

Resolution No.: 16-1439

Introduced: June 22, 2010

Adopted: July 20, 2010

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Resolution to Approve Cable Franchise Transfer from Starpower Communications, LLC to Yankee Cable Acquisition, LLC

Background

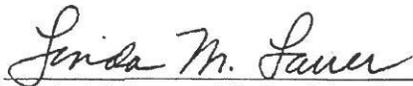
1. County Code Chapter 8A governs franchise agreements for cable systems. Under Section 8A-23, before approving transfer of a franchise the County must consider the legal, financial, technical and character qualifications of the transferee to operate the system, and whether operation by the proposed franchisee will adversely affect the cable services to subscribers or otherwise be contrary to the public interest. Section 8A-23 also requires the County to consider whether the transferee's interest will have any effect on the franchisee's operation of the system, the franchisee's qualifications, or the public interest.
2. On March 23, 2010, Starpower Communications, LLC ("Starpower"), whose direct parent is RCN Telecom Services, LLC, applied to transfer control of the franchise to Yankee Cable Acquisition, LLC, ("Yankee Cable") an entity controlled, through several intermediate wholly-owned subsidiaries, by ABRY Partners VI, L.P.
3. The Executive held a public hearing on May 19, 2010.
4. On June 15, 2010, the Council received the Executive's recommendation to approve the transfer of control of the cable television franchise to Yankee Cable under a proposed transfer agreement.
5. On July 15, 2010, the Council's Management and Fiscal Policy Committee considered the transfer application and recommended approval of the proposed transfer.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The Council grants the transfer of control of the cable television franchise from Starpower to Yankee Cable under the terms of the attached transfer agreement.

This is a correct copy of Council action.

Handwritten signature of Linda M. Lauer in cursive script.

Linda M. Lauer, Clerk of the Council

**2010 STARPOWER COMMUNICATIONS, L.L.C.
TRANSFER AGREEMENT**

THIS AGREEMENT is made this 20th day of July, 2010, by and between:

- 1.1.1. Montgomery County, Maryland (the "County");
- 1.1.2. Starpower Communications, L.L.C. ("Franchisee");
- 1.1.3. RCN Telecom Services, LLC ("RCN"); and
- 1.1.4. Yankee Cable Acquisition, L.L.C. ("Yankee Cable").
- 1.1.5. Franchisee, RCN Telecom Services, L.L.C., and Yankee Cable may be referred to herein individually as "Company," and jointly as "Companies."

RECITALS

WHEREAS, the County has granted the Franchisee a nonexclusive franchise (the "Franchise") for a term of fifteen (15) years pursuant to Montgomery County Code Chapter 8A, as amended (the "Cable Law"), and Article 25A, Section 5(B) of the Annotated Code of Maryland, 1957, as amended; and the franchise agreement between the Franchisee and the County dated August 3, 1999, as amended by a settlement agreement ("Settlement Agreement") executed by Franchisee on March 19, 2003, and by the County Executive on April 10, 2003 (the "Franchise Agreement");

WHEREAS, Franchisee is a wholly owned subsidiary of RCN Corporation;

WHEREAS, pursuant to a transaction (the "Proposed Transaction") described in an Agreement and Plan of Merger dated as of March 5, 2010 (the "Merger Agreement"), Yankee Cable will acquire control of the Franchisee and the cable system serving the County (the "System");

WHEREAS, Yankee Cable is controlled by ABRY Partners VI, L.P., a Delaware limited partnership, through several intermediate wholly-owned subsidiaries;

WHEREAS, if the Proposed Transaction is consummated, the Franchisee will continue to own and operate the System and will continue to hold the Franchise, but control of the Franchisee will be transferred to Yankee Cable (the “Transferee”);

WHEREAS, Section 3(a)(1) of the Franchise Agreement provides that the prior approval of the County, and of the municipalities within the County (listed at Exhibit 1) that have agreed to have the County administer and enforce the Franchise Agreement within their corporate limits (“Participating Municipalities”), is required for this transfer of control;

WHEREAS, each of the Participating Municipalities is also a party to an individual settlement agreement between that Participating Municipality and the Franchisee (each, a “Municipal Settlement Agreement”);

WHEREAS, on or about March 23, 2010, Starpower filed an application with the County including FCC Form 394 and requested that the County approve the Proposed Transaction (the “Transfer Application”);

WHEREAS, on April 20, 2010, April 27, 2010, and May 13, 2010, the County requested additional information regarding the Proposed Transaction (the “Information Requests”);

WHEREAS, on April 28, 2010 and May 7, 2010, and May 21, 2010, Franchisee responded to the Information Requests;

WHEREAS, pursuant to Section 3(a)(5) of the Franchise Agreement, in reviewing the Proposed Transaction, 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;

WHEREAS, Yankee Cable, RCN, and Franchisee have represented to the County that the Proposed Transaction will result in no change to the current management, technical, and operational personnel of the System, and will not have a detrimental effect on, or result in material change in, the service provided to existing customers;

WHEREAS, Yankee Cable and RCN have stated that they agree to abide by and accept all terms of the Franchise Agreement and the Cable Law, as they may be amended, and that Starpower will continue to be responsible for the obligations and liabilities, and continue to have responsibility for all acts and omissions, known and unknown, under the Franchise Agreement and the Cable Law for all purposes, including renewal, unless waived, in whole or in part, by the County and Participating Municipalities;

WHEREAS, the County has reviewed the Application and followed all required procedures to consider and act upon the Application; and

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

NOW, THEREFORE, in consideration for the County's consent to the Proposed Transaction, and subject to the terms and conditions of this Agreement and of the County's Resolution consenting to the Proposed Transaction ("Transfer Resolution"), THE PARTIES DO HEREBY AGREE as follows:

1. **TRANSFER**

1.1. The foregoing recitals are true and correct and are incorporated herein by reference.

1.2. The County has consented through the Transfer Resolution to the Proposed Transaction as described in the Transfer Application, in consideration for the promises and performances of Yankee Cable, RCN, and Franchisee as expressed in this Transfer Agreement.

2. ACCEPTANCE OF FRANCHISE OBLIGATIONS

2.1. Nothing in this Transfer Agreement amends or alters the Franchise Agreement, or any of the Municipal Settlement Agreements, or any requirements therein in any way, and all provisions of the Franchise Agreement and each of the Municipal Settlement Agreements remain in full force and effect and are enforceable in accordance with their terms and with applicable law.

2.2. The Companies agree that neither the Proposed Transaction nor the County's approval of the Proposed Transaction shall in any respect relieve the Franchisee or any of its successors in interest of responsibility for past acts or omissions, known or unknown. Franchisee hereby agrees that it shall continue to be liable for any such acts and omissions, known and unknown, including liability for any and all previously accrued but unfulfilled obligations to the County under the Franchise Agreement, the Municipal Settlement Agreements, and applicable law, for all purposes, including but not limited to review of past performance for purposes of determining whether the Franchise should be renewed. Franchisee agrees that all acts and omissions of Franchisee occurring prior to this Agreement will continue to be deemed to be those of Franchisee. The Proposed Transaction shall not restrict or expand the rights of the Franchisee under or related to the Franchise Agreement as compared to those that could have been exercised by the Franchisee prior to the Proposed Transaction.

2.3. The Companies shall ensure that all records pertaining to the Franchise, including financial records, shall continue to be available after the Proposed Transaction in the same way and to the same extent such information was available prior to the Proposed Transaction.

2.4. Yankee Cable and RCN agree that, from and after the consummation of the Proposed Transaction, they will not take any action inconsistent with the promises contained in the Franchise Agreement and the Municipal Settlement Agreements, and shall comply and cause Franchisee to fully comply with all of the terms and conditions set forth in the Franchise Agreement, the Municipal Settlement Agreements, and (when executed and delivered) this Transfer Agreement.

2.5. Franchisee agrees to provide a parent company guarantee from RCN, or another entity mutually acceptable to RCN and the County, guaranteeing performance by Franchisee of all of Franchisee's obligations under the Franchise Agreement and this Transfer Agreement. The

guarantee shall state that the financial condition of the Franchisee or any parent or affiliate of the Franchisee shall not limit the ability of the Franchisee to properly and fully comply with the terms of the Franchise Agreement. The signed guarantee must be provided within ten days of the closing of the Proposed Transaction. A form of such a guarantee is attached as Exhibit 2.

2.6. The County reserves all rights not expressly granted in this Transfer Agreement, including without limitation those specified below.

2.7. The County waives none of its rights with respect to the Franchisee's compliance with the requirements set forth in the Franchise Agreement or the Municipal Settlement Agreements. At no time will the Companies contend, either directly or indirectly, that the County is barred, by reason of the Proposed Transaction, from considering, or raising claims based on, any defaults of Franchisee, any failure by Franchisee to provide reasonable service in light of the community's needs, or any failure by Franchisee to comply with the terms and conditions of the Franchise Agreement, the Municipal Settlement Agreements, or with applicable law. The County's approval of the Proposed Transaction shall in no way be deemed a representation by the County that the Franchisee is in compliance with all of its obligations under the Franchise Agreement or the Municipal Settlement Agreements.

2.8. Neither this Transfer Agreement, nor any other action or omission by the County at or before the execution of this Transfer Agreement, shall be construed to grant the County's consent to any future transfer of the Franchise and/or the System, and/or any future change in ownership and/or control of the Franchise and/or the System, or to mean that the County's consent to any future transaction is not required.

2.9. Any consent given by the County to the Proposed Transaction is made without prejudice to, or waiver of, the County's right to investigate and take into account any lawful considerations during any future franchise renewal or transfer process.

2.10. This Transfer Agreement does not affect and shall not be construed to affect the rights and authority of the County to regulate or authorize, by ordinance, license or otherwise, use of the public rights-of-way for purposes other than for cable service. To the extent that the Companies may seek to provide a service other than cable service over the System, the County reserves the right to require any additional authorizations regarding such services that it may lawfully require. Consent to the Transfer shall not be deemed to be consent to the use of the

public rights-of-way by any of the Companies or any of their Affiliates for any purpose other than the provision of cable service.

2.11. The County reserves all of its rights regarding the charging of a franchise fee or other compensation for the right to provide cable modem service, broadband service, information services, and any other service that that the System has the technical capability of delivering using the rights-of-way within the County. The County's consent to the Transfer shall not relieve the Franchisee of any obligation to pay such compensation, past, present, or future.

2.12. The County reserves all of its rights to regulate cable modem service, broadband service, information services, and any other service that that the System has the technical capability of delivering under applicable law, including, without limitation, the right to adopt rules related to subscriber privacy and customer service.

3. NO EFFECT ON RATES

3.1. The Companies represent and warrant that neither the Proposed Transaction nor this Transfer Agreement will result in any increase in subscriber rates.

4. REPRESENTATIONS AND WARRANTIES

4.1. Each of the Companies hereby represents and warrants that at the time of the execution of this Agreement: (a) it is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; (b) the Franchise Agreement and, assuming due execution hereof by the other parties hereto, this Transfer Agreement constitute legal, valid, and binding obligations of such Company enforceable in accordance with their terms; (c) the execution and delivery of, and performance by such Company under, this Transfer Agreement and the Franchise Agreement, where applicable, are within such Company's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite corporate or limited liability company action on the part of such Company and are not in contravention of such Company's limited liability company operating agreement, charter, bylaws, and/or other organizational documents;

and (d) no representation made to the County by such Company is incomplete, untrue, or inaccurate in any material respect.

4.2. Franchisee represents and warrants that neither the Proposed Transaction nor this Transfer Agreement will adversely affect its ability to meet the requirements of the Franchise Agreement or the Municipal Settlement Agreements.

4.3. The Companies represent and warrant that the Proposed Transaction will not have any adverse financial effect on the System, or adversely affect either the performance of the System or the Franchisee's financial obligations with regard to the System. Franchisee represents and warrants that after the Proposed Transaction, Franchisee's financial qualifications will be such as shall enable it to maintain and operate its system in the County.

4.4. Franchisee represents and warrants that the Proposed Transaction will not in any respect reduce the quality of customer service in the County.

4.5. Franchisee represents and warrants that the Proposed Transaction will not reduce the quality of existing system maintenance or repair.

4.6. Franchisee represents and warrants that it has not and will not grant any other entity any right to use the System or any portion of the System, whether by means of a lease, irrevocable right of use, or any other type of grant or conveyance, without the prior written consent of the County, to the extent such consent would be required under the Franchise Agreement or applicable law.

5. COMMITMENTS BY THE FRANCHISEE

5.1. In accordance with Section 8A-23(i) of the Cable Law and Section 3(a)(8) of the Franchise Agreement, Franchisee, RCN, and Yankee Cable agree to reimburse the County for all reasonable out-of-pocket costs incurred by the County in the course of the consideration of the Transfer Application. The amount of the filing fee submitted with the Transfer Application shall be credited against the total of such costs, and payment of the balance shall be delivered to the County within thirty (30) days of receipt of invoices. Such payments are in addition to any franchise fee, and shall be deemed subject to the exception specified in 47 U.S.C. § 542(g)(2)(D). Failure to make timely payment of these costs and expenses, except to the extent

that they are the subject of legitimate dispute, shall constitute a material violation of this Agreement.

5.2. As partial settlement of the County's claim that the Franchisee's failure to give the County proper notice of the filing of a Petition for Special Relief, FCC Docket No. CSR-8166 (the "Petition") at the Federal Communications Commission violated Section 11(b) of the Franchise Agreement, Franchisee agrees to reimburse the County for the out-of-pocket costs incurred by the County in the course of seeking reconsideration of the Petition, in the amount of ten thousand five hundred dollars (\$10,500.00). This payment shall be made at the same time as the payment required by Section 5.1 hereof. This payment, together with the Internet connection provided pursuant to Section 5.3 hereof, constitute full and complete settlement of any claim known or unknown to the County that the County could assert with respect to Franchisee's failure to give the County proper notice of the Petition. Failure to make timely payment shall be a material breach of this Agreement.

5.3. The Settlement Agreement amended Section 7(b)(3) of the Franchise Agreement to provide, among other things, that the Franchisee would provide the County with up to three T-3 circuits. To address the County's expanded Internet use, the Franchisee voluntarily provided DS-3 circuits in lieu of T-3 circuits, and the parties wish to amend the Franchise Agreement to reflect the actual situation. In addition, as partial settlement of the County's claim against the Franchisee pertaining to the Petition, the Franchisee shall perform the construction and provide the additional equipment necessary to provide the County with a one Gigabit Ethernet port to the Internet, rate limited to 200 Mbps of bandwidth.

5.4. In addition, although not required by the Franchise Agreement or the Settlement Agreement or in settlement of any County claim arising from the Petition, the Franchisee agrees to waive its monthly recurring charges for the level of service described in Section 5.3, to the extent the level of service provided thereunder exceeds the level of service provided pursuant to the Settlement Agreement. This waiver will remain in effect for the duration of the Franchise Agreement. The parties also agree that, to the extent relevant in future discussions between the parties, including without limitation any discussions in the context of renewal of the Franchise Agreement and any capital contributions that may be agreed upon in connection with such renewal, the Franchisee and the County may assign a value to the increased level of service that

has voluntarily been provided by Franchisee pursuant to this Section, based on a range of factors, including, without limitation: the value of the original T-3 connections at the time of the Settlement Agreement; the cost to the Franchisee of providing the level of service described in Section 5.3; the commercial value of such service to the County based on comparable competitive rates; the portion of the value that is attributable to the benefit conferred on the County by the provision of the T-3 connections by the Franchisee pursuant to the Settlement Agreement; and changes in such cost and value that may occur over time. Section 7(b)(3) of the Franchise Agreement, as previously amended by the Settlement Agreement, shall therefore be amended as follows:

(3) The Operator shall without charge provide Internet services, including Internet Protocol ("IP") addresses, to County administrative departments and agencies. Upon the execution of this agreement, the Operator, shall install without charge a one gigabit per second Ethernet port to the Internet, rate limited to 200 Mbps of bandwidth, at the County Offices at 100 Maryland Avenue, Rockville, Maryland, to enable County access to such Internet services (the "Internet Connection"). Internet usage shall be metered, and reports shall be provided to the County at least once a month. 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 a connection to the Internet in excess of 200 Mbps of bandwidth, 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 the Internet Connection without unreasonably degrading the service. To the extent that the County may subscribe to more than

one such Internet Connection 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.

In addition, Section 14(g)(5) of the Franchise Agreement shall be amended as follows:

(5) For failure to make PEG capacity available; failure to provide to the County Internet Connections, domain name service, or border gateway protocol peering; failure to advertise the County's network to the Internet (i.e., failing to use the County's ARIN registered IP addresses); 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. INDEMNIFICATION

6.1. The Companies agree to indemnify and hold the County, its elected and appointed officers, officials, employees, agents, and contractors, harmless against third party claims any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) caused by any representation or warranty made by that Company herein which is determined by the parties or by a court of competent jurisdiction to be untrue or inaccurate in any material respect.

6.2. Franchisee shall indemnify and hold the County, its elected and appointed officers, officials, employees, agents, and contractors, harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) incurred by the County in connection with any action or proceeding commenced by a third party (not one of the parties to this Transfer Agreement) claiming or asserting any liability of the County relating to or arising from the Proposed Transaction or this Transfer Agreement.

7. **ADDITIONAL CONDITIONS**

7.1. In the event the Proposed Transaction does not close within 180 days after the date of the County's consent to the Proposed Transaction, or closes on terms that are in any material respect different from the terms disclosed to the County in writing, then any County consent to the Proposed Transaction shall be void and of no force or effect, and the Proposed Transaction deemed to have been timely denied.

7.2. The Companies hereby waive any and all claims that they may have that any denial of the Transfer Application that results from failure of the conditions in Section 7.1 fails to satisfy the deadlines established by applicable law including, without limitation, claims based on, arising out of, or relating to 47 U.S.C. § 537, as amended, and agree that they shall be deemed to have agreed to an extension of the time to act on the Transfer Application as required to make any such denial effective.

8. **BREACHES**

Any breach of this Transfer Agreement or any exhibit thereto shall be deemed a breach of the Franchise Agreement and shall be subject to all remedies available for a breach of the Franchise Agreement, in addition to any other remedies the parties may have under this Transfer Agreement at law or equity.

9. **MISCELLANEOUS PROVISIONS.**

9.1. **Effective Date:** This Transfer Agreement shall be effective and binding upon the signatories beginning on the date of approval by the County Council.

9.2. **Binding Acceptance:** This Transfer 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. Any purported assignment of this Transfer Agreement is void without the express written consent of the signatories.

9.3. **Voluntary Agreement:** This Transfer Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Transfer Agreement. Neither any of the Companies, nor any of their affiliates, nor the County, will take any action to challenge any provision of this Transfer Agreement; nor will they participate with any other person or entity in any such challenge.

9.4. **Severability:** If any term, condition, or provision of this Transfer Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

9.5. **Counterparts:** This Transfer Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

9.6. **Conforming Amendments to Franchise Agreement:** Yankee Cable and Franchisee agree to accept Franchise Agreement amendments that may be adopted by the County to the extent necessary to conform the Franchise Agreement to the Proposed Transaction or the provisions of this Transfer Agreement.

9.7. **Governing Law:** This Transfer Agreement shall be governed in all respects by the law of the state of Maryland.

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

AGREED TO BY THE PARTIES:

MONTGOMERY COUNTY, MARYLAND

6/15/10
Date

By: _____
By: Isiah Leggett
Isiah Leggett, County Executive

APPROVED AS TO FORM:

Clifford L. Royalty
6/15/10

STARPOWER COMMUNICATIONS, L.L.C.

Date

By: A
Its: CFO

Michael T. Sicoli, Chief Financial Officer

RCN TELECOM SERVICES, LLC

Date

By: [Signature]
Its: CFO

Michael T. Sicoli, Chief Financial Officer

YANKEE CABLE ACQUISITION, L.L.C.

Date

By: _____
Its: _____

Robert P. MacInnis, Authorized Representative

AGREED TO BY THE PARTIES:

MONTGOMERY COUNTY, MARYLAND

6/15/10
Date

By: _____

By: Isiah Leggett

Isiah Leggett, County Executive

APPROVED AS TO FORM:

Clifford L. Loyalty
6/15/10

STARPOWER COMMUNICATIONS, L.L.C.

Date

By: _____

Its: _____

Michael T. Sicoli, Chief Financial Officer

RCN TELECOM SERVICES, LLC

Date

By: _____

Its: _____

Michael T. Sicoli, Chief Financial Officer
YANKEE CABLE ACQUISITION, L.L.C.

6/11/10
Date

By: Robert P. MacInnis

Its: Authorized Representative

Robert P. MacInnis, Authorized Representative

EXHIBIT 1

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 2

GUARANTEE OF PERFORMANCE

WHEREAS, the County has granted the Franchisee a nonexclusive franchise (the "Franchise") for a term of fifteen (15) years pursuant to Montgomery County Code Chapter 8A, as amended (the "Cable Law"), and Article 25A, Section 5(B) of the Annotated Code of Maryland, 1957, as amended; and the franchise agreement between the Franchisee and the County dated August 3, 1999, as amended by a settlement agreement executed by Franchisee on March 19, 2003, and by the County Executive on April 10, 2003 (the "Franchise Agreement");

WHEREAS, RCN Telecom Services, LLC ("Guarantor") is the parent of the Franchisee and will have a substantial interest in the Franchise, in the conduct of the Franchisee, and in the Franchise Agreement, which are incorporated herein by this reference;

NOW, THEREFORE, the Guarantor hereby unconditionally guarantees the due and timely performance of any and all obligations of the Franchisee required by the Franchise Agreement. The financial condition of the Franchisee or any parent or affiliate of the Franchisee shall not limit the ability of the Franchisee to properly and fully comply with the terms of the Franchise Agreement. This Guarantee, unless terminated, substituted or canceled as hereinafter provided, shall remain in full force and effect for the term of the Franchise; provided, however, that upon the County's prior written approval of a substitute guarantor, which approval shall not be unreasonably withheld, this Guarantee may be terminated, substituted or canceled upon written notice from the Guarantor to the County and the Franchisee. Any such substitution of the Guarantor will be implemented in a manner that ensures that the substitute guarantee is in place and effective prior to or contemporaneously with the termination, substitution or cancellation of this Guarantee so that there is no breach in coverage.

Any such notice to be given hereunder shall be addressed to the County at [designated person & address] with a copy to the Franchisee. Such termination shall not affect liability incurred or accrued under this Guarantee prior to the effective date of such termination or cancellation.

By:  _____

Name: Michael T. Sicoli

Title: EVP + CFO

EXHIBIT 2

GUARANTEE OF PERFORMANCE

WHEREAS, the County has granted the Franchisee a nonexclusive franchise (the "Franchise") for a term of fifteen (15) years pursuant to Montgomery County Code Chapter 8A, as amended (the "Cable Law"), and Article 25A, Section 5(B) of the Annotated Code of Maryland, 1957, as amended; and the franchise agreement between the Franchisee and the County dated August 3, 1999, as amended by a settlement agreement executed by Franchisee on March 19, 2003, and by the County Executive on April 10, 2003 (the "Franchise Agreement");

WHEREAS, RCN Telecom Services, LLC ("Guarantor") is the parent of the Franchisee and will have a substantial interest in the Franchise, in the conduct of the Franchisee, and in the Franchise Agreement, which are incorporated herein by this reference;

NOW, THEREFORE, the Guarantor hereby unconditionally guarantees the due and timely performance of any and all obligations of the Franchisee required by the Franchise Agreement. The financial condition of the Franchisee or any parent or affiliate of the Franchisee shall not limit the ability of the Franchisee to properly and fully comply with the terms of the Franchise Agreement. This Guarantee, unless terminated, substituted or canceled as hereinafter provided, shall remain in full force and effect for the term of the Franchise; provided, however, that upon the County's prior written approval of a substitute guarantor, which approval shall not be unreasonably withheld, this Guarantee may be terminated, substituted or canceled upon written notice from the Guarantor to the County and the Franchisee. Any such substitution of the Guarantor will be implemented in a manner that ensures that the substitute guarantee is in place and effective prior to or contemporaneously with the termination, substitution or cancellation of this Guarantee so that there is no breach in coverage.

Any such notice to be given hereunder shall be addressed to the County at [designated person & address] with a copy to the Franchisee. Such termination shall not affect liability incurred or accrued under this Guarantee prior to the effective date of such termination or cancellation.

By:  _____

Name: Michael T. Sicoli

Title: EUP + CFO