

SECONDARY CABLE FRANCHISE AGREEMENT

BETWEEN HOWARD COUNTY, MARYLAND

AND

ELLCOTT CITY CABLE COMPANY, LLC

FOR

WAVERLY WOODS

_____, 2009

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THIS SECONDARY CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between Howard County, Maryland, a charter county, duly organized under the applicable laws of the State of Maryland (the Local Franchising Authority or “LFA”), and Ellicott City Cable Company, LLC, a limited liability company duly organized under the applicable laws of the State of Maryland (the “Franchisee”).

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

WHEREAS, the LFA is a “franchising authority” in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to the Howard County Cable Television Systems Franchise Act, as amended, and Article 25A, Section 5(B) of the Annotated Code of Maryland, as amended;

WHEREAS, Franchisee desires to have a cable Network (the “Network”) for the delivery of Cable Services and Non-Cable Services (as hereinafter defined), and the Network will occupy the Public Rights-of-Way within the LFA, and Franchisee desires to use portions of the Network once installed to provide Cable Services in the Franchise Area;

WHEREAS, Franchisee’s Application for a Cable Communications Franchise was approved by the LFA’s County Council on May 5, 2008, and whereas the County Council approved an extension of the time and the LFA has considered and approved the financial, technical and legal qualifications of Franchisee and has determined that Franchisee’s plans for its Cable System are adequate, in a full public proceeding affording due process to all parties;

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

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

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

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

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act and in the Cable Law, if not in conflict, are incorporated herein and shall apply in this Agreement. The words “shall” and “will” are mandatory, and the word “should” expresses an expectation, but is not mandatory, and the word “may” is permissive. In addition, the following definitions shall apply and shall govern in the event of a conflict with the Cable Law:

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

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

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

1.4 *Cable Administrator*: The person appointed by the LFA’s County Executive and confirmed by the LFA’s County Council to have day-to-day responsibility for administration of cable communication operations within the LFA as governed by the Cable Law and applicable franchise agreements.

1.5 *Cable Law*: The Howard County Cable Television Systems Franchise Act, to the extent authorized under and consistent with federal and state law.

1.6 *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6). If during the course of this Agreement any service is classified to be or not to be a “Cable Service” by a court of competent jurisdiction in a decision that constitutes a binding legal precedent on the LFA, or by the FCC in a decision that is binding on the LFA, then the term “Cable Service” as used in this Agreement shall be interpreted in accordance with such decision.

1.7 *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), meaning Franchisee’s facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area. 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 in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility uses any public right-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 to the extent it is used in the transmission of video programming directly to subscribers; (4) or any facilities of any electric utility used solely for operating its electric utility system. .

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

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

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

1.11 *Educational Access Channel*: An Access Channel available for the use solely of the local public schools in the Franchise Area and other higher level educational institutions in the Franchise Area as specified by the LFA in Exhibit A to this Agreement.

1.12 *Extended Service Area*: The portion of the Franchise Area as outlined in Exhibit B.

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

1.14 *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to control. This includes, but is not limited to, severe or unusual weather conditions, strike, labor disturbance, lockout, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, action or inaction of any government instrumentality or public utility including condemnation, accidents for which Franchisee is not primarily responsible, fire, flood, or other act of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary and the replacement thereof would be commercially impracticable as defined in 47 U.S.C. 545(f).

1.15 *Franchise Area*: The area shown on Exhibit B. If Franchisee fails to comply with the restrictions set forth in section 14.404, then Franchisee shall either take such action as is necessary to come into compliance within 90 days of written notice or the franchise shall be amended to contain the same or similar cable and communications build out requirements as are required of other franchise holders within the county.

1.16 *Franchisee*: Ellicott City Cable Company, LLC, and its lawful and permitted successors, assigns and transferees.

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

1.18 *Gross Revenue*: All revenue which is derived by Franchisee from the operation of the Cable System to provide Cable Service in the Service Area. Gross Revenue on bundled services will be calculated as provided in Section 7.4. Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts, including revenue for: (i) Basic Service, digital service tiers, pay per view services, expanded services and premium services; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Service Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service;

revenues from late or delinquent charge fees; cable franchise fee and FCC regulatory fee pass throughs to Subscribers paid by Subscribers to Franchisee; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) revenues from the sale or lease of access channel(s) or channel capacity; and (iv) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for promotion or exhibition of any products or services on the Cable System, such as "home shopping" or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising derived from the operation of Franchisee's Cable System to provide Cable Service within the Service Area, subject to the exceptions below. The allocation shall be based on the number of Subscribers in the Service Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

Gross Revenue shall not include:

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

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

1.18.3 Refunds, rebates or discounts made to Subscribers or other third parties, such as leased access providers, to the extent such refunds, rebates or discounts represent an actual refund or rebate of or a reduction in the price paid by Subscribers or other third parties;

1.18.4 Any revenues classified as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders;

1.18.5 Any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, except for that portion of such revenue which is paid to Franchisee as a commission or a fee for cablecasting such programming;

1.18.6 The sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable franchise fees from purchaser's customer;

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

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

1.18.9 Subject to Section 7.4, any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise; provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue;

1.18.10 Sales of capital assets or sales of surplus equipment;

1.18.11 Program launch fees and other programmer reimbursements to the extent such fees and reimbursements were actually used to recover the actual costs and expenses incurred by Franchisee in launching or marketing the specific programmer's programming, products, or services;

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

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

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

1.20 *Initial Service Area*: The portion of the Franchise Area as indicated on Exhibit B.

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

1.22 *Local Franchise Authority (LFA)*: Howard County, Maryland or the lawful successor, transferee, or assignee thereof.

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

1.24 *Normal Business Hours*: Monday to Friday 9:00am-5:00pm, including some evening hours at least one night per week and/or some weekend hours.

1.25 *Normal Operating Conditions*: Those service conditions which are within the control of Franchisee. Those conditions which are not within the control of Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are within the

control of Franchisee include, but are not limited to special promotions, pay per view events, rate increases, regular peak or seasonal demand periods, maintenance or rebuild of the Cable System, and delivery of special promotions or pay-per-view events. *See* 47 C.F.R. § 76.309(c)(4)(ii).

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

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

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

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

1.30 *Secondary Franchise*: Pursuant to section 14.404 and other applicable provisions of the Cable Law, A secondary franchise shall authorize the franchisee to serve no more than 1600 subscribers, shall be limited to a single real estate development (which may include multiple parcels of adjacent land which may be developed in stages and which may include public roads and/or private roads), within the county, and shall include no more than five public rights-of-way crossings in the area at the time the franchise application is filed. A separate secondary franchise is required for each real estate development area in which a franchisee wishes to offer franchised cable service. Under no circumstances shall a franchisee, collectively with any affiliates, provide franchised cable service to more than 2800 paid subscribers in the county.

1.31 *Service Area*: All portions of the Franchise Area shown on Exhibit B where Cable Service is being offered, including the Initial Service Area and the Extended Service Area.

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

1.33 *Service Date*: The date on or following the Effective Date that Franchisee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Franchise Area which shall be no later than 60 days after the Effective Date.

1.34 *Significant Outage*: A significant outage of the Cable Service shall mean any Service Interruption that affects at least ten percent (10%) of the Subscribers in the Service Area.

1.35 *Subscriber*: A Person who lawfully receives Cable Service of the Cable System.

1.36 *Telecommunications Facilities*: Franchisee's Telecommunications Services and Information Services facilities and its related FTTP Network facilities.

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

1.38 *Title II*: Title II of the Communications Act, Common Carriers, as amended.

1.39 *Title VI*: Title VI of the Communications Act, Cable Communications, as amended, which governs only the provision of Cable Services by Franchisee.

1.40 Transfer of the Franchise:

1.40.1 Any transaction in which:

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

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

1.40.2 However, notwithstanding Sub-subsection 1.40.1.1 above, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of Franchisee; or any action which is the result of a merger of another Affiliate of Franchisee.

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

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

2.1 *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Cable Law, the LFA hereby grants Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. This franchise grants no authority for Franchisee to use the LFA's Public Rights-of-Way for any other purpose unless otherwise expressly provided herein. However, nothing in this Agreement shall be construed to prohibit Franchisee from offering any service over the Cable System that is not prohibited by federal or state law provided any requirements for LFA authorization or registration not inconsistent with federal and state law are satisfied. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement. The authority granted under this Franchise is pursuant to the LFA's Cable Law. By its acceptance of the terms of this Franchise, except as may be otherwise provided in this Agreement, Franchisee specifically agrees to abide by the lawful requirements of said Cable Law in effect as of the date hereof, which requirements are incorporated herein by reference.

2.2 *LFA's Regulatory Authority*: The parties recognize that part of Franchisee's Network is being constructed and will be operated and maintained as a Telecommunications

Facilities for the provision of Non-Cable Services. The jurisdiction of the LFA over such Telecommunications Facilities is restricted by federal and state law, and the LFA does not assert jurisdiction over Franchisee's Network in contravention of those limitations. Therefore, as provided in Section 621 of the Communications Act, 47 U.S.C. §541, the LFA's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance or operation of Franchisee's Network to the extent the Network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending Franchisee's Telecommunications Facilities for the provision of Non-Cable Services. This Agreement shall not be construed to limit whatever regulatory authority the LFA may have under state and local law with respect to the Network facilities as Telecommunications Facilities.

2.3 *Term:* This Franchise shall become effective on the effective date of Howard County Council Bill No. _____ adopted February ____, 2009 (the "Effective Date") subject to the provisions of Section 14.408(h) of the Cable Law. The parties shall memorialize the Effective Date in writing. The term of this Franchise shall be ten (10) years from the Effective Date unless the Franchise is earlier revoked or terminated as provided herein.

2.4 *Grant Not Exclusive:* The Franchise and the right it grants to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the LFA reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights which are granted shall not by their terms reduce or detract from the authority granted under this Franchise.

2.5 *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law including but not limited to the Communications Act.

2.6 No Waiver:

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

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

2.6.3 Neither this Franchise nor any action by the LFA hereunder shall constitute a waiver of or a bar to the exercise of any police right or power of the LFA, including without limitation, the right of eminent domain. This Agreement shall not limit any authority of the LFA in accordance with Maryland law to condemn, in whole or in part, any property of Franchisee, provided that Franchisee shall receive whatever condemnation award Franchisee

would normally be entitled to recover as a matter of Maryland law. Partial condemnation of Franchisee's property shall not terminate this Agreement except in accordance with the terms of this Agreement.

2.7 Construction of Agreement:

2.7.1 The provisions of this Franchise shall be liberally construed to effectuate their objectives. Except as provided in this Agreement, in the event of a conflict between the existing Cable Law and this Agreement, the Cable Law shall prevail, provided, however, that any amendments to the Cable Law after the Effective Date shall be consistent with state and federal law, and shall not abrogate any contractual rights of Franchisee contained herein or otherwise alter any of Franchisee's material rights, benefits, obligations or duties specified in this Franchise or impose any new obligations or duties.

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

2.7.3 The LFA and Franchisee each acknowledge that they have received legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

2.8 *Police Powers:* Nothing in the Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of the LFA's police powers. However, if the reasonable, necessary and lawful exercise of the LFA's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to the LFA notwithstanding Section 14.408(a) of the Cable Law or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

3. PROVISION OF CABLE SERVICE

3.1 Service Area:

3.1.1 *Initial Service Area:* Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas of the Initial Service Area and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Service Date of this Franchise, and shall offer Cable Service to all residential areas of the Initial Service Area within two (2) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; and (F) in areas,

developments or buildings where Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; (G) in areas where the occupied residential household density does not meet the density and other requirements set forth in Sub-subsection 3.1.1.1. and Section 3.2.; and (H) in areas where the residences and businesses are not yet constructed, in which case Franchisee shall have eighteen (18) months from the date of occupancy permit to provide service to such potential customers if requested.

3.1.1.1 Density Requirement: Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than 30 occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active Network trunk or feeder line. Should, through new construction, an area within the Initial Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsections 3.1.1 and 3.1.2 respectively, Franchisee shall provide Cable Service to such area within one (1) year of receiving notice from the LFA that the density requirements have been met. In connection with the provision of Cable Service to lower density areas within the Service Area under Section 14.411(b)(3) of the Cable Law, Franchisee's one time charge under clause (i) thereof, will include all costs required to extend service, including, but not limited to, total construction, engineering, capital and administrative costs.

3.1.2 Extended Service Area: Within seven (7) years of the Service Date, Franchisee shall offer Cable Service to all residential areas of the Extended Service Area subject to the conditions of Subsection 3.1.1 above and the other terms set forth herein; provided, however, that the Extended Service Area may be modified in whole or in part by Franchisee upon demonstrating to the LFA that it would be economically infeasible to serve an area within the Extended Service Area. The LFA shall not unreasonably refuse, delay or condition any such request for a modification of the Extended Service Area. Furthermore, in areas of the extended service area (as identified on Exhibit B) where the residences and businesses are not constructed as of the Service Date, the Franchisee shall have the greater of seven (7) years from the Service Date or eighteen (18) months from the date of occupancy permit to provide service if requested.

3.1.3. Additional Service Areas: In the event that Franchisee desires to build-out the cable system beyond the franchise area, Franchisee shall notify LFA in writing and provide detailed plans and maps of the desired build-out. LFA and franchisee shall then negotiate in good faith the timeframe and terms of the build-out of such additional areas meeting the requirements of a Secondary Franchise.

3.2 Availability of Cable Service: Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, all residential dwelling units that are within one hundred twenty-five (125) feet of trunk or feeder lines not otherwise already served by Franchisee's Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential

dwelling unit connections that exceed one hundred twenty-five (125) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3 *Cable Service to Public Buildings*: Subject to Section 3.1 and the limitation below, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each fire station, public school, police station, public library, and such buildings or offices therein used for municipal purposes as designated in writing by the LFA from those listed in Exhibit C, and newly acquired or constructed schools and public buildings designated thereafter during the term of this Franchise in writing to Franchisee; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred twenty-five (125) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of one hundred twenty-five (125) feet, or of releasing Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover, from any school or other public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than one hundred twenty-five (125) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. In no event shall Franchisee be required to provide service hereunder to more schools and other public buildings than the number served by the incumbent cable operator in the Service Area.

4. **SYSTEM OPERATION**

4.1 Cable System Tests and Inspections:

4.1.1 Franchisee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise, and to ensure that the Cable System components are operating as required. All tests shall be conducted in accordance with federal rules and any applicable United States National Cable Television Association's Recommended Practices for measurement and testing.

4.1.2 Franchisee shall conduct tests as follows:

4.1.2.1 Proof of performance tests on the Cable System as required by FCC rules (Subparts K and V of Part 76);

4.1.2.2 Special proof of performance tests, as requested by the LFA, of the Cable System or a segment thereof when Subscriber complaints indicate tests are warranted;

4.1.2.3 Franchisee shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the LFA upon the LFA's request. The LFA shall have the same rights the FCC has to inspect Franchisee's performance test data;

4.1.2.4 If any test indicates that any part or component of the Cable System fails to meet applicable requirements, Franchisee, without requirement of additional

notice or request from the LFA, shall take corrective action, retest the locations and advise the LFA of the action taken and results achieved, and supply the LFA with a copy of the results within thirty days from the date corrective action was completed.

4.1.2.5 The LFA's Cable Administrator may, for good cause shown, waive or limit the system test and inspection provisions in this Section; and

4.1.2.6 The requirements of this Article 4 and Article 5 below are in lieu of those contained in Section 4-418 of the Cable Law.

5. **SYSTEM FACILITIES**

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

5.1.1 The System shall be designed with an initial analog and digital carrier passband between 50 MHz and 860 MHz.

5.1.2 The System shall be designed be a fiber optic or metallic plant.

5.1.3 The System shall use a modern design when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the Franchise Term. The FTTP Network shall have no active elements, except at the headend and at the customer premise or multi-dwelling unit utility closet.

5.1.4 Protection against outages due to power failures, so that back-up power is available for at least 24 hours at each headend, and four (4) hours at each multi-dwelling utility closet, outdoor cabinets, and power supply site serving multiple dwellings.

5.1.5 Facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design.

5.1.6 Facilities and equipment sufficient to cure violations of any applicable FCC technical standards and to ensure that the Cable System remains in compliance with the standards specified in Subsection 5.1.17.

5.1.7 Facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such standards may be amended from time to time.

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

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

5.1.10 All facilities and equipment designed, built and operated in such a manner as to protect the safety of the Cable System workers and the public.

5.1.11 Sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable Franchisee to substantially comply with applicable law, including applicable customer service standards and including requirements for responding to system outages.

5.1.12 All facilities and equipment required to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve system problems.

5.1.13 Design capable of interconnecting with other cable systems in the Franchise Area as set forth in Section 5.3 of this Agreement.

5.1.14 Facilities and equipment at the headend shall allow Franchisee to transmit or cablecast signals without material degradation as such term is defined by the FCC. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted over the Cable System shall include the closed-captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning.

5.1.15 Shall transmit in high definition any signal which is received in high definition format except that Franchisee shall also be permitted to down-convert such high-definition signals to analog format for delivery to Subscribers of Franchisee's analog Cable Service.

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

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

- 5.1.17.1 Occupational Safety and Health Administration (OSHA) Safety and Health Standards;
- 5.1.17.2 National Electrical Code;
- 5.1.17.3 National Electrical Safety Code (NESC);
- 5.1.17.4 Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;
- 5.1.17.5 Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and
- 5.1.17.6 The Howard County Building Code.

5.2 *General Description:* The Cable System shall, meet or exceed applicable FCC’s technical standards (Subpart K of Part 76 of the FCC’s Rules) at all times. Should Franchisee change or substantially alter the technical design of the Cable System at any time, Franchisee shall provide the County with detailed design maps and plans detailing the changes to the technical physical design of the System at least ninety (90) days prior to the date of any construction on the System. 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 Franchisee. The LFA shall not unreasonably refuse, delay or condition any such request for a modification of the Cable System.

5.2.1 The FTTP Network fiber outside the headend shall be initially designed utilizing splitters of no greater than thirty-two (32) homes per splitter. The FTTP Network shall be pass-through or passive until reaching the equipment at the Subscriber’s premise or in the multi-dwelling unit utility room.

5.2.2 Status monitoring capability shall be a feature of the electronics at the customer premises in the FTTP Network. The FTTP Network shall deliver fiber to an Optical Network Terminal (“ONT”) or similar device at the Subscriber’s premises or in the multi-dwelling unit utility room. The optical equipment at the headend may have a light to indicate that devices at both ends of the link are active. The System may include other network monitoring technologies that indicate a failure of link from the headend or from a remote monitoring location.

5.3 Interconnection:

5.3.1 Franchisee shall design its Cable System so that it can be interconnected with other cable systems in the Franchise Area at suitable locations as determined by Franchisee. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods as determined by Franchisee in its reasonable discretion, subject to the approval of the LFA, which approval shall not be unreasonably delayed or denied.

5.3.2 Franchisee shall notify the LFA prior to any interconnection of the Cable System.

5.4 Emergency Alert System:

5.4.1 Franchisee shall comply with the Emergency Alert System (“EAS”) requirements of the FCC (47 CFR Part 11) in order that emergency messages may be distributed over the System.

5.4.2 Pursuant to 47 CFR § 11.51(g) Franchisee shall transmit EAS audio messages in the same order specified in paragraph (a) of this section on at least one channel. The Attention signal may be produced from a storage device. Additionally, Franchisee:

- (1) Must install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal for analog cable systems shall comply with the aural signal requirements in §76.605 of this chapter,
- (2) Must provide a video interruption and an audio alert message on all channels. The audio alert message must state which channel is carrying the EAS video and audio message,
- (3) Shall transmit a visual EAS message on at least one channel. The message shall contain the Originator, Event, Location, and the valid time period of the EAS message. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.
- (4) May elect not to interrupt EAS messages from broadcast stations based upon a written agreement with LFA. Further, analog cable systems, digital cable systems, and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement with LFA.
- (5) May comply with requirements by using a means on all programmed channels that automatically tunes the subscriber's set-top box to a pre-designated channel which carries the required audio and video EAS messages.

5.5 Local Television Signals: The parties acknowledge that the carriage of local television signals by Franchisee under Section 14.411(a)(7) of the Cable Law is governed by and subject to federal law, including, without limitation, 47 U.S.C. Sections 325, 534, 544 and 47 C.F.R. Part 76 Subpart D.

6. **PEG SERVICES**

6.1 PEG Support :

6.1.1 In order to ensure greater availability of public, educational and government programming, Franchisee shall provide a capital grant of (\$35,000) to be used for upgrading public, educational and government access. This capital grant is accepted by LFA in lieu of requiring Franchisee to provide PEG programming given the associated costs for

Franchisee, a secondary franchise holder with the following circumstances : 1) the location of Franchisee's headend is too far from designated PEG interconnection points; 2) Other existing cable operators refuse to interconnect with Franchisee in a reasonably cost-effective manner; and 3) the LFA agrees that no other viable alternatives exist.

6.1.2 If a cable operator later agrees to interconnection on reasonable terms and conditions acceptable to Franchisee, the County may direct Franchisee to interconnect and to carry PEG channels pursuant to this Section 6.1.2.

6.1.2.1 PEG Interconnection may be accomplished by direct cable, or other reasonable method of connection as determined by Franchisee in its reasonable discretion, subject to the approval of the LFA, which approval shall not be unreasonably delayed or denied. Franchisee shall negotiate in good faith with the existing cable operator respecting a reasonable, mutually convenient, cost-effective, and technically viable interconnection point, methods, terms and conditions. Franchisee and the existing cable operator shall negotiate the precise terms and conditions of an interconnection agreement. If the interconnection point is outside the Service Area, Franchisee shall have use of the Public Rights-of-Way and or LFA owned land outside the Service Area to install its cable and any public road crossings used for the PEG interconnect shall not count towards the Franchisee's limit as a Secondary Franchisee. Franchisee shall notify the LFA prior to any interconnection of the Cable System.

6.1.2.2. Should PEG interconnection occur, Franchisee shall offer on the Basic Service Tier at least four (4) Access Channels (collectively, "PEG Channels"), which shall be individually designated by the LFA as Public, Educational or Government Access Channels. Each PEG Channel carried as a part of a basic service tier shall be delivered in a format so that every Subscriber can receive and display the PEG signals using the same equipment that is used for other Basic Service Channels. Further, each PEG Channel shall be delivered with transmission quality the same as or better than the transmission quality of any other Channel on Basic Cable Service, subject to the quality of the same received from the other cable operator.

6.1.2.3 The LFA shall notify Franchisee in writing of the programming to be carried on the PEG Channels to be set aside by Franchisee, and Franchisee shall assign the PEG Channels on its channel lineup in its sole discretion. The LFA hereby authorizes Franchisee to transmit such programming within and without the Franchise Area. If a PEG Channel provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose.

6.1.2.4. The LFA shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the LFA from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for

breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel.

6.2 PEG/INET Grant:

6.2.1 Franchisee shall provide a grant to the LFA to be used for public, educational, or governmental access facilities and equipment, including but not limited to the LFA's institutional network ("INET") (the "PEG/INET Grant"). Such grant shall be used solely by the LFA for PEG access and INET equipment and facilities, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities.

6.2.2 The PEG/INET Grant provided by Franchisee hereunder shall be the sum of \$0.10 per month, per subscriber in the Service Area to Franchisee's Basic Service Tier. The PEG/INET Grant payment, along with a brief summary of the Subscriber information upon which it is based, shall be delivered to the LFA within sixty (60) days after the end of each calendar quarter during the Franchise Term. Calculation of the PEG/INET Grant will commence with the first calendar month following the Effective Date. The LFA shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 6.2 and Section 6.3.

6.3 If, in connection with the LFA's renewal or modification of the incumbent cable operator's franchise, such cable operator agrees to provide INET facilities or an INET grant to the LFA, Franchisee shall provide the LFA with a *pro rata* share of the economic value of such facilities or grant on the same per Subscriber per month basis for the remainder of the term of this Franchise pursuant to a mutually agreed to amendment to this Franchise. In no event shall such INET grants by Franchisee exceed \$0.50 per Subscriber per month.

6.4 To the extent permitted by federal law, Franchisee shall be allowed to recover the costs of the PEG/INET Grant from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the forgoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection costs to Subscribers.

6.4.1 Should Franchisee interconnect to another cable operator and provide PEG programming services during the term of this agreement including any modifications made thereof; the grant provided by Franchisee for I-NET services shall increase to the sum of \$0.20 per month, per subscriber in the Service Area to Franchisee's Basic Service Tier.

7. **FRANCHISE FEES**

7.1 *Payment to LFA:* Franchisee shall pay to the LFA a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than thirty (30) days following

the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall receive a credit from the LFA for any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within 90 days following the close of the calendar year for which such payments were applicable.

7.2 *Supporting Information:* Each Franchise fee payment shall be accompanied by a report prepared by a representative of Franchisee showing the basis for the computation which reflects the Gross Revenue received by Franchisee during the quarter in question and the number of Subscribers served by Franchisee in the Service Area. Any audit expense reimbursements under Section 14.412(e) of the Cable Law shall not exceed \$20,000.

7.3 *Limitation on Franchise Fee Actions:* The period of limitation for recovery of any Franchise fee payable hereunder shall be three (3) years from the date on which payment by Franchisee is due.

7.4 *Bundled Services:* If Franchisee bundles Cable Service with Non-Cable Service, Franchisee agrees that it will allocate the discount associated with such bundle consistent with the portion allocated in Franchisee's books and records kept in the regular course of Franchisee's business. If Franchisee bundles Cable Services with Non-Cable Services, Franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading Franchise fee payments under this Franchise. The parties agree that tariffed telecommunication services that cannot be discounted by state or federal law or regulation are to be excluded from the bundled discount allocation basis.

8. CUSTOMER SERVICE

Franchisee shall comply in all material respects with Section 14.414 of the Cable Law subject to the exceptions and modifications contained in this Article 8.

8.1 *Standard Installation:* For purposes of Section 14.414(a)(4) of the Cable Law, a "standard installation" means an installation where the Subscriber is within one hundred twenty five (125) feet of trunk or feeder lines measured from the serving terminal or edge of the property and where an Optical Network Terminal ("ONT") or similar equipment can be installed on or to serve the Subscriber's premises.

8.2 *Business Office:* Franchise shall provide a designated local office in Howard County that provides customer services such as bill payment, equipment pick up or drop off and similar services when Franchisee has attained a minimum of 800 cable Subscribers. Prior to attaining 800 cable Subscribers, Franchisee shall provide a convenient alternative means for bill payment, and Franchisee shall provide for the pick up or drop off of equipment by any one or more of (i) having a Franchisee representative going to the Subscriber's premises, (ii) using a pre-paid mailer, or (iii) establishing a location(s) for the pick up and drop off equipment.

8.3 *Franchisee Contact Information:* Franchisee shall include the name, mailing address, e-mail and phone number of the LFA's Cable Administrator on cable Subscribers' bills no later than December 31, 2008, unless the LFA in writing requests the omission of any of the above information.

8.4 *Franchise Service Manager:* Franchisee shall provide a Franchise Service Manager who shall be the single point of contact for Franchisee on cable services and issues. Contact information shall include the contact's name, address, telephone facsimile numbers and e-mail address.

8.5 Telephone Service:

8.5.1 Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. The ARU or VRU shall contain an option for the customer to speak directly to a customer service representative. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options. For purposes of Sections 14.414(c)(4)(i) and 14.414(c)(4)(ii) of the Cable Law, the answer and transfer times are to be measured from the time that the customer selects an option on the ARU or VRU to speak to a customer service representative.

8.5.2 In lieu of utilizing a VRU, A secondary franchisee holder that employs 2 or fewer customer service representatives may rely on a voicemail messaging system during normal business hours to record incoming service related phone calls if a live representative is not available and a customer service representative returns the call promptly, no later than on the next business day. Should the next business day fall on a Monday or holiday, all effort shall be made to return the call by the close of business on the same day.

8.6 *Outages:* Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage to the maintenance, repair, or construction the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure and, notwithstanding Section 14.414(e) of the Cable Law, Franchisee shall not be required to give the LFA and each affected Subscriber in the Service Area prior notice of anticipated service interruptions except as follows: fifteen (15) days prior notice of any scheduled Significant Outage for service purposes for periods of more than four (4) hours between the hours of 12:00 midnight and 6:00 a.m. and for periods of more than two (2) hours between the hours of 6:00 a.m. and 12:00 midnight. Under Normal Operating Conditions, the Franchisee shall provide a credit upon Subscriber request when all Channels received by the Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Franchisee to verify the problem if requested by the Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

8.7 *Enforcement:* For any purpose of reviewing compliance with customer service standards the next to last sentence of Exhibit E shall apply.

9. **REPORTS AND RECORDS**

9.1 *Open Books and Records:* Subject to applicable law and this Section 9.1, upon reasonable written notice to Franchisee and with no less than thirty (30) business days prior written notice to Franchisee, the LFA shall have the right to inspect and copy Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any

time during Normal Business Hours as are reasonably necessary to ensure compliance with the terms of this Franchise. Such inspections shall be conducted in a manner that will not unreasonably disrupt Franchisee's normal operations. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to deliver copies of information that it reasonably deems to be proprietary or confidential in nature, or disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. The LFA shall only disclose Franchisee's proprietary or confidential information it to employees, representatives, and agents thereof who have a need to know, or in order to enforce the provisions hereof. The LFA shall treat as confidential any books, records and information disclosed hereunder that constitutes proprietary or confidential information under federal or state law, to the extent Franchisee makes the LFA aware of such confidentiality. Franchisee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the LFA believes it must disclose any such confidential information in the course of enforcing this Franchise, or for any other reason, it shall advise Franchisee in advance so that Franchisee can take appropriate steps to protect its interests. If the LFA receives a demand from any Person for disclosure of any information designated by Franchisee as confidential, the LFA shall, so far as consistent with applicable law, advise Franchisee and provide Franchisee with a copy of any written request by the party demanding access to such information within a reasonable time. Unless otherwise ordered by a court or agency of competent jurisdiction, the LFA agrees that, to the extent permitted by state and federal law, it shall deny access to any of Franchisee's information marked confidential as set forth above to any Person. Franchisee shall not be required to provide (a) Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. Section 551 or (b) Customer Proprietary Network Information in violation of Section 222 of the Communications Act, 47 U.S.C. Section 222..

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

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

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

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

9.2.4 Records of installation/reconnection and requests for service extension for a period of three years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

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

9.3 Certain Cable Law Reporting Requirements.

9.3.1 In the summary to be provided in the annual report to the LFA pursuant to Section 14.413(a)(1) of the Cable Law the number of houses passed by the Cable System will be for each of Franchisee's wire centers serving the Franchise Area, not by Service Area, and the miles of cable distribution plant in service will be for the FTTP Network plant.

9.3.2 Section 14.413(a)(3) of the Cable Law may be satisfied by Franchisee providing to the Cable Administrator a general description of the deployment of Cable Service availability in a form reasonably requested by the Cable Administrator.

10. **INSURANCE AND INDEMNIFICATION**

10.1 Insurance:

10.2 Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.2.1.1 General Comprehensive Liability Insurance with respect to the construction, operation and maintenance of the Cable System, including the operation of motor vehicles, and the conduct of Franchisee's Cable Service business in the LFA, in the following minimum amounts.

10.2.1.1.1 For bodily injury, including death, \$500,000 for any one person and \$2,000,000 for any one accident;

10.2.1.1.2 For property damage, \$3,000,000; and

10.2.1.1.3 For damages resulting from any liability of any nature that may arise from or be occasioned by operation of the Cable System, including any communication over the Cable System, excepting programming on PEG Channels, \$2,500,000.

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

10.2.1.3 Workers' Compensation Insurance meeting all legal requirements of the State of Maryland.

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

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

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

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

10.3 Indemnification:

10.3.1 Subject to the provisions below, Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the LFA, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments, whether for damages or otherwise arising out of or alleged to arise out of the installation, construction, operation, or maintenance of the Cable System, including but not limited to any claim against Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other intellectual property right of any Person, firm, or corporation.

10.3.2 This indemnity does not apply to programming carried on any Channel set aside for PEG use, or Channels leased pursuant to 47 U.S.C. § 532, or to operations of the PEG Channels to the extent such operations are carried out by a person other than Franchisee or its agents. Further, Franchisee shall not be required to indemnify the LFA for acts of the LFA which constitute willful misconduct or negligence, on the part of the LFA, its officers, employees, agents, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access, or EAS.

10.3.3 In no event shall Franchisee be responsible for indemnifying the LFA under this Section 10.3 for any act or omission by Franchisee that has been specifically approved by the LFA, or for any act or omission by the LFA or its elected and appointed officers, boards, commissions, commissioners, agents, or employees that results in personal injury or property damage.

10.3.4 The LFA shall give Franchisee written notice of its obligation to indemnify the LFA under this Section 10.3 within thirty (30) days of receipt of a claim, suit, cause of action, or proceeding for which Franchisee is obligated to indemnify the LFA. The LFA shall take action necessary to avoid entry of a default judgment if such action is needed

before the LFA provides Franchisee notice; provided, however, that no such action shall in anyway prejudice or harm Franchisee.

10.3.5 With respect to Franchisee's indemnity obligations set forth in this Section 10.3, Franchisee shall provide the defense of any claims, suits, causes of action, or proceedings brought against the LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the LFA, Franchisee shall have the right to defend, settle or compromise any claim, suit, cause of action, or proceeding arising hereunder, so long as the settlement includes a full release of the LFA, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the LFA does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the LFA shall in no event exceed the amount of such settlement. In the event that Franchisee fails, after notice pursuant to Subsection 10.3.4, to undertake the LFA's defense of any claims encompassed within this Section 10.3, Franchisee's indemnification shall include, but is not limited to, the LFA's reasonable attorneys' fees, including fees for outside counsel hired to defend the LFA, incurred in defending against any such claim, suit, cause of action, or proceeding, any interest charges arising from any claim, suit, cause of action, or proceeding arising under this Agreement or the Cable Law, the LFA's out-of-pocket expenses, and the reasonable value of any services rendered by the Howard County Solicitor, or the LFA's staff or its employees.

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

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

11. **TRANSFER OF FRANCHISE**

11.1 Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Franchisee in the Franchise or Cable System in order to secure

indebtedness, or otherwise excluded under Section 1.40.2 above. Such transfers shall not be considered a transfers subject to LFA approval under Section 14.421(a) of the Cable Law.

11.2 To the extent that LFA's consent to a Transfer of Franchise is required, Franchisee (or transferee) shall reimburse LFA for reasonable expenses incurred in reviewing that the transferee has the technical, legal, financial and operational ability to operate the Cable System to provide Cable Service. In no case shall Franchisee reimburse LFA for expenses exceeding \$15,000. This Section 11.2 supplements Section 14.421(e) of the Cable Law.

12. **RENEWAL OF FRANCHISE**

The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 14.420 of the Cable Law and Section 626 of the Communications Act, 47 U.S.C. § 546.

13. **ENFORCEMENT, REVOCATION AND TERMINATION OF FRANCHISE**

13.1 *Violations:* Violations of this Franchise shall be governed by Section 14.419 of the Cable Law. In the event that the LFA believes that Franchisee has not complied with the terms of this Franchise, the LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, the LFA shall notify Franchisee in writing of the exact nature of the alleged noncompliance. Franchisee shall have thirty (30) days from receipt of such written notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such default; or (iii) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the LFA of the steps being taken and the projected date that they will be completed, provided, however, that if such alleged noncompliance creates a safety hazard placing members of the public in imminent danger, Franchisee shall commence cure promptly after notice. In the event that Franchisee fails to respond to the written notice, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to clause (iii) above, the LFA may pursue available remedies, including the assessment of liquidated damages against Franchisee as described in Section 13.5.

13.2 *Revocation:* Should the LFA seek to revoke the Franchise after following the procedures set forth in Section 13.1 above, it shall follow the procedures set forth in Section 14.422 of the Cable Law, including the initiation and conduct of an administrative proceeding under Subsection (b) thereof. Franchisee shall have ninety (90) days from the issuance of the presiding officer's decision under Section 14.422(b) of the Cable Law in which to respond in writing and to state its reasons for such objection. The LFA shall cause to be served upon Franchisee, at least thirty (30) days prior to a public hearing pursuant to Section 14.422(c) of the Cable Law a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.2.1 In addition, at the designated Section 14.422(c) hearing, Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence. A complete verbatim record or a transcript shall be made of such hearing.

13.2.2 Following the Section 14.422(c) public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the LFA shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Franchisee. The LFA shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Franchisee to effect any cure. If the LFA determines that the Franchise shall be revoked, the LFA shall promptly provide Franchisee with a written decision setting forth its reasoning. To the extent permitted by law, Franchisee may challenge or appeal such determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA de novo if permitted by law. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the franchising authority.

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

13.3 Performance Bond.

13.3.1 . The Grantee shall establish a performance bond or irrevocable letter of credit in the amount of \$12,500 dollars (Exhibit D), to ensure its performance under this Agreement. If the Franchisee undertakes substantial new construction during the term of this Agreement, included but not limited to building out the Cable System to the Extended Service Area or any additional service areas added in the future, the County may require an increase in this amount.

13.3.2 In the event that a Performance Bond or irrevocable letter of credit provided pursuant to this Agreement is not renewed or is cancelled, Franchisee shall provide new security pursuant to this Article within 30 days of such cancellation or failure to renew.

13.3.3 Neither cancellation, nor termination nor refusal by a surety to extend the Performance Bond or irrevocable letter of credit, nor inability of Franchisee to file a replacement Performance Bond or replacement security for its obligations, shall constitute a loss to the LFA recoverable under the Performance Bond or irrevocable letter of credit.

13.4 *Security Fund*: Franchisee's security fund under Section 14.410 of the Cable Law shall be in the amount of Five Thousand Dollars (\$5,000) and may be in the form of cash or a irrevocable letter of credit in form and substance reasonably satisfactory to the LFA, as determined in the sole discretion of Franchisee (the "Security Fund"). The LFA may not draw on the Security Fund until thirty (30) days have passed after the LFA has provided Franchisee with written notice of its intent to make such withdrawal and the amount and the reasons therefor. In the event that the Security Fund is in the form of cash, amounts withdrawn from the Security Fund pursuant to this Section shall be replenished by Franchisee by delivering to the LFA or its designee for deposit in the Security Fund a cash amount equal to the amount so withdrawn within thirty (30) days of its receipt of notice from the LFA of the date and amount of such withdrawal. In the event the Security Deposit is in the form of a irrevocable letter of credit,

Franchisee shall replenish the Security Fund by establishing a new irrevocable letter of credit within thirty (30) days of its receipt of notice from the LFA of the date and amount of such withdrawal. Within thirty (30) days of receipt of the new irrevocable letter of credit, the LFA shall return the previously issued irrevocable letter of credit to Franchisee.

13.5 *Liquidated Damages:* If Franchisee fails to observe any obligation under this Franchise, the LFA may assess Franchisee, and Franchisee agrees to pay to the LFA, a monetary amount in accordance with the Liquidated Damages set forth in Exhibit E attached hereto. Upon the LFA's assessing a sanction pursuant to Section 13.1 above, written notice of such assessment shall be sent to Franchisee with a concise statement of the reasons therefor. Upon failure of Franchisee to make timely payment of an assessed penalty, the LFA may withdraw the amount of such penalty from the Security Fund.

13.6 *Termination by Franchisee:* Notwithstanding Section 14.408(a) of the Cable Law, Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of three (3) years from the Service Date of this Franchise, if at the end of such three (3) year period Franchisee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System and it also terminates its other cable franchise agreements in the State of Maryland. Franchisee may consider Subscriber penetration levels outside the Franchise Area in this determination. Notice to terminate under this Section 13.6 shall be given to the LFA in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. Franchisee shall also be required to give its then current Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

14. **MISCELLANEOUS PROVISIONS**

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

14.2 *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

14.3 *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the LFA. If, subsequent to the Effective Date, there is a change in federal law or state law that eliminates the authority of local governments to require and grant cable television franchises for the provision of Cable Service, then to the extent permitted by law this Franchise shall survive such legislation and remain in effect for the term of this Franchise.

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

14.4.1 Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers.

14.5 *Notices*: Unless otherwise expressly stated herein or otherwise required by law, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

14.5.1 Notices to Franchisee shall be mailed to:

Bruce T. Taylor, Managing Member
Ellicott City Cable Company, LLC.
4100 College Avenue, P.O. Box 396
Ellicott City, MD 21041-0396
btaylor@taylorservice.com
Phone: 410-465-3674
Fax: 410-461-7074

with a copy to:

Ronald L. Spahn, Esquire
5401 Twin Knolls Road, Suite 7
Columbia, MD 21045
rlspahn@netscape.net
Phone: 410-992-9700
Fax: 410-964-9018

14.5.2 Notices to the LFA shall be mailed to:

Cable Administrator
Department of Technology and Communication
3450 Court House Drive
Ligon Building
Ellicott City, MD 21043

with a copy to:

Howard County Office of Law
3430 Court House Drive
Howard Building
Ellicott City, MD 21043

Franchisee shall not be required to include the LFA's name, address or telephone number on Subscriber bills.

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

14.7 *Amendments:* Amendments and modifications of this Franchise shall be mutually agreed to in writing by the parties.

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

14.9 *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.10 *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.11 *Network Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the LFA or any third party. Franchisee shall not be required to remove the Network or to relocate the Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

14.12 *Rate Regulation:* The rates and charges for Franchisee's Cable Service shall comply with any applicable provisions of 47 U.S.C. § 543. The parties acknowledge and agree that the rates and charges imposed by Franchisee for Cable Services will not be subject to the approval of or regulation by the LFA since Franchisee will be subject to effective competition as provided in 47 U.S.C. § 543. Therefore, the LFA will not regulate Franchisee's rates at this time under Section 14.426 of the Cable Law, but it reserves any right to regulate Franchisee's rates it may have in the future.

14.13 *Acceptance Fee.* Any franchise acceptance fee imposed by the LFA pursuant to Section 14.408(h) of the Cable Law shall be mutually agreed to by the LFA and Franchisee in advance of the imposition thereof.

SIGNATURE PAGE FOLLOWS

AGREED TO THIS ____ DAY OF _____, 2008.

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie R. Robbins
Chief Administrative Officer

Ken Ulman
County Executive

APPROVED FOR SUFFICIENCY OF FUNDS: APPROVED & REVIEWED:

Sharon Greisz
Director of Finance

Lori L. Sherwood
Cable Administrator

APPROVED FOR LEGAL SUFFICIENCY
this ____ day of _____, 2008.

Margaret Ann Nolan
County Solicitor

ELLCOTT CITY CABLE COMPANY, LLC.

By: _____
Bruce T. Taylor
Managing Member

EXHIBITS

Exhibit A: Other Higher Level Educational Institutions

Exhibit B: Franchise Service Area

Exhibit C: Municipal Buildings to be Provided Free Cable Service

Exhibit D: Performance Bond

Exhibit E: Liquidated Damages

EXHIBIT A

OTHER HIGHER LEVEL EDUCATIONAL INSTITUTIONS

The higher level educational institution listed below is authorized to use Educational Access Channels.

Howard Community College

EXHIBIT B

See Attached Map

EXHIBIT C

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

(NONE)

In the event that any buildings as described at section 3.3 above are located within the Secondary Franchise Service Area in the future, they shall be included in this listing and Franchisee shall have 120 days from the date of inclusion of such building to provide the service as required.

EXHIBIT D

Franchise Bond

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS: That (name & address) (hereinafter called the Principal), and (name and address) (hereinafter called the Surety), a corporation duly organized under the laws of the State of (state), are held and firmly bound unto (name & address) (hereinafter called the Obligee), in the full and just sum of Twelve Thousand Five Hundred Dollars (\$12,500), the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal and Obligee have entered into a Franchise Agreement dated _____ which is hereby referred to and made a part hereof.

WHEREAS, said Principal is required to perform certain obligations under said Agreement.

WHEREAS, the Obligee has agreed to accept this bond as security against default by Principal of performance of its obligations under said Agreement during the time period this bond is in effect.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall perform its obligations under said Agreement, then this obligation shall be void, otherwise to remain in full force and effect, unless otherwise terminated, cancelled or expired as hereinafter provided.

PROVIDED HOWEVER, that this bond is executed subject to the following express provisions and conditions:

1. In the event of default by the Principal, Obligee shall deliver to Surety a written statement of the details of such default within 30 days after the Obligee shall learn of the same, such notice to be delivered by certified mail to address of said Surety as stated herein.
2. This Bond shall be effective _____, 20____, and shall remain in full force and effect thereafter for a period of one year and will automatically extend for additional one year periods from the expiry date hereof, or any future expiration date, unless the Surety provides to the Obligee not less than sixty (60) days advance written notice of its intent not to renew this Bond or unless the Bond is earlier canceled pursuant to the following. This Bond may be canceled at any time upon sixty (60) days advance written notice from the Surety to the Obligee.

3. Neither cancellation, termination nor refusal by Surety to extend this bond, nor inability of Principal to file a replacement bond or replacement security for its obligations under said Agreement, shall constitute a loss to the Obligee recoverable under this bond.
4. No claim, action, suit or proceeding shall be instituted against this bond unless same be brought or instituted and process served within one year after termination or cancellation of this bond.
5. No right of action shall accrue on this bond for the use of any person, corporation or entity other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.
6. The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond remains in force or the amount or number of claims brought against this bond.
7. This bond is and shall be construed to be strictly one of suretyship only. If any conflict or inconsistency exists between the Surety's obligations as described in this bond and as may be described in any underlying agreement, permit, document or contract to which this bond is related, then the terms of this bond shall supersede and prevail in all respects.

This bond shall not bind the Surety unless it is accepted by the Obligee by signing below.

IN WITNESS WHEREOF, the above bounded Principal and Surety have hereunto signed and sealed this bond effective this ____ day of _____, 200_.

Principal

Surety

By: _____

By: _____

, Attorney-in-Fact

Accepted by Obligee: _____

(Signature & date above - Print Name, Title below)

EXHIBIT E

LIQUIDATED DAMAGES

Pursuant to Section 13.5, the following liquidated damages shall apply:

Failure to file reports or supply information
under the Cable Law, FCC Regulation,
Federal Law or the Franchise.....\$100/day from time due until cured

Other material violations, except for
customer service standards defined in
the Cable Law and the Franchise\$100/day for each such occurrence

The amount of all liquidated damages per annum shall not exceed \$5,000 in the aggregate.

All similar violations or failures from the same factual events affecting multiple subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any one of the above-referenced categories. Violations or failures shall not be deemed to have occurred or commenced until they are not cured as provided in Section 13.1.