



Legislation Text

File #: 16-0724, **Version:** 0

Introduced by: The Council President

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

A Bill Entitled

An Ordinance concerning

Franchise - Comcast of Baltimore City, LLC

For the purpose of granting a franchise to Comcast of Baltimore City, LLC, to construct, operate, and maintain a cable communications system in and across certain streets and public ways, subject to certain terms, conditions, and reservations; and providing for a special effective date.

By authority of

Article VIII - Franchises
Baltimore City Charter
(1996 Edition)

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That a franchise or right, set to expire December 31, 2016, is renewed and granted to Comcast of Baltimore City, LLC, (the "Grantee") to construct, operate, and maintain a cable communications system, subject to the terms and conditions of this Ordinance and the Franchise Agreement between the Mayor and City Council of Baltimore and the Grantee, in substantially the form attached to this Ordinance, as approved by the Board of Estimates, with modifications adopted (the "Franchise Agreement").

Section 2. And be it further ordained, That Grantee shall continue to provide a modern and uniform cable communications system to the residents and institutions within the service area delineated in the Franchise Agreement (the "Service Area") and, to that end, may construct, operate, and maintain this cable communications system, as specified in the Franchise Agreement, in and across the streets and public ways in the Service Area.

Section 3. And be it further ordained, That for the franchise or right granted by this Ordinance (the "Franchise") to become effective, the Grantee must notify the Board of Estimates, within 30 days of the effective date of this Ordinance, that the Grantee accepts the renewal of the Franchise. The Grantee's failure to so notify the Board of Estimates constitutes a refusal to accept the renewal of the Franchise, and, in that event, this Ordinance and the Franchise granted by it will be abrogated and of no further effect.

Section 4. And be it further ordained, That the term of the Franchise renewal is 10 years, commencing on the effective date of this Ordinance, subject to renewal terms and to earlier termination as provided in the Franchise Agreement.

Section 5. And be it further ordained, That the Mayor and City Council of Baltimore expressly reserves the right at all times to exercise, in the interest of the public, full municipal superintendence, regulation, and control over and in respect to all matters connected with the Franchise and not inconsistent with the terms of this Ordinance.

Section 6. And be it further ordained, That this Ordinance takes effect when it is enacted.

**Baltimore City Cable Television
Franchise Agreement**

This Franchise Agreement is made and entered into this day of , 2016 by and between the Mayor and City Council of Baltimore, a municipal corporation of the State of Maryland (“City”), and Comcast of Baltimore City, LLC, a Colorado limited liability company (“Grantee”):

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

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

Whereas, pursuant to Ordinance No. 041553, duly adopted by the City on December 6, 2004, the City granted Grantee (as defined in Section 1 hereof), a franchise for the provision of cable television services (the “Prior Franchise”), the terms of which are set forth in a Franchise Agreement between the City and Comcast of Baltimore City, LLC; and

WHEREAS, Grantee has requested that the City renew the non-exclusive Prior Franchise on terms to be agreed by the City and the Grantee; and

WHEREAS, in response to the renewal request submitted by the Grantee, the City, pursuant to the terms of the Cable Act, reviewed the performance of the Grantee under the Prior Franchise, performed a technical review of the system, identified the future cable-related community needs and interests, and issued a request for renewal proposal for the cable television franchise, to which the Grantee responded; and

WHEREAS, the Grantee offered to provide certain facilities and equipment as well as various services (as defined in Section 1) and to perform certain additional undertakings and the Grantee and the City subsequently engaged in arm’s-length negotiations regarding the terms and conditions of a proposed franchise; and

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

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

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

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

WHEREAS, the City has relied on the Grantee's representations and has considered the information that the Grantee has presented to it; and

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

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

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

WHEREAS, the parties intend that this Agreement shall be effective as of January 1, 2017, and agree to abide by the Prior Franchise through December 31, 2016; and

WHEREAS, the City intends to exercise the full scope of its powers, including its police power and contracting authority, to: promote the public interest; protect the public health, safety and welfare of its residents; assure the widespread availability of cable television services; maximize the diversity of programming over the System (as defined in Section 1) and access to the System by Persons other than the Grantee; promote access to advanced services and technologies for City residents and institutions; develop programming and services by the City and its institutions for delivery to the public over the System; experiment with and implement uses for Cable Systems (as defined in Section 1) in connection with the City's operations; and further develop the Institutional Network (as defined in Section 1) as a means of providing a wide range of Cable Services and Non-Cable Services for public, educational, and governmental use; and

WHEREAS, the City and Grantee have reached agreement on the terms and conditions set

forth in this Agreement through arm's-length negotiations, and voluntarily agree to be bound by those terms and conditions;

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

Section 1 Defined Terms

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

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

"Affiliated Person" or "Affiliate" means any Person who directly or indirectly owns or controls, is owned or controlled, or is under common ownership with the Grantee, excluding entities related to the operations of the NBC Universal division of Grantee's parent company.

"Agreement" or "Franchise Agreement" means this Agreement, together with the Appendices attached to this Agreement, and any amendments or modifications.

"Board" means the Board of Estimates of Baltimore City, its designee, or any successor to its powers and responsibilities.

"Boring" means a steerable trenchless method of installing underground, conduits and cables in a shallow arc along a prescribed bore path by using a surface-launched drilling rig, with minimal impact on the surrounding area.

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

as otherwise set forth in 47 U.S.C. § 153, as amended.

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

- (i) a facility that serves only to retransmit the television Signals of one or more television broadcast stations;
- (ii) a facility that serves Subscribers without using any Public Ways;
- (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, approved June 19, 1934 (48 Stat. 1070; 47 U.S.C. § 201 *et seq.*), as amended, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) of the Cable Act (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (iv) an Open Video System that complies with Section 653 of the Cable Act (47 U.S.C. § 573) (or any successor thereto) and the rules promulgated pursuant to that section; or
- (v) any facilities of any electric utility used solely for operating its electric utility systems;
- (vi) or as otherwise set forth in 47 U.S.C. § 153, as amended.

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

“Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

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

“City Charter” means the Baltimore City Charter, 2014 edition.

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

“Control” of or “Controlling Interest” in a Person or in the Cable System or the Franchise, means the ability to exercise de facto or de jure control over day-to-day policies and operations or the management of Grantee’s business operations.

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

“Criminal Act” means the violation of a state or federal criminal code, and shall include, but not be limited to any material misrepresentation, either oral or written, intentionally or grossly negligently made by, or on behalf of, the Grantee in connection with any representation or warranty contained in this Agreement, or the negotiation or renegotiation of this Agreement, or any amendment or other modification to this Agreement that is in violation of any criminal law, provided that either the Grantee has admitted to such conduct or a court of competent jurisdiction has determined that the Grantee engaged in such conduct.

“Current Technology,” as applicable, means that level of technical or service performance in terms of quality, reliability, capacity, and capability (including, but not limited to, plant or other equipment; public, educational, or governmental access and other production equipment or facilities; construction techniques; customer service; facilities, equipment, systems, and operations; and performance standards) which has been developed and demonstrated in the cable industry or any other comparable industry that provides services to the public under similar conditions to be workable and Economically and Technically Feasible and Viable, as such level may develop from time to time throughout the Term of the Franchise.

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

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

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

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

“Economically and Technically Feasible and Viable” means capable of being provided through technology that has been demonstrated to be feasible for its intended purpose, in an operationally workable manner, on a sufficiently broad geographic basis, and in a manner whereby the Cable System has a reasonable likelihood of being operated on reasonably profitable terms consistent with margins and rates of return for the industry and similar systems operated by the Grantee and its Affiliates.

“Effective Date” means the later of (1) the date on which the Grantee fulfills all conditions precedent as set forth in Section 2.2C of this Agreement and this Agreement shall take effect; or (2) January 1, 2017.

“Executive Director” or “Director” mean the Executive Director of the Mayor’s Office of Cable and Communications of the City or any such successor office.

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

“Franchise” means the non-exclusive right granted, by ordinance and subject to this Agreement, to Grantee to construct, operate, repair, maintain, and reconstruct the Cable System on, over, under, upon, across, and along the Public Ways and easements dedicated to compatible uses.

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

“Grantee” means Comcast of Baltimore City, LLC.

“Gross Revenue” means all revenue, as determined in accordance with generally accepted accounting principles (GAAP), that is derived by the Grantee and by each Affiliated Person from the operation of the Cable System to provide Cable Services within the Franchise Area.

- A. Gross Revenue shall include, to the extent it is received by the Grantee, revenue from any other Person, including, without limitation, Leased or PEG Channel programmers, that is derived from the operation of the Cable System to provide Cable Services.
- B. Gross Revenue shall also include by way of example and without limitation:
 - 1. the fair market value of any non-monetary (i.e., barter) transactions between the Grantee and any Person involving the Cable System, which fair market value shall not be less than the customary prices paid in connection with equivalent transactions

conducted with Persons;

- 2. revenue received by the Grantee which represents or can be attributed to a Subscriber fee, which shall include any and all payments made by Subscribers in exchange for the receipt of Cable Services;*
 - 3. a payment for the use of the Cable System for the sale of merchandise through any Cable Service distributed over the Cable System;*
 - 4. franchise fees received from Subscribers;*
 - 5. fees received from Subscribers to support PEG Channels;*
 - 6. fees received to offset cable regulatory costs (i.e. FCC Fee);*
 - 7. any revenue generated by the Grantee or by any Affiliated Person for the provision of Cable Service over the Cable System through any means which has the effect of avoiding the payment of compensation that would otherwise be paid to the City for the Franchise granted in this Agreement;*
 - 8. any revenue from Subscriber equipment sold or leased by the Grantee or an Affiliated Person;*
 - 9. late fees and administrative fees;*
 - 10. revenue derived from program guides;*
 - 11. revenue derived from forfeited deposits;*
 - 12. revenue derived from installation, disconnection, or service call fees;*
 - 13. studio rental, production equipment, and personnel fees;*
 - 14. revenue derived from advertising commissions;*
 - 15. any actual bad debt that is written off but subsequently collected (such bad debt shall be included as Gross Revenue for the period in which it is collected).*
- C. Gross Revenue shall also include all advertising revenue which is derived, directly or indirectly, from or in connection with the sale of advertising on the Cable System, whether by the Grantee, or whether collected by an Affiliated Person or any other Person for Grantee.*

D. Gross Revenue shall not include:

1. any compensation awarded to the Grantee based on the City's condemnation of property of the Grantee;
2. the revenue of any Person, including, without limitation, a supplier of programming to the Grantee, to the extent that such revenue is also included in Gross Revenue of the Grantee;
3. the revenue of the Grantee or any other Person which is generated directly from the sale of any merchandise through any Service distributed over the Cable System, other than that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise – for example, the portion of such payment attributable to a commission for the Grantee or an Affiliated Person—which portion shall be included in Gross Revenue;
4. taxes imposed by law on Subscribers which the Grantee is obligated to collect, it being acknowledged that Franchise Fees under this Agreement are not considered taxes;
5. amounts collected by the Grantee from Subscribers on behalf of Leased or PEG Channel programmers, other than Affiliated Persons;
6. the revenue of any Affiliated Person which represents standard and reasonable amounts paid by the Grantee to the Affiliated Person for ordinary and necessary business expenses of the Grantee, including, without limitation, professional service fees and insurance or bond premiums;
7. advertising commissions deducted by advertising agencies, other than an agency which is an Affiliated Person, before advertising revenues are paid over to the Grantee;
8. to the extent consistent with generally accepted accounting principles, consistently applied, actual bad debt write-offs taken in the ordinary course of business;
9. amounts recovered by Grantee for theft or loss of portions of the Cable System, such as pedestal boxes, that were previously written off;
10. investment income; and
11. payments received by the Grantee or an Affiliated Person that represent a

reimbursement for work performed by the Grantee or its agents on behalf of a contractor or third party, where payment for such work would not normally be considered Gross Revenue based on the nature of the work performed.

“Institutional Network” or “I-Net” means the dedicated, high-speed data, video, television, audio communications and telephony facilities and one-way and two-way network, designed and constructed to connect government locations and institutions and for use in connection with the ongoing operations of such locations and institutions.

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

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

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

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

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

“Normal Operating Conditions” means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

“PEG Channels” means public Channels, educational Channels, and government Channels provided by Grantee under Section 6.

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

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

“Public Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way utilized for compatible uses. It also includes any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Franchise Area, which, consistent with the purpose for which it was dedicated, may be utilized for the purpose of installing, operating, repairing, and maintaining the Cable System after negotiation of terms and conditions mutually satisfactory to the City, the Grantee, and the appropriate public utility. Public Way also means any easement now or hereafter held by the City within the Franchise Area for the purpose of public travel, or for utility or public service use utilized for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use for the purposes of installing, operating, and maintaining the Grantee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System. Public Way shall not include any City buildings, structures, or other improvements, regardless of whether they are situated in a public right-of-way.

“Region” means Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Harford County, and Howard County.

“Resident” means (i) any occupant who resides in a dwelling in the City, including, without limitation, occupants of hotels, apartment houses, one- and two-family dwellings, apartment hotels, motels, lodging or rooming houses, rectories, convents, monasteries, school dormitories, hospitals, prisons, reformatories, nursing homes, mental institutions, clinics, orphanages, day nurseries, homes for the aged and sanitariums; or (ii) as otherwise defined by applicable law. However, with respect to prisons, reformatories, and mental institutions, the Grantee’s obligation shall be only to provide Services to common areas

in such facilities, to the extent that the Grantee can obtain the consent of such prison, reformatory, or mental institution for the provision of such Services. In the case of any other commercial or institutional facility (such as a hotel, a dormitory, a hospital, a nursing home, etc.), the Grantee shall negotiate the terms of providing Services to Residents in such institutional facility.

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

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

“Signal” means any transmission of electromagnetic or optical energy from one location to another.

“Significant Construction” means any major alteration, construction, reconstruction, upgrade, rebuild or enhancement of the System in the Franchise Area, during the Term of this Agreement or for such longer time as the Grantee operates the System, the costs of which are estimated to be more than Five Million Dollars (\$5,000,000) over a twenty-four month period; but excluding any item not located or occurring within, abutting, or affecting any City property or Public Way.

“Significant Outage” means any Service interruption lasting at least four (4) hours and affecting at least ten percent (10%) of Subscribers in the Franchise Area.

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

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

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

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

Section 2

Grant of Authority; Term

2.1 Grant of Franchise

- A. General. City hereby grants to Grantee, subject to the terms and conditions of this Agreement and the Franchise grant ordinance, a non-exclusive Franchise with the right, privilege and authority to construct, operate, repair, maintain, and reconstruct a Cable System on, over, under, upon, across, and along the Public Ways within the Franchise Area in accordance with this Agreement and applicable law. This Agreement grants no authority to Grantee to use the Public Ways for any purpose other than the provision of Cable Service unless expressly provided herein, however Grantee is not prohibited from providing other services in compliance with applicable law. The grant of this non-exclusive Franchise is expressly conditioned upon the construction, operation, maintenance, repair, and reconstruction of the Cable System in accordance with the terms of this Franchise. The rights granted hereunder, including, without limitation, rights to utilize the Public Ways, shall not be sold, transferred or assigned without the approval of the City as set forth in Section 11.
- B. Compliance with Law. The Franchise granted under the terms and conditions of this Agreement shall be consistent with the Baltimore City Charter, the generally applicable laws, regulations and rules of the City, and other applicable statutory requirements. In the event of conflict between this Agreement and the Charter, the generally applicable laws, regulations and rules of the City, any such generally applicable statutory requirements shall control; provided, however, that the terms and conditions of this Agreement may not be modified by any law, regulation, or rule adopted after the Effective Date of this Agreement unless: (1) the content of the law, regulation, or rule was not permitted to be enacted as of the Effective Date, and (2) the law, regulation, or rule is of general applicability.
- C. No Waiver of Other Permits and Authorizations. Nothing in this Agreement shall be construed as a waiver of any laws, regulations or rules of the City or of the City's right to require the Grantee or any Person using the Cable System to secure the appropriate permits or authorizations for such use, provided that the fees and charges imposed upon the Grantee for any such permit or authorization shall be the standard fees or charges generally applicable to all Persons for such permits or authorizations, and any such standard fee or charge: (i) shall not be considered a "franchise fee" under 47 U.S.C. § 542(g)(1); (ii) shall fall within the exception to such term pursuant to 47 U.S.C. § 542(g)(2)(A); and (iii) shall not be an offset against the compensation or other payment the Grantee, an Affiliated Person or other Person is required to pay the City or any other entity pursuant to Sections 6 and 10 of this Agreement. Notwithstanding the foregoing, Grantee shall not be required to obtain a permit for individual drop connections to Subscribers, for servicing or installing pedestals or similar facilities, or other instances of routine maintenance or repair to the Cable System not involving street or sidewalk openings or impacting vehicular traffic.
- D. Acquired Facilities. All facilities within the Franchise Area acquired by Grantee that are made part of Grantee's Cable System, shall be subject to this Agreement, including, in particular, Grantee's obligation to provide location

information as set forth in Section 3.5. Grantee shall provide the City written notice of any substantial acquisition of such facilities.

- E. Non-Cable Services. Except as otherwise provided in this Agreement, the Franchise neither authorizes the Grantee to provide, nor prohibits the Grantee from providing, any Non-Cable Services, provided that this limitation shall not limit the use of the Institutional Network or the PEG Channels by the City or PEG Users. The use of the Cable System for Non-Cable Services may be subject to separate additional approval and conditions by City if permitted by applicable law.
- F. Closing of Public Ways. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Public Ways. In the event that all or part of the Public Ways within the Franchise Area are (1) closed to pedestrian and/or vehicular traffic and/or utilities and services such as Cable Services; or (2) vacated or if ownership of the land under the affected Public Ways is otherwise transferred to another Person, all rights and privileges granted pursuant to this Agreement with respect to such Public Ways, or any part of such Public Ways so closed, vacated, or transferred, shall cease upon the effective date of such closing, vacation, or transfer, and Grantee shall remove its Cable System from such Public Ways. If such closing, vacation, or transfer of any Public Way is undertaken for the benefit of any private Person, the City shall condition its consent to such closing, vacation, or transfer of such Public Way on the agreement of such private Person to: (i) grant the Grantee the right to continue to occupy and use such Public Way; or (ii) reimburse the Grantee for its reasonable costs to relocate the affected part of the Cable System. The City shall provide reasonable prior notice to Grantee of any such closing, vacation, or transfer to allow Grantee to remove its Cable System where the right to continue to occupy and use such Public Way is not reserved for Grantee. Grantee shall be entitled to compensation for expenses incurred for relocation or removal of its Cable System related to any closing, vacation, or transfer of the Public Way to the extent other wired users of the Public Way are so compensated.

2.2 Term of Franchise

- A. Established. The Franchise granted shall be for a term commencing upon the Effective Date of the Agreement and terminating on December 31, 2026, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Agreement and applicable law.
- B. Effect on Prior Franchise. *Upon the Effective Date, this Agreement shall supersede and replace the prior Franchise.*
- C. Conditions Precedent. The Franchise shall commence upon the Effective Date, provided that the Grantee shall have met each of the conditions precedent set forth below and otherwise in this Agreement (unless the City agrees to waive any of the conditions precedent), at which time it shall become effective:
1. Board and Council Action. All necessary approvals of this Agreement by the City shall have been obtained.
 2. Performance Bond. *The Grantee shall furnish to the City any performance bond required pursuant to Section 13.2 of this Agreement or, in the event that the issuer will not issue the bond until this Agreement is in effect, the Grantee shall furnish to the City the form of the performance bond as set forth in Section 13.2 accompanied by a letter from the issuer stating that it will issue a bond in that form no later than thirty (30) Days after the Effective Date, which bond shall be retroactive to the Effective Date.*
 3. Location of Administrative Office. The Grantee shall have notified MOCC of the location of its administrative office for the City.

4. Insurance. The Grantee shall have secured its insurance policies as set forth in Section 12.3 of this Agreement and delivered the certificate of insurance to MOCC and the City Solicitor, together with evidence that the premium for each of such policies have been paid, that the policies will be in effect on or before the Effective Date, and that the policies are in accordance with this Agreement.
5. List of Government Installations. The Grantee shall have delivered to MOCC a list of all government facilities at which the Grantee has installed a courtesy service outlet or drop.
6. Clean Hands Certification. The Grantee shall have paid all amounts due and owing to the City, including, but not limited to, taxes, fees, fines, penalties and interest, based upon facts which are known or which should have been known to the City at the time.

2.3 Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of applicable law.

2.4 Reservation of Authority. Nothing in this Agreement shall abrogate the right of the City to perform any public works or public improvements of any description or be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or be construed as a waiver or release of the rights of the City in and to the Public Ways. In the event that the Cable System interferes with the construction, operation, maintenance or repair of such public works or public improvements, the Grantee shall, at its own cost and expense, protect or promptly alter or relocate the Cable System as directed by the City. In the event that Grantee refuses or neglects to so protect, alter or relocate all or part of the Cable System, or in the event of fire, disaster or other emergency, the City shall have the right to break through, remove, alter or relocate, without notice to Grantee, all or part of the Cable System and the Grantee shall pay to City the costs incurred in connection with such breaking through, removal, alteration or relocation. The City shall use reasonable efforts to minimize the impact on Grantee's facilities related to any removal. In the event that the City or any public or quasi-public entity reimburses costs for other occupants of the Public Ways which this Section 2.4 imposes on the Grantee, Grantee shall be entitled to reimbursement to the extent other occupants of the Public Way are reimbursed. It will not be a breach of this Agreement for the Grantee to request that the City or such public or quasi-public entity, as the case may be, bear some or all of the Grantee's costs.

2.5 Competitive Equity.

The City reserves the right to grant additional franchises or similar authorizations to provide Cable Service or similar video services via Cable Systems or other wireline facilities located in

the public rights of way. If the City grants such an additional franchise or authorization to use the public rights of way to provide such services and Grantee reasonably believes the City has done so on terms substantially more favorable than the obligations applicable to Grantee under this Franchise Agreement, then the provisions of this Section will apply.

Grantee and the City have agreed upon the following material terms in connection with the grant of Cable System franchise to Grantee, which terms may place the Grantee at a significant competitive disadvantage if not required of a competitor: a 5% franchise fee, the definition of "Gross Revenue," PEG funding, PEG channels, customer service obligations, liquidated damages, and complimentary services as described in Section 6.10A of this Agreement (hereinafter "Material Obligations").

Within one year of the adoption of the Cable Service competitor's franchise or similar authorization, Grantee must notify the City in writing of the Material Obligations in Grantee's franchise that substantially exceed the Material Obligations of the competitor's franchise. The City shall then have one hundred twenty (120) days to agree to allow Grantee to adopt the same Material Obligations provided to the competitor, or assert in writing that the Material Obligations are not substantially different. Grantee may bring an action in federal court or Circuit Court for Baltimore City for a determination as to whether the Material Obligations are substantially more favorable to the competitor.

The parties agree that this provision shall not require a word for word identical franchise for a competitive entity so long as the overall regulatory and financial burdens imposed by the Material Obligations on each entity are materially equivalent such that neither is afforded a material competitive advantage over the other. Nothing in this section is intended to alter the rights or obligations of either party under state law, and it shall only apply to the extent permitted under applicable FCC orders. It does not apply if the City cannot comply without violating applicable laws or regulations, or is required by specific court order or state or federal agency to issue a franchise on different terms and conditions. In no event will the City be required to refund or to offset against future amounts due the value of benefits already received. Without waiving any rights or arguments under applicable law, Grantee agrees that a "similar video service" for purposes of this section shall not include a service comparable to a Grantee service that is not itself subject to the franchise fee and other provisions of this Agreement, and that this section shall not be used in a discriminatory manner to disadvantage competitors with substantially similar services subject to City regulation.

The terms of this Section apply only if the competitor actually commences provision of a qualifying service in the Franchise area to its first customer. If the competitor does not

continuously provide service for a period of six (6) months, the City may implement this Franchise with its original terms upon sixty (60) days' notice to Grantee provided, that under such circumstances, all terms of the unmodified franchise shall apply throughout such six (6) month period and such sixty (60) day notice period.

This Section does not apply to common carrier systems exempted from franchise requirements pursuant to 47 U.S.C. §571; or to systems that pass less than fifteen percent (15%) of the households in the total geographic area of the City; or to systems that only provide video services via the public Internet (i.e. Netflix).

Section 3 Construction Standards

3.1 General Requirement. Throughout the Term, the Grantee shall comply with the terms, conditions, and provisions set forth in this Section, and all other requirements or procedures pertaining to construction and technical requirements that are specified by applicable law.

3.2 Standards and Specifications.

- A. Compliance with Standards and Specifications. The Grantee shall meet or exceed all construction and service requirements required by this Agreement and applicable law. All work involved in the construction, operation, repair, maintenance, Upgrade, Significant Construction, rebuild, enhancement, and removal of the System shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. The Grantee shall comply with generally applicable codes and industry standards, including the specifications set forth in the most recently published edition of the "City of Baltimore Department of Public Works Bureau of Highways Manual of Design Procedure and Criteria (1972)," as amended from time to time; the "City of Baltimore Department of Public Works Specifications for Material, Highways, Bridges, Utilities, and Incidental Structures (2006)," as amended from time to time ("Green Book"), as applicable to the Cable System; the "Department of Transportation Book of Standards,"; administrative orders of the City Department of Transportation, as amended from time to time; the National Electrical Code, as adopted by the City from time to time; the National Electrical Safety Code, as adopted by the City from time to time; and all applicable rules, standards, practices, and procedures of the FCC, as amended from time to time.
- B. Antennas and Towers. Antenna supporting structures and towers shall be designed, painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the Federal Communications Commission, and all other applicable codes and regulations.
- C. Plant and Equipment. The Grantee's plant and equipment, including, without limitation, the antenna and satellite earth station sites, headend and distribution system, towers, house connections, structures, foundations, poles, conduits, wire, cable, coaxial cable, fiber optic cable, fixtures, and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel, so as not to endanger or interfere with improvements made by the City, interfere in any manner with the rights of any property owner, or unnecessarily hinder or obstruct pedestrian or vehicular traffic on

any Public Way.

- D. Correction of Harmful or Unsafe Conditions. If, at any time, the City or any other agency or authority of competent jurisdiction determines that, consistent with applicable law, any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any Person, the City shall notify the Grantee of the circumstances and the Grantee shall then, at its sole cost and expense, within a reasonable time period specified by the City or such agency or authority, correct all such conditions. The Grantee shall promptly notify MOCC and the City Solicitor of any determination or finding by an agency or authority of competent jurisdiction that any part of the System is harmful to the health or safety of any Person, and in no event later than forty eight (48) hours after receiving notice of such a determination or finding. Grantee reserves its right, in accordance with applicable law, to appeal any determination under this section.
- E. Standards for Drawings and As-Builts. Whenever a drawing, illustration, or other depiction is required by this Agreement, the Grantee shall ensure that such drawing, illustration, or depiction is drawn to scale, shows all applicable utilities, and complies with Green Book section 01 33 21B (or substantial equivalent) when applicable to a Cable System, so long as such requirements are applicable to other occupants of the Public Right of Way. Any such drawings, illustrations, or other depictions required by this Agreement may be submitted in PDF, or suitable electronic, GIS-compatible format, at the discretion of the City.
- F. No Obstruction. The Grantee shall not obstruct the Public Ways, subways, railways, passenger travel, river navigation, or other traffic to, from, or within the Franchise Area without the required permits and any other required consent from public or private authorities.

3.3 Licenses and Permits. The Grantee shall be solely responsible for obtaining, at its sole cost and expense, all permits, licenses, and other forms of approval or authorization necessary to construct, operate, maintain, repair, Upgrade, perform Significant Construction to rebuild, enhance, or remove the System, or any part of the System, prior to the commencement of any such activity. In the event of an emergency which poses a serious risk to life or public safety, the Grantee may carry out any work necessary to eliminate the emergency to the extent consistent with applicable law. Any blanket permit issued by the City to the Grantee shall only authorize the Grantee to perform emergency repair.

3.4 Right of Inspection. The City shall have the right to inspect all construction and installation work performed subject to the provisions of this Agreement; provided, however, that such inspection shall not interfere with the provision of Services, or involve any physical inspection or opening of any components of the Cable System. Any delays in construction due to such inspections shall not be reason for default.

3.5 Location of Cable System. Upon the written request of City, Grantee shall provide an up-to-date and comprehensive as-built network location report, setting forth the specific location

of all conduits, fiber optic and coaxial cable used to distribute and provide Cable Services in the Public Ways. The network location report may be provided in electronic format, and shall be considered confidential, proprietary information of Grantee. Such report shall be delivered within thirty (30) days of City's request.

3.6 New Grades or Lines. If the grades or lines of any Public Way are changed at any time during the Term of this Agreement, then the Grantee shall, at its sole cost and expense and within twenty (20) Business Days after actual written notice from the City, or within such longer time period as may be reasonably requested by the Grantee, protect, alter, or relocate the System, or any part of the System, so as to conform with the new grades or lines. In the event that the Grantee refuses or neglects to so protect, alter, or relocate all or part of the System within the time period specified by this Section 3.6, the City shall have the right to break through, remove, alter, or relocate all or any part of the System without any Liability of the City to the Grantee, and the Grantee shall pay to the City the costs incurred in connection with such breaking through, removal, alteration, or relocation. The City shall exercise due care to minimize the impact on Grantee's facilities related to any removal, alteration, or relocation of any part of the System. Grantee shall be entitled to compensation for expenses incurred for protecting, altering or relocating the System, or any part of the System, to the extent that other wired users of the Public Ways are so compensated to conform with the same new grades or lines.

3.7 Movement of Cables, Wires, and Other Equipment. The Grantee shall, upon written notice delivered not less than twenty (20) Business Days in advance by the City, or by any Person holding a permit that authorizes an activity (including, but not limited to, movement of a structure) that requires movement of cables, wires, or other equipment, move its cables, wires, and other equipment as directed in a timely manner. Nothing in this Agreement shall affect Grantee's ability to charge a Person holding a permit, for which such movement of Grantee equipment is required under this Section.

3.8 Emergency Removal. If, at any time, in case of fire or other disaster, the Mayor or the Mayor's designee determines that it is necessary to cut or remove any part of the Cable System, the City may cause such cutting or removal. The City shall use reasonable efforts to minimize the impact on Grantee's facilities related to any emergency removal. The Grantee shall not charge the City for any restoration or repair resulting from such cutting or removal. Grantee shall be entitled to compensation for expenses incurred for replacement or repair related to any emergency removal by the City to the extent that other wireline users of the Public Ways affected by the same emergency are so compensated.

3.9 Notices of Construction.

- A. To City. The Grantee shall give the Director of Transportation written notice of any emergency work performed within the Public Way without a permit or under a blanket permit within eighteen (18) hours after the commencement of the emergency work or contemporaneously with the work, or, if the City is closed, on the next business day.
- B. To Property Owners. The Grantee shall provide advance notice of construction that involves entry into or the crossing of any private property, work in streets abutting private property, or Public Ways. The Grantee shall provide at least thirty-six (36) hours advance notice to all affected property owners by telephone, in person, by mail, by distribution of flyers to buildings, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice, unless exigent circumstances prevent thirty-six (36) hours advance notice, in which event the Grantee shall provide such notice as is practicable under the circumstances. In addition, before entering onto any Person's property, the Grantee shall provide prior notification and obtain the property owner's or, in the case of residential property, the resident's permission, where possible. The Grantee shall comply with all applicable parking restrictions.

3.10 Protection of Public Property and Landmarks.

- A. The Grantee shall, at its sole cost and expense, protect any and all existing structures belonging to the City, the federal government, and any other public or quasi-public entity; all federally and locally designated landmarks and districts, all other structures within any designated landmark district; and conduit, cables, wires, and equipment of the City.
- B. The Grantee shall not alter, interfere with, or damage any public structure in the Public Ways or any conduit, cable, wire, or equipment of the City in the Public Ways without prior approval of the City. Any such alteration shall be made by the Grantee, at no cost or expense to the City, and in a manner reasonably prescribed by the City. For other replacements, repairs, and restorations, the Grantee agrees that it shall be liable, at no cost or expense to the City, to replace or repair and restore, in a manner and within a reasonable time period as specified by the City, any Public Ways, public structure, or conduit, cable, wire, or equipment of the City involved in the construction, operation, maintenance, repair, Upgrade, Significant Construction, enhancement, rebuild, or removal of the System that is disturbed or damaged as a result of any work by or on behalf of the Grantee pursuant to this Agreement.
- C. *In the event the City does not specify the manner of replacement, repair, or restoration, the Grantee shall replace, repair, or restore the Public Ways, public structure, or any conduit, cable, wire, or equipment of the City within thirty (30) days, to good condition consistent with industry standards and the requirements of the standards and specifications of Section 3.2A.*
- D. Where any such alteration, interference, or damage is not immediately discovered, or where any such repair, replacement, or restoration effort fails or is otherwise inadequate or insufficient, the Grantee shall have a continuing obligation to perform all necessary restoration work, despite the prior termination or expiration of this Agreement.
- E. If Grantee fails to make such repairs within the time specified by City, the City, upon notice to the Grantee, shall have the right to make the repairs or cause the repairs to be made. The Grantee shall reimburse the City for the costs incurred for such repairs and the City shall have the right to pursue any other remedies provided by this Agreement and applicable law.
- F. *In the event the Grantee refuses or neglects to replace, repair, or restore any Public Way, public structure, or conduit, cable, wire, or equipment of the City, the City shall have the right to replace, repair, or restore such Public Way, structure, or conduit, cable,*

wire, or equipment of the City. The Grantee shall reimburse the City for the costs incurred in connection with such replacement, repair, or restoration, including, without limitation, any costs incurred for the inspection of the altered or damaged property.

- G. The Grantee shall guarantee and maintain all repairs, replacement, and restoration for at least one (1) year after completion against defective materials and workmanship.

3.11 Construction Coordination. The Grantee shall meet with the Director of the DOT at least twice per year to coordinate its construction program and all other work in the Public Ways with the City's program for water main, storm and sanitary sewer, sidewalk and street construction, rebuilding, and resurfacing (collectively, "Street Construction").

3.12 Safety Precautions.

- A. Standard of Care. The Grantee shall employ ordinary care at all times and employ commonly accepted methods and devices for the prevention of failures and accidents that are likely to cause damage, injury, or nuisance to the public. In addition, the Grantee shall undertake all reasonable efforts to prevent accidents at its work sites. The Grantee shall comply with the Occupational Safety and Health Act of 1970, (29 U.S.C. §§ 651- 78), as amended, and all other applicable law.
- B. Protection of Construction Areas. The Grantee shall comply with the safety requirements of all permits, licenses, and other forms of approval or authorization. In addition, Grantee shall maintain reasonable barriers, lights, signs, cones, and other similar warnings and protective devices required for the safety of the public in compliance with this Agreement and applicable law. If the Grantee places any such device in any Public Way, the device shall be placed and maintained in a way that does not unreasonably interfere with the usual travel or other existing and anticipated uses of the Public Way.
- C. Emergency Notification. The Grantee shall provide the City with a twenty-four (24) hour emergency telephone number at which a representative of the Grantee, not voice mail or a recording, can be contacted in the event of an emergency.
- D. Identification. The Grantee shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. The identification document shall include a name and photograph of the employee. In addition, the Grantee shall clearly identify all personnel, vehicles, and other major equipment operating under its authority.

3.13 No Interference with Facilities or Equipment.

- A. The Grantee shall not alter, interfere with, or damage the existing conduit system, cables, wires, or equipment of any Person other than the Grantee, including but not limited to utilities, other Cable Communications Systems, Open Video Systems, master antenna systems, satellite master antenna systems, and similar systems.
- B. If a final court decision, not subject to further appeal, concludes that the Grantee altered, interfered with, or damaged the existing conduit system, cables, wires, or equipment of the City or any Person, other than the Grantee, and if that decision finds that (i) the Grantee willfully interfered in a grossly material fashion with the operations of another Cable Service provider; or (ii) the court decision, considered with other interference by the Grantee, establishes a pattern of interference by the Grantee, then the City may consider whether the court decision constitutes a breach of this Agreement under Section 13.

- C. This Section 3.13 is intended to address the normal installation, repair, and maintenance practices of the Grantee and is not intended to prohibit the Grantee from taking any action that is consistent with applicable law to remove, use, or dispose of the facilities of another Cable Service provider.

3.14 Trimming of Trees and Vegetation.

- A. The Grantee, at its sole cost and expense, may trim trees and other natural vegetation upon and overhanging any Public Way when necessary to prevent such trees and vegetation from coming into contact with the Cable System, provided, however, that all non-emergency trimming in any Public Way shall only be performed with the prior approval, and under the direction, of the Director of Recreation and Parks.
- B. To the extent practicable, no trimming shall be done by the Grantee until the time of installation of any wires, cables, or other fixtures to the relevant portions of the Cable System in order to ensure that the tree is trimmed to the minimum extent necessary.
- C. The Grantee shall be responsible for any damage caused by such trimming and shall dispose of all trimmed materials on a daily basis.

3.15 Aerial and Underground Construction.

- A. Initial Placement. At the time of initial placement of cable facilities, if the transmission and distribution facilities of all of the respective public or municipal utilities in any part of the Franchise Area are underground, the Grantee shall place its transmission and distribution facilities underground in that part of the Franchise Area. The Grantee shall construct, operate, and maintain all of its transmission and distribution facilities, or any part of such facilities, underground. In any part of the Franchise Area where the transmission or distribution facilities of other utilities are both aerial and underground, the Grantee shall have the option to place its facilities to aerially, provided the Grantee obtain the express written permission of the Director of Transportation prior to installation. Such permission shall not be unreasonably withheld and may be provided through the permitting process. Grantee will not need such permission when attaching fiber or coaxial cable to existing facilities. At the discretion of the City, Grantee may receive compensation for expenses incurred from any relocation of cable, wires, or other equipment performed at the direction of the City.
- B. Existing Facilities. If, at any time in the future, the City requires that the utilities in all or any portion of the City place their lines underground, then the Grantee shall, at its sole cost and expense, and within a reasonable period

of time, place its existing and all future cable, wires, or other equipment underground in such portion of the City. At the discretion of the City, Grantee may receive compensation for expenses incurred from any relocation and/or underground placement of cable, wires, or other equipment performed. *In the event other providers of telecommunications or cable television services receive compensation for expenses incurred related to relocation or underground placement, Grantee shall be entitled to compensation. In the event no compensation from the City is provided.* Grantee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

- C. New Property Development. In cases of new construction or property development where utilities are to be placed underground, the City shall request that the developer or property owner give the Grantee no less than sixty (60) days before commencing construction or development affecting underground utility deployment. Upon request of the developer or property owner, the Grantee shall provide specifications for trenching required to enable deployment of Cable Service serving the property. *Specifications shall be consistent with all applicable construction requirements.*
- D. Directional Boring. Grantee shall have the option to utilize Boring for installing the Cable System or other facilities underground at a specific location, provided the Grantee obtain the express permission of the *Director of Transportation prior to installation. Such permission may be granted through the permitting process. Permission may be granted only when existing conduit infrastructure does not exist in the vicinity.*
- E. Any portion of the Cable System installed underground shall be buried to a depth of at least sixteen (16) inches; provided, however, that any hardline portions of the Cable System installed under Public Ways shall be buried to a depth of at least twenty-four (24) inches and all Drops shall be buried to a depth of at least twelve (12) inches.

3.16 Poles and Facilities.

- A. Use of Existing Poles and Facilities Preferred. Grantee shall use, with the owner's permission, existing poles, conduits, and other facilities whenever Economically and Technically Feasible and Viable. The Grantee may not erect poles, conduits, or other facilities in any Public Way without all necessary permits and authorizations and the express permission of the City. Upon written request, the Grantee shall file copies of all agreements for the use of conduits or other facilities with the City within fifteen (15) business days.
- B. City's Use of Grantee Structures. The City shall have the right to install and maintain, at no expense, wire and pole fixtures upon any poles owned by the Franchisee; provided, however, that such fixtures comply with applicable law and do not unreasonably interfere with the operation of the Cable System.

3.17 Map Accuracy. The City does not guarantee the accuracy of any maps, prints, atlases, illustrations, drawings, or other pictorial or computer-generated materials showing the horizontal or vertical location of existing substructures. All locations of other utilities and facilities in the Public Ways and easements used by the Grantee shall be verified by

excavation or by requesting “locates” from the City.

3.18 Storage of Slack Coil. Grantee shall not store more than seventy-five (75) linear feet of slack coil in any one manhole, per one thousand (1,000) linear feet of fiber optic cable installed between manholes. All such storage shall be at a location in the manhole, and installed in a manner, as designated by the City; provided, however, that any slack coil that has been installed by the Grantee and approved by the City prior to July 1, 2004 shall not be required to be removed until such time as the Grantee modifies, alters, repairs, or replaces such slack coil in a manhole. For the purposes of this Section, “slack coil” shall mean extra fiber optic cable that is coiled up and placed in a manhole for future use.

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

Section 4 **Service Obligations**

4.1 Service to All Persons.

A. General Obligation. Throughout the Term of this Agreement, the Grantee covenants and agrees to construct, operate, repair, maintain, reconstruct, and upgrade the System so as to provide access to all Services distributed over the Subscriber Network to any Person within the Franchise Area who submits a request for Services to the Grantee and whose service location is within the distances set forth in 4.2.B below. The Grantee shall provide such access within the time periods and subject to the procedures described in Section 4.2. It shall be the right of all Persons to receive all available Services provided on the Cable System so long as such Person’s financial and other obligations to the Grantee are satisfied and subject to Grantee’s reasonable terms of service.

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

C. Residential Conversions. For any specific building that has been constructed or converted to residential use after the Effective Date, where the obligations in this Section 4.1 to provide Services via the Cable System would be substantially in excess of the range of the Grantee’s usual costs for connections, the Grantee may seek a waiver of these obligations from the City, which waiver shall not be unreasonably withheld. In determining whether to grant a waiver permitting the Grantee to charge more than its standard installation fee, the City shall consider (i) the “payback” time period that it would take the Grantee to recoup its investment in establishing service to the building and (ii) the level of Subscriber penetration reasonably expected in the building, if applicable.

D. Conditions on Subscriber Services. Nothing in this Section 4.1 is intended to prevent the

Grantee from reasonably conditioning the provision of Services to a Person with an impaired credit history. Such conditions shall be lifted to the extent a Person demonstrates to the Grantee's reasonable satisfaction that the Person subsequently has established a positive credit history, i.e., that such Person has paid his, her, or its bills in full and on time.

4.2 Requests for Service.

A. Multiple Dwelling Unit Subscribers.

1. General. Provided that the Grantee is able to obtain access to the building in accordance with this Section to perform the necessary work and is able to negotiate a mutually acceptable right-of-entry or other access agreement, the Grantee shall fulfill all requests for Services, including any upgrades to inside wiring owned by Grantee necessary to transmit the full range of its Services for Residential Subscribers living in multiple dwelling unit buildings, within the time periods set forth in applicable law. The Grantee shall diligently respond to requests for the provision of Service to all buildings containing Residents that are not currently wired for Residents to receive any Services from the Grantee.
2. Unwired Buildings. If the Grantee is unable to fulfill any such request within sixty (60) Days because a multiple dwelling unit building is not currently wired for Residents to receive any Services from the Grantee, it shall provide written notice within seventy-two (72) hours after the expiration of such sixty (60) Day period to the City and the Person requesting Services. The notice shall state whether or not such Services can be provided and, if known, the date by which the Person requesting Services may expect to receive such Services.
3. New Construction and Conversions. Notwithstanding Section 4.2A1, for any building which has been constructed or converted to residential use after the Effective Date, and which is not passed by the Cable System at the time of the request for Services, the Grantee shall fulfill each request for Services not later than ninety (90) Days after receiving the request for Services provided it is Economically and Technically Feasible and Viable to extend the Cable System taking into account the number of expected subscribers in the building, but for

any such building for which the Grantee needs to obtain a permit, license, or other authorization from the City or any other Person to connect such building to the Cable System, the Grantee shall fulfill each request for Services not later than ninety (90) Days after receiving all necessary permits, licenses, and other authorizations from the City or any other Person. The Grantee shall use its best efforts to obtain any such permit, license, or other authorization.

B. Drops.

1. Fees. The Grantee shall charge its standard installation fee to Residents for installation of connections that do not require in excess of one hundred twenty-five (125) feet of underground trenching per Drop, or one hundred twenty-five (125) feet of aerial wiring per Drop. For longer connections, the Grantee shall not charge more than its actual cost (including a reasonable charge for overhead) for the portion of the connection from the closest point on the Subscriber Network to the residence to the point that is one hundred twenty-five (125) feet from the residence; provided, further, that, in the event multiple Subscribers share the same connection to the Subscriber Network at the time of installation, the Grantee shall allocate such actual cost (including a reasonable charge for overhead) evenly among such Subscribers. Any such additional charge of actual cost shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the 125 foot standard. Under no circumstances will Grantee be required to extend its distribution cable beyond 175 feet. However, if the Grantee determines it is Economically and Technically Feasible and Viable to do so, the Grantee may elect to extend its distribution cable beyond 175 feet.
2. Location. Whenever technically possible, Grantee shall meet each Subscriber's desire regarding the point at which the Drop enters the Subscriber's residence or other structure, and the point at which the Drop terminates inside the structure. Drops shall be placed underground whenever other utilities are located underground.
3. Removal Upon Termination. Upon the termination of Service, Grantee shall either entirely remove its Drop or secure the Drop in a method reasonably acceptable to City or Subscriber and in accordance with industry standards and applicable law.
4. Non-obstructive and Unobtrusive Locations. All cable within buildings and all Drops outside buildings shall be located so as to be as non-obstructive and

unobtrusive as practicable and in accordance with industry standards and applicable law.

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

4.4 Disconnection for Cause.

A. Cause. *Grantee may immediately disconnect a Subscriber for demonstrable reasonable cause, including, but not limited to, due or owing accounts between the Subscriber and Grantee, theft of Service, or theft of or vandalism to Grantee property, or other violations of Grantee's terms of service. Grantee may restore Service after the Subscriber provides adequate assurance that the Subscriber has ceased the practice that led to the disconnection, and paid all fees and charges, including any reconnect fees and amounts owed the Grantee for damage to its Cable System or equipment.*

B. Signal Leakage. *Grantee may disconnect a Subscriber who causes signal leakage in excess of federal limits. Grantee may disconnect a Subscriber without notice where signal leakage is detected originating from the Subscriber's premises in excess of federal limits, provided the Grantee shall immediately notify the Subscriber of the problem, and, once the problem is corrected, reconnect the Subscriber.*

4.5 Residential Subscribers Served Under Bulk Agreements. *The Grantee may enter into or maintain any "bulk rate" agreements permitted under applicable law. With respect to Residential Subscribers who receive Services under such bulk rate agreements, the Grantee shall permit MOCC to exercise its responsibilities under this Agreement to such Subscribers in a manner comparable to the way in which it exercises its responsibilities with respect to other Residential Subscribers.*

4.6 Cable Service to New Developments. *Grantee shall install its Cable System, excluding only Drops to individual dwelling units, in all new subdivisions and developments on the date on which electric or telephone facilities are installed in such subdivision or development unless Grantee is not timely notified of the subdivision or development, provided it is Economically and Technically Feasible and Viable. After Cable System installation, Grantee shall be capable of providing Cable Service to any dwelling unit in such subdivision or development solely by the construction of a Drop to the Subscriber premises when such dwelling unit is constructed.*

4.7 Continuity of Service. *Grantee shall operate the Cable System and provide Cable Service twenty-four (24) hours per Day, seven (7) Days per week. Grantee shall voluntarily interrupt the provision*

of Cable Service only in accordance with Section 9 of this Agreement.

4.8 Ownership of Installed Wiring. Ownership of all wiring installed by Grantee inside Subscribers' dwellings plus that extending on the outside of Subscribers' dwellings plus any such further length of cable extending beyond the exteriors of Subscribers' dwellings shall be determined as required by FCC requirements (76 C.F.R. §76.800 *et seq.*) and other applicable law.

Section 5

Cable System Facilities, Equipment, and Services

5.1 Cable System Design and Capacity; Technical Performance. Throughout the Term of this Agreement, the Grantee shall operate and maintain the Cable System in accordance with applicable law and this Agreement and shall maintain the System in overall compliance with the System characteristics as provided in this Section.

5.2 Technical Design. 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 Grantee's Cable System remains in compliance.

- A. The Cable System shall be equivalent to or exceed technical characteristics of an HFC 860 MHz Cable System.
- B. Nodes shall be sufficiently scalable to meet any future service requirements and such scalability can be accomplished with minimal further construction.
- C. The System shall be capable of offering a variety of Digital Services to Subscribers, including television and audio programming on digitally compressed Channels, high-definition television ("HDTV") and other Cable Services.
- D. The System shall be designed to be an active two-way plant providing for Subscriber interaction required for the selection or use of Cable Service.
- E. The System shall be capable of continuous twenty-four (24) hour per day operation in accordance with applicable FCC standards.

5.3 Standby Power. The System shall be protected against outages due to electrical power failures. Without limitation, the System shall have back-up electrical power sources that are sufficient to operate the headend and hub facilities of the System for at least twenty-four (24) hours without other electrical power. The distribution network, including nodes and amplifiers, shall have back-up electrical power sources sufficient to operate for at least four (4) hours.

5.4 System Monitoring. The Grantee shall maintain status monitoring at all system hubs and OTN's. The network operations center shall monitor the network twenty-four (24) hours a day, seven (7) days a week.

5.5 Signal Quality and Security. Grantee shall provide to the Subscribers a level of signal quality emanating from the headend that meets or exceeds applicable FCC technical standards.

- A. Parental Control Options. In accordance with applicable law, upon request by any Subscriber, the Grantee shall provide such requesting Subscriber with a parental control device. Such device will, at a minimum, offer as an option that a Person ordering programming must provide a personal identification number or other means

provided by the Grantee only to a Subscriber; provided, however, that the Grantee shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

5.6 Leased Access Services. Grantee shall comply with all federal leased access requirements under 47 U.S.C. § 532.

5.7 Signals/Channels.

A. Services. The Grantee shall carry Services, including local commercial television broadcast signals, in accordance with applicable law. The Grantee shall endeavor to offer to all Subscribers a diversity of Services. The Grantee shall provide to the City a listing of all Services it offers to Subscribers and the rates, in a form that is substantially consistent with that which is attached hereto as Appendix C to this Agreement.

B. Channel Capacity.

1. Prior to the Effective Date of this Franchise, Grantee upgraded its Cable System to a Fiber to the node System architecture, with Fiber Optic cable deployed from Grantee's Headend to Grantee's Fiber nodes, tying into Grantee's coaxial Cable System already serving Subscribers. Active and passive devices currently are passing a minimum of 860 MHz.

Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications throughout the Term of the Franchise with sufficient capability and technical quality to enable the implementation and performance of all the requirements of this Franchise, including the Appendices hereto, and in a manner which meets or exceeds FCC technical quality standards at 47 C.F.R. §76 Subpart K, regardless of the particular format in which a Signal is transmitted.

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

A. Testing Procedure; Technical Performance. Throughout the term of this Agreement, the Grantee shall operate and maintain the Cable System in accordance with applicable FCC testing procedures and technical performance standards as amended from time to time, and any other future applicable technical performance standards which the City is permitted by a change in law to enforce. Upon request, the City may arrange to have an engineer or other person observe the Grantee's engineer or other person performing required tests. Grantee shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect:

1. Occupational Safety and Health Administration (OSHA) Safety and Health Standards;
2. The National Electrical Code;
3. The National Electrical Safety Code (NESC).

B. Additional Tests. The City may require additional FCC tests or full or partial repeat FCC tests. Requests for such additional tests will be made only on the basis of a significant number of complaints received or other pertinent and valid evidence reasonably demonstrating non-compliance with applicable FCC standards, and such tests will be limited to the particular matter in controversy. The City will endeavor to arrange its requests for such special tests so as to minimize hardship or inconvenience to Grantee and the affected Subscribers.

C. Testing Vehicle and Equipment. *Franchisee shall maintain trucks, tools, testing equipment, monitoring devices and other equipment and facilities, as well as trained and*

skilled personnel, sufficient to ensure compliance with applicable law and the requirements set forth in this Article 5.

- D. Technical Assessment. *At the City's written request, no more than once every five (5) years, Grantee shall submit a written report addressing whether the Cable System's Service and program offerings are substantially comparable to the range and level of services existing in the Cable Systems owned and operated by the Grantee's parent corporation in the Region. Grantee shall cooperate with the City to provide necessary information upon the City's reasonable request as part of the assessment.*
- E. FCC Reports. Upon written request, Grantee shall provide the City with the reports required by Section 11.9 of this Agreement.

5.9 Parity with Neighboring Jurisdictions. If the Grantee or an Affiliated Person provides a new Cable Service on a commercially deployed basis in the Region, then the Grantee, within thirty-six (36) months, shall provide such Cable Service in the Franchise Area unless the Grantee reasonably determines that doing so would not be Economically and Technically Feasible and Viable, or that there is insufficient Subscriber demand for such Service(s). Within thirty (30) days of a written request by the City, Grantee shall meet with the City to discuss any non-deployment of Cable Services under this Section. Nothing in this Section shall require identical programming throughout the Region, including without limitation PEG and other non-commercial channels and must-carry signals or Programming signals, products or Cable Services that are being temporarily trialed.

5.10 Emergency Override. The Grantee shall comply with the Emergency Alert System ("EAS") requirements set forth in 47 C.F.R. Part 11 (or any successor thereto).

5.11 Subscriber Premises Equipment. (E.g., set-top boxes) Grantee shall make available to Subscribers premises equipment that is consistent with applicable law and industry standards for electrical power efficiency.

Section 6 Public Services

6.1 Provision of PEG Channels.

- A. Grantee to Provide. Grantee shall provide PEG Channels without any additional fee or charge in addition to the fee or charge the Subscriber is paying for the Cable Services the Subscriber receives on the Cable System. PEG Channels shall require no equipment other than the equipment used by the Subscriber to receive Cable Services. Such Channels shall be available twenty-four (24) hours per day throughout the Term of this Agreement.
- B. Location. All PEG Channels shall be placed on the basic tier of service (and in the lowest tier of service, if different), and available to all Subscribers. PEG Channel assignments shall be the same throughout the System.
- C. Relocation. Grantee shall carry the programming on each of the respective PEG Channels as indicated in Appendix A. Grantee shall not arbitrarily or capriciously change such channel assignments, and shall minimize the number of such changes; provided, however, that the Grantee may change such channel assignments as it deems appropriate so long as the Grantee: (i) gives the City and PEG Channel operator ("Access Programmer") sixty (60) days' notice of such change; and (ii) except for PEG Channel relocations due to the channel designations of must carry Channels or other federal or state legal requirements, reimburses the City up to ten thousand dollars \$10,000 for costs, which may include time of personnel, related to any channel relocation.

Grantee shall provide, at Grantee's expense, at least thirty (30) days advance notice of any PEG Channel relocation to Subscribers by any reasonable means including bill notices and multiple screen crawls.

- D. Editorial Control. Grantee shall not exercise any editorial control over any use of PEG Channels, or the content of programming on PEG Channels (except for such programming as the Grantee may produce or provide for its account), nor shall Grantee or its Affiliates incur any liability under this Agreement for any PEG programming carried on any PEG Channel.
- E. Signal Quality. Each PEG Channel shall be delivered with signal quality from the perspective of the viewer that is substantially equivalent to similar commercial non-premium channels carried on the Cable System, provided however, that Grantee shall have no responsibility to improve upon or modify the quality of any PEG Channel content provided to Grantee by any Access Programmer. Grantee may implement carriage of the PEG Channels in any manner so long as the signal is delivered and viewable by the Subscriber without material degradation; and of a quality equivalent from the perspective of the viewer to similar commercial non-premium channels carried on the Cable System. Properly formatted closed captioning and secondary and multilingual audio tracks should be accessible and of a quality equivalent from the perspective of the viewer to other similar commercial non-premium channels on the Cable System. Grantee may down convert HD PEG signals to SD for channels that are to be delivered in SD as set forth herein.
- F. The City or the Access Programmers shall be responsible for delivering the PEG Channel signal to an access connection point at each PEG Channel origination location. The Grantee shall provide, install, maintain, repair and replace equipment necessary to receive and transmit such PEG programming from the PEG Channel origination locations to Subscribers. In no event will Grantee be obligated to operate or maintain City or Access Programmer equipment necessary for PEG operation, creation, or delivery. The City and Access Programmers and the Grantee shall work together in good faith to resolve any issues related to PEG interconnection and Grantee's cablecasting of PEG programming from the PEG origination locations.
- G. Outages. In the event of failure of the headend, Video Origination Locations (as defined in Section 6.5), or interconnection, the Grantee shall respond within four (4) hours after receiving notice from a PEG Programmer or PEG facility. The Grantee shall restore Service through such failed interconnection or facility as soon as reasonably possible, but not later than twenty-four (24) hours after receipt of such notice from a PEG Programmer or PEG facility, absent some delay or failure beyond the control of the Grantee.

6.2 Number of PEG Channels and Activation.

- A. Grantee shall continue to provide three (3) downstream PEG Channels in Standard Definition ("SD") format. Grantee shall activate one (1) additional SD PEG channel within one hundred eighty (180) days of a written request by the City, which may be requested at any time during the Term. The activation of such a first additional SD PEG channel shall be at the City's discretion, and shall not be subject to the threshold use requirement set forth in Subparagraph B.
- B. Following the third anniversary of the Effective Date of this Agreement, the City may request in writing the activation of up to two (2) additional SD PEG Channels for a total of six (6) SD PEG channels. Grantee shall implement any such request within one hundred twenty (120) days provided that the City or Access Programmer documents that it is producing and airing, on average, at least twenty five (25) hours per week of non-character generated, non-alphanumeric, non-repetitive, locally produced PEG content provided by the City, or a PEG entity designated by the City, on each of the existing PEG Channels and has done so for the prior six (6) months. Grantee shall not be required to activate more than one additional PEG Channel in any twelve (12) month period. In the event any new channel requires activation of a new Video Origination Location as defined in Section 6.5 of this Agreement and/or additional equipment, the City shall pay the costs associated with any new Video Origination Location prior to activation of any new channel. The Grantee shall activate and make available any additional PEG Channel not later than one hundred twenty (120) Days following receipt of a notice from the City

or from payment from the City for the new Video Origination location as appropriate.

6.3 HD PEG Channels.

A. Activation. Within one hundred twenty (120) days of the Effective Date of this Agreement, Grantee shall make available two (2) PEG Access Channels in HD format and City may, in its discretion, allocate such HD channel to the retransmission of any SD PEG Channel it chooses. On or after four years after the Effective Date, upon one hundred twenty (120) days of a written request by the City, Grantee shall make available one (1) additional PEG Channel in HD format and the City may, in its discretion, allocate such HD channel to the retransmission of any SD PEG Channel it choose. Grantee's obligation with regard to each of the three (3) HD PEG channels that may be requested is conditioned upon there being a minimum of ten (10) hours of original, locally produced PEG programming per week of HD programming unique to the Channel (i.e. not repeated on any other HD PEG Channel) being produced for the prior six (6) months. In the event Grantee carries all commercial channels in HD format (or better), and ceases to offer commercial channels in SD format, Grantee shall carry all PEG channels in HD format (or better) and may cease to offer PEG channels in SD format.

B. Provision of HD PEG.

1. The PEG Channel programmers shall be responsible for providing the HD PEG Channel signal in an HD digital format compatible with Grantee's equipment in the Cable System to the demarcation point at the designated points of origination for the HD PEG Channels. The City or any PEG Channel operator is responsible for acquiring all equipment, other than transmission equipment to transmit the operator's signal to Grantee's System (which shall be provided by Grantee), necessary to produce programming in HD.
2. The City acknowledges that HD programming may require special viewer equipment and subscription to advanced services and that, by agreeing to make PEG Channels available in HD format, Grantee shall not be required to provide free HD equipment to Subscribers, or for complimentary municipal and educational accounts, nor modify its equipment or pricing policies in any manner, except as otherwise expressly provided for in this Agreement. The City acknowledges that not every Subscriber may be able to view HD PEG programming, nor on every TV in the home, and additional costs may be involved in the reception of HD programming.
3. Grantee may implement HD carriage of the PEG Channels in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the viewer that is substantially equivalent to similar commercial HD channels carried on the Cable System and consistent with the requirements of Section 6.1E.

6.4 Video on Demand.

- A. Grantee will make available up to a total of five (5) hours of capacity on its Video On Demand ("VOD") platform for the shared use by the PEG Channels. Distribution of the available hours as between PEG Users shall be at the discretion of the City. The Access Channel operators shall be solely responsible for uploading all such programming in the manner required by the Grantee's VOD intake system and for populating all menus and program descriptions. Grantee shall be responsible for any down-conversion from HD to SD for the programming as submitted by the City or Access Programmer. PEG programs will be listed on the VOD menu in a nondiscriminatory manner to other local programming.
- B. Following the fifth anniversary of the Effective Date, the City may request, and Grantee shall provide within 60 days of such request, an additional five (5) hours of VOD capacity for PEG programming. Grantee may, within 60 days of such request, decline to provide such additional VOD capacity if Grantee demonstrates, in writing and with particularity, that the City does not use the existing five (5) hours of VOD capacity to a reasonable extent

based upon factors such as the quantity of programming made available, and the number of views per month. Any such evaluation shall take into account the City's targeted public service and public safety objectives with regard to PEG VOD capacity.

- C. Grantee agrees to work in good faith with the City to establish a process agreeable to the PEG Users for placing PEG programming on Grantee's VOD platform, utilizing a system that enables online content uploading to an FTP site or equivalent technology. Such process will also include, but not be limited to, addressing programming technical formatting, submitting program description to the electronic program guide, and identifying potentially offensive programming for disclaimers. PEG Users are responsible for selecting the PEG programming and providing it to Grantee in an MPEG2 or other appropriate format compatible with Grantee's equipment and system.
- D. Any PEG programming placed on VOD shall be accessible by Subscribers free of charge, provided that they subscribe to the appropriate level of cable service in which access to Grantee's VOD platform is included.
- E. The parties recognize that VOD platforms for distribution of programming may change over time. Future development may allow for the City and Grantee to agree on a mutually acceptable alternative to include PEG programming on Grantee's VOD platform and, as a result, increase the amount of PEG Programming available to Subscribers. To that end, Grantee agrees to engage in good faith efforts to discuss alternatives to including PEG programming on any Grantee VOD platform.

6.5 Allocation and Use of PEG Channels.

- A. By City. PEG Channels are, and shall be, allocated for PEG Access programming use by the City in its sole discretion. The City or other Access Programmer shall not transmit on the PEG Channels Commercial Programming. The City may, at any time on ninety (90) days' notice to Grantee, allocate or reallocate the usage of the PEG Channels among and between different uses and PEG Users. For purposes of this subsection, "Commercial Programming" shall mean content originally produced for commercial consumption or profit, such as movies or episodes of "Seinfeld." This limitation of the transmission of Commercial Programming shall not apply to programming of particular local interest to Baltimore, for example a documentary about the Chesapeake Bay that was originally produced for commercial distribution.
- B. Rules and Procedures. The City, or other City authorized designees, shall establish rules and regulations for use of PEG facilities, subject to and consistent with 47 U.S.C. §531(d). The parties hereto agree that, consistent with 47 U.S.C. §558, Grantee shall not incur any liability in connection with or arising from any programming carried on any PEG Channel.
- C. Fallow Time. The City may, from time to time, adopt and revise rules and procedures as to when and how Grantee may use the PEG Channels for the provision of video programming if the PEG Channels are not being used for their intended purposes. Grantee shall use the PEG Channels solely in accordance with such rules and procedures and, except for PEG Channels being used by Grantee, shall have no responsibility or control with respect to the programming of such Channels.

6.6 Video Origination Locations. During the entire term of this Agreement, Grantee shall continue to maintain, operate and own the existing return lines ("Video Return Lines" or "VRL") from the Video Origination Locations identified in Appendix A, including the existing Drops and Outlets at each location identified in Appendix A. The Grantee shall maintain the VRL, and VRL drops and outlets identified in Appendix A, at no charge to the City and/or PEG Access Programmers.

- A. Unless otherwise provided herein, the City and its designated VRL users shall be solely responsible for any and all Video Origination Location equipment including but not limited to, modulators and demodulators, or the equivalent, and video production equipment, except such modulators and demodulators located at the Headend or

hub site. Unless otherwise agreed to, the demarcation point between the Grantee's equipment and/or the City's or the PEG Access Programmer's equipment shall be at the output of the PEG Access Programmer master control output. The Grantee shall provide and assume responsibility for all PEG Access signal transport equipment.

- B. The Grantee shall be responsible for any Grantee-owned equipment located at its Headend or hub site necessary to make the VRL function.
- C. The Grantee shall be responsible for equipment to enable the existing VRL to interact with the Grantee-owned Cable System such that PEG Access Programming may be transmitted upstream from the PEG Access Video Origination Locations to Grantee's headend and/or hub, and then transmitted downstream on the PEG Channels.
- D. The City may request to relocate Video Origination Locations. Any such relocation shall be to a location that provides both adequate signal capacity and adequate safeguards for the security of the Cable System. Within thirty (30) days for such request, Grantee shall provide the City with a cost estimate for the relocation of a Video Origination Location. Within one hundred eighty (180) days of the City's written approval of an estimate of the actual cost for Grantee to relocate the Video Origination Location, the Grantee shall relocate the Video Origination Location. Grantee shall then submit for payment by the City an itemized invoice reflecting actual costs incurred by Grantee.
- E. Upon written request by the City, Grantee shall work in good faith with the City to interconnect with other cable operators at a designated meet point in order to hand off PEG Channel signals for the purpose of sharing PEG programming throughout the Franchise Area. Such interconnection shall preserve the technical quality of the PEG Channels without material degradation. Any costs incurred by Grantee under this subsection shall be paid to Grantee according to the terms of such an interconnection agreement.

6.7 Capital Support For Equipment and Facilities For PEG Channels. Grantee shall pay to the City, for PEG Access capital costs (or if permitted under FCC ruling or other applicable law, any other PEG cost), including, without limitation, facilities and equipment, ongoing support of one percent (1%) of Gross Revenue per Subscriber per month or, at the option of the City to be exercised in writing within 45 days of the third (3rd), fifth (5th), seventh (7th) and ninth (9th) anniversaries of the Effective Date, an amount equal to \$0.90 per Subscriber per month. This grant shall be paid in the same manner and on the same schedule as the Franchise Fees set forth in Article 10, shall be clearly itemized on Grantee's quarterly Franchise Fee payment statements, and shall be subject to the right of the City to inspect, audit, and re-compute in the same manner as for Franchise Fees under Article 10 and with late payments subject to interest in the same manner as are Franchise Fees. Grantee and City agree that the obligations set forth in this Section are not "franchise fees" within the meaning of 47 U.S.C. §542.

6.8 Support for PEG Channel Operational Expenses.

- A. Grantee shall pay to the City for operational costs relating to PEG Channels, ongoing support of twenty-five cents (\$0.25) per Subscriber per month. This per-Subscriber payment shall be computed and paid in the same manner and on the same schedule as the Franchise Fees set forth in Section 10, shall be clearly itemized as "PEG Operational Cost Support" on Grantee's quarterly Franchise Fee payments, and shall be subject to the right of the City to inspect, audit, and re-compute in the same manner as for Franchise Fees under Section 10 and with late payments subject to interest in the same manner as are Franchise Fees.
- B. At Grantee's discretion, consistent with federal law, Grantee may deduct payments made for PEG Channel operational expenses from Grantee's Franchise Fee payment amount. Any such deduction shall be clearly stated on Grantee's quarterly Franchise Fee statements. The City shall have no liability to Grantee with respect to any such deduction or franchise fee offset after 180 days from Grantee's submission of a particular quarterly franchise fee payment.

6.9 Guide. If a program guide or menu is produced by Grantee, Grantee shall list all PEG Channels on all such program

guides or menus, including print and electronic versions. If a program guide or menu is managed by a third party, Grantee will ensure that the third party has the capability to include PEG Channels on that program guide or menu, and shall require a third party program guide manager to include PEG Channels on a program guide or menu on a nondiscriminatory basis, in substantially the same manner as other channels carried by Grantee.

6.10 Courtesy Services to Government, Educational, and Other Facilities.

- A. Service Provided. The Grantee shall continue to provide one activated outlet and basic Cable Service, and any equipment necessary to receive such Service, to one activated outlet at no cost, to: (i) the facilities specified in Appendix B, (ii) all new City facilities owned by, leased to and used by the City as requested from time to time by the City pursuant to Section B of this Section; and (iii) all City facilities that are relocated from time to time pursuant to Section B of this Section.
- B. Installation and Relocation. Upon request of the City, the Grantee shall, without charge, install one activated outlet at each City public educational institution and each building or facility owned by or leased to, and used by, the City, within the Franchise Area, as shall be designated by the City from time to time; provided, however, that a total of not more than five (5) such new activations shall be required in any calendar year. At no point shall the Grantee be required to provide Service under this Section to more than 333 total numbers of locations. Upon prior notification to the City, the City shall be responsible for reimbursing the Grantee for the Grantee's cost of installation of such new outlets where the Drop is greater than two hundred fifty (250) feet in length. In the event that construction costs are extraordinary due to special site conditions, the Parties shall in good faith negotiate an equitable allocation of costs. The Grantee shall not be entitled to reimbursement for its cost of installation of such new outlets where the Drop is two hundred fifty (250) feet or less in length. The City shall be responsible for reimbursing the Grantee for the Grantee's cost to relocate any drops or outlets after their initial installation, when such relocation is requested by the City. The Grantee shall be responsible for the cost to relocate any existing drops or outlets where the relocation is due to the Grantee's requirements. Courtesy accounts shall not be used for facilities with a residential purpose such as public housing, senior housing, hospitals and prison facilities.

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

6.12 PEG Costs. To the extent permitted by federal law, subject to Section 6.8B, Grantee shall be allowed to recover the costs of any PEG capital support funding or any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill.

6.13 Institutional Network. In satisfaction of the City's Institutional Network needs, the parties have entered into a separate "*2004 I-Net Transfer and Modification Agreement,*" included herein as Appendix I.

Section 7

Employment and Purchasing

7.1 Equal Employment Opportunity. Grantee shall comply in all respects with Federal, state and local equal employment opportunity ("EEO") and non-discrimination laws and regulations including, but not 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 Baltimore City Code.

7.2 Hiring.

- A. Grantee will maintain an active relationship with the Mayor's Office of Economic Development (MOED) (or its equivalent) and the Mayor's Office of Minority and Women Owned Businesses (or its equivalent), and

acknowledges that the City offers substantial resources to help fulfill Grantee's employment needs with City residents. Within thirty (30) days of the Effective Date, Grantee shall have a meeting, either in person or via telephone, with the Mayor's Office of Economic Development (MOED) to review Grantee's present and future workforce needs and to outline steps for a productive partnership moving forward. Thereafter, Grantee shall meet with MOED on a quarterly basis.

- B. Grantee will utilize MOED as a recruitment, referral, and training agent. Grantee will post job opportunities with MOED contemporaneously with any other public disclosure of the opportunity. Grantee will identify a representative to work with MOED for the purpose of communicating hiring needs and, upon request of MOED, will promptly provide hiring status on all job applicants referred by MOED.
- C. Grantee will interview qualified Baltimore City residents referred from MOED for open positions.
- D. Grantee shall support the following workforce elements or their equivalents as agreed with the City:
 - 1. Upon request, identify expert guest speakers to discuss the cable workforce environment for job-seeking customers at the City's One Stop Career Centers;
 - 2. Participate in or support the Mayor's YouthWorks Summer Jobs program for City youth.
 - 3. Participate in an annual conference for workforce development professionals upon request;
 - 4. Participate in quarterly and targeted job fairs as requested;
 - 5. Develop on-the-job training programs for entry level positions.

7.3 MBE/WBE. Notwithstanding that this Agreement is not a procurement contract, Grantee agrees to comply with the requirements of the City's statutes, ordinances and regulations regarding participation by minority business enterprises ("MBEs") and women's business enterprises ("WBEs") as set forth in Appendix G. Enforcement of this Section shall be exclusively by way of goal setting, reporting obligations, and meetings with the Mayor's Office of Minority and Women Owned Businesses to address any underperformance as in Appendix G. In the event that, after the use of reasonable, good faith efforts to meet MBE and WBE participation requirements established pursuant to this Section, the Grantee is able to demonstrate to the City's satisfaction that sufficient qualified and willing MBEs and WBEs are unavailable, then Grantee shall be granted a waiver or reduction of the MBE/WBE participation requirements.

7.4 Meetings with City. To facilitate the mutual objectives of this Section 7, Grantee will provide appropriate personnel to meet with City hiring and MBE/WBE officials as may be reasonably requested by the City.

7.5. Reporting.

- A. Annual Compliance Statement. Grantee shall provide a statement demonstrating its compliance with this section as part of Grantee's annual reporting obligations set forth in Section 11.
- B. Annual Hiring Report. As part of Grantee's annual reporting obligations set forth in Section 11, Grantee will provide a report for MOED describing Grantee hiring practices, to include the following information: (i) number of Baltimore City residents employed at Comcast (including non-System positions), (ii) number of Baltimore City residents employed within the Baltimore System; and (iii) number of Baltimore City residents employed within other Comcast systems.
- C. Annual MBE/WBE Procurement Report. As part of Grantee's annual reporting obligations set forth in Section 11, Grantee will provide a report for the Mayor's Office of Minority and Women Owned Businesses consistent with the requirements in Appendix G.

Section 8 Fees and Charges

8.1 General Requirement.

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

1. any equipment, installation, or other activity subject to Section 623 of the Cable Act (47U.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 Grantee'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 Grantee 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 Rates or Services. *In addition to any notice to customers required by applicable law, not fewer than thirty (30) Days prior to the effective date of any such change the Grantee shall provide written notice to MOCC.*

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 Grantee 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 Grantee 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. Grantee 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 Grantee, refusal to provide required deposit, theft of Service, theft of or vandalism to Grantee property, abusive and/or threatening behavior toward the Grantee's employees or representatives, or refusal to provide credit history information or refusal to allow the Grantee to validate the identity, credit history, and credit worthiness via an external credit agency.

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

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

Section 9

Customer Service Standards, Customer Bills, and Privacy Protection

9.1 Consumer Protection Standards. The Grantee shall comply with (i) applicable FCC customer service standards for Cable Service, 47 C.F.R. §76.309, as they may be amended from time to time, (ii) 47 C.F.R. §76.981, *Negative Option Billing*, and (iii) the provisions of Appendix F hereto. Grantee must maintain records and documentation sufficient to show compliance with all applicable customer service and consumer protection standards.

9.2 Rates and Charges. The rates and charges for Cable Service provided pursuant to this Agreement shall be subject to the requirements of federal law.

9.3 Customer Bills. Bills sent by the Grantee to the Subscriber for Cable Services are to be clear, concise, and understandable, and Grantee shall comply with the additional customer billing obligations set forth in Appendix F.

9.4 Privacy Protection. The Grantee shall comply with Section 631 of the Cable Act (47 U.S.C. § 551), FCC rules and regulations concerning Subscriber privacy, and any other applicable law or regulation pertaining to Subscriber privacy.

9.5 Service Centers. Grantee shall maintain at least one (1) customer service center ("Service Center") in the City. The Service Center(s) shall be open during Normal Business Hours and shall offer weekend hours, have a publicly listed local telephone number, and be operated so as to promptly and efficiently receive Subscriber complaints and requests for repairs or adjustments. At a minimum, each Service Center shall allow Subscribers on a walk-in basis to file complaints; ask questions regarding bills or service; pay bills; request, upgrade or terminate Services; and pick up or drop off equipment. Grantee shall operate the Service Center in such a manner as to ensure that Subscribers whose transaction relates to dropping off leased equipment are processed promptly and efficiently.

9.6 Service Complaints. Grantee shall address service complaints received by Subscribers and complaints referred by the City according to the requirements set forth in Appendix F.

9.7 Quarterly Reports. Within sixty (60) days of the end of a calendar quarter, the Grantee shall provide to MOCC (i) a

quarterly call log, (ii) a quarterly summary of installation and repair performance, and (iii) a quarterly complaint summary, in substantially the form set forth in Appendix F.

9.8 Information to Subscribers.

- A. Grantee shall provide certain written information to Subscribers at the time of installation of Service, as set forth in Appendix G.
- B. Prevention of Reception of Undesired Services. Grantee shall comply with Section 640 of the Cable Act, 47 U.S.C. § 560. In addition, Grantee shall inform Subscribers at the time of subscription, and annually thereafter, by individual written notice of their rights, and how to make a request pursuant to 47 U.S.C. §650.
- C. Contact Information in Subscriber Bills. Grantee shall clearly and conspicuously direct Subscribers to contact Comcast in the event of a Subscriber complaint. Grantee shall provide address and email contact information for the local franchising authority (MOCC) on Subscriber bills, but shall not suggest, explicitly or by text placement, that Subscribers should initially contact MOCC in the event of a Subscriber complaint.

9.9 No Interference with Customer Equipment. The Grantee and any Affiliated Person shall comply with applicable law regarding a Subscriber's ability to utilize consumer equipment of the Subscriber's choosing.

Section 10 Franchise Fees

10.1 Franchise Fees; Payment Due.

- A. Amount; Date Due. As compensation for the use of the public rights-of-way under this Franchise, the Grantee shall pay to the City an amount equal to five percent (5%) of annual Gross Revenue throughout the Term of the Agreement. All such Payments shall be made on a quarterly basis and shall be remitted within thirty (30) days after the last day of each March, June, September, and December throughout the term of this Agreement. The Grantee may prepay Franchise Fees from time to time with the consent of the City.
- B. Change in Amount. *The City may, in its sole discretion, increase the amount of the franchise fee up to the maximum amount permitted under state and federal law at any time provided that the City gives the Grantee sixty (60) days advance notice of such an increase. If the maximum amount is not specifically provided by law, the City and the Grantee shall negotiate in good faith to amend the Agreement to specify the increased amount. The Grantee shall begin paying the increased fee from the effective date of the amendment to the Agreement.*
- C. Payment on Transfer. *Except as may otherwise be provided in an agreement between the City and the Grantee authorizing the transfer of the Cable System, in the event of any transfer of the Cable System to any Person pursuant to this Agreement, the Grantee, as a condition to the City's approval of any such transfer, shall remit to the City any Franchise Fees due based on the Gross Revenue as of the date of the transfer prior to the effective date of the transfer.*

10.2 Franchise Fee Report. Grantee shall file with MOCC and the Director of Finance a certified statement of Gross Revenues with each quarterly Franchise Fee payment ("Gross Revenues Statement") that is prepared by an appropriate, duly authorized financial representative of the Grantee in accordance with the definition of "Gross Revenues" provided in Section 1 of this Agreement, and that shows the basis for the computation of the Franchise Fees payment for the quarter. The Gross Revenues Statement shall be in a form substantially as attached hereto as Appendix H.

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

10.4 Bundled Services. If Cable Services are provided to Subscribers in conjunction with non-Cable Services and sold to Subscribers as part of a single bundle of services, the revenue earned on the bundle shall be allocated in accordance with GAAP and applicable law and shall not be disproportionately allocated for the purpose of reducing franchise fees. Current GAAP provides that bundled revenues shall be allocated on a *pro rata* basis based on the full rate-card price for the services in the bundle, with the exception of equipment which may not be discounted due to tax law requirements and subject to applicable law. In no event shall Grantee use a revenue allocation methodology designed for the purpose of evading franchise fees.

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

10.6 Franchise Fee and Other Audits.

- A. General. Within three (3) years after the receipt of a payment pursuant to Section 6.5 or this Section 10 (as applicable), the City, at its expense, may commence and conduct an audit or review of the payments made pursuant to Section 6.5 and this Section 10 by (i) the Grantee; or (ii) any other Affiliated Person, to the extent that the Affiliated Person's revenues constitute Gross Revenue. Except in extraordinary circumstances, there shall be no more than one (1) audit for each fiscal year in any twelve (12) month period.
- B. Records. At the City's request, the Grantee shall provide the source records that support the franchise fee and PEG capital funding calculation, as applicable, for the time period(s) being audited and a reconciliation between the Gross Revenue on which the franchise fee is based and the financial statements for the Cable System and a reconciliation between the PEG capital and the number of Subscribers, as applicable, prepared in accordance with generally accepted accounting principles, regardless of whether the records are held by the Grantee, an Affiliate, or any other entity that collects or receives funds related to the Grantee's operation in the City. The Grantee shall

be responsible for maintaining all such records for at least five (5) years following the payments to which they apply, plus the duration of any audit in progress at the end of that five (5) year period, and providing all such records reasonably requested by the City.

- C. Underpayment. Within thirty (30) Days after notice from the City of any underpayment by the Grantee, the Grantee shall:
1. pay the amount of the underpayment to the City, plus interest calculated at the rate and in the manner specified in Section 10.9, and shall pay to the City any corresponding underpayment in support required by Section 6.7, with interest calculated at the rate specified in Section 10.9, or
 2. notify the City in writing that it does not agree with the results of the audit and the reasons therefor.
- D. Costs of Audit. If the audit or review reveals an underpayment to the City in an amount that exceeds four percent (4%) of the total amount due to the City from the Grantee over the time period and for the type of payment audited or reviewed, the Grantee shall reimburse the City for the City's costs of such audit or review.
- E. Completion. The City shall have a reasonable period of time to complete the audit or review and to accept the audit or review as accurate and final. At the end of such period, the City shall issue an audit closure notice to the Grantee. Notwithstanding the issuance of such notice, the City shall have the right to reopen any audit or review for a period of twelve (12) months after the date of such notice or at any time upon the discovery that the Grantee or an Affiliated Person has provided fraudulent information or acted in bad faith during the course of the audit or review.
- F. Reservation of Rights. To the extent the parties disagree about the results of the audit, each party reserves the right to exercise all its rights and remedies under this Agreement and Applicable Law.

10.7 Not Franchise Fees.

- A. Except for the payments expressly required under Section 10 relating to franchise fees, and Section 6.8 relating to PEG operational fees, none of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided or performed by the Grantee pursuant to this Agreement, or otherwise provided or performed in connection with the construction, operation, maintenance, repair, removal, upgrade, rebuild or enhancement of the Cable System, shall be counted as franchise fees chargeable against the compensation payments to be paid to the City by the Grantee pursuant to Section 6 and Section 10.
- B. Grantee shall not modify its treatment as to the payment of franchise fees for any such other payments, contributions, or services, as described in subsection A above, during the Term.
- C. The payments due from the Grantee to the City pursuant to Sections 10.1, 10.6, and 10.7 shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources, or other activities to be paid or supplied by the Grantee pursuant to this Agreement.

10.8 Method of Payment. All payments by the Grantee to the City pursuant to this Agreement shall be made payable to the Director of Finance and shall be delivered to MOCC.

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

Section 11 Oversight and Regulation by City

11.1 Oversight.

- A. General. The City shall have regulatory oversight over the Cable System to ensure compliance with the terms and conditions of this Agreement and Applicable Law, including, without limitation, the right to regulate and inspect the construction, operation, maintenance, repair, rebuild, enhancement, and removal of the Cable System, and all parts of the Cable System, provided, however, that the City shall provide not less than ten (10) Business Days prior notice to the Grantee for any inspection that takes place on Grantee's premises or that requires a representative of Grantee to obtain access, and provided, further, that such notice shall not be required in the event of an emergency. Regulation may be exercised through any City official, agency, department, duly established public commission, or other Person appointed or authorized by the City to support or assist the City in its regulatory responsibilities.
- B. Compliance. The Grantee shall establish and maintain managerial and operational standards, procedures, records, and controls to enable the Grantee to be in compliance with each term and condition of this Agreement at all times required by this Agreement.

11.2 City Reservation of Authority.

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

11.3 Grantee's Participation in Meetings and Hearings.

- A. Board Meetings and Hearings. *At the request of the Board or Council, the Grantee's*

personnel with relevant expertise in the designated subjects shall participate in any meeting or hearing held by the Board or Council regarding the Cable System, this Agreement, or the Grantee. The Grantee personnel shall bring to such meeting or hearing any documents reasonably requested by the Board or Council; provided that the documents relate to the terms of the Franchise and which are necessary for the enforcement of this Agreement or the operations, affairs, transactions, or property of the Grantee, including any documents reasonably known by the Grantee to be responsive to the request even if such documents are not specifically identified by such request. Any confidential or proprietary information or documents requested for such meeting or hearing pursuant to this Section 11.3 may be provided to the Board or Council in advance of the meeting or hearing. Whether provided at or in advance of the meeting or hearing, any such confidential or proprietary information or documents shall be subject to Section 11.10 of this Agreement.

B. MOCC Meetings. At the request of the Executive Director of MOCC, the Grantee's personnel with relevant expertise in the designated subjects shall participate in any meeting held by the Executive Director regarding the Cable System, this Agreement, or the Grantee. Grantee personnel shall bring to such meeting any documents reasonably requested by MOCC, including any documents reasonably known by the Grantee to be responsive to MOCC's request even if such documents are not specifically identified by such request. Any confidential or proprietary information or documents requested for such meeting pursuant to this Section 11.3 shall be provided to MOCC in advance of the meeting. Whether provided at or in advance of the meeting, any such confidential or proprietary information or documents shall be subject to Section 11.10 of this Agreement.

11.4 Performance Evaluation Sessions.

A. Not more than once per three year period, and upon thirty (30) days written notice to the Grantee, the City may require the Grantee to attend and participate in a scheduled performance review session, presided over by the City or its designee, within ninety (90) days after the close of each calendar year of the Franchise (the "Annual Public Performance Review Session"). All Annual Public Performance Review Sessions shall be open to the public. At any Annual Public Performance Review Session, Grantee shall not

be required to disclose any information or documents reasonably determined by Grantee to be proprietary or confidential; provided, however, that Grantee shall cooperate in good faith to participate in any such Annual Public Performance review Session.

- B. Elements of Review. Topics which may be discussed at any such meeting may include, but need not be limited to, Subscriber rate structures, franchise fees, liquidated damages, free or discounted services, applications of new technologies, Cable System performance, Services provided, programming offered, Subscriber and community complaints, privacy, amendments to City ordinances, rules, and regulations, modifications to this Agreement, judicial and FCC rulings, line extension policies, and Grantee or City rules and regulations.
- C. Grantee Cooperation. The Grantee shall fully cooperate with the City in all matters relating to any such review pursuant to this Section and shall, at the Grantee's expense, provide such information, data, and documents as the City may reasonably request in connection with any such evaluation subject to Section 11.10.
- D. City Right to Require Special Tests. If during such review pursuant to this Section, the City determines that reasonable evidence exists of inadequate Cable System performance, it may require the Grantee, at the Grantee's expense, to perform tests and analyses directed toward the identified or suspected inadequacies. The Grantee shall fully cooperate with the City in scheduling and performing such testing and shall prepare and present a written report setting forth and interpreting the results of such testing within thirty (30) Days after receiving notice from the City that such testing will be required. Such report shall include at least the following information:
1. Identification and qualifications of the Person performing the tests;
 2. The nature of the identified or suspected inadequacy which precipitated the special tests;
 3. What system components were tested;
 4. The equipment used and procedures employed in testing;

5. The results, and an analysis and interpretation of the results, of the tests and, in particular, data and information tending to confirm and identify the source of, or to negate the existence of, the identified or suspected inadequacy;
6. The method, if any, by which any such identified system inadequacy has been, or will be rectified;
7. Recommendations, if any, for additional action; and
8. Any other information pertinent to said tests and analyses which may be required or useful.

If the City is not satisfied with the results of any of the Grantee's tests or analyses, then the City may repeat the test or analysis with personnel and consultants selected by the City at the City's sole expense. If the result of any such repeated test or analysis demonstrates that the result of the Grantee's test or analysis was in error, then the Grantee shall reimburse the City for the City's costs and expenses incurred in connection with the test or analysis, including, without limitation, the costs incurred by the City for hiring a professional engineer or other consultant to perform the test or analysis. If the results of any such repeated test or analysis demonstrates that the result of the Grantee's test or analysis was accurate and that there was no performance problem with the Cable System, the City shall reimburse Grantee for the costs of testing.

11.5 General Provisions Regarding Reports and Records.

- A. Additional Information. Within a reasonable period of time after a request of the Board, the Council, the City Solicitor, or MOCC, the Grantee shall, subject to the provisions of Section 11.10 of this Agreement with respect to the processing of confidential and proprietary information, submit to the requesting party any information reasonably required to demonstrate compliance with the terms and conditions of this Agreement or applicable law.
- B. Format. The Grantee shall transmit to MOCC, by means of such method and in such format as MOCC may reasonably specify after consultation with the Grantee and taking

into account how the information is maintained in Grantee's ordinary course of business, all information requested by MOCC consistent with this Agreement, including, without limitation, the information required to be submitted by Applicable Law. In the event that MOCC's staff and the Grantee's personnel disagree regarding such specification of the format of a report, the issue shall be referred to the Executive Director of Operations and the Grantee's General Manager (or a person in an equivalent or higher position) for resolution. The Grantee shall inform MOCC, at the beginning of any report submitted, of all changes in calculations, methodology, time periods used, and any other changes that may adversely affect MOCC's ability to compare previous reports to the report in question.

- C. Deadline for Submission. Unless otherwise specified, any report or other provision of information required under this Agreement shall be due to MOCC within thirty (30) Days after the event that triggers the reporting requirement.
- D. Designated Officers and Employees. Throughout the Term of this Agreement, the General Manager of the Grantee or a person in an equivalent position, or such other person whom the Grantee designates in writing to MOCC, shall be responsible for overseeing the Grantee's reporting obligations pursuant to this Agreement and for responding to the City's questions regarding the Grantee's compliance with the terms and conditions of this Agreement. The Grantee must notify MOCC in writing of any change in the designation of such person within five (5) Days after the change.

11.6 Grantee Annual Report. No later than March 31 of each year during the Term, the Grantee shall submit a report to MOCC for the prior year. MOCC, after consultation with the Grantee, may reasonably specify the format of and details covered by any such annual report taking into account how the information is maintained in Grantee's ordinary course of business, provided that the failure of MOCC so to specify shall not relieve the Grantee of its obligation to submit such report annually to MOCC. In the event that MOCC's staff and the Grantee's personnel disagree regarding such specification of the format of or details covered by a report, the issue shall be referred to the Executive Director and the Grantee's General Manager (or a person in an equivalent or higher position) for resolution. The report shall specifically address, at a minimum, the following issues, and shall state whether there has been any material change in the information or plans regarding such issues from the information or

plans the Grantee previously has provided to the City:

- A. compliance with the requirements regarding Cable System characteristics and technical performance and testing requirements;
- B. compliance with any plans or specifications submitted by the Grantee in connection with the construction terms, schedule, and sequence for performance or any other construction, upgrades, rebuilds, and enhancements of the Cable System;
- C. a description of the interconnections between the Cable System and any other network or system provided by the City or a local, state, or federal government entity or any other Cable System or Open Video System; a statement of the reason for each such interconnection; and the Grantee's response to any request by the City to perform such an interconnection;
- D. compliance with all requirements related to PEG Channels as provided in Section 6 of this Agreement;
- E. compliance with all requirements related to Cable Services to City and other facilities, as provided in Section 6 of this Agreement, including a list of the sites provided with such Services;
- F. compliance with applicable law regarding access to Cable Services by disabled Subscribers, as provided in Section 8.4;
- G. compliance with the Grantee's employment and purchasing obligations, as provided in Section 7 of this Agreement;
- H. copies or, if no copies exist, descriptions of any notices or other information provided to Subscribers about the Grantee's privacy policies and other protections of Subscriber privacy;
- I. (i) a schedule of the Grantee's current fees, charges, deposits, terms, and conditions for the provision of Services and equipment (including, but not limited to, equipment for the

hearing impaired) to Residential Subscribers not billed on a bulk basis in the form set out in Appendix C to this Agreement; (ii) a schedule of Grantee's contract or application forms for Subscriber Service; and (iii) copies of the Grantee's policies regarding Subscriber complaints, delinquent accounts, disconnection and reconnection procedures, and any other policies affecting Subscribers;

- J. an organizational chart showing (i) all corporations or partnerships with an ownership interest in the Grantee; (ii) the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and (iii) the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified and so on until the ultimate corporate and partnership interests are identified; accompanied by an annual report and SEC 10(k) filing for each entity identified that generates such documents; provided, however, that for any non-Affiliated Person for which Grantee does not possess, and cannot reasonably obtain, the required information, Grantee shall so indicate on the chart;
- K. a copy of the annual financial report with respect to the fiscal year most recently ended for each of the Grantee's parent companies that produce such reports, including the certification required by Section 302(a) of the Sarbanes-Oxley Act of 2002, P.L. 107-204, 116 Stat. 745;
- L. an annual facilities report, setting forth the physical miles of plant constructed, rebuilt, or in operation during the previous calendar year and any revisions to the Cable System "as built" maps on file with the City; and
- M. the number of homes passed and the number of customers to Cable Services.

11.7 Significant Construction. If the Grantee performs Significant Construction of the Cable System during the Term of the Franchise, the Grantee shall provide MOCC with written progress reports as to such Significant Construction, in the manner and frequency reasonably required by MOCC depending on the nature and scope of the Significant Construction.

11.8 Technical Performance Documents.

- A. Within ten (10) Days after receiving the results of any tests or other measurements pertaining to the Cable System's technical performance, including, without limitation: (i) reports on proof-of- performance tests conducted pursuant to 47 C.F.R. § 76.601, or any successor thereto; (ii) summary flyover reports; and (iii) records pertaining to any test conducted pursuant to Appendix A to this Agreement; the document(s) reflecting such results are to be placed in a file for public inspection if so required pursuant to 47 C.F.R. § 76.1700, or any successor thereto, and Section 11.12 of this Agreement, and the Grantee shall submit a copy of such document to MOCC upon written request.
- B. Documents and records pertaining to daily signal leakage logs created pursuant to 47 C.F.R. §§ 76.614, 76.1706, or any successors thereto, shall be placed in a file for public inspection if so required pursuant to 47 C.F.R. § 76.1700, or any successor thereto, and Section 11.13 of this Agreement, within ten (10) Days after receiving such documents and records.
- C. Documents and records pertaining to tests of the emergency alert system pursuant to 47 C.F.R. §§ 11.54, 11.61, 76.1700, or 76.1711, or any successors thereto, shall be provided to the City within ten (10) Days after a request by the City therefor.

11.9 Additional Filings.

- A. Legislative. Within ten (10) days after the Grantee has received from or submitted to any city, municipal, state, county, or federal legislative body, agency, or official any communication, public report, petition, or other filing which in Grantee's reasonable judgment could have a material adverse effect on the Grantee, the Cable System, or its operation in the City, the Grantee shall submit to the City a copy of such report, petition, or other communication. This Section 11.9 shall not apply to tax returns, automobile registrations, and other similar routine filings. This subsection shall not apply to matters of general advocacy by the company that are not specific to the City or the Cable System in the Franchise Area.
- B. Regulatory and Administrative Agencies. The Grantee shall file with the City, in a form acceptable to the City, all reports and materials that are submitted to or received from the FCC, the Securities and Exchange Commission, or any other federal or state

regulatory or administrative commission or agency with jurisdiction over any matter affecting operation of the Cable System, if such reports and materials could have a material adverse effect on the Grantee, the Cable System, or its operation in the City. Such reports may include, without limitation, any proof of performance tests and results, Equal Employment Opportunity reports, and all petitions, applications, and communications of all types regarding the Cable System or a group of Cable Systems of which the Grantee's Cable System is a part, including any such material submitted by or received by the Grantee, an Affiliated Person, or any other Person on the behalf of the Grantee. Materials filed or received by the Grantee shall be filed with the City within thirty (30) Days after the date they are received by the Grantee, except that, if Applicable Law permits a response to such materials by the City and sets a deadline of sixty (60) or fewer Days for the City's response, they shall be filed with the City within five (5) Days after the date they are received by the Grantee. This subsection shall not apply to matters of general advocacy or defense by the company that are not specific to the City or the Cable System in the Franchise Area.

- C. Court Documents. Whenever a proceeding could have a material adverse effect on the Grantee, the Cable System, or its operation in the City, the Grantee shall provide notice to the City of such proceeding, and upon request by the City, shall submit copies of the following to the City within the time designated: (i) all pleadings, applications, notifications, and documents of any kind relating to Grantee's operation of the Cable System that are submitted by the Grantee to any federal, state, or local court, arbitrator, or mediator, along with copies of all decisions, correspondence, and documents evidencing actions by any such court, arbitrator, or mediator, within thirty (30) Days after submitting such documents to a court, arbitrator, or mediator; and (ii) any complaint that names Grantee as a defendant in a judicial, arbitration, or mediation proceeding, in law or equity, pertaining to the Cable System or this Agreement, within thirty (30) Days after receiving the complaint.
- D. Bankruptcy Documents. Grantee shall provide a copy and explanation of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy, by the Grantee or by any Person that owns or Controls the Grantee directly or indirectly, to the City within thirty (30) Days after submitting such a request or receiving such a judgment.

11.10 Books and Records.

A. Open Books and Records. Upon reasonable written notice to the Grantee, of no less than twenty (20) days, the City shall have the right to inspect and require copies of, for purposes relating to enforcement of this Agreement, the books, records, maps, plans and other like materials of the Grantee applicable to the System or Grantee's provision of Cable Service in the City at any time during Normal Business Hours; provided that where volume and convenience necessitate, the Grantee may require inspection to take place at Grantee's office. Such notice shall identify with reasonable specificity the books, records and materials the City requires to inspect. Except as otherwise expressly provided in this Agreement, the Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than five (5) years, except that books and records related to Franchise Fees shall be maintained for the longer of five (5) years or until the applicable statute of limitations has run.

B. Proprietary or Confidential Information.

1. General. All books, records and materials Grantee provides to the City or allows the City access pursuant to its obligations under this Agreement may be subject to disclosure under applicable public records laws, including the Maryland Public Information Act, Md. Code, General Provisions Article, Title 4 ("PIA"). Any books, records and materials which the Grantee believes contain proprietary and confidential information of the Grantee shall be clearly marked "CONFIDENTIAL" by the Grantee and, subject to applicable law, including the PIA, the City shall maintain the confidentiality of material so marked. Upon the written request of the City, the Grantee shall provide the City with a brief statement setting forth the Grantee's reasons for designating such information confidential. To the extent the City determines that applicable law requires disclosure of any books, records materials or other information provided by Grantee pursuant to this Agreement, Grantee shall have the right to challenge such disclosure to the fullest extent possible under applicable law. Notwithstanding anything herein to the contrary, the Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. § 551.

2. Public Requests for Grantee Information. The City agrees to timely advise the Grantee of any request by any Person, other than a City official or employee in the scope of their duties, seeking to review or obtain any books, records and materials the Grantee has marked "CONFIDENTIAL." In the event that the City determines that the documents are disclosable under the PIA, the City shall timely advise the Grantee, and allow the Grantee to challenge the disclosure of such documents at the Grantee's own expense. If the Grantee's challenge of the disclosure is unsuccessful, the Grantee, in addition to its own expenses, shall indemnify, defend, and hold harmless the City, and its officials and employees, of and from all costs and damages related to the challenge, including reasonable attorneys' fees.
3. Actions to Disclose. The Grantee and the City each agree to provide, upon written request, the other with copies of all pleadings, court filings, and non-privileged correspondence relating to the defense of any action brought to disclose documents under the PIA.

11.11 {reserved.}

11.12 Files for Public Inspection. Throughout the term of this Agreement, the Grantee shall maintain at its administrative offices closest to the City, as specified initially pursuant to Section 2.2C(3) of this Agreement, in a file available for public inspection during normal business hours, all documents required by 47 C.F.R.

§ 76.1700, or any successor thereto, and FCC rules and regulations.

11.13 Transfer of Interest.

A. Prohibited Transfers. Except as provided in Section 11.22 of this Agreement, the following are prohibited without the prior written approval of the Board:

1. the encumbrance, assignment, sale, transfer, pledge, lease, or sublease, in whole or in part, to any Person, of the Franchise or any rights or obligations of the Grantee in the Cable System or pursuant to this Agreement;

2. the encumbrance, assignment, sale, transfer, pledge, lease, or sublease of all or substantially all of the capacity of the Cable System to any Person,
3. the passing or vesting of title to the Cable System, either legal or equitable, or of any right or interest in the Cable System, to or in any Person, either by act of the Grantee, or by act of any Person holding Control, directly or indirectly, of any interest in the Grantee, the Cable System, or the Franchise, by operation of law or otherwise.

B. Exclusions. The prohibitions contained in this Section 11.13 shall not:

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

11.14 Transfer of Control or Stock.

A. Board Approval Required. The Grantee represents and warrants that, notwithstanding any other provision of this Agreement, except as provided in Section 11.22 of this Agreement, no change in Control of the Grantee, the Cable System, the Cable System assets, or the Franchise shall occur after the Effective Date: (i) by act of the Grantee; (ii) by act of any Person holding Control, directly or indirectly, of the Grantee, the Cable System, or the Franchise; or (iii) by operation of law or otherwise, without the prior written approval of the Board. The requirements of this Section 11.14 to obtain prior written approval of the Board shall also apply to any other Person seeking to obtain Control, directly or indirectly, of the Grantee, the Cable System, the assets of the Cable System, or the Franchise.

B. Grantee's Continued Responsibility. After the consummation of any transfer permitted or approved under this Section 11.14, (i) the Grantee shall remain responsible for any past

breaches of this Agreement or Applicable Law for purposes of the remedies under this Agreement and for purposes of the City's right to consider past breaches and other past performance problems in future renewal or other proceedings; and (ii) this Agreement shall remain in full force and effect.

C. Additional Requirements. The requirements of Sections 11.15 through 11.21 of this Agreement shall apply whenever any change is proposed with respect to:

1. five percent (5%) or more for voting interests or fifty percent (50%) or more for non-voting interests of the ownership of the Grantee, the Cable System, the Cable System assets, the Franchise, or any Person holding Control, directly or indirectly, of the Grantee, the Cable System, the Cable System assets, or the Franchise; or
2. Control of the Grantee, the Cable System, the Cable System assets, the Franchise, or any Person holding Control, directly or indirectly, of the Grantee, the Cable System, the Cable System assets, or the Franchise.

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

D. Exceptions. Notwithstanding the foregoing, Board approval shall not be required with respect to solely intracorporate reorganizations between or among entities wholly owned and wholly controlled by the Grantee's ultimate parent, which as of the Effective Date is Comcast Corporation, to the extent such transaction does not involve a change in the management, day-to-day operations, or financial condition of the Grantee; and provided that the Grantee shall give the City thirty (30) Days advance written notice of such intracorporate reorganization. Nor shall consent be required to corporate parent transactions of less than 50% ownership or involving public stock transactions, particularly to the extent such transactions do not relate to the operation of the Cable Service business (for example, transactions involving NBC Universal or other non-cable

entities).

11.15 Petition.

- A. Petition Required. The Grantee shall notify the City of any proposed action requiring Board approval pursuant to Sections 11.14 or 11.15 of this Agreement at least 120 Days before the contemplated effective date of any transfer, by submitting to MOCC, with a copy to the City Solicitor, a petition requesting the approval of the Board. The Grantee shall also promptly notify MOCC, with a copy to the City Solicitor, of any proposed action pursuant to this Agreement.
- B. Content. The petition shall include a completed FCC Form 394, or any successor to that form, and all other information required to be filed with the FCC and the City pursuant to the FCC's implementing regulations issued pursuant to Section 617 of the Cable Act, 47 U.S.C. § 537, or any successor thereto. The petition shall provide complete information on the proposed transaction, including details on the legal, financial, and technical qualifications of the transferee and the potential impact of the transfer on Subscriber rates and Service.

11.16 Transfer Review Period.

- A. Length and Commencement of Period. Unless the City and the Grantee agree to an extension of time pursuant to Section 11.17, the City shall have the transfer review period provided under Section 617 of the Cable Act, 47 U.S.C. § 537, or any successor thereto, to act on a transfer request. The transfer review period shall not commence until all of the information required by Section 11.15 of this Agreement is submitted to the City; provided, however, that requests by the City for information other than that required by Section 11.15 shall not delay the commencement of the transfer review period. All such information shall not be deemed to have been submitted until notice is provided to the Grantee as set forth in Section 11.17, at which time the commencement of the transfer review period shall relate back to the date on which the last element of information required by Section 11.15 was submitted.
- B. Additional Information. In addition to the information required by Section 11.15, the

City shall have the right to request any additional information and documents reasonably necessary to determine the transferee's qualifications to assume the Grantee's obligations under this Agreement and/or to determine how the transferee intends to address any outstanding compliance issues under this Agreement. The Grantee shall respond to requests for such information and documents within the time period specified by the City. Assuming that the Grantee has submitted all of the information required by Section 11.15, a request for additional information and documents pursuant to this Section shall not toll the transfer review period, provided that, if the Grantee does not respond within ten (10) Days to a request for additional information and documents, the transfer review period shall be tolled from the end of such ten (10) Day period until the Grantee does respond.

11.17 Notice to Grantee that Information is Complete; Extensions. The City shall provide notice to the Grantee when all of the information required by FCC regulations, FCC Form 394, or any successor form, Section 11.15 of this Agreement, and other Applicable Law has been submitted and therefore the petition is complete. As provided in Section 11.16 of this Agreement, the Board shall act on the Grantee's petition within the transfer review period. The Grantee and the City may, at their discretion, agree to increase the time period for review of the transfer request.

11.18 City Decision.

A. On Petition. Upon review of the petition, the City shall submit the Grantee's petition requesting approval to the Board, along with a recommendation for action on the petition.

B. No Petition. In the event that the City determines that Grantee is contemplating or has made or allowed a transfer requiring approval of the City under this Agreement, and a petition requesting approval therefor has not been submitted by the Grantee, the City shall notify the Grantee to submit a petition and such additional information as is required.

11.19 Scope of Inquiry. For the purpose of determining whether Board approval shall be granted, the City may inquire into, *inter alia*: (i) the qualifications of the transferee; (ii) all

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

11.20 Conditions. As a condition to the granting of any approval required by Sections 11.13 or 11.14 of this Agreement, in addition to the conditions imposed elsewhere in this Agreement, the transferee shall make the same representations and warranties to the City that the Grantee has made in this Agreement. The City may require that the transferee execute an agreement providing that (i) the transferee assumes and agrees to be bound by all applicable provisions of this Agreement and such other conditions which the City deems necessary or appropriate in the circumstances to ensure performance of the existing terms of the Agreement; and (ii) the transferee agrees that approval of the pending transfer petition does not waive the City's right to consider past breaches and other past performance problems in future renewal or other proceedings. In connection with review of a transfer of interest under Section 11.13 of this Agreement, the City may require that the Grantee and/or the transferee address past compliance issues by corrective or other appropriate action. If a transfer involves a change in Control of the Grantee described under Section 11.14 of this Agreement, the City may require the Person to whom Control is being transferred to sign an agreement reaffirming the obligations of the Grantee under this Agreement.

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

11.22 Permitted Encumbrances.

A. Nothing in this Section 11.22 shall be deemed to prohibit any assignment, pledge, lease, sublease, mortgage, or other transfer of all or any part of the Cable System, or any right or interest in the Cable System, for purposes of financing the construction, rebuild, enhancement, upgrade, maintenance, repair, or operation of the Cable System, provided that:

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

B. If the terms of any financing obligate any Person other than the Grantee to perform the obligations of the Grantee under this Agreement, the terms of such financing shall constitute a transfer subject to Sections 11.13 and 11.14 of this Agreement.

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

11.23 Effect of Unauthorized Sale or Transfer. The completion of any action described in Sections 11.13 and 11.14 of this Agreement without prior written Board approval shall be ineffective and deemed to be a material breach of this Agreement. The granting of approval for a transfer in one instance shall not obligate the City to approve any subsequent transfer or render approval of any subsequent transfer unnecessary.

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

Section 12

Insurance and Indemnity

12.1 Liability.

- A. Grantee. The Grantee shall, at its own cost and expense, replace, repair, and restore any damaged property to its prior condition and shall pay compensation in the event of any personal injury, death or property damage occasioned by any act or failure to act of the Grantee, any Affiliated Person, or any officer, employee, agent or subcontractor of either the Grantee or any Affiliated Person in connection with the construction, operation, maintenance, repair, upgrade, enhancement or removal of the Cable System. Nothing in this Subsection is intended to permit third parties to file claims to enforce this Subsection; rather, the parties intend that only the City may take action to enforce this Subsection.
- B. No Liability of the City for Liability of the Grantee. The City, its officers, employees, agents, attorneys, consultants and independent contractors shall not be liable for any Liability of the Grantee, any Affiliated Person or any other Person, arising out of or in connection with the construction, operation, maintenance, repair, upgrade, rebuild, enhancement or removal of, or other action or event with respect to, the Cable System, any Service-Related Activity or the distribution of any Service over the Cable System. Grantee undertakes and assumes, for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any City-owned or controlled property, the streets and Public Ways.
- C. Moving Wires in Emergencies. The City may, at any time, in case of fire, disaster or other emergency, in its sole discretion, cut or move any of the wires, cables, fibers, amplifiers, appliances or other parts of the Cable System, in which event the City shall not incur any Liability to the Grantee, any Affiliated Person or any other Person. When possible, the Grantee shall be consulted prior to any such cutting or movement of its wires, cable, fibers, amplifiers, appliances or other parts of the Cable System. All costs to repair or replace such wires, cables, amplifiers, appliances or other parts of the Cable System shall be borne by the Grantee. Should the City cut or move any of the Grantee's facilities as described in this Section, and such act results in a service interruption or any other result that might otherwise constitute a violation of this Agreement, such service interruption or result shall not be deemed a violation of this Agreement by the Grantee.
- D. No Liability for Public Works and Emergencies. Neither the City nor its officials, boards, commissions, officers, employees, agents, attorneys, consultants or independent contractors shall have any Liability to the Grantee or any Affiliated Person for any Liability as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any part of the Cable System, by or on behalf of the Grantee or the City, in connection with any emergency or in connection with any change in the grade or line of any Public Way; or the elimination, discontinuation and closing of any Public Way, as provided in this Agreement. The parties understand that the City will be performing such work only in an emergency or if the Grantee fails to do so as required by this Agreement.
- E. No Liability for Damages. Consistent with Section 635a of the Cable Act (47 U.S.C. § 555a), the City, its officers, employees, agents, attorneys, consultants, and independent contractors shall have no liability to:
1. the Grantee;
 2. any Affiliated Person; or
 3. any other Person, to the extent there is privity between such other Person and either the Grantee or an Affiliated Person;

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

12.2 Indemnification.

A. General. The Grantee and each Affiliated Person shall:

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

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

1. final verdicts; and
2. settlements entered into by the City with the Grantee's prior knowledge and consent.

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

1. any willful misconduct or gross negligence of any City officer, employee, agent, attorney, consultant or independent contractor proximately causing any claim or damages;
2. any Liability arising out of the content of Services over the Governmental Channels or the portion of the Institutional Network available to and used by the City to the extent that such claim does not arise out of an act or failure to act by the Grantee; or
3. any Liability arising out of the content of Services over Public Channels and Educational Channels to the extent that such claim does not arise out of an act or failure to act by the Grantee.

12.3 Insurance.

A. Coverages and Limits. During the Term of the Agreement and any period of removal of the Cable System following the end of the Term, Grantee shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense the following types and limits of insurance:

1. Workers' compensation insurance meeting Maryland statutory requirements and employer's liability insurance with minimum limits of One Million Dollars (\$1,000,000) for each accident.
 2. Commercial general liability insurance with minimum limits of Ten Million Dollars (\$10,000,000) as the combined single limit for each occurrence of bodily injury, personal injury, and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability, and property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.
 3. Media Errors & Omissions liability including coverage for loss or damage arising out of publications or utterances in the course of or related to advertising, broadcasting, telecasting or other communication activities conducted by or on behalf of Grantee with minimum limits of Five Million Dollars (\$5,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage.
 4. Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Grantee, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of the Maryland no-fault insurance law, including residual liability insurance with minimum limits of Three Million Dollars (\$3,000,000) as the combined single limit for each occurrence for bodily injury and property damage.
- B. Types of Policies. The coverage amounts set forth in this Section 12.3 may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
- C. Period of Coverage. The liability insurance policy or policies required by this Section 12.3 shall:
1. Be maintained by the Grantee throughout the term of this Agreement and such other period of time during which the Grantee operates or is engaged in the removal of the Cable System, whichever period is longer, and for one hundred twenty (120) Days thereafter; and
 2. Provide coverage for acts and omissions occurring throughout the term of this Agreement and such other period of time during which the Grantee operates or is engaged in the removal of the Cable System, irrespective of when a claim arising out of such acts and omissions is made.
- D. Insurance Companies. *All insurance shall be effected under valid and enforceable policies, issued by insurers licensed to do business by the State of Maryland or surplus line carriers on the Maryland Insurance Commissioner's approved list of companies qualified to do business in Maryland. All insurance carriers and surplus line carriers shall be rated A- or better by A.M. Best Company.*
- E. Additional Insureds. All required insurance policies, except for workers' compensation and broadcaster liability policies, shall name the "City of Baltimore, a municipal corporation of the State of Maryland and all associated, affiliated, allied and subsidiary entities of the City, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear" as additional insureds (referred to as the "Additional Insureds") providing coverage for the negligence or other conduct of the Additional Insureds to the same extent as provided to Grantee. Each policy which is to be endorsed to add Additional Insureds under this Agreement shall contain cross-liability or severability of interests wording, with respect to each additional insured.

- F. Evidence of Insurance. On or before the Effective Date, certificates of insurance for each insurance policy required to be obtained by Grantee in compliance with this Agreement, along with written evidence of payment of required premiums, shall be filed and maintained with City annually and at any time of policy change or cancellation during the term of this Agreement. City shall have the right to request copies of any policies required under this Section 12.3, and Grantee shall provide same within ten (10) Days after a written request is made. The acceptance of a form of policy by the City Solicitor shall not change or reduce Grantee's obligation to provide the required insurance pursuant to this Section 12.
- G. Endorsement. Not later than thirty (30) Days prior to a cancellation or failure to renew, the Grantee shall obtain one (1) or more replacement insurance policies and shall furnish copies of the certificate of insurance to the City Solicitor and to MOCC.
- H. Notice of Expiration. Prior to the expiration of any insurance policy required of the Grantee by this Section, the Grantee shall provide to MOCC and to the City Solicitor evidence of the renewal or replacement of the policy. Further, the Grantee shall notify MOCC and the City Solicitor of any modification or discontinuation of coverage under any such policy, together with a plan to correct such modification or discontinuation, within two (2) Business Days after receipt of notice of such modification or discontinuance.
- I. Contractors. Grantee shall require that each and every one of its contractors and their subcontractors carry, in full force and effect, workers' compensation, employer's liability, comprehensive general liability and automobile liability insurance coverages of the type which Grantee is required to obtain under the terms of this Agreement regarding Additional Insureds, with appropriate limits of insurance. In the alternative, Grantee, at its expense, may provide such coverages for any or all its contractors or subcontractors, but if Grantee does so it shall provide evidence of same in writing to City. The relationship of Grantee's insurance to any insurance provided by contractors or subcontractors shall be determined by the respective contracts or subcontracts. However, failure by Grantee or Grantee's contractors or subcontractors to carry the required insurance does not relieve Grantee from any liability of the contractors or subcontractors that would otherwise be covered by insurance.
- J. Insurance Primary; Not Limiting. The legal Liability of the Grantee or any Affiliated Person to the City or any Person for any of the matters which are the subject of the liability insurance policies required by this Section 12.3, including, without limitation, the Grantee's indemnification obligation set forth in Section 12.2 of this Agreement, shall not be limited by such insurance policies nor by the recovery of any amounts under such policies, except to the extent necessary to avoid duplicative recovery from or payment by the Grantee.
- K. Review of Limits.
1. Review. Commencing on the fifth anniversary of the Effective Date and once every five (5) years thereafter during the Term of this Agreement, City may review the insurance coverages to be carried by Grantee. If City determines that additional coverages or higher limits of coverage are necessary to protect the interests of City, the Additional Insureds, or the public, the City shall notify the Grantee of its determination and City and Grantee shall negotiate for appropriate modifications in coverages or limits. Any such decisions shall be supported by a claim history evidencing the inadequacy of the current coverage limits. The Grantee shall obtain and maintain such modified insurance at its sole cost and expense.
 2. Changes in Cable System. *At any time that Grantee proposes to engage in any construction, expansion, or upgrade of the Cable System other than routine repairs, replacement, or maintenance, the City may review the insurance coverages carried by Grantee. If City determines that that additional coverages or*

higher limits of coverage are required to protect the interests of City, the Additional Insureds, or the public, the City shall notify the Grantee of its determination and City and Grantee shall negotiate for appropriate modifications in coverages or limits, which modifications shall be mutually agreed upon by the City and Grantee in writing prior to the commencement of such construction, expansion, or upgrade. The Grantee shall obtain and maintain such additional coverages or limits at its sole cost and expense for the duration of the construction, expansion, or upgrade.

Section 13
Enforcement, Remedies, and Termination

13.1 Rights and Remedies Not Exclusive.

- A. **General.** The Grantee agrees that the City shall have the specific rights and remedies set forth in this Agreement, including this Section 13. These rights and remedies are in addition to and cumulative with any and all other rights or remedies, whether existing, express or implied, now or hereafter available to the City at law or in equity in order to enforce the provisions of this Agreement; provided, however, that nothing in this Agreement shall be interpreted to permit the City to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such rights and remedies shall not be exclusive, but each and every right and remedy may be exercised from time to time and as often and in such order as may be deemed expedient by the City.
- B. **No Waiver or Release.** The exercise of one (1) or more rights or remedies shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right or remedy nor shall any such delay or omission in the exercise of any right or remedy be construed to be a waiver of such right or remedy or acquiescence to any default. The exercise of any such right or remedy by the City shall not release the Grantee from its obligations or from any Liability under this Agreement.

13.2 Performance Bond.

- A. **Obligation to Maintain.** Grantee shall obtain and maintain at its cost and expense, and file with the City, a corporate surety bond issued by a company authorized to do business in Maryland, which bond shall be on the bond form attached in Appendix D, shall be subject to the approval of the City's Law Department, shall be in the amounts as set forth in this Agreement (the "Performance Bond"), and shall be conditioned upon compliance with this Agreement. If the City determines that the Grantee has failed to comply with any provision of this Agreement, then there shall be recoverable jointly and severally from the principals and surety any and all damages and costs suffered or incurred by the City as a result thereof, including, but not limited to, attorneys' fees and costs of any action or proceeding, and including the full amount of any compensation, indemnification, cost of removal or abandonment of any property or other costs which may be in default, up to the full principal amount of the Performance Bond. The Grantee shall maintain the Performance Bond during the entire Term of this Agreement and thereafter until the Grantee shall have satisfied in full any and all obligations to the City which arise out of or pertain to the Franchise and/or this Agreement. Upon the expiration or termination of the Franchise or Agreement, the Grantee shall notify the City when the Grantee believes that it has satisfied in full any and all such obligations and request the release of its obligation to maintain the Performance Bond. The City, within six (6) months after receipt of such notice, shall advise the Grantee in writing, whether or not such obligations have been satisfied, and if such obligations have not been satisfied, the general reasons therefor. If the Grantee has the right to terminate the Performance Bond under any provision of this Agreement, the City shall cooperate with the Grantee to permit such termination. In the event that the Performance Bond provided

pursuant to this Agreement is not renewed or is cancelled, Grantee shall provide a new Performance Bond pursuant to this Section 13.2 within thirty (30) days of such cancellation or failure to renew, and Grantee shall not be excused from financial responsibility during such interim period between bonds. Neither cancellation, nor refusal by the surety to extend the Performance Bond, nor inability of the Grantee to file a replacement bond or replacement security for its obligations, shall constitute a loss to the City recoverable under the bond that is not renewed or cancelled; provided, however, that the replacement bond shall be effective as of the date of termination of the cancelled or non-renewed bond and any loss or damage incurred by the City after such effective date of the replacement bond shall be recoverable under the replacement bond. The performance bond shall contain the following endorsement: "At least sixty (60) days prior written notice shall be given to the City by the surety of any intention not to renew such bond, or to cancel, replace or alter same, such notice to be given by registered mail, return receipt requested, to City of Baltimore Law Department."

B. Amount. On or before the Effective Date, the Grantee shall provide the City with a Performance Bond in the amount of One Million Dollars (\$1,000,000.00).

C. Purposes. The Performance Bond shall serve as security for:

1. the faithful performance of the Grantee's obligations pursuant to this Agreement and any costs, losses, or damages incurred by the City as a consequence of the Grantee's performance or nonperformance of the terms and conditions of this Agreement;
2. any costs, claims, expenditures, damages, or losses incurred by the City occasioned by the Grantee's failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Agreement or Applicable Law;
3. all payments due the City from the Grantee pursuant to this Agreement;
4. the loss of any payments required to be made by the Grantee to the City which would have been received by the City but for the Grantee's failure to perform its obligations pursuant to this Agreement during the period of time between the Grantee's unexcused or uncured failure to perform and the date on which the City takes over, or any other Person authorized by the City takes over, the construction, operation, or maintenance of the System;
5. any costs incurred by the City in connection with the award of any franchise for, or other authorization to, construct, operate, maintain, repair, upgrade, rebuild, or enhance a Cable Communications System in the Franchise Area necessitated by such a failure to perform; and
6. any costs, losses, expenditures, claims or damages incurred by the City as a result of termination for cause due to a breach pursuant to Section 13.4; and
7. the payment by the Grantee to the City of any Liability payable to the City and relating to the System that is due and unpaid.

The withdrawal of amounts from the Performance Bond shall constitute a credit against the amount of the applicable Liability of the Grantee to the City but only to the extent of said withdrawal.

D. Withdrawals from Performance Bond.

1. After Grantee's receipt of notice from City that the Grantee has: (a) failed to faithfully perform its

obligations under this Agreement; (b) failed to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Agreement or Applicable Law; (c) failed to make any payment required to be made to the City pursuant to this Agreement within the time fixed in this Agreement; (d) breached the Agreement and the Agreement is terminated for cause; (e) failed to pay to the City any Liability payable to the City and relating to the System that is due and unpaid; (f) failed to pay to the City any costs, losses, damages, claims or expenditures which the City has been compelled to pay or has incurred by reason of any act or default of the Grantee; or (g) failed to comply with any provision of this Agreement which City determines can be remedied by an expenditure of an amount in the Performance Bond, which notice shall contain all such details as are necessary to describe such failure, the Grantee shall take one (1) of the steps specified in Section 13.2D(2).

2. Except as provided in Section 13.3A for liquidated damages, not later than fifteen (15) Days after receipt of notice, the Grantee shall:

- (a) cure such alleged failure and provide to City a written explanation and evidence of such cure; or
 - (b) promptly begin to cure such breach, default or other noncompliance and provide to City a written explanation of why such cure cannot be completed within fifteen (15) Days, as applicable, as well as a schedule for completing such cure, both of which are subject to City approval.

3. If the Grantee has failed to take any of the steps specified in Section 13.2D(2) within fifteen (15) Days to the satisfaction of City, then City shall invite Grantee to a meeting with appropriate City personnel (including personnel from the City Solicitor's Office) to jointly explore the issue and work in good faith toward a mutually satisfactory resolution ("Conference"). If such Conference does not resolve the issue within a reasonable time, or if Grantee does not participate (given reasonable opportunity to do so), the City may withdraw the amount specified in the notice to Grantee from the Performance Bond.

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

E. Replenishment. Within fifteen (15) Days after notice from City that any amount has been withdrawn from the Performance Bond, as provided in Section 13.2D of this Agreement, the Grantee shall restore the affected components of the Performance Bond to the amount specified in Section 13.2B of this Agreement and provide to City evidence satisfactory to City that the Grantee has done so unless Grantee has petitioned the Court for a stay of the obligation to provide replacement security. If a court determines that said withdrawal by the City was improper, the City shall restore the improperly withdrawn amount to the affected components of the Security Fund, together with interest from the date of the withdrawal at the rate specified in Section 10 of this Agreement, during the period from such withdrawal until such restoration.

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

G. Termination of Performance Bond. The Performance Bond shall remain in force for a minimum of six months after termination or expiration of this Agreement.

13.3 Liquidated Damages.

A. Notice and Right to Cure. The Grantee shall be liable and pay to the City for the amounts specified in this Section 13.3 for any of the following failures by the Grantee to comply with the provisions of this Agreement. The City shall provide written notice of any alleged violation and shall afford Grantee no less than thirty (30) days to cure the violation or provide a written explanation as to why there is no violation. In the event Grantee fails to cure

the alleged violation, and upon a finding of non-compliance by the City following a Conference (to include participation of the City Solicitor's Office), the City shall notify Grantee of the failure to comply and the assessment of liquidated damages which shall accrue from the date of the initial written notice of the violation and, at the option of City, if not paid to the City by the Grantee within ten (10) Days after notice of assessment is given, such amounts may be withdrawn from the Performance Bond and paid to the City (in addition to the withdrawals authorized by any other Section of this Agreement) or shall be paid in such other manner as may be determined by the City.

B. Amounts. For the following failures to comply with this Agreement, the liquidated damages shall be in the following amounts, accruing on the date of written notice of the violation:

1. Failure to complete Significant Construction in accordance with stated technical requirements or any current sequence or schedule approved by the City: Two Thousand Five Hundred Dollars (\$2,500) per Day;
2. Failure to provide all requested Services to any Person to the extent required by Section 4 of this Agreement: Ten Dollars (\$10) per Day, per affected Person, for each Day that such failure continues;
3. Failure to maintain and provide data, documents, records, reports, or information to the City pursuant to the terms of this Agreement, or, as reasonably requested by City, to cooperate with the City during a performance review of the System or during an audit: Five Hundred Dollars (\$500) per Day;
4. Failure to comply with the requirements in this Agreement for PEG access or to provide any of the capital grants, equipment and other support for the PEG Channels pursuant to Section 6, including, but not limited to, compliance with the provisions of Section 6.5: Seven Hundred Fifty Dollars (\$750) per Day for each Day that such failure occurs or continues;
5. Failure to adhere to the technical performance standards agreed to in Sections 5.1, 5.2, 5.7 and 5.8 of this Agreement: Five Hundred Dollars (\$500) per Day;
6. Failure to comply with the customer service and consumer protection rules set forth in Section 9 of this Agreement, Appendix F, and 47 C.F.R. § 76.309 and such other customer service and consumer protection rules, regulations, or standards as may be established by Applicable Law: Fifty Dollars (\$50) per violation per Day for each Day such violation continues and Seventy Five Dollars (\$75) per violation per Day after the first thirty (30) Days of the same continuous violation; provided, however, that where a customer service or consumer protection rule requires the Grantee to meet a standard of ninety percent (90%) or more: Seven Hundred Fifty Dollars (\$750) per quarter where performance is less than 95% or 90%, as applicable, but equal to or greater than 85%; One Thousand Dollars (\$1,000) per quarter where performance is less than 85% but equal to or greater than 80%; One Thousand Five Hundred Dollars (\$1,500) per quarter where performance is less than 80% but equal to or greater than 75%; Two Thousand Dollars (\$2,000) per quarter where performance is less than 70% but equal to or greater than 65%; and Four Thousand Dollars (\$4,000) per quarter where performance is less than 65%. For purposes of this provision, "quarter" shall mean any consecutive three-month period.
7. Failure to furnish or maintain the Performance Bond as required by Section 13.12: Two Hundred Fifty Dollars (\$250) per Day;
8. Failure to provide the emergency alert system pursuant to Section 5.10: One Thousand Two Hundred Dollars (\$1,200) per Day;
9. Failure to obtain a permit where construction, reconstruction, or relocation of the System or its components within the Public Ways of the City is undertaken: Two Hundred Fifty Dollars (\$250) per

Day;

10. Failure of the Grantee to comply with construction, operation, or maintenance standards: Four Hundred Dollars (\$400) per Day;
11. Failure to test, analyze, and report on the performance of the System: Five Hundred Dollars (\$500) per Day;
12. Failure to promptly provide information reasonably required by the City as part of an audit conducted pursuant to Section 10.6: Five Hundred Dollars (\$500) per Day;
13. Failure to provide programming services in accordance with Section 4: Seven Hundred Fifty Dollars (\$750) per Day; and
14. Failure to comply with the material provisions of this Agreement for which an amount is not otherwise specifically provided pursuant to this Section: Five Hundred Dollars (\$500) per Day.

The Grantee agrees that each of the failures set forth in this Section 13.3 shall result in injuries to the City and its residents, businesses and institutions, the compensation for which will be difficult to ascertain and to prove. Accordingly, the Grantee and the City agree that the liquidated damages in the amounts set forth above are fair and reasonable compensation for such injuries. The Grantee agrees that the foregoing amounts are liquidated damages, not penalties or forfeitures, and are within one (1) or more exclusions to the term “franchise fee” provided by Section 622(g)(2)(A)-(D) of the Cable Act (47 U.S.C. § 542(g)(2)(A)-(D)). Further, the payment of such liquidated damages shall not be deemed to be: (i) “Payments-in-kind” or involuntary payments chargeable against the compensation to be paid to the City by the Grantee pursuant to Section 10 of this Agreement or chargeable against the payments to the City by the Grantee pursuant to Section 6 of this Agreement; or (ii) part of the compensation to be paid to the City by the Grantee pursuant to Section 10 of this Agreement or part of the payments to the City by the Grantee pursuant to Section 6 of this Agreement. Nothing contained in this Section 13.3B shall be construed to permit duplicative recovery from, or payment by, the Grantee. Under no circumstances shall the total Liquidated Damages paid by Grantee exceed \$250,000 per year.

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

13.4 Remedies For Breach.

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

1. City may require the Grantee, within such reasonable time as may be fixed by City, to complete or correct the breach, and to take any or all actions necessary to cure the breach that the City deems appropriate in the circumstances; and/or
2. Seek money damages from the Grantee as compensation for such breach; and/or
3. For breaches of material terms, revoke the Franchise granted pursuant to this Agreement by termination of this Agreement pursuant to Sections 13.8 and 13.9; and/or
4. City may perform or have performed any or all acts necessary to cure the breach and recover from Grantee all the costs and expenses incurred in relation to that cure, including attorneys' fees and costs; and/or
5. City may recover from Grantee all costs, including attorneys' fees, incurred by City as a result of any breach or as a result of actions taken by City in response to any breach.

In addition to all other remedies granted or available to the City, the City may seek, to the extent appropriate under applicable law, (a) the restraint by injunction of the violation, or attempted or threatened violation, by the Grantee of any terms or provisions of this Agreement; or (b) a decree or order compelling performance by the Grantee of any term or provision of this Agreement.

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

1. The City shall notify the Grantee, in writing, of an alleged failure to comply with a provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The Grantee shall, within fifteen (15) Days (for an allegation of breach of financial provisions) or thirty (30) Days (for an allegation of breach of non-financial provisions) after receipt of such notice or such longer period of time as the City may specify in such notice: (a) cure such alleged failure and provide to the City a written explanation and evidence of such cure; (b) in a written response to the City, state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure; or (c) dispute the alleged violation with specificity as to reasons there is no breach.
2. The City shall determine: (a) whether a failure to comply with a provision has occurred; and (b) whether such failure has been cured or will be cured by the Grantee in a manner and in accordance with a schedule acceptable to the City. Any such determination shall be made after a Grantee has been given reasonable opportunity to attend a Conference (including personnel from the City Solicitor's Office).
3. If City determines that a failure to comply with a provision of this Agreement has occurred and that such failure has not been or will not be cured by the Grantee in a manner and in accordance with a schedule satisfactory to City, then City may take any action set forth in Sections 13.4A.

13.5 Arbitration.

A. Any dispute between the parties, including but not limited to disputes or controversies arising from or related to

interpretation of this Agreement, may be arbitrated provided that both parties consent in writing to the arbitration. Such arbitration will be final and binding, and the parties shall have no right to appeal from the arbitrator's decision.

- B. The City may initiate arbitration by resolution of its City Council, while Grantee may choose to initiate arbitration by sending written notice to the City.
- C. After arbitration has been initiated, the City and Grantee may agree that one arbitrator may conduct the arbitration. If the parties are unable to agree upon the identity of the arbitrator within 20 days after the arbitration has been initiated, the arbitrator shall be selected by the presiding judge of the Baltimore City Circuit Court.
- D. If either the City or Grantee does not consent to having one arbitrator conduct the arbitration, the arbitration shall be conducted by three arbitrators, who shall be selected as follows:
 - 1. If the City initiates arbitration, the City shall select one arbitrator and Grantee by written notice shall select one arbitrator within 15 days after passage of the resolution. If Grantee initiates arbitration, it shall identify its selected arbitrator in its written notice, and the City shall select one arbitrator, within 15 days after receiving the notice.
 - 2. The two selected arbitrators shall select a third arbitrator within 15 days after the appointment of the second arbitrator. If the two arbitrators are unable to agree upon a third arbitrator within the time limit, the third arbitrator shall be appointed by the presiding civil judge of the Baltimore City Circuit Court.
 - 3. After selection of the arbitrator(s), the arbitrator(s) shall take an oath to serve neutrally and impartially. The arbitrator(s) shall then schedule a date, time and place for the arbitration hearing. The hearing shall occur not less than 120 days after the appointment of the arbitrator (or the third arbitrator, if three arbitrators are used), unless extended by mutual agreement of the City and Grantee. The arbitrator(s) shall make a written report to the City and Grantee on the final determination within sixty (60) days after completion of the hearing. If the arbitration is conducted by three arbitrators, the determination of a majority of the arbitrators shall constitute a final, binding arbitration determination.
 - 4. Once initiated by the parties, the arbitration shall be conducted according to the Uniform Arbitration Act, Md. Courts & Judicial Proceedings, §§ 3-201 - 3-234.
 - 5. The City and Grantee shall share equally the fees and costs of the arbitrator(s).

13.6 Mediation. The City and Grantee agree that should any dispute arise between the parties concerning any aspect of this Agreement which is not resolved by mutual agreement of the parties, and unless either party believes in good faith that injunctive relief is warranted, the dispute may be submitted to mediated negotiation prior to any party commencing litigation, or initiating binding arbitration. All costs associated with mediation shall be borne, equally and separately, by the parties.

13.7 Renegotiation.

- A. *If any provision of this Franchise becomes invalid or unenforceable and the City expressly finds that such provision constituted a consideration material to this Franchise, then the City and Grantee shall renegotiate the terms of this Franchise which may be affected by such provision. The parties shall have 90 days to conduct and complete the renegotiation. If the City and Grantee cannot successfully conclude the renegotiation*

within ninety (90) days from the date the renegotiation request is served on the other party, the matter may be submitted to arbitration under Section 13.5.

13.8 Obligations upon Termination. In the event of any termination, revocation, or expiration of this Agreement, and the absence of other authorization to continue offering Cable Service the City may, at its option:

- A. Direct the Grantee to continue providing Cable Services pursuant to the provisions of this Agreement and such additional terms and conditions as are agreed upon by the City and the Grantee, for a period of up to one (1) year;
- B. If there is an Abandonment, authorize any other Person to operate the System on behalf of the City; or
- C. If Grantee possesses no authorization to offer other services using the Public Way, order the Grantee to cease all construction and operational activities in a prompt, workmanlike and safe manner by a date to be specified by the City.

In the event of such a termination, revocation, or expiration, the Grantee shall maintain in full force and effect the performance bond required by Section 13.10 for a reasonable period following the date of termination, revocation, or expiration, but in no event less than three (3) years where Comcast is removing the System and one (1) year in all other instances following termination, revocation or expiration. Pursuant to this Section 13.8, the Grantee shall cooperate with the City in maintaining continuous and uninterrupted distribution of Services over the System, including, but not limited to, operating the System for a period of time specified by the City for a period up to one (1) year; it is the intent of the parties that only the City may take action to enforce this sentence.

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

The following provisions of this Section shall apply only to the extent that Grantee is providing Cable Services over the System and does not have other legal authorization to continue to operate in the Public Way (for example, a legal authorization to provide telecommunications or other non-cable services in the Public Way).

- A. Removal. In addition to its rights under Section 13.5, upon any termination, revocation, or expiration, the City may, in its sole discretion, but shall not be obligated to, in the event the System is not sold, direct the Grantee to immediately discontinue the provision of Services and all rights of Grantee to use the Public Ways shall cease. City may direct Grantee to remove, at the Grantee's sole cost and expense, all or any portion of the System from all Public Ways and other public property within the City, including all supporting structures, poles, transmission, and distribution portions of the System and other appurtenances, fixtures, or property from the Public Ways in, over, under, along, or through which they are installed within a reasonable time (not to exceed 12 months), after the termination, revocation, or expiration, except that: (i) Grantee may abandon its facilities in place; and (ii) Grantee cannot remove underground facilities without City's consent in advance, which consent shall not be unreasonably withheld. Removal shall be subject to the following:
 - 1. This provision shall not apply to buried cable which the City determines should not be removed;
 - 2. Prior to any removal, Grantee shall notify City where removal will occur;
 - 3. In removing the System, or any part of the System, the Grantee shall comply with all requirements of Section 3 for construction within the Public Ways and shall restore and leave all Public Ways and other property in as good condition as that prevailing prior to the Grantee's removal of the System, including any improvements made to such property subsequent to the construction of its System, and without affecting, altering, or disturbing in any way any electric, telephone or other utility cables, wires, or attachments (except to the extent such affecting, altering, or disturbing is permitted by an agreement between the Grantee and the applicable owner of the cable, wires, or attachments);

4. Restoration of streets and City property, including, but not limited to, Public Ways, shall be in accordance with the requirements of Section 3 and the directions and specifications of City and all Applicable Law, at Grantee's sole expense. The City shall have the right to inspect and approve the condition of such Public Ways and public property after removal;
5. Notwithstanding any other provisions of this Agreement, the performance bond, the Security Fund, and liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal and associated repair of all Public Ways and other public property (or during such longer period as may be required by any other provision of this Agreement);
6. Removal and restoration shall be commenced within thirty (30) Days after the removal order by the City and shall be completed within a reasonable time (not to exceed 12 months) thereafter, including all associated repair of all Public Ways and other public property; and
7. If, in the reasonable judgment of City, the Grantee fails to substantially complete such removal and restoration, including all associated repair of Public Ways and other public property; then, to the extent not inconsistent with applicable law, the City shall have the right to: (a) declare that all rights, title and interest to those portions of the System within Baltimore City (or outside Baltimore City but used exclusively for the System) belong to the City with all rights of ownership, including, but not limited to, the right to operate the System or to effect a transfer of the System to another Person for operation; or (b) (i) authorize removal of the System, including all associated repair of Public Ways and other public property, by another Person at the Grantee's cost, and (ii) declare that, to the extent not inconsistent with applicable law, any portion of the System within Baltimore City (or outside Baltimore City but used exclusively to serve Persons within Baltimore City) not designated by the City for removal shall belong to and become the property of the City without compensation to the Grantee and the Grantee shall execute and deliver such documents, as City shall request, in form and substance acceptable to City, to evidence such ownership by the City; and
8. In the event Grantee chooses to remove its System and fails to satisfactorily restore all areas to the condition in which they existed prior to the original construction of the System, City, at its option, may perform such work, and, if such work is performed within two (2) years after the revocation, termination, or expiration of this Agreement, collect the costs thereof from Grantee.

Notwithstanding the foregoing, the Grantee may dispose of any portion of the System (other than the Institutional Network) not designated by the City for removal; provided, however, that if the Grantee fails to complete the removal of the portion(s) of the System designated for removal by the City within a reasonable time (not to exceed 12 months), then all such portion(s) of the System not disposed of and all amounts collected for any portion(s) of the System disposed of by the Grantee during such period shall belong to the City, with no price due to the Grantee.

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

B. Acquisition or Transfer. *Upon any termination, revocation or expiration and as an alternative to ordering removal of the System, the City shall have the right to, and may, in its sole discretion and in accordance with Section 627 of the Cable Act (47 U.S.C. §*

547) (or any successor thereto) and other applicable law, acquire, or effect a transfer to a third party acceptable to the City, of all or any part of the System and all components thereof necessary to maintain and operate the System pursuant to the terms of this Agreement, provided that this requirement shall apply only to those portions of the System within Baltimore City (or outside Baltimore City but used exclusively to serve Persons within Baltimore City). The City shall notify the Grantee ninety (90) Days after the termination, revocation or expiration of its intent to purchase or transfer the System. For a period of sixty (60) days after such notice is given, the City and the Grantee shall negotiate, in good faith, the terms and condition of the purchase of the System, including the purchase price, as detailed below.

- C. Price. The price to be paid to the Grantee upon an acquisition or transfer by the City or a third party acceptable to the City shall depend upon the nature of the termination. If the Franchise expires without any request by the Grantee pursuant to Section 626(a)(1) of the Cable Act (47 U.S.C.

§ 546(a)(1)) (or any successor thereto) that it be renewed, or if the renewal of the Franchise is denied, then the price shall be fair market value, determined on the basis of the System valued as a going concern but with no value allocated to the Franchise itself (*i.e.*, the fair market value of the System valued as a going concern, with a deduction for the value allocable to the Franchise itself). If the termination is due to the revocation of the Franchise for cause, including, but not limited to, revocation due to a breach of this Agreement by the Grantee as provided in Section 13.5 or otherwise, then the price shall be an equitable price.

- D. Valuation Date and Appraisal. The date of valuation for purposes of the price determination pursuant to Section 13.9C shall be the day before the date the City preliminarily elects to acquire or to effect a transfer of the System. If the City and the Grantee cannot agree upon the purchase price referenced in Section 13.9C, the City shall have the right to require the convening of a panel of qualified cable system appraisers to determine the fair market value of the Cable System in accordance with the provisions of this Section 13.9D. Such panel, if required, shall be composed of one appraiser chosen by the City, one appraiser chosen by the Grantee, and a third appraiser chosen by the first two appraisers. The Grantee shall make necessary data and information available to the appraisers. All expenses of the appraisal, including the fees of the appraisers, shall be borne by the parties in equal shares. Within sixty (60) Days after the three appraisers have been selected, each shall independently appraise the value of such assets pursuant to Section 13.9.B, and shall, without disclosing such value to the other appraisers, record and seal the appraised value in an envelope. Upon completion of all appraisals, the appraisers shall convene together and open and disclose to each other their sealed appraised values for such assets. The appraised value which is farthest from the average of the three disclosed figures shall be discarded and the average of the two remaining values shall be certified to the City and the Grantee by all three appraisers as having been determined in accordance with this Subsection of this Agreement. The figure so certified shall be deemed by the Grantee and the City to be the fair market value of such assets.

13.10 Grantee's Obligations. In the event of any acquisition or transfer pursuant to Section 13.9 or Abandonment pursuant to Sections 13.8 and 13.9, the Grantee shall:

- A. cooperate with the City or any third party in maintaining continuous and uninterrupted distribution of Services over the System, including, but not limited to, operating the System for a period of time specified by the City but not to exceed one (1) year;
- B. promptly execute all appropriate documents to transfer to the City or third party, free of any and all encumbrances, title to the System, all components thereof necessary to operate and maintain the System pursuant

to the terms and conditions of this Agreement, as well as all contracts, leases, licenses, permits, rights-of-way and any other rights, contracts or understandings necessary to maintain the System and the distribution of Services over the System; provided that such transfers shall be made subject to the rights under the Maryland Uniform Commercial Code, Md. State Government Code, Titles 1-10, as amended, or any successor thereto, and, to the extent that any collateral consists of real property, under Baltimore City's real property law, of banking or lending institutions which are secured creditors or mortgagees of the Grantee at the time of such transfers; and provided that the City shall have no obligation following said transfers to pay, pledge or otherwise commit in any way any general or any other revenues or funds of the City, other than the net operating revenues received by the City from its operation of the System, in order to repay any amounts outstanding on any debts secured by the System which remain owing to such creditors or mortgagees; and provided, finally, that the total of such payments by the City to such creditors and mortgagees, from the net operating revenues received by the City from its operation of the System, shall in no event exceed the lesser of: (a) the fair market value of the System on the date of the transfer of title to the City or (b) the outstanding debt owed to such creditors and mortgagees on said date. Nothing in this Section 13.10 shall be construed to limit the rights of any such banking or lending institutions which are not Affiliated Persons to exercise its or their rights as secured creditors or mortgagees at any time prior to the payment of all amounts due pursuant to the applicable debt instruments; and

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

It is the intent of the parties that only the City may take action to enforce Subsection A of this Section 13.10.

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

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

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

13.12 Termination.

- A. General. The termination of this Agreement shall occur upon the earliest to occur of: (i) the revocation of the Franchise granted pursuant to this Agreement as provided in Section 13.4; (ii) an Abandonment of the System; or (iii) subject to Section 626 of the Cable Act (47 U.S.C. § 546) (or any successor thereto), the expiration of the Term of the Franchise as set forth in Section 2.2, or otherwise.
- B. Termination Not a Waiver. The termination of this shall not, for any reason, operate as a waiver or release of any obligation or Liability of the Grantee or any other Person, as applicable, incurred or accrued prior to the date of such termination, and shall include, without limitation, the obligations of this Section 13.9B and Sections 6.7, 10, 11.1, 11.10, 11.21, 12, 13, 14.9, 14.12, 14.14, and 14.27 shall survive the termination of this Agreement. If the Grantee continues to operate all or any part of the System after the expiration of the Term of the Franchise, without renewal, then (i) this Section 13.12B shall not be construed to waive or release any obligation or Liability of the Grantee arising out of such continued operations; and (ii) the Grantee shall comply with the terms and conditions of this Agreement, including, but not limited, to all compensation and other payment provisions of this

Agreement. Any such continued operation shall in no way be construed as a renewal or other extension of this Agreement or the Franchise granted pursuant to this Agreement.

- C. Effect of Termination. In the event of a termination as set forth in Section 13.9A, the Term of the Franchise shall expire and the Franchise shall be revoked; all rights of the Grantee in the Franchise shall cease, with no value allocable to the Franchise itself; and the rights of the City and the Grantee to the System, or any part thereof, shall be determined as provided in Sections 13.5 through 13.12.

Section 14

Miscellaneous Provisions

14.1 Delays and Failures Beyond Control of Grantee.

- A. General. Notwithstanding any other provision of this Agreement, the Grantee shall not be liable for reasonable delay in the performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike; war or act of war; riot; fire; flood or other act of God; unusually severe weather conditions considering the time of year; manufacturing delays or delays in delivery due to conditions that would otherwise relieve the Grantee from liability under this Section; loss of utility service or facilities, except to the extent such loss should have been covered by the Grantee's standby and backup power supplies; any act, order, or decree of any governmental agency or judicial body; or any other event to the extent that the event is reasonably beyond the Grantee's ability to anticipate or control.
- B. Partial Impact. In the event that any such delay in performance or failure to perform affects only part of the Grantee's capacity to perform, the Grantee shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such delays as rapidly as possible.
- C. Notice. The Grantee shall notify MOCC by fax or telephone of the occurrence of any event covered by this Section within five (5) Business Days of the time at which the Grantee learns of the occurrence.

14.2 Notice.

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

Mayor's Office of Cable Communications
Attn: Executive Director
8 Market Place, Suite 200
Baltimore, Maryland 21202

With a copy to:

City Solicitor
101 City Hall
100 North Holliday Street
Baltimore, Maryland 21202

Notices and communications to the Grantee shall be addressed to, delivered at, the following address:

Comcast of Baltimore City, L.L.C.
5801 Metro Drive
Baltimore, Maryland 21215
Attention: General Manager

With a copy to:

Comcast Cable Communications, Inc.
One Comcast Center
Philadelphia, PA 19103
Attn: Legal Department

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

14.3 Public Notice. The City may provide public notice of any public meeting relating to the Franchise by publication at least once in a newspapers of general circulation in the area not less than seven (7) nor more than twenty-one (21) Days prior to the meeting, or on a webpage in a manner suitable to provide effective public notice.

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

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

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

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

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

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

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

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

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

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

- A. Organization, Standing, and Power. The Grantee is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Colorado, and in good standing under the laws of the State of Maryland and is duly authorized to do business in the State and the City. The Grantee has all requisite power and authority to own or lease its properties and assets, to conduct its businesses as currently conducted and to execute, deliver, and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby. Certified copies of the Grantee's organizational documents, as amended to date, have been delivered to the City and are complete and correct. The Grantee is qualified to do business and is in good standing in each jurisdiction in which it conducts business.
- B. Authorization; Non-Contravention. The execution, delivery, and performance of this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly, legally, and validly authorized by all necessary action on the part of the Grantee. This Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Grantee and constitute, or upon execution and delivery will constitute, the valid and binding obligations of the Grantee, and are enforceable, or upon execution and delivery will be enforceable, in accordance with their respective terms, subject to the qualifications that the availability of the remedy of specific enforcement, of injunctive relief or of other equitable relief is subject to the discretion of the court before which any proceeding therefor may be brought, and that the enforcement of the rights and remedies created hereby is subject to bankruptcy, insolvency, reorganization, and similar laws of general application affecting the rights and remedies of creditors and secured parties, provided that nothing in the foregoing qualifications is intended to diminish or affect the rights and remedies of the City under this Agreement at law or in equity. The Grantee has obtained the requisite authority to approve, authorize, execute, and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceeding or other action is necessary on the part of the Grantee to approve and authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The Grantee has not made any representations, warranties, or agreements inconsistent with or with respect to the subject matter of this Agreement. Neither the execution and delivery of this Agreement by the Grantee nor the performance by the Grantee of its obligations contemplated by this Agreement will:

1. conflict with, result in a material breach of or constitute a material default under (or with notice or lapse of time or both result in a material breach of or constitute a material default under):
 - a. any governing document of the Grantee or, to the Grantee's knowledge, any shareholders' agreement or other similar agreement among security holders or other owners of the Grantee; or
 - b. any statute, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which the Grantee is a party or by which it (or any of its properties or assets) is subject or bound;
 2. result in the creation of, or give any party the right to create, any material lien, charge, encumbrance or security interest upon the property and assets of the Grantee that would have a material adverse effect on the operation of the Cable System or the financial condition of the Grantee or the Cable System; or
 3. terminate, modify or accelerate, or give any third party the right to terminate, modify or accelerate, any provision or term of any contract, arrangement, agreement, license agreement or commitments, except for any event which individually or in the aggregate would not have a material adverse effect on the business, properties or financial condition of the Grantee or the Cable System.
- C. Consent. No consent, approval or authorization of, or declaration or filing with, any public, governmental or other authority, including, without limitation, the FCC or any other federal agency or any City, state, county or municipal agency, authority, board, commission, or council, and, if applicable, public service commissions and other entities, on the part of the Grantee is required for the valid execution and delivery of this Agreement or any other agreement or instrument executed or delivered in connection herewith.
- D. Compliance with Law. The Grantee is in material compliance with all applicable law and the Grantee has obtained all government licenses, permits, and authorizations necessary for the operation and maintenance of the Cable System.
- E. Litigation; Investigations.
1. Except as otherwise disclosed in writing, there is no civil, criminal, administrative, arbitration or other proceeding, investigation or claim, including, without limitation, proceedings with respect to unfair labor practice matters or labor organization activity matters or involving the granting of a temporary or permanent injunction, pending or threatened against the Grantee at law or in equity or before any foreign, federal, City, state, county, municipal or other governmental department, commission, board, bureau, agency or instrumentality or any arbitrator(s), that, if decided adversely to the Grantee, would:
 - a. have a material adverse effect on the business, operation, properties, assets or financial condition of the Grantee or the Cable System, or
 - b. question the validity or prospective validity of this Agreement, of any essential element upon which this Agreement depends or of any action to be taken by the Grantee.
 2. The Grantee is not subject to any outstanding order, writ, injunction or decree which materially and adversely affects or will affect the business, operation, properties, assets or financial condition of the Cable System.
- F. Full Disclosure. Without limiting the specific language of any other representation and warranty in this Agreement, the Grantee warrants and represents that, as of the Effective Date, all information furnished by the Grantee is accurate and complete in all material respects and does not contain any untrue statement of a material fact or omit any material fact necessary to make the statements therein not misleading, including, but not limited to the information contained in:

1. this Agreement and its Appendices;
2. any other document executed on the Effective Date;
3. the most recently supplied financial information about the Grantee;
4. the most recently supplied design, as-built and construction sequence maps; and
5. documents submitted in connection with any transfer of Control authorized by Section 11 of this Agreement.

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

H. Licenses and Permits.

1. Grantee has duly secured all material permits and licenses in connection with the design, construction, operation, maintenance, repair, upgrade, rebuild or enhancement of the Cable System, or any part of the Cable System, from, and has filed all required registrations, applications, reports and other documents with, the FCC.
2. The Grantee acknowledges and agrees that no event has occurred which (i) could result in the revocation or termination of any such license or authorization; (ii) could materially and adversely affect any rights of the Grantee; (iii) permits, or after notice or lapse of time or both would permit, revocation or termination of any such license; or (iv) materially and adversely affects or, so far as the Grantee can now foresee, will materially and adversely affect the Cable System or any part of the Cable System.
3. The Grantee has obtained all material leases, easements and equipment-rental or other agreements necessary for the maintenance and operation of the Cable System as now conducted.

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

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

1. Compliance with Laws; Licenses and Permits. The Grantee shall have the sole responsibility for obtaining all permits, licenses and other forms of approval or authorization necessary to construct, operate, maintain, upgrade, rebuild, enhance, replace or repair the Cable System, or any part of the Cable System. Consistent with Section 11.2 and Section 14 of this Agreement, the Grantee shall comply with all applicable laws (including, but not limited to, those of the FCC and any other federal, state, or local agency or authority of competent jurisdiction).
2. Maintain Existence. The Grantee will preserve and maintain its existence, its business and all of its rights and privileges necessary or appropriate for the normal conduct of its business. The Grantee shall maintain its good standing in the State of Maryland and continue to qualify to do business and remain in good standing in each jurisdiction in which it conducts business.
3. Financial Condition. The Grantee shall, throughout the term of this Agreement and thereafter, for

as long as the Grantee is required to construct, operate, maintain, upgrade, rebuild, and enhance the Cable System pursuant to this Agreement, maintain adequate financial resources to perform all obligations pursuant to this Agreement.

4. Condition of Cable System. All of the material properties, assets and equipment of the Cable System are, and all such items added in connection with any construction, upgrade, rebuild, or enhancement will be, maintained in good repair and proper working order and condition throughout the Term of the Agreement and for any time period in which the Grantee continues to operate the Cable System.
5. Inconsistent Contracts. The Grantee shall not enter into any contract, compliance with which would prevent the Grantee from performing its obligations under this Agreement.

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

14.14 Survival of Representations and Warranties. After the Term of the Agreement and any extension of the Agreement, the City may seek any lawful remedy for any breach by the Grantee or any Affiliated Person of any representation or warranty made by such Person and contained in this Agreement; provided, however, that the breach occurred during the Term of the Agreement or any extension of the Agreement; or, for a representation or warranty specifically limited to being true as of the Effective Date, that the breach occurred as of the Effective Date.

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

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

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

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

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

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

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

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

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

14.23 Days and Time; Computation of Time.

- A. Days and Time. Any reference in this Agreement to “day” or “days” shall mean calendar days and not Business Days. If the date for giving or receiving of any notice or the performance of any obligation required by this Agreement falls on a Saturday, Sunday, or federal or State of Maryland holiday, then the notice or obligation may be given or performed on the next Business Day after such Saturday, Sunday, or federal or State of Maryland holiday. Any reference to time of day in this Agreement shall refer to local time for the City.
- B. Computation. Unless otherwise provided, the first Day to be counted under this Agreement when a period of time begins with the occurrence of an act, event, or default is the Day after the Day on which the act, event, or default occurs. When computing a period of time, the last Day of such period is included in the computation, and any required action must be taken on or before that Day. It is immaterial whether the first Day of a time period is a Holiday.

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

14.25 Delegation of City Rights.

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

- B. Not an Amendment. Any such delegation, revocation, or re-delegation, no matter how often made, shall not be deemed an amendment to this Agreement or require any consent of the Grantee.
- C. Fact-Finding. Nothing in this Section shall be construed to prevent the Board or Council from delegating any fact-finding function, including, but not limited to, the hearing of evidence, in support of a decision that must be made by the Board or Council under this Agreement, provided that the Board or Council is the entity that shall adopt the final findings of fact and conclusions of law for the City, subject to any subsequent judicial process under applicable law.

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

14.27 Time of the Essence. Time is of the essence in the execution and performance of all terms and provisions of this Agreement.

[signatures on following page]

In Witness Whereof, the parties have caused this Agreement to be executed as of the day and year first above written.

Mayor and City Council of Baltimore

By: Mayor

Attest:

Custodian of Seal

Comcast of Baltimore City, LLC

By: _____

Its: _____

Witness/Attest:

Approved as to Form and Legal Sufficiency:

Approved:

City Solicitor

City Purchasing Agent

Approved by the Board of Estimates:
