building, the County shall have the option either of paying Franchisee's direct costs for such extension in excess of two hundred (200) feet, or of releasing Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover, from any public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than two hundred (200) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic

Service to the additional service outlets once installed. The County may extend its one outlet to additional locations throughout the building at its own installation expense without an additional monthly fee.

3.4.2 The owners of the Public Buildings referred to in Section 3.4.1 shall be responsible for the provision, maintenance, updating and replacing as necessary of any hardware, such as personal computers and related equipment, required for access to such service, as well as the cost of installing additional outlets if so requested.

### 3.5 *Conditions on Street Occupancy*

3.5.1. Franchisee shall, as a minimum condition of its use of the rights of way comply with the requirements of this Section 3.5. Franchisee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits.

3.5.2. The facilities of the Franchisee shall be installed underground in those service areas where existing telephone facilities of a provider other than the Franchisee or its affiliates and electric utility local distribution facilities are both underground at the time of system construction. In areas where either of such telephone or electric utility facilities are installed aerially at the time of system construction, the Franchisee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the County, the Franchisee shall likewise place its facilities underground. Nothing in this section shall preclude the Franchisee from receiving funds for relocation for which it is eligible.

3.5.3. Franchisee shall obtain all legally required permits and easements before commencing any work requiring a permit, including the opening or disturbance of any Street within the service area. The County shall cooperate with the Franchisee in granting any permits required, providing such grant and subsequent construction by the Franchisee shall not unduly interfere with the use of such Streets. The Franchisee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the service area.

3.5.4 All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Franchisee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Franchisee shall be placed in such a manner as not to interfere with the usual travel on such public way.

3.5.5. Franchisee shall repair any disturbance or damage to public property or private property caused by Franchisee's construction, operation or repair of the Cable System promptly and in compliance with such standards and deadlines as may be specified by the County in writing. Franchisee agrees to compensate any entity whose person or property is damaged by Franchisee, or any contractor, subcontractor or agent of Franchisee in the course of the construction, operation or repair of the Cable System where the property is not fully restored by Franchisee to a condition as good or better than existed before the damage.

3.5.6. In an emergency, or where the Cable System creates or is contributing to an imminent danger to public health, safety, or property, the County may remove, relay, or relocate any or all parts of the Cable System without prior notice; however, the County will make reasonable efforts to provide prior notice.

3.5.7. Franchisee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision of the County, and any regulations that the County may adopt regarding the same.

3.5.8. Relocation for Government. Except as provided below, Franchisee will protect, support, temporarily disconnect, relocate, or remove any of its property at the time and in the manner required by the County or any other governmental entity for any governmental purpose.

3.5.8.1. Except in an emergency, the County will provide written notice describing where the work is to be performed at least thirty (30) days before the deadline for performing the work; Franchisee may seek an extension of the time to perform the work where it cannot be performed in a week even with the exercise of due diligence, and such request for an extension will not be unreasonably refused.

3.5.8.2. Franchisee may abandon any property in Public Rights-of-Way that is in place upon written notice to the County unless the County determines, in the exercise of its reasonable discretion exercised within ninety (90) days of the date the required written notice is received, that the safety, appearance, functioning or use of Public Rights-of-Way and facilities in Public Rights-of-Way will be adversely affected. Abandonment shall be in a manner acceptable to the County Engineer.

### 3.5.9 Relocation for a Third Party.

3.5.9.1. If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person authorized to use Public Rights-of-Way (other than entities covered by Section 3.5.8. above), Franchisee will, after thirty (30) days' advance written notice, take action to effect the necessary changes requested by such Person.

3.5.9.2. Unless the matter is governed by a valid contract or Applicable Law, or unless the Franchisee's Cable System was improperly installed and if installed properly, the removal, relocation or relaying would be unnecessary, the reasonable

cost of removal, relaying, or relocation will be borne by such Person requesting the removal, relaying, or relocation.

3.5.9.3. The County may direct Franchisee to remove, relay, or relocate its facilities pending resolution of a dispute as to responsibility for costs upon posting of a bond by such Person requesting such removal, relaying or relocation in the amount of Franchisee's estimated costs.

3.5.9.4. Upon the request of a Person holding a valid permit, other than an entity covered by Section 3.5.8 above, Franchisee will temporarily raise or lower its wires to allow buildings or other objects to be moved. The requesting Person will pay for any expense associated with such temporary removal or raising or lowering of wires. Franchisee will have the authority to estimate the reasonable material and labor costs and require payment of the same in advance. The Franchisee will be given not less than thirty (30) days advance notice to arrange for such temporary wire changes.

3.6. *Access to Private Property:* The Franchisee shall not be required to serve potential Subscribers in developments or buildings that are subject to claimed exclusive arrangements with other providers or to which the Franchisee cannot obtain physical access under reasonable terms and conditions after good faith negotiations with the owner or manager of the property.

#### **4. SYSTEM OPERATION**

4.1. *Provision of Maps to the County:* The Franchisee shall provide to the County annually updated maps of the Franchise Area which shall clearly delineate the following:

4.1.1. Areas within the Franchise Area where Cable Service will be available to Subscribers.

4.1.2. Areas covered by the Franchise where the Cable System cannot be extended due to lack of present or planned development, with such areas clearly marked, as provided in Section 9.6.7.

4.2. *Additional Maps:* Should the County request access to more detailed maps of the Cable System that are too voluminous or for security reasons cannot be copied and moved, then the Franchisee shall permit the County to review such maps and may require that any inspection take place at a specified location in northern Virginia.

4.3. *Changes in Service:* Franchisee agrees to give the County Administrator thirty (30) days prior written notice of changes in the mix, or quality of the Cable Services.

#### **5. SYSTEM FACILITIES**

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

5.1.1. The System shall be designed with an initial analog and digital passband of 50-750 MHz.

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

5.1.3. The Cable System shall be operated in a manner such that it is in compliance with FCC standards and requirements with respect to interference. The Cable System shall be operated in such a manner as to minimize interference with the reception of off the-air signals by a Subscriber. The Franchisee shall insure that signals carried by the Cable System, or originating outside the Cable System wires, cable, fibers, electronics and facilities, do not ingress or egress into or out of the Cable System in excess of FCC standards. In particular, the Franchisee shall not operate the Cable System in such a manner as to pose unwarranted interference with emergency radio services, aeronautical navigational frequencies or any airborne navigational reception in normal flight patterns, or any other type of wireless communications, pursuant to FCC regulations.

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

5.3. *Standby Power:* The Franchisee shall provide standby power generating capacity at the headend. The Franchisee shall maintain portable motorized standby power generators capable of at least twenty-four (24) hours duration at the headend and all hubs. The headend generator shall be tested once per week.

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

5.5. *Technical Standards:* The Cable System shall meet or exceed the applicable technical standards set forth in 47 C.F.R. § 76.601 and any other applicable standards as amended from time to time.

5.6. *Leased Access Channels:* The Franchisee shall provide Leased Access Channels as required by federal law.

## **6. PEG SERVICES**

6.1. *Preservation of Existing Benefits:* Franchisee shall continue to provide and maintain all existing equipment, facilities and other support for PEG use that it was providing prior to and upon the effective date of this Franchise, until and unless the County notifies Franchisee that such support is no longer necessary.



## 6.2. PEG Set Aside

6.2.1. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide three (3) Channels. The PEG Channels shall be designated as follows: one (1) dedicated County Government Access Channel and one (1) Education Access Channel dedicated to the Jefferson County Public Schools, and one (1) Channel dedicated to Shepherd University (collectively, "PEG Channels"). Consistent with federal law, the Government Access Channel and Education Access Channel shall be on the Basic Service Tier and the Shepherd University Channel may be on the Digital Tier. In addition to the aforementioned channels, the County may request an additional PEG Access Channel when the cumulative time on the existing Access Channels combined meets the following standards, but no more than a total of five (5) Channels over the Term of the Franchise, including the present PEG Channels: at least eighty percent (80%) of the cumulative time of sixty (60) hours per week over a consecutive (16) week period has been programmed with original, non-duplicative programming. Each PEG Channel carried as part of an analog service shall consist of a band of frequencies which is capable of carrying one standard National Television Standards Committee ("NTSC") analog television signal. Each PEG Channel carried as part of the digital service shall consist of the system capacity required to provide the transmission of a video signal, with accompanying audio, that is in digital format and capable of producing sound and picture of NTSC quality or better based on the standard compression technology then in use in the System.

6.2.2. PEG links and channels must be designed so that there is no noticeable deterioration in signal quality or programming as received from the PEG programmer. If the Franchisee chooses to eliminate its analog programming service, the Franchisee shall give each entity that manages a PEG Channel at least ninety (90) days notice before ceasing to provide programming in analog format. In addition, if the Franchisee chooses to eliminate its analog programming service, and it becomes necessary for any entity that manages a PEG Channel to replace existing equipment or purchase new equipment in order to produce and transmit programming of the same quality or better than that which was being produced and transmitted prior to the elimination of analog programming, then the Franchisee shall reimburse each such entity for the reasonable costs incurred for replacing all such equipment. Alternatively, the Franchisee may choose to supply such equipment itself, provided that in the reasonable judgment of the entity, the equipment provided by the Franchisee meets the entity's needs.

6.2.3. The PEG Channels shall be carried on the channel numbers assigned to them in Exhibit B. Thereafter, PEG Channel assignments may be changed. PEG Channel assignments shall be the same throughout the Franchise Area. If the Franchisee decides to change the channel designation for any of the PEG Channels, it must provide thirty (30) days prior written notice to the County, and shall reimburse the County, and/or PEG users for all reasonable costs incurred by the County or other PEG users, including, but not limited to, technical costs, logo modifications, stationery, promotion, and advertising. Alternatively, the Franchisee may choose to supply such equipment itself, provided such equipment is satisfactory in the reasonable judgment of the County or the affected PEG users.

6.2.4. Within ten (10) days after the Effective Date of this Agreement, the County shall notify Franchisee of the programming to be carried on each of the PEG Channels set aside by Franchisee, as listed in Exhibit B, or inform Franchisee that the entity assigned to such PEG channel has not determined the programming to be carried. Such notification shall constitute authorization to Franchisee to transmit such programming within and without the Franchise Area.

6.3. *PEG Indemnification.* All local producers and users of any of the PEG facilities or Channels shall agree in writing to hold harmless Franchisee, the County and Participating Municipalities, from any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. Furthermore, all local producers and users of any of the PEG facilities or Channels shall agree in writing, and the County shall require that such local producer or user agree in writing, to authorize Franchisee to transmit programming consistent with this Agreement.

6.4. *Franchisee Shall Assure High Technical Quality of Access Channels:* The technical quality of the transmission path for Access Channels from headend to Subscriber shall be at least equal to the same technical quality as the Channels used by Franchisee to transmit other commercial television broadcast stations and satellite Channels. Franchisee shall insure that there is no material degradation in the Access Channel signals that are received by the Franchisee for distribution by Franchisee over the Cable System.

## **7. FRANCHISE FEE**

7.1. *Payment of Franchise Fee to County:* Franchisee shall pay to the County a Franchise fee of five percent (5%) of annual Gross Revenue, after deducting the annual fee required to be paid to the public service commission of West Virginia pursuant to West Virginia Code §24D-1-25. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be computed quarterly and paid within forty-five (45) days of the end of each quarter. Should Franchisee submit an incorrect amount, Franchisee shall be allowed to add or subtract that amount in a subsequent quarter, but no later than ninety (90) days following the close of the calendar year for which such amounts were applicable; such correction shall be documented in the supporting information required under Section 7.2 below.

7.2. *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, and a detailed breakdown by major revenue categories (such as Basic Service, premium service, etc.). The County shall have the right to reasonably request further supporting information for each Franchise fee payment, subject to the confidentiality

provision of Section 9.2.

7.3. *Accord and Satisfaction* Notwithstanding anything to the contrary in §7.1 hereof, no acceptance of any payment by the County shall be construed as a release or as an accord and satisfaction of any claim the County may have for further or additional sums payable as a Franchise Fee or for the performance of any other obligation of the Franchisee.

7.4. *Limitation on Franchise Fee Actions:* The period of limitation for recovery of any Franchise fee payable hereunder shall be as provided under Applicable Law.

7.5. *Bundled Services:* This Section 7.5 shall only apply if state or federal law does not otherwise address the computation of franchise fees or gross revenues in connection with the provision of Cable Service as part of a bundle or package with any Non-Cable Service. If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the Franchise fee payments under this Agreement. In the event that the Franchisee or any Affiliate shall bundle, tie, or combine Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee), so that subscribers pay a single fee for more than one class of service or receive a discount on Cable Services, a pro rata share of the revenue received for the bundled, tied, or combined services shall, to the extent reasonable, be allocated to gross revenues for purposes of computing the franchise fee. Any discounts resulting from purchasing the services as a bundle shall be reasonably allocated between or among the respective services that constitute the bundled transaction.

#### 7.6. *Audit*

7.6.1. Subject to the confidentiality requirements of Section 9.2 of this Agreement, the County, or such Person or Persons designated by the County, shall have the right to inspect and copy records and the right to audit and to recompute any amounts determined to be payable under this Franchise, without regard to by whom they are held. If an audit discloses an overpayment or underpayment of franchise fees, the County shall notify the Franchisee of such overpayment or underpayment within ninety (90) days of the date the audit was completed. The County, in its sole discretion, shall determine the completion date for any audit conducted hereunder. Audit completion is not to be unreasonably delayed by either party.

7.6.2. Subject to the confidentiality requirements of Section 9.2 of this Franchise, the Franchisee shall be responsible for providing to the County all records necessary to confirm the accurate payment of franchise fees. The Franchisee shall maintain such records for five (5) years. The County's audit expenses shall be borne by the County unless the audit determines the Franchisee underpaid the County by five percent (5%), or Ten Thousand dollars (\$10,000.00) in the audited period, whichever is less, in which case the costs of the audit shall be paid by the Franchisee to the County within thirty (30) days following written notice to the Franchisee by the County of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid by Franchisee to the County, such amount shall be subject to an interest charge of the

Prime rate plus one percent (1%). If the audit determines that there has been an overpayment by the Franchisee, the Franchisee may credit any overpayment against its next quarterly payment; and, the County shall waive the interest charge on any past due amounts that were a result of such overpayment by the Franchisee.

7.6.3. The audit provisions set forth in this subsection shall similarly apply to the PEG support payments specified in subsection 6.3.2 of this Franchise.

## **8. CUSTOMER SERVICE**

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

## **9. REPORTS AND RECORDS**

9.1 *Open Books and Records*: Books and records shall be produced to the County at its offices, or such other location as the parties may agree. If Franchisee objects to a request for books and records, it must nonetheless produce the books and records requested, unless the County agrees that they need not be produced, or a court of competent jurisdiction rules otherwise. If documents cannot be copied or moved because (i) they are too voluminous; (ii) of security reasons; or (iii) the requested records contain trade secrets, then the Franchisee may request that County inspection of such records take place at some other location mutually agreed to by the County and the Franchisee, provided that:

9.1.1. The Franchisee must make necessary arrangements for copying documents selected by the County after its review; and

9.1.2. Franchisee must pay all reasonable travel and additional copying expenses incurred by the County (above those that would have been incurred had the documents been produced in the County) in inspecting those documents or having those documents inspected by its designee.

9.1.3 Any amounts paid pursuant to this Section 9.1 are not a franchise fee within the meaning of 47 U.S.C. § 542 and fall within one of the exceptions listed in 47 U.S.C. §542(g)(2).

### **9.2 Confidentiality:**

9.2.1. Franchisee shall take all steps required, if any, to ensure that it is able to provide the County all information which must be provided to the County or that may be requested by the County under Applicable Law or this Franchise, including by providing appropriate Subscriber privacy notices. Nothing in this section shall be read to require the Franchisee to violate 47 U.S.C. § 551 or other Applicable Law governing privacy. Franchisee shall be responsible for redacting any data that State or Federal law prevents it from providing to the County.

9.2.2. The County agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Franchisee makes the County aware of such confidentiality, and to the extent that the County is permitted to do so by Applicable Law. If the County believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Franchisee in advance in writing so that Franchisee may take appropriate steps to protect its interests. To the extent permitted by State and federal law, if the Franchisee takes appropriate steps to protect its interests in maintaining such information as confidential, the County agrees that it shall deny access to any of Franchisee's books and records marked confidential, as set forth above, to any Person.

9.3. *Records Required:* In addition to any requirements set forth by the West Virginia Cable Television Systems Act and Regulations promulgated thereunder, Franchisee shall at all times maintain:

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

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

9.3.3. Records of service calls for repair and maintenance for a period of two years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.3.4. Records of installation-reconnection and requests for service extension for a period of two years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.3.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service in areas not currently served.

9.4 *Inspection and Testing:* The County shall have the right to inspect the Cable System to ensure compliance with this Franchise, and applicable provisions of local, State and Federal law. The County (i) may require the Franchisee to perform tests based on the County's investigation of Cable System performance or on Subscriber complaints; and (ii) may require Franchisee to prepare a report to the County on the results of those tests, including a statement identifying any problems found and the actions taken to correct those problems. This provision is subject to any limitations on the County's authority under Applicable Law.

9.5. *Federal Communications (FCC) Testing:* Within fourteen (14) days of a written request by the County, a written report of test results of FCC performance testing will be provided to the County and any supporting documentation regarding the tests and testing equipment and procedures. Franchisee shall, if requested, notify the County in advance of conducting such test so that the County may observe the testing.

9.6. *Annual Report:* Franchisee shall file with the County, concurrently with its filing with the West Virginia Public Service Commission, a copy of the annual report required by §24-D-1-24 of the West Virginia Code. Additionally, upon request by the County, no later than one hundred twenty (120) days after the end of the Franchisee's fiscal year, the Franchisee shall submit a written report to the County, in a form reasonably satisfactory to the County, which shall include:

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

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

9.6.3. A statement of Gross Revenues for the previous calendar or fiscal year, certified by the Franchisee's financial agent, including a year-end balance sheet and an income statement showing Subscriber revenue and every material category of non-Subscriber revenue; and operating expenses by category, at whatever operating level such records are kept; which obligation may be satisfied by submitting the Franchisee's audited financial statements prepared for the Franchisee's bondholders or equivalent financial document acceptable to the County or the annual report for the Franchisee's ultimate parent entity;

9.6.4 Maps of the areas within the Franchise Area where Cable Service will be available to Subscribers and the areas covered by the Franchise where the Cable System cannot be extended due to lack of present or planned development, with such areas clearly marked.

9.7. The Franchisee shall submit to the County copies of each petition, application, report, and communication that directly and materially affects the provision of Cable Service within the Franchise Area that are transmitted by the Franchisee to any federal, state, or other regulatory commissions, agencies or courts.

9.8. All reports provided to the County that are not confidential, pursuant to Section 9.2 of this Agreement, shall be available to the public in the County Offices during Normal Business Hours.

## 10. INSURANCE AND INDEMNIFICATION

### 10.1 *Insurance:*

10.1.1. Franchisee shall at all times maintain in full force and effect at its own cost and expense, during the Franchise Term, the following insurance coverage by a company authorized to do business in the State of West Virginia:

10.1.1.1. Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for personal injury or death of any one person or property damage to the property of any one person, and two million dollars (\$2,000,000) combined single limit for personal injury or death of any two or more persons or property damage to the property of any two or more persons. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the County.

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

10.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of West Virginia.

10.1.2. The County, its officers, boards, commission, agents, and employees shall be designated as additional insureds under each of the insurance policies required in this Article 10 except Worker's Compensation Insurance.

10.1.3. The insurance policies mentioned above shall state that the policies are extended to cover the liability assumed by the Franchisee under the terms of the Agreement and shall contain the following statement:

"It is hereby understood that this policy may not be canceled until thirty (30) days after receipt by the County by mail of written notice of such intent to cancel coverage."

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

10.1.5. Within ninety (90) days of the Effective Date, Franchisee shall deliver to the County Certificates of Insurance showing evidence of the required coverage.

### 10.2. *Indemnification:*

10.2.1. The Franchisee shall, at its sole cost and expense, indemnify and hold harmless the County and its officials, boards, commissions, agents and employees against any and all claims, suits, causes of action, proceedings and judgments for damage or injury to any person or property for actions or omissions arising out of the operation of the Cable System under this Franchise. These damages include, but are not limited to,

penalties arising out of copyright infringements and antitrust violations and damages arising out of the failure by the Franchisee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the Franchisee's Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by the Franchise and, or arising out of the Franchisee improperly crossing private property.

10.2.2. Franchisee, upon receipt of notice in writing from the state or County, shall, at its own expense, defend any action or proceeding against the state or County in which it is claimed that personal injury or property damage was caused by the activities or omissions of the Franchisee in the installation, operation or maintenance of its Cable System. Nothing in this Section shall be deemed to obligate or to prevent the County from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the County of any sum by way of the Security Fund herein shall be a limitation upon the liability of the Franchisee to the County under the insurance and indemnification provisions herein, except that sums received by the County shall be deducted from any recovery which the County establishes against the Franchisee under this Agreement.

10.2.3. Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such settlement does not include the release of the County and the County 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 County shall in no event exceed the amount of such settlement.

## **11. TRANSFER OF FRANCHISE**

11.1. *County Approval Required.* Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, and West Virginia Code §24D-1-12 and the regulations promulgated thereunder, no Transfer of the Franchise shall occur without the prior consent of the County, provided that such consent shall not be unreasonably withheld, delayed or conditioned.

## **12. RENEWAL OF FRANCHISE**

12.1. The County and Franchisee agree that any proceedings undertaken by the County 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 and West Virginia Code §24D-1-11 and the regulations promulgated thereunder.

## **13. ENFORCEMENT AND TERMINATION OF FRANCHISE**

13.1. *Notice of Violation:* In the event that the County believes that Franchisee has not complied with the terms of the Franchise, the County shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, the County



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 County, 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 County 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 County shall schedule a public hearing. The County 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 and the terms and conditions of this Agreement, the County may apply one or a combination of the following remedies if the County determines that the Franchisee is in default of any provision of the Franchise:

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 West Virginia Code §24D-1-10 and the regulations promulgated thereunder, or,

13.4.4. Apply any other remedy provided for in this Agreement or applicable federal, state or local laws.

13.5. *Revocation:* Should the County seek to revoke the Franchise, the County shall follow the procedure set forth in West Virginia Code §24D-1-10 and the regulations promulgated thereunder.

13.6. *Security Fund:*

To ensure the performance of its obligations under this Franchise, the Franchisee shall establish a security fund in the form of a letter of credit for the County in the amount of fifty thousand dollars (\$50,000). Recovery under the letter of credit shall be in accordance with the procedures set forth in Section 13.7.3. If at the time of recovery under the letter of credit by the County, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the

obligation of the Franchisee to the County until it is paid. Within thirty (30) days of being notified that any amount has been recovered by the County, the Franchisee shall restore the letter of credit to the total amount specified above.

13.7 *Franchisee Termination*: Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of ten (10) years from the Effective Date of this Franchise, if at the end of such ten (10) year period Franchisee has less than twenty five percent (25%) market penetration of the homes passed in the Franchise area. Notice to terminate under this Section shall be given to the County in writing, with such termination to take effect no sooner than one hundred and eighty (180) days after giving such notice. Franchisee shall also be required to give its then current Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

13.8. *Rights Upon Franchise Termination or Revocation*. If the County revokes the Franchise or the Franchise otherwise terminates, the County shall have the following rights, in addition to the rights specified in this Franchise or under Applicable Law:

13.8.1. The County may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense. If the former Franchisee fails to do so within a reasonable period of time, the County may have the removal done at the former Franchisee's and/or surety's expense, subject to any right of abandonment that may be provided for under Applicable Law.

13.8.2. Subject to Applicable Law, the County, by County Commission resolution, may acquire ownership or effect a Transfer of the Cable System at fair market value, or, if the Franchise terminates or is revoked in accordance with Applicable Law at an equitable price. The terms "equitable price" and "fair market value" shall be interpreted in accordance with 47 U.S.C. § 547.

13.8.3. Section 13.9.2. does not apply to an abandonment. Subject to Applicable Law, if the Cable System or any part thereof is abandoned by Franchisee, the County may require the Franchisee to transfer title to the abandoned portions to it at no charge, free and clear of encumbrances, and the same will become the County's property and the County may keep, sell, assign, or transfer all or part of the assets of the Cable System, or otherwise dispose of those assets as it sees fit.

## 14. MISCELLANEOUS PROVISIONS

14.1. *Actions of Parties*: In any action by the County 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. *Administration*. The administration of this Agreement, including the Cable Ordinance, shall be vested in the County Commission of Jefferson County, or its designee.

### 14.3. Representations and Warranties

14.3.1. Franchisee hereby warrants, represents, acknowledges, and agrees that:

14.3.1.1. The Franchisee is qualified to do business in West Virginia;

14.3.1.2. The Franchisee has the requisite power and authority under applicable law and Franchisee's organizational documents, is authorized by Resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Effective Date of this Agreement, to enter into and legally bind the Franchisee to this Agreement and to take all actions necessary to perform all of its obligations pursuant to this Agreement;

14.3.1.3. Franchisee is financially able to perform all commitments made in this Agreement and agrees to provide financial statements evidencing this ability;

14.3.1.4. The Franchisee upon accepting this Franchise, does so relying upon its own investigation and understanding of the power and authority of the County to grant the Franchise. West Virginia Code §24D-1-1 et seq. and the regulations promulgated thereunder, authorize the County to grant this Franchise;

14.3.1.5. The Franchisee has carefully read the terms and conditions of this Franchise and the Cable Ordinance and is willing to and does accept all of the risks of the meaning of such terms and conditions;

14.3.1.6. To the best of its knowledge there is no action or proceeding pending or threatened against the Franchisee which questions its ability to perform under this Agreement;

14.3.1.7. Insofar as the legal capacity of the Franchisee to carry out any obligation pursuant to this Agreement is concerned, the execution of, and performance pursuant to, this Agreement will not result in the breach or violation of any provision of the by-laws of the Franchisee or of any statute, regulation, agreement, judgment, or decree to which it is subject;

14.3.1.8. None of the officers, directors, or managers of the Franchisee has any ownership interests that would be in violation of Section 613 of the Communications Act of 1934, 47 U.S.C. 533, and amendments thereto; and,

14.3.1.9. The Franchisee enters into this Agreement willingly and without coercion, undue influence, or duress, has not misrepresented or omitted material facts, has not entered into this Agreement with the intent to act contrary to its provisions, and represents and warrants that, for the term of this Agreement, it will be bound by the terms and conditions of this Agreement and the Cable Ordinance.

14.3.2. The Franchisee by acceptance of this Franchise acknowledges that it has not been induced to enter into this Franchise by any understanding or promise or other

statement whether oral or written by or on behalf of the County or by any other Person concerning any term or condition of this Franchise not expressed herein or in the Cable Ordinance.

14.3.3. The rights and remedies of the parties pursuant to this Agreement are cumulative, except as otherwise provided in this Agreement, and shall be in addition to and not in derogation of any other rights or remedies which the parties may have with respect to this subject matter of this Agreement. A waiver of any right or remedy by a party at one time shall not affect the exercise of said right or remedy or any other right or other remedy by such party at any other time.

14.4. *Filing Requirements:* When not otherwise prescribed herein, all matters herein required to be filed with the County shall be filed with the County Commission.

14.5. *No Person, Firm, or Corporation Shall be Arbitrarily Refused Service:* Subject to this Agreement, no person, firm, or corporation in the Franchise Area shall be arbitrarily refused Cable Service; provided, however, that the Franchisee shall not be required to provide Cable Service to any Subscriber who does not pay the applicable connection fee or monthly Cable Service charge. The Franchisee reserves the right to terminate service or refuse service on the basis of theft of service, damage to Franchisee's equipment, or abusive conduct directed towards Franchisee's employees or agents.

14.6. *Non-Discrimination:* As a condition to receiving a franchise from the County, Franchisee covenants and agrees that it shall not discriminate in any employment matter or any other matter against any person on account of race, color, creed or political or religious affiliation.

14.7. *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.

14.8. *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 County.

14.9. *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, provided that the Franchisee furnishes the County with prior written notice of the noncompliance, when possible, and takes immediate and diligent steps to bring itself back into compliance and to comply as soon as reasonably possible, under the circumstances, with the Agreement without unduly endangering the

health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, the Public Rights-of-Way, public property, or private property.

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

14.10 *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.

14.10.1 Notices to Franchisee shall be mailed to:

Comcast  
400 Westfield Road  
Charlottesville, VA 22901  
Attn.: Area Vice President

14.10.2 with a copy to:

Comcast Cable Communications, Inc.  
1301 McCormick Drive  
Largo, MD 20774-5348  
Attn.: Vice president, Government Affairs, Beltway Region

14.10.3 Notices to the County shall be mailed to:

County Commission of Jefferson County  
Post Office Box 250  
124 E. Washington St.  
Charles Town, West Virginia 25414

14.10.4 With copies to:

County Attorney  
Jefferson County  
Post Office Box 729  
Charles Town, West Virginia 25414

14.11 *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the County. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.12 *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.

14.13 *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. In the event of a subsequent change in applicable law so that the provision which had been held invalid is not longer invalid, said provision shall thereupon return to full force and effect without further action by the County and shall thereafter be binding on Franchisee and the County.


14.14 *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.

AGREED TO THIS 30<sup>th</sup> DAY OF April, 2009

Jefferson County Commission

By:   
Dale Manuel  
President, Jefferson County Commission

Comcast

By:   
[Name] ROBERT S. JACOBS  
[Title] VP, FRANCHISING + GOVERNMENT AFFAIRS  
COMCAST BELTWAY REGION

**EXHIBITS**

- Exhibit A: County Buildings to be Provided Free Cable Service
- Exhibit B: PEG Channels
- Exhibit C: Customer Service Standards

## EXHIBIT A

### COUNTY BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

#### **Jefferson County Courthouse and adjacent Buildings**

Jefferson County Emergency Communication Center (under renovation)  
Jefferson County Sheriff's Department (under renovation)  
Both on Industrial Boulevard, Kearneysville.

#### **Jefferson County Public Services Center**

1948 Wiltshire Road  
Kearneysville, WV 25430  
(includes Jefferson County Development Authority, WVU Extension, Jefferson  
County Health Department, WV State Health Department)

#### **Jefferson County Convention and Visitors Bureau**

Harpers Ferry, WV 25425  
(304) 535-1813

#### **Jefferson County Schools**

Board of Education Office  
110 Mordington Ave.  
Charles Town, WV 25414  
Jefferson High School  
Washington High School (under construction)  
Shepherdstown Middle School  
Charles Town Middle School  
Harpers Ferry Middle School  
Wildwood Middle School (current 9<sup>th</sup> grade complex)  
North Jefferson Elementary School  
Shepherdstown Elementary  
T. A. Lowery Elementary  
Page Jackson Elementary  
C .W. Shipley Elementary  
Blue Ridge Elementary  
Wright Denny Intermediate  
Ranson Elementary  
South Jefferson Elementary

## EXHIBIT B

### PEG CHANNELS

County Government Channel:	Channel 17
Jefferson County Public Schools Channel:	Channel 19
Shepherd University Channel	Channel to be determined



## EXHIBIT C

### CUSTOMER SERVICE STANDARDS

These standards shall, starting six months after the Effective Date, apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area.

#### **SECTION 1: DEFINITIONS**

A. Business Office or Customer Service Center: Consistent with West Virginia Code §24D-1-17, Franchisee shall provide a business office or Customer Service Center, as such term is used in 47 C.F.R. § 76.309(c)(1)(v), in the Franchise Area or in an immediately adjacent franchise area, *i.e.* within the county served or within 30 miles of the majority of subscribers served under the Franchise, or as otherwise provided for in West Virginia Code §24D-1-et seq. and the regulations promulgated thereunder, 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 County, and is providing for the making of payments in one or more of the following manners: (i) on-line; (ii) by mail; (iii) bill payment locations located in the County; or, (iv) by establishing a local business office in the County.

B. Respond: Franchisee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.

C. Service Call: The action taken by the Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.

D. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Franchise Area.

E. Standard Installation: Installations where the subscriber is within two hundred (200) feet of trunk or feeder lines.

#### **SECTION 2: TELEPHONE AVAILABILITY**

A. The Franchisee shall maintain a local or toll free telephone number and a phone service such that complaints and requests for service, repairs or adjustments and inquiries from Subscribers in the Franchise Area and-or residents regarding Cable Service may be received at any time. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Franchise Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty-five (45) hours per week. Franchisee representatives shall identify themselves by name when answering this number.

B. The Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Franchise Area, beginning with the next publication cycle after acceptance of this Franchise by the Franchisee.

C. Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

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

D. Under Normal Operating Conditions, calls received by the Franchisee shall be answered within thirty (30) seconds. The Franchisee shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers, as measured on accumulative quarterly calendar basis. Measurement of this standard shall 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.

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

F. Upon request from the County, but in no event more than once a quarter thirty (30) days following the end of each quarter, the Franchisee shall report to the County the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

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

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

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

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

### **SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS**

A. All installations will be in accordance with FCC and PSC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of the Franchisee-supplied equipment and Cable Service. Drop wires in underground service areas that are temporarily placed above ground shall be buried within thirty (30) calendar days of the date and time of the temporary installation, except in those situations where weather conditions make trenching impractical.

B. Unless otherwise required by Applicable Law, the Standard Installation shall be performed within seven (7) business days after an order is placed.

The Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis.

C. The Franchisee shall provide the County with a report upon request from the County, but in no event more than once a quarter thirty (30) days following the end of each quarter, noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to the County for review upon reasonable request.

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

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

E. Upon the customer's request, the Franchisee's service representatives will have the ability to issue service credits, at their sole discretion, to address customer complaints related to missed appointments.

F. Under Normal Operating Conditions, the Franchisee may not cancel an

appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the Franchisee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer shall be contacted. The appointment shall be rescheduled, as necessary, at a time which is convenient for the customer.

G. Between the time a new customer is signed up for service and the time service is installed, he or she shall be afforded a right of rescission.

H. The Franchisee shall have a Customer Service Office or Local Business Office as defined in these Customer Service Standards.

#### **SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES**

A. The Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the County and each affected Subscriber in the Franchise Area have been given fifteen (15) days prior notice of the proposed Significant Outage.

B. Franchisee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week and comply with the requirements of West Virginia Code §24D-1-15 regarding restoration of service.

C. In further compliance with West Virginia Code §24D-1-15, Franchisee shall restore interrupted service that is not characterized as a Significant Outage not later than twenty-four (24) hours after being notified by a subscriber that service has been interrupted, unless (1) service cannot be restored until another company repairs facilities owned by such company and leased to, or required for the operation of, the cable service, (2) the interruption was caused by an act of nature, or (3) Franchisee is unable to restore service within twenty-four (24) hours due to extenuating circumstances. In the event of such extenuating circumstances, the company shall restore service as soon as feasible and then submit a written notice to the Public Service Commission indicating that service has been restored and the nature of the extenuating circumstances.

D. Under Normal Operating Conditions, the Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more, provided such interruption is not caused by the Subscriber. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill.

E. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, the Franchisee shall issue a credit to the affected Subscribers who request such credit in the

amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

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

G. The Franchisee shall keep maintenance crew and repair staff to meet the Franchisee's obligations under these Customer Service Standards.

#### **SECTION 5: CUSTOMER COMPLAINTS**

Under Normal Operating Conditions, the Franchisee shall Respond to Subscriber complaints within twenty-four (24) hours and investigate Subscriber complaints within seventy-two (72) hours. The Franchisee shall notify the County of those matters that necessitate an excess of seventy-two (72) hours to resolve, but those matters must be resolved within fifteen (15) days of the initial complaint. The County may require reasonable documentation to be provided by the Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

#### **SECTION 6: BILLING**

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

B. Every Subscriber shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

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

(1) The Subscriber pays all undisputed charges;

(2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and

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

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

E. The Franchisee shall provide a telephone number and address on the bill for Subscribers to contact the Franchisee. The County, furthermore, hereby requests that Franchisee omit publishing information specified in 47 C.F.R. § 76.952.

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

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

## **SECTION 7: DEPOSITS, REFUNDS AND CREDITS**

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

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

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

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

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

## **SECTION 8: RATES, FEES AND CHARGES**

A. Franchisee's rates and charges are subject to regulation by the County, to the extent not prohibited by Applicable Law. If and when exercising rate regulation, the County shall abide by the terms and conditions set forth by the state and FCC.

B. The Franchisee shall not, except to the extent expressly permitted by Applicable Law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee equipment necessary to receive Cable Service.

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

## **SECTION 9: DISCONNECTION/DENIAL OF SERVICE**

A. The Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless the Franchisee provides a notice of the delinquency and impending termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

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

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

D. Charges for cable service will be discontinued at the time of the requested termination of service by the subscriber, except equipment charges may be applied until

equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by the Franchisee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Franchisee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by the Franchisee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from the Franchisee and to receive Cable Service or other multi-channel video service from another Person or entity.

#### **SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS**

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

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

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

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

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

(2) A separate electronic notification.

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

F. The Franchisee shall provide information to all Subscribers about each of the



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

- (1) Products and Cable Service offered;
- (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service. options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Franchisee related to Cable Service;
- (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
- (4) Channel positions of Cable Services offered on the Cable System;
- (5) Complaint procedures, including the name, address and telephone number of the County, but with a notice advising the Subscriber to initially contact the Franchisee about all complaints and questions;
- (6) Procedures for requesting Cable Service credit;
- (7) The availability of a parental control device;
- (8) Franchisee practices and procedures for protecting against invasion of privacy; and
- (9) The address and telephone number of the Franchisee's office to which complaints may be reported.

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

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

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

I. Every notice of termination of Cable Service shall include the following

information:

- (1) The name and address of the Subscriber whose account is delinquent;
- (2) The amount of the delinquency for all services billed;
- (3) The date by which payment is required in order to avoid termination of Cable Service; and,
- (4) The telephone number for the Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.