

**A CABLE FRANCHISE AGREEMENT
BETWEEN MONTGOMERY COUNTY, MARYLAND
AND STARPOWER COMMUNICATIONS, L.L.C.**

APPROVED AUGUST 3, 1999

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CABLE FRANCHISE AGREEMENT
MONTGOMERY COUNTY, MARYLAND

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**CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN MONTGOMERY COUNTY, MARYLAND
AND STARPOWER COMMUNICATIONS L.L.C.**

THIS CABLE FRANCHISE AGREEMENT (the "Franchise Agreement") is entered into by and between Montgomery County, Maryland, a charter county, duly organized under the applicable laws of the State of Maryland ("County"), and Starpower Communications L.L.C., a Delaware Limited Liability Company ("Operator" or "Operator").

WHEREAS, the County wishes to grant Operator a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the County; and

WHEREAS, the County is authorized to grant one or more nonexclusive cable television franchises pursuant to Montgomery County Code Chapter 8A, as amended, and Article 25A, Section 5(B) of the Annotated Code of Maryland, 1957, as amended; and

WHEREAS, the construction, installation, maintenance and operation of such a system involves the occupation of and placement of private commercial facilities in the Public Rights-of-Way within the County; and

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 Operator, and has determined whether Operator's plans for constructing, operating and maintaining its Cable System are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, the County has relied on Operator's representations regarding its financial, technical and legal qualifications and its plans for constructing, operating and maintaining its Cable System, and has considered the information that Operator has presented to it; and

WHEREAS, based on Operator's representations and information, the County has determined that, subject to the provisions of Montgomery County Code, Chapter 8A, known as the Cable Communications Law, to the extent consistent with federal law without infringing on any state or local concurrent jurisdiction, and the terms and conditions set forth herein, the grant of a nonexclusive franchise to Operator, is consistent with the public interest; and

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

WHEREAS, certain municipalities located within the County and identified in Exhibit A (the "Participating Municipalities") have requested that the County administer and enforce

the terms of their cable television franchises and intend to grant Operator a nonexclusive franchise on materially the same terms and conditions as the County; and

WHEREAS, Operator agrees to be bound by the terms of this Agreement with respect to the County and each of the Participating Municipalities.

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

(a) *Access Channel*: Any Channel on the Cable System set aside under this Agreement for public, educational, or governmental use without a charge by the Operator for channel usage.

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

(c) *Basic Service*: Any service tier that includes the retransmission of local television broadcast signals.

(d) *Cable Law*: Montgomery County Code, Chapter 8A -- Cable Communications Law, as it may be amended from time to time, and to the extent consistent with federal law without infringing on any state or local concurrent jurisdiction.

(e) *Cable Service*: (1) the one-way transmission to Subscribers of video programming or other programming services; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable Service includes the provision of Internet Access over the Cable System.

(f) *Cable System or System*: A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple Subscribers within the County, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any Public Rights-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the

Communications Act, except that such facility shall be considered a Cable System if such facility is used in the transmission of video programming directly to Subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility system. The foregoing definition of "Cable System" shall not be deemed to circumscribe or limit the valid authority of the County or any Participating Municipality to regulate or franchise the activities of any other communications system or provider of communications services to the full extent permitted by law.

(g) *Channel*: A six Megahertz (MHz) frequency band, which is suitable for carrying either one standard video signal, a number of audio, digital or other non-video signals or some combination of such signals.

(h) *Channel Equivalent*: 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 compression technology then in use in the Cable System.

(i) *Consumer Price Index or CPI*: The annual average of the Consumer Price Index for all Urban Consumers (CPI-U) for the Washington-Baltimore CMSA, as published by the Bureau of Labor Statistics.

(j) *Control*: The legal or practical ability to exert actual working control over the affairs of the Operator, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner.

(k) *County*: Montgomery County, Maryland.

(l) *Franchise*: The right granted by the County and each Participating Municipality to construct, maintain and operate a Cable System over, on or under the Public Rights-of-Way, as embodied in this Agreement and the Cable Law.

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

(n) *Franchise Area*: The portion of the County described in Exhibit B, and any portions subsequently added pursuant to Section 2(b).

(o) *Operator*: Starpower Communications, L.L.C., a Delaware Limited Liability Company, and its lawful and permitted successors, assigns, and transferees.

(p) *Gross Revenues*: Any and all revenues, including cash, credits, property or other consideration of any kind or nature arising from, attributable to, or in any way derived directly or indirectly by the Operator, its Affiliates, or by any other entity that is a cable operator of the System, from the operation of the Operator's Cable System (including the studios and other facilities associated therewith) to provide Cable Service. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any

basic, optional, premium, per-channel, per-program service, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments, or other consideration received from programmers for carriage of programming on the System and accounted for as revenue under GAAP; revenues from rentals or sales of Converters or other equipment; any studio rental, production equipment, and personnel fees; advertising revenues; barter; revenues from program guides; revenues from the sale or carriage of other cable-related services; and revenues from home shopping, bank-at-home channels, and other revenue sharing arrangements. Gross Revenues shall include revenues received by an entity other than the Operator, an Affiliate, or another entity that operates the System where necessary to prevent evasion or avoidance of the obligation under this Agreement to pay the franchise fee. Gross Revenues shall not include (i) to the extent consistent with generally accepted accounting principles, actual bad debt write-offs not to exceed 2% of annual revenues, provided, however, that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Operator which are imposed directly on any Subscriber or user by the state, County, or other governmental unit and which are collected by the Operator on behalf of said governmental unit. A Franchise fee is not such a tax.

(q) *Incumbent Operator*: Cable TV Montgomery, or any successor cable operator.

(r) *Institutional Network or Network*: The two-way optical fiber system linking public, educational, and governmental facilities in the County or a Participating Municipality operated by the County or Participating Municipality and constructed by the County or Participating Municipality and the Incumbent Operator.

(s) *Internet Access*: Broadband access service provided by the Operator over the Cable System that enables Subscribers to access the Internet services of the Operator, its Affiliates, or third parties. Such services shall not include (i) "dial up" access to the Internet services of third-party information service providers, the Operator, or its Affiliates, nor (ii) unbundled broadband access services offered by the Operator on an "open platform" basis to third-party information service providers, the Operator or its Affiliates, to the extent that the Operator chooses to offer such unbundled broadband access services as telecommunications services as defined in 47 U.S.C. § 153(46).

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

(u) *Normal Operating Conditions*: Those service conditions which are within the control of the Operator. Those conditions which are not within the control of the Operator 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 Operator 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.

(v) *Participating Municipality*: Municipalities within the County which have agreed to have the County administer and enforce the Franchise within their corporate limits, which have signed and entered into this Agreement, and which are identified in Exhibit A, as amended.

(w) *PEG*: Public, educational, and governmental.

(x) *Plant Mile*: The length in miles of strand-bearing or underground cable as measured on the street or easement from pole to pole or pedestal to pedestal.

(y) *Public Rights-of-Way*: The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property within the County and each Participating Municipality, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining the Cable System. No reference herein to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by the County or any Participating Municipality that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and the Operator shall be deemed to gain only those rights to use as are properly in the County and each Participating Municipality and as the County and each Participating Municipality may have the right and power to give.

(z) *Service Interruption*: The loss of picture or sound on one or more cable Channels or Channel Equivalents.

(aa) *System Outage*: A Service Interruption affecting more than 10 Subscribers.

(bb) *Transfer of the Franchise*.

Any transaction in which:

(A) an ownership or other interest in the Operator is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons so that control of the Operator is transferred; or

(B) the rights held by the Operator under this Franchise Agreement are transferred or assigned to another Person or group of Persons.

(cc) *Transfer of an Interest*: The sale or transfer, directly or indirectly, of an existing or newly created equity interest in the Operator that does not result in a transfer of control of the Operator.

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

(a) *Grant of Authority:*

(1) Subject to the terms and conditions of this Agreement and the Cable Law, the County and the Participating Municipalities hereby grant the Operator the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, for the sole purpose of providing Cable Service. This Franchise shall grant no authority for the Operator to use the Public Rights-of-Way for any purposes other than provision of 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. This Agreement does not confer any rights other than as expressly provided herein or as mandated by federal, state, County or local law.

(2) The Participating Municipalities, having adopted Chapter 8A of the Montgomery County Code by ordinance, have each requested that the County administer and enforce such ordinance within the corporate limits of the Participating Municipality through one or more County-municipality agreements. The County has agreed to administer and enforce Chapter 8A and the comparable municipal ordinance within the corporate limits of each Participating Municipality. Therefore, the County has the authority to administer and enforce Chapter 8A and the comparable municipal ordinance along with the Franchise Agreement within the corporate limits of each Participating Municipality. Termination of any County-municipality agreement shall not result in the termination of this Franchise Agreement for either the County or the Participating Municipality. Upon termination of any County-municipality agreement, the Participating Municipality shall become responsible for the administration and enforcement of this Agreement within its corporate limits, and shall be entitled to collect and retain only that part of the franchise fee due it for the franchise within its corporate boundaries. After notice to the Operator that the County-municipality agreement has been terminated, the Operator shall communicate directly with the Participating Municipality.

(3) If after the effective date of this Agreement, a municipality adopts Chapter 8A of the Montgomery County Code by ordinance and enters into a County-municipal agreement requesting the County to administer and enforce such ordinance within the corporate limits of the municipality, and signs and enters into this Franchise Agreement, such municipality shall then be considered a Participating Municipality. The Operator agrees that it shall take any actions the County deems necessary to allow the municipality to become a signatory to this Agreement, including entering into an amendment to this Agreement. After the municipality has signed and entered into the Franchise Agreement, the Operator agrees that it shall provide service to the entire area of the municipality under the same terms and conditions of this Agreement as applicable to the County and other Participating Municipalities.

(b) *Area Served:*

(1) The Franchise is granted for the Franchise Area defined in Exhibit B (the "Initial Franchise Area"), and additional portions of the County described in Exhibit B that will be added during the Franchise term pursuant to this section (the "Extended Franchise

Area”). Within one hundred-eighty (180) days following the Effective Date, Starpower shall submit a revised Exhibit B which, based upon the completion of field engineering surveys, expands the Initial Franchise Area and the Extended Franchise Area such that the outer boundary of the combined Initial Franchise Area and Extended Franchise Area encompass all contiguous areas with an average density of one hundred (100) homes per mile or more. This Franchise is also granted for such other portions of the County that may in the future be added to the Initial Franchise Area and the Extended Franchise Area pursuant to Section 2(c) (the “Additional Franchise Areas”). The Initial Franchise Area, the Extended Franchise Area, and any Additional Franchise Areas shall jointly comprise the entire Franchise Area under this Agreement. If the Operator wishes to add additional portions of the County to the Franchise Area that are not Additional Franchise Areas, it shall apply for an additional franchise, pursuant to the provisions of the Cable Law.

(2) At any time during the period permitted for the Operator’s build-out of the Initial Franchise Area, but in no event later than four (4) years following the Effective Date, the Operator shall submit a notice of intent to expand its System into the Extended Franchise Area. The notice shall include the operator’s planned construction schedule. Such notice shall be submitted at least thirty (30) days in advance of any construction in the Extended Franchise Area. All of the terms of this Agreement and Chapter 8A of the County Code shall apply to the construction, operation and maintenance of the Operator’s System throughout the Franchise Area, including both the Initial Franchise Area and the Extended Franchise Area.

(c) Additional Franchise Areas:

(1) After final acceptance of initial construction in the Extended Franchise Area, the Operator shall extend its Cable System within a reasonable time (but not to exceed 120 days) into Additional Franchise Areas to provide cable service to persons or businesses outside the Initial Franchise Area and Extended Franchise Area at no charge other than any applicable installation fees for the individual subscriber’s drop, as long as the number of dwelling units to be passed by the extension is equal to or greater than one hundred (100) homes per mile measured from any point on the System.

The above requirement may be waived if the Operator demonstrates to the County’s satisfaction, in its sole discretion, that a waiver is justified due to extraordinary circumstances. In addition, the Operator may obtain a waiver of the one hundred-twenty-day (120-day) time period if it demonstrates to the County’s satisfaction that additional time is required to accommodate utilities providing the Operator with access to poles, ducts, conduit, or right-of-way.

(2) When the criteria listed above are met, the Operator shall submit a notice of intent to expand its System into an Additional Franchise Area. The notice shall describe the portion of the County to be added and include a map identifying any portions to be added. The notice shall include the Operator’s planned construction schedule. Such notice shall be submitted at least thirty (30) days in advance of any construction in the Additional Service Area. All terms of this Agreement and Chapter 8A of the County Code shall apply to

the construction, operation, and maintenance of the Operator's System throughout the Franchise Area, including any and all Additional Franchise Areas.

(3) In addition to any periodic performance evaluations conducted pursuant to Section 6(t) herein, any Mid-Term Technical Review conducted pursuant to Section 6(u) herein, and any review conducted in the twelfth through fifteenth years of the Franchise pursuant to Section 3(c)(4) herein, the County and Operator will review the density criterion in Section 2(c)(1) once each year during the seventh through the eleventh years of the Franchise to determine whether the Operator has achieved a Cable Service market penetration of thirty-five (35) percent or greater of the homes passed by the System in the Franchise Area. If the Operator has achieved this market penetration, Section 2(c)(1) of this Agreement shall be modified to substitute "eighty (80) homes per mile" for the "one hundred (100) homes per mile" requirement in effect as of the Effective Date.

(4) In addition to any periodic performance evaluations conducted pursuant to Section 6(t) herein, any Mid-Term Technical Review conducted pursuant to Section 6(u) herein, and any review conducted during the seventh through the eleventh years of the Franchise pursuant to Section 3(c)(3) herein, the County and Operator will review the density criterion in Section 2(c)(1) once each year during the twelfth through the fifteenth years of the Franchise to determine whether the Operator has achieved a Cable Service market penetration of thirty-five (35) percent or greater of the homes passed by the System in the Franchise Area. If the Operator has achieved this market penetration, Section 2(c)(1) of this Agreement shall be modified to substitute "seventy (70) homes per mile" for the "one hundred (100) homes per mile" requirement in effect as of the Effective Date, as may have been modified pursuant to Section 3(c)(3) herein.

(d) *Term:* The Franchise and this Franchise Agreement shall extend for a term of 15 (fifteen) years, commencing on the effective date determined pursuant to Section 2(h), unless the Franchise is earlier revoked or its term shortened as provided herein or in the Cable Law.

(e) *Grant Not Exclusive:* The Franchise and the right it grants to use and occupy the Public Rights-of-Way shall not be exclusive, and the County and the Participating Municipalities reserve 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, with or without a franchise.

(f) *Franchise Agreement Subject to Other Laws:* This Franchise Agreement is subject to and shall be governed by all applicable provisions of federal, state, County and local law.

(g) *Franchise Agreement Subject to Exercise of Police Powers:* All rights and privileges granted herein are subject to the police powers of the County and each Participating Municipality and their rights under applicable laws and regulations to exercise their governmental powers to their full extent and to regulate the Operator and the construction,

operation and maintenance of the Operator's Cable System, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the County and or any Participating Municipality shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety laws, ordinances and regulations, the right to adopt and enforce laws, ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce laws, ordinances and regulations containing right-of-way, telecommunications, utility and cable television consumer protection and service standards and rate regulation provisions that are consistent with federal law without infringing on any state or local concurrent jurisdiction. By its acceptance of the Franchise, the Operator agrees to meet all requirements of the Cable Law.

(h) *Approval, Acceptance, and Effective Date:* This Franchise Agreement shall become effective on _____, 1999 (the "Effective Date"), following its approval by the County Council and its acceptance by the Operator, provided that if the Operator fails to accept the Franchise before _____, 1999, or within thirty (30) days after approval by the Council, whichever is later, it shall be deemed void.

(i) *Effect of Acceptance:* By accepting the Franchise and executing this Franchise Agreement, the Operator:

(1) accepts and agrees to comply with each provision of the Cable Law and this Agreement;

(2) acknowledges and accepts the legal right of the County and each Participating Municipality to grant the Franchise to enter this Franchise Agreement, and to enact and enforce laws, ordinances and regulations related to the Franchise;

(3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary, or allege in any claim or proceeding by the Operator against the County or any Participating Municipality that any provision, condition or term of the Cable Law or this Franchise Agreement at the time of the acceptance of the Franchise was unreasonable or arbitrary, or that at the time of the acceptance of the Franchise any such provision, condition or term was void or that the County or a Participating Municipality had no power or authority to make or enforce any such provision, condition or term;

(4) agrees that it will not oppose intervention by the County in any proceeding affecting the County's or Participating Municipality's rights under this Agreement or the County's exercise of its regulatory authority; and

(5) agrees to reimburse the County and the Participating Municipalities for all reasonable costs incurred in its review, preparation, evaluation of proposals and qualifications, and negotiations involving this Agreement. The County and the Participating Municipalities shall provide the Operator with an accounting of these expenses, such as consultant fees, and shall supply the Operator with invoices for said expenses. Operator shall deliver payment to the County and to the Participating Municipalities within thirty (30) days

of receipt of said invoices. Such payments are in addition to the Franchise Fee. Failure to make timely payment of said expenses, except for any expenses that are the subject of legitimate dispute, shall constitute a material violation of this Agreement.

(j) *No Waiver:*

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

(2) The failure of the Operator 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 or a Participating Municipality from performance, unless such right or performance has been specifically waived in writing.

(3) Waiver of a breach of this Agreement by the County or a Participating Municipality shall not be a waiver of any other breach, whether similar to or different from that waived. Neither the granting of the Franchise, nor any provision herein, nor any action by the County or a Participating Municipality hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the County or such Participating Municipality, including without limitation the right of eminent domain.

(k) *No Recourse:* The Operator shall have no recourse against the County or a Participating Municipality for any loss, cost, expense, claim, liability or damage arising out of any action undertaken or not undertaken by the Operator pursuant to the Franchise, this Agreement or the Cable Law, whether or not such action or non-action was required by the Franchise, the Agreement or the Cable Law, arising out of the enforcement or non-enforcement by the County or the Participating Municipality of any provision or requirement of this Agreement or the Cable Law, or otherwise arising out of the Franchise, the Agreement or the Cable Law. The preceding shall not preclude injunctive relief.

(l) *Construction of Franchise Agreement:* The provisions of this Franchise Agreement shall be liberally construed to effectuate its objectives consistent with the Cable Law and the public interest. In the event of a conflict between the Cable Law and this Agreement, the Cable Law shall prevail. References to applicable law or applicable requirements refer to applicable law or requirements as the same may be amended from time to time.

(m) *Promotion of Competition:* The County is committed to promoting competition in cable television service for all residents, wherever they choose to reside in the County. The expansion of Starpower service countywide, to areas outside the Initial and Extended Franchise Areas, is a major County goal.

3. TRANSFERS

(a) *Application:*

(1) A Transfer of the Franchise, or a Transfer of an Interest in the Franchise that results in a change in ownership interest of the Franchise of 5 percent or more, must not occur without prior approval by the County and the Participating Municipalities. However, a Transfer of an Interest to a person who already holds an ownership interest of 25 percent or more does not require such prior approval if Transfer of the Franchise does not occur. A Transfer of the Franchise will not be approved by the County nor by a Participating Municipality when the transferor has held the Franchise less than three years unless the County or the Participating Municipality finds that the transfer is necessary and in the best interests of the County or the Participating Municipality and its residents.

(2) An application to Transfer the Franchise must meet the requirements of section 8A-8(b) of the Cable Law and provide complete information on the proposed transaction, including the legal, character, financial, technical and other pertinent qualifications of the transferee, and on the potential impact of the transfer on subscriber services or rates. The information required in section 8A-8(e)(1) through (3), (10) and (12) of the Cable Law must be provided by the proposed transferee. The information required in section 8A-8(e)(4) through (9) of the Cable Law must also be provided whenever the proposed transferee expects material changes to occur in those areas as a result of the transfer.

(3) An application for Transfer of an Interest in the Franchise must describe the proposed transaction in detail and identify the interest to be transferred, the transferor, and transferee. If the proposed transferee is not a current equity owner of the Operator, the application must include the information required by section 8A-8(e)(1) through (2).

(4) A public hearing must be held on an application for Transfer of an Interest in a Operator of 25 percent or more.

(5) Before approving Transfer of the Franchise, the County and the Participating Municipalities must consider the legal, financial, technical and character qualifications of the transferee to operate the System, and whether operation by the proposed Operator will adversely affect the cable services to Subscribers or otherwise be contrary to the public interest. Before approving a Transfer of an Interest in the Operator, the County and the Participating Municipalities must consider whether the transferee's interest will have any effect on the Operator's operation of the System, the Operator's qualifications, or the public interest.

(6) The Council must take final action on an application for Transfer of the Franchise after receiving a recommendation from the County Executive. The County Executive may take final action on an application for Transfer of an Interest.

(7) Approval by the County or a Participating Municipality of a Transfer of the Franchise does not constitute a waiver or release of any of the rights of the County or Participating Municipality under the Cable Law or this Agreement.

(8) The County and the Participating Municipalities may impose a grant fee to cover their costs in excess of the filing fee in considering an application for Transfer of the Franchise.

(b) *Anti-Trafficking:* The Operator shall not Transfer the Franchise to any Person that owns or operates a Cable System in the County unless the County and Participating Municipalities find, in their sole discretion, that the Transfer is necessary and in the best interests of the County and Participating Municipalities, and their residents.

(c) *Transferee's Agreement:* No application for a Transfer of the Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Agreement and the Cable Law, as they may be amended, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Operator under this Agreement and the Cable Law for all purposes, including renewal, unless the County and Participating Municipalities, in their sole discretion, expressly waive this requirement in whole or in part.

(d) *Right to Purchase the System:* The County and each Participating Municipality shall have the right to purchase the Cable System in accordance with the provisions set forth below.

(1) If at any time Operator enters into a bona fide purchase agreement for the Cable System, a complete copy of such agreement shall be given to the County, and to the Participating Municipalities, within thirty (30) days of execution of such agreement. Upon receipt of such agreement, the County alone or with any of the Participating Municipalities shall have the right to purchase the Cable System according to the terms of that agreement. The County and any of the Participating Municipalities shall exercise such right by submitting a written notice of intent to purchase to the Operator. The County Executive shall make a recommendation to the County Council within thirty (30) days after receipt of the copy of the agreement, and the County Council shall act on the recommendation no more than ninety (90) days following the County's receipt of the copy of the agreement. If the County and any other Participating Municipality do not so notify Operator, the Cable System may be sold, subject to the transfer provisions of this Franchise and the County Code, on the terms submitted to the County. If any material change advantageous to the buyer is made in the agreement, the amended agreement shall again be given to the County and to all other Participating Municipalities, and each shall again have forty-five (45) days to exercise their right to purchase as provided herein. Operator's failure to comply with the requirements of this paragraph shall be sufficient basis for the County to deny the Transfer. This provision applies only to a sale of the Cable System and not to transactions involving the sale of the stock of a company related to the Operator which owns other assets worth substantially more than the assets of the Cable System.

(2) If the Cable System is not sold to the buyer on the terms set forth in the purchase agreement or amended purchase agreement, as applicable, then paragraph (d)(1) shall apply to any subsequent purchase agreement. Notice of all subsequent purchase agreements shall be given to the County and each Participating Municipality pursuant to paragraph (d)(1). The County's and Participating Municipalities' right to purchase pursuant to this Section shall survive every sale to a buyer and be binding upon every buyer of the Cable System.

4. PROVISION OF CABLE SERVICE

(a) *Availability of Cable Service:* The Operator shall make Cable Service available to all persons, including residences, businesses, and other legal entities, within the Franchise Area, including owners or occupants of multiple dwelling units that request Cable Service, except for multiple dwelling unit buildings to which the Operator cannot legally obtain access or cannot reach an agreement for access after good faith negotiation with the building owner. Notwithstanding the foregoing, the requirements contained in the following sections of this Franchise shall not apply to service provided by the Operator to business customers: Section 4(b) (Line Extensions); Section 6(a)(8) (Consumer Equipment); Section 6(a)(11) (Program Security); Section 9(b) (Installations), Section 9(d) (Scheduling and Completing Service), Section 9(f)(3) and Section 9(h) (Rebate Policy). Except as otherwise required under this Franchise, terms and conditions of services provided to businesses are subject to negotiation between the Operator and the business requesting the service.

(b) *Line Extension Requirements:*

(1) Requirements. After final acceptance of initial construction of the System in the Initial Franchise Area pursuant to Section 6(i), the Operator shall extend its Cable System within a reasonable time (but not to exceed ninety (90) days) to provide service to any person or business in the Franchise Area upon request at no charge other than any applicable installation fees for the individual subscriber's drop, as long as the following conditions are satisfied:

(A) the new subscriber requesting service is located 400 feet or less from the termination of the Cable System; and

(B) the number of dwelling units to be passed by the extension is equal to or greater than 15 per mile measured from any point on the system.

The above requirements may be waived if the Operator demonstrates to the County's satisfaction, in its sole discretion, that a waiver is justified due to extraordinary circumstances. In addition, the Operator may obtain a waiver of the 90-day time period if it demonstrates to the County's satisfaction that additional time is required to accommodate utilities providing the Operator with access to poles, ducts, conduit or right-of-way.

(2) Cost sharing.

(A) If a person has requested Cable Service but the requirement in paragraph (1)(A) above is not met, and the density requirement in paragraph (1)(B) is met, then the Operator shall extend its System to serve the person requesting service, provided that the Operator may require the person to pay the cost of any line extension in excess of 400 feet.

(B) If neither of the requirements in paragraph (1) is met, then the Operator must extend its System based upon an equitable and reasonable cost-sharing arrangement with affected potential subscribers, such as the arrangement described below:

(C) The Operator shall first determine the total construction costs of the extension. The "total construction costs" are defined as the actual turnkey cost to construct the entire extension including electronics, pole make-ready charges, labor and reasonable associated overhead, but not profit or the cost of the house drop.

(D) The Operator shall then determine its share of the total construction costs by multiplying the total construction costs by a fraction, where the numerator equals the number of actual potential subscribers per mile in the area to be served by the extension at the time of the request, and the denominator equals 15.

(E) Persons requesting service can be required to bear the remainder of the total construction costs on a pro rata basis.

(F) If the Operator proposes to require a person requesting extension to make a contribution in aid of extension, it must, within 30 days of completion of the extension, furnish the County proof of the total cost of the extension.

(3) Construction of System in Extended Franchise Area. After final acceptance by the County of initial construction of the Operator's System in the Extended Franchise Area or any Additional Franchise Area, the provisions of Sections 4(b)(1) and 4(b)(2) shall apply to the entire Franchise Area.

5. CONSTRUCTION AND MAINTENANCE

(a) *Construction Standards:*

(1) The construction, operation, maintenance, and repair of the System shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended; the most current edition of the National Electrical Safety Code and National Electric Code; Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17; the Society of Cable Television Engineers ("SCTE") Recommended Practices for Optical Fiber Construction and Testing; the SCTE's Recommended Practices for Coaxial Cable Construction and Testing; Operator's Construction Procedures Manual; the Cable Law; applicable local building codes; and other applicable federal, state, County or local laws and regulations that may apply to the operation,

construction, maintenance, or repair of a Cable System, including, without limitation, local zoning and construction codes and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among codes, the most stringent code shall apply (except insofar as those codes, if followed, would result in a system that could not meet requirements of federal, state, County or local law, or is expressly preempted by other such provisions). The County and the Participating Municipalities may adopt additional standards as required to ensure that work continues to be performed in an orderly and workmanlike manner.

(2) All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located to minimize interference with the rights and convenience of property owners and the use of the Public Right-of-Way.

(3) All installation of electronic equipment shall be of a permanent nature, using durable components, except where maintenance or emergency repairs require the installation of temporary equipment. Temporary equipment shall be replaced as soon as possible. If replacement cannot occur within 60 days, Operator must provide notification to the County and the affected Participating Municipality.

(4) Without limiting the foregoing, antennae and their supporting structures (towers) shall be designed in accordance with the Building Officials and Code Administrator's National Building Code, as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, state or local laws, codes, and regulations, all as hereafter may be amended or adopted.

(5) Without limiting the foregoing, all of the Operator's plant and equipment, including, but not limited to, antennae sites, headend and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel so as not to endanger or interfere with improvements the County or an affected Participating Municipality shall deem appropriate to make or to interfere in any manner with the Public Rights-of-Way or legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

(6) All safety practices required by law shall be used during construction, maintenance, and repair of the Cable System. The Operator shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(7) In the event of a failure by the Operator to complete any work required for the protection or restoration of the Public Rights-of-Way, or any other work required by County or local law or ordinance, within the time specified by and to the reasonable satisfaction of the County or the affected Participating Municipality, the County or the

affected Participating Municipality, following notice and an opportunity to cure, may cause such work to be done, and the Operator shall reimburse the County and the affected Participating Municipality the cost thereof within thirty (30) days after receipt of an itemized list of such costs; or the County or the affected Participating Municipality may recover such costs through the Security Fund provided by Operator.

(8) The Operator shall place facilities, equipment, and fixtures where they will minimize effects on any gas, electric, telephone, water, sewer, or other utility facilities, and shall not obstruct or hinder in any manner the various utilities serving the residents of the County and the Participating Municipalities or their use of any Public Rights-of-Way.

(9) Any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or construction of a System shall be promptly restored to the same condition as it was in prior to its disturbance by the Operator.

(10) The Operator shall, by a time specified by the County or an affected Participating Municipality, and at no cost to the County or an affected Participating Municipality, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the County or an affected Participating Municipality by reason of traffic conditions; public safety; Public Right-of-Way construction; Public Right-of-Way maintenance or repair (including resurfacing or widening); change of Public Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; Public-Right-of-Way vacation; or for any other purpose where the convenience of the County or an affected Participating Municipality would be served thereby; provided, however, that the Operator shall, in all such cases, have the privilege of abandoning any property in place.

(11) If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person that is authorized to use the Public Rights-of-Way, the Operator shall, after thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The County may resolve disputes as to responsibility for costs associated with the removal, relaying, or relocation of facilities as among entities authorized to install facilities in the Public Rights-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or a state or federal law or regulation.

(12) In the event of an emergency, or where a Cable System creates or is contributing to an imminent danger to health, safety, or property, the County or an affected Participating Municipality may remove, relay, or relocate any or all parts of that Cable System without prior notice. The County or an affected Participating Municipality shall make reasonable efforts to contact the Operator prior to performing such work, or immediately thereafter if prior notice is impossible.

(13) The Operator shall, on the request of any Person holding a building moving permit issued by the County or a Participating Municipality, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Operator shall have the authority to require such payment in advance, except in the case where the requesting Person is the County or a Participating Municipality, in which case no such payment shall be required. The Operator shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(14) (A) The Operator may trim trees or other vegetation owned by the County or a Participating Municipality to prevent their branches or leaves from touching or otherwise interfering with its wires, cables or other structures.

(1) All trimming or pruning provided herein shall be done only with the County's prior approval. All trimming or pruning to be done within a Participating Municipality shall be done only with the Municipality's prior approval.

(2) All trimming or pruning shall be at the sole cost of the Operator.

(3) The Operator may contract for said trimming or pruning services with any person approved by the County or the affected Participating Municipality prior to the rendering of said services. Any person engaged by the Operator to provide tree trimming or pruning services shall be deemed, for the purpose of this Agreement, to be an employee of the Operator when engaged in said activity.

(B) The Operator shall obtain the written permission of the owner of any privately owned tree or other vegetation before it trims or prunes the same, unless otherwise provided by the right-of-way agreement.

(15) The Operator shall use, with the owner's permission, existing poles, conduits and other facilities whenever technically feasible and economically practical. The Operator may not erect poles, conduits, or other facilities in Public Rights-of-Way without the express permission of the County or an affected Participating Municipality, and/or necessary local permits. Copies of agreements for use of conduits or other facilities shall be filed within fifteen (15) business days with the County or an affected Participating Municipality upon County or Participating Municipality request.

(16) System cable and facilities may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead, but where no overhead poles exist all cables and facilities, excluding system passive or active electronics that may be housed in low-profile, above-ground pedestals, shall be constructed underground. Whenever and wherever electric lines and telephone lines are moved from overhead to underground placement, all Cable System cables shall be similarly moved.

(17) The County and the Participating Municipality in which a pole is located shall have the right to install and maintain free of charge upon any poles owned by the Operator any wire and pole fixtures that do not unreasonably interfere with the Cable System operations of the Operator.

(18) Except as otherwise required by Section 6(e), prior to erection of any poles or conduits or the construction, upgrade, or rebuild of a Cable System, the Operator shall first submit to the County for approval, and to any affected Participating Municipality for informational purposes only, a concise description of the Cable System facilities proposed to be erected or installed, including engineering drawings, if required by the County or an affected Participating Municipality, together with a map and plans indicating the proposed location of all such facilities. No such erection or construction shall be commenced by any Person until approval therefor has been received from the County. Nothing in this section shall diminish or detract from the permitting authority of any Participating Municipality.

(19) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of System equipment or for the pruning or removal must be properly licensed under laws of the State and all applicable local ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as the Operator would have if the work were performed by the Operator. The Operator must ensure that contractors, subcontractors and all employees who will perform work for it are trained and experienced. The Operator shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the franchise and applicable law, shall be responsible for acts or omissions of contractors or subcontractors to the same degree it is responsible for the acts of its employees, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed.

(20) The County and Participating Municipalities do not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures.

(21) The Operator shall be a member of the One Call Notification System (otherwise known as "Miss Utility") and shall comply with all of the marking and location verification requirements of the One Call Notification System.

(b) *System Tests and Inspections:*

(1) The Operator shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise and other performance standards established by law or regulation, and to ensure that the System components are operating as expected. All tests shall be conducted in accordance with applicable federal law and rules.

(2) The Operator shall conduct tests as follows:

(A) acceptance tests on each newly constructed or rebuilt segment prior to subscriber connection or activation;

(B) proof of performance tests on the System at least once every six months or as required by FCC rules, whichever is more often, except as federal law otherwise limits the Operator's obligation;

(C) special tests when Subscriber or User complaints indicate tests are warranted;

(D) special tests at the County's request.

(3) Tests shall be supervised by the Operator's chief technical authority, who shall sign all records of tests provided to the County.

(4) The Operator shall provide the County with at least two business days' notice of, and opportunity to observe, any tests performed on the System pursuant to subsection 2 above. The County may also conduct inspections of construction areas and subscriber installations, including but not limited to inspections to assess compliance with the Operator's construction and installation requirements. Inspection does not relieve the Operator of its obligation to build in compliance with all provisions of the Franchise.

(5) A written report of test results shall be filed with the County within fourteen (14) days of each test. In addition, the Operator shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the County upon the County's request.

(6) If any test indicates that any part or component of the System fails to meet applicable requirements, the Operator, without requirement of additional notice or request from County, shall take corrective action, retest the locations and advise the County of the action taken and results achieved.

(c) *Restoration:* In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Operator shall, in a manner approved by the County or the affected Participating Municipality, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, in substantially the same condition and in a good workmanlike, timely manner in accordance with standards for such work set by the County or the affected Participating Municipality. Such restoration shall be undertaken as quickly as possible, and within no more than thirty (30) days after the damage is incurred, and shall be completed as soon as reasonably possible thereafter, provided that the County or the affected Participating Municipality may extend the thirty-day period if weather conditions make restoration within that time impractical. The Operator shall guarantee and maintain such restoration for at least one year against defective materials or workmanship.

(d) *Publicizing Proposed Construction Work:* The Operator shall notify the public prior to commencing any proposed construction that will significantly disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally, except when a delay in commencing such work would present a danger or affect

the safety of the public. The Operator shall publicize proposed construction work at least one (1) week prior to commencement of that work by causing written notice of such construction work to be delivered to the County and any affected Participating Municipality and by notifying those Persons most likely to be affected by the work in at least two (2) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice. In addition, before entering onto any Person's property, the Operator shall provide prior notification and obtain the property owner's or, in the case of residential property, the resident's permission. If the Operator must enter premises, it must schedule an appointment at the convenience of the owner or resident.

(e) *System Maintenance:*

(1) **Interruptions to be Minimized.** The Operator shall schedule maintenance on its System at times that will minimize the likelihood of interruptions in service to Subscribers.

(2) **Maintenance Practices Subject to Regulation.** Maintenance of the System shall be performed in accordance with the technical performance and operating standards established by FCC rules and regulations. The County may monitor the Operator's maintenance practices and, to the extent permitted by applicable law, may waive requirements or adopt additional requirements as reasonable to ensure the system remains capable of providing high-quality service.

(f) *Failure Grounds for Termination:* Failure on the part of the Operator to commence and diligently pursue and complete each of the material requirements set forth in this Section of the Agreement or in plans submitted to the County regarding System design and construction shall be grounds for termination of its Franchise under and pursuant to the terms of Section 14(h); provided, however, that the County in its discretion may extend the time for the completion of construction and installation for additional periods in the event the Operator, acting in good faith, experiences delays by reason of circumstances beyond its control.

6. SYSTEM FACILITIES, EQUIPMENT AND SERVICES

(a) *System Characteristics:* The Operator's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

(1) **Compliance With FCC Rules.** All maintenance performed on the Cable System by the Operator shall be in accordance with the FCC rules and regulations governing the technical performance and operating standards for such System.

(2) **Continuous 24-Hour Operation.** The System shall be capable of continuous twenty-four (24) hour daily operation without severe material degradation of signal except during extremely inclement weather or immediately following extraordinary storms that adversely affect utility services or damage major system components.

(3) Temperature Specifications. The System shall be capable of operating over an outdoor temperature range of -20 degrees F to +120 degrees F and over variation in supply voltages from 105 to 130 volts AC without catastrophic failure or irreversible performance changes. The System shall meet all applicable specifications over an outdoor temperature range of 0 degrees F to 100 degrees F and over variation in supply voltages from 105 to 130 volts AC.

(4) No Interference. The Operator shall operate the System in such a manner as to minimize interference with the reception of off-the-air signals by a Subscriber. The Operator shall insure that signals carried by the System, or originating outside the System wires, cables, fibers, electronics and facilities, do not ingress or egress into or out of the System in excess of FCC or other applicable standards. In particular, Operator shall not operate the 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) No Deterioration to Access Signals. The System shall be so constructed and operated that there is no significant deterioration in the quality of PEG signals or leased access signals resulting from the transportation of the video signal, either upstream or downstream, as compared with any other channel on the System. Deterioration refers to any signal problem, including but not limited to ghost images and other interference and distortions.

(6) Industry-accepted Equipment. The System shall use equipment generally used in high-quality, reliable, modern systems of similar design.

(7) Stand-by Power. Operator shall provide standby power generating capacity at the headend and at all hubs. Operator shall maintain motorized standby power generators capable of at least twenty four (24) hours duration at the headend, and battery back-up power capability of at least four (4) hours duration for all system hubs with automatic response systems to alert the system headend when commercial power is interrupted. The headend generator shall be tested once per week. The standby power system shall be reviewed and approved by the County as part of System Design Review. The power suppliers serving the nodes and distribution plant shall be capable of providing power to the system for not less than two (2) hours according to manufacturer specification in the event of an electrical outage. The Operator shall maintain sufficient portable motorized generators to be deployed to a hub site in the event that the duration of a power disruption is expected to exceed four (4) hours.

(8) Cable Ready Television Sets. The Operator shall comply with all FCC regulations regarding scrambling or other encryption of signals.

(9) Consumer Equipment For Lease or Sale. Subject to applicable law or regulation, as part of the System, the Operator shall, consistent with 47 C.F.R. § 76.984 and

47 U.S.C. § 543(d), offer every Subscriber, at uniform prices and regardless of the level of service taken, the opportunity to lease from the Operator or to lease or buy from others Converters (including digital converters), including any associated software, that allow Subscribers to view a program on one channel while taping a program on another channel. To the extent permitted by federal law, Subscribers shall have the right to attach devices to the Operator's System to allow them to transmit signals or service to video cassette recorders, receivers and other terminal equipment, and to use their own remote control devices and Converters, and other similar equipment, as long as such devices do not interfere with the operation of the Operator's System or the reception of any cable Subscriber, do not serve to circumvent the Operator's security procedures, or are not used in any manner to obtain services illegally. The Operator, at no additional charge, shall provide information regarding the Cable System to Subscribers which will assist them in adjusting such devices so that they may be used with the Operator's System.

(10) Parental Control. The Operator shall provide equipment to enable Subscribers to block out audio and video on any undesired channels on the System. To the extent that the converter box or other equipment necessary to enable such blocking is not provided as part of a Subscriber's service tier, the Company may charge a reasonable fee for such equipment.

(11) Program Security. The System shall include equipment so that any pay-per-view programming can only be activated by the positive action of a subscriber.

(12) Service for the Disabled. All closed-caption programming retransmitted by the System shall include the closed-caption signal. For hearing impaired Subscribers, the Operator shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, the Operator must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company. Upon request, the Operator shall provide, for purchase or lease, a remote control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited.

(b) *System Construction in Initial Franchise Area:* Within four years after the effective date of this Agreement, the Operator shall complete construction of a System in the Initial Franchise Area providing at least the following capabilities (the "System Build-Out"):

(1) The System shall be designed and constructed using a combination of fiber optics and coaxial radio frequency ("RF") distribution. The System shall have an analog passband of 860 MHz and shall be designed to meet or exceed FCC performance standards tested in accordance with NCTA procedures. The System shall have the flexibility to allocate a portion of the analog bandwidth to support digital Channel Equivalents to transmit video digital service with the deployment of digital set-top converters.

(2) The basic System shall consist of a combination of 1550 nanometer ("nm") and 1310 nm optical components connected to an optical node which will convert the

optical signals to an RF signal for distribution on a conventional coaxial-based cable system. Each optical node shall be constructed with at least a 12-fiber bundle of single mode type fibers to serve an area no larger than 500 homes to accommodate future communications needs of residents. Each optical node and its RF distribution shall be powered using a zero transfer standby power supply to minimize interruptions of service caused by power outages. The coaxial cable shall be of the jacketed variety for durability and performance. All splicing and RF connections shall use integral sleeve pin type connectors and shielded with heat shrinkable tubing for weather protection.

(3) The System shall be designed and constructed to be an active two-way plant utilizing the return bandwidth of 5-40 MHz to permit such services as impulse pay-per-view and other interactive services. These return signals shall be transmitted back to the primary headend or hub using the optical return laser in the node. The optical return laser shall have a return passband of 5-200 MHz to allow for additional future bandwidth requirements.

(4) The System headend is located at 10000 Derekwood Lane, Lanham, in Prince George's County, Maryland. All programming except for public, educational, and government (PEG) programming is received at the Lanham headend and transmitted over a fiber optic backbone network to regional hub sites. A redundantly-routed fiber optic ring interconnects the headend with regional distribution hub sites located to serve approximately 50,000 serviceable passings each. The ring must be designed to provide automatic cutover to the redundant route in event of failure of electronics or fiber on the primary route. PEG programming may be inserted at regional hub locations for distribution to all other hubs serving the County. Regional hubs are interconnected to neighborhood optical nodes. Backup power at the regional hubs is 12 hours or greater with a dial-up alert system to notify the headend when the hub goes to backup power operation.

(5) The Operator may offer high-speed cable modems as a Cable Service.

(c) *System Construction in Extended Franchise Area:* Within two years after the date of the Operator's notice to the County of its intent to expand into the Extended Franchise Area, the Operator shall complete construction of its System in the Extended Franchise Area in accordance with the requirements of paragraphs (6)(b)(1)-(4).

(d) *System Architectural Design Review Process:*

At least ninety (90) days prior to the date of initial construction in each of the Initial Franchise Area and the Extended Franchise Area, the Operator shall deliver to the County a detailed architectural design plan, which shall include at least the following elements:

- (1) Location of headend and all hub sites;
- (2) Technical description of equipment at headend, hubs, and nodes;

(3) Technical analysis of coaxial cable design or nodal service areas including, for example, specifications for amplifiers, active and passive devices, fiber coupling equipment and power supplies;

(4) Technical description of delivery of PEG programming to Subscribers on Operators' System, including interconnection equipment, method of transport to interconnection point (to the extent Operator is responsible for any connection or has obtained such information from any other cable operators involved in PEG interconnection) and from interconnection point to Operator's System, and signal origination and destination locations; and

(5) System level trunking maps to illustrate the architecture of the system.

The architectural design shall be shown on maps of industry standard scale using standard symbology, and shall depict all electronic and physical features of the cable plant. The County may review the plan and, within forty-five (45) days of the date the plan is made available for County review, submit comments to the Operator. Within fifteen (15) days of receipt of the comments, the Operator shall submit a revised plan to the County, either incorporating the comments or explaining why the comments were not included. The County may take any appropriate action it is entitled to take under this Agreement, the Cable Law, or other applicable law if it believes the design plan fails to satisfy or is likely to fail to satisfy the Operator's obligations. The County's review shall not operate to excuse any non-performance under this Agreement, the Cable Law or other applicable law.

(e) *System Physical Design Review Process:* The Operator shall provide the County with detailed design maps defining the geographical and technical physical design of the System in both the Initial Franchise Area and the Extended Franchise Area and showing the areas of the County to be served by each hub, as well as the construction and energization schedule by hub area for the upgraded systems. Maps shall be provided at least 45 days prior to release for construction. The County may review the physical system design maps and submit comments to the Operator within fifteen (15) days of the date each map is provided to the County for review. The Operator shall take any such comments into account in implementing its construction plan.

(f) *Construction Manual:* No later than sixty (60) days before the date construction of the System in the Initial Franchise Area is to begin, the Operator shall provide for County review and approval, a System construction manual, installation manual, and plan for notifying area residents of the System Construction work process. Updated versions of these manuals and plans shall be submitted no later than sixty (60) days before construction in the Extended Franchise Area is to begin.

(g) *Post-Construction Design Modifications:* At least ninety (90) days prior to the date of any construction on the System initiated after completion of the System Construction intended to implement any modifications to the design of the System, the Operator shall deliver to the County a detailed description of the proposed design modifications. The description shall include any of the information required by subsection 6(e), relevant to an

understanding of the proposed modification. The County may review the plan and, within thirty (30) days of the date the plan is made available for County review, submit comments to the Operator.

(h) *Construction:*

(1) The Operator shall begin construction of the System within six months of the effective date of the Agreement, and shall complete construction in the Initial Franchise Area within four years of the effective date of the Agreement, in order to minimize disruption of the Public Rights-of-Way. The Operator's construction plan shall insure that service is extended to low income areas at least as quickly as it is extended to higher income areas.

(2) All construction shall be performed in accordance with generally accepted construction standards and applicable provisions of the Cable Law, other local law and ordinances, and this Agreement, except where specifically waived in writing by the County.

(i) *System Acceptance Schedule:* The Operator shall comply with the following procedures as it completes construction of plant:

(1) The Operator shall notify the County in writing ten (10) days in advance of completion of construction to and construction of each node. The notice shall include the date the Operator is prepared to conduct an acceptance test prior to or concurrent with activation of service. The County and the Operator shall jointly develop the standards and procedures required by the acceptance test on that portion of the System. The County shall have the option of attending the test. Within ten (10) days of completion of the test, the Operator shall send the County the results of the test.

(2) Upon substantial completion of construction of each area served by a single hub, the Operator shall notify the County in writing ten (10) days in advance of the date Operator will conduct a test of a subset, as defined by the County, of the tests required by the FCC semi-annual proof-of-performance tests. The County shall have the option of attending the test. Upon completion of the test, the Operator shall send the County the results of the test within ten (10) days.

(3) Successful completion of the first semi-annual FCC proof-of-performance test for an upgraded portion of the System shall constitute the final acceptance test for that portion. The Operator shall notify the County of the date at least fifteen (15) days in advance, in writing, that it will conduct such a test. The test must be conducted in the presence of the County's designated observer. If the tested portion of the System passes the performance test, that portion shall be deemed accepted by the County. If the tested portion does not pass, the Operator shall take all steps necessary to meet the applicable standards and the affected portion shall be retested in accordance with the above procedures.

(4) Final acceptance of the entire System shall take effect when (i) all nodes as set forth in the system architectural design plan approved by the County pursuant to

Section 6(e) have been constructed, activated, and accepted pursuant to paragraph (1) above; and (ii) at least 80% of the entire System, as measured by the number of nodes, has passed the first semi-annual FCC proof-of-performance test.

(j) *Periodic Progress Reporting.*: Following the commencement of construction of the System or any similar major construction, the Operator shall meet with the County at least every three (3) months until the construction is completed, and provide an update on the progress of the Construction according to the Operator's general plan, unless the County waives such meeting. Upon request, the Operator shall provide detailed written reports to the County on the Operator's progress in construction, within ten (10) days of the request.

(1) *Public Notification.* Prior to the beginning of any System Construction, and periodically during each phase, the Operator shall inform the public and its Subscribers about the progress of the construction areas where construction crews will be working and any expected temporary interruptions to existing services which may occur.

(2) *Delays in the System Construction.* The Operator shall not be excused from the timely performance of its obligation to begin and complete any System Construction within the times specified herein, except for the following occurrences:

(A) Any "Force Majeure" situation, as described herein;

(B) Delays beyond the control of the Operator that the Operator could not reasonably have anticipated regarding the availability, shipment and arrival of necessary equipment, cables, electronics or hardware, protracted underground excavation, easement availability, third-party refusal to allow necessary access to poles or other rights-of-way facilities, changes in contractors or contractor personnel, the issuance of necessary governmental permits, or any other valid factor agreed to by the County as fully explained and reasonably justified in writing to the County or its designee.

(3) *Consequences of Delays.* Absent a showing of excusable delay pursuant to subsection (k)(2) above, should the Operator be unable to demonstrate the commencement or timely completion of the System Construction by the times specified herein, or be unable to reasonably justify any delays, then the Operator shall be in violation of a material provision of this Franchise Agreement and the County may, in its sole discretion, either grant the Operator an extension of time to complete such construction or implement any enforcement measures specified in this Agreement or the Cable Law, including but not limited to revocation of the Franchise. In the event of excusable delay pursuant to subsection (k)(2), the time for completion shall be extended by the period of such delay.

(k) *Technical Standards.* The Cable System shall meet or exceed the applicable technical standards set forth in 47 C.F.R. Part 76 and any other applicable technical standards, including any such standards as hereafter may be amended or adopted by the County subject to applicable federal law.

(l) *Types of Service:* Should the Operator desire to change the selection of programs or services offered on any of its tiers, it shall maintain the quality and level of services provided over the System. Any change in programs or services offered shall comply with all lawful conditions and procedures contained in this Agreement and in applicable law. The Operator shall provide thirty (30) days' advance written notice to Subscribers and the County of any change in channel assignment or in the video programming service provided over any channel, unless this requirement is waived by the County or by operation of federal or state law, or due to events beyond the reasonable control of the Operator.

(m) *Leased Access Channels:* The Operator shall provide leased access channels as required by federal law.

(n) *Interconnection:*

(1) The Operator shall design its System so that it may be interconnected with other Cable Systems or similar communications systems in the area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, use of the County's Institutional Network or other facilities, or other appropriate methods.

(2) Unless otherwise agreed by the County during the term of this Agreement, Operator shall promptly interconnect with all other cable operators for the purpose of exchanging PEG programming to be carried over the Access Channels. The Operator shall immediately initiate negotiations with the other affected system or systems and shall pay its own costs for both construction and operation of the interconnection link. The County shall work with the Operator and the operators of such other systems to designate a reasonable and mutually acceptable place and manner for the PEG interconnection. Interconnection shall preserve the quality of the PEG signals, and design of the interconnection shall be subject to County review pursuant to Section 6(d)(4). If any cable operator refuses to interconnect or otherwise obstructs interconnection, the County shall use its best efforts to require any such cable operator both to cooperate with the Operator and to agree to reasonable terms for interconnection.

(3) If in the future the County requests that the Operator interconnect Cable Service on its System with other Cable Systems or similar communications systems in the area for purposes other than the receipt of the PEG programming to be delivered to subscribers by Operator on the Access Channels, the County shall work with the Operator and the operators of such other systems to designate a reasonable and mutually acceptable place and manner for such interconnection. Each interconnecting company shall bear its own costs for both construction and operation of the interconnection link. The County may grant reasonable extensions of time to interconnect or rescind its request to interconnect upon a petition by the Operator or other operators(s) to the County or in the event that a reasonable and mutually acceptable place and manner for such interconnection has not been determined.

(4) No interconnection shall take place without notice to the County, and a demonstration that all signals to be interconnected will comply with applicable FCC technical standards for all classes of signals.

(5) The Operator shall cooperate with any interconnection corporation, regional interconnection authority, state or federal regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of communications systems beyond the boundaries of the County.

(o) *Customer Service Monitoring:* The Operator shall keep such records and maintain such monitoring equipment as are required to enable the County to determine whether the Operator is complying with all telephone answering standards required by applicable customer service regulations, as amended from time to time.

(p) *Emergency Alert System:*

(1) The Operator shall install and thereafter maintain for use by the County, for itself and on behalf of the Participating Municipalities, an Emergency Alert System ("EAS"), as required by 47 C.F.R. Part 11.

(2) To the extent permitted by 47 C.F.R. Part 11, the EAS shall be remotely activated by telephone and shall allow a representative of the County to override the audio and video on all channels on the Operator's System that may lawfully be overridden, without the assistance of the Operator, for emergency broadcasts from a location designated by the County in the event of a civil emergency or for reasonable tests.

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

(q) *Uses of System:* Operator must agree to advise the County of all active uses of the System, for both entertainment and other purposes, and the County shall have the right to conduct unannounced audits of such usage.

(r) *Additional Capacity:* Operator will notify the County in advance of the installation of any fiber optic capacity not contemplated by the initial design of the System, so that additional fiber may be installed, at the County's or a Participating Municipality's expense, on an Actual Cost basis for government and institutional use. If the County or a Participating Municipality wishes to request additional capacity, the County may notify the Operator within thirty (30) days of receipt of Operator's notification that the County or Participating Municipality will request additional capacity.

(s) *Home Wiring:*

Operator will comply with Chapter 8A governing the disposition of subscriber home wiring and home run wiring to the extent consistent with federal law.

(t) *Periodic Performance Evaluation:* The County may schedule periodic public hearings to evaluate the performance of the Operator, or to discuss the integration of future

technologies, other plans or operations of the Operator or any aspect of the Operator's Cable System. The Operator shall cooperate with the County in any such evaluation.

(u) *Mid-Term Technical Review:*

(1) In addition to any periodic performance evaluations conducted pursuant to Section 6(t) herein, the County may also conduct a Mid-Term Technical Review of the Operator's Cable System once during the eighth and ninth year of the Franchise. The Operator shall fully cooperate and assist the County in conducting such review.

(2) Purpose: The purpose of the Mid-Term Technical Review shall be to evaluate the technical performance and capabilities of the Operator's System, to determine whether to require a system upgrade to conform with technical improvements then commonly in use in the industry and available on systems in communities similar to the County. Subject to the provisions of this Section 6(u), the County may amend this Franchise Agreement to require the Operator to upgrade its System to incorporate technical improvements (the "Upgrade Option").

(3) County's Initial Review: To determine whether to invoke the Upgrade Option, the County shall first commence a review of the Cable System. Such review shall be conducted to enable the County to determine the following: (i) whether the Cable System should be upgraded or rebuilt; (ii) whether the Cable System's technical standards should be revised or improved; (iii) whether additional channels, equipment, facilities or support are required for public, educational and governmental use of the Cable System; and (iv) in general, whether any other changes in Franchise requirements should be made. Each determination under this paragraph shall be based upon the reasonable cable-related needs and interests of the County and the community, including the Participating Municipalities, considering the costs to the Operator of meeting those needs and interests during the remaining term of the Franchise Agreement.

(4) Operator's Report: To assist in the County's initial review, the Operator shall, at the County's request, promptly submit a report to the County describing advances in cable technology nationwide, the potential benefits and disadvantages of those advances for consumers, and any plans or timetables the Operator may have for instituting such changes in technology.

(5) Public Hearings: If, after conducting its initial review, the County determines that a system upgrade may be warranted, it shall hold a public hearing to enable the general public and the Operator to comment and to present additional information.

(6) Upgrade Order: Following such hearings, the County shall determine whether the exercise of the Upgrade Option is warranted, based upon the reasonable cable-related needs and interests of the community, considering the costs to the Operator of meeting those needs and interests. The County shall issue a written order ("Upgrade Order") stating whether an upgrade is required, describing any upgrade to be implemented, and setting forth

the basis for its decision. If an upgrade is required, the County shall set forth any relevant conditions.

(7) **Operator's Response.** Within sixty (60) days after the County issues the Upgrade Order, the Operator shall notify the County in writing whether it will comply with the Order. If the Operator does not so notify the County within sixty (60) days, the Operator will be deemed to have agreed to comply with the Upgrade Order.

(8) **Amendment of the Franchise Agreement.** If the Operator agrees to comply with the Upgrade Order, the parties shall amend this Franchise Agreement accordingly.

(9) **Rejection of the Upgrade Option.** If, however, the Operator is unwilling to comply with the Upgrade Order, the Operator shall, notify the County in writing, pursuant to Section 626 of the Cable Act, that it wishes to commence proceedings to renew the Franchise. If, at the time of such notice, more than three (3) years remain in the term of the Franchise, such notice shall be deemed, by mutual agreement, to shorten the term of the Franchise and this Agreement so that the Franchise and this Agreement shall terminate thirty-one (31) months from the date of the notice.

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

(a) *Access Channels:*

(1) The Operator shall provide at least thirteen (13) analog video Access Channels for public, educational and governmental use. At its own expense, the Operator shall interconnect its System pursuant to Section 6(n)(2) of this Agreement in such a manner as to permit delivery over the Operator's System of the same PEG programming as is delivered over the Incumbent Operator's system. Each of the thirteen (13) Access Channels provided under this section shall carry PEG video programming which corresponds to one of the Access Channels provided over the Incumbent Operator's system.

(2) Additionally, the Operator shall make available up to 10% of the System's total downstream digital capacity for PEG use (the "Digital Set-aside"), subject to a limit of 25 Channel Equivalents. Capacity made available under this section shall be used for PEG purposes only. If PEG users are providing programming to subscribers, or otherwise using any comparable capacity on the Incumbent Operator's system, the Operator shall interconnect, at its own expense, its System pursuant to Section 6(n)(2) of this Agreement in such a manner as to permit delivery over the Operator's System of all the PEG programming delivered over the Incumbent Operator's system using the Incumbent Operator's digital set-aside. The City of Rockville, the City of Takoma Park, and the Montgomery County Chapter of the Maryland Municipal League may each request to be allocated one of the Channel Equivalents to be made available pursuant to this section; such a request shall not be unreasonably denied. The County shall work with the Operator and the Incumbent Operator to implement technical solutions that make the most efficient use of the Digital Set-aside. The

requirements of Section 7(c) (Management of Channels), 7(d) (Editorial Control), and 7(e) (Indemnification) shall apply to programming provided over the Digital Set-Aside.

(3) Within ten (10) days after the Effective Date of this Agreement, the County shall notify the Operator of which PEG programming is to be carried on each of the channels set aside by the Operator for the purpose and listed in Exhibit D. Thereafter, the Operator shall assign the Access Channels on its channel line-up as set forth in the County's notice. Channel assignments should not be changed unless there is good cause and the entity responsible for managing the Access Channel consents to the change. Such consent to a channel assignment change shall not be unreasonably withheld. Access channel assignments should be the same throughout the System. If the Operator decides to change the channel designations for Access Channels, it must provide six months notice to the County and the applicable entity responsible for the affected PEG programming prior to doing so, and shall reimburse the County and/or PEG users for any costs incurred for purchasing or modifying any equipment or for making logo changes necessitated by the channel designation changes. Alternatively, the Operator may choose to supply such equipment itself, provided such equipment is satisfactory to the County or PEG users.

(4) Any reference to an upstream or downstream analog channel for PEG use refers to a 6 MHz Channel. Any entity that manages an Access Channel may use that capacity to provide one or more channels of service.

(5) Pursuant to Section 8A-28 of the Montgomery County Code, 1994, as amended, the County has provided for certain cable communications plans which govern the expenditure of access and institutional grants required by the Franchise Agreement. The Operator agrees that where an approved item of such plan involves implementation by use of agreements with a third party contractor, then the Operator shall execute such agreements and make payments thereunder at the direction of the County or its designee(s).

(6) The access channels for the City of Rockville, the City of Takoma Park and the Montgomery County Chapter of the Maryland Municipal League shall be provided on the lowest cost tier of service and shall be provided County wide.

(b) *Capital Grant for Access Equipment and Facilities:*

(1)(A) The Operator shall provide a capital grant to the County, on its behalf and on behalf of the Participating Municipalities, consisting of 3% of Gross Revenues per year, excluding revenues arising from, attributable to, or in any way derived directly or indirectly by the Operator, its Affiliates, or by any other entity that is a cable operator of the System, from the provision of Internet Access to subscribers. Such capital grants may be used as the County and the Participating Municipalities, in their discretion may determine, for PEG access and institutional network purposes, including PEG access equipment (including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment), institutional network equipment (including, but not limited to, network equipment, electronic transmission equipment and end user interface equipment) or for renovation or construction of PEG access or institutional network facilities. Payment of this

grant shall be made quarterly, concurrently with the franchise fee payment. The first payment shall be due on the same date as the first franchise fee payment made by the Operator under this Agreement.

(B) The County shall distribute three-sevenths (3/7) of the capital grant provided pursuant to Section 7(b)(1)(A) to the municipal channels (one-seventh (1/7) each to Rockville, Takoma Park and MMC) to be used by the municipal channels for the PEG access purposes specified in Section 7(b)(1)(A). If a municipal channel is permanently abandoned by the entity responsible for its operation, the portion of the capital grant that would otherwise be distributed to that channel shall be retained by the County, which shall have sole discretion to expend that portion of the grant for any purposes permitted by Section 7(b)(1)(A).

(2) At the option of the County and the Operator, the Operator shall provide a public service network for the use of County agencies and the Montgomery County Public Schools in accordance with this paragraph. The costs of constructing any facilities and providing any equipment required to provide the public service network shall be credited against the County's share of the capital grant to be provided under paragraph 7 (b)(1). The network shall be established by setting aside up to six (6) channels of capacity on the Operator's system to be used to carry distance learning programming and public safety training and information programming. This programming shall originate from up to ten (10) sites designated by the County, and shall be distributed to the sites identified in Exhibit E. Programming distributed over the public service network shall not be viewable by subscribers in general, but only at those sites designated in Exhibit E, and at the residences of employees, agents and contractors of the County, the Participating Municipalities, the Montgomery County Public Schools, and the County Economic Development Authority authorized by the County to receive the programming for institutional purposes. To receive the programming, such authorized individuals shall receive the public service network programming and any equipment required to receive the programming free of charge. The Operator shall provide all links necessary to connect the origination facilities, patch panel equipment as necessary, encoding and decoding equipment as necessary, and switching equipment sufficient to meet service requirements. The County shall provide all video production equipment. In addition, the public service network programming shall be treated as PEG programming for purposes of Section 6(n)(2) of this Agreement. Accordingly, if a person authorized to receive the public service network programming is a subscriber of another cable system in the County, the Operator shall interconnect its system with the other system upon request of the operator of the other system, pursuant to the terms of Section 6(n)(2).

(3) The Operator shall without charge provide Internet services, including Internet Protocol ("IP") addresses, to County administrative departments and agencies and, within 90 days following the effective date of this Agreement, shall install without charge up to two (2) activated T-1 or equivalent connections at a County-designated location to enable County access to such Internet services (the "Internet Connections"). Internet usage shall be metered, and reports shall be provided to the County at least once a month. In the event that the average throughput between 7:00 a.m. and 7:00 p.m. over a one-week period exceeds 25% of capacity or there are five or more instances in a single week in which throughput reaches full capacity, the Operator shall without charge install additional activated Internet

Connections within ninety (90) days for Internet Connections obtained by the Operator from another provider, and within ten (10) days for Internet Connections provided over the Operator's facilities, up to a maximum of four (4) such Internet Connections. The Operator shall provide IP addresses for the County for this service as requested by the County. In addition, the Operator shall provide the Participating Municipalities, at no charge, with Internet services, Web hosting services, Web development services, and the related facilities described in Exhibit F. Exhibit F may be amended at any time until ninety (90) days after the Effective Date, to reflect the addition of requests from municipalities not currently listed for Internet services, to request up to ten (10) high-speed cable modems per municipality, and to reflect mutually agreed upon changes in the requirements currently specified. Internet Access service to any location requested by a Participating Municipality shall be available only on a dial-up basis until such time as high-speed service over the Operator's facilities is available to residential subscribers neighboring the requested municipal location.

(A) To the extent that the County may require more than four (4) such Internet Connections and related Internet service, at the request of the County the Operator will provide to the County additional Internet connections and services at rates to be mutually agreed upon by the Operator and the County, not to exceed the Operator's standard rates for such connections and usage of its Internet services. The Operator shall provide IP addresses to the County for this service as requested by the County.

(B) The Operator shall provide as many IP addresses to the County as may be served via a maximum of four (4) Internet Connections without unreasonably degrading the service. To the extent that the County may subscribe to more than four (4) Internet Connections from the Operator, at the request of the County the Operator will provide to the County additional IP addresses at rates to be mutually agreed upon by the Operator and the County, not to exceed the Operator's standard rates for such IP addresses and related Internet services.

(C) The Internet Connections shall be terminated by the Operator using standard industry connectors at a demarcation point at a County location to be agreed upon by the Operator and the County up to twelve inches inside the building wall (the "Demarcation Point"). The County shall be responsible for all equipment and wiring on the County's side of the Demarcation Point. The Operator shall coordinate its design and construction planning with the County so that the County may plan for activation and use of the Internet Connections provided for in this Section 7(b)(3).

(D) The Operator shall maintain, repair and, as necessary, replace the Internet Connections and any T-1 connections provided to the Participating Municipalities provided pursuant to Exhibit F on the Operator's side of the Demarcation Point. Operator shall perform routine and preventive maintenance on the Internet Connections in the same time and in the same fashion as routine and preventive maintenance are performed for Operator's commercial subscribers, without charge to the County. The Operator shall provide the County reasonable notification of service-affecting planned activities that may occur in normal operation of its business, and shall use its best efforts to minimize the duration of such activities and to undertake them in periods of low usage by the County. Such activities may

include, without limitation, equipment or facilities additions, removals or rearrangements and routine preventive maintenance. The Operator shall maintain the same standards for response and restoration of service following emergency or unplanned service-affecting conditions as are applicable to its commercial subscribers.

(E) All Internet services provided pursuant to this Section 7(b)(3) shall be provided by Operator in accordance with reasonably accepted Internet service industry standards, which shall be no less than the standards applicable to Operator's commercial Internet service customers. The Operator shall have customer service personnel available 24 hours a day, seven days a week to provide assistance on the telephone to County employees regarding the Internet service provided pursuant to this section.

(F) In the event that Operator ceases to provide Internet Access as defined in this Agreement, and instead offers broadband access services to subscribers only on a "dial up" or on an "open platform" basis as set forth in Section 1(s) of this Agreement, Operator's obligation to provide Internet Connections and Internet service to the County and Participating Municipalities without charge shall cease upon ninety (90) days written notice to the County and the affected Participating Municipalities. At the option of the Operator, the County, and/or the Participating Municipalities, the Operator will continue to provide Internet connections and services to the County and/or the Participating Municipalities at mutually agreed upon rates for such connections and Internet service usage.

(c) *Management of Channels:* Except as to the City of Rockville, City of Takoma Park and Montgomery County Chapter of the Maryland Municipal League channels, the County may designate one (1) or more entities, including a non-profit access management corporation, to perform any or all of the following functions:

(1) to manage any necessary scheduling or allocation of capacity on the Access Channels; and/or

(2) on the County's behalf, to program any Public, Educational, or Government Access Channel.

(d) *Editorial Control:* Except as expressly permitted by federal law, the Operator shall not exercise any editorial control over the content of programming on PEG Channels.

(e) *Indemnification By PEG Programming Producers and Users:* All local producers and users of any of the PEG facilities or channels shall agree in writing to hold harmless the Operator, the County and the 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 claims result from the use of a PEG facility or channel.

(f) *Cable Service to Certain Facilities:*

(1) Upon the request of the County, the Operator shall without charge install one activated outlet at each public and non-profit educational institution, each County, State or municipal and agency building, each facility owned by or leased to the County, each non-profit health care institution with patient beds, and each multi-purpose Community Center, within the Franchise Area, as shall be designated by the County from time to time. Upon request by the County, the Operator at its own cost shall provide the signal power level at the outlet at 15 dBmV.

(2) The Operator shall provide the highest tier that contains Basic Service, and any equipment necessary to receive such service, free of charge to those facilities specified in subsection (1) herein. At its sole discretion, the Operator may also provide higher levels of service to such facilities free of charge.

(g) *Transmission Capacity:*

If the County or the Participating Municipalities wish to use transmission capacity on the Cable System, the charges for such use shall be freely negotiated on terms and conditions equal to or more favorable to the County or the Participating Municipalities than those offered to any other major user by the Operator.

(h) *Costs and Payments Not Franchise Fees:* The parties agree that any costs to the Operator associated with the provision of support for PEG or the Institutional Network pursuant to this Agreement, including without limitation any payments made to the County on its behalf or on behalf of the Participating Municipalities pursuant to Section 7(b) of this Agreement, are capital costs and do not constitute and are not part of a franchise fee and fall within one or more of the exceptions to 47 U.S.C. § 542.

8. FRANCHISE FEE

(a) *Payment to County:* Each year during the Franchise term, as compensation for use of Public Rights-of-Way, the Operator shall pay to the County, on a quarterly basis, a Franchise fee of five percent (5%) of Gross Revenues, including any Franchise fee owed to the Participating Municipalities. Such payments shall be made no later than thirty days following the end of each calendar quarter. Such payments may be made subject to an annual adjustment for shortfalls or overpayments pursuant to Chapter 8A-12.

(b) *Increase in Franchise Fee:* The County may, in its sole discretion, increase the amount of the Franchise fee up to the maximum amount permitted under state and federal law at any time. However, the County shall provide the Operator with sixty days' advance notice of such an increase. If no maximum amount is specified, the County and Operator may amend the Franchise Agreement to specify the amount the Operator will pay. The Operator shall begin paying the increased fee from the effective date of the amendment to the Franchise Agreement.

(c) *Supporting Information:* Each Franchise fee payment shall be submitted with supporting detail and a statement certified by the Operator's chief financial or accounting officer or an independent certified public accountant, reflecting the total amount of quarterly Gross Revenues for the payment period and a breakdown by major revenue categories (such as basic service, cable programming service, premium service, etc.). In the information provided with each payment, the Operator shall also indicate the number of subscribers within the corporate limits of each Participating Municipality. The County shall have the right to require further supporting information.

(d) *Late Payments:* In the event any franchise fee payment or recomputation amount is not made on or before the required date, the Operator shall pay a late charge of five percent of the amount of payment plus interest charges computed from such due date at an annual rate equal to the annual rate then charged for unpaid federal income taxes.

(e) *Audit:*

(1) The County shall have the right to inspect and copy records and the rights to audit and to recompute any amounts determined to be payable under this Agreement, whether the records are held by the Operator, an Affiliate, or any other entity that collects or receives funds related to the Operator's operation in the County, including, by way of illustration and not limitation, any entity that sells advertising on the Operator's behalf.

(2) The Operator shall be responsible for providing to the County all records necessary to confirm the accurate payment of Franchise fees, without regard to by whom they are held. Such records shall be made available pursuant to the requirements of Sections 9(a) and (f) herein. The Operator shall maintain such records for seven years.

(3) The County's audit expenses shall be borne by the Operator as a cost incidental to the enforcement of the Franchise, if the audit determines the annual payment to the County for the preceding year is increased by more than 5%. Any additional amounts due to the County as a result of the audit shall be paid within thirty (30) days following written notice to the Operator by the County of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid to the County, such amount shall be subject to the interest charge described in subsection (d), above. If the audit determines that there has been an overpayment by Operator, the Operator may credit any overpayment against its next quarterly payment.

(4) The Operator shall maintain its fiscal and financial records and have all relevant fiscal and financial records maintained by others on its behalf in such a manner as to enable the County to determine the cost of assets of the Operator which are used in providing services within the County and to determine Gross Revenues.

(f) *No Limitation on Taxing Authority:*

(1) Nothing in this Agreement shall be construed to limit any authority of the County or the Participating Municipalities to impose any tax, fee, or assessment of general applicability. By way of illustration and not limitation, to the extent permitted by applicable law, the County or the Participating Municipalities may impose a tax, fee, or other assessment on any Person (other than a cable operator) with respect to Cable Service or other communications service provided by such Person over a Cable System for which charges are assessed to subscribers but not received by the cable operator.

(2) The Franchise fee payments required by this section shall be in addition to any and all taxes of a general nature (i.e., those which are not applicable solely to cable television operations within the County) or other fees or charges which the Operator shall be required to pay to the County or to any local, state or federal agency or authority, as required herein or by law, all of which shall be separate and distinct obligations of the Operator. The Operator shall not have or make any claim for any deduction or other credit of all or any part of the amount of said Franchise fee payments from or against any of said County or municipal taxes or other fees or charges which the Operator is required to pay to the County or any Participating Municipality, except as expressly permitted by law. The Operator shall not apply nor seek to apply all or any part of the amount of said Franchise fee payments as a deduction or other credit from or against any of said County or municipal taxes or other fees or charges, except as expressly permitted by law. Nor shall the Operator apply or seek to apply all or any part of the amount of any of said taxes or other fees or charges as a deduction or other credit from or against any of its Franchise fee obligations, except as expressly permitted by law.

9. CUSTOMER SERVICE

(a) *General Provisions:*

This Section 9 sets forth customer service standards that the Operator must satisfy. In addition, the Operator shall at all times satisfy any additional or stricter requirements established by FCC regulations, or other applicable federal, state, or local law or regulation, as the same may be amended from time to time.

Nothing in this section in any way relieves the Operator of its obligation to comply with other applicable consumer protection laws.

(b) *Installations, Connections, and Other Operator Services:*

(1) **Standard Installations.** Except as federal rate regulations may otherwise require, the Operator shall not assess a Subscriber any cost other than a standard installation charge for service drops of one hundred seventy-five (175) feet or less, to the primary outlet, unless the Operator demonstrates to the County's satisfaction that extraordinary circumstances justify a higher charge. Except as applicable law may otherwise require, where a drop exceeds one hundred seventy-five (175) feet in length from the nearest

Public Right of Way, the Operator may charge a subscriber an additional charge, pursuant to the Operator's "long drop" policy, for any drop up to four hundred (400) feet long.

(2) Location of Drops. The Subscriber's preference as to the point of entry into the residence shall be observed whenever feasible. Runs in building interiors shall be as unobtrusive as possible. The Operator shall use due care in the process of installation and shall restore the subscriber's property to its prior condition. Such restoration shall be undertaken and completed promptly if an unsafe condition exists, or if not, as soon as possible after the damage is incurred and shall be completed within no more than thirty (30) days after the damage is incurred.

(3) Non-standard Installations. In locations where the Operator's System must be underground, drops must be placed underground as well. Except as federal law may otherwise require, in any area where the Operator would be entitled to install a drop above-ground, the Operator will provide the homeowner the option to have the drop installed underground if requested, but may charge the homeowner the difference between the Actual Cost of the above-ground installation and the Actual Cost of the underground installation.

(4) Antennas and Antenna Switches. The Operator shall adhere to FCC regulations regarding antenna switches. The Operator shall not, as a condition to providing Cable Service, require any subscriber or potential subscriber to remove any properly grounded existing antenna structures for the receipt of over-the-air television signals.

(5) Delinquent Accounts. The Operator shall use its best efforts to collect on delinquent subscriber accounts before terminating service. In all cases, the Operator shall provide the customer with at least ten (10) working days written notice, with the telephone number to call to arrange payment or to resolve disputes, prior to disconnection.

(c) *Telephone and Office Availability:*

(1) The Operator shall maintain an office at a convenient location in the Franchise Area that shall be open during Normal Business Hours to allow Subscribers to request service, pay bills, and conduct other business.

(2) The Operator will maintain at least one local, toll-free or collect call telephone access line which will be available to subscribers 24 hours a day, seven days a week. Trained representatives of the Operator shall be available to respond to Subscriber telephone inquiries during Normal Business Hours.

(3) Under Normal Operating Conditions, the following standards shall be met by the Operator at least ninety (90) percent of the time, measured quarterly.

(A) Telephone answering time shall not exceed thirty (30) seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds.

(B) A customer will receive a busy signal less than three percent (3%) of the time.

(C) When the business office is closed, an answering machine or service capable of receiving and recording service complaints and inquiries shall be employed. Inquiries received after hours must be responded to by a trained representative of the Operator on the next business day. To the extent possible, the after-hours answering service shall comply with the same telephone answer time standard set forth in this Section.

(4) The Operator must hire sufficient staff so that it can adequately respond to customer inquiries, complaints, and requests for service in its office, over the phone, and at the Subscriber's residence.

(d) *Scheduling and Completing Service:* Under Normal Operating Conditions, each of the following standards shall be met by all Operators at least 95% of the time, as measured on a quarterly basis:

(1) **Prompt Service.** Installations located up to 400 feet from the nearest Public Right-of-Way shall be completed within seven (7) business days after the order is placed or Miss Utility marking, or at a later time if requested by the Subscriber. Repairs and maintenance for Service Interruptions and other repairs not requiring work within a Subscriber's premises must be completed within 24-hours of the time the Subscriber reports the problem to the Operator or its representative or the interruption or need for repairs otherwise becomes known to the Operator. Work on all other requests for service shall be scheduled for the next available appointment, or at a later time mutually agreeable to the Operator and the Subscriber. Operator shall exercise its best efforts to complete such work within three (3) days from the date of the initial request, except installation requests, provided that the Operator shall complete the work in the shortest time possible where, for reasons beyond the Operator's control, the work could not be completed in those time periods even with the exercise of all due diligence; the failure of the Operator to hire sufficient staff or to properly train its staff shall not justify the Operator's failure to comply with this provision.

(2) **Service Times.** The Operator shall perform service calls, installations, and disconnects at least during Normal Business Hours. In addition, maintenance service capability enabling the prompt location and correction of outages that affect 50% or more of channels in any tier or a channel for which there is a separate charge affects shall be available Monday through Friday from the end of Normal Business Hours until 12:30 a.m., and from 8:00 a.m. until 12:30 a.m. on Saturdays, Sundays, and holidays.

(3) **Appointments.** The appointment window for installations, service calls, and other installation activities will be either a specific time or, at maximum, a 4-hour time block during Normal Business Hours. Where a Subscriber cannot conveniently arrange for a service call or installation during Normal Business Hours, the Operator shall make reasonable efforts to schedule service and installation calls outside Normal Business Hours for the express convenience of the Subscriber.

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

(5) Emergency Maintenance. The Operator shall keep an emergency system maintenance and repair staff, capable of responding to and repairing system malfunctions or interruptions, on a twenty-four (24) hour basis at all times, and under Normal Operating Conditions shall provide an immediate response to System Outages twenty-four (24) hours a day, seven (7) days a week .

(6) Other Inquiries. Under Normal Operating Conditions, billing inquiries and requests for service, repair, and maintenance not involving Service Interruptions must be acknowledged by a trained customer service representative within twenty-four (24) hours, or prior to the end of the next business day, whichever is earlier. The Operator shall respond to all other inquiries within five (5) business days of receipt of the inquiry or complaint.

(7) To the extent consistent with federal law, no charge shall be made to the Subscriber for repairs or maintenance of Operator-owned equipment or facilities, except for the cost of repairs to the Operator's equipment or facilities where it can be shown that the equipment or facility was damaged by a Subscriber.

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

→ (e) *Interruptions of Service:*

The Operator may intentionally interrupt service on the Cable System only for good cause and for the shortest time possible and, except in emergency situations or to the extent necessary to fix the affected Subscriber's service problems, only after a minimum of forty-eight (48) hours prior notice to Subscribers, the County, and municipal PEG channel operators of the anticipated service interruption; provided, however, that planned maintenance that does not require more than two (2) hours' interruption of service that occurs between the hours of 12:00 midnight and 6:00 a.m., shall not require such notice to Subscribers, but shall require notice to the County no less than twenty-four (24) hours prior to the anticipated service interruption. Brief interruptions of service of less than five minutes necessary to conduct planned maintenance shall not require notice to Subscribers, the County, or municipal PEG channel operators.

(f) *Notice to Subscribers.*

(1) The Operator shall provide the following materials to each Subscriber at the time Cable Service is installed, at least annually thereafter, and at any time upon

request. Copies of all such materials provided to Subscribers shall also be provided to the County.

(A) a written description of products and services offered, including a schedule of rates and charges, a list of channel positions, and a description of programming services, options, and conditions;

(B) a written description of the Operator's installation and service maintenance policies, delinquent subscriber disconnect and reconnect procedures, and any other of its policies applicable to its subscribers;

(C) written instructions on how to use the Cable Service;

(D) written instructions for placing a service call;

(E) a written description of the Operator's billing and complaint procedures, including the address and telephone number of the County office responsible for receiving Subscriber complaints;

(F) a copy of the service contract, if any;

(G) notice regarding Subscribers' privacy rights pursuant to 47 U.S.C. § 551;

(H) notice of the availability of universal remote controls and other compatible equipment (a list of which, specifying brands and models, shall be provided to any Subscriber upon request).

(2) Subscribers and the County will be notified of any changes in rates, programming services or channel positions, and any significant changes in any other information required to be provided by this section, as soon as possible through announcements on the Cable System and in writing. Notice must be given to subscribers and the County a minimum of thirty (30) days in advance of such changes and other significant changes if the change is within the control of the cable operator.

(3) All Operator promotional materials, announcements, and advertising of residential Cable Service to Subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials must clearly and accurately disclose price terms and in the case of telephone orders, the Operator shall take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers before the order is accepted.

(4) The Operator shall maintain a public file containing all notices provided to Subscribers under these customer service standards, as well as all promotional offers made to Subscribers. Copies of all notices, promotional or special offers sent to

Subscribers and any agreements used with Subscribers shall be filed promptly with the County. All forms and notices distributed to customers which describe customer service policies and procedures shall be subject to County approval. County response to Operator's requests for review shall be made within five (5) working days of Operator's submission, and approval shall not be unreasonably withheld.

(g) *Billing:*

(1) Bills shall be clear, concise, and understandable. Bills must be fully itemized with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(h) *Rebate Policy:*

In the event of a Service Interruption of one or more channels to any subscriber, the Operator shall repair the Service Interruption as soon as possible. This obligation is satisfied if the Operator offers the Subscriber the next available repair appointment within the twenty-four hour period following the Service Interruption, or at the request of the Subscriber, to a mutually convenient later time for the repair call, and successfully repairs the Service Interruption during the agreed appointment. Under Normal Operating Conditions, if the Service Interruption is not repaired at the time of the scheduled appointment, the Subscriber will receive a credit of 10% of the Subscriber's normal monthly bill for each 24 hour period, or segment thereof, that the Service Interruption continues beyond the scheduled repair call.

10. EMPLOYMENT, TRAINING, AND PROCUREMENT REQUIREMENTS

(a) *Employment:*

(1) The Operator shall, in accordance with Federal, State, County and local laws and regulations, afford equal opportunity and non-discrimination in employment to all individuals, regardless of their race, color, religion, age, sex, national origin, sexual orientation or handicap. The Operator shall comply with all applicable requirements of the Americans with Disabilities Act.

(2) The Operator agrees that it shall give documentary evidence as to the steps it took to ensure that a good faith effort was made by it to comply with subsection (a)(1) above.

(b) *Training:* The Operator shall provide training on an ongoing basis for its employees to maintain and upgrade skills and to prepare for promotional opportunities.

(c) *Procurement:*

(1) The Operator shall establish and maintain a program to purchase goods and services from minority, female, and disabled-owned (MFD) businesses consistent with the purposes of the County's MFD program as set forth in Exhibit C.

(2) The Operator shall submit an annual report, on a form to be approved by the County, which shall detail total procurement, MFD procurement by MFD category, procurement type, and dollar value.

(d) *Performance:* Performance in employment and MFD procurement shall be considered in mid-term performance review and in any request for renewal of the Franchise.

11. REPORTS AND RECORDS

(a) *Open Books and Records:*

(1) The County shall have the right, upon reasonable notice, to inspect and copy at any time during normal business hours at the County Cable System office or at such location as the County may designate, all books, receipts, maps, plans, financial statements, contracts, service complaint logs, performance test results, records of requests for service, computer records, codes, programs, and disks or other storage media and other like material which the County deems appropriate in order to monitor compliance with the terms of the Cable Law, this Agreement, or applicable law. This includes not only the books and records of the Operator, but any books and records the County deems relevant held by an Affiliate, a cable operator of the Cable System, or any person holding any form of management contract for the Cable System. With respect to books and records held by contractors and subcontractors other than entities described in the preceding sentence, the Operator shall cooperate with the County and exercise Operator's best efforts to obtain access to the books and records. The Operator is responsible for collecting the information and producing it at the location specified above.

(2) The Operator shall maintain financial records that allow analysis and review of its operations in the Franchise Area.

(3) Access to the Operator's records shall not be denied by the Operator on the basis that said records contain "proprietary" information. Refusal to provide information required herein to the County shall be grounds for revocation. All such information received by the County shall remain confidential insofar as permitted by the Maryland Public Information Act and other applicable state and federal law.

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

(b) *Communication with Regulatory Agencies:*

(1) The Operator shall file with the County in a form acceptable to the County all reports and materials submitted to or received from the FCC, the Security and

Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the Operator's System, including, but not limited to, any proof of performance tests and results, Equal Employment Opportunity reports, and all petitions, applications, and communications of all types regarding the Cable System, or a group of Cable Systems of which the Operator's Cable System is a part, including any such material submitted by or received by the Operator, an Affiliate, or any other Person on the behalf of the Operator.

(2) Materials filed with the County pursuant to Section 11(b)(1) shall be filed as follows: Materials submitted by the Operator, an Affiliate, or any other Person on the behalf of the Operator shall be filed with the County at the time they are submitted to the receiving agency. Materials received by the Operator shall be filed with the County within thirty (30) days of the date they are received by the Operator, except that if applicable law permits a response to such materials by the County and sets a deadline of sixty (60) or fewer days for the County's response, they shall be filed with the County within five (5) days of the date they are received by the Operator.

(c) *Annual Report:* Unless this requirement is waived in whole or in part by the County, no later than 90 days after the end of Operator's fiscal year, the Operator shall submit a written report to the County, in a form directed by the County, which shall include:

(1) a summary of the previous year's activities in development of the Cable System, including but not limited to descriptions of services begun or dropped, the number of subscribers gained or lost for each category of service, the number of pay units sold, the number of subscribers using converters, the amount collected annually from Users of the System, and the character and extent of the services rendered to such Users, including Leased Access Channel Users;

(2) a summary of complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions, as such records are kept by the Operator. Where complaints involve recurrent System problems, the nature of each problem and the corrective measures taken shall be identified.

(3) A report showing the number of service calls received by type during the prior quarter, and the percentage of service calls compared to the Subscriber base by type of complaint.

(4) A report showing the number of System Outages and service degradations for the prior quarter, and identifying separately each planned System Outage, the time it occurred, its duration, and the estimated area and number of Subscribers affected; each unplanned System Outage or service degradation, the time it occurred, its estimated duration and the estimated area and the number of Subscribers affected; and the total hours of System Outages and service degradations as a percentage of total hours of Cable System operation.

(5) A copy of the Operator's rules and regulations applicable to subscribers of the Cable System;

(6) An annual statement of Gross Revenues derived from the operation of the Cable System, certified by the Operator's Director of Finance or other authorized person responsible for the Operator's accounting, or an independent certified public accountant;

(7) No later than 120 days after the end of its fiscal year, the Operator shall provide an annual financial report for the previous calendar year, certified by the Operator's Vice President of Accounting or an independent certified public accountant, including year-end balance sheet; income statement showing Subscriber revenue from each category of service and every source of non-Subscriber revenue, line item operating expenses, depreciation expense, interest expense, and taxes paid; statement of sources and applications of funds; capital expenditures; and depreciation schedule;

(8) An annual list of officers and members of the Board of Directors or similar controlling body of the Operator and any Affiliates;

(9) An organizational chart showing all corporations or partnerships with more than a five (5) percent ownership interest in the Operator, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified and so on until the ultimate corporate and partnership interests are identified;

(10) An annual report and SEC 10(k) filing for each entity identified in subsection (9) of this Section that generates such documents;

(11) Unless previously provided, a detailed paper copy or electronic copy of updated maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the County, and including changes in all such items for the period covered by the report;

(12) a full schedule of all Subscriber and other user rates, fees and charges;

(13) the Operator's policies regarding A/B switches;

(14) the Operator's policies regarding Subscriber privacy; and

(15) a summary of programs and statistical results which quantify Operator's implementation of nondiscrimination, equal opportunity, and minority business policies as required by the County.

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

(1) The Operator shall submit quarterly construction reports to the County and each Participating Municipality in which construction was performed during that quarter.

The first report shall be due thirty (30) days after the end of the calendar quarter in which construction begins, and the last report shall be due 30 days after construction is complete. The Operator must submit updated as-built system design maps to the County, within sixty (60) days of the completion of system construction in any geographic area. The maps shall be developed on the basis of post-construction inspection by the Operator and construction personnel to assess compliance with system design. Any departures from design must be indicated on the as-built maps, to assist the County in assessing the Operator's compliance with its obligations.

(2) The Operator must submit a copy and full explanation of any notice of deficiency, forfeiture, or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding regarding the Cable System, the Operator, or any Affiliate of the Operator, to the extent the same may affect or bear on operations in the County. By way of illustration and not limitation, a notice that an Affiliate that has a management contract for the Cable System was not in compliance with FCC EEO requirements would be deemed to affect or bear on operations in the County.

(3) The Operator must submit a copy and brief explanation of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Operator or by any partnership or corporation that owns or controls the Operator directly or indirectly.

(e) *Additional Reports:* Each Operator shall prepare and furnish to the County, at the times and in the form prescribed by the County, such additional reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the County in connection with this Agreement and/or the Cable Law.

(f) *Records Required:*

(1) The Operator shall at all times maintain:

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

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

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

(D) Records of service calls for repair and maintenance 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 solved.

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

(F) A public file showing its plan and timetable for System construction.

(2) Copies of the foregoing shall be provided to the County upon request, and the County may require additional information, records, and documents from time to time.

(g) *Performance Evaluation:*

(1) The County may, at its discretion, hold performance evaluation sessions every three years. The Operator may be required by the County to notify subscribers of all such evaluation sessions by announcement on a designated local channel on the System in a manner and with a frequency specified by the County for five (5) consecutive days preceding each session.

(2) Topics that may be discussed at any evaluation session may include, but are not limited to, system performance and construction, Operator compliance with the Cable Law and this Agreement, customer service and complaint response, Subscriber privacy, services provided, programming offered, service rate structures, Franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

(3) During the evaluation process, the Operator shall fully cooperate with the County and shall provide such information and documents as the County may need to reasonably perform its review.

(h) *Voluminous Materials:*

If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then the Operator may request that the inspection take place at some other location, provided that (1) the Operator must make necessary arrangements for copying documents selected by the County after review; and (2) the Operator must pay all travel and additional copying expenses incurred by the County in inspecting those documents or having those documents inspected by its designee. The parties agree that any payments made by the Operator pursuant to this paragraph are not a Franchise fee.

(i) *Retention of Records; Relation to Privacy Rights:*

The Operator shall take all steps that may be required to ensure that it is able to provide the County and any Participating Municipality all information which must be provided or may be requested under the Cable Law or this Agreement, including by providing appropriate Subscriber privacy notices. Nothing in this Section shall be read to require the Operator to violate 47 U.S.C. § 551. The Operator shall be responsible for redacting any data that federal law prevents it from providing to the County or any Participating Municipality. The County and the Participating Municipalities retain the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge. Records shall be kept for at least five (5) years.

(j) *Waiver of Reporting Requirements:* The County and any Participating Municipality may, at its discretion, waive in writing the requirement of any particular report specified in this Section 11.

12. RATE REGULATION(a) *All Rights Reserved:*

The County reserves all of its rights to regulate the Operator's rates to the maximum extent permitted by law.

(b) *Geographical Uniformity:*

To the extent consistent with the requirements of Section 8A-15 of the Cable Law, the Operator's residential rates throughout the Franchise Area shall be uniform.

13. INSURANCE, SURETY, AND INDEMNIFICATION(a) *Insurance Required:*

(1) The Operator shall obtain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise period, at its own cost and expense and keep in force and effect the following insurance covering the Operator, and by additional insured provision, the County and the Participating Municipalities. Coverage must be placed with an insurance company/companies licensed to do business in the State of Maryland evidenced by a certificate of insurance and/or copies of the insurance policies. Operator's insurance shall be primary.

(a) Commercial General Liability insurance with respect to the construction, operation and maintenance of the Cable System, and the conduct of the Operator's business in the County and the Participating Municipalities, in the minimum amount of five million dollars (\$5,000,000) per occurrence, combined single limit for property damage and bodily injury. The policy must include coverage for Contractual Liability, Premises and Operations, Independent Contractors, Broad Form Property Damage,

Personal Injury, and Products and Completed Operations. The policy must also include coverage for the explosion, collapse and underground hazard.

(b) Automobile Liability Coverage, with a minimum limit of liability of two million dollars (\$2,000,000), per occurrence, combined single limit for bodily injury and property damage coverage. Policy must include coverage for owned automobiles, leased or hired automobiles and non-owned automobiles.

(c) Workers' Compensation Coverage meeting all requirements of Maryland Law and Employers' Liability Coverage with the following minimum limits: Bodily Injury by Accident - \$100,000 each accident, Bodily Injury by Disease - \$500,000 policy limits and Bodily Injury Disease - \$100,000 each employee.

(d) If Operator should engage in programming origination of any kind, including production of advertising, Operator shall obtain Broadcasters' Liability Coverage, covering errors and omissions and negligent acts and other operations of the Operator, committed during the term of the Franchise period with the County and the Participating Municipalities, with a limit of liability of at least one million dollars (\$1,000,000) per claim and aggregate and a maximum deductible of \$25,000; Operator shall provide a one-year discovery period under this policy.

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

(3) The County may review these amounts no more than once a year and may require reasonable adjustments to them consistent with the public interest.

(b) *Endorsements:*

All insurance policies and certificates maintained pursuant to this Agreement shall contain the following endorsement: It is hereby understood and agreed that this insurance coverage may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until sixty (60) days after receipt by the County, by registered mail, of a written notice of such intention to cancel or not to renew.

(c) *Qualifications of Sureties:* All insurance policies shall be with sureties qualified to do business in the State of Maryland, with an A+9 or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the County.

(d) *Policies Available for Review:*

All insurance policies shall be available for review by the County and the Participating Municipalities, and the Operator shall deliver to the County a copy of the required certificates

of insurance, evidencing that the required policies are in effect, no later than thirty (30) days after such policy is required to be effective.

(e) *Additional Insureds; Prior Notice of Policy Cancellation:*

All liability insurance policies shall name the County, the Participating Municipalities, their officers, boards, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction except as a result of the payment of claims in coverage shall not be effective unless sixty (60) days' prior written notice thereof has been given to the County and the Participating Municipalities. The Operator shall not cancel any required insurance policy without submission of proof that the Operator has obtained alternative insurance satisfactory to the County which complies with this Agreement.

(f) *Failure Constitutes Material Violation:* Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

(g) *Indemnification:*

(1) The Operator shall, at its sole cost and expense, indemnify, hold harmless, and defend the County, each Participating Municipality, and each of their officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Cable System; copyright infringements or a failure by the Operator to secure consents from the owners, authorized distributors, or Operators of programs to be delivered by the Cable System, other than programs delivered on PEG channels; the conduct of the Operator's business in the County; or in any way arising out of the Operator's enjoyment or exercise of the Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the Cable Law or this Agreement.

(2) Specifically, the Operator shall fully indemnify, defend, and hold harmless the County, the Participating Municipalities and, in their capacity as such, the officers, agents, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to 47 U.S.C. § 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of the System, including but not limited to any claim against the Operator for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or corporation, except to the extent such loss, damage, cost or expense is due to the gross negligence or willful misconduct of the County or its employees or agents.

(3) The County or any affected Participating Municipality shall give the Operator prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Operator shall provide the defense of any claims brought against the County and any affected Participating Municipality under this

Section of the franchise by selecting counsel of Operator' choice to defend the claim, subject to the consent of the County, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the County from cooperating with the Operator and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the County, Operator shall have the right to defend, settle or compromise any claim or action arising hereunder, and Operator shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the County does not consent to the terms of any such settlement or compromise, the Operator shall not settle the claim or action but its obligation to indemnify the County shall in no event exceed the amount of such settlement.

(4) Nothing in this Agreement shall be construed to waive the tort immunity of the County or any Participating Municipality.

(h) *No Limit of Liability:*

Neither the provisions of this Section nor any damages recovered by the County or a Participating Municipality shall be construed to limit the liability of the Operator for damages under the Franchise.

14. PERFORMANCE GUARANTEES AND REMEDIES

(a) *Performance Bond:*

(1) Operator shall obtain and maintain during the entire term of the Franchise, and any renewal or extensions thereof, except as provided in Section 14(a)(4) below, a performance bond or an irrevocable letter of credit in favor of the County and the Participating Municipalities in the amount of \$2,000,000, to ensure the Operator's faithful performance of its obligations under the Cable Law and this Agreement.

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

(A) There shall be recoverable by the County and the Participating Municipalities, from the principal and surety, any and all fines and penalties due to the County and the Participating Municipalities and any and all damages, losses, costs, and expenses suffered or incurred by the County or the Participating Municipalities resulting from the failure of the Operator after notice and opportunity to cure to faithfully comply with (i) the material provisions of this Agreement, the Cable Law, and other applicable law; (ii) all orders, permits and directives of the County, a Participating Municipality, or other body having jurisdiction over its acts or defaults; (iii) payment of fees due to the County or any Participating Municipality; or (iv) payment of any claims or liens due the County or any Participating Municipality. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

(B) The total amount of the performance bond shall be forfeited in favor of the County and the Participating Municipalities in the event:

(i) the Operator abandons the System at any time during the term of its Franchise or any extension thereto; or

(ii) the Operator carries out a Transfer of the Franchise without the express written consent of the County and the Participating Municipalities as provided herein. The County and the Participating Municipalities shall apply any funds received under the performance bond to defray any damages, fees, costs and expenses attributable to or arising from the abandonment of the System or Transfer of the Franchise. Any funds remaining upon final resolution of all claims and payment of all damages, costs, fees, and expenses shall be returned to the bonding company.

(3) The performance bond shall be issued by a surety qualified to do business in Maryland and with an A+9 or better rating for financial condition and financial performance in Best's Key Rating Guide, Property/Casualty Edition; shall be in a form approved by the County; and shall contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, until ninety (90) days after receipt by the County, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(4) Reduction of Bond. Ninety (90) days after acceptance by the County of construction of the System in both the Initial Franchise Area and the Extended Franchise Area, the Operator may submit to the County a written request to reduce the amount of the performance bond. The County shall then authorize the Operator, in writing, to reduce the amount of the performance bond to \$250,000, provided that all outstanding claims of the County or an affected Participating Municipality against the Operator have been resolved to the County's satisfaction.

(b) Security Fund:

(1) The Operator shall provide a security fund in the amount of \$100,000 to secure its performance of all its obligations under this Agreement and the Cable Law.

(2) The Security Fund shall be released only upon expiration of the Franchise and if there is no outstanding default or unpaid amounts by the Operator.

(c) Rights Cumulative: The rights reserved to the County herein are in addition to all other rights of the County, whether reserved herein or authorized by applicable law, and no action, proceeding, or exercise of a right with respect to such Security Fund will affect any other right the County may have. The receipt of damages by the County from the Security Fund shall not be construed to excuse faithful performance by the Operator or limit the liability of the Operator under the terms of its Franchise for damages.

(d) *Security Fund Procedures*: The following procedures shall apply to drawing on the Security Fund:

(A) The County may immediately withdraw an appropriate amount, including interest and penalties, from the security deposit if:

(1) After 10 days notice the Operator fails to pay to the County any fees or taxes due and unpaid, liquidated damages, damages, or costs or expenses that the County is compelled to pay by reason of any act of default of the Operator in connection with the franchise; or

(2) After 30 days notice to the Operator, the Operator fails to comply with any provision of the Franchise that the County reasonably determines can be remedied by an expenditure of the security deposit.

The County must promptly notify the Operator of the amount and date of any withdrawal.

(B) Within 30 days after the County gives notice that an amount has been withdrawn from the security deposit, the Operator must deposit a sum of money equal to the amount withdrawn. If the Operator does not deposit the required amount within 30 days, the entire security deposit remaining may be forfeited. In addition, that failure is a violation of Chapter 8A for which the County may revoke the franchise or take any other enforcement action.

(C) The security deposit is the property of the County if the Franchise is revoked. The County must return the security deposit to the Operator after the Franchise is terminated if there is no outstanding default or unpaid amounts owed to the County or any Participating Municipality by the Operator.

(D) The rights reserved to the County with respect to the security deposit are in addition to all other rights of the County under this Chapter or other law. An action, proceeding, or exercise of a right with respect to the security deposit does not affect any other right the County may have.

(e) *Failure Constitutes Material Violation:*

Failure to maintain or restore the Security Fund shall constitute a material violation of this Agreement.

(f) *Remedies:*

(1) If the Operator violates any provision of the law or this Franchise Agreement, the County may have one or more of the following actions:

(A) impose liquidated damages in the amount, whether per day, incident, or other measure of violation, as provided in the Franchise Agreement. Payment of liquidated damages by the Operator will not relieve the Operator of its obligation to meet the Franchise requirements;

(B) reduce the duration of the Operator on any basis the County determines is reasonable and affords the Operator reasonable due process;

(C) require the Operator to pay its subscribers or classes of subscribers in an amount and on a basis the County determines is necessary to cure the breach or default, or equitably compensate for the violation; or

(D) revoke the Franchise.

(2) In determining which remedy or remedies are appropriate under subsection (1), the County must consider the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and any other matters the County determines are appropriate.

(3) In addition to or instead of these remedies, the County may seek legal or equitable relief from any court of competent jurisdiction.

(4) Before initiating a remedy under this subsection (f) other than revocation of the Franchise, the County must give the Operator written notice of the violations claimed and at least 10 working days to correct the violations.

(g) *Liquidated Damages:* Because the Operator's failure to comply with provisions of the Franchise and this Franchise Agreement will result in injury to the County, and because it will be difficult to estimate the extent of such injury, the County and the Operator agree to the following liquidated damages for the following violations of the Franchise and of this Agreement, which represent both parties' best estimate of the damages resulting from the specified violation. To maintain that estimate, the parties agree that the liquidated damage amounts are in 1998 dollars and shall be increased each year by the CPI. The County may draw on the Security Fund to recover any liquidated damages.

(1) For failure to submit any required plans indicating expected dates of installation of various parts of the System: \$400/day for each day the violation continues;

(2) For failure to substantially complete the System build-out, including the timeline of completion, in accordance with this Agreement: \$2,000/day for each day the violation continues;

(4) For a Transfer without approval: \$2,000/day for each day the violation continues;

(5) For failure to make PEG capacity available; failure to provide Internet and T-1 services to the County; failure to comply with the provisions of Section 7(b)(3) regarding services to the Participating Municipalities; failure to provide any public service network that may be agreed upon by the parties; failure to construct required links to PEG facilities; or failure to make grant payments required under this Agreement: \$1,000/day for

each day the violation continues, in addition to any monetary payment due under this Agreement or the Cable Law;

(6) For failure to supply information, reports, or filings lawfully required under the Franchise Agreement or applicable law or by the County: \$200/day for each day the violation continues;

(7) For violation of customer service standards: \$200 per violation;

(8) For failure, unless such failure is beyond the Operator's control, of the Emergency Alert System to perform in the event of a public emergency or vital information situation: \$250 per occurrence;

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

(10) For failure to file, obtain or maintain any required Security Fund in a timely fashion: \$50 per day;

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

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

(h) *Shortening, Revocation, or Termination of Franchise:*

(1) Upon completion of the term of this Franchise, if a new, extended, or renewed Franchise is not granted to the Operator by the County or a Participating Municipality, the Operator's right to occupy the Public Rights-of-Way within the County or the non-renewing Municipality shall terminate, subject to applicable federal law.

(2) The County shall have the right to revoke the Franchise, or to shorten the term of the Franchise to a term not less than thirty-one (31) months from the date of the action shortening the Franchise term, for the Operator's failure to construct, operate, or maintain the Cable System as required by the Cable Law or this Agreement; for defrauding or attempting to defraud the County or Subscribers; or for any other material breach of this Agreement or material violation of the Cable Law.

(3) To invoke the provisions of this subsection (h), the County shall give the Operator written notice of the default in its performance. If within thirty (30) calendar days following such written notice from the County to the Operator, or such other period as the Franchise Agreement shall require or the Operator and the County shall agree, the Operator has not taken corrective action to the satisfaction of the County, or diligently commenced corrective action if the nature of the default does not permit completion of such

action within 30 days, the County may give written notice to the Operator of its intent to revoke the Franchise, stating its reasons; provided that no opportunity to cure shall be provided where the Operator is shown to have defrauded or attempted to defraud the County, a Participating Municipality, or its Subscribers.

(4) Prior to revoking the Franchise, the County shall hold a public hearing, on thirty (30) calendar days' notice, at which time the Operator and the public shall be given an opportunity to be heard. Following the public hearing, the County may determine whether to revoke the Franchise based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to the Operator to effect any cure. If the County determines to revoke the Franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Operator.

(5) If the County revokes the Franchise, or if for any other reason the Operator abandons, terminates, or fails to operate or maintain service to its Subscribers, the following procedures and rights are effective:

(A) The County may require the former Operator to remove its facilities and equipment at the former Operator's expense and restore affected sites as required in Section 5(c), or permit the former Operator to abandon such facilities in place. If the former Operator fails to do so within a reasonable period of time, the County may have the removal done at the former Operator's and/or surety's expense.

(B) The County may require the former Operator to continue operating the Cable System as specified in Section 4(a).

(C) In the event of revocation, the County, and with respect to facilities within a Participating Municipality, the municipal government, by resolution, may acquire ownership of the Cable System at its then-fair market value.

(D) If a Cable System is abandoned by the Operator or the Operator fails to operate or maintain service to its Subscribers or otherwise terminates the Franchise, the ownership of all portions of the Cable System in Public Rights-of-Way shall revert to the County or to the Participating Municipality which has jurisdiction over the Public Right-of-Way, and the County and the Participating Municipality may sell, assign, or Transfer all or part of the assets of the System.

15. MISCELLANEOUS PROVISIONS

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

(b) *Preemption:* In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event 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 or Participating Municipality.

(c) *Compliance With Federal and State Laws:* The Operator shall comply with all applicable federal, state, County and local laws and regulations.

(d) *Force Majeure:* The Operator shall not be deemed in default of provisions of this Agreement or the Cable Law where performance was rendered impossible by war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, or epidemics, or other causes beyond the Operator's control, and the Franchise shall not be revoked or the Operator penalized for such noncompliance, provided that the Operator takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise without unduly endangering the health, safety, and integrity of the Operator's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

(e) *Governing Law:* This Franchise Agreement shall be governed in all respects by the law of the State of Maryland.

(f) *Notices:* Unless otherwise expressly stated herein, notices required under this Franchise Agreement 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.

(1) Notices to the Operator shall be mailed to:

General Counsel
Starpower Communications, LLC
1130 Connecticut Avenue, NW
Suite 400
Washington, DC 20036

with a copy to:

Jean L. Kiddoo, Esq.
Swidler Berlin Shereff Friedman, L.L.P.
3000 K Street, N.W.
Suite 300
Washington, DC 20007-5116

- (2) Notices to the County shall be mailed to:

County Executive
Office of the County Executive
101 Monroe Street
Rockville, MD 20850

Cable Administrator
Office of Cable Communications
100 Maryland Avenue
Suite 250
Rockville, MD 20850

(3) The Operator shall at all times keep the County advised as to which individual(s) are authorized to act on behalf of the Operator and whose acts will be considered to bind the Operator.

(g) *Time of Essence:* In determining whether the Operator has substantially complied with this Franchise Agreement, the parties agree that time is of the essence. As a result, the Operator's failure to complete construction, to extend service, to seek approval of Transfers or to provide information in a timely manner may constitute material breaches.

(h) *Captions and References:*

(1) The captions and headings of 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.

(2) When any provision of the Cable Law is expressly mentioned herein, such reference shall not be construed to limit the applicability of any other provision of the Cable Law or County law that may also govern the particular matter in question.

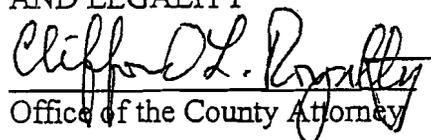
(i) *Jurisdiction and Venue:* The Operator consents to venue and jurisdiction in the U.S. District Court of Maryland and the Circuit Court for Montgomery County, Maryland.

AGREED TO THIS 3rd DAY OF AUGUST, 1999.

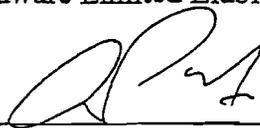
Montgomery County, Maryland

By: 
Douglas M. Duncan
County Executive

APPROVED AS TO FORM
AND LEGALITY

 8/24/99
Office of the County Attorney

Starpower Communications, L.L.C.
A Delaware Limited Liability Company

By: 
[title] General Manager

[ADD SIGNATURE PAGES FOR EACH PARTICIPATING MUNICIPALITY]

EXHIBIT A

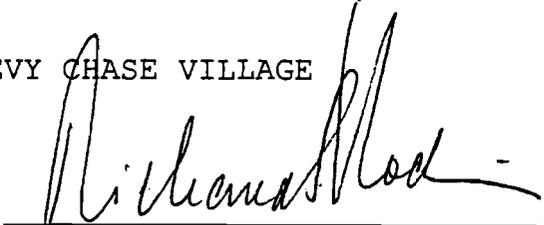
PARTICIPATING MUNICIPALITIES

	<u>Signature</u> on <u>10/18/99</u>
1. <u>Chevy Chase Village</u>	<u>9/13/99</u>
2. <u>Chevy Chase Section 3</u>	
3. <u>Town of Chevy Chase</u>	<u>9/9/99</u>
4. <u>Chevy Chase Section 5</u>	<u>9/17/99</u>
5. <u>Chevy Chase View</u>	<u>9/15/99</u>
6. <u>Garrett Park</u>	<u>8/26/99</u>
7. <u>Glen Echo</u>	
8. <u>Kensington</u>	<u>9/29/99</u>
9. <u>Rockville</u>	<u>9/14/99</u>
10. <u>Somerset</u>	<u>9/8/99</u>
11. <u>Takoma Park</u>	<u>8/5/99</u>
12. <u>Village of Martins Addition</u>	
13. <u>Village of North Chevy Chase</u>	
14. <u>Washington Grove</u>	<u>9/19/99</u>

Signature page for Cable Franchise Agreement with Starpower
Communications, L.L.C. dated August 3, 1999

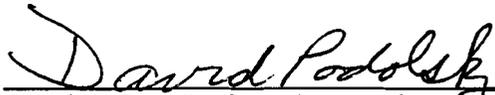
Agreed to this 13th day of September, 1999.

CHEVY CHASE VILLAGE

By: 

Richard S. Rodin
Chairman, Board of Managers

Approved as to Form and Legality:


David R. Podolsky, Village Counsel

Signature page for Cable Franchise Agreement with Starpower ..
Communications, L.L.C. dated August 3 , 1999

Agreed to this 9th day of September, 1999.

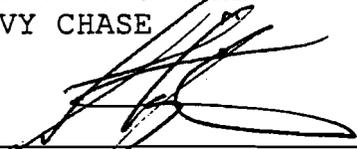
TOWN OF
CHEVY CHASE

By: Marilyn B. Ordway
Marilyn Ordway, Mayor

Signature page for Cable Franchise Agreement with Starpower
Communications, L.L.C. dated August 3 , 1999

Agreed to this 17 day of September, ~~1998~~ 1999

SECTION 5 OF THE VILLAGE OF
CHEVY CHASE

By: 

Scott Livingston
Council Chairman

Approved as to Form and Legality:



David R. Podolsky, Village Counsel

Signature page for Cable Franchise Agreement with Starpower
Communications, L.L.C. dated August 3, 1999

Agreed to this 15th day of September, 1999.

CHEVY CHASE VIEW

By: Philip F. Silk
Philip Smith, Chairman
Chevy Chase View Council

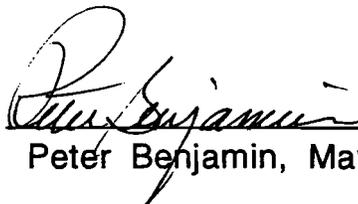
Approved as to Form and Legality:

David Podolsky
David R. Podolsky, Town Attorney

Signature page for Cable Franchise Agreement with Starpower
Communications, L.L.C. dated *26th August*, 1999.

Agreed to this *26th* day of *August*, 1999.

TOWN OF GARRETT PARK

By: 
Peter Benjamin, Mayor

Approved as to Form and Legality:


David R. Podolsky, Town Attorney

Signature page for Cable Franchise Agreement with Starpower
Communications, L.L.C. dated Aug 3, 1999

Agreed to this 29 day of September 1999.

TOWN OF KENSINGTON

By: Lynn L. Raujas
Lynn Raujas, Mayor

Signature page for Cable Franchise Agreement with Starpower
Communications, L.L.C. dated August 3, 1999

Agreed to this 14th day of September, 1999.

THE MAYOR AND COUNCIL OF ROCKVILLE

By: Rose J. Krasnow
Rose Krasnow, Mayor

Signature page for Cable Franchise Agreement with Starpower
Communications, L.L.C. dated August 3 , 1999

Agreed to this 8th day of September, 1999.

TOWN OF SOMERSET

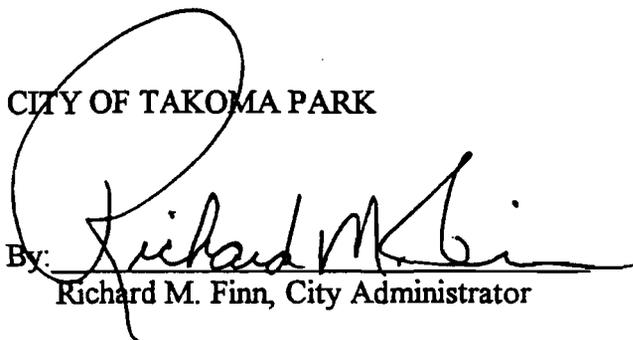
By: Walter J Behr
Walter Behr, Mayor

Signature page for Cable Franchise Agreement with Starpower Communications, L.L.C.

dated August 5, 1999

Agreed to this 5th day of August, 1999

CITY OF TAKOMA PARK

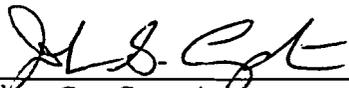
By: 

Richard M. Finn, City Administrator

Signature page for Cable Franchise Agreement with Starpower
Communications, L.L.C. dated August 3, , 1999

Agreed to this 19th day of August, 1999.

TOWN OF WASHINGTON GROVE

By: 
John G. Compton

LIST OF EXHIBITS

- Exhibit A - Participating Municipalities
- Exhibit B - Franchise Area
- Exhibit C - MFD Procurement
- Exhibit D - Access Channel Assignments
- Exhibit E - Public Service Network
- Exhibit F - Internet Services for Participating Municipalities

EXHIBIT A

PARTICIPATING MUNICIPALITIES

Chevy Chase Village
Chevy Chase Section 3
Town of Chevy Chase
Chevy Chase Section 5
Chevy Chase View
Garrett Park
Glen Echo
Kensington
Rockville
Somerset
Takoma Park
Village of Martins Addition
Village of North Chevy Chase
Washington Grove

EXHIBIT B**FRANCHISE AREAS**

The initial franchise area is the area north of the District of Columbia and west of Prince George's County within the following boundaries:

Briggs Chaney Road from the Prince George's County border west to New Hampshire Avenue (Route 650); south on New Hampshire Avenue to Norwood Road; Norwood Road northwest to Layhill Road; Layhill Road southwest to Norbeck Road (Route 28); Norbeck Road west to Muncaster Mill Road (Route 115); Muncaster Mill Road northwest to the western border of North Branch Stream Valley Park; north on the western border of North Branch Stream Valley Park to the northern end of Grist Mill Drive; west southwest to the intersection of Avery Road and Muncaster Mill Road; Muncaster Mill Road northwest to Woodfield Road (Route 124), which becomes Washington Grove Lane; Washington Grove Lane southwest to Midcounty Highway; Midcounty Highway southeast to Shady Grove Road; Shady Grove Road southwest to Interstate 370; Interstate 370 west to Interstate 270; Interstate 270 southeast to Shady Grove Road; Shady Grove Road southwest to Darnestown Road (Route 28); Darnestown Road east to Glen Mill Road (Wooton Parkway extension); Glen Mill Road southwest to Glen Road; Glen Road east to Falls Road (Route 189); Falls Road south to Marseille Drive; Marseille Drive east past the intersection with Fall River Lane to the eastern intersection of Marseille Drive and Cherbourg Drive; Cherbourg Drive south, becoming Willowbrook Drive, to Bells Mill Road; Bells Mill Road southeast to the eastern border of Bucks Branch Park (west of the intersection of Bells Mill Road and Windsor View Drive); directly from the intersection of Bells Mill Road and the eastern border of Bucks Branch Park (which becomes Cabin John Creek Park) generally south-southeast to the intersection of Bradley Boulevard (Route 191) and the eastern border of Cabin John Creek Park; the eastern border of Cabin John Creek Park south to River Road (Route 190); River Road southeast to Goldsboro Road (Route 614); Goldsboro Road west to its closest point to the southern terminus of Cairn Terrace; directly from that point on Goldsboro Road northwest to the intersection of Crathie Lane and Benalder Drive; Crathie Lane northwest to Halbert Road; Halbert Road north to Bannockburn Drive; Bannockburn Drive south to MacArthur Boulevard; MacArthur Boulevard northwest to Cabin John Parkway; Cabin John Parkway south to Clara Barton Parkway; Clara Barton Parkway southeast to the District of Columbia border.

The extended franchise area is the area north and west of the initial franchise area and west of Prince George's County within the following boundaries:

Sandy Spring Road (Route 198), which becomes Spencerville Road, from the Prince George's County border west to New Hampshire Avenue (Route 650); New Hampshire Avenue north to Olney Sandy Spring Road (Route 108); Olney Sandy Spring Road west to Slade School Road; Slade School Road north to Marden Lane; Marden Lane north to its northern terminus; directly from the northern terminus of Marden Lane northwest to the intersection of Old Baltimore Road and James Creek (east of the eastern terminus of Owens Road); James Creek west to Georgia Avenue (Route 97) (at Greenwood Park); Georgia Avenue north to Brookeville Road; Brookeville Road west to Grayheaven Manor Road; Grayheaven Manor Road south to the

southern border of Reddy Branch Park; the southern border of Reddy Branch Park southwest to Olney-Laytonsville Road (Route 108); Olney-Laytonsville Road northwest to Fieldcrest Road; Fieldcrest Road west to Woodfield Road (Route 124); Woodfield Road north to Warfield Road; Warfield Road west to Goshen Road; Goshen Road north to Goshen Mill Court; Goshen Mill Court west to Brink Road; Brink Road west to Ridge Road (Route 27); Ridge Road southwest to Interstate 270; Interstate 270 north to Little Seneca Creek; Little Seneca Creek southwest to Little Seneca Lake (near the northern terminus of Spinning Wheel Drive); Little Seneca Lake to the Little Seneca Lake Dam; Little Seneca Lake Dam directly due south to the Metropolitan Area Rapid Commuter (MARC) railroad right-of-way; the MARC railroad right-of-way east to Germantown Road (Route 118); Germantown Road southwest to Clopper Road (Route 117); Clopper Road east to Longdraft Road; Longdraft Road south to Great Seneca Highway; Great Seneca Highway west to the eastern border of Seneca Creek State Park (near the northernmost point of Morning Light Terrace); directly from the intersection of Great Seneca Highway and the eastern border of Seneca Creek Park generally southwest to the intersection of Riffle Ford Road and Woodsboro Drive; Riffle Ford Road south to Darnestown Road (Route 28); Darnestown Road southwest to Jones Lane; Jones Lane south to the intersection with Crossland Lane; directly from the intersection of Jones Lane and Crossland Lane generally east to Quince Orchard Road at the southern border of Muddy Branch Park (west of the Potomac Horse Center); Quince Orchard Road south to Dufief Mill Road; Dufief Mill Road south to Travilah Road; Travilah Road east to Piney Meetinghouse Road; Piney Meetinghouse Road southwest to Boswell Lane; Boswell Lane east to Glen Mill Road and the western border of the initial franchise area.

The initial franchise area includes both sides of any street or other right-of-way boundary in the County. The extended franchise area includes both sides of any street or other right-of-way boundary in the County that is not in the initial area. The initial and extended franchise areas do not include the City of Gaithersburg, which will be served under a separate franchise.

EXHIBIT C

**MONTGOMERY COUNTY
MINORITY-OWNED BUSINESS CONTRACTING REGULATIONS**

7 MINORITY OWNED BUSINESS CONTRACTING

7.1 Purpose

The purpose of Section 7 is to establish procedures to facilitate the goal of the County Government to remedy the effects of discrimination by awarding a percentage of the dollar value of County contracts, including contract modifications and renewals, over \$3,000 to minority owned businesses (MFD owned business or MFD) as defined in Chapter 11B of the County Code in proportion to the availability of MFD owned businesses to perform work under County contracts.

7.2 Policy

- 7.2.1 The Director, with the assistance of Using Departments and employees involved in contracting and purchasing, must actively and aggressively recruit certified MFD owned businesses to provide goods, construction, and services, including professional services, for the performance of governmental functions to facilitate the MFD goal of the County. Procurements under \$3,000, grants that are appropriated by the County Council to specific grantees, utilities, intragovernmental procurements, and certain intergovernmental procurements including certain bridge contracts identified by the Director are excluded from the base against which the goal is measured.
- 7.2.2 Businesses that are certified as a minority business enterprise under State procurement law and certain non-profit entities organized to promote the interests of persons with a disability are eligible to be certified as an MFD business in accordance with this regulation. Certification is subject to the graduation provisions of Section 7.4.4.
- 7.2.3 This regulation is the County's exclusive procedure for the certification, recertification and decertification of MFD owned businesses.
- 7.2.4 Using Department Heads should seek the advice and concurrence of the Director in the development of internal operating procedures to implement the provisions of this procedure.

7.3 General

7.3.1 In Section 7 the term Washington, D.C. - Baltimore Consolidated Metropolitan Statistical Area has the same meaning as it has in Chapter 11B. The term MFD group or group of MFD owned businesses has the same definition as socially or economically disadvantaged group in Chapter 11B.

7.3.2 To qualify to participate in the MFD subcontracting program under Section 7.3.3, an MFD owned business must:

- belong to an MFD group for which a goal has been set under Section 7.3.4 in the purchasing category covering the work that is the subject of the subcontract; and
- be certified as an MFD owned business under Section 7.4.

7.3.3 MFD Subcontracting Program.

7.3.3.1 Unless the context indicates otherwise, in Section 7.

- (a) contract means a contract identified by Using Departments or the Director as having an estimated dollar value of \$65,000 or more, including renewals; and
- (b) contractor means a contractor that:
 - is not a certified MFD owned business; or
 - if the contractor is a certified MFD owned business, the contractor does not belong to an MFD group for which a goal has been set in the purchasing category covering significant work to be undertaken in the contract.

7.3.3.2 A contractor must subcontract a minimum percentage (as determined by the Director) of the contract price to certified MFD owned businesses that are eligible to participate in the subcontracting program. To be eligible, a certified MFD owned business must have a goal set under Section 7.3.4 in a purchasing category covering the work to be performed under the subcontract. The Director applies the goals established by the CAO under Section 7.3.4.8(d) for each purchasing category covering a substantial amount of work to be done under the contract to set the minimum percentage of the contract which the contractor must subcontract to certified MFD owned businesses.

7.3.3.3 Each contractor must submit a Subcontractor Performance Plan prior to undertaking performance under the contract, or at such earlier time as required by the Director. An MFD Subcontractor Performance Plan must:

- (a) identify each MFD subcontractor;
- (b) identify the amount the contractor has agreed to pay each MFD subcontractor;
- (c) provide a copy of the language used in each MFD subcontract which requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the contractor and the MFD subcontractor. The language must describe how the costs of dispute resolution will be apportioned: the apportionment must not, in the judgment of the Director, attempt to penalize an MFD subcontractor for filing an arbitration claim; and
- (d) be made a part of the contract between the contractor and the County. County approval of the Subcontractor Performance Plan must not establish a contractual relationship between the County and the MFD subcontractor.

7.3.3.4 The contract between the contractor and the County must require:

- (a) the contractor to notify the Director of any proposed change to the Subcontractor Performance Plan;
- (b) the contractor to provide in each subcontract with an MFD owned business a provision requiring the use of binding arbitration to resolve disputes between the contractor and the MFD owned business;
- (c) that failure to submit documentation showing compliance with the Subcontracting Performance Plan is grounds for imposing liquidated damages unless failure to comply with the Plan is the result of an arbitration decision in favor of the contractor or a waiver granted by the Director. Liquidated damages under this provision should equal the difference between all amounts the contractor has agreed under its plan to pay MFD subcontractors and all amounts actually paid MFD

subcontractors considering any relevant waiver or arbitrator's decision; and

- (d) that failure to show compliance with a Subcontractor Performance Plan must result in finding the contractor nonresponsible for purposes of future procurements with the County during the next 3 years.

7.3.3.5 The Director may waive in whole or in part an MFD subcontracting requirement imposed under Section 7.3.3. if the Director finds that:

- (a) it is unusually difficult or impossible for the contractor to meet a subcontracting requirement because, for example, a qualified MFD owned business is not available for subcontracting or the contractor's good-faith efforts to subcontract with available MFD owned businesses have failed;
- (b) reasonable grounds exist to waive a subcontracting requirement because, for example, the subcontracting requirement would undermine the purpose of a contract for personal services, subcontracting would be inconsistent with requirements for confidentiality, or the contract is awarded under an emergency procurement; or
- (c) the contractor belongs to a class of nonprofit entities for which the Director has determined that it would be impractical to require participation in the MFD Subcontracting Program.

7.3.3.6 The Director has sole discretion to determine the estimated value of a contract and may consider the value of any modifications or renewals.

7.3.4 The MFD subcontracting goal is set as follows:

7.3.4.1 By September 1 of each year the Director must determine for the previous fiscal year the availability of each group of MFD owned businesses with one or more employees. The Director must use the latest available federal economic census data, or other reliable means of measuring availability to determine the availability of MFD owned business in the Washington D.C. – Baltimore Consolidated Metropolitan Statistical Area to perform work under County contracts.

7.3.4.2 Fiscal year means July 1 through June 30.

7.3.4.3 The Director must state the availability for each group of MFD owned businesses as a percentage of all available businesses in the purchasing categories of:

- (a) construction;
- (b) goods;
- (c) professional services; and
- (d) other services.

7.3.4.4 The Director may set the availability of Disabled owned businesses at 0.75 percent in each purchasing category. Not for profit entities that are certified as MFD businesses are included in the Disabled owned business group.

7.3.4.5 The Director must determine the percentage of contract dollars awarded to each group of MFD owned business as prime contractors and subcontractors in the purchasing categories of:

- (a) construction;
- (b) goods;
- (c) professional services; and
- (d) other services.

7.3.4.6 The Director must determine the disparity between the dollar value of contracts and subcontractor awarded to each group of MFD owned business in each purchasing category identified in Section 7.3.4.5. with the availability of that group in each purchasing category. The Director must use, to the extent practicable, a methodology compatible with the methodology used to determine disparity in the Minority, Female, Disabled Disparity Study dated November 26, 1996.

7.3.4.7 By September 1 of each year the Director must submit to the CAO a report setting forth the determinations made under Sections 7.3.4.3. through 7.3.4.6.

7.3.4.8 After receiving the Director's report, the CAO must set by September 30 of each year MFD subcontracting goals for the period beginning on October 1 and ending on September 30.

- (a) In setting MFD subcontracting goals the CAO must determine if the County has significantly underutilized each group of MFD owned businesses in each purchasing category. The CAO makes this determination by considering the disparity between the availability of each group of MFD owned businesses in each purchasing category with the contract dollars awarded to each group of MFD owned businesses in each purchasing category.
- (b) If the CAO determines that a group of MFD owned businesses in a specific purchasing category has been significantly underutilized, the CAO must set an MFD goal for that group in the applicable purchasing category. The goal must be related to

the availability of the group of MFD owned businesses in the purchasing category.

- (c) If the CAO determines that a group of MFD owned businesses in a specific purchasing category has not been significantly underutilized, the CAO must not set an MFD goal in the applicable purchasing category. The CAO, nevertheless, may set a goal for an MFD group in a purchasing category (even though a finding of significant underutilization has not been found) if, in at least one out of the last 4 years, the CAO had determined the MFD group had been significantly underutilization and during that year a goal had not been set for the MFD group in the applicable purchasing category.
- (d) The CAO must set for each purchasing category for which an MFD goal has been set an overall MFD subcontracting goal that contractors must meet under Section 7.3.3. The overall MFD subcontracting goal for each purchasing category must be related to the availability of all groups of MFD owned businesses for which a goal is set in that purchasing category.

7.4 Certification of MFD Owned Businesses

7.4.1 The Director may certify an entity as an MFD owned business if the business is certified as a minority business enterprise under the State procurement law except for a not for profit entity organized to promote the interests of physically and mentally disabled individuals. In the case of a not for profit entity, the Director must determine that:

- (a) the not for profit entity is certified as a minority business enterprise under State procurement law; and
- (b) at least 51% of the individuals used by the not for profit entity to perform the work or manufacture the goods contracted for by the County are individuals with a physical or mental disability.

The Director must conduct a review to determine whether a business may be certified as an MFD owned business. This review must include an evaluation of the documentation submitted by the business on an MFD Application form. The Director may also include a site visit to the offices of a not for profit entity. The Director may review any of the following:

7.4.1.1 Certifications issued by the State.

- 7.4.1.2 Employment records, health records, and/or educational records of the employees of a not for profit entity seeking MFD certification.
- 7.4.1.3 Other relevant information concerning the operation of a not for profit entity.
- 7.4.2 A request for certification or recertification as an MFD business may be denied by the Director for any of the following reasons:
 - 7.4.2.1 Failure to demonstrate that the business is a certified minority business enterprise under the State procurement law.
 - 7.4.2.2 Failure to provide sufficient and timely information for the Director to make a certification or recertification determination.
 - 7.4.2.3 Refusal to permit an on-site inspection by the Director.
 - 7.4.2.4 Failure to comply with a request by the Director for information or access to records.
 - 7.4.2.5 Graduation of the MFD owned business.
- 7.4.3 Certification as an MFD owned business by the County may be revoked for any one of the following reasons:
 - 7.4.3.1 Fraud, deceit or misrepresentation in obtaining certification.
 - 7.4.3.2 Failure to report in writing to the Director within 30 days of the date of the occurrence of any changes in the status of the certified MFD owned business which are relevant to its certification.
 - 7.4.3.3 Failure to demonstrate at the request of the Director that the entity continues to be an MFD owned business.
- 7.4.4. Certification is subject to the graduation provisions of this Section. The Director must not certify an entity as a MFD owned business for a period of time that exceeds 5 years.

The Director, however, may certify a business as an MFD owned business for 8 years if during the first 5 years of certification, the MFD owned business.

7.4.4.1 has not received at least

- (a) 4 subcontracts awarded under Chapter 11B of the County Code; and
- (b) the cumulative value of the subcontracts has not exceeded \$120,000.

7.4.4.2 The MFD graduation requirement established under this subsection begins on December 1, 1993, and is only effective prospectively.

7.5 Responsibilities

7.5.1. Director

- 7.5.1.1 The Director is responsible for contracts with businesses to identify, encourage and coordinate participation of MFD owned businesses in the procurement process, including certification. This includes notification to MFD owned businesses of prospective procurement opportunities by telephone or mailings based on the most recent MFD owned business directory, encouragement of MFD owned business participation in procurement, as prime contractors or subcontractors, procurement system education and information for MFD owned businesses, and referrals to resources such as technical consultants, sureties and financing.
- 7.5.1.2 The Director maintains up-to-date mailing lists, and other references of County certified MFD owned businesses for use by Using Departments, contractors, and for public information.
- 7.5.1.3 The Director provides Using Departments with a list of certified MFD owned businesses who have stated an interest in providing services required by the Using Department.
- 7.5.1.4 The Director assists Using Departments, as needed, in developing internal operating procedures to use certified MFD owned businesses in accordance with the provisions of this section.
- 7.5.1.5 The Director cooperates with other governments and governmental agencies in exchanging information regarding certified MFD owned businesses.
- 7.5.1.6 The Director distributes to non-minority prime contractors a current list of certified MFD owned businesses with a requirement that one or more be contacted if the work is being subcontracted.

7.5.1.7 The Director should ensure that contract administrators receive appropriate guidance in implementing the provisions of this regulation.

17.5.2 Using Departments

7.5.2.1 The Using Departments should request and use the most recent list of certified MFD owned businesses furnished by the Director to encourage certified owned business response to Requests for Proposals and Request for Expressions of Interest and all other procurements.

7.5.2.2 When inviting proposals for services with a dollar value of less than \$65,000, whether by RFP, REOI, Mini-Contract or any other form of procurement, the Using Departments must ensure an effort is made to afford certified MFD owned businesses an opportunity to participate in the award of the contract. Periodically, or at the request of the Director, Using Departments must provide to the Director written documentation including contract documents that indicate the results of efforts to provide an opportunity for certified MFD owned businesses to submit proposals. The Using Departments should also cooperate with the Director in efforts to encourage MFD contractor participation by, among other things, establishing minority business procurement objectives consistent with Chapter 11B of the County Code and by developing and implementing techniques to encourage greater MFD owned business participation.

7.5.2.3 The Using Departments must notify the Director when an Invitation For Bid, a Request for Proposal or a Request for Expression of Interest is expected to have a dollar value of \$65,000 or more. Notification should be as early as possible but not later than the Using Department's official request to the Director to commence a procurement action.

7.5.2.4 The Using Departments should develop, with the advice and concurrence of the Director, internal operating procedures to implement the provisions of this section.

7.6 Procedures for Certification/Recertification of MFD Businesses

7.6.1 The Director, upon request from a business or at the Director's initiative, provides a MFD Application form to the business. To ensure timely recertification, the certified MFD owned businesses should file a MFD Application form at least 60 days prior to expiration of certification.

7.6.2 The business returns the MFD Application form to the Director in accordance with the form's instructions.

- 7.6.3 The Director reviews the MFD Application form submitted to determine, in accordance with this procedure, whether the business should be certified or recertified as an MFD owned business. Upon determination of eligibility as an MFD owned business, the Director certifies the business as an MFD owned business.
- 7.6.4 If a business is not certified or recertification is denied, the Director informs the applicant, in writing of the denial, the reasons for denial and the right to request reconsideration of the decision to the Director within 5 days of the date of the decision. This notice of denial should indicate that the business may request a hearing.
- 7.6.5 The Director reviews the request for reconsideration and may conduct a hearing if appropriate. The Director makes a written determination and finding regarding the reconsideration request. The Director must then send a copy of the decision to the CAO who may approve, revise, or remand the decision. If the CAO takes no action within 5 working days, the decision of the Director becomes final.
- 7.6.6 After the decision becomes final, the Director must inform the business making the reconsideration request, in writing, of the decision and the right to appeal to the Circuit Court for Montgomery County, Maryland, pursuant to Title 7 of the Maryland Rules of Procedure governing judicial review of decisions of administrative agencies.

7.7 Procedures for Decertification

- 7.7.1 The Director, based upon a written determination that there are grounds for concluding that the entity is no longer entitled to be certified as an MFD owned business, makes a proposal to revoke the certification. The entity must be notified, in writing, of this proposed decertification.
- 7.7.2 The entity may submit any written information to the Director within the time limits specified by the Director, which must not be less than 3 working days of receipt of notification of the proposed decertification.
- 7.7.3 The Director must review the proposed decertification and any information submitted by the entity and decide whether to revoke the certification after the expiration of the time specified by the Director for submitting information. The Director must inform the entity of the decision, in writing, and the right to request a reconsideration of the decision within 5 days.
- 7.7.4 The entity must submit to the Director a written reconsideration request regarding the decertification within the 5 day limit or waives all rights of appeal.

7.7.5 If there is a reconsideration request, the Director may conduct a hearing, if appropriate, concerning the decertification. The Director makes a written determination and finding regarding the decertification request. The Director must then send a copy of the decision to the CAO who may approve, revise, or remand the decision. If the CAO takes no action within 5 working days, the decision of the Director becomes final.

7.7.6 After the decision becomes final, the Director must inform the entity making the reconsideration request, in writing, of the decision and the right to appeal to the Circuit Court for Montgomery County, Maryland, pursuant to Title 7 of the Maryland Rules of Procedure governing judicial review of decisions of administrative agencies.

7.8 Special Solicitation Requirements

7.8.1 The Director must include in all formal competitive solicitations (and resulting contracts) with an estimated value of \$65,000 or greater MFD contracting conditions in a form created by the Director and approved by the Office of County Attorney.

7.8.2 These conditions must include the following provisions:

7.8.2.1 Notice of the Montgomery County MFD contracting policy and associated contracting goals.

7.8.2.2 A requirement that the offeror subcontractor with certified MFD owned businesses in a manner consistent with Section 7.3.3 and how the offeror may demonstrate the basis for the Director to grant, in whole or in part, a waiver of the MFD subcontracting goal.

7.8.2.3 Notice of the requirement to comply with the MFD Subcontractor Performance Plan, including binding arbitration to resolve disputes with MFD subcontracts and imposition of liquidated damages for failure to comply with the MFD Subcontractor Performance Plan.

7.8.2.4 A specification of all documentation required to be submitted by the contractor, including information required under Section 7.9 which the Director requires the contractor to submit, and time requirements for those submissions as determined by the Director.

7.8.2.5 Notice of non-eligibility and disqualification for award for failure to submit required documentation or meet MFD goals, unless waived.

7.8.2.6 Limitations on substitutions or other non-use of designated MFD subcontractors.

7.8.2.7 Notice of enforcement procedures, including penalties and actions which may result from non-compliance.

7.8.2.8 Statement of records requirements for contractors, including types of records required and length of time the records must be maintained.

7.8.3 The Director must review and evaluate procurement procedures and solicitation requirements to determine the effect those procedures and requirements may have on the ability of MFD owned businesses to be competitive. The Director may also take necessary action to remove any artificial barriers to competition found to exist. Those actions may include:

7.8.3.1 Requiring Using Departments to take steps to assist contractors in making timely submissions of subcontracting plans.

7.8.3.1 Considering past compliance with the County minority business procurement program in determining contractor responsibility.

7.8.3.3 Adjusting evaluation criteria or method of award decisions and lowering or eliminating insurance, bonding and experience requirements.

7.8.3.4 Requiring the minority procurement officer to report in writing to the Director those solicitations and contracts which adversely affect MFD participation and those actions by existing contractors which do not comply in good faith with approved MFD subcontractor plans.

7.9 Reporting Requirements

The Director may require each contractor to provide the County with information concerning utilization by the contractor of MFD owned businesses in private and government contracts. The Director may also require each certified MFD owned business to provide the County with information concerning its utilization by non-MFD owned businesses in private and government contracts.

7.10 Monitoring Procedures

7.10.1 The contract administrator in conjunction with the minority procurement officer must monitor all contracts subject to MFD participation to ensure compliance by prime contractors with the requirements of these regulations. Monitoring may include site visits, audits of contractors' books and records relative to County contracts, the submission of copies of invoices from the minority subcontractor to the prime contractor, submission of Contract Monitoring Reports at scheduled intervals during the life of the contract, and other procedures that the Director may require.

- 7.10.2 The Director must notify certified MFD owned businesses of their responsibility to report to the minority procurement office in a timely manner any changes in status that affects the entity's eligibility for certification as an MFD owned business. The failure of the MFD owned business to report any relevant change in a timely manner constitutes sufficient grounds for decertification.

EXHIBIT D

ACCESS CHANNEL ALLOCATIONS

Channel

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EXHIBIT E

PUBLIC SERVICE NETWORK SITES

Name	Group	Street#	Street Name	Type	City	Zip Code
HIGH SCHOOLS						
LINCOLN CENTER	SCHOOLS-- HIGH SCHOOL	570	N. STONE	ST	ROCKVILLE	20850
MAGRUDER COL. ZADOK	SCHOOLS-- HIGH SCHOOL	5939	MUNCASTER MILL	RD	ROCKVILLE	20855
KENNEDY JOHN F	SCHOOLS-- HIGH SCHOOL	1901	RANDOLPH	RD	SILVER SPRING	20902
PAINT BRANCH	SCHOOLS-- HIGH SCHOOL	14121	OLD COLUMBIA	PK	BURTONSVIL LE	20866
JOHNSON WALTER	SCHOOLS-- HIGH SCHOOL	6400	ROCK SPRING	DR	BETHESDA	20817
SENECA VALLEY	SCHOOLS-- HIGH SCHOOL	12700	MIDDLEBROOK	RD	GERMANTO WN	20874
SPRINGBROOK	SCHOOLS-- HIGH SCHOOL	201	VALLEYBROOK	DR	SILVER SPRING	20904
QUINCE ORCHARD	SCHOOLS-- HIGH SCHOOL	15800	QUINCE ORCHARD	RD	GAITHERSBU RG	20878
SHERWOOD	SCHOOLS-- HIGH SCHOOL	300	OLNEY SANDY SPRING	RD	SANDY SPRING	20860
WATKINS MILL	SCHOOLS-- HIGH SCHOOL	10301	APPLE RIDGE	RD	GAITHERSBU RG	20879
BLAKE JAMES HUBERT	SCHOOLS-- HIGH SCHOOL	300	NORWOOD	RD	SILVER SPRING	20905
CARVER EDUCATIONAL SVCS CTR	SCHOOLS-- HIGH SCHOOL	850	HUNGERFORD	DR	ROCKVILLE	20850
MONTGOMERY BLAIR	SCHOOLS-- HIGH SCHOOL	51	E. UNIVERSITY	BLVD	SILVER SPRING	
ALBERT EINSTEIN	SCHOOLS-- HIGH SCHOOL	11135	NEWPORT MILL	RD	KENSINGTON	
WHEATON	SCHOOLS-- HIGH SCHOOL	12601	DALEWOOD	DR	SILVER SPRING	
WALT WHITMAN	SCHOOLS-- HIGH SCHOOL	7100	WHITTIER	BLVD	BETHESDA	
BETHESDA-CHEVY CHASE	SCHOOLS-- HIGH SCHOOL	4301	EAST-WEST	HWY	BETHESDA	
WINSTON CHURCHILL	SCHOOLS-- HIGH SCHOOL	11300	GAINSBORO	RD	POTOMAC	
GAITHERSBURG	SCHOOLS-- HIGH SCHOOL	314	S. FREDERICK	AV	GAITHERSBU RG	
RICHARD MONTGOMERY	SCHOOLS-- HIGH SCHOOL	250	MONTGOMERY	DR	ROCKVILLE	
ROCKVILLE	SCHOOLS-- HIGH SCHOOL	2100	BALTIMORE	RD	ROCKVILLE	
WOOTTON	SCHOOLS-- HIGH SCHOOL	2100	WOOTTON	PKWY	ROCKVILLE	
FIRE STATIONS						
STATION 15 - BURTONSVILLE	FIRE COMPANIES	15430	OLD COLUMBIA PIKE	PK	BURTONSVIL LE	20866
STATION 20 - BETHESDA	FIRE COMPANIES	9041	OLD GEORGETOWN	RD	BETHESDA	20814
STATION 8 - WASH GROVE	FIRE COMPANIES	801	RUSSELL	AV	GAITHERSBU RG	20879
STATION 23 - ROCKVILLE	FIRE COMPANIES	121	ROLLINS	AV	ROCKVILLE	20852
STATION 12 - HILLDALE	FIRE COMPANIES	10617	NEW HAMPSHIRE	AV	SILVER SPRING	20903

STATION 33 - ROCKVILLE	FIRE COMPANIES	11430	GREAT FALLS	RD	POTOMAC	20854
STATION 19 - SILVER SPRING	FIRE COMPANIES	1945	SEMINARY	RD	SILVER SPRING	20910
STATION 3 - ROCKVILLE	FIRE COMPANIES	3380	HUNGERFORD	DR	ROCKVILLE	20850
STATION R1 - BETH/CHEVY CHASE	FIRE COMPANIES	15020	BATTERY	LA	BETHESDA	20814
STATION 1 - SILVER SPRING	FIRE COMPANIES	18131	GEORGIA	AV	SILVER SPRING	20910
STATION 2 - TAKOMA PARK	FIRE COMPANIES	27201	CARROLL	AV	TAKOMA PARK	20912
STATION 26 - BETHESDA	FIRE COMPANIES	6700	DEMOCRACY	BLVD	BETHESDA	20814
STATION 31 - ROCKVILLE	FIRE COMPANIES	12100	DARNESTOWN	RD	N POTOMAC	20878
STATION 4 - SANDY SPRING	FIRE COMPANIES	4816	OLNEY SANDY SPRING	RD	SANDY SPRING	20860
STATION 6 - BETHESDA	FIRE COMPANIES	6600	WISCONSIN	AV	BETHESDA	20815
STATION 25 - KENSINGTON	FIRE COMPANIES	14401	CONNECTICUT	AV	KENSINGTON	20906
STATION 7 - CHEVY CHASE	FIRE COMPANIES	8001	CONNECTICUT	AV	CHEVY CHASE	20815
STATION 21 - KENSINGTON	FIRE COMPANIES	12500	VEIRS MILL	RD	ROCKVILLE	20853
STATION 24 - HILLANDALE	FIRE COMPANIES	13216	NEW HAMPSHIRE	AV	SILVER SPRING	20904
STATION 18 - KENSINGTON	FIRE COMPANIES	12251	GEORGIA	AV	WHEATON	20902
STATION 40 - SANDY SPRING	FIRE COMPANIES	16911	GEORGIA	AV	OLNEY	20832
STATION 10 - CABIN JOHN	FIRE COMPANIES	8201	RIVER	RD	BETHESDA	20817
STATION 16 - SILVER SPRING	FIRE COMPANIES	111	UNIVERSITY	BLVD	E SILVER SPRING	20901
STATION 28 - GAITH-WASH GROVE	FIRE COMPANIES	7272	MUNCASTER MILL	RD	ROCKVILLE	20855
STATION 5 - KENSINGTON	FIRE COMPANIES	10620	CONNECTICUT	AV	KENSINGTON	20895
STATION R.2 - WHEATON	FIRE COMPANIES	11435	GRAND VIEW	AV	WHEATON	20902
STATION 11 - GLEN ECHO	FIRE COMPANIES	5920	MASSACHUSETTS	AV	BETHESDA	20816
STATION 27 - PSTA	FIRE COMPANIES	10025	DARNESTOWN	RD	ROCKVILLE	20850
STATION 29 - GERMANTOWN	FIRE COMPANIES	20001	CRYSTAL ROCK	RD	GERMANTOWN	20874
STATION 33 - ROCKVILLE	FIRE COMPANIES	11430	FALLS	RD	POTOMAC	20854
EOB 12		101	MONROE	ST	ROCKVILLE	20850
CODE ENFORCEMENT		250	HUNGERFORD	DR	ROCKVILLE	20850
ECC		120	MARYLAND	AV	ROCKVILLE	20850
EMG		100	MARYLAND	AV	ROCKVILLE	20850

EXHIBIT F

INTERNET SERVICES FOR PARTICIPATING MUNICIPALITIES

The Operator shall provide the following services and facilities:

Rockville –

1. Internet Access and IP addresses for a total of 318 workstations, and up to ten (10) high-speed cable modems for the provision of high-speed Internet Access for locations not served by the City's internal network. Internet usage shall be metered, and reports shall be provided to the City on request.
2. T-1 line at City-designated location, with connection to City's internal network.
3. An additional T-1 line at the City-designated location upon a showing by the City, based upon the reports described above, that the average through-put between 7:00 a.m. and 7:00 p.m. over a one-week period exceeds 25% of capacity, or there are five or more instances in a single week in which through-put reaches full capacity. To the extent that the City may require more than two (2) activated T-1 or equivalent connections and related Internet service, at the request of the City the Operator will provide to the City additional Internet connections and services at rates to be mutually agreed upon by the Operator and the City, not to exceed the Operator's standard rates for such connections and usage of its Internet services.
4. The Operator shall provide as many IP addresses as may be served by a maximum of two (2) T-1 connections without unreasonably degrading service. To the extent that the City may subscribe to more than two (2) such connections from the Operator, at the request of the City the Operator will provide to the City additional IP addresses at rates to be mutually agreed upon by the Operator and the City, not to exceed the Operator's standard rates for such IP addresses and related Internet Services.
5. The T-1 or equivalent connections shall be terminated by the Operator using standard industry connectors at a demarcation point at a City location to be agreed upon by the Operator and the City up to twelve inches inside the building wall (the "Demarcation Point"). The City shall be responsible for all equipment and wiring on the City's side of the Demarcation Point.

6. Operator will provide the City with City asbuilt maps upon request in the same format that such maps are provided by the Operator to the County.

Takoma Park -

- Internet Access and IP addresses for 136 workstations, and up to ten (10) high-speed cable modems for the provision of high-speed Internet Access for locations not served by the City's LAN. Internet usage shall be metered, and reports shall be provided to the City on request.
2. T-1 line at City-designated location, with connection to City's internal network.
3. An additional T-1 line at the City-designated location upon a showing by the City, based upon the reports described above, that the average through-put between 7:00 a.m. and 7:00 p.m. over a one-week period exceeds 25% of capacity, or there are five or more instances in a single week in which through-put reaches full capacity. To the extent that the City may require more than two (2) activated T-1 or equivalent connections and related Internet service, at the request of the City the Operator will provide to the City additional Internet connections and services at rates to be mutually agreed upon by the Operator and the City, not to exceed the Operator's standard rates for such connections and usage of its Internet services.
4. The Operator shall provide as many IP addresses as may be served by a maximum of two (2) T-1 connections without unreasonably degrading service. To the extent that the City may subscribe to more than two (2) such connections from the Operator, at the request of the City the Operator will provide to the City additional IP addresses at rates to be mutually agreed upon by the Operator and the City, not to exceed the Operator's standard rates for such IP addresses and related Internet Services.
5. The T-1 or equivalent connections shall be terminated by the Operator using standard industry connectors at a demarcation point at a City location to be agreed upon by the Operator and the City up to twelve inches inside the building wall (the "Demarcation Point"). The City shall be responsible for all equipment and wiring on the City's side of the Demarcation Point.
6. Operator will provide the City with City as-built maps upon request in the same format that such maps are provided by the Operator to the County.

Montgomery County Chapter of MML -

Up to five (5) high-speed cable modems for the provision of Internet Access, and associated IP addresses.

All other Participating Municipalities -

Up to ten (10) high-speed cable modems each for the provision of Internet Access, and associated IP addresses.