

**CITY OF BALTIMORE
COUNCIL BILL 07-0825
(First Reader)**

Introduced by: The Council President

At the request of: The Administration (Mayor's Office of Cable and Communications)

Introduced and read first time: October 1, 2007

Assigned to: Judiciary and Legislative Investigations Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Planning Commission, Department of Housing and Community Development, Department of Public Works, Fire Department, Department of Transportation, Mayor's Office of Cable and Communications, Board of Estimates

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Franchise – Cavalier IP TV, LLC**

3 FOR the purpose of granting a franchise to Cavalier IP TV, LLC, to construct, operate, and
4 maintain a cable communications system in and across certain streets and public ways,
5 subject to certain terms, conditions, and reservations; and providing for a special effective
6 date.

7 By authority of

8 Article VIII - Franchises
9 Baltimore City Charter
10 (1996 Edition)

11 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE**, That a
12 franchise or right is granted to Cavalier IP TV, LLC (the "Grantee") to construct, operate, and
13 maintain a cable communications system, subject to the terms and conditions of this Ordinance
14 and the Franchise Agreement between the Mayor and City Council of Baltimore and the Grantee,
15 in substantially the form attached to this Ordinance, as approved by the Board of Estimates on
16 _____, 200_ (the "Franchise Agreement").

17 **SECTION 2. AND BE IT FURTHER ORDAINED**, That Grantee shall provide a modern and
18 uniform cable communications system to the residents and institutions within the service area
19 delineated in the Franchise Agreement (the "Service Area") and, to that end, may construct,
20 operate, and maintain this cable communications system, as specified in the Franchise
21 Agreement, in and across the streets and public ways in the Service Area.

22 **SECTION 3. AND BE IT FURTHER ORDAINED**, That for the franchise or right granted by this
23 Ordinance (the "Franchise") to become effective, the Grantee must notify the Board of
24 Estimates, within 30 days of the effective date of this Ordinance, that the Grantee accepts the
25 Franchise. The Grantee's failure to so notify the Board of Estimates constitutes a refusal to
26 accept the Franchise, and, in that event, this Ordinance and the Franchise granted by it will be
27 abrogated and of no further effect.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

Council Bill 07-0825

1 **SECTION 4. AND BE IT FURTHER ORDAINED,** That also for the Franchise to become
2 effective, the Franchise must be executed and enjoyed by the Grantee within 6 months after the
3 effective date of this Ordinance.

4 **SECTION 5. AND BE IT FURTHER ORDAINED,** That the term of the Franchise is 12 years,
5 commencing on the effective date of this Ordinance, subject to renewal terms and to earlier
6 termination as provided in the Franchise Agreement.

7 **SECTION 6. AND BE IT FURTHER ORDAINED,** That this ordinance does not affect or modify
8 the mutual rights, duties, and obligations under Baltimore City Ordinance No. 41, approved May
9 9, 1889, of: (1) the Mayor and City Council of Baltimore; and (2) the Chesapeake and Potomac
10 Telephone Company of Baltimore City and the Chesapeake and Potomac Telephone Company.

11 **SECTION 7. AND BE IT FURTHER ORDAINED,** That the Mayor and City Council of Baltimore
12 expressly reserves the right at all times to exercise, in the interest of the public, full municipal
13 superintendence, regulation, and control over and in respect to all matters connected with the
14 Franchise and not inconsistent with the terms of this Ordinance.

15 **SECTION 8. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it
16 is enacted.

Council Bill 07-0825

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**BALTIMORE CITY CABLE TELEVISION
FRANCHISE AGREEMENT**

**BY AND BETWEEN
THE MAYOR AND CITY COUNCIL OF BALTIMORE
AND
CAVALIER IP TV, LLC**

Council Bill 07-0825

1 **TABLE OF CONTENTS**

2 **INTRODUCTORY CLAUSES**

3 **SECTION 1. DEFINED TERMS.**

4 **SECTION 2. GRANT OF AUTHORITY; TERM.**

- 5 2.1 Grant of Franchise.
- 6 2.2 Term of Franchise
- 7 2.3 Renewal
- 8 2.4 Reservation of Authority

9 **SECTION 3. CONSTRUCTION STANDARDS.**

- 10 3.1 General Requirement
- 11 3.2 Standards and Specifications
- 12 3.3 Licenses and Permits
- 13 3.4 Right of Inspection
- 14 3.5 Report on Permits
- 15 3.6 New Grades or Lines
- 16 3.7 Movement of Cables, Wires, and Other Equipment
- 17 3.8 Emergency Removal
- 18 3.9 Notices of Construction
- 19 3.10 Protection of Public Property and Landmarks
- 20 3.11 Pavement Cut Coordination
- 21 3.12 Safety Precautions
- 22 3.13 No Interference with Facilities or Equipment
- 23 3.14 Trimming of Trees and Vegetation
- 24 3.15 Aerial and Underground Construction
- 25 3.16 Open Conductors and Sheathing
- 26 3.17 Poles and Facilities
- 27 3.18 Map Accuracy
- 28 3.19 Storage of Slack Coil
- 29 3.20 Membership Required

30 **SECTION 4. SERVICE OBLIGATIONS.**

- 31 4.1 Service to All Persons
- 32 4.2 Requests for Service
- 33 4.3 Prohibition Against Reselling Service
- 34 4.4 Disconnection for Cause
- 35 4.5 Residential Subscribers Served under Bulk Agreements
- 36 4.6 Continuity of Service
- 37 4.7 Ownership of Installed Wiring

38 **SECTION 5. CABLE SYSTEM FACILITIES, EQUIPMENT, AND SERVICES.**

- 39 5.1 Cable System Design and Capacity; Technical Performance
- 40 5.2 Signal Quality and Security
- 41 5.3 Leased Services
- 42 5.4 Interactive Services/Two-Way Cable Modem Service
- 43 5.5 Audio Services
- 44 5.6 Digital Television Programming
- 45 5.7 Signals/Channels
- 46 5.8 Parity with Neighboring Jurisdictions

Council Bill 07-0825

- 1 5.9 Testing
- 2 5.10 Headend/Hubs Design and Intrasystem Interconnection
- 3 5.11 System Bandwidth and Capacity
- 4 5.12 Emergency Override

5 **SECTION 6. PUBLIC SERVICES.**

- 6 6.1 Provision of Peg Channels
- 7 6.2 Number of Peg Channels
- 8 6.3 Allocation and Use of Peg Channels
- 9 6.4 Signal Input Points
- 10 6.5 Capital Support for Equipment and Facilities for Peg Channels
- 11 6.6 Publicity
- 12 6.7 Leased Access
- 13 6.8 Cost Borne by Franchisee

14 **SECTION 7. EMPLOYMENT AND PURCHASING.**

- 15 7.1 Equal Employment Opportunity
- 16 7.2 Hiring
- 17 7.3 MBE/WBE
- 18 7.4 Prequalification
- 19 7.5 Compliance

20 **SECTION 8. FEES AND CHARGES.**

- 21 8.1 General Requirement
- 22 8.2 Notice of Change
- 23 8.3 No Discrimination
- 24 8.4 Service to Disabled Subscribers
- 25 8.5 Subsequent Changes

26 **SECTION 9. CUSTOMER SERVICE STANDARDS, CUSTOMER BILLS, AND PRIVACY** 27 **PROTECTION.**

- 28 9.1 Consumer Protection Standards
- 29 9.2 Customer Bills
- 30 9.3 Privacy Protection
- 31 9.4 Service Centers; Bill Payment Locations; Administrative Office
- 32 9.5 Service Interruptions
- 33 9.6 Service Complaints
- 34 9.7 Information to Subscribers
- 35 9.8 No Interference with Customer Equipment

36 **SECTION 10. FRANCHISE FEES.**

- 37 10.1 Franchise Fees; Payment Due
- 38 10.2 Quarterly Report
- 39 10.3 Acceptance by City
- 40 10.4 Itemization
- 41 10.5 Ordinary Business Expense
- 42 10.6 Payments to Be Made to the City
- 43 10.7 Franchise Fee and Other Audits
- 44 10.8 Not Franchise Fees
- 45 10.9 Method of Payment
- 46 10.10 Interest on Late Payments

Council Bill 07-0825

1 SECTION 11. OVERSIGHT AND REGULATION BY CITY.

- 2 11.1 Oversight
- 3 11.2 City Reservation of Authority
- 4 11.3 Franchisee's Participation in Meetings and Hearings
- 5 11.4 Performance Evaluation Sessions
- 6 11.5 General Provisions Regarding Reports and Records
- 7 11.6 Franchisee Report
- 8 11.7 Related Services Report
- 9 11.8 Significant Construction Progress
- 10 11.9 Technical Performance Documents
- 11 11.10 Additional Filings
- 12 11.11 Books and Records
- 13 11.12 Inspection of Cable System
- 14 11.13 Files for Public Inspection
- 15 11.14 Transfer of Interest
- 16 11.15 Transfer of Control or Stock
- 17 11.16 Petition
- 18 11.17 Transfer Review Period
- 19 11.18 Notice to Franchisee That Information Is Complete; Extensions
- 20 11.19 City Decision
- 21 11.20 Scope of Inquiry
- 22 11.21 Conditions
- 23 11.22 Franchisee Liability
- 24 11.23 Permitted Encumbrances
- 25 11.24 Effect of Unauthorized Sale or Transfer
- 26 11.25 No Waiver

27 SECTION 12. INSURANCE AND INDEMNITY.

- 28 12.1 Liability
- 29 12.2 Indemnification
- 30 12.3 Insurance

31 SECTION 13. ENFORCEMENT, REMEDIES, AND TERMINATION.

- 32 13.1 Rights and Remedies Not Exclusive
- 33 13.2 Security Fund
- 34 13.3 Liquidated Damages
- 35 13.4 Remedies for Breach
- 36 13.5 Obligations upon Termination
- 37 13.6 City's Right to Order Removal or to Acquire or Effect a Transfer of the System
- 38 13.7 Franchisee's Obligations
- 39 13.8 Other Provisions
- 40 13.9 Termination
- 41 13.10 Performance Bond

42 SECTION 14. MISCELLANEOUS PROVISIONS.

- 43 14.1 Delays and Failures Beyond Control of Franchisee
- 44 14.2 Notice
- 45 14.3 Public Notice
- 46 14.4 Appendices
- 47 14.5 Entire Agreement
- 48 14.6 Modification
- 49 14.7 Severability
- 50 14.8 Preemption

Council Bill 07-0825

- 1 14.9 Governing Law
- 2 14.10 Priority of Maryland Laws
- 3 14.11 Action Taken by City
- 4 14.12 Venue
- 5 14.13 Additional Representations and Warranties
- 6 14.14 Survival of Representations and Warranties
- 7 14.15 No Waiver; Cumulative Remedies
- 8 14.16 Cooperation
- 9 14.17 No Opposition
- 10 14.18 Binding Effect
- 11 14.19 No Recourse Against the City
- 12 14.20 Interpretation
- 13 14.21 Headings and Interpretation
- 14 14.22 Terms
- 15 14.23 Days and Time; Computation of Time
- 16 14.24 No Agency
- 17 14.25 Delegation of City Rights
- 18 14.26 No Third Party Beneficiaries
- 19 14.27 Time of the Essence

20 **APPENDIX A. SYSTEM CHARACTERISTICS APPENDIX B. PEG SIGNAL INPUT POINTS**

21 **APPENDIX C. RATE CARD**

22 **APPENDIX D. FORM OF LETTER OF CREDIT**

23 **APPENDIX E. OWNERSHIP INTERESTS**

Council Bill 07-0825

**BALTIMORE CITY CABLE TELEVISION
FRANCHISE AGREEMENT**

1 THIS FRANCHISE AGREEMENT is made and entered into this _____ day of _____, 200_,
2 by and between THE MAYOR AND THE CITY COUNCIL OF BALTIMORE, a municipal corporation
3 of the State of Maryland (“City”), and CAVALIER IP TV, LLC, a Delaware limited liability company with
4 its principal place of business at 2134 West Laburnum Avenue, Richmond, Virginia 23227
5 (“Franchisee”):
6
7

8 WITNESSETH:

9 WHEREAS, the City, pursuant to Article II, Sec. 35A and Article VIII of the City Charter (as defined
10 in Section 1), is authorized to grant and renew non-exclusive, revocable franchises for Cable Services (as
11 defined in Section 1) within the City; and

12 WHEREAS, pursuant to the federal Cable Act (as defined in Section 1), the Congress established
13 certain procedures and standards for cable franchising in order to, among other purposes, encourage the
14 growth and development of cable systems, assure that cable systems are responsive to the needs and
15 interests of the local community, assure that cable operators provide and are encouraged to provide the
16 widest possible diversity of information services and other services to the public and assure that access to
17 Cable Services is not denied to any Person (as defined in Section 1); and

18 WHEREAS, Franchisee has requested that the City grant a non-exclusive franchise on terms to be
19 agreed by the City and the Franchisee; and

20 WHEREAS, in response to the request submitted by the Franchisee, the City, pursuant to the terms of
21 the Cable Act, performed a technical review of the system and identified the future cable-related
22 community needs and interests;; and

23 WHEREAS, the Franchisee offered to provide certain services (as defined in Section 1) and the
24 Franchisee and the City subsequently engaged in arm’s-length negotiations regarding the terms and
25 conditions of a proposed franchise; and

26 WHEREAS, the construction, installation, maintenance of a Cable System (as defined in Section 1)
27 involves the occupation of, and placement of private commercial facilities in, the Public Ways (as defined
28 in Section 1) within the City; and

29 WHEREAS, pursuant to Article VIII, Section 2 of the City Charter, a final franchise shall be granted
30 by an ordinance of the Council (as defined in Section 1) for the compensation and on the terms approved
31 by the vote or resolution of the Board (as defined in Section 1); and

32 WHEREAS, the Board held a public hearing on the proposed franchise agreement memorializing the
33 compensation, terms and conditions of the proposed franchise; and

34 WHEREAS, said hearing was a full public proceeding affording due process at which the Board
35 reviewed the Franchisee’s character and its financial, legal and technical ability to carry out its
36 obligations pursuant to this Agreement (as defined in Section 1), and reviewed the Franchisee’s plan for
37 operating, maintaining, upgrading, and enhancing the System (as defined in Section 1); and

38 WHEREAS, the City has relied on the Franchisee’s representations and has considered the
39 information that the Franchisee has presented to it; and

40 WHEREAS, the City has determined that, subject to the terms and conditions set forth in this
41 Agreement, the grant of a non-exclusive franchise to the Franchisee is consistent with the federal Cable
42 Act, the City Charter, all other applicable laws and regulations, and the public interest; and

Council Bill 07-0825

1 WHEREAS, the Board approved the compensation, terms and conditions of the proposed franchise,
2 as set forth in this Agreement; and

3 WHEREAS, the Council adopted an Ordinance authorizing the Mayor to execute this Agreement and
4 granting the Franchisee a non-exclusive franchise on the terms and conditions set forth in this Agreement;
5 and

6 WHEREAS, the City intends to exercise the full scope of its powers, including its police power and
7 contracting authority, to: promote the public interest; protect the public health, safety and welfare of its
8 residents; assure the widespread availability of cable television services; maximize the diversity of
9 programming over the System (as defined in Section 1) and access to the System by Persons other than
10 the Franchisee; promote access to advanced services and technologies for City residents and institutions;
11 develop programming and services by the City and its institutions for delivery to the public over the
12 System; and experiment with and implement uses for Cable Systems (as defined in Section 1) in
13 connection with the City's operations; and

14 WHEREAS, the City and Franchisee have reached agreement on the terms and conditions set forth in
15 this Agreement through arm's-length negotiations, and voluntarily agree to be bound by those terms and
16 conditions;

17 NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby
18 incorporated in and made a part of this Agreement by this reference, the mutual promises, covenants and
19 agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of
20 which is hereby acknowledged, the parties hereby covenant and agree as follows:

21 SECTION 1 22 DEFINED TERMS

23 For purposes of this Agreement, the following terms, phrases, words and their derivations shall have the
24 meanings set forth in this Section, unless the context clearly indicates that another meaning is intended.
25 When not inconsistent with the context, words used in the present tense include the future tense, words
26 used in the plural number include the singular number, and words used in the singular number include the
27 plural number. All capitalized terms used in the definition of any other term shall have their meaning as
28 otherwise defined in this Section 1.

29 "Abandonment" means the cessation, by act or failure to act of the Franchisee or any Affiliated Person, of
30 the provision of all, or substantially all, of the Services then being provided over the System to
31 Subscribers or the City for seven (7) or more consecutive days, except if due to an event beyond the
32 control of the Franchisee as set forth in Section 14.1 of this Agreement.

33 "Affiliated Person" means each Person who falls into one (1) or more of the following categories:

- 34 (i) each Person having, directly or indirectly, a Controlling Interest in the Franchisee;
35 (ii) each Person in which the Franchisee has, directly or indirectly, a Controlling Interest;
36 (iii) each officer, director, general partner, limited partner holding an interest of five percent
37 (5%) or more, joint venturer, or joint venture partner of the Franchisee; and
38 (iv) each Person, directly or indirectly, controlling, controlled by or under common Control with
39 the Franchisee;

40 provided that Affiliated Person shall in no event mean the City, any PEG Entity, or any creditor of the
41 Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person by
42 reason of falling within clause (iii) of this definition or by reason of owning a Controlling Interest in;
43 being owned by; or being under common ownership, common management or common Control with; the
44 Franchisee.

Council Bill 07-0825

1 “Agreement” or “Franchise Agreement” means this Agreement, together with the Appendices attached to
2 this Agreement, and any amendments or modifications.

3 “Applicable Law” means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders,
4 rules, and regulations, including but not limited to all FCC resolutions, orders, rules, and regulations, and
5 the Baltimore City Charter; and the administrative and judicial decisions interpreting these sources of law,
6 but in all uses Applicable Law shall be limited by Section 11.2 of this Agreement.

7 “Board” means the Board of Estimates of Baltimore City, its designee, or any successor to its powers and
8 responsibilities.

9 “Business Day” means any day that is not a Holiday.

10 “Cable Service” means: (i) the one-way transmission to Subscribers of (a) video programming or (b)
11 other programming service, and (ii) Subscriber interaction, if any, which is required for the selection or
12 use of such video programming or other programming service.

13 “Cable System” means any facility consisting of a set of closed transmission paths and associated signal
14 generation, reception, and control equipment that is designed to provide Cable Service which includes
15 video programming and which is provided to multiple Subscribers within a community, but such term
16 does not include:

- 17 (i) a facility that serves only to retransmit the television Signals of one or more television
18 broadcast stations;
- 19 (ii) a facility that serves Subscribers without using any Public Ways;
- 20 (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title
21 II of the Communications Act of 1934, approved June 19, 1934 (48 Stat. 1070; 47 U.S.C. §
22 201 *et seq.*), as amended, except that such facility shall be considered a cable system (other
23 than for purposes of Section 621(c) of the Cable Act (47 U.S.C. § 541(c)) to the extent such
24 facility is used in the transmission of video programming directly to Subscribers, unless the
25 extent of such use is solely to provide interactive on-demand services;
- 26 (iv) an Open Video System that complies with Section 653 of the Cable Act (47 U.S.C. § 573)
27 (or any successor thereto) and the rules promulgated pursuant to that section; or
28 (v) any facilities of any electric utility used solely for operating its electric utility systems.

29 The foregoing definition of “Cable System” shall not be deemed to circumscribe the valid authority of
30 any governmental body, including the City, to regulate the activities of any other communications system
31 or provider of communications services.

32 “Channel” means a band of frequencies in the electromagnetic spectrum utilizing various means of
33 transmission (including, without limitation, optical fibers or any other means now available or that may
34 become available), which band of frequencies is capable of carrying one (1) or more video, audio, voice,
35 or data Signals.

36 “City” means the Mayor and City Council of Baltimore, Maryland or, as appropriate in the case of
37 specific provisions of this Agreement, any board, bureau, authority, agency, commission or department
38 of, or any other entity of or acting on behalf of, the Baltimore City government or any officer, official,
39 employee, or agent of the Baltimore City Government, any designee of any of the foregoing, or any
40 successor thereto.

41 “City Charter” means the Baltimore City Charter, 1996 edition.

42 “City Solicitor” means the City Solicitor of the City, the City Solicitor’s designee, any person legally
43 acting in such capacity, or any successor to his powers and responsibilities.

Council Bill 07-0825

1 “Comptroller” means the Comptroller of the City, the Comptroller’s designee, any person legally acting
2 in such capacity, or any successor to her powers and responsibilities.

3 “Control” or of “Controlling Interest” in a Person or in the Cable System or the Franchise, means working
4 control in whatever manner exercised, including, without limitation, working control through ownership,
5 management, debt instruments, or negative control, as the case may be, of such Person, the Cable System,
6 or the Franchise. A rebuttable presumption of the existence of Control of, or a Controlling Interest in, a
7 Person shall arise from the beneficial ownership, directly or indirectly, by any Person or group of Persons
8 acting in concert (other than underwriters during the period in which they are offering securities to the
9 public) of five percent (5%) or more (for voting interests), or fifty percent (50%) or more (for non-voting
10 interests), of such Person. Control or Controlling Interest as used in this Agreement may be held
11 simultaneously by more than one (1) Person or group of Persons. Notwithstanding the preceding
12 sentence, if one (1) Person owns a majority of the voting interests of a Person, the Cable System, or the
13 Franchise, such owner shall have sole Control of and shall possess the sole Controlling Interest in such
14 Person, the Cable System, or the Franchise unless another Person exercises *de facto* control (as that term
15 is defined under the precedents of the Federal Communications Commission) of the Controlled Person,
16 the Cable System, or the Franchise, in which case such other Person also shall have Control and a
17 Controlling Interest.

18 “Council” means the City Council of the City, its designee, or any successor to its powers and
19 responsibilities.

20 “Criminal Act” means the commission of a crime, and shall include, but not be limited to:

- 21 A. Any material misrepresentation, either oral or written, intentionally or grossly negligently made
22 by, or on behalf of, the Franchisee in connection with any representation or warranty contained in
23 this Agreement, or the negotiation or renegotiation of this Agreement, or any amendment or other
24 modification to this Agreement that is in violation of any criminal law, provided that either the
25 Franchisee has admitted to such conduct or a court of competent jurisdiction has determined that
26 the Franchisee engaged in such conduct;
- 27 B. The conviction, guilty plea or plea of *nolo contendere* (or an equivalent plea) of the Franchisee,
28 any Person holding a Controlling Interest in the Franchisee, or any director or officer of the
29 Franchisee or of any Controlling Person, of: (i) any criminal offense relevant to fitness to own or
30 operate a Cable System, excluding traffic infractions; or (ii) any offense, including, without
31 limitation, bribery or fraud, arising out of or in connection with (a) this Agreement or any other
32 agreement to construct, operate or maintain a Cable System in the City; (b) the award of the
33 Franchise granted pursuant to this Agreement; or (c) any act to be taken following the Effective
34 Date of this Agreement by the City, its officers, employees or agents relating or pursuant to this
35 Agreement, provided that the right to terminate this Agreement in the event of such convictions
36 or guilty pleas shall arise only with respect to any of the foregoing convictions of the Franchisee
37 itself and, in the event of the conviction or guilty plea of any of the other Persons specified, the
38 City shall have the right to order the Franchisee to disassociate itself from, or terminate the
39 employment of, said other Persons with respect to activities in the City or any other activities
40 affecting the System pursuant to this Agreement;
- 41 C. The conviction, guilty plea or plea of *nolo contendere* (or an equivalent plea) of any City officer,
42 employee or agent of the offense of bribery, extortion or fraud with respect to this Agreement
43 which arises out of or in connection with an interaction between such Person and the Franchisee,
44 any Person holding a Controlling Interest in the Franchisee, or any agent or employee of any of
45 the foregoing acting under the express direction or actual consent of the foregoing, provided that
46 the interaction was initiated by the Franchisee, any Person holding a Controlling Interest in the
47 Franchisee or any agent or employee of any of the foregoing.

48 “Current Technology,” as applicable, means that level of technical or service performance in terms of
49 quality, reliability, capacity, and capability (including, but not limited to, plant or other equipment;

Council Bill 07-0825

1 public, educational, or governmental access and other production equipment or facilities; construction
2 techniques; customer service; facilities, equipment, systems, and operations; and performance standards)
3 which has been developed and demonstrated in the cable industry or any other comparable industry that
4 provides services to the public under similar conditions to be workable and Economically and Technically
5 Feasible and Viable, as such level may develop from time to time throughout the Term of the Franchise.

6 “Day” or “Days” means calendar day or days unless otherwise specified.

7 “Digital Service” means a Service which is transmitted in a digital format.

8 “Digital Television Channel” means a Channel which is transmitted in a digital format; which utilizes
9 digital compression and encryption technologies; and which occupies sufficient bandwidth to enable the
10 transmission of a high-quality television program at the Cable System’s standard compression level(s).

11 “Direct Bury” means installation of fiber optic or coaxial cable or wires directly in the ground without
12 any casing, conduit, or other covering thereon. Often, a Direct Bury is done using a pull-type or self-
13 propelled machine to plant or bury such cable or wire in a continuous, one-step operation, eliminating
14 trenching and backfilling.

15 “DOT” shall mean the City’s Department of Transportation, its designee, or any successor thereto.

16 “DPW” shall mean the City’s Department of Public Works, its designee, or any successor thereto.

17 “Drop” means the cable or wire that connects the distribution portion of a Cable System to a Subscriber’s
18 premises.

19 “Economically and Technically Feasible and Viable” means capable of being provided through
20 technology that has been demonstrated to be feasible for its intended purpose, in an operationally
21 workable manner, and in a manner whereby the Cable System has a reasonable likelihood of being
22 operated on reasonably profitable terms.

23 “Effective Date” means the later of (1) the date on which the Franchisee fulfills all conditions precedent
24 as set forth in Section 2.2C of this Agreement and this Agreement shall take effect; or (2) December 31,
25 2007.

26 “FCC” means the Federal Communications Commission, or the successor to its responsibilities.

27 “Franchise” means the non-exclusive right granted, by ordinance and subject to this Agreement, to
28 Franchisee to construct, operate, repair, maintain, and reconstruct the Cable System on, over, under, upon,
29 across, and along the Public Ways.

30 “Franchise Area” or “Service Area” shall mean all the area within the boundaries of the City.

31 “Franchisee” means Cavalier IP TV, LLC.

32 “Gross Revenue” means all revenue, as determined in accordance with generally accepted accounting
33 principles, that is derived by the Franchisee and by each Affiliated Person from the operation of the Cable
34 System to provide Cable Services.

- 35 A. Gross Revenue shall include, to the extent it is received by the Franchisee, revenue from any
36 other Person, including, without limitation, Leased or PEG Channel programmers, that is derived
37 from the operation of the Cable System to provide Cable Services.

Council Bill 07-0825

1 B. Gross Revenue shall include by way of example and without limitation:

- 2 1. the fair market value of any non-monetary (*i.e.*, barter) transactions between the Franchisee
3 and any Affiliated Persons, which fair market value shall not be less than the customary
4 prices paid in connection with equivalent transactions conducted with Persons who are not
5 Affiliated Persons;
- 6 2. revenue received by the Franchisee which represents or can be attributed to a Subscriber fee
7 or a payment for the use of the Cable System for the sale of merchandise through any Cable
8 Service distributed over the Cable System;
- 9 3. franchise fees received from Subscribers;
- 10 4. fees received from Subscribers to support PEG Channels;
- 11 5. any revenue generated by the Franchisee or by any Affiliated Person through any means
12 which has the effect of avoiding the payment of compensation that would otherwise be paid
13 to the City for the Franchise granted in this Agreement;
- 14 6. any revenue from Subscriber equipment sold or leased by the Franchisee or an Affiliated
15 Person;
- 16 7. late fees and administrative fees;
- 17 8. revenue derived from program guides;
- 18 9. revenue derived from forfeited deposits;
- 19 10. revenue derived from installation, disconnection, or service call fees;
- 20 11. revenue derived from game channels;
- 21 12. studio rental, production equipment, and personnel fees;
- 22 13. revenue derived from commissions;
- 23 14. any actual bad debt that is written off but subsequently collected (such bad debt shall be
24 included as Gross Revenue for the period in which it is collected); and
- 25 15. other revenues that may be posted in the general ledger as an offset to an expense account.

26 C. Gross Revenue shall also include all advertising revenue which is derived, directly or indirectly,
27 from or in connection with the sale of advertising on the Cable System, whether by the
28 Franchisee, or whether collected by an Affiliated Person or any other Person for Franchisee. If
29 the advertising revenue received from the Affiliated Person is only net advertising revenue,
30 advertising revenues from an Affiliated Person shall be grossed up as if the Franchisee had
31 received the advertising revenue directly. Notwithstanding the preceding sentence, standard and
32 reasonable commissions retained by a regional interconnect that is an Affiliated Person may be
33 excluded from Gross Revenue.

34 D. Gross Revenue shall not include:

- 35 1. any compensation awarded to the Franchisee based on the City's condemnation of property
36 of the Franchisee;
- 37 2. the revenue of any Person, including, without limitation, a supplier of programming to the
38 Franchisee, to the extent that such revenue is also included in Gross Revenue of the
39 Franchisee;
- 40 3. the revenue of the Franchisee or any other Person which is generated directly from the sale of
41 any merchandise through any Service distributed over the Cable System, other than that
42 portion of such revenue which represents or can be attributed to a Subscriber fee or a
43 payment for the use of the Cable System for the sale of such merchandise – for example, the
44 portion of such payment attributable to a commission for the Franchisee or an Affiliated
45 Person—which portion shall be included in Gross Revenue;
- 46 4. taxes imposed by law on Subscribers which the Franchisee is obligated to collect, it being
47 acknowledged that Franchise Fees under this Agreement are not considered taxes;
- 48 5. amounts collected by the Franchisee from Subscribers on behalf of Leased or PEG Channel
49 programmers, other than Affiliated Persons, to the extent that all of the amounts collected, in
50 excess of the amounts deducted pursuant to Section 10.6 of this Agreement and paid to the
51 City, are passed on by the Franchisee to such programmers;

Council Bill 07-0825

- 1 6. the revenue of any Affiliated Person which represents standard and reasonable amounts paid
2 by the Franchisee to the Affiliated Person for ordinary and necessary business expenses of the
3 Franchisee, including, without limitation, professional service fees and insurance or bond
4 premiums;
- 5 7. advertising commissions deducted by advertising agencies, other than an agency which is an
6 Affiliated Person, before advertising revenues are paid over to the Franchisee;
- 7 8. to the extent consistent with generally accepted accounting principles, consistently applied,
8 actual bad debt write-offs taken in the ordinary course of business;
- 9 9. amounts recovered by Franchisee for theft or loss of portions of the Cable System, such as
10 pedestal boxes, that were previously written off;
- 11 10. investment income; and
- 12 11. payments received by the Franchisee or an Affiliated Person that represent a reimbursement
13 for work performed by the Franchisee or its agents on behalf of a contractor or third party,
14 where payment for such work would not normally be considered Gross Revenue based on the
15 nature of the work performed.

16 “Holiday” means a Saturday, Sunday, officially recognized federal or City legal holiday, and any other
17 day on which the City’s offices are closed and not reopened before 4:00 p.m.

18 “Leased Channel” means a Channel on the Subscriber Network designated by the Franchisee pursuant to
19 Section 612 of the Cable Act (47 U.S.C. § 532).

20 “Liability” or “Liabilities” means any and all encumbrances, defects of title, easements, mortgages,
21 security interests or agreements, pledges, liens, charges, damages, expenses, penalties, fines, costs,
22 conditional sales agreements, title retention agreements, claims, assessments, restrictions, liabilities,
23 obligations, debts, commitments, undertakings, taxes, covenants, attorneys’ and other fees and
24 responsibilities of every kind and character, known and unknown, contingent or otherwise, or arising or
25 existing by operation of law, by judicial decree or judgment, by contract or otherwise, including, without
26 limitation, those evidenced by contracts, agreements, memoranda, indentures, mortgages and security
27 agreements and conditional sales and other title retention agreements. “Liability” or “Liabilities” shall
28 also mean any damage or loss to any real or personal property of, or any injury to or death of, any Person
29 or the City.

30 “MOCC” means the Mayor’s Office of Cable and Communications of the City, its designee, or any
31 successor to MOCC.

32 “Non-Cable Service” means any Service which is distributed over the Cable System, other than a Cable
33 Service.

34 “Non-Residential Subscriber” means a Subscriber, other than a Residential Subscriber, who lawfully
35 receives any Service the Franchisee provides through its Cable System.

36 “Open Video System” means an Open Video System as defined in Section 653 of the Cable Act (47
37 U.S.C. § 573) (or any successor thereto) and the rules promulgated pursuant to that section.

38 “PEG Channels” means public Channels, educational Channels, and government Channels provided by
39 Franchisee under Section 6 and shall include leased access Channels provided pursuant to Section 6.8.

40 “PEG User” means a Person authorized to administer or operate a PEG Channel or the I-Net, and shall
41 include the City. If several Persons share a PEG Channel, each Person shall be a separate PEG User.

42 “Person” shall mean any natural person or any association, firm, partnership, joint venture, corporation or
43 other legally recognized entity, whether for-profit or not-for-profit.

44 “Public Way” means the surface of, and the space above and below, any public street, highway, freeway,
45 bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public

Council Bill 07-0825

1 right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-
2 way utilized for compatible uses and any temporary or permanent fixtures or improvements located
3 thereon now or hereafter held by the City in the Franchise Area, which, consistent with the purpose for
4 which it was dedicated, may be utilized for the purpose of installing, operating, repairing, and maintaining
5 the Cable System after negotiation of terms and conditions mutually satisfactory to the City, the
6 Franchisee, and the appropriate public utility. Public Way also means any easement now or hereafter
7 held by the City within the Franchise Area for the purpose of public travel, or for utility or public service
8 use utilized for compatible uses, and shall include other easements or rights-of-way as shall within their
9 proper use and meaning entitle the City and the Franchisee to the use for the purposes of installing,
10 operating, and maintaining the Franchisee's Cable System over poles, wires, cables, conductors, ducts,
11 conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily
12 necessary and pertinent to the Cable System. Public Way shall not include any City buildings, structures,
13 or other improvements, regardless of whether they are situated in a public right-of-way.

14 "Region" means Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Harford
15 County, and Howard County.

16 "Resident" means (i) any occupant who resides in a dwelling in the City, including, without limitation,
17 occupants of hotels, apartment houses, one- and two-family dwellings, apartment hotels, motels, lodging
18 or rooming houses, rectories, convents, monasteries, school dormitories, hospitals, prisons, reformatories,
19 nursing homes, mental institutions, clinics, orphanages, day nurseries, homes for the aged and
20 sanitariums; or (ii) as otherwise defined by Applicable Law. However, with respect to prisons,
21 reformatories, and mental institutions, the Franchisee's obligation shall be only to provide Services to
22 common areas in such facilities, to the extent that the Franchisee can obtain the consent of such prison,
23 reformatory, or mental institution for the provision of such Services. In the case of any other commercial
24 or institutional facility (such as a hotel, a dormitory, a hospital, a nursing home, etc.), the Franchisee shall
25 negotiate the terms of providing Services to Residents in such institutional facility.

26 "Residential Subscriber" means a Resident who lawfully receives any Service on the Subscriber Network,
27 except to the extent that such Services are used by the Subscriber in connection with a trade, business, or
28 profession, either directly or indirectly, unless such use is incidental.

29 "Security Fund" means the fund established in Section 13.2 of this Agreement.

30 "Service" means (i) any Cable Service, including any Basic Service, or any other service, whether
31 originated by the Franchisee or any other Person, which is offered to any Person in conjunction with, or
32 distributed over, the Cable System; and (ii) any Non-Cable Service provided for public, educational, or
33 governmental use.

34 "Service-Related Activity" means any activity or function associated with the production or distribution
35 of any Service over the Cable System, including, without limitation, the use of studio or other facilities
36 equipment, billing, audience promotion, or installation or lease of equipment.

37 "Signal" means any transmission of radio frequency energy or of optical information.

38 "Significant Construction" means any major alteration, construction, reconstruction, upgrade, rebuild or
39 enhancement of the System in the Franchise Area, during the Term of this Agreement or for such longer
40 time as the Franchisee operates the System, the costs of which are estimated to be more than One Million
41 Dollars (\$1,000,000) over a twenty-four month period; but excluding therefrom any item not located or
42 occurring within, abutting, or affecting any City property or Public Way.

43 "Standard Installation" means: (i) any installation by which cable service is delivered to a Subscriber over
44 existing copper twisted-pair wires leased by Franchisee from an incumbent local exchange carrier, as
45 unbundled network elements in Franchisee's collocation sites in central offices, without causing new
46 equipment, facilities, or outside plant to be built or added, and without having existing equipment,
47 facilities, or outside plant reengineered or modified, and with twisted-pair wires able to support Internet

Council Bill 07-0825

1 protocol (IP) download speeds of 10 Megabits per second (Mbps) and IP upload speeds of 1 Mbps
2 utilizing digital subscriber line (DSL) technology; or (ii) with respect to Franchisee-constructed cable
3 plant, any installation by which cable service is delivered to a Subscriber using a cable that connects the
4 Network Interface Device at the Subscriber’s residence or institution to the nearest distribution cable of
5 the Subscriber Network (within one hundred fifty (150) feet or less).

6 “System” means, subject to Section 13.6 of this Agreement, the Cable System constructed, operated, and
7 maintained by the Franchisee pursuant to this Agreement, including, without limitation, all real property,
8 all tangible and intangible personal property, buildings, offices, furniture, Subscriber lists, cables, wires,
9 amplifiers, and all other electronic devices used in connection with the Cable System and all rights,
10 contracts, and understandings with regard to any matter related to the Cable System.

11 “Subscriber” means any Person lawfully receiving any Service provided by the Franchisee by means of or
12 in connection with the Cable System, whether or not a fee is paid for such Service.

13 “Subscriber Network” means that portion of the Cable System over which Services are provided primarily
14 to Residential Subscribers.

15 “Term” shall have the meaning set forth in Section 2.2 of this Agreement.

16 “Two-Way” means that the headend, cables, hubs, distribution plant, amplifiers and other technical
17 components of the Cable System have the requisite equipment in place to pass video, audio, voice and/or
18 data Signals in both directions simultaneously.

19 **SECTION 2**
20 **GRANT OF AUTHORITY; TERM**

21 **2.1 Grant of Franchise.**

22 A. General. City hereby grants to Franchisee, subject to the terms and conditions of this Agreement
23 and the Franchise grant ordinance, a non-exclusive Franchise with the right, privilege and
24 authority to construct, operate, repair, maintain, and reconstruct a Cable System on, over, under,
25 upon, across, and along the Public Ways within the Franchise Area in accordance with the City’s
26 specifications and this Agreement. The grant of this non-exclusive Franchise is expressly
27 conditioned upon the construction, operation, maintenance, repair, and reconstruction of the
28 Cable System in accordance with the terms of this Franchise. The rights granted hereunder,
29 including, without limitation, rights to utilize the Public Ways, shall not be sold, transferred or
30 assigned without the approval of the City.

31 B. Compliance with Law. The Franchise granted under the terms and conditions of this Agreement
32 shall be consistent with the Baltimore City Charter, the laws, regulations and rules of the City,
33 and other applicable statutory requirements. In the event of conflict between this Agreement and
34 the terms and conditions on which the City can grant a franchise, the Charter, the laws,
35 regulations and rules of the City, and any such statutory requirements shall control; provided,
36 however, that the terms and conditions of this Agreement may not be affected by any law,
37 regulation, or rule adopted after the Effective Date of this Agreement unless: (1) the content of
38 the law, regulation, or rule was not permitted to be enacted as of the Effective Date, or (2) the
39 law, regulation, or rule is of general applicability.

40 C. No Waiver of Other Permits and Authorizations. Nothing in this Agreement shall be construed as
41 a waiver of any laws, regulations or rules of the City or of the City’s right to require the
42 Franchisee or any Person using the Cable System to secure the appropriate permits or
43 authorizations for such use, provided that the fees and charges imposed upon the Franchisee for
44 any such permit or authorization shall be the standard fees or charges generally applicable to all
45 Persons for such permits or authorizations, and any such standard fee or charge: (i) shall not be
46 considered a “franchise fee” under 47 U.S.C. § 542(g)(1); (ii) shall fall within the exception to
47 such term pursuant to 47 U.S.C. § 542(g)(2)(A); and (iii) shall not be an offset against the

Council Bill 07-0825

1 compensation or other payment the Franchisee, an Affiliated Person or other Person is required to
2 pay the City or any other entity pursuant to Sections 6 and 10 of this Agreement.

3 D. Non-Cable Services. Except as otherwise provided in this Agreement, the Franchise neither
4 authorizes the Franchisee to, nor prohibits the Franchisee from, providing any Non-Cable
5 Services, provided that this limitation shall not limit the use of the PEG Channels by the City or
6 PEG Users. The use of the Cable System for Non-Cable Services shall be subject to separate
7 additional approval by City if permitted by Applicable Law. Any use of the Cable System for
8 Non-Cable Services shall be reported in writing to MOCC not less than fifteen (15) Days after the
9 Franchisee has begun such use. Nothing in this Agreement shall be interpreted to prevent the City
10 from imposing additional lawful conditions, including additional compensation provisions, for
11 use of the Public Ways if the Franchisee provides any service other than Cable Service.

12 E. Closing of Public Ways. Nothing in this Agreement shall be construed as a waiver or release of
13 the rights of the City in and to the Public Ways. In the event that all or part of the Public Ways
14 within the Franchise Area are (1) closed to pedestrian and/or vehicular traffic and/or utilities and
15 services such as Cable Services; or (2) vacated or if ownership of the land under the affected
16 Public Ways is otherwise transferred to another Person, all rights and privileges granted pursuant
17 to this Agreement with respect to such Public Ways, or any part of such Public Ways so closed,
18 vacated, or transferred, shall cease upon the effective date of such closing, vacation, or transfer,
19 and Franchisee shall remove its Cable System from such Public Ways. If such closing, vacation,
20 or transfer of any Public Way is undertaken for the benefit of any private Person, the City shall,
21 as appropriate, condition its consent to such closing, vacation, or transfer of such Public Way on
22 the agreement of such private Person to: (i) grant the Franchisee the right to continue to occupy
23 and use such Public Way; or (ii) reimburse the Franchisee for its reasonable costs to relocate the
24 affected part of the Cable System. The City shall provide reasonable prior notice to Franchisee of
25 any such closing, vacation, or transfer to allow Franchisee to remove its Cable System where the
26 right to continue to occupy and use such Public Way is not reserved for Franchisee.

27 2.2 Term of Franchise.

28 A. Established. The Franchise granted shall be for a term commencing upon the Effective Date of
29 the Agreement and terminating on December 31, 2019, unless the Franchise is renewed or is
30 lawfully terminated in accordance with the terms of this Agreement.

31 B. Conditions Precedent. The Franchise shall commence upon the Effective Date, provided that the
32 Franchisee shall have met each of the conditions precedent set forth below and otherwise in this
33 Agreement (unless the City agrees to waive any of the conditions precedent), at which time it
34 shall become effective:

35 1. Board and Council Action. All necessary approvals of this Agreement by the City shall have
36 been obtained.

37 2. Certified Copies of Resolutions. The Franchisee shall provide the City with a certified copy
38 of resolution(s) duly adopted by the Franchisee approving the execution, delivery and
39 performance of this Agreement and approving the execution, delivery and performance by
40 Franchisee of all other documents, certificates, guarantees and other instruments required to
41 be furnished to the City by and pursuant to the terms of this Agreement.

42 3. Representations and Warranties. The Franchisee shall provide the City with a certificate by
43 the Franchisee certifying that the representations and warranties made in this Agreement are
44 true and correct as of the Effective Date.

45 4. Labor Employment Plan. The Franchisee shall have executed Baltimore City Residents First
46 Certification Statement as set forth in Section 7.2 of this Agreement.

Council Bill 07-0825

- 1 5. Related Services Report. The Franchisee shall have submitted to MOCC the Related Services
- 2 Report, as set forth in Section 11.7 of this Agreement.

- 3 6. Location of Customer Service Center(s). The Franchisee shall have notified MOCC of the
- 4 proposed location(s) of its customer Service Center(s) within the City.

- 5 7. Insurance. The Franchisee shall have secured its insurance policies as set forth in Section
- 6 12.3 of this Agreement and delivered the certificate of insurance to MOCC and the City
- 7 Solicitor, together with evidence that the premium for each of such policies have been paid,
- 8 that the policies will be in effect on or before the Effective Date, and that the policies are in
- 9 accordance with this Agreement.

- 10 8. Security Fund. The Franchisee shall have complied with the Security Fund requirements
- 11 pursuant to Section 13.2 of this Agreement.

- 12 9. Letter of Credit. The Franchisee shall have delivered to MOCC and the City Solicitor a fully
- 13 executed letter of credit in the form set forth in Appendix D to this Agreement.

- 14 10. Permitting and Licensing Compliance. DOT and DPW shall each have certified that the
- 15 Franchisee is in compliance with all applicable permitting, leasing, and licensing
- 16 requirements under City law.

- 17 11. Clean Hands Certification. The Franchisee shall have paid all amounts due and owing to the
- 18 City, including, but not limited to, taxes, fees, fines, penalties and interest.

19 2.3 Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of
20 Applicable Law.

21 2.4 Reservation of Authority. Nothing in this Agreement shall abrogate the right of the City to perform
22 any public works or public improvements of any description or be construed as a waiver of any codes or
23 ordinances of general applicability promulgated by the City, or be construed as a waiver or release of the
24 rights of the City in and to the Public Ways. In the event that the Cable System interferes with the
25 construction, operation, maintenance or repair of such public works or public improvements, the
26 Franchisee shall, at its own cost and expense, protect or promptly alter or relocate the Cable System as
27 directed by the City. In the event that Franchisee refuses or neglects to so protect, alter or relocate all or
28 part of the Cable System, or in the event of fire, disaster or other emergency, the City shall have the right
29 to break through, remove, alter or relocate, without notice to Franchisee, all or part of the Cable System
30 and the Franchisee shall pay to City the costs incurred in connection with such breaking through,
31 removal, alteration or relocation. In the event that the City or any public or quasi-public entity reimburses
32 costs for other occupants of the Public Ways which this Section 2.4 imposes on the Franchisee, it will not
33 be a breach of this Agreement for the Franchisee to request that the City or such public or quasi-public
34 entity, as the case may be, bear some or all of the Franchisee’s costs.

**SECTION 3
CONSTRUCTION STANDARDS**

37 3.1 General Requirement. Throughout the Term, and for such other time as it may take the Franchisee to
38 remove the System pursuant to Section 13 of this Agreement, the Franchisee shall comply with the terms,
39 conditions, and provisions set forth in this Section, and all other requirements or procedures pertaining to
40 construction and technical requirements that are specified by the City or Applicable Law.

41 3.2 Standards and Specifications.

42 A. Compliance with Standards and Specifications. The Franchisee shall meet or exceed all
43 construction and service requirements required by this Agreement, the Baltimore City Code, and
44 Applicable Law. All work involved in the construction, operation, repair, maintenance, upgrade,

Council Bill 07-0825

1 Significant Construction, rebuild, enhancement, and removal of the System shall be performed in
2 a safe, thorough, and reliable manner using materials of good and durable quality. The
3 Franchisee shall comply with applicable codes and industry standards, including the
4 specifications set forth in the most recently published DPW guidelines and standards and the
5 “City of Baltimore Department of Public Works Specifications for Material, Highways, Bridges,
6 Utilities, and Incidental Structures (2006),” as amended from time to time (“Green Book”);
7 administrative orders of the City Department of Transportation, as amended from time to time;
8 the National Electrical Code, as adopted by the City from time to time; the National Electrical
9 Safety Code, as adopted by the City from time to time; all rules, standards, practices, and
10 procedures of the FCC and National Cable Television Association, as amended from time to time;
11 and the requirements of other utilities whose poles and conduits the Franchisee uses, as amended
12 from time to time.

13 B. Antennas and Towers. Antenna supporting structures and towers shall be designed for the proper
14 loading as specified in Electronic Industry Association’s R.S. 222-C Specifications. In addition,
15 antenna supporting structures and towers shall be designed in accordance with the International
16 Building Code, as amended, and shall be painted, lighted, erected, and maintained in accordance
17 with all applicable rules and regulations of the Federal Aviation Administration and all other
18 Applicable Law.

19 C. Plant and Equipment. The Franchisee’s plant and equipment, including, without limitation, the
20 antenna and satellite earth station sites, headend and distribution system, towers, house
21 connections, structures, poles, wire, cable, coaxial cable, fixtures, and appurtenances shall be
22 installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained,
23 and operated in accordance with good engineering practices, performed by experienced and
24 properly trained maintenance and construction personnel, so as not to endanger or interfere with
25 improvements made by the City, interfere in any manner with the rights of any property owner, or
26 unnecessarily hinder or obstruct pedestrian or vehicular traffic on any Public Way.

27 D. Correction of Harmful or Unsafe Conditions. If, at any time, the City or any other agency or
28 authority of competent jurisdiction determines that, consistent with Applicable Law, any part of
29 the System, including, without limitation, any means used to distribute Signals over or within the
30 System, is harmful to the health or safety of any Person, the City shall notify the Franchisee of
31 the circumstances and the Franchisee shall then, at its sole cost and expense, within a reasonable
32 time period specified by the City or such agency or authority, correct all such conditions. The
33 Franchisee shall promptly notify MOCC and the Directors of DPW, DOT, and the Baltimore City
34 Department of Health (or any successor thereto) of any determination or finding by an agency or
35 authority of competent jurisdiction that any part of the System is harmful to the health or safety of
36 any Person, and in no event later than twenty-four (24) hours after receiving notice of such a
37 determination or finding.

38 E. Standards for Drawings and As-Builts. Whenever a drawing, illustration, or other depiction is
39 required by this Agreement or by the City, the Franchisee shall ensure that such drawing,
40 illustration, or depiction is drawn to scale, shows all existing utilities, and complies with Green
41 Book standards, including, but not limited to, the following:

42 1. All shop drawings and working drawings shall be completely legible and drawn to scale on
43 sheets, twenty-four inch (24") by thirty-six inch (36") outside dimensions, and with border
44 lines set back three-quarters of an inch (3/4") on the top, bottom, and right hand side of the
45 sheet and one and one-quarter (1-1/4") on the left hand side of the sheet. After all work is
46 completed, all drawings shall be corrected to show all parts of the structure as finally built.
47 The tracings shall then be turned over to the DPW and become the property of the City,
48 except for tracings of reinforced steel, which need not be turned over to the City.

49 2. All shop drawings and working drawings shall include a four inch (4") by eight (8") standard
50 title block in the lower right corner. The title block shall state the following:

Council Bill 07-0825

- 1 a. Name of contractor and subcontractor if applicable;
- 2 b. Address of contractor and subcontractor if applicable;
- 3 c. Sheet Title, including reinforcement details;
- 4 d. Name of structure;
- 5 e. Crossing; and
- 6 f. Signature block.

7 **F. Prohibited Construction Techniques.** In Public Ways and on City property:

- 8 1. Franchisee shall not use, or cause to be used, the “back of sidewalk” or “lip of gutter”
9 construction techniques.
- 10 2. Franchisee shall not perform any installations using the Direct Bury technique; provided,
11 however, that Drops or portions thereof that: (i) are located under structures or improvements
12 of any kind, including, without limitation, paving, sidewalks, driveways, fences, walls,
13 garages, sheds, and the like, shall not be performed using the Direct Bury technique and shall
14 be encased or enclosed in a conduit, covering, concrete, or other material consistent with the
15 City standards and specifications in Section 3.2A, and (ii) are not located under such
16 structures or improvements may be performed using the Direct Bury technique.
17

18 **G. No Obstruction.** The Franchisee shall not obstruct the Public Ways, subways, railways, passenger
19 travel, river navigation, or other traffic to, from, or within the Franchise Area without the required
20 permits from and the prior consent of the City and all other appropriate public or private
21 authorities.

22 **3.3 Licenses and Permits.** The Franchisee shall be solely responsible for obtaining, at its sole cost and
23 expense, all permits, licenses, and other forms of approval or authorization necessary to construct,
24 operate, maintain, repair, upgrade, perform Significant Construction to, rebuild, enhance, or remove the
25 System, or any part of the System, prior to the commencement of any such activity. In the event of an
26 emergency which poses a serious risk to life or public safety, the Franchisee may carry out any work
27 necessary to eliminate the emergency to the extent consistent with Applicable Law. Any blanket permit
28 issued by the City to the Franchisee shall only authorize the Franchisee to perform everyday maintenance
29 and emergency repair. If, during the performance of any work authorized by a blanket permit, Franchisee
30 performs any work in the Public Ways that is not authorized by the blanket permit, Franchisee shall file
31 for all required permits no later than the following Business Day. Where work is pursuant to a blanket
32 permit, the Franchisee shall submit a list of proposed work locations by the 25th of each month for the
33 succeeding months.

34 **3.4 Right of Inspection.** The City shall have the right to inspect all construction and installation work
35 performed subject to the provisions of this Agreement and to conduct such tests as it deems necessary to
36 ensure compliance with this Agreement and Applicable Law; provided, however, that such inspection and
37 tests shall not interfere with the provision of Services. The City shall be permitted to charge the
38 Franchisee its usual and customary fees for the inspection of construction in the streets. Any delays in
39 construction due to such inspections shall not be reason for default.

40 **3.5 Report on Permits.** Not later than the fifteenth (15th) Day after the close of each calendar quarter
41 during the period of any Significant Construction, the Franchisee shall provide MOCC with a cumulative
42 written list of the permits that the Franchisee or any Affiliated Person has received from the City through
43 the last Day of the preceding calendar quarter. The report shall list the type of permit, the location(s) of
44 the work being performed under the permit, the date the work started or is projected to start, and the date
45 the work stopped or is projected to stop. The Franchisee shall omit a permit from this list after such
46 permit has expired and not been renewed for three (3) consecutive months.

47 **3.6 New Grades or Lines.** If the grades or lines of any Public Way are changed at any time during the
48 Term of this Agreement, then the Franchisee shall, at its sole cost and expense and within ten (10) Days
49 after actual or constructive notice from the City, or within such longer time period as may be reasonably

Council Bill 07-0825

1 requested by the Franchisee, protect, alter, or relocate the System, or any part of the System, so as to
2 conform with the new grades or lines. In the event that the Franchisee refuses or neglects to so protect,
3 alter, or relocate all or part of the System within the time period specified by this Section 3.6, the City
4 shall have the right to break through, remove, alter, or relocate all or any part of the System without any
5 Liability of the City to the Franchisee, and the Franchisee shall pay to the City the costs incurred in
6 connection with such breaking through, removal, alteration, or relocation.

7 3.7 Movement of Cables, Wires, and Other Equipment. The Franchisee shall, upon written notice
8 delivered not less than ten (10) Days in advance by the City or any Person holding a permit that
9 authorizes an activity (including, but not limited to, movement of a structure) that requires movement of
10 cables, wires, or other equipment, move its cables, wires, and other equipment to allow the permitted
11 activity to be completed in a timely manner. The Franchisee may impose a charge, not to exceed its
12 Actual Cost plus 15%, on any such permit holder other than the City, for any such movement of its
13 cables, wires, and other equipment. This Section 3.7 shall not be construed to be a limitation on Section 2
14 of this Agreement.

15 3.8 Emergency Removal. If, at any time, in case of fire or other disaster, the Mayor or the Mayor's
16 designee determines that it is necessary to cut or remove any part of the Cable System, the City may cause
17 such cutting or removal. The Franchisee shall not charge the City for any restoration or repair resulting
18 from such cutting or removal.

19 3.9 Notices of Construction.

20 A. To City. The Franchisee shall give the City, the Director of Transportation, and the Director of
21 Public Works written notice of any construction to be performed in the City at the time that the
22 Franchisee applies for a permit to perform the construction. The Franchisee shall give the City,
23 the Director of Transportation, and the Director of Public Works written notice of any emergency
24 work performed without a permit as soon as possible after the commencement of the emergency
25 work. Not later than fifteen (15) Days before the close of each calendar quarter, the Franchisee
26 shall give the City a quarterly schedule of upcoming construction areas and planned disturbances
27 of Public Ways.

28 B. To Property Owners. The Franchisee shall provide advance notice of construction that involves
29 entry into or the crossing of any private property, work in streets abutting private property, or
30 Public Ways. The Franchisee shall provide at least thirty-six (36) hours advance notice to all
31 affected property owners by telephone, in person, by mail, by distribution of flyers to buildings,
32 by publication in local newspapers, or in any other manner reasonably calculated to provide
33 adequate notice, unless exigent circumstances prevent thirty-six (36) hours advance notice, in
34 which event the Franchisee shall provide such notice as is practicable under the circumstances. In
35 addition, before entering onto any Person's property, the Franchisee shall provide prior
36 notification and obtain the property owner's or, in the case of residential property, the resident's
37 permission, where possible.

38 3.10 Protection of Public Property and Landmarks.

39 A. The Franchisee shall, at its sole cost and expense, protect any and all existing structures
40 belonging to the City, the federal government, and any other public or quasi-public entity; all
41 federally and locally designated landmarks and districts, all other structures within any designated
42 landmark district; and conduit, cables, wires, and equipment of the City.

43 B. The Franchisee shall not alter, interfere with, or damage any public structure in the Public Ways
44 or any conduit, cable, wire, or equipment of the City in the Public Ways without prior approval of
45 the City and all other appropriate authorities. Any such alteration shall be made by the
46 Franchisee, at no cost or expense to the City or such other appropriate authorities, and in a
47 manner reasonably prescribed by the City and all other appropriate authorities. For other
48 replacements, repairs, and restorations, the Franchisee agrees that it shall be liable, at no cost or

Council Bill 07-0825

1 expense to the City or such other appropriate authorities, to replace or repair and restore, in a
2 manner and within a reasonable time period as specified by the City and all other appropriate
3 authorities, any Public Ways, public structure, or conduit, cable, wire, or equipment of the City
4 involved in the construction, operation, maintenance, repair, Upgrade, Significant Construction,
5 enhancement, rebuild, or removal of the System that is disturbed or damaged as a result of any
6 work by or on behalf of the Franchisee pursuant to this Agreement.

7 C. In the event the City or other appropriate authorities do not specify the manner of replacement,
8 repair, or restoration, the Franchisee shall replace, repair, or restore the Public Ways, public
9 structure, or any conduit, cable, wire, or equipment of the City within thirty (30) Days, to good
10 condition consistent with industry standards and the requirements of the standards and
11 specifications of Section 3.2A.

12 D. Where any such alteration, interference, or damage is not immediately discovered, or where any
13 such repair, replacement, or restoration effort fails or is otherwise inadequate or insufficient, the
14 Franchisee shall have a continuing obligation to perform all necessary restoration work, despite
15 the prior termination or expiration of this Agreement.

16 E. If Franchisee fails to make such repairs within the time specified by City, the City, upon notice to
17 the Franchisee, shall have the right to make the repairs or cause the repairs to be made. The
18 Franchisee shall reimburse the City for the costs incurred for such repairs and the City shall have
19 the right to pursue any other remedies provided by this Agreement and Applicable Law.

20 F. In the event the Franchisee refuses or neglects to replace, repair, or restore any Public Way,
21 public structure, or conduit, cable, wire, or equipment of the City, the City shall have the right to
22 replace, repair, or restore such Public Way, structure, or conduit, cable, wire, or equipment of the
23 City. The Franchisee shall reimburse the City for the costs incurred in connection with such
24 replacement, repair, or restoration, including, without limitation, any costs incurred for the
25 inspection of the altered or damaged property.

26 G. The Franchisee shall guarantee and maintain all repairs, replacement, and restoration for at least
27 one year after completion against defective materials and workmanship.

28 3.11 Pavement Cut Coordination. The Directors of the DPW and the DOT may require the Franchisee to
29 meet with DPW and DOT at least twice per year to coordinate the Franchisee's construction program and
30 all other work in the Public Ways with the City's program for water main, storm and sanitary sewer,
31 sidewalk and street construction, rebuilding, and resurfacing (collectively, "Street Construction"). The
32 goals of such coordination shall be to require the Franchisee to conduct all work in the Public Ways in
33 conjunction with or immediately prior to any Street Construction planned by the City, and to prevent a
34 Public Way from being disturbed by the Franchisee within the time period specified in the Green Book.
35 The City may authorize the Franchisee to disturb a Public Way prior to the end of the specified period
36 due to the presence of extraordinary circumstances, such as where there is no reasonably feasible
37 alternative for initial construction of the Cable System, which authorization shall be subject to such
38 reasonable conditions as the Directors of the DPW and the DOT shall, in their discretion, impose.

39 3.12 Safety Precautions.

40 A. Standard of Care. The Franchisee shall employ ordinary care at all times and employ commonly
41 accepted methods and devices for the prevention of failures and accidents that are likely to cause
42 damage, injury, or nuisance to the public. In addition, the Franchisee shall, at its sole cost and
43 expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites.
44 The Franchisee shall comply with the Occupational Safety and Health Act of 1970, (29 U.S.C. §§
45 65178), as amended, and all other Applicable Law.

46 B. Protection of Construction Areas. The Franchisee shall comply with the safety requirements of
47 all permits, licenses, and other forms of approval or authorization. In addition, Franchisee shall

Council Bill 07-0825

1 maintain reasonable barriers, lights, signs, cones, and other similar warnings and protective
2 devices required for the safety of the public in compliance with this Agreement and Applicable
3 Law. If the Franchisee places any such device in any Public Way, the device shall be placed and
4 maintained in a way that does not interfere with the usual travel or other existing and anticipated
5 uses of the Public Way.

6 C. Emergency Notification. The Franchisee shall provide the City with a twenty-four (24) hour
7 emergency telephone number at which a representative of the Franchisee, not voice mail or a
8 recording, can be contacted in the event of an emergency.

9 D. Identification. The Franchisee shall provide a standard identification document to all employees,
10 including employees of subcontractors, who will be in contact with the public. The identification
11 document shall include a telephone number that can be used for verification. In addition, the
12 Franchisee shall clearly identify all personnel, vehicles, and other major equipment operating
13 under its authority.

14 3.13 No Interference with Facilities or Equipment.

15 A. The Franchisee shall not alter, interfere with, or damage the existing conduit system, cables,
16 wires, or equipment of any Person other than the Franchisee, including but not limited to utilities,
17 other Cable Communications Systems, Open Video Systems, master antenna systems, satellite
18 master antenna systems, and similar systems.

19 B. If a final court decision, not subject to further appeal, concludes that the Franchisee altered,
20 interfered with, or damaged the existing conduit system, cables, wires, or equipment of the City
21 or any Person, other than the Franchisee, and if the City finds that (i) the Franchisee willfully
22 interfered in a grossly material fashion with the operations of another Cable Service provider; or
23 (ii) the court decision, considered with other interference by the Franchisee, establishes a pattern
24 of interference by the Franchisee, then the City may consider whether the court decision
25 constitutes a breach of this Agreement under Section 13.

26 C. This Section 3.13 is intended to address the normal installation, repair, and maintenance practices
27 of the Franchisee and is not intended to prohibit the Franchisee from taking any action that is
28 consistent with Applicable Law to remove, use, or dispose of the facilities of another Cable
29 Service provider.

30 3.14 Trimming of Trees and Vegetation.

31 A. The Franchisee, at its sole cost and expense, may trim trees and other natural vegetation upon and
32 overhanging any Public Way when necessary to prevent such trees and vegetation from coming
33 into contact with the Cable System, provided, however, that all trimming in any Public Way shall
34 only be performed with the prior approval, and under the direction, of the Director of Recreation
35 and Parks.

36 B. The Franchisee shall obtain the prior written consent of the property owner for all trimming of
37 trees on private property.

38 C. No trimming shall be done by the Franchisee until the time of installation of any wires, cables, or
39 other fixtures to the relevant portions of the Cable System in order to ensure that the tree is
40 trimmed to the minimum extent necessary.

41 D. The Franchisee shall be responsible for any damage caused by such trimming and shall dispose of
42 all trimmed materials on a daily basis.

Council Bill 07-0825

1 3.15 Aerial and Underground Construction.

- 2 A. If all of the transmission and distribution facilities of all of the respective public or municipal
3 utilities in any part of the Franchise Area are underground, the Franchisee shall place its
4 transmission and distribution facilities underground. In any region(s) of the Franchise Area where
5 the transmission or distribution facilities of the respective public or municipal utilities are both
6 aerial and underground, the Franchisee shall have the discretion to construct, operate, and
7 maintain all of its transmission and distribution facilities, or any part of such facilities, aerially or
8 underground, provided, however, that previously installed aerial cable shall be undergrounded in
9 concert and on a cost-sharing basis with affected utilities when such utilities convert from aerial
10 to underground construction and when Franchisee is given reasonable prior notice of such
11 undergrounding.
- 12 B. In cases of new construction or property development where utilities are to be placed
13 underground, the developer or property owner shall give the Franchisee notice of at least thirty
14 (30) Days before commencing such construction or development. The notice shall indicate the
15 date on which open trenching will be available for the Franchisee's installation of conduit,
16 pedestals, vaults, and laterals, all of which shall be provided at Franchisee's expense. Upon
17 request of the developer or property owner, the Franchisee shall provide specifications for the
18 trenching. The costs of the trenching and the easements required to facilitate Cable Service to the
19 development shall be borne by the developer or property owner, provided however, that, if
20 Franchisee fails to install its conduit, pedestals, vaults, and laterals within ten (10) Days after the
21 date the trenches are available, as designated in the notice given by the developer or property
22 owner, then the cost of any new trenching necessary shall be borne by the Franchisee. Except for
23 the notice of the date on which open trenching will be available to the Franchisee, any notice
24 provided to the Franchisee by the City of a preliminary plat request shall satisfy the requirement
25 of notice if sent to the General Manager of Franchisee prior to the City's approval of the
26 preliminary plat request.
- 27 C. Any portion of the Cable System installed underground shall be buried to a depth of at least
28 sixteen (16) inches; provided, however, that any portions of the Cable System installed under
29 Public Ways shall be buried to a depth of at least twenty-four (24) inches and all Drops shall be
30 buried to a depth of at least twelve (12) inches.
- 31 D. If, at any time in the future, the City requires that the utilities in all or any portion of the City
32 place their lines underground, then the Franchisee shall, at its sole cost and expense, and within a
33 reasonable period of time, place its existing and all future cable, wires, or other equipment
34 underground in such portion of the City without charge, expense, or liability therefor to the City.
- 35 E. Whenever the Franchisee must place the Cable System or other facilities beneath the traveled or
36 paved portion of any Public Way, the Franchisee shall make such placement by directional boring
37 and not by the excavation of a trench, unless otherwise approved in advance by MOCC.
38 Directional boring shall be done wherever possible so that the excavations necessary for it are not
39 in the paved portion of the Public Way.
- 40 F. Franchisee shall be entitled to compensation for expenses incurred from any relocation and/or
41 underground placement of cable, wires, or other equipment performed at the direction of the City
42 to the extent that other users of the Public Ways are so compensated.

43 3.16 Open Conductors And Sheathing. Open conductors shall conform to the National Electrical Safety
44 Code, as adopted by the City from time to time, regarding minimum clearances. As of the Effective Date,
45 such minimum clearances are as follows:

- 46 A. Ten (10) feet above finished grade, sidewalks, or from any platform or projection from which
47 they might be reached at locations where there is no vehicular traffic.

Council Bill 07-0825

1 B. Sixteen (16) feet over public streets, roads, alleys, and driveways that are subject to vehicular
2 traffic.

3 C. Twenty-four (24) feet over track rails of railroads.

4 3.17 Poles and Facilities.

5 A. Use of Existing Poles and Facilities Preferred. Franchisee shall use, with the owner’s permission,
6 existing poles, conduits, and other facilities whenever Economically and Technically Feasible and
7 Viable. The Franchisee may not erect poles, conduits, or other facilities in any Public Way
8 without all necessary permits and authorizations and the express permission of the City. Upon
9 request, the Franchisee shall file copies of all agreements for the use of conduits or other facilities
10 with the City within fifteen (15) Business Days.

11 B. City’s Use of Poles. The City shall have the right to install and maintain, at no expense, wire and
12 pole fixtures upon any poles owned by the Franchisee; provided, however, that such fixtures
13 comply with Applicable Law and do not unreasonably interfere with the operation of the Cable
14 System.

15 3.18 Map Accuracy. The City does not guarantee the accuracy of any maps, prints, atlases, illustrations,
16 drawings, or other pictorial or computer-generated materials showing the horizontal or vertical location of
17 existing substructures. All locations of other utilities and facilities in the Public Ways and easements used
18 by the Franchisee shall be verified by excavation or by requesting “locates” from the City.

19 3.19 Storage of Slack Coil. Franchisee shall not store more than seventy-five (75) linear feet of slack coil
20 in any one manhole, per one thousand (1,000) linear feet of fiber optic cable installed between manholes.
21 All such storage shall be at a location in the manhole, and installed in a manner, as designated by the City.
22 For the purposes of this Section, “slack coil” shall mean extra fiber optic cable that is coiled up and
23 placed in a manhole for future use.

24 3.20 Membership Required. For the Term of this Agreement, the Franchisee shall become a full-time,
25 private sector member of: (A) the DPW Utility Coordinating Committee; and (B) the One Call
26 Notification System (otherwise known as “Miss Utility”) and shall comply with all of the marking and
27 location verification requirements of the One Call Notification System.

28 **SECTION 4**
29 **SERVICE OBLIGATIONS**

30 4.1 Service to All Persons.

31 A. General Obligation. Throughout the Term of this Agreement, the Franchisee covenants and
32 agrees to construct, operate, repair, maintain, reconstruct, and upgrade the System so as to
33 provide access to all Services distributed over the Subscriber Network to any Person within the
34 Franchise Area who submits a request for Services to the Franchisee if the Services can be
35 provided to the Person using a Standard Installation. The Franchisee shall provide such access
36 within the time periods and subject to the procedures described in Section 4.2. It shall be the
37 right of all Persons to receive all available Services provided on the Cable System so long as such
38 Person’s financial and other obligations to the Franchisee are satisfied.

39 B. Non-Residential Connections. The Franchisee may charge a Non-Residential Subscriber
40 reasonable and nondiscriminatory rates and charges to connect such Non-Residential Subscriber
41 to the Subscriber Network.

42 C. Residential Conversions. For any specific building that has been constructed or converted to
43 residential use after the Effective Date, where the obligations in this Section 4.1 to provide
44 Services via the Cable System would be substantially in excess of the range of the Franchisee’s

Council Bill 07-0825

1 usual costs for connections, the Franchisee may seek a waiver of these obligations from the City,
2 which waiver shall not be unreasonably withheld. In determining whether to grant a waiver
3 permitting the Franchisee to charge more than its standard installation fee, the City shall consider:
4 (i) the “payback” time period that it would take the Franchisee to recoup its investment in
5 establishing service to the building; and (ii) the level of Subscriber penetration reasonably
6 expected in the building, if applicable.

- 7 D. Conditions on Subscriber Services. Nothing in this Section 4.1 is intended to prevent the
8 Franchisee from reasonably conditioning the provision of Services to a Person with an impaired
9 credit history. Such conditions shall be lifted to the extent a Person demonstrates to the
10 Franchisee’s reasonable satisfaction that the Person subsequently has established a positive credit
11 history, *i.e.*, that such Person has paid his, her, or its bills in full and on time.

12 4.2 Requests for Service.

13 Drops.

- 14 1. Fees. The Franchisee shall charge its standard installation fee to Residents for installation of
15 connections that are Standard Installations. For any installation that is not a Standard
16 Installation, the Franchisee shall not charge more than its actual cost (including a reasonable
17 charge for overhead) for the installation; provided, further, that, in the event multiple
18 Subscribers share the same connection to the Subscriber Network at the time of installation,
19 the Franchisee shall allocate such actual cost (including a reasonable charge for overhead)
20 evenly among such Subscribers. Any such charge of actual cost shall be computed on a time
21 plus materials basis.
- 22 2. Location. Whenever technically possible, Franchisee shall meet each Subscriber’s desire
23 regarding the point at which the Drop enters the Subscriber’s residence or other structure, and
24 the point at which the Drop terminates inside the structure. Drops shall be placed
25 underground whenever other utilities are located underground.
- 26 3. Removal Upon Termination. Upon the termination of Service, Franchisee shall either entirely
27 remove its Drop or secure the Drop in a method reasonably acceptable to City or Subscriber.
- 28 4. Non-obstructive and Unobtrusive Locations. All cable within buildings and all Drops outside
29 buildings shall be located so as to be as non-obstructive and unobtrusive as practicable.

30 4.3 Prohibition Against Reselling Service. No Person shall resell, without the express prior written
31 consent of the Franchisee, any Cable Service, program, or signal transmitted over the Cable System by
32 the Franchisee.

33 4.4 Disconnection for Cause.

- 34 A. Cause. Franchisee may immediately disconnect a Subscriber for demonstrable reasonable cause,
35 including, but not limited to, due or owing accounts between the Subscriber and Franchisee, theft
36 of Service, or theft of or vandalism to Franchisee property. Franchisee may restore Service after
37 the Subscriber provides adequate assurance that the Subscriber has ceased the practice that led to
38 the disconnection, and paid all fees and charges, including any reconnect fees and amounts owed
39 the Franchisee for damage to its Cable System or equipment.
- 40 B. Signal Leakage. Franchisee may disconnect a Subscriber who causes signal leakage in excess of
41 federal limits. Franchisee may disconnect a Subscriber without notice where signal leakage is
42 detected originating from the Subscriber’s premises in excess of federal limits, provided the
43 Franchisee shall immediately notify the Subscriber of the problem, and, once the problem is
44 corrected, reconnect the Subscriber.

Council Bill 07-0825

1 4.5 Residential Subscribers Served Under Bulk Agreements. The Franchisee may enter into or maintain
2 any “bulk rate” agreements permitted under Applicable Law. With respect to Residential Subscribers who
3 receive Services under such bulk rate agreements, the Franchisee shall permit MOCC to exercise its
4 responsibilities under this Agreement to such Subscribers in a manner comparable to the way in which it
5 exercises its responsibilities with respect to other Residential Subscribers.

6 4.6 Continuity of Service. Franchisee shall operate the Cable System and provide Cable Service twenty-
7 four (24) hours per Day, seven (7) Days per week. Franchisee may voluntarily interrupt the provision of
8 Cable Service only with good cause and for the shortest time possible and, except in emergency
9 situations, or as otherwise provided in this Agreement, only after periodically cablecasting notice of the
10 service interruption, including at the same time of day as the anticipated interruption. Service may be
11 interrupted without notification between 12:00 a.m. and 6:00 a.m. for routine testing, maintenance, and
12 repair, on any night except Friday, Saturday, or Sunday, or any night preceding a Holiday.

13 4.7 Ownership of Installed Wiring. Ownership of all wiring installed by Franchisee inside Subscribers’
14 dwellings plus that extending on the outside of Subscribers’ dwellings plus any such further length of
15 cable extending beyond the exteriors of Subscribers’ dwellings shall be determined as required by FCC
16 requirements (76 C.F.R. §76.800 *et seq.*) and other Applicable Law.

17 SECTION 5 18 CABLE SYSTEM FACILITIES, EQUIPMENT, AND SERVICES

19 5.1 Cable System Design and Capacity; Technical Performance. Throughout the Term of this Agreement,
20 the Franchisee shall operate and maintain the Cable System in accordance with Applicable Law and this
21 Agreement. In addition, the Franchisee shall maintain the System in overall compliance with the System
22 characteristics as provided in Appendix A to this Agreement; provided, however, that the Franchisee
23 reserves the right to modify such plan from time to time, with prior notice to the City, so long as the
24 Cable System remains in compliance with the technical standards and requirements of Applicable Law
25 and all other requirements of this Agreement.

26 5.2 Signal Quality and Security. Franchisee shall provide to the Subscribers a level of signal quality
27 emanating from the headend that meets or exceeds FCC technical standards. The Cable System shall
28 have the means for users to acquire signal security for selected channels and subchannels, such as the
29 current methods of tier filters, individual Channel trapping, Channel blocking via the customer set-top
30 box and digital encryption and such future methods as may be developed from time to time.

31 5.3 Leased Services. The Cable System shall comply with all Applicable Law regarding the requirement
32 to provide Leased Channels on the Cable System.

33 5.4 Interactive Services/Two-Way Cable Modem Service. The Cable System shall be Two-Way capable,
34 which shall allow for the capability to deliver interactive Services, including Two-Way cable modem
35 service. The Franchisee shall comply with Applicable Law pertaining to competitive access to its Cable
36 System for the provision of Internet access Services.

37 5.5 Audio Services. The Cable System offers a wide variety of audio services. The System shall be
38 capable of transmitting secondary audio programming (SAP).

39 5.6 Digital Television Programming. The System shall provide no fewer than two hundred (200) digital
40 Channels. Examples of such Digital Services may include pay-per-view programs, premium Channels
41 and special interest programming.

42 5.7 Signals/Channels.

- 43 A. Services. The Franchisee shall carry Services, including local commercial television broadcast
44 signals, in accordance with Applicable Law. The Franchisee shall endeavor to offer to all
45 Subscribers a diversity of Services. The Franchisee shall provide to the City a listing of all

Council Bill 07-0825

1 Services it offers to Subscribers and the rates, in the form attached as Appendix C to this
2 Agreement.

3 B. Channels. The Cable System will include the following types of Channels and Services:

- 4 1. Digital Service: a Service that is transmitted in a digital form.
- 5 2. Digital Television Channel: a Channel which is transmitted in a digital format; which utilizes
6 digital compression and encryption technologies; and which occupies sufficient bandwidth to
7 enable the transmission of a high-quality television program at the Cable System's standard.

8 5.8 Parity with Neighboring Jurisdictions. If the Franchisee or an Affiliated Person provides a new Cable
9 Service on a commercially deployed basis in the Region, then the Franchisee, within thirty-six (36)
10 months, shall provide such Cable Service on the System unless the Franchisee reasonably determines and
11 demonstrates in writing to the City, within eighteen (18) months of such commercial deployment, that
12 doing so would not be Economically and Technically Feasible and Viable. Nothing in this Section 5.8
13 shall require identity of programming throughout the Region.

14 5.9 Testing. The following shall apply to Franchisee's compliance with FCC rules and regulations
15 pertaining to cable television technical standards for signal quality:

16 A. Testing Procedure; Technical Performance. Throughout the term of this Agreement, the
17 Franchisee shall operate and maintain the Cable System in accordance with the City's testing
18 procedures and the technical performance standards as provided in Appendix A to this
19 Agreement. The Franchisee shall give at least four (4) Days prior notice to MOCC of any
20 scheduled Cable System test performed in accordance with Appendix A or as required by FCC
21 regulations so that the City may arrange to have an engineer or other person observe the
22 Franchisee's engineer or other person performing such test.

23 B. Special Tests. At any time after commencement of Service to Subscribers, the City may require
24 additional tests, full or partial repeat tests, or tests involving a specific Subscriber's converter.
25 Requests for such additional tests will be made only on the basis of a significant number of
26 complaints received or other pertinent and valid evidence reasonably demonstrating non-
27 compliance with FCC standards, and such tests will be limited to the particular matter in
28 controversy. The City will endeavor to arrange its requests for such special tests so as to
29 minimize hardship or inconvenience to Franchisee and the affected Subscribers.

30 C. Testing Vehicle and Equipment. In order to enable the Franchisee to test the ability of the Cable
31 System to perform in accordance with Appendix A to this Agreement, the Franchisee shall have
32 available to it, at all times and in good working order, in the Franchise Area:

- 33 1. all necessary testing and monitoring equipment specified in Appendix A, or equivalent
34 equipment;
- 35 2. any other equipment necessary to monitor the performance of the Cable System (including
36 any upgrades to the testing and monitoring equipment specified in Appendix A to this
37 Agreement); and
- 38 3. one (1) or more motor vehicles collectively capable of containing and having all such
39 equipment installed therein promptly, and which shall be used for the purpose of such tests.

40 D. Current Technical Report. As part of the first annual report submitted pursuant to Section 11.6A
41 of this Agreement, after the fifth (5th) anniversary of the Effective Date of this Agreement, the
42 Franchisee shall explain what it has done or plans to do to keep pace with Current Technology,
43 including keeping pace with a new or improved level of technical or service performance
44 provided in neighboring jurisdictions pursuant to Section 5.8 of this Agreement. At a minimum,
45 such report shall identify:

Council Bill 07-0825

- 1 1. new Services which have been or are scheduled to be offered to Subscribers;
- 2 2. new technologies which have been or are scheduled to be deployed in connection with the
- 3 Cable System; and
- 4 3. new equipment which has been or is scheduled to be deployed as part of the Cable System.

5 The City may, but shall not be obliged to, schedule a public hearing or meeting to discuss such
6 report and the deployment of Current Technology in the Cable System. Pursuant to Section 11.3
7 of this Agreement, the Franchisee shall participate in such public hearing or meeting.

- 8 E. FCC Reports. Franchisee shall provide the City with the reports required by Section 11.9 of this
9 Agreement.

10 5.10 Headend/Hubs Design and Intrasystem Interconnection.

- 11 A. As of the Effective Date, the headend facility is located at 2134 West Laburnum Avenue,
12 Richmond, Virginia 23227. For the duration of this Agreement, Franchisee shall maintain the
13 headend at a level capable of receiving and transmitting all Signals necessary to make up channel
14 capacity as utilized in the System in Baltimore City. Prior to any relocation of the headend,
15 Franchisee shall notify MOCC of the new location of the headend.
- 16 B. The headend facility is the central Signal-processing site for the System. Signals from the various
17 programming sources are received via off-air antennas, satellite dish antennas, terrestrial
18 microwave antennas, and fiber optic links located at the headend, where they are combined into
19 the unique package of programming.

20 5.11 System Bandwidth and Capacity.

- 21 A. Downstream. The Cable System shall have a Downstream bandwidth of at least eight hundred
22 eight (808) MHz from fifty-two (52) MHz to eight hundred sixty (860) MHz. The Downstream
23 bandwidth shall be allocated for Digital Services, and this allocation may change over time.
- 24 B. Upstream. The Upstream bandwidth shall be thirty-five (35) MHz, from five (5) MHz to forty
25 (40) MHz. This bandwidth will be used for digital Signals.
- 26 5.12 Emergency Override. The Franchisee shall comply with the Emergency Alert System (“EAS”)
27 requirements set forth in 47 C.F.R. Part 11 (or any successor thereto).

28 SECTION 6 29 PUBLIC SERVICES

30 6.1 Provision of PEG Channels.

- 31 A. Franchisee to Provide. Franchisee shall provide PEG Channels at no charge on the Cable System,
32 as specified in this Agreement. Such Channels shall be available twenty-four (24) hours per Day
33 throughout the Term of this Agreement at no cost to Subscribers, City, or PEG Users (initial or
34 ongoing).
- 35 B. Location. All PEG Channels shall be placed on the basic tier of service (and in the lowest tier of
36 service, if different), shall be available to all Subscribers and can be in either analog (6 MHz
37 NTSC) or digital format, at the City’s option, capable of carrying the same information as a 6
38 MHz NTSC signal, so long as at all times they are in the same format used by Franchisee for the
39 principal local off-air Channels that are provided to Subscribers on its Cable System. PEG
40 Channel assignments shall be the same throughout the System. Franchisee shall use reasonable
41 efforts to cooperate with any other cable operators to ensure that PEG Channel assignments are
42 the same for all cable systems in the City.

Council Bill 07-0825

- 1 C. Relocation. PEG Channel assignments shall not be changed unless there is good cause, and in no
2 case shall a given PEG Channel be moved from one Channel number to another number (*e.g.*
3 from Channel 7 to Channel 12) more often than once every forty-eight (48) months. The
4 Franchisee will make reasonable efforts in any relocation of PEG Channels, or any relocation of
5 any other Channels, to ensure that the PEG Channels are reasonably proximate to each other.
6 Franchisee must give City and each PEG User at least three (3) months advance notice of any
7 change in the Channel number on which a PEG Channel will be distributed on Franchisee's
8 System. Any such relocation must be to a Channel of technical quality equivalent to that of other
9 Channels on the System. In addition, the Franchisee shall provide, at Franchisee's expense, at
10 least thirty (30) days advance notice of such Channel relocation in monthly bills or another
11 mailing sent to Subscribers.
- 12 D. Editorial Control. Franchisee shall not exercise any editorial control over any use of PEG
13 Channel capacity (including Channels provided under Section 6.1B), or the content of
14 programming on PEG Channels (except for such programming as the Franchisee may produce or
15 provide for its account), nor shall Franchisee or its Affiliates incur any liability under this
16 Agreement for any PEG programming carried on any PEG Channel.
- 17 E. Signal Quality. The Franchisee shall transmit the signals of the PEG Channels without altering or
18 degrading the signal, failing to retransmit, or removing any formatting or coding information
19 associated with such signal, such as secondary audio programming ("SAP") and closed
20 captioning. The Franchisee shall use the same or better quality equipment and engineering
21 practices to transport the Signal of the PEG Channels as it uses to transport the Signal for the
22 commercial broadcast Channels.
- 23 F. Outages. In the event of failure of the headend, Signal Input Points (as defined in Section 6.4),
24 Remote Signal Input Points (as defined in Section 6.4), or interconnection, the Franchisee shall
25 respond within four (4) hours after receiving notice from a PEG facility. The Franchisee shall
26 restore service through such failed interconnection or facility as soon as reasonably possible, but
27 not later than twenty-four (24) hours after receipt of such notice from a PEG User or facility,
28 absent some delay or failure beyond the control of the Franchisee.
- 29 G. Subscriber Reception of PEG Digital Channels. The Franchisee shall provide to each Subscriber a
30 digital cable converter, which permits the Subscriber to receive the Cable Services, including all
31 PEG Digital Channels,.

32 6.2 Number of PEG Channels.

- 33 A. Number of Channels. Franchisee shall provide eight (8) downstream PEG Channels in digital
34 format. PEG Channel capacity and use shall be allocated by the City in its sole discretion. The
35 Franchisee shall provide, at its cost and expense, for all equipment necessary for the PEG
36 facilities to transmit on the digital Channels instead of the analog Channels.
- 37 B. Channel Activation. The decision to activate an additional PEG Channel is, in all events, a
38 decision to be made in the sole discretion of the City, after notice to the Franchisee. The
39 Franchisee shall, without charge to the City, activate and make available an additional PEG
40 Channel not later than one hundred twenty (120) Days following receipt of a notice from the City
41 that the City desires to activate an additional PEG Channel; provided, however, that the
42 Franchisee shall not be required to activate more than one additional PEG Channel in any twelve
43 (12) month period.

44 6.3 Allocation and Use of PEG Channels.

- 45 A. By City. PEG Channels are, and shall be, allocated by the City in its sole discretion. City may, at
46 any time on ninety (90) days notice to Franchisee, allocate or reallocate the usage of the PEG
47 Channels among and between different uses and PEG Users.

Council Bill 07-0825

- 1 B. Rules and Procedures. City may, from time to time, adopt and revise rules and procedures as to
2 when and how Franchisee may use the PEG Channels for the provision of video programming if
3 the PEG Channels are not being used for their respective purposes. Franchisee shall use the PEG
4 Channels solely in accordance with such rules and procedures and, except for PEG Channels
5 being used by Franchisee, shall have no responsibility or control with respect to the programming
6 of such Channels.

7 6.4 Signal Input Points. For purposes of this Agreement, Signal Input Points refer to the facilities that
8 connect the permanent facilities of PEG Users to the Cable System and provide the connection by which
9 such Users provide their programming to Franchisee for immediate retransmission to Subscribers.
10 Remote Signal Input Points are signal input points for PEG programming that are used intermittently (but
11 repeatedly) from the same location, such as from a community center, a high school football field, or the
12 like.

- 13 A. As of the Effective Date, the Franchisee shall have provided, in good working order, the Signal
14 Input Points at the PEG facilities shown on Appendix B for the receipt of the signal by Franchisee
15 from PEG Users for simultaneous distribution of video programming to Subscribers on the Cable
16 System in City. The Signal Input Points include all equipment required for the transport of video
17 and audio source material, including, without limitation, laser transmitters, modulators,
18 processors, drops, and wiring, so that each such center can send signals to the headend via the I-
19 Net on at least one path initially. For the purposes of this provision, "good working order" shall
20 mean that the Signal Input Point has sufficient fiber optic connectivity in operating condition and
21 such equipment as is necessary for such fiber optic connection to be active and send Signals.
- 22 B. Remote Signal Input Points shall be provided by Franchisee from which a real time video signal
23 shall be transmitted by Franchisee simultaneously to Franchisee's local headend for simultaneous
24 distribution on the Cable System in the City. The initial Remote Signal Input Points as of the
25 Effective Date are set forth in Appendix B.
- 26 C. The Franchisee shall be responsible for any fiber and equipment of Franchisee at such Signal
27 Input Points and Remote Signal Input Points that is not in good working order as of the Effective
28 Date, and the City shall be responsible for any City fiber and equipment at such Signal Input
29 Points and Remote Input Points that is not in good working order as of the Effective Date. The
30 City shall be responsible for the cost of any new fiber and equipment requested or required by the
31 City at the Signal Input Points and Remote Input Points.
- 32 D. The City may change Signal Input Points and Remote Signal Input Points upon reasonable notice
33 to Franchisee, such as if the PEG User of a Channel changes or the main studio of a PEG User
34 moves to another location. Any such change shall be to a location that provides both adequate
35 signal capacity and adequate safeguards for the security of the Cable System. In the event that
36 the location of a Signal Input Point or Remote Signal Input Point changes, the City may request
37 that the Franchisee connect the new location to the Cable System. Upon the City's receipt and
38 approval of an estimate of the cost for Franchisee to make such connection, the Franchisee shall
39 promptly make such connection, and the City shall reimburse the Franchisee for such cost.
- 40 E. Upon notice from the City, the Franchisee shall be responsible for providing, constructing, and
41 installing, at the Franchisee's cost and expense, a fiber optic link from a node designated by the
42 City to the Franchisee's headend, to enable the transmission of Signals from one or more of the
43 Signal Input Points to the Franchisee's headend for transmission of PEG programming on the
44 PEG Channels. Such fiber optic link shall meet or exceed the Electronic Industry Association
45 Standard 250-C, entitled "Electrical Performance Standards for Television Transmission."

46 6.5 Capital Support For Equipment and Facilities For PEG Channels. Franchisee shall pay to the City, for
47 capital costs, including, without limitation, facilities and equipment, ongoing support of one percent (1%)
48 of Gross Revenues per Subscriber per month, for the Term of this Franchise Agreement, or so long as

Council Bill 07-0825

1 Franchisee is providing Cable Service in the City, whichever is longer. This per-Subscriber grant shall be
2 computed and paid in the same manner and on the same schedule as the Franchise Fees set forth in Article
3 10, and shall be subject to the right of the City to inspect, audit, and re-compute in the same manner as for
4 Franchise Fees under Article 10 and with late payments subject to interest in the same manner as are
5 Franchise Fees. Franchisee and City agree that the obligations set forth in this Section are not “franchise
6 fees” within the meaning of 47 U.S.C. §542.

7 6.6 Publicity. Franchisee shall undertake the following PEG Channel publicity activities at its own cost
8 and expense:

- 9 A. City may request, from time to time, and Franchisee shall use reasonable efforts to provide, to
10 City and PEG Users, a reasonable number of advertising avails on an “as available” basis for
11 advertising spots promoting public, educational, and government programming. Such spots shall
12 be prepared by, and at the expense of, the City or PEG User, as applicable.
- 13 B. Franchisee shall list all PEG Channels on print and cablecast electronic program guides.
- 14 C. Franchisee shall include written information about public, educational and governmental access
15 programming and activities in its customer handbook and in materials given to new Subscribers.

16 6.7 Leased Access. Franchisee shall make available suitable Channel capacity for leased access by third
17 parties not Affiliated with Franchisee to the extent from time to time required by federal law and
18 regulations. Franchisee shall have the sole responsibility for all operating aspects and for the fixing of
19 rates and conditions for leased access use.

20 6.8 Cost Borne by Franchisee. All the equipment, services and grants provided in this Article 6 shall be
21 provided without any cost of any kind (initial, one time, on-going or recurring) to the City or PEG Users,
22 except as specifically provided in this Agreement.

23 SECTION 7 24 EMPLOYMENT AND PURCHASING

25 7.1 Equal Employment Opportunity. Franchisee shall comply in all respects with Federal, state and local
26 equal employment opportunity (“EEO”) and non-discrimination laws and regulations including, but not
27 limited to, the FCC’s EEO rules set forth at 47 C.F.R. § 76.75 *et seq.*, and Article 4, Section 3-1 of the
28 Baltimore City Code. Franchisee shall make rigorous efforts to develop a workforce with minority
29 representation at all levels.

30 7.2 Hiring.

- 31 A. Franchisee shall be required to comply with the Baltimore City Residents First program and shall
32 execute a Baltimore City Residents First Certification Statement in the form provided by the City.
- 33 B. In accordance with the Statement required in Section 7.2A above, and to the extent available and
34 appropriate, Franchisee shall designate MOED as a principal recruitment, referral, and training
35 agent. Franchisee shall identify a representative to work with MOED for the purpose of
36 communicating hiring needs and providing hiring status on all job applicants upon request of
37 MOED.
- 38 C. Franchisee shall fund, sponsor, and/or support the following workforce elements or their
39 equivalents:
- 40 1. Identify expert guest speakers to discuss the cable workforce environment for job-seeking
 - 41 customers at the City’s One Stop Career Centers;
 - 42 2. Participate in the Mayor’s YouthWorks Summer Jobs Fair for City teens;

Council Bill 07-0825

- 1 3. Hire youth to fill summer job positions, to the extent that such positions are appropriate for
- 2 youth under applicable safety regulations;
- 3 4. Participate in an annual conference for workforce development professionals;
- 4 5. Participate in quarterly and targeted job fairs;
- 5 6. Develop on-the-job training programs for entry level positions.

6 D. Compliance Report. Franchisee shall submit to MOED and MOCC an annual report on its
7 compliance with Section 7.2 of this Agreement.

8 7.3 MBE/WBE. Franchisee agrees to comply with the City's statutes, ordinances and regulations
9 regarding participation by minority business enterprises ("MBEs") and women's business enterprises
10 ("WBEs") as if it were a contractor receiving funding from the City provided that enforcement of this
11 Section shall be exclusively by way of liquidated damages and in no event shall the City seek to suspend
12 or rescind the Franchise for any violation of this Section. The Franchisee shall use reasonable, good faith
13 efforts to meet a goal for participation by MBE and WBE for purchases and construction contracts as
14 established by the City's Minority and Women's Business Opportunity Office ("MWBOO"). MWBOO
15 shall administer the provisions of this Section on behalf of the City, and Franchisee shall comply with
16 MWBOO rules and requirements.

17 A. Documentation to the City on MBE/WBE. Six (6) months after the Effective Date and annually
18 thereafter, the Franchisee shall submit to the City written documentation, including executed
19 contracts, service agreements and utilization commitment forms, that shall identify the particular
20 MBE/WBEs that are (i) contracting directly with the Franchisee; or (ii) subcontracting with prime
21 contractors who contract directly with Franchisee. The documentation submitted to the City shall
22 specify the dollar value of the participation, type of work to be performed, and such other
23 information as the City may reasonably request.

24 B. Waiver of MBE/WBE. In the event that, after the use of reasonable, good faith efforts to meet the
25 goals for MBE and WBE participation established pursuant to this Section 7.3, the Franchisee is
26 able to demonstrate to the City's satisfaction that sufficient qualified and willing MBEs and
27 WBEs are unavailable, then Franchisee may request a waiver or reduction of the MBE/WBE
28 goals.

29 C. Report on MBE/WBE. Six (6) months after the Effective Date and every six (6) months
30 thereafter, the Franchisee shall submit to MOCC a report on its compliance with this Section 7.3.
31 Franchisee may satisfy this requirement by copying MOCC on any such report that it files with
32 another City agency on a semiannual or more frequent basis.

33 7.4 Prequalification. Franchisee and each of its contractors and subcontractors performing work with
34 respect to the Cable System in excess of the dollar amount established by the City shall be prequalified
35 annually with the City. The Franchisee and its contractors and subcontractors shall submit such forms
36 and other information as may be required by the City to obtain such prequalification annually.

37 7.5 Compliance. Franchisee shall ensure that the requirements of Section 7 are adhered to by any
38 Affiliated Person or contractor or subcontractor that is regularly performing functions on the System.

39 SECTION 8 40 FEES AND CHARGES

41 8.1 General Requirement.

42 A. Compliance with Law. Each fee, charge, deposit, or associated term or condition imposed by the
43 Franchisee or any Affiliated Person for:

Council Bill 07-0825

1. any equipment, installation, or other activity subject to Section 623 of the Cable Act (47 U.S.C. § 543) (or any successor thereto) and the rules and regulations issued in connection therewith, or
2. any Service,

shall be consistent with the requirements of such provision and of any other Applicable Law.

- B. Current Fees and Charges. A schedule of the Franchisee's current fees, charges, deposits, terms, and conditions as of the Effective Date of this Agreement is set forth in Appendix C to this Agreement. The Franchisee shall not change the Services it offers or the rates it charges therefor without meeting all requirements of any Applicable Law and this Agreement.

8.2 Notice of Change. In addition to any notice required by any Applicable Law, not fewer than thirty (30) Days prior to the effective date of any change in any such fee, charge, deposit, term, or condition, the Franchisee shall:

- A. submit notice of such changes to MOCC;
- B. provide written notice to each affected Subscriber utilizing the affected Service, which notice shall include the telephone number(s) for accessing the Franchisee's automated telephone descriptions of such change pursuant to Subsection D of this Section;
- C. post notice of such change in all customer Service Centers in the City; and
- D. offer descriptions of such change via an automated telephone system, which descriptions shall be in English and Spanish.

8.3 No Discrimination.

- A. General. Except to the extent otherwise permitted by any Applicable Law (and with the City's approval, where the City is exercising such authority pursuant to Applicable Law), the Franchisee shall not discriminate among Subscribers with respect to fees, charges, deposits, and other terms and conditions affecting any Service, or any equipment, installation, or any other activity subject to regulation under Section 623 of the Cable Act (47 U.S.C. § 543) (or any successor thereto) and the rules and regulations issued in connection therewith. All such fees, charges, deposits, and other terms and conditions must be applied fairly and uniformly to all Subscribers in the Franchise Area.
- B. Exceptions. Nothing contained in this Section shall prohibit the Franchisee from offering, to the extent permitted by any Applicable Law:
 1. discounts to senior citizens or economically disadvantaged groups;
 2. different charges for Residential Subscribers than for Non-Residential Subscribers;
 3. sales promotions and other discounts or reduced charges for a reasonable period of time, which are offered to all Residential Subscribers for the same length of time, although the start date of such promotions, discounts, or reduced charges may be staggered;
 4. sales promotions and other discounts or reduced charges for a reasonable period of time, which are offered to a discrete class of Subscribers which may affect the fees, charges, deposits, and other terms and conditions for such Subscribers;
 5. bulk rates; or
 6. other special, short-term discounts or reduced charges to identifiable classes of Subscribers or potential Subscribers for reasonable categories of Service.
- C. Refusal of Service. Franchisee may refuse to provide Service to any Person for demonstrable reasonable cause, including, but not limited to, due or owing accounts between such Person and Franchisee, theft of Service, or theft of or vandalism to Franchisee property.

Council Bill 07-0825

1 8.4 Service to Disabled Subscribers. The Franchisee shall comply with all applicable FCC rules related to
2 provision of Service to disabled Subscribers.

3 8.5 Subsequent Changes. To the extent that any Applicable Law may in the future permit the City to
4 regulate fees, charges, deposits, and the terms and conditions with respect thereto, the City shall not be
5 estopped or prevented from so doing by any provision of this Agreement.

6 SECTION 9 7 CUSTOMER SERVICE STANDARDS, CUSTOMER BILLS, AND PRIVACY PROTECTION

8 9.1 Consumer Protection Standards. The Franchisee shall comply in all respects with all applicable
9 customer service and consumer protection requirements set forth in Applicable Law. Franchisee must
10 maintain records and documentation sufficient to show compliance with all applicable customer service
11 and consumer protection standards.

12 9.2 Customer Bills. Bills sent by the Franchisee to the Subscriber for Cable Services are to be clear,
13 concise, and understandable. All bills shall be fully itemized and clearly delineate all activity during the
14 billing period, including dates of service being billed, optional charges, rebates, and credits. The
15 Franchisee must include on Subscriber bills the information required by Applicable Law.

16 9.3 Privacy Protection. The Franchisee shall comply with Section 631 of the Cable Act (47 U.S.C. § 551),
17 FCC rules and regulations concerning Subscriber privacy, and any other Applicable Law or regulation
18 pertaining to Subscriber privacy.

19 9.4 Service Centers; Bill Payment Locations; Administrative Office.

20 A. Service Center. Within one hundred eighty (180) days after the Effective Date, Franchisee shall
21 maintain at least one (1) customer service center ("Service Center") in the City. Franchisee shall
22 notify the MOCC of the location(s) of the Service Center(s) not less than thirty (30) Days prior to
23 opening the centers. The Service Center(s) shall be open during normal business hours and at
24 least six (6) hours on Saturdays, have a publicly listed local telephone number, and be operated so
25 as to promptly and efficiently receive Subscriber complaints and requests for repairs or
26 adjustments. At a minimum, each Service Center shall allow Subscribers on a walk-in basis to file
27 complaints; ask questions regarding bills or service; pay bills; request, upgrade or terminate
28 Services; and drop off equipment.

29 B. Bill Payment Location. Franchisee shall maintain, or cause to be maintained, not less than five (5)
30 locations other than the Service Center in the City at which Subscribers may pay their bills. If
31 such location is operated by a third party, a reasonable service fee may be charged by the third
32 party to the Subscriber. Franchisee shall use reasonable efforts to maintain such locations at other
33 than liquor stores. Franchisee shall provide the following to the City as of the Execution Date and
34 shall promptly report any changes thereto to MOCC: (i) a map of bill payment locations; (ii) a
35 schedule of third party service fees; and (iii) description of the procedures used by bill payment
36 locations to process Subscriber payments. To the extent that any Applicable Law may, in the
37 future, permit the City to further regulate bill payment locations, third party service fees, or
38 payment processing procedures, the City shall not be estopped or prevented from so doing by any
39 provision of this Agreement.

40 C. Report on Change in Location of Service Center(s). The Franchisee shall give written notice to
41 MOCC not less than thirty (30) Days prior to changing the location of any Service Center(s)
42 within the City.

Council Bill 07-0825

9.5 Service Interruptions.

- 1
- 2 A. General. The Franchisee shall render efficient Service, make repairs promptly, and interrupt
3 Service only for good cause and for the shortest time possible. Such interruptions, insofar as
4 possible, shall be preceded by notice and shall occur during periods of minimum use of the Cable
5 System.
- 6 B. Report on Service Interruptions. Not later than the fifteenth (15th) Day after the close of each
7 calendar quarter, the Franchisee shall provide to MOCC a log of all Service outages during the
8 preceding quarter. The log shall identify scheduled and unscheduled outages separately, and shall
9 include a legend that explains the codes used by Franchisee to categorize and describe outages.
10 The log shall also include the following information regarding both scheduled and unscheduled
11 outages: the locations affected by the outages, the time, duration, and probable cause of the
12 outages, the number of homes affected, and the action taken on all failures or outages of the
13 Cable System. The Franchisee shall notify MOCC:
- 14 1. of all scheduled outages, by fax or telephone, and shall include the location and the number
15 of homes affected by each scheduled outage; and
 - 16 2. of all major unscheduled outages, by fax or telephone, as Franchisee becomes aware of such
17 outages and to the extent that information regarding the location, the number of homes
18 affected by, and the time, duration, and probable cause of an unscheduled outage is available,
19 with updates to MOCC as additional information becomes available.

20 9.6 Service Complaints.

- 21 A. Response Time. Franchisee shall maintain an adequate force of repair technicians. Franchisee
22 shall respond to Subscriber service complaints, problems, and Cable System outages in
23 accordance with Applicable Law. No charge shall be made to a Subscriber for this service, unless
24 the malfunction is the fault of the Subscriber or the Subscriber's equipment, which shall be
25 Franchisee's burden to prove. Franchisee shall assure rapid repair of major Cable System outages,
26 or other outages that could affect high priority services such as security systems. If a Subscriber
27 is not satisfied with the resolution of a complaint, the Subscriber shall, upon request, be referred
28 to supervisory-level personnel.
- 29 B. Report on Subscriber Complaints. Not later than the fifteenth (15th) Day after the close of each
30 calendar quarter, the Franchisee shall provide to MOCC a log of all Subscriber complaints,
31 written and unwritten, received during the preceding quarter. The log shall include a legend that
32 explains the codes used by Franchisee to categorize and describe the complaints. The log shall
33 also include the following information: the number of complaints, a general description of the
34 complaints by category (excluding personally identifiable information of Subscribers), and the
35 resolution of each complaint or the steps required to resolve any unresolved complaint. For all
36 complaints originally received by MOCC and forwarded to the Franchisee, the Franchisee shall
37 provide a copy to MOCC of any written response by Franchisee to the complaint. Franchisee
38 shall comply with FCC regulations, including 47 C.F.R. § 1713.

39 9.7 Information to Subscribers.

- 40 A. Franchisee Notice to Subscribers. At the time an installation agreement is signed, the Franchisee
41 shall furnish to each Subscriber a written statement that clearly sets forth a complete schedule of
42 rates, fees, and charges currently applicable to the type of installation, billing policies,
43 information concerning the procedures for making inquiries or complaints, and the address and
44 telephone number of the City office responsible for the administration of the Franchise. The
45 Franchisee shall comply with FCC regulations requiring notice to Subscribers (including, but not
46 limited to, 47 C.F.R. §§ 1602, 1618 and 47 U.S.C. § 551) and shall provide a copy to the City.

Council Bill 07-0825

1 B. City Information to Subscribers. The Franchisee shall carry out, at its cost, not more than four (4)
2 mailings in each three (3) year interval of the Term to Subscribers containing such materials
3 related to cable, telecommunications, and information services as the City provides, at its cost.
4 For any remaining portion of the Term that is less than three (3) years, the number of mailings
5 during such remaining portion shall be reduced proportionately so that the number of mailings
6 during the remaining portion shall be at the same frequency as the balance of the Term.

7 C. Prevention of Reception of Undesired Services. Franchisee shall comply with Section 640 of the
8 Cable Act, 47 U.S.C. § 560. In addition, Franchisee shall inform Subscribers at the time of
9 subscription, and annually thereafter, by individual written notice: (i) that they are entitled, upon
10 request and without charge, to receive full blockage of any undesired audio or video
11 programming to which they do not subscribe; and (ii) how to make such a request. Franchisee
12 shall comply with all such Subscriber requests.

13 9.8 No Interference with Customer Equipment. The Franchisee and any Affiliated Person shall comply
14 with Applicable Law regarding a Subscriber's ability to utilize consumer equipment of the Subscriber's
15 choosing.

SECTION 10 FRANCHISE FEES

10.1 Franchise Fees; Payment Due.

16 A. Amount; Date Due. As compensation for the Franchise, the Franchisee shall pay to the City an
17 amount equal to five percent (5%) of annual Gross Revenue throughout the Term of the
18 Agreement. All such Payments shall be made on a quarterly basis and shall be remitted within
19 thirty (30) Days after the last Day of each March, June, September, and December throughout the
20 term of this Agreement and simultaneously with the submission of Franchisee's quarterly report
21 required pursuant to Section 10.2 of this Agreement. The Franchisee may prepay Franchise Fees
22 from time to time with the consent of the City.
23

24 B. Change in Amount. The City may, in its sole discretion, increase the amount of the franchise fee
25 up to the maximum amount permitted under state and federal law at any time provided that the
26 City gives the Franchisee sixty (60) Days advance notice of such an increase and provided that
27 the imposition of the increased franchise fee shall be phased in over two years. If the maximum
28 amount is not specifically provided by law, the City and the Franchisee shall negotiate in good
29 faith to amend the Agreement to specify the increased amount. The Franchisee shall begin
30 paying the increased fee from the effective date of the amendment to the Agreement.
31

32 C. Payment on Transfer. Except as may otherwise be provided in an agreement between the City and
33 the Franchisee authorizing the transfer of the Cable System, in the event of any transfer of the
34 Cable System to any Person pursuant to this Agreement, the Franchisee, as a condition to the
35 City's approval of any such transfer, shall remit to the City any Franchise Fees due based on the
36 Gross Revenue as of the date of the transfer prior to the effective date of the transfer.
37

38 10.2 Quarterly Report. Franchisee shall submit to MOCC, with a copy to the Director of Finance, a report
39 in such form and containing such detail as MOCC and the Franchisee shall agree, not later than the date
40 for payment of the fee required by Section 10.1, setting forth the Gross Revenue for the quarter ending on
41 the last Day of the last month of each quarter. The report shall contain a reconciliation between the Gross
42 Revenue shown in the report and the financial statements for the Cable System, prepared in accordance
43 with generally accepted accounting principles, over the relevant time period. The report shall also contain
44 a breakdown of Gross Revenues by major revenue categories, including, but not limited to Basic Service,
45 cable programming service, and premium service.

Council Bill 07-0825

1 10.3 Acceptance by City. No acceptance of any Franchise Fee payment by the City shall be construed as
2 an accord and satisfaction that the amount paid is in fact the correct amount or as a release of any claim
3 that the City may have for further or additional sums payable under this Agreement. All amounts paid
4 shall be subject to audit and recalculation by the City.

5 10.4 Itemization. If the Franchisee designates the amount of any compensation payment to be made to the
6 City by the Franchisee or by any other Person pursuant to this Agreement, including any payments made
7 on behalf of any Person for whose Services the Franchisee bills Subscribers, it shall do so in a manner
8 that is consistent with Applicable Law and that does not mischaracterize the nature of such compensation
9 payment. The Franchisee shall submit a sample bill containing such a designation to MOCC for review at
10 least fifteen (15) Days prior to mailing a bill containing such a designation for the first time. The
11 Franchisee shall consider any comments received from MOCC on the sample bill.

12 10.5 Ordinary Business Expense. Nothing contained in this Agreement shall prevent the Franchisee or
13 any Affiliated Person from treating the compensation and other payments that it, they, or either of them
14 pays, or may pay, pursuant to this Agreement as an ordinary expense of doing business and, accordingly,
15 from deducting such payments from gross income in any City, state, or federal income tax return.

16 10.6 Payments to Be Made to the City.

- 17 A. Use of Cable System. If the Franchisee collects any amounts from Subscribers that are to be paid
18 to any Person for the provision of Services on the Cable System or in connection with the Cable
19 System, the Franchisee shall deduct five percent (5%) from such amounts and include the
20 deducted amounts in its payments to the City pursuant to Section 10.1 and in its quarterly report
21 required pursuant to Section 10.2. Unless otherwise agreed by the Franchisee and the City, this
22 Section shall not apply to the provision of Non-Cable Services on the Cable System.
- 23 B. Collections by Others. If any Person, other than the Franchisee, directly collects any amounts
24 from Subscribers that would constitute Gross Revenue if received directly by the Franchisee, and
25 such amounts are not then paid by such Person to the Franchisee, the Franchisee shall include a
26 provision in its contract or other arrangement with such Person that states that such Person shall
27 remit to the City an amount equal to five percent (5%) of such amounts collected from
28 Subscribers on a quarterly basis. Such provision, which must be approved in advance by the City
29 Solicitor, shall also state that such payments to the City shall be accompanied by a quarterly
30 report similar in form and content to the report required pursuant to Section 10.2 and that the City
31 may enforce the provision directly against such Person. Unless otherwise agreed by the
32 Franchisee and the City, this Section shall not apply to revenues received for Non-Cable Services.

33 10.7 Franchise Fee and Other Audits.

- 34 A. General. At any time during the Term of the Franchise or for six (6) years after the receipt of a
35 payment pursuant to Section 6.5 or this Section 10 (as applicable), whichever is later, the City, at
36 its expense, may commence and conduct an audit or review, pursuant to Section 11.11, of the
37 payments made pursuant to Section 6.5 and this Section 10 by (i) the Franchisee; or (ii) any other
38 Affiliated Person, to the extent that the Affiliated Person's revenues constitute Gross Revenue.
39 Except in extraordinary circumstances, there shall be no more than one (1) audit for each fiscal
40 year in any twelve (12) month period.
- 41 B. Records. At the City's request, the Franchisee shall provide the source records that support the
42 franchise fee and PEG capital funding calculation, as applicable, for the time period(s) being
43 audited and a reconciliation between the Gross Revenue on which the franchise fee and the PEG
44 capital funding calculation are based and the financial statements for the Cable System, prepared
45 in accordance with generally accepted accounting principles, regardless of whether the records
46 are held by the Franchisee, an Affiliate, or any other entity that collects or receives funds related
47 to the Franchisee's operation in the City. The Franchisee shall be responsible for maintaining all
48 such records for at least six (6) years following the payments to which they apply, plus the

Council Bill 07-0825

1 duration of any audit in progress at the end of that six (6) year period, and providing all such
2 records to the City.

3 C. Underpayment. Within 30 Days after notice from the City of any underpayment by the
4 Franchisee, the Franchisee shall:

- 5 1. pay the amount of the underpayment to the City, plus interest calculated at the rate and in the
6 manner specified in Section 10.10, and shall pay to the City any corresponding underpayment
7 in support required by Section 6.5, with interest calculated at the rate specified in Section
8 10.10, or
- 9 2. notify the City in writing that it does not agree with the results of the audit and the reasons
10 therefor.

11 D. Costs of Audit. If the audit or review reveals an underpayment to the City in an amount that
12 exceeds four percent (4%) of the total amount due to the City from the Franchisee over the time
13 period and for the type of payment audited or reviewed, the Franchisee shall reimburse the City
14 for the City's costs of such audit or review.

15 E. Completion. The City shall have a reasonable period of time to complete the audit or review and
16 to accept the audit or review as accurate and final. At the end of such period, the City shall issue
17 an audit closure notice to the Franchisee. Notwithstanding the issuance of such notice, the City
18 shall have the right to reopen any audit or review for a period of twelve (12) months after the date
19 of such notice or at any time upon the discovery that the Franchisee or an Affiliated Person has
20 provided fraudulent information or acted in bad faith during the course of the audit or review.

21 F. Reservation of Rights. To the extent the parties disagree about the results of the audit, each party
22 reserves the right to exercise all its rights and remedies under this Agreement and Applicable
23 Law.

24 10.8 Not Franchise Fees. The Franchisee expressly acknowledges and agrees that:

25 A. Except for the payments expressly required by Sections 10.1, 10.6, and 10.7 relating to franchise
26 fees, none of the payments or contributions made by, or the services, equipment, facilities,
27 support, resources, or other activities to be provided or performed by the Franchisee pursuant to
28 this Agreement, or otherwise provided or performed in connection with the construction,
29 operation, maintenance, repair, removal, upgrade, rebuild or enhancement of the Cable System,
30 are franchise fees chargeable against the compensation payments to be paid to the City by the
31 Franchisee pursuant to Sections 10.1, 10.6, and 10.7; and

32 B. Except for the payments to the City expressly required by Sections 10.1, 10.6, and 10.7 relating
33 to franchise fees, each of the payments or contributions made by, or the services, equipment,
34 facilities, support, resources, or other activities to be provided by the Franchisee, are within the
35 exclusions from the term "franchise fee" set forth in Section 622(g)(2) of the Cable Act, 47
36 U.S.C. § 542(g)(2) (or any successor thereto); and

37 C. The payments due from the Franchisee to the City pursuant to Sections 10.1, 10.6, and 10.7 shall
38 take precedence over all other payments, contributions, services, equipment, facilities, support,
39 resources, or other activities to be paid or supplied by the Franchisee pursuant to this Agreement;
40 and

41 D. The compensation and other payments to be made pursuant to Section 6.5 and this Section 10
42 shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of
43 general applicability or other fees or charges which the Franchisee or any Affiliated Person shall
44 be required to pay to the City or to any state or federal agency or authority. Unless the City

Council Bill 07-0825

1 agrees otherwise, neither the Franchisee nor any Affiliated Person shall have or make any claim
2 for any deduction or other credit for any part of the amount of the compensation or other
3 payments to be made pursuant to this Agreement from or against any fees or charges which the
4 Franchisee or any Affiliated Person is required to pay to the City or other governmental agency or
5 jurisdiction or other governmental taxes of general applicability, including:

- 6 1. any such tax, fee or assessment imposed on both utilities and cable operators or their services
7 but not including a tax, fee or assessment which is unduly discriminatory against cable
8 operators or cable subscribers; and
- 9 2. income taxes.

10 Each of the compensation payments, other payments, taxes, and other fees and charges shall be
11 deemed to be separate and distinct obligations of the Franchisee and Affiliated Persons.

- 12 E. Neither the Franchisee nor any Affiliated Person shall apply or seek to apply all or any part of the
13 amount of any City or other governmental taxes or other fees or charges of general applicability,
14 including any such tax, fee, or assessment imposed on both utilities and cable operators or their
15 services but not including a tax, fee, or assessment which is unduly discriminatory against cable
16 operators or cable subscribers, as a deduction or other credit from or against any of the
17 compensation or other payments to be made pursuant to this Agreement, each of which shall be
18 deemed to be separate and distinct obligations of the Franchisee and Affiliated Persons.

19 Nothing in this Agreement is intended to preclude the Franchisee from exercising any right it may
20 have to challenge the lawfulness of any tax imposed by the City or any state or federal agency or
21 authority.

22 10.9 Method of Payment. All payments by the Franchisee to the City pursuant to this Agreement shall be
23 made payable to the Director of Finance and shall be delivered to MOCC.

24 10.10 Interest on Late Payments. In the event that any payment required by this Agreement, including but
25 not limited to the payment of franchise fees, is not actually received by the City on or before the
26 applicable date fixed in this Agreement, interest on such payment shall accrue from such date at a rate
27 equal to the then-prevailing prime rate of interest for commercial loans as published in the "Money Rates"
28 section of the *Wall Street Journal* or as published by a comparable rate source to be determined by the
29 City should the rate fail to be published by the *Wall Street Journal*. Such interest shall be compounded
30 daily, except as otherwise provided in this Agreement.

31 SECTION 11 32 OVERSIGHT AND REGULATION BY CITY

33 11.1 Oversight.

- 34 A. General. The City shall have regulatory oversight over the Cable System to ensure compliance
35 with the terms and conditions of this Agreement and Applicable Law, including, without
36 limitation, the right to regulate and inspect the construction, operation, maintenance, repair,
37 upgrade, rebuild, enhancement, and removal of the Cable System, and all parts of the Cable
38 System, provided, however, that the City shall provide not less than three (3) Business Days prior
39 notice to the Franchisee for any inspection that takes place on Franchisee's premises or that
40 requires a representative of Franchisee to obtain access, and provided, further, that such notice
41 shall not be required in the event of an emergency. Regulation may be exercised through any
42 City official, agency, department, duly established public commission, or other Person appointed
43 or authorized by the City to support or assist the City in its regulatory responsibilities.

Council Bill 07-0825

- 1 B. Compliance. The Franchisee shall establish and maintain managerial and operational standards,
2 procedures, records, and controls to enable the Franchisee to be in compliance with each term and
3 condition of this Agreement at all times required by this Agreement.

4 11.2 City Reservation of Authority.

- 5 A. Right to Regulate. To the extent allowed by Applicable Law, the City reserves the right to adopt
6 or issue such statutes, rules, regulations, orders, or other directives governing the Franchisee or
7 the Cable System as it shall find necessary or appropriate in the exercise of its police powers or
8 its powers to regulate Cable Service or the Cable System, and the Franchisee expressly agrees to
9 comply with all such lawful statutes, rules, regulations, orders, or other directives; provided that
10 the Franchisee shall not be required to comply with any such statutes, rules, regulations, orders,
11 or other directives that take effect after the Effective Date to the extent such statutes, rules,
12 regulations, orders, or other directives are materially in conflict with the Franchisee's rights and
13 obligations as set forth in this Agreement.
- 14 B. Exceptions. Notwithstanding Section 11.2A, the Franchisee shall comply with each statute, rule,
15 regulation, order, and directive of the City (i) that is of general applicability; (ii) if, in the exercise
16 of its police power, the City finds an emergency exists constituting a danger to health, safety,
17 property, or general welfare; or (iii) if the exercise of the City's police power is mandated by law.

18 11.3 Franchisee's Participation in Meetings and Hearings.

- 19 A. Board Meetings and Hearings. At the request of the Board or Council, the Franchisee's General
20 Manager, or his or her designee, and other personnel of the Franchisee with relevant expertise in
21 the designated subjects shall participate in any meeting or hearing held by the Board or Council
22 regarding the Cable System, this Agreement, or the Franchisee. The Franchisee personnel shall
23 bring to such meeting or hearing any documents requested by the Board or Council; provided that
24 the documents relate to the terms of the Franchise and which are necessary for the enforcement of
25 this Agreement or the operations, affairs, transactions, or property of the Franchisee, including
26 any documents reasonably known by the Franchisee to be responsive to the request even if such
27 documents are not specifically identified by such request. Any confidential or proprietary
28 information or documents requested for such meeting or hearing pursuant to this Section 11.3
29 may be provided to the Board or Council in advance of the meeting or hearing. Whether
30 provided at or in advance of the meeting or hearing, any such confidential or proprietary
31 information or documents shall be subject to Section 11.11E of this Agreement.
- 32 B. MOCC Meetings. At the request of the Executive Director of MOCC, the Franchisee's General
33 Manager, or his or her designee, and other personnel of the Franchisee with relevant expertise in
34 the designated subjects shall participate in any meeting held by the Executive Director regarding
35 the Cable System, this Agreement, or the Franchisee. Franchisee personnel shall bring to such
36 meeting any documents requested by MOCC, including any documents reasonably known by the
37 Franchisee to be responsive to MOCC's request even if such documents are not specifically
38 identified by such request. Any confidential or proprietary information or documents requested
39 for such meeting pursuant to this Section 11.3 shall be provided to MOCC in advance of the
40 meeting. Whether provided at or in advance of the meeting, any such confidential or proprietary
41 information or documents shall be subject to Section 11.11E of this Agreement.

42 11.4 Performance Evaluation Sessions.

- 43 A. Annual Performance Evaluation Sessions. The City and the Franchisee shall hold annual
44 performance sessions within ninety (90) Days after each anniversary date of the Effective Date of
45 the Agreement.
- 46 B. Special Performance Evaluation Sessions. Special performance evaluation sessions may be held
47 at any time during the term of the Agreement at the request of the City or Franchisee.

Council Bill 07-0825

- 1 C. Open to Public. All annual and special performance evaluations shall be open to the public.
2 Franchisee shall notify its Subscribers of all evaluation sessions by announcement on at least two
3 (2) Channels of its Cable System between the hours of 7:00 P.M. and 9:00 P.M. for five (5)
4 consecutive Days preceding each session.
- 5 D. Elements of Evaluation. Topics which may be discussed at any regular or special evaluation
6 meeting may include, but need not be limited to, Subscriber rate structures, franchise fees,
7 liquidated damages, free or discounted services, applications of new technologies, Cable System
8 performance, Services provided, programming offered, Subscriber and community complaints,
9 privacy, amendments to City ordinances, rules, and regulations, modifications to this Agreement,
10 judicial and FCC rulings, line extension policies, and Franchisee or City rules and regulations.
- 11 E. Franchisee Cooperation. The Franchisee shall fully cooperate with the City in all matters relating
12 to any regular or special evaluation pursuant to this Section and shall, at the Franchisee's
13 expense, provide such information, data, and documents as the City may reasonably request in
14 connection with any such evaluation.
- 15 F. City Right to Require Special Tests. If at any time during any regular or special evaluation
16 pursuant to this Section, the City determines that reasonable evidence exists of inadequate Cable
17 System performance, it may require the Franchisee, at the Franchisee's expense, to perform tests
18 and analyses directed toward the identified or suspected inadequacies. The Franchisee shall fully
19 cooperate with the City in scheduling and performing such testing and shall prepare and present a
20 written report setting forth and interpreting the results of such testing within thirty (30) Days after
21 receiving notice from the City that such testing will be required. Such report shall include at least
22 the following information:
- 23 1. Identification and qualifications of the Person performing the tests;
 - 24 2. The nature of the identified or suspected inadequacy which precipitated the special tests;
 - 25 3. What system components were tested;
 - 26 4. The equipment used and procedures employed in testing;
 - 27 5. The results, and an analysis and interpretation of the results, of the tests and, in particular,
28 data and information tending to confirm and identify the source of, or to negate the existence
29 of, the identified or suspected inadequacy;
 - 30 6. The method, if any, by which any such identified system inadequacy has been, or will be
31 rectified;
 - 32 7. Recommendations, if any, for additional action; and
 - 33 8. Any other information pertinent to said tests and analyses which may be required or useful.

34 If the City is not satisfied with the results of any of the Franchisee's tests or analyses, then the
35 City may repeat the test or analysis with personnel and consultants selected by the City. If the
36 result of any such repeated test or analysis demonstrates that the result of the Franchisee's test or
37 analysis was in error, then the Franchisee shall reimburse the City for the City's costs and
38 expenses incurred in connection with the test or analysis, including, without limitation, the costs
39 incurred by the City for hiring a professional engineer or other consultant to perform the test or
40 analysis.

41 11.5 General Provisions Regarding Reports and Records.

- 42 A. Additional Information. Within a reasonable period of time after a request of the Board, the
43 Council, the City Solicitor, or MOCC, the Franchisee shall, subject to the provisions of Section
44 11.11 of this Agreement with respect to the processing of confidential and proprietary
45 information, submit to the requesting party any information reasonably required to demonstrate
46 compliance with the terms and conditions of this Agreement or Applicable Law.

Council Bill 07-0825

- 1 B. Format. The Franchisee shall transmit to MOCC, by means of such method and in such format as
2 MOCC may specify after consultation with the Franchisee, all information requested by MOCC
3 consistent with this Agreement, including, without limitation, the information required to be
4 submitted by Applicable Law. In the event that MOCC's staff and the Franchisee's personnel
5 disagree regarding such specification of the format of a report, the issue shall be referred to the
6 Executive Director of Operations and the Franchisee's General Manager (or a person in an
7 equivalent or higher position) for resolution. The Franchisee shall inform MOCC, at the
8 beginning of any report submitted, of all changes in calculations, methodology, time periods
9 used, and any other changes that may adversely affect MOCC's ability to compare previous
10 reports to the report in question.
- 11 C. Deadline for Submission. Unless otherwise specified, any report or other provision of information
12 required under this Agreement shall be due to MOCC within thirty (30) Days after the event that
13 triggers the reporting requirement.
- 14 D. Designated Officers and Employees. Throughout the Term of this Agreement, the General
15 Manager of the Franchisee or a person in an equivalent position, or such other person whom the
16 Franchisee designates in writing to MOCC, shall be responsible for overseeing the Franchisee's
17 reporting obligations pursuant to this Agreement and for responding to the City's questions
18 regarding the Franchisee's compliance with the terms and conditions of this Agreement. The
19 Franchisee must notify MOCC in writing of any change in the designation of such person within
20 five (5) Days after the change.

21 11.6 Franchisee Report. On June 1 of every year during the Term of this Agreement, the Franchisee shall
22 submit an annual report to MOCC. MOCC, after consultation with the Franchisee, may reasonably
23 specify the format of and details covered by any such annual report, provided that the failure of MOCC so
24 to specify shall not relieve the Franchisee of its obligation to submit such report annually to MOCC. In
25 the event that MOCC's staff and the Franchisee's personnel disagree regarding such specification of the
26 format of or details covered by a report, the issue shall be referred to the Executive Director and the
27 Franchisee's General Manager (or a person in an equivalent or higher position) for resolution. The report
28 shall specifically address, at a minimum, the following issues, and shall state whether there has been any
29 material change in the information or plans regarding such issues from the information or plans the
30 Franchisee previously has provided to the City:

- 31 A. compliance with the requirements regarding Cable System characteristics; and technical
32 performance and testing requirements, as provided in Appendix A to this Agreement;
- 33 B. compliance with any plans or specifications submitted by the Franchisee in connection with the
34 construction terms, schedule, and sequence for performance of any construction, upgrades,
35 rebuilds, and enhancements of the Cable System, as provided in Section 3 of, and Appendix A to,
36 this Agreement;
- 37 C. a description of the interconnections between the Cable System and any other network or system
38 provided by the City or a local, state, or federal government entity or any other Cable System or
39 Open Video System; a statement of the reason for each such interconnection; and the
40 Franchisee's response to any request by the City to perform such an interconnection;
- 41 D. compliance with all requirements related to PEG Channels, including funding for PEG Channels,
42 PEG Signal Input Points and Remote Signal Input Points, and signal quality and transmission on
43 the PEG Channels, as provided in Section 6 of this Agreement;
- 44 E. compliance with Applicable Law regarding access to Cable Services by disabled Subscribers, as
45 provided in Section 8.4;
- 46 F. compliance with the Franchisee's employment and purchasing obligations, as provided in Section
47 7 of this Agreement;

Council Bill 07-0825

- 1 G. copies or, if no copies exist, descriptions of any notices or other information provided to
2 Subscribers about the Franchisee's privacy policies and other protections of Subscriber privacy;
- 3 H. compliance with the additional covenants set forth in Section 14.13J of this Agreement;
- 4 I. compliance with the customer service and consumer protection standards, as provided in Section
5 9 of this Agreement and Applicable Law pertaining to consumer protection;
- 6 J. (i) a schedule of the Franchisee's current fees, charges, deposits, terms, and conditions for the
7 provision of Services and equipment (including, but not limited to, equipment for the hearing
8 impaired) to Residential Subscribers not billed on a bulk basis in the form set out in Appendix D
9 to this Agreement; (ii) a schedule of Franchisee's contract or application forms for Subscriber
10 Service; and (iii) copies of the Franchisee's external policies regarding Subscriber complaints,
11 delinquent accounts, disconnection and reconnection procedures, and any other policies affecting
12 Subscribers;
- 13 K. a report answering the following questions (for the purposes of this Section 11.6M the
14 Franchisee may exclude Affiliated Persons that do not operate a Cable System in the Franchise
15 Area):
- 16 1. Has an adverse decision been rendered by any court or administrative body with respect to
17 the Franchisee or any Affiliated Person in a civil, criminal, or administrative proceeding,
18 brought under the provisions of any law or regulation related to the following: any felony;
19 revocation, suspension, or involuntary transfer of any authorization (including cable
20 franchises) to provide communications services; communications-related antitrust or unfair
21 competition; fraudulent statements to another government unit; or employment
22 discrimination?
- 23 2. If the answer to (1) is "Yes," fully describe the Persons and matter(s) involved, including an
24 identification of any court or administrative body and any proceeding (by dates and file
25 numbers, if applicable) and the disposition of such proceeding.
- 26 3. Is the Franchisee or any Affiliated Person currently a party in any pending matter of a type
27 described in (1)?
- 28 4. If the answer to (3) is "Yes," fully describe the Persons and matter(s) involved, including an
29 identification of any court or administrative body and any proceeding (by dates and file
30 numbers, if applicable) and the disposition of such proceeding;
- 31 L. an organizational chart showing (i) all corporations or partnerships with an ownership interest in
32 the Franchisee; (ii) the nature of that ownership interest (limited partner, general partner,
33 preferred shareholder, etc.); and (iii) the same information for each corporation or partnership that
34 holds such an interest in the corporations or partnerships so identified and so on until the ultimate
35 corporate and partnership interests are identified; accompanied by an annual report and SEC
36 10(k) filing for each entity identified that generates such documents; provided, however, that for
37 any non-Affiliated Person for which Franchisee does not possess, and cannot reasonably obtain,
38 the required information, Franchisee shall so indicate on the chart;
- 39 M. a list of the members of Franchisee's limited liability company, and if any such members are
40 corporate entities, a list of the officers and members of such entities;
- 41 N. a copy of the annual financial report with respect to the fiscal year most recently ended for each
42 of the Franchisee's parent companies that produce such reports, including the certification
43 required by Section 302(a) of the Sarbanes-Oxley Act of 2002, P.L. 107-204, 116 Stat. 745;

Council Bill 07-0825

- 1 O. (i) a copy of the Franchisee’s annual financial statements, including, without limitation, its
2 balance sheet, statements of operation, statements of changes in financial position and owner’s
3 equity, and income statement; along with a certification, comparable to the certification required
4 by Section 302(a) of the Sarbanes-Oxley Act, by an officer of the Franchisee that the annual
5 financial statements have been prepared in accordance with generally accepted accounting
6 principles; and (ii) copies of audited and certified annual reports, if Franchisee obtains such
7 reports;
- 8 P. a copy of the Franchisee’s rules and regulations applicable to Subscribers; and
- 9 Q. an annual facilities report, setting forth the physical miles of plant constructed, rebuilt, or in
10 operation during the previous calendar year and any revisions to the Cable System “as built”
11 maps on file with the City.

12 11.7 Related Services Report. The Franchisee shall submit to MOCC annually a list of all programming
13 Services owned, controlled, or operated, in whole or in part (excluding interests of less than five percent
14 (5%)), by the Franchisee or its ultimate parent (other than local origination Services to Cable Systems
15 outside the City). The first such report shall be submitted no later than 120 Days after the end of each
16 calendar year and shall be updated annually. To the extent that the Securities and Exchange Commission
17 Form 10-K of Franchisee or any of its owners or parents contains such information, the Franchisee may
18 satisfy the requirements of this Section 11.7 by filing a copy of such Form 10-K with MOCC.

19 11.8 Significant Construction Progress.

- 20 A. Progress Meetings. During any Significant Construction of the Cable System by the Franchisee
21 during the Term of the Franchise, the General Manager, or his or her designee, and one (1) or
22 more of the engineers designing and managing the Significant Construction shall meet with the
23 Executive Director of MOCC at least once a month to brief the Executive Director on the
24 progress of the Significant Construction. Franchisee agrees to make such personnel available for
25 additional progress meetings at the request of the Executive Director.
- 26 B. Progress Reports. The Franchisee shall submit written progress reports to MOCC, with copies to
27 DPW and DOT, every three (3) months throughout the Significant Construction of the Cable
28 System. The first report shall be submitted within ninety (90) Days after the commencement of
29 the Significant Construction. The last such report for the Significant Construction shall be due
30 within ninety (90) Days after the completion of the Significant Construction and shall include a
31 certification to the City that the Significant Construction has been completed. The written
32 progress reports shall (i) explain what work has been done; (ii) how such work satisfies the
33 requirements of this Agreement; (iii) include as-built maps in both paper and electronic forms;
34 and (iv) describe the Franchisee’s construction plans for the six (6) month period following the
35 report. A final design map shall be substituted for any as-built map if an as-built map is not yet
36 available for an area where the construction has been completed. The City agrees that it shall
37 treat the maps to be submitted by the Franchisee pursuant to this Section 11.8 in accordance with
38 the confidentiality provisions of Section 11.11 of this Agreement.

39 11.9 Technical Performance Documents.

- 40 A. Within ten (10) Days after receiving the results of any tests or other measurements pertaining to
41 the Cable System’s technical performance, including, without limitation: (i) reports on proof-of-
42 performance tests conducted pursuant to 47 C.F.R. § 76.601, or any successor thereto; (ii)
43 summary flyover reports; and (iii) records pertaining to any test conducted pursuant to Appendix
44 A to this Agreement; the document(s) reflecting such results are to be placed in a file for public
45 inspection pursuant to 47 C.F.R. § 76.1700, or any successor thereto, and Section 11.13 of this
46 Agreement, and the Franchisee shall submit a copy of such document to MOCC.

Council Bill 07-0825

1 B. Documents and records pertaining to daily signal leakage logs created pursuant to 47 C.F.R. §§
2 76.614, 76.1706, or any successors thereto, shall be placed in a file for public inspection pursuant
3 to 47 C.F.R. § 76.1700, or any successor thereto, and Section 11.13 of this Agreement, within ten
4 (10) Days after receiving such documents and records.

5 C. Documents and records pertaining to tests of the emergency alert system pursuant to 47 C.F.R. §§
6 11.54, 11.61, 76.1700, or 76.1711, or any successors thereto, shall be provided to the City within
7 ten (10) Days after a request by the City therefor.

8 11.10 Additional Filings.

9 A. Legislative. Within ten (10) Days after the Franchisee has received from or submitted to any City,
10 municipal, state, county, or federal legislative body, agency, or official any communication,
11 public report, petition, or other filing which could have a material adverse effect on the
12 Franchisee, the Cable System, or its operation, the Franchisee shall submit to the City a copy of
13 such report, petition, or other communication. This Section 11.10 shall not apply to tax returns,
14 automobile registrations, and other similar routine filings.

15 B. Regulatory and Administrative Agencies. The Franchisee shall file with the City, in a form
16 acceptable to the City, all reports and materials that are submitted to or received from the FCC,
17 the Securities and Exchange Commission, or any other federal or state regulatory or
18 administrative commission or agency with jurisdiction over any matter affecting operation of the
19 Cable System, if such reports and materials could have a material adverse effect on the
20 Franchisee, the Cable System, or its operation. Such reports may include, without limitation, any
21 proof of performance tests and results, Equal Employment Opportunity reports, and all petitions,
22 applications, and communications of all types regarding the Cable System or a group of Cable
23 Systems of which the Franchisee's Cable System is a part, including any such material submitted
24 by or received by the Franchisee, an Affiliated Person, or any other Person on the behalf of the
25 Franchisee. Materials submitted by the Franchisee, an Affiliated Person, or any other Person on
26 the behalf of the Franchisee shall be filed with the City at the time they are submitted to the
27 receiving agency. Materials received by the Franchisee shall be filed with the City within thirty
28 (30) Days after the date they are received by the Franchisee, except that, if Applicable Law
29 permits a response to such materials by the City and sets a deadline of sixty (60) or fewer Days
30 for the City's response, they shall be filed with the City within five (5) Days after the date they
31 are received by the Franchisee.

32 C. Court Documents. Whenever a proceeding could have a material adverse effect on the Franchisee,
33 the Cable System, or its operation, the Franchisee shall submit copies of the following to the City
34 within the time designated: (i) all pleadings, applications, notifications, and documents of any
35 kind relating to Franchisee's operation of the Cable System that are submitted by the Franchisee
36 to any federal, state, or local court, arbitrator, or mediator, along with copies of all decisions,
37 correspondence, and documents evidencing actions by any such court, arbitrator, or mediator,
38 within thirty (30) Days after submitting such documents to a court, arbitrator, or mediator; and
39 (ii) any complaint that names Franchisee as a defendant in a judicial, arbitration, or mediation
40 proceeding, in law or equity, pertaining to the Cable System or this Agreement, within thirty (30)
41 Days after receiving the complaint.

42 D. Bankruptcy Documents. Franchisee shall provide a copy and explanation of any request for
43 protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy, by the
44 Franchisee or by any Person that owns or Controls the Franchisee directly or indirectly, to the
45 City within thirty (30) Days after submitting such a request or receiving such a judgment.

46 E. Subscriptions. Not later than the thirty (30) Days after the last Day of each March, June,
47 September, and December throughout the Term of this Agreement, the Franchisee shall report to
48 the City the number of Subscribers that subscribed to its various categories of Cable Service
49 provided in the City, including without limitation those shown on Appendix C and as modified by

Council Bill 07-0825

1 notice pursuant to Section 8.2, such as basic ("B1"), expanded basic ("B2"), and pay (or
2 premium) tiers of Cable Service, during the previous quarter; such report shall clearly indicate
3 whether the number listed for a lower tier of Service includes the number of Subscribers also
4 receiving a higher tier (for example, whether the basic number includes expanded basic
5 Subscribers). The report shall also identify the number of homes passed by the Cable System.

6 11.11 Books and Records.

- 7 A. Maintenance. Subject to Section 631 of the Cable Act, 47 U.S.C. § 551, or any successor thereto,
8 for any period as may be required by the last sentence in Section 10.7B or by Section 11.11D of
9 this Agreement, the Franchisee shall maintain complete and accurate books of account and
10 records of the business, ownership, and operations of the Franchisee with respect to the Cable
11 System, its operation, any Service distributed over the Cable System and reflected in the
12 calculation of Gross Revenue and each Service-Related Activity. Such books of account and
13 records shall include, without limitation, (i) books of account; (ii) records adequate to enable the
14 Franchisee to demonstrate that it is, and has been, in compliance with each term and condition of
15 this Agreement and Applicable Law; (iii) maps; (iv) plans; (v) income tax returns; (vi) financial
16 statements; (vii) service complaint logs; (viii) Franchisee's inspectors' logs; (ix) performance test
17 results; (x) hardware installation and specification documents; and (xi) records reflecting the true
18 and entire cost of construction, equipment, and maintenance and of the administration and
19 operation of maintenance.
- 20 B. Inspection of Books and Records. Subject to Section 631 of the Cable Act, 47 U.S.C. § 551, or
21 any successor thereto, the Franchisee agrees that the City, MOCC, the City Solicitor, the
22 Comptroller or their designated representative(s), upon three (3) Business Days prior notice to the
23 Franchisee, may inspect, examine, copy or audit any of the Franchisee's books and records
24 regarding the operation of the Cable System and the provision of Services in the Franchise Area
25 that are reasonably necessary to monitor Franchisee's compliance with the provisions of this
26 Agreement. In the case of audits, the City shall provide five (5) Business Days prior notice to the
27 Franchisee for an initial meeting between the City and the Franchisee, at which meeting a
28 reasonable schedule for the audit shall be set. Such inspection, examination, or audit shall take
29 place at a mutually agreed upon location within thirty-five (35) miles of MOCC's office. Such
30 books and records shall include any records required to be kept in a public file by the Franchisee
31 pursuant to the rules and regulations of the FCC and any books and records the City deems
32 relevant that are held by an Affiliated Person, a cable operator of the Cable System, or any person
33 holding any form of management contract for the Cable System. With respect to books and
34 records held by contractors and subcontractors other than entities described in the preceding
35 sentence, the Franchisee shall cooperate with the City and exercise its best efforts to obtain access
36 to such books and records.
- 37 C. Delivery of Books and Records. Provided that the request is not unreasonably voluminous and
38 subject to Section 11.11 of this Agreement, MOCC, the City Solicitor, the Comptroller, or their
39 designated representative(s) shall have the right to require the production and delivery of all such
40 documents, records, and information to the offices of such agency, official, or representative(s).
41 The Franchisee shall complete such production and delivery within twenty-one (21) Business
42 Days after receipt of such request, unless extenuating circumstances warrant, or an agreed-upon
43 schedule for delivery pursuant to an audit provides for, a longer or shorter period of time.
- 44 D. Duration of Maintenance. All such documents pertaining to financial matters that may be the
45 subject of an inspection, examination, or audit by the City shall be retained by the Franchisee for
46 a minimum period of six (6) years following termination of this Agreement.
- 47 E. Proprietary or Confidential Information.
- 48 1. General. Access by the City to any document, records, or other information supplied, or
49 required to be supplied, by the Franchisee to the City under this Agreement shall not be

Council Bill 07-0825

1 denied by the Franchisee on the grounds that such documents, records, or other information
2 are alleged by the Franchisee to contain confidential or proprietary information; provided that
3 this provision shall not be deemed to constitute a waiver of the Franchisee's right, pursuant to
4 the Maryland Public Information Act, Md. State Government Code, Title 10, Subtitle 6
5 ("MPIA"), as amended, or any successor thereto, to assert that such documents, records, or
6 other information should be prevented from disclosure under the MPIA. To invoke any
7 review of such a claim with respect to such documents, the Franchisee shall physically mark
8 each page of such document in a manner that conspicuously indicates that the Franchisee
9 believes such page contains confidential or proprietary information and submit a cover letter
10 claiming such confidential or proprietary treatment at the same time.

11 2. Public Requests for Franchisee Information. The City agrees to advise timely the Franchisee
12 of any request by any Person, other than a City official or employee, seeking to review or
13 obtain such documents. In the event that the City determines that the documents are
14 disclosable under the MPIA, the City shall timely advise the Franchisee, and allow the
15 Franchisee to challenge the disclosure of such documents at the Franchisee's own expense. If
16 the Franchisee's challenge of the disclosure is unsuccessful, the Franchisee, in addition to its
17 own expenses, shall indemnify, defend, and hold harmless the City, and its officials and
18 employees, of and from all costs and damages related to the challenge, including reasonable
19 attorneys' fees.

20 3. Notice. For purposes of Section 11.11E, and notwithstanding any provision of Section 14.2 of
21 this Agreement, notice shall be provided by facsimile transmission to the General Manager's
22 attention.

23 4. Actions to Disclose. The Franchisee and the City each agree to provide, upon written request,
24 the other with copies of all pleadings, court filings, and non-privileged correspondence
25 relating to the defense of any action brought to disclose documents under the MPIA.

26 11.12 Inspection of Cable System. The City and its designated representative(s) shall have the right to
27 access, inspect, and examine any other aspect of the Cable System, including the facilities and equipment
28 of the Cable System, during normal business hours, provided, however, that the City shall provide not
29 less than three (3) Business Days prior notice to the Franchisee for any inspection that takes place on
30 Franchisee's premises or that requires a representative of Franchisee to obtain access, and provided,
31 further, that such notice shall not be required in the event of an emergency.

32 11.13 Files for Public Inspection. Throughout the term of this Agreement, the Franchisee shall maintain at
33 a Service Center within the City, as specified initially pursuant to Section 2.2B(7) of this Agreement, in a
34 file available for public inspection during normal business hours, all documents required by 47 C.F.R. §
35 76.1700, or any successor thereto, and FCC rules and regulations.

36 11.14 Transfer of Interest.

37 A. Prohibited Transfers. Except as provided in Section 11.23 of, and Appendix F to, this Agreement,
38 the following are prohibited without the prior written approval of the Board:

- 39 1. the encumbrance, assignment, sale, transfer, pledge, lease, or sublease, in whole or in part, to
40 any Person, of the Franchisee or any rights or obligations of the Franchisee in the Cable
41 System or pursuant to this Agreement;
- 42 2. the encumbrance, assignment, sale, transfer, pledge, lease, or sublease of all or substantially
43 all of the capacity of the Cable System to any Person,
- 44 3. the passing or vesting of title to the Cable System, either legal or equitable, or of any right or
45 interest in the Cable System, to or in any Person, either by act of the Franchisee, or by act of
46 any Person holding Control, directly or indirectly, of any interest in the Franchisee, the Cable
47 System, or the Franchisee, by operation of law or otherwise.

Council Bill 07-0825

1 B. Exclusions. The prohibitions contained in this Section 11.14 shall not:

- 2 1. Apply to conveyances of real or personal property in the ordinary course of business; or
- 3 2. Require the Franchisee to obtain the Board's approval before leasing Channel capacity as
- 4 required by Section 612 of the Cable Act, 47 U.S.C. § 532, or any successor thereto.

5 11.15 Transfer of Control or Stock.

6 A. Board Approval Required. The Franchisee represents and warrants that, notwithstanding any
7 other provision of this Agreement, except as provided in Section 11.23 of, and Appendix E to,
8 this Agreement, no change in Control of the Franchisee, the Cable System, the Cable System
9 assets, or the Franchise shall occur after the Effective Date: (i) by act of the Franchisee; (ii) by act
10 of any Person holding Control, directly or indirectly, of the Franchisee, the Cable System, or the
11 Franchise; or (iii) by operation of law or otherwise, without the prior written approval of the
12 Board. The requirements of this Section 11.15 to obtain prior written approval of the Board shall
13 also apply to any other Person seeking to obtain Control, directly or indirectly, of the Franchisee,
14 the Cable System, the assets of the Cable System, or the Franchise.

15 B. Franchisee's Continued Responsibility. After the consummation of any transfer permitted or
16 approved under this Section 11.15, (i) the Franchisee shall remain responsible for any past
17 breaches of this Agreement or Applicable Law for purposes of the remedies under this Agreement
18 and for purposes of the City's right to consider past breaches and other past performance
19 problems in future renewal or other proceedings; and (ii) this Agreement shall remain in full force
20 and effect.

21 C. Additional Requirements. The requirements of Sections 11.16 through 11.21 of this Agreement
22 shall apply whenever any change is proposed with respect to:

- 23 1. five percent (5%) or more for voting interests or fifty percent (50%) or more for non-voting
24 interests of the ownership of the Franchisee, the Cable System, the Cable System assets, the
25 Franchise, or any Person holding Control, directly or indirectly, of the Franchisee, the Cable
26 System, the Cable System assets, or the Franchise; or
- 27 2. Control of the Franchisee, the Cable System, the Cable System assets, the Franchise, or any
28 Person holding Control, directly or indirectly, of the Franchisee, the Cable System, the Cable
29 System assets, or the Franchise.

30 However, nothing in this Section shall be construed as suggesting that a proposed change of less
31 than five percent (5%) for voting interests or fifty percent (50%) for non-voting interests does not
32 require the Board approval if it would in fact result in a change in Control of the Franchisee, the
33 Cable System, the Cable System assets, or the Franchise, regardless of the manner in which such
34 Control is evidenced (e.g., stock, bonds, debt instruments, or other indicia of ownership or
35 Control).

36 D. Exceptions. Notwithstanding the foregoing, Board approval shall not be required with respect to
37 solely intracorporate reorganizations between or among entities wholly owned and wholly
38 controlled by the Franchisee's ultimate parent, which as of the Effective Date is Cavalier
39 Telephone Corporation, to the extent such transaction does not involve a change in the
40 management, day-to-day operations, or financial condition of the Franchisee; and provided that
41 the Franchisee shall give the City thirty (30) Days advance written notice of such intracorporate
42 reorganization.

43 11.16 Petition.

44 A. Petition Required. The Franchisee shall notify the City of any proposed action requiring Board
45 approval pursuant to Sections 11.14 or 11.15 of this Agreement at least 120 Days before the

Council Bill 07-0825

1 contemplated effective date of any transfer, by submitting to MOCC, with a copy to the City
2 Solicitor, a petition requesting the approval of the Board. The Franchisee shall also promptly
3 notify MOCC, with a copy to the City Solicitor, of any proposed action pursuant to this
4 Agreement.

- 5 B. Content. The petition shall include a completed FCC Form 394, or any successor to that form,
6 and all other information required to be filed with the FCC and the City pursuant to the FCC's
7 implementing regulations issued pursuant to Section 617 of the Cable Act, 47 U.S.C. § 537, or
8 any successor thereto. The petition shall provide complete information on the proposed
9 transaction, including details on the legal, financial, and technical qualifications of the transferee
10 and the potential impact of the transfer on Subscriber rates and Service.

11 11.17 Transfer Review Period.

- 12 A. Length and Commencement of Period. Unless the City and the Franchisee agree to an extension
13 of time pursuant to Section 11.18, the City shall have the transfer review period provided under
14 Section 617 of the Cable Act, 47 U.S.C. § 537, or any successor thereto, to act on a transfer
15 request. The transfer review period shall not commence until all of the information required by
16 Section 11.16 of this Agreement is submitted to the City; provided, however, that requests by the
17 City for information other than that required by Section 11.16 shall not delay the commencement
18 of the transfer review period. All such information shall not be deemed to have been submitted
19 until notice is provided to the Franchisee as set forth in Section 11.18, at which time the
20 commencement of the transfer review period shall relate back to the date on which the last
21 element of information required by Section 11.16 was submitted.
- 22 B. Additional Information. In addition to the information required by Section 11.16, the City shall
23 have the right to request any additional information and documents reasonably necessary to
24 determine the transferee's qualifications to assume the Franchisee's obligations under this
25 Agreement and/or to determine how the transferee intends to address any outstanding compliance
26 issues under this Agreement. The Franchisee shall respond to requests for such information and
27 documents within the time period specified by the City. Assuming that the Franchisee has
28 submitted all of the information required by Section 11.16, a request for additional information
29 and documents pursuant to this Section shall not toll the transfer review period, provided that, if
30 the Franchisee does not respond within ten (10) Days to a request for additional information and
31 documents, the transfer review period shall be tolled from the end of such ten (10) Day period
32 until the Franchisee does respond.

33 11.18 Notice to Franchisee that Information is Complete; Extensions. The City shall provide notice to the
34 Franchisee when all of the information required by FCC regulations, FCC Form 394, or any successor
35 form, Section 11.16 of this Agreement, and other Applicable Law has been submitted and therefore the
36 petition is complete. As provided in Section 11.17 of this Agreement, the Board shall act on the
37 Franchisee's petition within the transfer review period. The Franchisee and the City may, at their
38 discretion, agree to increase the time period for review of the transfer request.

39 11.19 City Decision.

- 40 A. On Petition. Upon review of the petition, the City shall submit the Franchisee's petition
41 requesting approval to the Board, along with a recommendation for action on the petition.
- 42 B. No Petition. In the event that the City determines that Franchisee is contemplating or has made or
43 allowed a transfer requiring approval of the City under this Agreement, and a petition requesting
44 approval therefor has not been submitted by the Franchisee, the City shall notify the Franchisee to
45 submit a petition and such additional information as is required.

46 11.20 Scope of Inquiry. For the purpose of determining whether Board approval shall be granted, the City
47 may inquire into, *inter alia*: (i) the qualifications of the transferee; (ii) all matters reasonably necessary to

Council Bill 07-0825

1 determine whether the transferee will adhere to all applicable provisions of this Agreement and
2 Applicable Law; (iii) the transferee's plans to address any outstanding compliance issues; (iv) whether the
3 transferee owns or controls any other Cable System in the City; (v) whether the transfer may eliminate or
4 reduce competition in the delivery of Services in the City; and (vi) whether operation by the transferee or
5 approval of the transfer would have other adverse effects that may be lawfully considered by the City.
6 The City may also perform a comprehensive audit and evaluation of the Franchisee's performance under
7 the terms and conditions of this Agreement, which audit and evaluation shall not operate to extend the
8 transfer review period, unless otherwise agreed by the parties. The Franchisee shall provide all
9 reasonably requested assistance to the City in connection with any such inquiry and, as appropriate, shall
10 secure the cooperation and assistance of all Persons involved in said action, including any prospective
11 transferees.

12 11.21 Conditions. As a condition to the granting of any approval required by Sections 11.14 or 11.15 of
13 this Agreement, in addition to the conditions imposed elsewhere in this Agreement, the transferee shall
14 make the same representations and warranties to the City that the Franchisee has made in this Agreement.
15 The City may require that the transferee execute an agreement providing that (i) the transferee assumes
16 and agrees to be bound by all applicable provisions of this Agreement and such other conditions which
17 the City deems necessary or appropriate in the circumstances to ensure performance of the existing terms
18 of the Agreement; and (ii) the transferee agrees that approval of the pending transfer petition does not
19 waive the City's right to consider past breaches and other past performance problems in future renewal or
20 other proceedings. In connection with review of a transfer of interest under Section 11.14 of this
21 Agreement, the City may require that the Franchisee and/or the transferee address past compliance issues
22 by corrective or other appropriate action. If a transfer involves a change in Control of the Franchisee
23 described under Section 11.18 of this Agreement, the City may require the Person to whom Control is
24 being transferred to sign an agreement reaffirming the obligations of the Franchisee under this
25 Agreement.

26 11.22 Franchisee Liability. The Franchisee shall be fully liable under this Agreement for any transfer that
27 is in violation of the terms of this Franchise and caused in whole or in part by any other Person or
28 Persons, including, without limitation, any parents or Affiliated Persons, as if such transfer had been
29 caused by the Franchisee itself.

30 11.23 Permitted Encumbrances.

31 A. Nothing in this Section 11.23 shall be deemed to prohibit any assignment, pledge, lease, sublease,
32 mortgage, or other transfer of all or any part of the Cable System, or any right or interest in the
33 Cable System, for purposes of financing the construction, rebuild, enhancement, upgrade,
34 maintenance, repair, or operation of the Cable System, provided that:

- 35 1. each such assignment, pledge, lease, sublease, mortgage, or other transfer shall be subject and
36 subordinate to the rights of the City pursuant to this Agreement and Applicable Law; and
37 2. the terms of such financing do not require any Person other than the Franchisee to perform
38 the obligations of the Franchisee under this Agreement.

39 B. If the terms of any financing obligate any Person other than the Franchisee to perform the
40 obligations of the Franchisee under this Agreement, the terms of such financing shall constitute a
41 transfer subject to Sections 11.14 and 11.15 of this Agreement.

42 C. The City agrees that any financial institution having a pledge of the Franchise or its assets for the
43 advancement of money for the construction and/or operation of the Cable System may take
44 control and operate the Cable System upon fourteen (14) Days prior written notification to the
45 City, provided, however, that such financial institution must agree in writing to comply with the
46 terms of this Agreement.

47 11.24 Effect of Unauthorized Sale or Transfer. The completion of any action described in Sections 11.14
48 and 11.15 of this Agreement without prior written Board approval shall be ineffective and deemed to be a

Council Bill 07-0825

1 material breach of this Agreement. The granting of approval for a transfer in one instance shall not
2 obligate the City to approve any subsequent transfer or render approval of any subsequent transfer
3 unnecessary.

4 11.25 No Waiver. The grant or waiver of any one (1) or more of such consents to any transfer of the
5 Franchisee shall not render unnecessary any subsequent consent, nor shall the grant of any such consent
6 constitute a waiver or release of any other rights of the City. Any transfer shall, by its terms, be expressly
7 subordinate to the terms and conditions of this Agreement.

8 SECTION 12 9 INSURANCE AND INDEMNITY

10 12.1 Liability.

- 11 A. Franchisee. The Franchisee shall, at its own cost and expense, replace, repair, and restore any
12 damaged property to its prior condition and shall pay compensation in the event of any personal
13 injury, death or property damage occasioned by any act or failure to act of the Franchisee, any
14 Affiliated Person, or any officer, employee, agent or subcontractor of either the Franchisee or any
15 Affiliated Person in connection with the construction, operation, maintenance, repair, upgrade,
16 enhancement or removal of the Cable System. Nothing in this Subsection is intended to permit
17 third parties to file claims to enforce this Subsection; rather, the parties intend that only the City
18 may take action to enforce this Subsection.
- 19 B. No Liability of the City for Liability of the Franchisee. The City, its officers, employees, agents,
20 attorneys, consultants and independent contractors shall not be liable for any Liability of the
21 Franchisee, any Affiliated Person or any other Person, arising out of or in connection with the
22 construction, operation, maintenance, repair, upgrade, rebuild, enhancement or removal of, or
23 other action or event with respect to, the Cable System, any Service-Related Activity or the
24 distribution of any Service over the Cable System. Franchisee undertakes and assumes, for its
25 officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions,
26 if any, on or about any City-owned or controlled property, the streets and Public Ways.
- 27 C. Moving Wires in Emergencies. The City may, at any time, in case of fire, disaster or other
28 emergency, in its sole discretion, cut or move any of the wires, cables, fibers, amplifiers,
29 appliances or other parts of the Cable System, in which event the City shall not incur any
30 Liability to the Franchisee, any Affiliated Person or any other Person. When possible, the
31 Franchisee shall be consulted prior to any such cutting or movement of its wires, cable, fibers,
32 amplifiers, appliances or other parts of the Cable System. All costs to repair or replace such
33 wires, cables, amplifiers, appliances or other parts of the Cable System shall be borne by the
34 Franchisee. Should the City cut or move any of the Franchisee's facilities as described in this
35 Section, and such act results in a service interruption or any other result that might otherwise
36 constitute a violation of this Agreement, such service interruption or result shall not be deemed a
37 violation of this Agreement by the Franchisee.
- 38 D. No Liability for Public Works and Emergencies. Neither the City nor its officials, boards,
39 commissions, officers, employees, agents, attorneys, consultants or independent contractors shall
40 have any Liability to the Franchisee or any Affiliated Person for any Liability as a result of or in
41 connection with the protection, breaking through, movement, removal, alteration, or relocation of
42 any part of the Cable System, by or on behalf of the Franchisee or the City, in connection with
43 any emergency or in connection with any change in the grade or line of any Public Way; or the
44 elimination, discontinuation and closing of any Public Way, as provided in this Agreement. The
45 parties understand that the City will be performing such work only in an emergency or if the
46 Franchisee fails to do so as required by this Agreement.

Council Bill 07-0825

1 E. No Liability for Damages. Consistent with Section 635a of the Cable Act (47 U.S.C. § 555a), the
2 City, its officers, employees, agents, attorneys, consultants, and independent contractors shall
3 have no liability to:

- 4 1. the Franchisee;
- 5 2. any Affiliated Person; or
- 6 3. any other Person, to the extent there is privity between such other Person and either the
7 Franchisee or an Affiliated Person;

8 for any money damages as a result of the exercise of the rights of the City to approve or
9 disapprove the grant, amendment, renewal, or transfer of the Agreement or the Franchise.

10 12.2 Indemnification.

11 A. General. The Franchisee and each Affiliated Person shall:

- 12 1. Defend, indemnify and hold harmless the City, its officers, employees, agents, attorneys,
13 consultants and independent contractors from and against all Liabilities, special, incidental,
14 consequential, punitive and all other damages, costs and expenses (including, but not limited
15 to, reasonable attorneys' fees and witness fees) arising out of or in connection with:
 - 16 a. the construction, operation, maintenance, repair, upgrade, enhancement, rebuild or
17 removal of, or any other action or event with respect to, the Cable System or any Service-
18 Related Activity; or
 - 19 b. the distribution of any Service over the Cable System, except as provided in Subsection C
20 of this Section; and
- 21 2. Cooperate with the City, by providing, at no charge to the City, such non-financial assistance
22 as may be requested by the City, in connection with any claim arising out of or in connection
23 with the selection of the franchisee for, or the negotiation or award of, this Agreement.

24 B. Defense and Settlement. In any action in which the Franchisee defends the City, the Franchisee
25 shall consult with the City prior to proposing, accepting or rejecting a settlement and prior to
26 filing any pleading which might estop the City with respect to any question of fact or law. The
27 City shall have the right, at its option, with regard to Liabilities subject to indemnification under
28 this Section, to participate in its own defense by engaging, at its own expense, its own attorneys,
29 experts and consultants. In the event the City and the Franchisee disagree about whether to settle
30 a case for which the Franchisee must indemnify the City under this Section, the issue shall be
31 referred to the Executive Director, the City Solicitor and the Franchisee's General Manager (or a
32 person in an equivalent or higher position) for resolution. Notwithstanding the foregoing, the
33 Franchisee shall be required to indemnify the City for:

- 34 1. final verdicts; and
- 35 2. settlements entered into by the City with the Franchisee's prior knowledge and consent.

36 C. Limitations. As between the City and the Franchisee or any Affiliated Person, the foregoing
37 Liability and indemnity obligations of the Franchisee pursuant to this Section 12 shall not apply
38 to:

- 39 1. any willful misconduct or gross negligence of any City officer, employee, agent, attorney,
40 consultant or independent contractor proximately causing any claim or damages;
- 41 2. any Liability arising out of the content of Services over the Governmental Channels available
42 to and used by the City to the extent that such claim does not arise out of an act or failure to
43 act by the Franchisee; or

Council Bill 07-0825

- 1 3. any Liability arising out of the content of Services over Public Channels and Educational
2 Channels to the extent that such claim does not arise out of an act or failure to act by the
3 Franchisee.

4 12.3 Insurance.

- 5 A. Coverages and Limits. During the Term of the Agreement and any period of removal of the Cable
6 System following the end of the Term, Franchisee shall maintain, or cause to be maintained, in
7 full force and effect and at its sole cost and expense, in a form acceptable to the City Solicitor, the
8 following types and limits of insurance:

- 9 1. Workers' compensation insurance meeting Maryland statutory requirements and employer's
10 liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for
11 each accident.
- 12 2. Comprehensive commercial general liability insurance with minimum limits of Five Million
13 Dollars (\$5,000,000) as the combined single limit for each occurrence of bodily injury,
14 personal injury, and property damage. The policy shall provide blanket contractual liability
15 insurance for all written contracts, and shall include coverage for products and completed
16 operations liability, independent contractor's liability, and property damage from perils of
17 explosion, collapse or damage to underground utilities, commonly known as XCU coverage.
- 18 3. Broadcaster's liability coverage for loss or damage arising out of publications or utterances in
19 the course of or related to advertising, broadcasting, telecasting or other communication
20 activities conducted by or on behalf of Franchisee with minimum limits of One Million
21 Dollars (\$1,000,000) as the combined single limit for each occurrence of bodily injury,
22 personal injury and property damage.
- 23 4. Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by
24 Franchisee, its employees and agents, with personal protection insurance and property
25 protection insurance to comply with the provisions of the Maryland no-fault insurance law,
26 including residual liability insurance with minimum limits of Two Million Dollars
27 (\$2,000,000) as the combined single limit for each occurrence for bodily injury and property
28 damage.

- 29 B. Types of Policies. The coverage amounts set forth in this Section 12.3 may be met by a
30 combination of underlying and umbrella policies so long as in combination the limits equal or
31 exceed those stated.

- 32 C. Period of Coverage. The liability insurance policy or policies required by this Section 12.3 shall:

- 33 1. Be maintained by the Franchisee throughout the term of this Agreement and such other
34 period of time during which the Franchisee operates or is engaged in the removal of the Cable
35 System, whichever period is longer, and for one hundred twenty (120) Days thereafter; and
36 2. Provide coverage for acts and omissions occurring throughout the term of this Agreement and
37 such other period of time during which the Franchisee operates or is engaged in the removal
38 of the Cable System, irrespective of when a claim arising out of such acts and omissions is
39 made.

- 40 D. Retentions and Deductibles. Franchisee's insurance policy retentions shall not exceed, as
41 applicable, \$50,000, unless larger retentions are approved in advance by City in writing.
42 Franchisee agrees to indemnify and save harmless the Indemnites and Additional Insureds from
43 and against the payment of any retention or deductible and from the payment of any premium on
44 any insurance policy required to be furnished by this Agreement.

Council Bill 07-0825

- 1 E. Insurance Companies. All insurance shall be effected under valid and enforceable policies, issued
2 by insurers licensed to do business by the State of Maryland or surplus line carriers on the
3 Maryland Insurance Commissioner's approved list of companies qualified to do business in
4 Maryland. All insurance carriers and surplus line carriers shall be rated A- or better by A.M. Best
5 Company.
- 6 F. Additional Insureds. All insurance policies, except for workers' compensation and broadcaster
7 liability policies, shall name the "City of Baltimore, a municipal corporation of the State of
8 Maryland and all associated, affiliated, allied and subsidiary entities of the City, now existing or
9 hereafter created, and their respective officers, boards, commissions, employees, agents and
10 contractors, as their respective interests may appear" as additional insureds (referred to as the
11 "Additional Insureds") providing coverage for the negligence or other conduct of the Additional
12 Insureds to the same extent as provided to Franchisee. Each policy which is to be endorsed to add
13 Additional Insureds under this Agreement shall contain cross-liability wording, as follows:
- 14 "In the event of a claim being made hereunder by one insured for which another
15 insured is or may be liable, then this policy shall cover such insured against
16 whom a claim is or may be made in the same manner as if separate policies had
17 been issued to each insured hereunder."
- 18 G. Evidence of Insurance. On or before the Effective Date, certificates of insurance for each
19 insurance policy required to be obtained by Franchisee in compliance with this Agreement, along
20 with written evidence of payment of required premiums, shall be filed and maintained with City
21 annually and at any time of policy change or cancellation during the term of this Agreement.
22 City shall have the right to request copies of any policies required under this Section 12.3, and
23 Franchisee shall provide same within ten (10) Days after a written request is made. The
24 acceptance of a form of policy by the City Solicitor shall not change or reduce Franchisee's
25 obligation to provide the required insurance pursuant to this Section 12.
- 26 H. Endorsement. Each such liability insurance policy shall contain the following endorsement: "It is
27 hereby understood and agreed that this policy may not be cancelled or not renewed nor the
28 intention not to renew be stated until thirty (30) Days after receipt by the City, by registered mail,
29 of a written notice of such intent to cancel or not to renew." Not later than thirty (30) Days prior
30 to said cancellation or failure to renew, the Franchisee shall obtain one (1) or more replacement
31 insurance policies in a form acceptable to the City Solicitor and shall furnish copies of the
32 certificate of insurance to the City Solicitor and to MOCC.
- 33 I. Notice of Expiration. Prior to the expiration of any insurance policy required of the Franchisee by
34 this Section, the Franchisee shall provide to MOCC and to the City Solicitor evidence acceptable
35 to the City Solicitor of the renewal or replacement of the policy. Further, the Franchisee shall
36 notify MOCC and the City Solicitor of any modification or discontinuation of coverage under any
37 such policy, together with a plan to correct such modification or discontinuation, within two (2)
38 Business Days after receipt of notice of such modification or discontinuance.
- 39 J. Contractors. Franchisee shall require that each and every one of its contractors and their
40 subcontractors carry, in full force and effect, workers' compensation, employer's liability,
41 comprehensive general liability and automobile liability insurance coverages of the type which
42 Franchisee is required to obtain under the terms of this Agreement regarding Additional Insureds,
43 with appropriate limits of insurance. In the alternative, Franchisee, at its expense, may provide
44 such coverages for any or all its contractors or subcontractors, but if Franchisee does so it shall
45 provide evidence of same in writing to City. The relationship of Franchisee's insurance to any
46 insurance provided by contractors or subcontractors shall be determined by the respective
47 contracts or subcontracts. However, failure by Franchisee or Franchisee's contractors or
48 subcontractors to carry the required insurance does not relieve Franchisee from any liability of
49 the contractors or subcontractors that would otherwise be covered by insurance.

Council Bill 07-0825

1 K. Insurance Primary; Not Limiting. The legal Liability of the Franchisee or any Affiliated Person to
2 the City or any Person for any of the matters which are the subject of the liability insurance
3 policies required by this Section 12.3, including, without limitation, the Franchisee's
4 indemnification obligation set forth in Section 12.2 of this Agreement, shall not be limited by
5 such insurance policies nor by the recovery of any amounts under such policies, except to the
6 extent necessary to avoid duplicative recovery from or payment by the Franchisee.

7 L. Review of Limits.

8 1. Review. Commencing on the fifth anniversary of the Effective Date and once every five (5)
9 years thereafter during the Term of this Agreement, City may review the insurance coverages
10 to be carried by Franchisee. If City determines that additional coverages or higher limits of
11 coverage are necessary to protect the interests of City, the Additional Insureds, or the public,
12 the City shall notify the Franchisee of its determination and City and Franchisee shall
13 negotiate for appropriate modifications in coverages or limits. The Franchisee shall obtain
14 and maintain such modified insurance at its sole cost and expense.

15 2. Changes in Cable System. At any time that Franchisee proposes to engage in any
16 construction, expansion, or upgrade of the Cable System other than routine repairs,
17 replacement, or maintenance, the City may review the insurance coverages carried by
18 Franchisee. If City determines that that additional coverages or higher limits of coverage are
19 required to protect the interests of City, the Additional Insureds, or the public, the City shall
20 notify the Franchisee of its determination and City and Franchisee shall negotiate for
21 appropriate modifications in coverages or limits, which modifications shall be mutually
22 agreed upon by the City and Franchisee in writing prior to the commencement of such
23 construction, expansion, or upgrade. The Franchisee shall obtain and maintain such
24 additional coverages or limits at its sole cost and expense for the duration of the construction,
25 expansion, or upgrade.

26 SECTION 13 27 ENFORCEMENT, REMEDIES, AND TERMINATION

28 13.1 Rights and Remedies Not Exclusive.

29 A. General. The Franchisee agrees that the City shall have the specific rights and remedies set forth
30 in this Agreement, including this Section 13. These rights and remedies are in addition to and
31 cumulative with any and all other rights or remedies, whether existing, express or implied, now or
32 hereafter available to the City at law or in equity in order to enforce the provisions of this
33 Agreement; provided, however, that nothing in this Agreement shall be interpreted to permit the
34 City to exercise such rights and remedies in a manner that permits duplicative recovery from, or
35 payments by, the Franchisee. Such rights and remedies shall not be exclusive, but each and every
36 right and remedy may be exercised from time to time and as often and in such order as may be
37 deemed expedient by the City; provided, however, that to the extent the City may obtain a
38 remedy by recourse to both the Security Fund pursuant to Section 13.2 of this Agreement and the
39 performance bond pursuant to Section 13.10 of this Agreement, the City shall seek such remedy
40 from the Security Fund before seeking such remedy from the performance bond.

41 B. No Waiver or Release. The exercise of one (1) or more rights or remedies shall not be deemed a
42 waiver of the right to exercise, at the same time or thereafter, any other right or remedy nor shall
43 any such delay or omission in the exercise of any right or remedy be construed to be a waiver of
44 such right or remedy or acquiescence to any default. The exercise of any such right or remedy by
45 the City shall not release the Franchisee from its obligations or from any Liability under this
46 Agreement.

Council Bill 07-0825

1 13.2 Security Fund.

- 2 A. Obligation to Maintain. Throughout the Term of this Agreement, or for such longer time as the
3 Franchisee operates the System or until the Franchisee completes the removal of the System,
4 whichever period is longest, and for at least two hundred ten (210) Days thereafter, the
5 Franchisee shall maintain the Security Fund in the amount specified in Section 13.2B.
- 6 B. Amount. On or before the Effective Date, the Franchisee shall provide the City with security for
7 the purposes described in this Agreement in the form of a letter of credit, in the amount of Fifty
8 Thousand Dollars (\$50,000), which shall constitute the Franchisee's Security Fund and shall be
9 maintained by the Franchisee until it is released to the Franchisee pursuant to this Section 13.2.
10 The City may, if at anytime it determines that the amount of the Security Fund is insufficient for
11 the purposes described in this Section, require that Franchisee increase the amount of the Security
12 Fund to an amount not exceeding Five Hundred Thousand Dollars (\$500,000). Franchisee must
13 increase the amount no later than thirty (30) days after the City has notified Franchisee that the
14 increased amount is required. The letter of credit shall be irrevocable, unconditional, in the form
15 attached to this Agreement as Appendix D, and acceptable to the City Solicitor. The letter of
16 credit shall be issued by a bank doing business in the Franchise Area, having adequate capital,
17 assets, earnings, and liquidity to ensure the financial soundness of the issuing institution, insured
18 by an agency of the United States Government, and acceptable to the City. The letter of credit
19 shall in no event require the consent of the Franchisee prior to the collection by the City of any
20 amounts covered by such letter of credit.
- 21 C. Purposes. The Security Fund shall serve as security for:
- 22 1. the faithful performance of the Franchisee's obligations pursuant to this Agreement and any
23 costs, losses, or damages incurred by the City as a consequence of the Franchisee's
24 performance or nonperformance of the terms and conditions of this Agreement;
 - 25 2. any costs, claims, expenditures, damages, or losses incurred by the City occasioned by the
26 Franchisee's failure to comply with all rules, regulations, orders, permits and other directives
27 of the City issued pursuant to this Agreement or Applicable Law;
 - 28 3. all payments due the City from the Franchisee pursuant to this Agreement;
 - 29 4. the loss of any payments required to be made by the Franchisee to the City which would have
30 been received by the City but for the Franchisee's failure to perform its obligations pursuant
31 to this Agreement during the period of time between the Franchisee's unexcused or uncured
32 failure to perform and the date on which the City takes over, or any other Person authorized
33 by the City takes over, the construction, operation, or maintenance of the System;
 - 34 5. any costs incurred by the City in connection with the award of any franchise for, or other
35 authorization to, construct, operate, maintain, repair, upgrade, rebuild, or enhance a Cable
36 Communications System in the Franchise Area necessitated by such a failure to perform;
 - 37 6. any costs, losses, expenditures, claims or damages incurred by the City as a result of
38 termination for cause due to a breach pursuant to Section 13.4; and
 - 39 7. the payment by the Franchisee to the City of any Liability payable to the City and relating to
40 the System that is due and unpaid.

41 The withdrawal of amounts from the Security Fund shall constitute a credit against the amount of
42 the applicable Liability of the Franchisee to the City but only to the extent of said withdrawal.

43 D. Withdrawals from Security Fund.

- 44 1. After Franchisee's receipt of notice from City that the Franchisee has: (a) failed to faithfully
45 perform its obligations under this Agreement; (b) failed to comply with all rules, regulations,
46 orders, permits and other directives of the City issued pursuant to this Agreement or
47 Applicable Law; (c) failed to make any payment required to be made to the City pursuant to
48 this Agreement within the time fixed in this Agreement; (d) breached the Agreement and the
49 Agreement is terminated for cause; (e) failed to pay to the City any Liability payable to the

Council Bill 07-0825

1 City and relating to the System that is due and unpaid; (f) failed to pay to the City any costs,
2 losses, damages, claims or expenditures which the City has been compelled to pay or has
3 incurred by reason of any act or default of the Franchisee; or (g) failed to comply with any
4 provision of this Agreement which City determines can be remedied by an expenditure of an
5 amount in the Security Fund, which notice shall contain all such details as are necessary to
6 describe such failure, the Franchisee shall take one (1) of the steps specified in Section
7 13.2D(2).

8 2. Except as provided in Section 13.3A for liquidated damages, not later than five (5) Days after
9 receipt of the notice described in Section 13.2D(1)(c), (e) and (f), or twenty (20) Days after
10 receipt of the notice described in Section 13.2D(1)(a), (b), (d) and (g), the Franchisee shall:
11 (a) cure such alleged failure and provide to City a written explanation and evidence of such
12 cure; or (b) promptly begin to cure such breach, default or other noncompliance and provide
13 to City a written explanation of why such cure cannot be completed within five (5) or twenty
14 (20) Days, as applicable, as well as a schedule for completing such cure, both of which are
15 subject to City approval.

16 3. If the Franchisee has failed to take any of the steps specified in Section 13.2D(2) within the
17 five (5) or twenty (20) Days, as applicable, to the satisfaction of City, then City may
18 withdraw the amount specified in the notice to Franchisee (the notice provided pursuant to
19 Section 13.2D(1)) from the Security Fund.

20 4. For breaches subject to liquidated damages pursuant to Section 13.3 of this Agreement, City
21 may withdraw liquidated damages from the Security Fund, and the procedures set forth in
22 Section 13.3A shall apply to such withdrawals instead of the procedures set forth in this
23 Section 13.2D(1)-(3).

24 E. Replenishment. Within fifteen (15) Days after notice from City that any amount has been
25 withdrawn from the Security Fund, as provided in Section 13.2D of this Agreement, the
26 Franchisee shall restore the affected components of the Security Fund to the amount specified in
27 Section 13.2B of this Agreement and provide to City evidence satisfactory to City that the
28 Franchisee has done so. If a court determines that said withdrawal by the City was improper, the
29 City shall restore the improperly withdrawn amount to the affected components of the Security
30 Fund, together with interest from the date of the withdrawal at the rate specified in Section 10 of
31 this Agreement, during the period from such withdrawal until such restoration.

32 F. Confirmation of Withdrawals. Within five (5) Days after each of the foregoing withdrawals, City
33 shall notify the Franchisee of the date and amount of the withdrawal.

34 G. Return of Security Fund. Within two hundred ten (210) Days after the termination of this
35 Agreement due to the expiration of the Term of the Franchise granted pursuant to this Agreement,
36 the Franchisee shall be entitled to the return of the Security Fund deposited pursuant to this
37 Section 13.2, or such portion of the Security Fund as remains on deposit at said termination,
38 provided that all offsets necessary to compensate the City for any uncured failure to comply with
39 any provision of this Agreement have been taken by the City. Notwithstanding the foregoing
40 sentence, if the Franchisee continues to operate the System following the termination of this
41 Agreement or if the City orders the Franchisee to remove the System as provided in Section 13.6,
42 the Franchisee shall not be entitled to a return of the Security Fund until two hundred ten (210)
43 Days after the end of such continued operation or the completion of removal of the System,
44 whichever is later. In the event of a termination of this Agreement for cause due to a breach by
45 the Franchisee pursuant to Section 13.4, such Security Fund shall become the property of the City
46 to the extent necessary to satisfy the purposes of the Security Fund as set forth in this Section
47 13.2, including the covering of any costs, loss or damage incurred by the City as a result of such
48 termination or breach, provided that any amounts in excess of such costs, loss or damage shall be
49 refunded to the Franchisee, and provided further that, to the extent the City actually withdraws
50 from such Security Fund amounts used to reimburse the City for such costs, losses or damages,

Council Bill 07-0825

1 such withdrawn amounts shall not also be considered in determining the “equitable price”
2 pursuant to Section 13.6.

3 13.3 Liquidated Damages.

- 4 A. Notice and Right to Cure. The Franchisee shall be liable and pay to the City for the amounts
5 specified in this Section 13.3 for any of the following failures by the Franchisee to comply with
6 the provisions of this Agreement. The City shall notify Franchisee of the failure to comply and
7 resulting liquidated damages and, at the option of City, if not paid to the City by the Franchisee
8 within ten (10) Days after notice is given, such amounts may be withdrawn from the Security
9 Fund and paid to the City (in addition to the withdrawals authorized by any other Section of this
10 Agreement) or shall be paid in such other manner as may be determined by the City. The City
11 may, at its discretion, provide Franchisee with a reasonable time period in which to correct the
12 failure before liquidated damages are required.
- 13 B. Amounts. For the following failures to comply with this Agreement, the liquidated damages shall
14 be in the following amounts:
- 15 1. Failure to complete any Significant Construction in accordance with Appendix A or other
16 technical requirements or any current sequence or schedule approved by the City: Two
17 Thousand Five Hundred Dollars (\$2,500) per Day;
 - 18 2. Failure to provide all requested Services to any Person to the extent required by Section 4 of
19 this Agreement: Ten Dollars (\$10) per Day, per affected Person, for each Day that such
20 failure continues; provided, however, that in no event shall the total liquidated damages
21 amount calculated under this Section 13.3B(2) be less than Three Hundred Dollars (\$300) per
22 Day;
 - 23 3. Failure to maintain and provide data, documents, records, reports, or information to the City
24 pursuant to the terms of this Agreement, or, as reasonably requested by City, to cooperate
25 with the City during a performance review of the System or during an audit: Five Hundred
26 Dollars (\$500) per Day;
 - 27 4. Failure to comply with the requirements in this Agreement for PEG access or to provide any
28 of the capital grants, equipment and other support for the PEG Channels pursuant to Section
29 6, including, but not limited to, compliance with the provisions of Section 6.5: Seven
30 Hundred Fifty Dollars (\$750) per Day for each Day that such failure occurs or continues;
 - 31 5. Failure to adhere to the technical performance standards agreed to in Sections 5.1, 5.2, 5.7
32 and 5.8 of this Agreement: Five Hundred Dollars (\$500) per Day;
 - 33 6. Failure to comply with the customer service and consumer protection rules set forth in
34 Section 9 of this Agreement and 47 C.F.R. § 76.309 and such other customer service and
35 consumer protection rules, regulations, or standards as may be established by Applicable
36 Law: Five Hundred Dollars (\$500) per violation per Day for each Day such violation
37 continues and Seven Hundred Fifty Dollars (\$750) per violation per Day after the first thirty
38 (30) Days of the same continuous violation; provided, however, that where a customer
39 service or consumer protection rule requires the Franchisee to meet a standard of ninety
40 percent (90%) or more: Seven Hundred Fifty Dollars (\$750) per quarter where performance is
41 less than 95% or 90%, as applicable, but equal to or greater than 85%; One Thousand Dollars
42 (\$1,000) per quarter where performance is less than 85% but equal to or greater than 80%;
43 One Thousand Five Hundred Dollars (\$1,500) per quarter where performance is less than
44 80% but equal to or greater than 75%; Two Thousand Dollars (\$2,000) per quarter where
45 performance is less than 70% but equal to or greater than 65%; and Four Thousand Dollars
46 (\$4,000) per quarter where performance is less than 65%. For purposes of this provision,
47 “quarter” shall mean any consecutive three-month period.

Council Bill 07-0825

- 1 7. Failure to furnish or maintain the performance bond as required by Section 13.10 or failure to
2 furnish or replenish the Security Fund as required by Section 13.2: Two Hundred Fifty
3 Dollars (\$250) per Day;
- 4 8. Failure to provide the emergency alert system pursuant to Section 5.12: One Thousand Two
5 Hundred Dollars (\$1,200) per Day;
- 6 9. Failure to obtain a permit where construction, reconstruction, or relocation of the System or
7 its components within the Public Ways of the City is undertaken: Two Hundred Fifty Dollars
8 (\$250) per Day;
- 9 10. Failure of the Franchisee to comply with construction, operation, or maintenance standards:
10 Four Hundred Dollars (\$400) per Day;
- 11 11. Failure to test, analyze, and report on the performance of the System: Five Hundred Dollars
12 (\$500) per Day;
- 13 12. Failure to provide programming services in accordance with Section 4: Seven Hundred Fifty
14 Dollars (\$750) per Day; and
- 15 13. Failure to comply with the material provisions of this Agreement for which an amount is not
16 otherwise specifically provided pursuant to this Section: Five Hundred Dollars (\$500) per
17 Day.

18 The Franchisee agrees that each of the failures set forth in this Section 13.3 shall result in injuries
19 to the City and its residents, businesses and institutions, the compensation for which will be
20 difficult to ascertain and to prove. Accordingly, the Franchisee and the City agree that the
21 liquidated damages in the amounts set forth above are fair and reasonable compensation for such
22 injuries. The Franchisee agrees that the foregoing amounts are liquidated damages, not penalties
23 or forfeitures, and are within one (1) or more exclusions to the term “franchise fee” provided by
24 Section 622(g)(2)(A)-(D) of the Cable Act (47 U.S.C. § 542(g)(2)(A)-(D)). Further, the payment
25 of such liquidated damages shall not be deemed to be: (i) “Payments-in-kind” or involuntary
26 payments chargeable against the compensation to be paid to the City by the Franchisee pursuant
27 to Section 10 of this Agreement or chargeable against the payments to the City by the Franchisee
28 pursuant to Section 6 of this Agreement; or (ii) part of the compensation to be paid to the City by
29 the Franchisee pursuant to Section 10 of this Agreement or part of the payments to the City by the
30 Franchisee pursuant to Section 6 of this Agreement. Nothing contained in this Section 13.3B
31 shall be construed to permit duplicative recovery from, or payment by, the Franchisee.

- 32 C. No Pass-Through of Liquidated Damages. The costs associated with payment of liquidated
33 damages pursuant to Section 13.3 shall not be passed through to Subscribers in any form,
34 itemized on Subscriber bills, or, for rate regulation purposes, attributed to capital costs, operating
35 expenses, or external costs of the System.
- 36 D. Availability of Additional Remedies; Breach Procedures Not Applicable. To the extent that the
37 City elects to assess liquidated damages as provided in this Section 13.3 and such liquidated
38 damages have been paid to the City to the satisfaction of City, such damages shall be in lieu of
39 the City’s right to seek actual damages for the same failures to comply with this Agreement.
40 Nothing in this Section 13.3D is intended to preclude the City from exercising any other right or
41 remedy with respect to: (i) a breach that continues past the time the City stops assessing
42 liquidated damages for such breach; or (ii) the City’s use of a past breach or past portion of a
43 continuing breach to support a claim of breach or other claim, one (1) of the elements of which is
44 a previous, continuing or repeated violation of this Agreement or Applicable Law. Further, the
45 Franchisee’s payment of such liquidated damages shall not preclude the City from considering
46 the breaches for which such liquidated damages were paid in any decision the City makes on
47 whether to renew this Franchise pursuant to Section 626 of the Cable Act (47 U.S.C. § 546) (or
48 any successor thereto), to terminate the Franchise, or otherwise. The procedures set forth in
49 Sections 13.2 and 13.3A of this Agreement shall apply to liquidated damages or payments of
50 other amounts payable from the Security Fund and the withdrawal of any such damages or
51 payments of other amounts from the Security Fund. The breach procedures set forth in Section
52 13.4B shall apply solely to the remedies for material breach.

Council Bill 07-0825

1 13.4 Remedies For Breach.

2 A. Rights of City. In the event that the City believes that Franchisee fails to comply with a provision
3 of this Agreement or has performed a Criminal Act (which shall be considered a breach of this
4 Agreement), and has failed to cure any such breach within any applicable cure period after
5 Franchisee’s notice of such breach, then the City shall have the right, at its election and without
6 prejudice to any other remedies provided at law or in equity, to pursue any one or more of the
7 following remedies:

- 8 1. City may require the Franchisee, within such reasonable time as may be fixed by City, to
9 complete or correct the breach, and to take any or all actions necessary to cure the breach that
10 the City deems appropriate in the circumstances; and/or
- 11 2. Seek money damages from the Franchisee as compensation for such breach; and/or
- 12 3. Revoke the Franchise granted pursuant to this Agreement by termination of this Agreement
13 pursuant to Section 13.5; and/or
- 14 4. City may perform or have performed any or all acts necessary to cure the breach and recover
15 from Franchisee all the costs and expenses incurred in relation to that cure, including
16 attorneys’ fees and costs; and/or
- 17 5. City may recover from Franchisee all costs, including attorneys’ fees, incurred by City as a
18 result of any breach or as a result of actions taken by City in response to any breach.

19 In addition to all other remedies granted or available to the City, the City may seek, to the extent
20 appropriate under Applicable Law, (a) the restraint by injunction of the violation, or attempted or
21 threatened violation, by the Franchisee of any terms or provisions of this Agreement; or (b) a
22 decree or order compelling performance by the Franchisee of any term or provision of this
23 Agreement.

24 B. Breach Procedures. The City shall exercise the rights provided in Section 13.4A in accordance
25 with following procedures, which procedures shall not be applicable to other remedies provided
26 in this Agreement:

- 27 1. The City shall notify the Franchisee, in writing, of an alleged failure to comply with a
28 provision of this Agreement, which notice shall specify the alleged failure with reasonable
29 particularity. The Franchisee shall, within fifteen (15) Days (for an allegation of breach of
30 financial provisions) or thirty (30) Days (for an allegation of breach of non-financial
31 provisions) after receipt of such notice or such longer period of time as the City may specify
32 in such notice, either: (a) cure such alleged failure and provide to the City a written
33 explanation and evidence of such cure; or (b) in a written response to the City, state that such
34 alleged failure will be cured and set forth the method and time schedule for accomplishing
35 such cure.
- 36 2. The City shall determine: (a) whether a failure to comply with a provision has occurred; and
37 (b) whether such failure has been cured or will be cured by the Franchisee in a manner and in
38 accordance with a schedule acceptable to the City.
- 39 3. If City determines that a failure to comply with a provision of this Agreement has occurred
40 and that such failure has not been or will not be cured by the Franchisee in a manner and in
41 accordance with a schedule satisfactory to City, then City may take any action set forth in
42 Sections 13.4A.

43 13.5 Obligations upon Termination. In the event of any termination, revocation, or expiration of this
44 Agreement, the City may, at its option:

Council Bill 07-0825

- 1 A. Direct the Franchisee to operate the System on behalf of the City pursuant to the provisions of
2 this Agreement and such additional terms and conditions as are agreed upon by the City and the
3 Franchisee, for a period of up to one (1) year;
- 4 B. If there is an Abandonment, authorize any other Person to operate the System on behalf of the
5 City; or
- 6 C. Order the Franchisee to cease all construction and operational activities in a prompt, workmanlike
7 and safe manner by a date to be specified by the City.

8 In the event of such a termination, revocation, or expiration, the Franchisee shall maintain in full force
9 and effect the performance bond required by Section 13.10 for a reasonable period following the date of
10 termination, revocation, or expiration, but in no event less than three (3) years where Franchisee is
11 removing the System and one (1) year in all other instances following termination, revocation or
12 expiration. Pursuant to this Section 13.5, the Franchisee shall cooperate with the City in maintaining
13 continuous and uninterrupted distribution of Services over the System, including, but not limited to,
14 operating the System for a period of time specified by the City for a period up to one (1) year; it is the
15 intent of the parties that only the City may take action to enforce this sentence.

16 13.6 City's Right to Order Removal or to Acquire or Effect a Transfer of the System.

- 17 A. Removal. In addition to its rights under Section 13.5, upon any termination, revocation, or
18 expiration, the City may, in its sole discretion, but shall not be obligated to, in the event the
19 System is not sold pursuant to Section 13.6B, direct the Franchisee to immediately discontinue
20 the provision of Services and all rights of Franchisee to use the Public Ways shall cease. City
21 may direct Franchisee to remove, at the Franchisee's sole cost and expense, all or any portion of
22 the System from all Public Ways and other public property within the City, including all
23 supporting structures, poles, transmission, and distribution portions of the System and other
24 appurtenances, fixtures, or property from the Public Ways in, over, under, along, or through
25 which they are installed within six (6) months after the termination, revocation, or expiration,
26 except that: (i) Franchisee may abandon its facilities in place; and (ii) Franchisee cannot remove
27 underground facilities without City's consent in advance, which consent shall not be
28 unreasonably withheld. Removal shall be subject to the following:
- 29 1. This provision shall not apply to buried cable which the City determines should not be
30 removed;
 - 31 2. Prior to any removal, Franchisee shall notify City where removal will occur;
 - 32 3. In removing the System, or any part of the System, the Franchisee shall comply with all
33 requirements of Section 3 for construction within the Public Ways and shall restore and leave
34 all Public Ways and other property in as good condition as that prevailing prior to the
35 Franchisee's removal of the System, including any improvements made to such property
36 subsequent to the construction of its System, and without affecting, altering, or disturbing in
37 any way any electric, telephone or other utility cables, wires, or attachments (except to the
38 extent such affecting, altering, or disturbing is permitted by an agreement between the
39 Franchisee and the applicable owner of the cable, wires, or attachments);
 - 40 4. Restoration of streets and City property, including, but not limited to, Public Ways, shall be
41 in accordance with the requirements of Section 3 and the directions and specifications of City
42 and all Applicable Law, at Franchisee's sole expense. The City shall have the right to inspect
43 and approve the condition of such Public Ways and public property after removal;
 - 44 5. Notwithstanding any other provisions of this Agreement, the performance bond, the Security
45 Fund, and liability insurance and indemnity provisions of this Agreement shall remain in full
46 force and effect during the entire period of removal and associated repair of all Public Ways
47 and other public property (or during such longer period as may be required by any other
48 provision of this Agreement);

Council Bill 07-0825

- 1 6. Removal and restoration shall be commenced within thirty (30) Days after the removal order
2 by the City and shall be completed within six (6) months thereafter, including all associated
3 repair of all Public Ways and other public property; and
- 4 7. If, in the reasonable judgment of City, the Franchisee fails to substantially complete such
5 removal and restoration, including all associated repair of Public Ways and other public
6 property, within six (6) months after the revocation, termination, or expiration; then, to the
7 extent not inconsistent with Applicable Law, the City shall have the right to: (a) declare that
8 all rights, title and interest to those portions of the System within Baltimore City (or outside
9 Baltimore City but used exclusively for the System) belong to the City with all rights of
10 ownership, including, but not limited to, the right to operate the System or to effect a transfer
11 of the System to another Person for operation; or (b)(i) authorize removal of the System,
12 including all associated repair of Public Ways and other public property, by another Person at
13 the Franchisee's cost, and (ii) declare that, to the extent not inconsistent with Applicable Law,
14 any portion of the System within Baltimore City (or outside Baltimore City but used
15 exclusively to serve Persons within Baltimore City) not designated by the City for removal
16 shall belong to and become the property of the City without compensation to the Franchisee
17 and the Franchisee shall execute and deliver such documents, as City shall request, in form
18 and substance acceptable to City, to evidence such ownership by the City; and
- 19 8. In the event Franchisee chooses to remove its System and fails to satisfactorily restore all
20 areas to the condition in which they existed prior to the original construction of the System,
21 City, at its option, may perform such work, and, if such work is performed within two (2)
22 years after the revocation, termination, or expiration of this Agreement, collect the costs
23 thereof from Franchisee.

24 Notwithstanding the foregoing, the Franchisee may dispose of any portion of the System not designated
25 by the City for removal during such six (6) month period; provided, however, that if the Franchisee fails
26 to complete the removal of the portion(s) of the System designated for removal by the City within such
27 period, then all such portion(s) of the System not disposed of and all amounts collected for any portion(s)
28 of the System disposed of by the Franchisee during such period shall belong to the City, with no price due
29 to the Franchisee.

30 For purposes of this Section 13.6, the System shall not be deemed to include any trademarks, service
31 marks or any other intangible personal property of the Franchisee that is not necessary for the operation of
32 a Cable System in Baltimore City. Without limiting the types of intangible personal property that are
33 necessary for such operation, nothing in this paragraph shall be construed to exclude the Franchisee's list
34 of Subscribers, their addresses, the Services that they receive and similar information from the meaning of
35 the System as used in this Section 13.6.

36 B. Acquisition or Transfer. Upon any termination, revocation or expiration and as an alternative to
37 ordering removal of the System, the City shall have the right to, and may, in its sole discretion
38 and in accordance with Section 627 of the Cable Act (47 U.S.C. § 547) (or any successor thereto)
39 and other Applicable Law, acquire, or effect a transfer to a third party acceptable to the City, of
40 all or any part of the System and all components thereof necessary to maintain and operate the
41 System pursuant to the terms of this Agreement, provided that this requirement shall apply only
42 to those portions of the System within Baltimore City (or outside Baltimore City but used
43 exclusively to serve Persons within Baltimore City). The City shall notify the Franchisee ninety
44 (90) Days after the termination, revocation or expiration of its intent to purchase or transfer the
45 System. For a period of sixty (60) Days after such notice is given, the City and the Franchisee
46 shall negotiate, in good faith, the terms and condition of the purchase of the System, including the
47 purchase price, as detailed below.

48 C. Price. The price to be paid to the Franchisee upon an acquisition or transfer by the City or a third
49 party acceptable to the City shall depend upon the nature of the termination. If the Franchisee
50 expires without any request by the Franchisee pursuant to Section 626(a)(1) of the Cable Act (47
51 U.S.C. § 546(a)(1)) (or any successor thereto) that it be renewed, or if the renewal of the
52 Franchise is denied, then the price shall be fair market value, determined on the basis of the

Council Bill 07-0825

1 System valued as a going concern but with no value allocated to the Franchise itself (*i.e.*, the fair
2 market value of the System valued as a going concern, with a deduction for the value allocable to
3 the Franchise itself). If the termination is due to the revocation of the Franchise for cause,
4 including, but not limited to, revocation due to a breach of this Agreement by the Franchisee as
5 provided in Section 13.4 or otherwise, then the price shall be an equitable price. In either case,
6 the price shall take into consideration the effects of Sections 13.7 and 13.8.

7 D. Valuation Date and Appraisal. The date of valuation for purposes of the price determination
8 pursuant to Section 13.6C shall be the Day before the date the City preliminarily elects to acquire
9 or to effect a transfer of the System. If the City and the Franchisee cannot agree upon the
10 purchase price referenced in Section 13.6C, the City shall have the right to require the convening
11 of a panel of qualified cable system appraisers to determine the fair market value of the Cable
12 System in accordance with the provisions of this Section 13.6D. Such panel, if required, shall be
13 composed of one appraiser chosen by the City, one appraiser chosen by the Franchisee, and a
14 third appraiser chosen by the first two appraisers. The Franchisee shall make necessary data and
15 information available to the appraisers. All expenses of the appraisal, including the fees of the
16 appraisers, shall be borne by the parties in equal shares. Within sixty (60) Days after the three
17 appraisers have been selected, each shall independently appraise the value of such assets pursuant
18 to Section 13.6.B, and shall, without disclosing such value to the other appraisers, record and seal
19 the appraised value in an envelope. Upon completion of all appraisals, the appraisers shall
20 convene together and open and disclose to each other their sealed appraised values for such
21 assets. The appraised value which is farthest from the average of the three disclosed figures shall
22 be discarded and the average of the two remaining values shall be certified to the City and the
23 Franchisee by all three appraisers as having been determined in accordance with this Subsection
24 of this Agreement. The figure so certified shall be deemed by the Franchisee and the City to be
25 the fair market value of such assets.

26 13.7 Franchisee's Obligations. In the event of any acquisition or transfer pursuant to Section 13.6 or
27 Abandonment pursuant to Sections 13.5 and 13.6, the Franchisee shall:

- 28 A. cooperate with the City or any third party in maintaining continuous and uninterrupted
29 distribution of Services over the System, including, but not limited to, operating the System for a
30 period of time specified by the City but not to exceed one (1) year;
- 31 B. promptly execute all appropriate documents to transfer to the City or third party, free of any and
32 all encumbrances, title to the System, all components thereof necessary to operate and maintain
33 the System pursuant to the terms and conditions of this Agreement, as well as all contracts, leases,
34 licenses, permits, rights-of-way and any other rights, contracts or understandings necessary to
35 maintain the System and the distribution of Services over the System; provided that such transfers
36 shall be made subject to the rights under the Maryland Uniform Commercial Code, Md. State
37 Government Code, Titles 1-10, as amended, or any successor thereto, and, to the extent that any
38 collateral consists of real property, under Baltimore City's real property law, of banking or
39 lending institutions which are secured creditors or mortgagees of the Franchisee at the time of
40 such transfers; and provided that the City shall have no obligation following said transfers to pay,
41 pledge or otherwise commit in any way any general or any other revenues or funds of the City,
42 other than the net operating revenues received by the City from its operation of the System, in
43 order to repay any amounts outstanding on any debts secured by the System which remain owing
44 to such creditors or mortgagees; and provided, finally, that the total of such payments by the City
45 to such creditors and mortgagees, from the net operating revenues received by the City from its
46 operation of the System, shall in no event exceed the lesser of: (a) the fair market value of the
47 System on the date of the transfer of title to the City or (b) the outstanding debt owed to such
48 creditors and mortgagees on said date. Nothing in this Section 13.7 shall be construed to limit the

Council Bill 07-0825

1 rights of any such banking or lending institutions which are not Affiliated Persons to exercise its
2 or their rights as secured creditors or mortgagees at any time prior to the payment of all amounts
3 due pursuant to the applicable debt instruments; and

- 4 C. promptly supply City with all necessary records to reflect the City’s or third party’s ownership of
5 the System and to operate and maintain the System, including, without limitation, all Subscriber
6 records and plant and equipment layout documents.

7 It is the intent of the parties that only the City may take action to enforce Subsection A of this Section
8 13.7.

9 13.8 Other Provisions. The City and the Franchisee shall negotiate in good faith all other terms and
10 conditions of any such acquisition or transfer, except that, in the event of any acquisition of the System by
11 the City:

- 12 A. The City shall not be required to assume any of the debts or obligations of any collective
13 bargaining agreements or any other employment contracts held by the Franchisee or any other
14 obligations of the Franchisee or its officers, employees or agents, including, without limitation,
15 any pension or other retirement or any insurance obligations;
- 16 B. The City shall not be required to assume any Liabilities; and
- 17 C. The City may lease, sell, operate or otherwise dispose of all or any part of the System in any
18 manner.

19 In the event the City does assume any of the debts or obligations of the Franchisee, the payment terms
20 shall be adjusted accordingly.

21 13.9 Termination.

- 22 A. General. The termination of this Agreement shall occur upon the earliest to occur of: (i) the
23 revocation of the Franchise granted pursuant to this Agreement as provided in Section 13.4; (ii)
24 an Abandonment of the System; or (iii) subject to Section 626 of the Cable Act (47 U.S.C. § 546)
25 (or any successor thereto), the expiration of the Term of the Franchise as set forth in Section 2.3,
26 or otherwise.
- 27 B. Termination Not a Waiver. The termination of this Agreement (in any way specified in Section
28 13.9(A)) shall not, for any reason, operate as a waiver or release of any obligation or Liability of
29 the Franchisee or any other Person, as applicable, incurred or accrued prior to the date of such
30 termination, and shall include, without limitation, the obligations of this Section 13.9B and
31 Sections 6.5, 10, 11.1, 11.11, 11.22, 12, 13, 14.9, 14.12, 14.14, and 14.27, shall survive the
32 termination of this Agreement. If the Franchisee continues to operate all or any part of the
33 System after the expiration of the Term of the Franchise, without renewal, then (i) this Section
34 13.9B shall not be construed to waive or release any obligation or Liability of the Franchisee
35 arising out of such continued operations; and (ii) the Franchisee shall comply with the terms and
36 conditions of this Agreement, including, but not limited, to all compensation and other payment
37 provisions of this Agreement. Any such continued operation shall in no way be construed as a
38 renewal or other extension of this Agreement or the Franchise granted pursuant to this
39 Agreement.
- 40 C. Effect of Termination. In the event of a termination as set forth in Section 13.9A, the Term of the
41 Franchise shall expire and the Franchise shall be revoked; all rights of the Franchisee in the
42 Franchise shall cease, with no value allocable to the Franchise itself; and the rights of the City
43 and the Franchisee to the System, or any part thereof, shall be determined as provided in Sections
44 13.5 through 13.8.

Council Bill 07-0825

1 13.10 Performance Bond.

2 A. Establishment. To guarantee the timely completion of any Significant Construction undertaken
3 during the Term of this Agreement, to ensure that the operation of the System continues in an
4 orderly and uninterrupted manner in the event of a default by the Franchisee, and for the other
5 purposes specified in Section 13.2C, the Franchisee shall arrange for, and shall maintain, before
6 the commencement of any Significant Construction, a performance bond solely for the protection
7 of the City, with a corporate surety and trust company that: (i) is listed as a certified company in
8 the most recent version, as of the Effective Date, of the Department of the Treasury’s Listing of
9 Approved Sureties (Department Circular 570), or any successor thereto; (ii) has a per-bond
10 underwriting limitation, as set forth in such Listing, of not less than Twenty Million Dollars
11 (\$20,000,000); and (iii) is otherwise acceptable to the City Solicitor.

12 Before any change in the performance bond (including, but not limited to, its issuer, amount or
13 terms and conditions, whether or not such change is explicitly contemplated by this Section
14 13.10A) takes effect, (i) the City Solicitor shall have approved the form of the new bond if the
15 form is being changed, such approval not to be unreasonably withheld or denied; and (ii) the
16 Franchisee shall furnish the new bond to the City Solicitor, with a copy to MOCC, DPW, and
17 DOT.

18 B. Amount. The amount of the performance bond during any Significant Construction of the System
19 shall be in an amount not less than one hundred ten percent (110%) of the estimated costs of the
20 Significant Construction, as approved by the City. The bond shall remain in effect until ninety
21 (90) Days after the City has acknowledged the completion of the Significant Construction.

22 C. Indemnification. The performance bond shall indemnify the City, up to the full face amount of
23 the bond, for: (i) the cost to complete the Significant Construction, or any other construction,
24 upgrade, rebuild or enhancement of the System in the Franchise Area and to maintain the
25 operation of the System following a termination of this Agreement; (ii) any loss or damage to any
26 municipal structure during the course of any work on the System; (iii) any other costs, losses, or
27 damages incurred by the City as a result of the Franchisee’s failure to perform its obligations
28 pursuant to this Agreement, irrespective of whether such failure is or is not negligent, intentional
29 or otherwise; and (iv) the removal of all or any part of the System from the Public Ways;
30 provided, however, that the City may not seek recourse against such bond for any costs or
31 damages for which the City has previously been compensated in full through a withdrawal from
32 the Security Fund or otherwise by the Franchisee. The requirements of this Section 13.10C shall
33 apply to both the initial and replacement bonds described in Sections 13.10A and 13.10B.

34 D. Form. Any performance bond provided under this Section shall be in a form approved by the City
35 Solicitor and shall be furnished to the City Solicitor, with a copy to MOCC, DPW, and DOT,
36 before the commencement of any Significant Construction. Such bond shall contain the
37 following endorsement:

38 “It is hereby understood and agreed that this bond may not be cancelled or not
39 renewed by the surety nor may the intention to cancel or not to renew be stated
40 by the surety until not less than sixty (60) Days after City has acknowledged the
41 completion of the [describe Significant Construction] pursuant to the Franchise
42 Agreement between the City and Cavalier IP TV, LLC. and, notwithstanding the
43 foregoing, shall in no case be cancelled or not renewed by the surety until at least
44 sixty (60) Days’ prior written notice to the City Solicitor and MOCC of the
45 surety’s intention to cancel or not renew this bond is given.”

46 E. Responsibilities of the Franchisee If the Surety Cancels or Fails to Renew a Performance Bond.
47 Prior to the effective date of any cancellation or failure to renew a performance bond by the

Council Bill 07-0825

1 surety, the Franchisee shall obtain a replacement performance bond from a corporate surety and
2 trust company that meets the requirements set forth of Section 13.10A as of the effective date of
3 such replacement performance bond, and is otherwise acceptable to the City Solicitor. Such
4 replacement performance bond shall be in a form approved by the City Solicitor, such approval
5 not to be unreasonably withheld or denied, and, prior to such effective date, shall have been
6 furnished to the City Solicitor, with a copy to MOCC.

7 F. Not a Limit on Liability. The acceptance by the City of the bond required by this Section 13.10
8 shall not limit the requirement of faithful performance by the Franchisee pursuant to this
9 Agreement or the Liability of the Franchisee pursuant to this Agreement.

10 **SECTION 14**
11 **MISCELLANEOUS PROVISIONS**

12 **14.1 Delays and Failures Beyond Control of Franchisee.**

13 A. General. Notwithstanding any other provision of this Agreement, the Franchisee shall not be
14 liable for reasonable delay in the performance of, or failure to perform, in whole or in part, its
15 obligations pursuant to this Agreement due to strike; war or act of war; riot; fire; flood or other
16 act of God; unusually severe weather conditions considering the time of year; manufacturing
17 delays or delays in delivery due to conditions that would otherwise relieve the Franchisee from
18 liability under this Section; loss of utility service or facilities, except to the extent such loss
19 should have been covered by the Franchisee’s standby and backup power supplies required by
20 Appendix A to this Agreement; any act, order, or decree of any governmental agency or judicial
21 body; or any other event to the extent that the event is reasonably beyond the Franchisee’s ability
22 to anticipate or control.

23 B. Partial Impact. In the event that any such delay in performance or failure to perform affects only
24 part of the Franchisee’s capacity to perform, the Franchisee shall perform to the maximum extent
25 it is able to do so and shall take all steps within its power to correct such delays as rapidly as
26 possible.

27 C. Notice. The Franchisee shall notify MOCC by fax or telephone of the occurrence of any event
28 covered by this Section within five (5) Business Days of the time at which the Franchisee learns
29 of the occurrence.

30 **14.2 Notice.**

31 A. Any notice or communication required or permitted to be given under this Agreement shall be in
32 writing, signed by an authorized representative, and delivered (i) personally, (ii) by a reputable
33 overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S.
34 Mail, postage prepaid. Unless otherwise provided in this Agreement, notices shall be deemed
35 received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1)
36 Business Day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b)
37 the date that is three (3) Business Days after deposit in the U.S. mail, as evidenced by a return
38 receipt. By notice complying with the requirements of this Section 14.2, each party to this
39 Agreement shall have the right to change the address or the addressee, or both, for all future
40 notices and communications to them, but no notice of a change of addressee or address shall be
41 effective until actually received.

42 B. Notices and communications to the City shall be addressed to, and delivered at, the following
43 address:

44 Mayor’s Office of Cable Communications
45 Attn: Executive Director

Council Bill 07-0825

1 8 Market Place, Suite 200
2 Baltimore, Maryland 21202

3 With a copy to:

4 City Solicitor
5 101 City Hall
6 100 North Holliday Street
7 Baltimore, Maryland 21202

8 Notices and communications to the Franchisee shall be addressed to, and delivered at, the following
9 address:

10 Brad Evans
11 Executive Chairman
12 Cavalier IP TV, LLC
13 2134 West Laburnum Avenue
14 Richmond, Virginia 23227

15 With a copy to:

16 General Counsel
17 Cavalier IP TV, LLC
18 2134 West Laburnum Avenue
19 Richmond, Virginia 23227

20 C. Notice from the City. Notwithstanding any other provision of this Section, any notice the City is
21 required to give to the Franchisee pursuant to Section 13.2 of this Agreement for which a cure
22 period is ten (10) Days or less must be served by personal delivery, overnight mail service, or
23 facsimile transmission.

24 14.3 Public Notice. The minimum public notice of any public meeting relating to the Franchise shall be
25 by publication at least once in two (2) newspapers of general circulation in the area not less than seven (7)
26 nor more than twenty-one (21) Days prior to the meeting, posting in all customer Service Centers in the
27 City, and by announcement on at least two (2) Channels on the Cable System between the hours of 7:00
28 p.m. and 9:00 p.m., for five (5) consecutive Days prior to the meeting.

29 14.4 Appendices. The Appendices A through E attached to this Agreement, are, unless otherwise
30 specified, incorporated in this Agreement by reference and expressly made a part of this Agreement.

31 14.5 Entire Agreement. This Agreement, including all Appendices attached, contains the entire
32 understanding and agreement between the City and the Franchisee with respect to the subject matter of
33 this Agreement. All prior negotiations, drafts of this Agreement or any part thereof, understandings, and
34 agreements, including, without limitation, all written or oral statements or representations of any official,
35 employee, agent, attorney, consultant, or independent contractor of the City or Franchisee, are merged in
36 and superseded by this Agreement. The Franchisee shall comply with the terms and conditions of the
37 Previous Franchise Agreement, as amended, for any period between the date of execution by the
38 Franchisee and the Effective Date.

39 14.6 Modification. Except where this Agreement specifies that a provision may be modified without the
40 approval of both parties, no provision of this Agreement may be modified unless and until such change is
41 reduced to writing, duly authorized and executed by the authorized representatives of each of the parties,
42 and delivered.

Council Bill 07-0825

1 14.7 Severability. If any section, subsection, sentence, clause, provision, or other portion of this
2 Agreement is declared to be invalid or unenforceable, in whole or in part, for any reason, by any court,
3 agency, commission, legislative body, or other authority of competent jurisdiction, such declaration of
4 invalidity or unenforceability of such section, subsection, sentence, clause, provision, or other portion
5 shall not affect the validity of any of the remaining portions of this Agreement, which other portions shall
6 continue in full force and effect. If any material provision of this Agreement is found to be unenforceable
7 in a final judicial or administrative proceeding, the parties shall enter into good faith negotiations with the
8 intent of reaching an agreement that would place all parties to this Agreement, and Cable System users
9 and Subscribers, substantially in the same position as if this Agreement were fully enforceable.

10 14.8 Preemption. In the event that federal or state laws, rules, or regulations preempt a provision or limit
11 the enforceability of a provision of this Agreement, then the provision shall be read to be preempted to the
12 extent and for the time, but only to the extent and for the time, required by law. In the event such federal
13 or state law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed so
14 that the preempted provision is no longer preempted, such provision shall immediately return to full force
15 and effect, and shall thereafter be binding on the parties, without the requirement of further action on the
16 part of the City.

17 14.9 Governing Law. This Agreement shall be deemed to be executed in the State of Maryland, and shall
18 be governed in all respects, including validity, interpretation and effect, and construed in accordance with
19 the laws of the State of Maryland, without regard to its conflicts of laws principles, as applicable to
20 contracts entered into and to be performed entirely within that jurisdiction.

21 14.10 Priority of Maryland Laws. To the extent the rules and regulations promulgated by the City, and the
22 administrative and judicial decisions interpreting such rules and regulations, answer a question left to
23 Applicable Law under this Agreement, such rules, regulations, and decisions shall take precedence over
24 any other source of Maryland law.

25 14.11 Action Taken by City. Any action to be taken by the City and/or MOCC pursuant to this
26 Agreement shall be taken in accordance with Applicable Law, as such Law may be amended or modified
27 throughout the Term of this Agreement.

28 14.12 Venue. The City and the Franchisee, on its behalf, agree that, except to the extent inconsistent with
29 Section 635 of the Cable Act, 47 U.S.C. § 555, or any successor provision, any and all claims asserted by
30 or against the City arising under this Agreement or related to this Agreement shall be heard and
31 determined either in a court of the United States located in Baltimore City or in the Circuit Court for
32 Baltimore City.

33 14.13 Additional Representations and Warranties. In addition to the representations, warranties, and
34 covenants of the Franchisee to the City set forth elsewhere in this Agreement, the Franchisee represents
35 and warrants to the City and covenants and agrees that, as of the Closing:

- 36 A. Organization, Standing, and Power. The Franchisee is a limited liability company, duly
37 organized, validly existing, and in good standing under the laws of the State of Delaware, and in
38 good standing under the laws of the State of Maryland and is duly authorized to do business in
39 the State and the City. The Franchisee has all requisite power and authority to own or lease its
40 properties and assets, to conduct its businesses as currently conducted and to execute, deliver, and
41 perform this Agreement and all other agreements entered into or delivered in connection with or
42 as contemplated hereby. Certified copies of the Franchisee's organizational documents, as
43 amended to date, have been delivered to the City and are complete and correct. The Franchisee is
44 qualified to do business and is in good standing in each jurisdiction in which it conducts business.

Council Bill 07-0825

1 B. Authorization; Non-Contravention. The execution, delivery, and performance of this Agreement
2 and all other agreements entered into in connection with the transactions contemplated hereby
3 have been duly, legally, and validly authorized by all necessary action on the part of the
4 Franchisee, and the Franchisee has furnished the City with a certified copy of the resolutions of
5 the Franchisee that authorize the execution and delivery of this Agreement. This Agreement and
6 all other agreements entered into in connection with the transactions contemplated hereby have
7 been duly executed and delivered by the Franchisee and constitute, or upon execution and
8 delivery will constitute, the valid and binding obligations of the Franchisee, and are enforceable,
9 or upon execution and delivery will be enforceable, in accordance with their respective terms,
10 subject to the qualifications that the availability of the remedy of specific enforcement, of
11 injunctive relief or of other equitable relief is subject to the discretion of the court before which
12 any proceeding therefor may be brought, and that the enforcement of the rights and remedies
13 created hereby is subject to bankruptcy, insolvency, reorganization, and similar laws of general
14 application affecting the rights and remedies of creditors and secured parties, provided that
15 nothing in the foregoing qualifications is intended to diminish or affect the rights and remedies of
16 the City under this Agreement at law or in equity. The Franchisee has obtained the requisite
17 authority to approve, authorize, execute, and deliver this Agreement and to consummate the
18 transactions contemplated hereby and no other proceeding or other action is necessary on the part
19 of the Franchisee to approve and authorize the execution and delivery of this Agreement and the
20 consummation of the transactions contemplated hereby. The Franchisee has not made any
21 representations, warranties, or agreements inconsistent with or with respect to the subject matter
22 of this Agreement. Neither the execution and delivery of this Agreement by the Franchisee, nor
23 the performance by the Franchisee of its obligations contemplated by this Agreement will:

- 24 1. conflict with, result in a material breach of or constitute a material default under (or with
25 notice or lapse of time or both result in a material breach of or constitute a material default
26 under):
 - 27 a. any governing document of the Franchisee or, to the Franchisee's knowledge, any
28 shareholders' agreement or other similar agreement among security holders or other
29 owners of the Franchisee; or
 - 30 b. any statute, regulation, agreement, judgment, decree, court or administrative order or
31 process or any commitment to which the Franchisee is a party or by which it (or any of
32 its properties or assets) is subject or bound;
- 33 2. result in the creation of, or give any party the right to create, any material lien, charge,
34 encumbrance or security interest upon the property and assets of the Franchisee that would
35 have a material adverse effect on the operation of the Cable System or the financial condition
36 of the Franchisee or the Cable System; or
- 37 3. terminate, modify or accelerate, or give any third party the right to terminate, modify or
38 accelerate, any provision or term of any contract, arrangement, agreement, license agreement
39 or commitments, except for any event which individually or in the aggregate would not have
40 a material adverse effect on the business, properties or financial condition of the Franchisee
41 or the Cable System.

42 C. Consent. No consent, approval or authorization of, or declaration or filing with, any public,
43 governmental or other authority, including, without limitation, the FCC or any other federal
44 agency or any City, state, county or municipal agency, authority, board, commission, or council,
45 and, if applicable, public service commissions and other entities, on the part of the Franchisee is
46 required for the valid execution and delivery of this Agreement or any other agreement or
47 instrument executed or delivered in connection herewith.

Council Bill 07-0825

1 D. Compliance with Law. The Franchisee is in material compliance with all Applicable Law and the
2 Franchisee has obtained all government licenses, permits, and authorizations necessary for the
3 operation and maintenance of the Cable System.

4 E. Litigation; Investigations.

5 1. Except as disclosed in a certificate which has been provided by the an officer of the
6 Franchisee or its parents who is acceptable to MOCC and approved by MOCC and the City
7 Solicitor prior to the Closing, there is no civil, criminal, administrative, arbitration or other
8 proceeding, investigation or claim, including, without limitation, proceedings with respect to
9 unfair labor practice matters or labor organization activity matters or involving the granting
10 of a temporary or permanent injunction, pending or threatened against the Franchisee at law
11 or in equity or before any foreign, federal, City, state, county, municipal or other
12 governmental department, commission, board, bureau, agency or instrumentality or any
13 arbitrator(s), that, if decided adversely to the Franchisee, would:

14 a. have a material adverse effect on the business, operation, properties, assets or financial
15 condition of the Franchisee or the Cable System, or

16 b. question the validity or prospective validity of this Agreement, of any essential element
17 upon which this Agreement depends or of any action to be taken by the Franchisee.

18 2. The Franchisee is not subject to any outstanding order, writ, injunction or decree which
19 materially and adversely affects or will affect the business, operation, properties, assets or
20 financial condition of the Cable System.

21 F. Full Disclosure. Without limiting the specific language of any other representation and warranty
22 in this Agreement, the Franchisee warrants and represents that, as of the Effective Date, all
23 information furnished by the Franchisee is accurate and complete in all material respects and does
24 not contain any untrue statement of a material fact or omit any material fact necessary to make the
25 statements therein not misleading, including, but not limited to the information contained in:

26 1. this Agreement and its Appendices;

27 2. any other document executed on the Effective Date;

28 3. the most recently supplied financial information about the Franchisee;

29 4. the most recently supplied design, as-built and construction sequence maps; and

30 5. documents submitted in connection with any transfer of Control authorized by Section 11 of
31 this Agreement.

32 G. Fees. Franchisee has paid all franchise, license or other fees and charges which have become due
33 pursuant to any prior franchise or permit and has made adequate provisions for any such fees and
34 charges which have accrued.

35 H. Licenses and Permits.

36 1. Franchisee has duly secured all material permits and licenses in connection with the design,
37 construction, operation, maintenance, repair, upgrade, rebuild or enhancement of the Cable
38 System, or any part of the Cable System, from, and has filed all required registrations,
39 applications, reports and other documents with, the FCC.

40 2. The Franchisee acknowledges and agrees that no event has occurred which (i) could result in
41 the revocation or termination of any such license or authorization; (ii) could materially and
42 adversely affect any rights of the Franchisee; (iii) permits, or after notice or lapse of time or
43 both would permit, revocation or termination of any such license; or (iv) materially and

Council Bill 07-0825

1 adversely affects or, so far as the Franchisee can now foresee, will materially and adversely
2 affect the Cable System or any part of the Cable System.

3 3. The Franchisee has obtained all material leases, easements and equipment-rental or other
4 agreements necessary for the maintenance and operation of the Cable System as now
5 conducted.

6 I. Ownership Interests. Appendix E represents a current, complete, and accurate description of the
7 ownership structure of the Franchisee and a current, complete, and accurate list of all Persons
8 which hold, directly or indirectly, a five percent (5%) or greater interest in the Franchisee, and all
9 Persons in which the Franchisee, directly or indirectly, holds a five percent (5%) or greater
10 interest.

11 J. Additional Covenants. Until the termination of this Agreement and the satisfaction in full by the
12 Franchisee of its obligations under this Agreement, in consideration of the Franchise granted in
13 this Agreement, the Franchisee agrees that it will comply with the following affirmative
14 covenants, unless the City otherwise consents in writing:

15 1. Compliance with Laws; Licenses and Permits. The Franchisee shall have the sole
16 responsibility for obtaining all permits, licenses and other forms of approval or authorization
17 necessary to construct, operate, maintain, upgrade, rebuild, enhance, replace or repair the
18 Cable System, or any part of the Cable System. Consistent with Section 11.2 and Section 14
19 of this Agreement, the Franchisee shall comply with:

20 a. all Applicable Laws (including, but not limited to, those of the FCC and any other
21 federal, state, or local agency or authority of competent jurisdiction); and

22 b. all Applicable Laws or other directives of the City, including MOCC, issued pursuant to
23 this Agreement or Applicable Law.

24 2. Maintain Existence. The Franchisee will preserve and maintain its existence, its business and
25 all of its rights and privileges necessary or appropriate for the normal conduct of its business.
26 The Franchisee shall maintain its good standing in the State of Maryland and continue to
27 qualify to do business and remain in good standing in each jurisdiction in which it conducts
28 business.

29 3. Financial Condition. The Franchisee shall, throughout the term of this Agreement and
30 thereafter, for as long as the Franchisee is required to construct, operate, maintain, upgrade,
31 rebuild, and enhance the Cable System pursuant to this Agreement, maintain adequate
32 financial resources to perform all obligations pursuant to this Agreement.

33 4. Condition of Cable System. All of the material properties, assets and equipment of the Cable
34 System are, and all such items added in connection with any construction, upgrade, rebuild,
35 or enhancement will be, maintained in good repair and proper working order and condition
36 throughout the Term of the Agreement and for any time period in which the Franchisee
37 continues to operate the Cable System.

38 5. Inconsistent Contracts. The Franchisee shall not enter into any contract, compliance with
39 which would prevent the Franchisee from performing its obligations under this Agreement.

40 These representations, warranties, covenants, and agreements shall not be affected or waived by any
41 inspection or examination made by or on behalf of the City.

42 14.14 Survival of Representations and Warranties. After the Term of the Agreement and any extension of
43 the Agreement, the City may seek any lawful remedy for any breach by the Franchisee or any Affiliated

Council Bill 07-0825

1 Person of any representation or warranty made by such Person and contained in this Agreement;
2 provided, however, that the breach occurred during the Term of the Agreement or any extension of the
3 Agreement; or, for a representation or warranty specifically limited to being true as of the Effective Date,
4 that the breach occurred as of the Effective Date.

5 14.15 No Waiver; Cumulative Remedies. Subject to the conditions and limitations established in this
6 Agreement, no failure on the part of the City or the Franchisee to exercise, and no delay in exercising, any
7 right under this Agreement shall operate as a waiver of such right, nor, except as otherwise provided in
8 this Agreement, shall any single or partial exercise of any such right preclude any other right. Except as
9 otherwise provided in this Agreement, the rights and remedies provided in this Agreement are cumulative
10 and not exclusive of any remedies provided by law or in equity, and nothing contained in this Agreement
11 shall impair any of the rights of the City under Applicable Law, subject in each case to the terms and
12 conditions of this Agreement. A waiver of any right or remedy by either party at any one time shall not
13 affect the exercise of such right or remedy or any other right or other remedy by such party at any other
14 time. No waiver shall be effective unless explicit and in writing. The failure of the City to take any action
15 in the event of a material breach by the Franchisee shall not be deemed or construed to constitute a waiver
16 of or otherwise affect any right of the City to take any action permitted by this Agreement at any other
17 time in the event that such material breach has not been cured, or with respect to any other material
18 breach by the Franchisee; provided that this sentence is not intended to change or affect the application of
19 the last sentence of Section 626(d) of the Cable Act, 47 U.S.C. § 546(d), or any successor to such
20 sentence.

21 14.16 Cooperation. The parties recognize that it is in their mutual best interest to cooperate with each
22 other in accordance with the terms and provisions of this Agreement. Should either party believe that the
23 other is not acting timely or reasonably within the confines of applicable regulations and procedures in
24 responding to a request for action, that party shall notify the agent designated for this purpose by the
25 other. That agent will use his or her best efforts to facilitate the particular action requested.

26 14.17 No Opposition. By execution of this Agreement, the Franchisee:

- 27 A. accepts the validity of the terms and conditions of this Agreement, including the Appendices, in
28 their entirety; and
- 29 B. waives and relinquishes, to the maximum extent permitted by Applicable Law, any and all rights
30 it has as of the Effective Date, or may have had prior to the Effective Date, in law or in equity, to
31 assert in any manner, at any time or in any forum, that this Agreement, the Franchise, or the
32 processes and procedures pursuant to which this Agreement was entered into and the Franchise
33 was granted, are not consistent with Applicable Law as of the Effective Date.

34 14.18 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties to this
35 Agreement and their respective successors and permitted transferees and assigns. All of the provisions of
36 this Agreement apply to the Franchisee, its successors, and assigns.

37 14.19 No Recourse Against the City. The City and its officials, boards, commissions, officers, employees,
38 agents, attorneys, consultants or independent contractors shall have no liability for any loss, expense, or
39 damage arising out of any provision or requirement of the Franchise, the enforcement of the Franchise, or
40 the regulation of Cable Service, except as provided by Section 635a of the Cable Act (47 U.S.C. §555a)
41 and as otherwise provided by Applicable Law.

42 14.20 Interpretation. This Agreement shall be construed without regard to the identity of the party who
43 drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement
44 shall be construed as though all parties to the Agreement participated equally in the drafting of this
45 Agreement. As a result of the foregoing, any rule of construction that a document is to be construed
46 against the drafting party shall not be applicable to this Agreement.

Council Bill 07-0825

1 14.21 Headings and Interpretation. The headings contained in this Agreement are to facilitate reference
2 only, do not form a part of this Agreement, and shall not in any way affect the construction or
3 interpretation of this Agreement.

4 14.22 Terms. Terms such as “hereby,” “herein,” “hereof,” “hereinafter,” “hereunder,” and “hereto” refer
5 to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the
6 context otherwise requires. The term “may” is permissive; the terms “shall” and “will” are mandatory, not
7 merely directive. All references to any gender shall be deemed to include all others, as the context may
8 require. Terms used in the plural include the singular, and vice versa, unless the context otherwise
9 requires. “Number” shall include “amount” and vice versa.

10 14.23 Days and Time; Computation of Time.

11 A. Days and Time. Any reference in this Agreement to “day” or “days” shall mean calendar days
12 and not Business Days. If the date for giving or receiving of any notice or the performance of
13 any obligation required by this Agreement falls on a Saturday, Sunday, or federal or State of
14 Maryland holiday, then the notice or obligation may be given or performed on the next Business
15 Day after such Saturday, Sunday, or federal or State of Maryland holiday. Any reference to time
16 of day in this Agreement shall refer to local time for the City.

17 B. Computation. Unless otherwise provided, the first Day to be counted under this Agreement when
18 a period of time begins with the occurrence of an act, event, or default is the Day after the Day on
19 which the act, event, or default occurs. When computing a period of time, the last Day of such
20 period is included in the computation, and any required action must be taken on or before that
21 Day. It is immaterial whether the first Day of a time period is a Holiday.

22 14.24 No Agency. The Franchisee shall conduct the work to be performed pursuant to this Agreement as
23 an independent contractor and not as an agent of the City. No liability or benefits, such as worker’s
24 compensation, pension rights or liabilities, insurance rights or liabilities, or other provisions or liabilities,
25 arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to
26 either party or to either party’s agents or employees as a result of the performance of this Agreement.

27 14.25 Delegation of City Rights.

28 A. Reservation and Notice. Except where this Agreement specifies that an action is to be taken by
29 the Board or Council, the City reserves the right to delegate and re-delegate, from time to time,
30 any of its rights or obligations under this Agreement to any body, organization, or official. Any
31 such delegation by the City shall be effective upon written notice by the City to the Franchisee of
32 such delegation. Upon receipt of such notice by the Franchisee, the Franchisee shall be bound by
33 all terms and conditions of the delegation not in conflict with this Agreement.

34 B. Not an Amendment. Any such delegation, revocation, or re-delegation, no matter how often
35 made, shall not be deemed an amendment to this Agreement or require any consent of the
36 Franchisee.

37 C. Fact-Finding. Nothing in this Section shall be construed to prevent the Board or Council from
38 delegating any fact-finding function, including, but not limited to, the hearing of evidence, in
39 support of a decision that must be made by the Board or Council under this Agreement, provided
40 that the Board or Council is the entity that shall adopt the final findings of fact and conclusions of
41 law for the City, subject to any subsequent judicial process under Applicable Law.

42 14.26 No Third Party Beneficiaries. Nothing in this Agreement shall create, or be construed to create, any
43 third party beneficiary rights in any person or entity not a signatory to this Agreement.

Council Bill 07-0825

1 14.27 Time of the Essence. Time is of the essence in the execution and performance of all terms and
2 provisions of this Agreement.
3 *[signatures on following page]*

Council Bill 07-0825

1 **IN WITNESS WHEREOF**, the parties have caused this Agreement to executed as of the day and year
2 first above written.

3 **MAYOR AND CITY COUNCIL OF BALTIMORE**

4 By: _____
5 Mayor

6 **ATTEST:**

7 _____
8 Custodian of Seal

9 **CAVALIER IP TV, LLC**

10 By: _____

11 Its: _____

12 **WITNESS/ATTEST:**

13 **Approved as to Form and Legal Sufficiency:**

14 _____
15 City Solicitor

16 **Approved:**

17 _____
18 City Purchasing Agent

19 **Approved by the Board of Estimates:**

20 _____

Council Bill 07-0825

APPENDIX A SYSTEM CHARACTERISTICS

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1. The System shall conform to all applicable FCC technical performance standards, as amended from time to time, and the System shall have the personnel, facilities, and equipment sufficient to ensure that Franchisee's Cable System remains in compliance with the performance standards.
2. The Cable System shall be designed, constructed, routinely inspected, and maintained to guaranty the Cable System meets or exceeds the requirements of the most current applicable editions of the National Electrical Code (NFPA 70) and the National Electrical Safety Code (ANSI C2).
3. General Requirements. Franchisee shall use equipment used in high-quality, reliable, modern Cable Systems of similar design.
4. General Description. The Cable System shall provide Subscribers with a technically advanced and reliable Cable System. The Cable System shall operate with a minimum capability of being capable of delivering a minimum of seventy-eight (78) Channels of programming. The Cable System will be two-way active. The design will provide the benefits of proven seventy-eight (78) Channel electronics while positioning the Cable System for expansion of bandwidth and Channel capacity as technology and future services develop.
5. Design. The design of the Cable System shall be based upon a copper-based DSL architecture.
6. System Requirements. The Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:
 - (a) Franchisee shall ensure that each part of the Cable System's distribution network is capable of operating for not less than three (3) hours according to manufacturer's reasonable specifications, in view of local conditions, in the event of an electrical outage. Franchisee shall use equipment that will (A) cut in automatically on failure of commercial utility AC power, (B) revert automatically to AC power when such power is restored, (C) prevent the standby power source from powering a "dead" utility line, and (D) alert Franchisee's staff when the backup power supply cuts in. The obligation to provide such backup power supplies shall apply to Franchisee's headend, each fiber optic node, and any other location(s) within the Cable System necessary to maintain service to Subscribers who have power for not less than three hours in the event of an electrical outage affecting the Cable System.
 - (b) The Cable System shall function so that a signal received at the headend in color may be received by a Subscriber in color and a stereo signal in stereo, without substantial alteration or deterioration in those respects.
 - (c) Franchisee shall comply with all applicable laws and regulations concerning Cable System compatibility with Subscribers' television receivers and/or electronic recording devices.
 - (d) Franchisee shall comply with all FCC regulations regarding scrambling or other encryption of signals.
 - (e) The Cable System shall function so that there is no significant deterioration in the quality of PEG Access signals or leased Access signals, either upstream or downstream, as compared with any other channel on the Cable System.
 - (f) Franchisee shall ensure that means are available to enable Subscribers to block out audio and video on any undesired channels on the Cable System.

Council Bill 07-0825

- 1 (g) The Cable System shall function so that any Subscriber can limit access to pay-per-view
2 programming by ensuring that pay-per-view programming can only be activated by the positive
3 action of the Subscriber using, for example, a private identification number or other individual
4 selection procedure.
- 5 (h) All programming delivered to Franchisee with closed captions shall be retransmitted by the Cable
6 System with the closed-caption signal included.
- 7 (i) Franchisee shall work cooperatively with any services that allow hearing-impaired Subscribers to
8 contact Franchisee by telephone.
- 9 (j) Cable System capabilities: The Cable System shall utilize a copper (or better) fed DSL
10 distribution network (or better) or fiber distribution network.
- 11 (k) Franchisee shall maintain sufficient trucks, tools, testing equipment, monitoring devices and other
12 equipment and facilities and trained and skilled personnel required to enable Franchisee to
13 substantially comply with applicable law, including applicable customer service standards and
14 including requirement or responding to system outages.
- 15 (l) The Cable System shall be designed to be capable of interconnecting with other cable systems in
16 the Franchise Area.
- 17 (m) The Cable System shall, if technically capable, transmit in high definition any signal which is
18 received in high definition.
- 19 (n) The Franchisee shall install and maintain for use by the City an Emergency Alert System
20 (“EAS”) meeting all applicable requirements of federal law. In the event of an emergency
21 situation that requires notification to the City’s citizens, in addition to other methods of
22 notification, the City, in accordance with established Emergency Alert System (EAS) procedures,
23 will notify Franchisee of the emergency and present it with an emergency message. Franchisee
24 shall broadcast the emergency message on all analog and digital channels, or shall force tune
25 viewers to a designated EAS alert channel, except for those off-air channels with which
26 Franchisee has agreed not to override during an emergency message. The emergency message
27 will advise the citizens of the emergency and direct them to turn to the City’s emergency alert
28 channel for further information.

Council Bill 07-0825

1 **APPENDIX B PEG SIGNAL INPUT POINTS**

2 Permanent

- 3 1. 8 Market Place
- 4 2. 100 N. Holliday (City Hall)
- 5 3. 200 E. North Avenue (School Headquarters)
- 6 4. 620 Fallsway (Emergency Operations Center 1)
- 7 5. 1201 E. Coldsprings (Emergency Operations Center 2)

8 Remote

- 9 1. 2600 W. North Avenue (Coppin College)
- 10 2. 2600 E. Northern Parkway (School Technology Center)
- 11 3. Camden Yards/Ravens Stadium Complex (State Emergency Operations Center)
- 12 4. University of Maryland College Park
- 13 5. Johns Hopkins University
- 14 6. Morgan State University

Council Bill 07-0825

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**APPENDIX C
RATE CARD**

Council Bill 07-0825

APPENDIX D
FORM OF LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT NO. _____ AMOUNT: _____

EXPIRATION DATE: _____ DATE OF ISSUE: _____

[Name of Bank]

[Address]

TO: City of Baltimore
[insert address]
Attention: [insert title]

WE HEREBY AUTHORIZE YOU TO DRAW AT SIGHT on the _____
UP TO AN AGGREGATE AMOUNT OF
_____ United States Dollars (\$) _____) for account of
_____ (the "Customer").

Drafts under this Letter of Credit shall bear upon their face the words:

Drawn under _____
Credit No. _____ Dated: _____

and shall be in the form attached hereto as Exhibit A and shall be accompanied by one of the following
documents executed by the City [insert title], an individual designated as acting [insert title], or the
Assistant [insert title]:

- (a) A written statement on the form attached hereto as Exhibit B stating that, conditioned upon
proper notice to the City [insert title], Letter of Credit No. _____ will expire within _____
days or less and that the Customer has failed to deliver to the City [insert title] evidence of a
renewal of Letter of Credit No. _____; or
(b) A written statement on the form attached hereto as Exhibit C stating that Customer has failed to
perform its obligations under the Franchise Agreement dated _____ by and between the City
of Baltimore and [name of Cavalier entity] ("Agreement"), has failed to comply with all rules,
regulations, orders, permits and other directives of the City issued pursuant to the Agreement or
Applicable Law (as defined in the Agreement), and/or has materially breached the Agreement and
the Agreement is terminated for cause; or
(c) A written statement on the form attached hereto as Exhibit D stating that Customer has failed to
make any payment required to be made to City pursuant to the Agreement within the time fixed
in the Agreement, has failed to pay to the City any Liability payable to the City and relating to the
System that is due and unpaid, has failed to pay to the City any costs, losses, damages, claims or
expenditures which the City has been compelled to pay or incur by reason of any act or default of
the Franchisee, and/or has failed to comply with any provision of the Agreement which City
determines can be remedied by an expenditure of an amount in the Security Fund. All terms used
herein have the meaning set forth in the Agreement.

EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS LETTER OF CREDIT, THIS LETTER
OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY
CREDITS 1993 REVISION, INTERNATIONAL CHAMBER OF COMMERCE BROCHURE NO. 500"
(THE "UNIFORM RULES"). IN THE EVENT OF A CONFLICT BETWEEN THIS LETTER OF
CREDIT AND THE UNIFORM RULES, THIS LETTER OF CREDIT SHALL CONTROL.

Council Bill 07-0825

1 WE HEREBY AGREE with the drawers of drafts drawn under and in compliance with the terms of this
2 Letter of Credit, that:

- 3 1. Drafts drawn under and in compliance with this Letter of Credit shall be duly honored
4 immediately upon presentation to the drawees if presented on or before the above-stated
5 Expiration Date or presented at our office together with the original of this Letter of Credit on or
6 before that date.
- 7 2. The amount of any draft drawn under this Letter of Credit must be endorsed on the reverse hereof
8 by our bank.
- 9 3. If, within three days after any draft drawn under this Letter of Credit is presented to us in
10 conformance with the terms of this Letter of Credit, we fail to honor same, we agree to pay all
11 attorneys' fees, court costs and other expenses incurred by the City of Baltimore in enforcing the
12 terms hereof.
- 13 4. This Letter of Credit shall expire on _____, 20____, as stated hereinabove; provided,
14 however, that we shall notify the City *[insert title]* by certified mail, return receipt requested, at
15 least thirty-five (35) days and not more than ninety (90) days prior to said expiration date, that
16 this Letter of Credit is about to expire.
- 17 5. In no event shall this Letter of Credit or the obligations contained herein expire except upon the
18 prior written notice required herein, it being expressly agreed that the above expiration date shall
19 be extended as shall be required to comply with the prior written notice required herein.
- 20 6. No consent, acknowledgment, or approval of any kind from the Customer shall be necessary or
21 required prior to honoring any draft presented in conformance with the terms of this Letter of
22 Credit.
- 23 7. This Letter of Credit is irrevocable.

24 _____ [Signature of Bank Officer] _____ [Signature of Bank Officer]
25
26 _____ [Officer's Title] _____ [Officer's Title]
27

28 **EXHIBIT A TO FORM OF IRREVOCABLE LETTER OF CREDIT**
29 **FORM OF DRAFT**
30 [To Be Supplied By Issuing Bank]

31 **EXHIBIT B TO FORM OF IRREVOCABLE LETTER OF CREDIT**

32 To:
33 Attn:
34 Re: Letter of Credit No. _____

35 Ladies and Gentlemen:

36 This is to advise you that Letter of Credit No. _____ dated _____ in the amount of
37 \$_____ will expire within __ days or less and that _____ has failed to deliver to the
38 City *[insert title]* evidence of a renewal of Letter of Credit No. _____.

Council Bill 07-0825

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Very truly yours,
City *[insert title]*

Council Bill 07-0825

EXHIBIT C TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:
Attn:
Re: Letter of Credit No. _____

Ladies and Gentlemen:

This is to advise you that Customer has failed to perform its obligations under the Franchise Agreement dated _____ by and between the City of Baltimore and _____ (“Agreement”), has failed to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to the Agreement or Applicable Law (as defined in the Agreement), or has materially breached the Agreement and the Agreement is terminated for cause.

Very truly yours,
City *[insert title]*

EXHIBIT D TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:
Attn:
Re: Letter of Credit No. _____

Ladies and Gentlemen:

This is to advise you that Customer has failed to make any payment required to be made to City pursuant to the Franchise Agreement dated _____ by and between the City of Baltimore and _____ (“Agreement”) within the time fixed in the Agreement, has failed to pay to the City any Liability payable to the City and relating to the System that is due and unpaid, has failed to pay to the City any costs, losses, damages, claims or expenditures which the City has been compelled to pay or incur by reason of any act or default of the Franchisee, and/or has failed to comply with any provision of the Agreement which City determines can be remedied by an expenditure of an amount in the Security Fund. All terms used herein have the meaning set forth in the Agreement.

Very truly yours,
City *[insert title]*

Council Bill 07-0825

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**APPENDIX E
OWNERSHIP INTERESTS**