Resolution No.: 18-469
Introduced: April 12, 2016
Adopted: May 3, 2016

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the County Executive

SUBJECT: Approval of a Cable Franchise Agreement with Starpower Communications. L.L.C.

Background

1. Chapter 8A of the County Code governs franchise agreements for cable systems Starpower Communications, L.L.C submitted the proposed franchise agreement and related agreements to the County pursuant to Section 8A-22(f).

2. The Council may, within the applicable time provided in Section 8A-28(d) grant or deny the franchise agreement.

3. On November 3, 2015, the County Executive held a public hearing on the proposed franchise application.

4. On March 22, 2016, the Council received the Executive's recommendation to renew a cable television franchise to Starpower Communications, L.L.C.

5. The Council held a public hearing on the proposed franchise on May 3, 2016.

Action

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

The Council grants the franchise with Starpower Communications, L.L.C under the terms of the attached franchise agreement with an amendment to make July 1, 2016 the effective date of the agreement.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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

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

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

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

WHEREAS, Franchisee has asked the County to renew Franchisee's non-exclusive franchise which took effect on August 3, 1999 ("Prior Franchise"), as amended by a Settlement Agreement executed by Franchisee on March 19, 2003 and by the County Executive on April 10, 2003 ("2003 Settlement Agreement"), and which was subsequently transferred to Franchisee on March 1, 2011;

WHEREAS, the County is authorized to grant one or more nonexclusive cable television franchises pursuant to Montgomery County Code Chapter 8A, and Section 10-312 of the Section 10-312 of the Maryland Local Government Article;

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

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

WHEREAS, the County has reviewed Franchisee's performance under the Prior Franchise and the quality of service during the franchise term, has identified the future cable-related needs and interests of the County and its residents and businesses, and has considered the financial, technical and legal qualifications of the Franchisee;

WHEREAS, the County has provided for public comment as required by applicable law;

WHEREAS, based on Franchisee's representations and information, the County has determined that, subject to the provisions of Montgomery County Code, to the extent consistent with federal law without infringing on any state or local concurrent jurisdiction, and the terms and conditions set forth herein, the grant of a non-exclusive franchise to Franchisee, is consistent with the public interest;

WHEREAS, the County and Franchisee have reached agreement on the terms and conditions set forth herein, and have entered into a Settlement Agreement with respect to certain

claims in regard to Franchisee's Prior Franchise, and the parties have agreed to be bound by those terms and conditions;

WHEREAS, certain municipalities located within the County and identified in Exhibit A (the Participating Municipalities) have requested that the County enforce and administer the terms of their cable television franchises and intend to grant Franchisee a new non-exclusive franchise on the same terms and conditions as the County; and

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

NOW, THEREFORE, in consideration of the County's grant of a franchise to Franchisee, and Franchisee's promise to provide Cable Service pursuant to and consistent with the Montgomery County Code, the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged.

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usage set forth in the Montgomery County Code are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

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

(b) *Advertising Revenues:* Advertising revenues include all advertising revenues received by Franchisee, any Affiliate of Franchisee, or any entity that classifies the Franchisee as an advertising marketing partner including but not limited to National Cable Communications, LLC ("NCC Media"), allocable to or attributable to the Cable System within the County without offset or other adjustment whether for commissions, affiliate fees, expenses, rebates or otherwise. Advertising revenues derived from sales of advertising that are also made available to Franchisee's Cable System subscribers outside of the County shall be allocated on a *pro rata* basis equal to the total subscribers within the County divided by the total Cable Service subscribers reached by the advertising.

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

(d) *Area Served:* The portion of the Franchise Area defined in Exhibit B, as may be expanded from time to time in accordance with Section 2(b).

(e) *Barter:* Any non-monetary benefit received by Franchisee or an Affiliate in exchange for consideration related to the provision of Cable Services, valued at the benefit's fair market value at the time of the Barter.

(f) *Cable Service:* (1) the one-way transmission to Subscribers of video programming or other programming services; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(g) *Cable System or System:* A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple Subscribers within the County and Participating Municipalities, but such term does not include: (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any Public Rights-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System if such facility is used in the transmission of video programming directly to Subscribers; (4) an open video system that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system. The foregoing definition of "Cable System" shall not be deemed to circumscribe or limit the valid authority of the County or any Participating Municipality to regulate or franchise the activities of any other communication system or provider of communications services to the full extent permitted by law.

(h) *Channel or Cable Channel:* A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering one or more video, audio or other subscriber terminal signals, as television channel is defined by the FCC by regulation.

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

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

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

(l) *Effective Date:* The Effective Date of this Franchise shall be _____, 2015.

(m) *Extraordinary Storm:* A weather event which causes a Service Interruption of more than four (4) hours to more than twenty (20) percent of the Cable System Subscribers.

(n) *FCC:* The Federal Communications Commission (which is the federal agency as presently constituted by the Communications Act), its designee, or any successor agency.

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

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

(q) *Franchise Area:* The territorial limits of the County and each of the Participating Municipalities and any area annexed thereto during the term of the Franchise.

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

(s) *Force Majeure:* An event or events reasonably beyond the ability of Franchisee to control. This includes, but is not limited to, severe or unusual weather conditions affecting more than twenty (20) percent of the Area Served, strike, labor disturbances, lockout, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, fire, flood, or other act of God, and sabotage.

(t) *Gross Revenues:* Any and all revenues of any kind or nature derived directly or indirectly by Franchisee, an Affiliate, or by any other entity that is a cable operator of the System, from the operation of the Franchisee's Cable System to provide Cable Services within the Franchise Area. Gross Revenues shall include revenues received by an entity other than the Franchisee, an Affiliate, or another entity that operates the System where necessary to prevent evasion or avoidance of the obligation under this Agreement to pay the franchise fee. The County acknowledges that Franchisee maintains its books in accordance with generally accepted accounting principles (GAAP). Gross Revenues shall be construed broadly and include all cash, credits, property or other consideration of any kind or nature.

(1) Gross Revenues include, by way of illustration and not limitation, revenue derived from or attributable to:

(A) Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including, but not limited to, pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, video-on-demand, other Cable Service or other benefit related to the provision of Cable Services);

(B) Installation, disconnection, reconnection, downgrade, upgrade or similar change-in-service charges associated with changes in subscriber Cable Service levels;

(C) Fees paid to Franchisee related to channels designated for commercial leased access use, to the extent attributable to use within the Franchise Area

(D) Converter, remote control, and other Cable Service equipment rentals, leases, or sales;

(E) Advertising Revenues as defined herein;

(F) Late fees, convenience fees and administrative fees to the extent attributable to the provision of Cable Services;

(G) Revenues from program guides;

(H) Revenues attributable to line-itemization or pass-through of Franchisee expenses to subscribers including but not limited to franchise fees, PEG Fees, FCC Regulatory Fees and all line itemized charges to Subscribers, except as excluded in Section 1(s)(2);

(I) Commissions from home shopping channels and other Cable Service revenue sharing arrangements to the extent attributable to transactions within the Franchise Area;

(J) Revenues from the sale or carriage of other Cable Services;

(K) Revenues received by an entity other than the Franchisee, an Affiliate, or another entity that operates the System where necessary to prevent evasion or avoidance of any obligation under this Agreement to pay any fees based on Gross Revenues;

(L) Barter as defined herein to the extent attributable to the provision of Cable Services within the Franchise Area;

(M) Revenues, fees, payment, or other consideration received from programmers for carriage of programming on the System;

(N) Any studio rental, production equipment, and personnel fees.

(2) Gross Revenues shall not include:

(A) Actual bad debt write-offs related to Cable Services revenues within the County, to the extent that bad debt is recorded as revenue on the books of Franchisee, except any portion which is subsequently collected shall be included in Gross Revenues in the period collected;

(B) Any tax of general applicability imposed upon Franchisee or upon Subscribers by the State, County, any municipality or other governmental unit, that the Franchisee is required to collect and remit to the taxing entity (including but not limited to, sales or use tax, gross receipts tax, excise tax, utility users tax, public service tax and communications taxes).

(u) *Institutional Network (or "I-Net"):* The two-way optical fiber communications system linking educational and government facilities in the County.

(v) *Metadata:* Program-related information provided as part of a video program in addition to primary video and accompanying audio, including, but not limited to, closed captioning, video description, secondary audio, signal enhancements, and program-related materials.

(w) *Montgomery County Code or County Code:* The Montgomery County Code, the Montgomery County Zoning Ordinance, and all applicable provisions of the Code of

Montgomery County Regulations implementing the Montgomery County Code. When applicable, references to the Montgomery County Code in this Agreement shall be read to mean the ordinance by which a Participating Municipality has adopted relevant provisions of the Montgomery County Code.

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

(y) *Normal Operating Conditions:* Those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions affecting more than twenty (20) percent of the Area Served. Those conditions which are within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

(z) *Participating Municipality:* Any municipality within the County which has agreed to have the County administer and enforce the Franchise within its corporate limits, that has signed and entered into this Agreement, and that is identified in Exhibit A, as may be amended under Section 2(a)(3). Collectively, the municipalities identified in Exhibit A shall be referred to as the Participating Municipalities.

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

(bb) *PEG Fees:* Fees, including but not limited to PEG and I-Net Grants, paid pursuant to any agreement between the Franchisee and the County, or between Franchisee and a Participating Municipality, to support PEG access facilities and equipment, including but limited to an Institutional Network, for the use of channel capacity on the Cable System or an Institutional Network.

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

(dd) *Peering:* An arrangement under which two networks allow, without additional charges, direct access to each other's networks and customers without routing network traffic through the public Internet.

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

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

property is sufficient to permit its use for such purposes, and the Franchisee shall be deemed to gain only those rights to use as are properly in the County and each Participating Municipality and as the County and each Participating Municipality may have the right and power to give.

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

(hh) *Significant Upgrade:* A major improvement or enhancement in the technology or service capabilities of the Cable System by the Franchisee, such as but not limited to an upgrade to fiber-to-the-curb or fiber-to-the-premises.

(ii) *Subscriber or Subscribers:* A member of the general public who receives Cable Service, distributed by a Cable System, not for resale or further distribution. Subscribers may include commercial customers who receive Cable Service.

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

(kk) *Transfer of the Franchise:* Any transaction defined as a "Transfer" by Montgomery County Code Section 8A-3.

(ll) *Transfer of an Interest:* Any transaction defined as a "Transfer of interest" by Montgomery County Code Section 8A-3.

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

(a) *Grant of Authority:*

(1) Subject to the terms and conditions of this Agreement and the Montgomery County Code, the County and the Participating Municipalities hereby grant to the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, for the sole purpose of providing Cable Service. This Franchise shall grant no authority for the Franchisee to use the Public Rights-of-Way for any purposes other than provision of Cable Service. If, and to the extent that, Franchisee offers non-Cable Services, Franchisee does so at its own risk. If the County acts consistent with state and federal law to require Franchisee to obtain additional authority to use the Public Rights-of-Way for the provision of non-Cable Services over the Cable System or otherwise, the Franchisee will comply. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement. This Agreement does not confer any rights other than as expressly provided herein or as mandated by federal, state, County or local law.

(2) The Franchisee recognizes that the Participating Municipalities, having adopted Chapter 8A of the Montgomery County Code by ordinance, have each requested, and the County has agreed, that the County administer and enforce such ordinance within the corporate limits of the Participating Municipality through one or more County-municipality agreements. Therefore, the County has the authority to administer and enforce Chapter 8A and the comparable municipal ordinance along with the Franchise Agreement within the corporate limits of each Participating Municipality. Termination of any County-municipality agreement

shall not affect the validity or effectiveness of this Franchise Agreement which shall remain in full force and effect and binding on the Franchisee, the County and any Participating Municipalities that have adopted it. Upon termination of any County-municipality agreement, the Participating Municipality shall become responsible for the administration and enforcement of this Agreement within its corporate limits, and shall be entitled to collect and retain only that part of the Franchise fee due it for the Franchise within its corporate boundaries. After notice to the Franchisee that the County-municipality agreement has been terminated, the Franchisee shall communicate directly with the Participating Municipality.

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

(b) *Area Served:* The Franchisee may expand the Area Served by providing notice to the County ninety (90) days prior to commencement of construction as to the specific geographic boundaries of such area to be added to the Area Served, complying with the System Construction provisions as stated in Section 5, and providing an amended Exhibit B to cover the expanded Area Served. The Parties agree that an amended Exhibit B reflecting the expanded Area Served by the Franchisee shall have the same force as the initial Exhibit B had at the Effective Date of this Agreement. Provided, however, that the County may review the proposed expansion, and require the Franchisee to reasonably alter the boundaries of the Area Served to prevent discrimination in the provision of service based on income in an area, race, ethnicity, age, religion, or any other basis prohibited by applicable law.

(c) *Term:* The Franchise and this Franchise Agreement shall have a term of fifteen (15) years, commencing on the Effective Date determined pursuant to Section 2(g), unless the Franchise is earlier revoked or its term shortened as provided herein or in the Montgomery County Code.

(d) *Grant Not Exclusive:* The Franchise and the right it grants to use and occupy the Public Rights-of-Way shall not be exclusive, and the County and the Participating Municipalities reserve the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise Agreement, with or without a franchise.

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

(f) *Franchise Agreement Subject to Exercise of Police Powers:* All rights and privileges granted herein are subject to the police powers of the County and each Participating Municipality and their rights under applicable laws and regulations to exercise their governmental powers to their full extent and to regulate the Franchisee and the construction, operation and maintenance of the Franchisee's Cable System, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the County and or any Participating Municipality shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety laws, ordinances and regulations, the right to adopt and enforce laws, ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce laws, ordinances and regulations containing right-of-way, telecommunications, utility and cable television consumer protection and service standards and rate regulation provisions that are consistent with federal law without infringing on any state or local concurrent jurisdiction.

(g) *Approval, Acceptance, and Effective Date:* This Franchise Agreement shall become effective on _____, 2015 (the "Effective Date"), following its approval by the County Council and its acceptance by the Franchisee, provided that if the Franchisee fails to accept the Franchise before _____, 2015, or within thirty (30) days after approval by the Council, whichever is later, it shall be deemed void.

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

(1) Accepts and agrees to comply with each provision of the Montgomery County Code and this Agreement;

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

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

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

(i) *No Waiver:*

(1) The failure of the County or a Participating Municipality on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Montgomery County Code or any other applicable law shall not be deemed to

constitute a waiver of such right or a waiver of compliance or performance by the County or the Participating Municipality, nor to excuse the Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

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

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

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

(k) *Construction of Franchise Agreement:* The provisions of this Franchise Agreement shall be liberally construed to effectuate its objectives consistent with the Montgomery County Code and the public interest. In the event of a conflict between the Montgomery County Code and this Agreement, the Montgomery County Code shall prevail. References to applicable law, regulations, codes or applicable requirements refer to applicable law, regulations, codes or requirements as the same may be amended or adopted.

3. TRANSFERS

(a) *Application:*

(1) A Transfer of the Franchise, or a Transfer of an Interest in the Franchise that results in a change in ownership interest of the Franchise of five (5) percent or more, must not occur without prior approval by the County and the Participating Municipalities and must comply with the Montgomery County Code Section 8A.

~~(2) The Franchisee shall not consummate a Transfer of the Franchise with any~~ Person that directly or indirectly owns or operates a Cable System in the County unless the County and Participating Municipalities find in their sole discretion that the Transfer of the Franchise is necessary and in the best interests of the County and Participating Municipalities and their residents.

(3) Nothing herein relieves the Franchisee of any obligation it may have under applicable law or other agreements with the County to pay fees associated with a Transfer.

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

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

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

(2) If the Cable System is not sold to the buyer on the terms set forth in the purchase agreement or amended purchase agreement, as applicable, then paragraph (c)(1) shall apply to any subsequent purchase agreement. Notice of all subsequent purchase agreements shall be given to the County and each Participating Municipality pursuant to Section 3(c)(1). The County's and Participating Municipalities' right to purchase pursuant to this Section shall survive every sale to a buyer and be binding upon every buyer of the Cable System.

4. PROVISION OF CABLE SERVICE

(a) *Availability of Cable Service:* The Franchisee shall make Cable Service available to all Persons, including residences, businesses, and other legal entities, within the Area Served, including owners or occupants of multiple dwelling units that request Cable Service, except for multiple dwelling unit buildings to which the Franchisee cannot legally obtain access or cannot reach an agreement for access after good faith negotiation with the building owner.

(b) *Line Extension Requirements:*

(1) Requirements. The Franchisee shall extend its Cable System within a reasonable time, not to exceed ninety (90) days, to provide service to any Person in the Area Served upon request. Where an individual drop for a Person requesting service would be located two hundred (200) feet or less from the Public Right of Way, the extension shall be at no charge other than any applicable installation fees for the individual drop.

(A) This requirement to extend the Cable System to provide service may be waived if the Franchisee demonstrates to the County's satisfaction, in County's sole discretion, that a waiver is justified due to extraordinary circumstances.

In addition, the Franchisee may obtain a waiver of the ninety (90) day time period if it demonstrates to the County's satisfaction and the County determines in its sole discretion that additional time is required to accommodate utilities providing the Franchisee with access to poles, ducts, conduit or right-of-way.

(2) Cost Sharing. The Franchise may require a Person to make a contribution in aid of extension where the Person's drop is located more than two hundred (200) feet from the Public Right-of-Way, provided however, that such contribution shall be limited to the actual cost of extending the drop further than two hundred (200) feet from the Public Right-of-Way.

(A) If the Franchisee proposes to require a Person requesting extension to make a contribution in aid of extension, it must provide a cost estimate to the Person and obtain the prior approval of the Person before commencing the construction. Upon request, the Franchisee must, within thirty (30) days of completion of the extension, furnish the Person requesting service and the County proof of the Person's share of the total cost of the extension.

(B) If the drop shall be used to support more than one service installation, the Franchisee shall allocate the contributions in aid on a *pro rata* basis.

5. SYSTEM CONSTRUCTION AND DESIGN

(a) *Cable System Characteristics:* The Cable System shall be at minimum, designed to be an active two-way, fully digital, hybrid fiber-coaxial-wireless cable system, capable of subscriber interaction as required for selection or use of Cable Service.

(1) Minimum Capacity. The Cable System shall have a minimum bandwidth capacity of 860 MHz on all active components, and at least 1 GHz for all passive components. The System backbone connections shall utilize fiber optic links (headend to hubs, hubs to hubs, and hubs to nodes). The System shall be designed and engineered with redundant paths between the headend and all hubs.

(2) Significant Upgrade. Franchisee may make a Significant Upgrade provided that the Franchisee complies with the terms of this Franchise Agreement. Any change in technology shall result in a System with functionality that equals or exceeds the functionality of the System as it existed on the effective date of this Agreement. Further, it is the responsibility of the Franchisee to periodically upgrade its Cable System to integrate advancements in technology as may be required to meet the needs and interests of the community in light of the costs during the term of the Franchise Agreement.

(3) Non-Discrimination. Franchisee's System shall have the same activated capabilities throughout the Area Served. In planning upgrades, the Franchisee shall ensure that upgrades are implemented uniformly, including but not limited to ensuring that low-income areas are not discriminated against in terms of the quality of services or the quality of the system offered. In planning system expansion, the Franchisee shall ensure that low-income, low-density or rural areas contiguous to planned expansion areas are not unreasonably excluded from Area Served expansion planning. Nothing in this Franchise Agreement shall prohibit the Franchisee from adopting reasonable build-out schedules. The County may require the Franchisee to provide information regarding upgrade plans, technical specifications and implementation schedules to ensure Franchisee complies with its obligations under this Section 5(a)(3).

(b) *Compliance With Codes & Standards:* The Cable System shall meet or exceed all applicable technical standards set forth in 47 C.F.R. Part 76 and any other applicable FCC rules and regulations, all industry standards, manufacturers performance specifications, and any other future applicable technical performance standards. The County may amend or adopt any such standards subject to applicable federal law.

(1) The Cable System, including Subscriber drops, shall comply with applicable building, safety and electric codes, and shall substantially conform in all material respects to applicable sections of the following standards and regulations:

(A) Occupational Safety and Health Act of 1970;

(B) The most current edition of the National Electrical Safety Code and National Electrical Code, or if different, the edition adopted by Montgomery County;

(C) Obstruction Marking and Lighting, AC 70/7460 *i.e.*, Federal Aviation Administration;

(D) Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17;

(E) The Society of Cable Television Engineers ("SCTE") Recommended Practices for Optical Fiber Construction and Testing;

(F) The SCTE's Recommended Practices for Coaxial Cable Construction and Testing;

(G) Franchisee's Construction Procedures Manual;

(H) The Montgomery County Code;

(I) Applicable local building codes; and

(J) Other applicable federal, state, County or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, local zoning, permitting and construction codes and laws and accepted industry practices.

(2) In the event of a conflict among codes, the most stringent code shall apply (except insofar as those codes, if followed, would result in a system that could not meet requirements of federal, state, County or local law, or is expressly preempted by other such provisions).

(3) The County and the Participating Municipalities may adopt additional standards as required to ensure that work continues to be performed in an orderly and workmanlike manner.

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

(d) *Interconnection:*

(1) The Franchisee shall continue to ensure that its System may be interconnected with the County's Institutional Network, other Cable Systems, or similar communications systems in the Franchise Area or adjacent area for purpose of sharing cable signals between Cable Systems and PEG facilities. Any interconnection of systems must be made by direct fiber optic connection.

(2) Upon receiving the directive of the County to interconnect, the Franchisee shall immediately initiate negotiations with the affected system or systems so that costs may be shared equally for both construction and operation of the interconnection link.

(3) The Franchisee shall cooperate with any interconnection corporation, regional interconnection authority, state or federal regulatory agency, or regional network established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of communications systems beyond the boundaries of the County.

(e) *Minimize Impact of Use of Right-of-Way:* All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located to minimize

interference with the rights and convenience of property owners and the use of the Public Right-of-Way.

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

(2) The Franchisee shall use, with the owner's permission, existing poles, conduits and other facilities whenever technically feasible and economically practical.

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

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

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

(2) In the event of a failure by the Franchisee to complete any work required for the protection or restoration of the Public Rights-of-Way, or any other work required by County or local law or ordinance, within the time specified by and to the reasonable satisfaction of the County or the affected Participating Municipality, the County or the affected Participating Municipality, following notice and an opportunity to cure, may cause such work to be done, and the Franchisee shall reimburse the County and the affected Participating Municipality the cost thereof within thirty (30) days after receipt of an itemized list of such costs; or the County or the affected Participating Municipality may recover such costs through the Security Fund provided by Franchisee.

(g) *Contractors:* Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of System equipment or for the pruning or removal of trees and vegetation must be properly licensed under laws of the State and all applicable local

ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as the Franchisee would have if the work were performed by the Franchisee. The Franchisee must ensure that contractors, subcontractors and all employees who will perform work for it are trained and experienced. The Franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the Franchise Agreement and applicable law, shall be responsible for acts or omissions of contractors or subcontractors to the same degree it is responsible for the acts of its employees, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed.

(h) *Publicizing Proposed Construction Work:* The Franchisee shall notify the public in accordance with this Section and applicable Montgomery County Codes or regulations prior to commencing any proposed construction that will disturb or disrupt public or private property or have the potential to present a danger or affect the safety of the public generally, except when a delay in commencing such work would present a danger or affect the safety of the public. The Franchisee shall publicize proposed construction work by causing written notice of such construction work to be delivered to the County and any affected Participating Municipality, and by notifying at least one (1) day prior to commencement of construction work, those Persons most likely to be affected by the work in at least two (2) of the following ways: by telephone, in person, by mail, by distribution of flyers to residences or businesses, by publication in local newspapers, or in any other manner approved by the County that shall reasonably provide adequate notice. If the Franchisee must enter premises, it must schedule an appointment at the convenience of the owner or resident. If the Franchisee will commence construction in the Public Rights-of-Way that will impact more than five percent (5%) of Subscribers, prior to the commencement of any such construction, and periodically throughout, the Franchisee shall inform the public and its Subscribers about the progress of construction, where construction crews will be working, and any expected temporary interruptions to existing services.

(i) *Additional Capacity:* Franchisee will notify the County in advance of the installation of any fiber optic cable within the Franchise Area, so that additional fiber may be installed, at the County's expense, on an actual cost basis for government and institutional use, or so that the County may coordinate its own fiber construction with the Franchisee's construction in order to reduce costs or minimize the disruption to the Public Right-of-Way. If the County wishes to request additional capacity, it may notify the Franchisee within fifteen (15) days of receipt of Franchisee's notification.

6. SYSTEM OPERATION AND MAINTENANCE

The Franchisee's Cable System shall, at all times during the Franchise Agreement term, meet or exceed the following requirements:

(a) *Sufficient Staff, Facilities and Equipment:* The Franchisee shall maintain sufficient staff, facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with this Agreement and applicable laws and regulations. This obligation includes, but it not limited to, maintaining the staff, facilities and equipment to comply with any applicable FCC technical standards, to cure violations of any applicable FCC technical standards,

and to ensure that the Cable System remains in compliance with the standards specified in subsection 5(b), as such standards may be amended.

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

(c) *Regular Maintenance:* Maintenance of the System shall be performed so that all Subscribers consistently receive signals in compliance with the technical performance and operating standards required by this Franchise Agreement, by FCC rules and regulations, and by any applicable Subscriber service terms that establish stricter requirements than the foregoing.

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

(e) *System Tests and Inspections:*

(1) The Franchisee shall perform all tests necessary to ensure that the System components are operating as expected and to demonstrate compliance with the requirements of the Franchise Agreement and other performance standards established by law or regulation, including performance and testing standards required by the County unless preempted by federal law. All tests shall be conducted in accordance with applicable federal law and rules, with the following qualifications:

(A) The Franchisee shall comply with the proposed federal rules for performance standards and proof-of-performance testing as set forth in *In re Cable Television Technical and Operational Requirements*, 27 FCC Rcd 9678 (F.C.C. 2012), until such time as the FCC adopts federal rules to address digital cable and successor technologies.

(B) If, after the Effective Date of this Agreement, the federal requirement for a regular formal Cable System proof-of-performance testing is eliminated but federal performance standards exist, the Franchisee agrees to perform testing to ensure compliance with applicable federal performance standards at locations and times selected by the County.

(C) If there are no federal standards applicable to signal quality, the Franchisee agrees to perform tests to ensure compliance with industry performance standards, including but not limited to DOCSIS requirements, practices as recommended by the Society of Cable Telecommunications Engineers or the National Cable & Telecommunications Association, or test equipment manufacturers, at locations and times selected by the County.

(2) The Franchisee shall conduct tests as follows:

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

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

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

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

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

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

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

(6) If any test indicates that any part or component of the System fails to meet applicable requirements, the Franchisee, without requirement of additional notice or request from County, shall take immediate corrective action. Within thirty (30) days, Franchisee shall retest the locations and advise the County of the action taken and the test results. Franchisee shall continue to retest the locations every thirty (30) days and continue to take corrective action until the location performs according to applicable federal and industry standards. Failure to pass any test shall constitute a breach of this Agreement and Franchisee shall be subject to liquidated damages as specified in Section 14(e). Any repeated failure to pass shall be treated as a repetitive failure to correct the original breach, subject to escalating liquidated damages.

(f) *Continuous 24-Hour Operation:* The System shall be capable of continuous twenty-four (24) hour daily operation without severe material degradation of signal except during or immediately following Extraordinary Storms.

(g) *Stand-by Power:* Franchisee shall provide standby power generating capacity at the headend and at all hubs. Franchisee shall maintain motorized standby power generators capable of at least twenty four (24) hours continuous operation at the headend and at all hubs. The headend and hub power generators shall be tested once per week. The Franchisee shall provide power supplies serving the nodes and distribution that shall be capable of providing power to the system for not less than four (4) hours according to manufacturer specifications in the event of an electrical outage. The Franchisee shall maintain sufficient generators within the Area Served to simultaneously power twenty (20) percent of the System, and these generators shall be deployed, in place, and activated at the site of any power outage before battery power supplies fail.

(h) *No Deterioration to Access Signals:* The System shall be so constructed and operated that there is no material deterioration in the quality of PEG signals or leased access signals resulting from the transportation of the video signal, either upstream or downstream, as compared with any local commercial broadcast channel on the System. Deterioration refers to any signal problem, including but not limited to pixilation, ghost images and other interference and distortions. All PEG signals provided to the Franchisee in high definition or other specific formats shall be transmitted by the Cable System to Subscribers in the same format without deterioration, provided however, that nothing in this Agreement shall obligate the Franchisee to deliver a level of service beyond that to which the Subscriber has subscribed.

(i) *Metadata:* All Metadata provided to the Franchisee shall be transmitted to all Subscribers in a manner that can be used by all Subscribers authorized to receive and use the Metadata. All closed or open captioning, video description, second language content, or similar Metadata provided to the Franchisee shall be provided to the Subscriber in a manner that can be viewed with a standard television monitor.

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

(k) *Compliance with FCC Regulations.* The Franchisee shall comply with all applicable FCC regulations, and without limiting this obligation, comply with the following:

(1) Multichannel Video and Cable Television Service Standards. The Franchisee shall comply with 47 C.F.R. Part 76 (Section 47 C.F.R. § 76.1 through 47 C.F.R. § 76.2000).

(2) No Interference. The Franchisee shall operate the System in such a manner as to minimize interference with the reception of off-the-air signals by a Subscriber. The Franchisee shall insure that signals carried by the System, or originating outside the System wires, cables, fibers, electronics and facilities, do not ingress or egress into or out of the System in excess of technical standards in 47 C.F.R. Part 76, Subpart K, or other applicable standards. In particular, Franchisee shall not operate the System in such a manner as to pose unwarranted interference with emergency radio services, aeronautical navigational frequencies or any airborne navigational reception in normal flight patterns, or any other type of wireless communications and shall comply with applicable FCC regulations.

(3) Consumer Equipment For Lease or Sale. Subject to applicable law or regulation, as part of the System, the Franchisee shall, consistent with 47 C.F.R. § 76.984 and 47 U.S.C. § 543(d), offer every Subscriber, at uniform prices and regardless of the level of service taken, the opportunity to lease from the Franchisee or to lease or buy from others converters (including digital converters), including any associated software, that allow Subscribers to view a program on one channel while recording a program on another channel. To the extent permitted by federal law, Subscribers shall have the right to attach devices to the Franchisee's System to allow them to transmit signals or service to video cassette recorders, digital video recorders, receivers and other terminal equipment, and to use their own remote control devices and converters, and other similar equipment, as long as such devices do not interfere with the operation of the Franchisee's System or the reception of any cable Subscriber, do not serve to

circumvent the Franchisee's security procedures, or are not used in any manner to obtain services illegally. The Franchisee, at no additional charge, shall provide information regarding the Cable System to Subscribers which will assist them in adjusting such devices so that they may be used with the Franchisee's System.

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

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

(6) Home Wiring. Franchisee will comply with applicable law governing the disposition of subscriber home wiring and home run wiring, including 47 C.F.R. Part 76, Subpart M (Cable Inside Wiring) and any notice requirements with respect to home wiring. Prior to a Subscriber's termination of Cable Service, the Franchisee will not restrict the ability of the Subscriber to remove, replace, rearrange or maintain any cable wiring located within the interior space of the Subscriber's dwelling unit, so long as such actions are consistent with FCC standards.

(l) *Accessibility of Services:* Franchisee shall comply in all material respects with all applicable requirements regarding accessibility of services in the Americans with Disabilities Act and 47 C.F.R. § Part 79.

(1) For persons with disabilities, upon request, the Franchisee shall provide information concerning the cost and availability of equipment to allow the reception of services for persons with disabilities, including but not limited to equipment to facilitate of reception of services by deaf, hearing-impaired, blind or low-vision Subscribers. Nothing in this subsection shall obligate the Franchisee to deliver a level of service beyond that to which its Subscribers have subscribed.

(2) The Franchisee must have TDD/TTY (or equivalent) equipment, and a publicly listed telephone number for such equipment, that will allow deaf or hearing-impaired customers to contact the Franchisee.

(3) For consumer information materials on the Franchisee's website, the Franchisee shall ensure accessibility of these materials for, and effective communication with, and persons with disabilities, including but not limited to deaf, hearing-impaired, blind or low-vision consumers. The Franchisee agrees to make a good faith effort to comply with the Web Content Accessibility Guidelines 2.0 Level A and AA Success Criteria ("WCA2.0 AA") or a successor standard.

(4) The Franchisee shall ensure that for all closed-captioned and video description-enabled programming retransmitted by the System, the closed captioning and video

description text shall be located in a visually appropriate location on the screen so as not to degrade the viewability of the video programming.

(m) *Types of Service:* Should the Franchisee desire to change the selection of programs or services offered on the System, any of its tiers, it shall maintain the quality and level of services provided over the System. Any change in programs or services offered shall comply with all lawful conditions and procedures contained in this Agreement and in applicable law.

(n) *Emergency Alert System:*

(1) The Franchisee shall install and thereafter maintain for use by the County, for itself and on behalf of the Participating Municipalities, a local Emergency Alert System ("EAS"), and ensure accessibility as required by 47 C.F.R § 79.2.

(2) The local EAS shall be capable of being remotely activated by telephone or other agreed technology and shall allow a representative of the County to place a text crawl message on all video programs on the Franchisee's System that may lawfully be overridden. This override must be able to take place without the assistance of the Franchisee, for emergency broadcasts from a location designated by the County in the event of a civil emergency or for reasonable tests.

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

(o) *Periodic Performance Evaluation:* The County may schedule periodic public hearings to evaluate the performance of the Franchisee, or to discuss the integration of future technologies, other plans or operations of the Franchisee or any aspect of the Franchisee's Cable System. The Franchisee shall cooperate with the County in any such evaluation.

(p) *Mid-Term Technical Review:*

(1) In addition to any periodic performance evaluations, the County may also conduct a Mid-Term Technical Review of the Franchisee's Cable System. The Franchisee shall fully cooperate and assist the County in conducting any such review.

(2) Purpose. The purpose of the Mid-Term Technical Review shall be to evaluate the technical performance and capabilities of the Franchisee's System, to determine whether to require a system upgrade to conform with technical improvements then commonly in use in the industry and available on systems in communities similar to the County. Such review shall be conducted to enable the County to determine the following:

(A) Whether the Cable System should be upgraded or rebuilt;

(B) Whether the Cable System's technical standards should be revised or improved;

(C) Whether additional channels, equipment, facilities or support are required for public, educational and governmental use of the Cable System; and

(D) In general, whether any other changes in Franchise Agreement requirements should be made.

Each determination under this section shall be based upon the reasonable cable-related needs and interests of the County and the community, including the Participating Municipalities, considering the costs to the Franchisee of meeting those needs and interests during the remaining term of the Franchise Agreement.

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

(a) *Standard Definition Access Channels:* The Franchisee shall provide at least thirteen (13) standard definition ("SD") digital video Access Channels for non-commercial public, educational and governmental use, which Channels shall be in addition to any capacity provided on the Institutional Network. Seven of the Access Channels shall be allocated as follows:

(1) One full-time standard definition digital video channel for County Government use;

(2) One full-time standard definition digital video channel for Education Access use by the Montgomery County Public Schools;

(3) One full-time standard definition digital video channel for Education Access for use by Montgomery College;

(4) One full-time standard definition digital video channel for Public Access use by the County's community media designee;

(5) One full-time standard definition digital video channel for Governmental use by the City of Rockville;

(6) One full-time standard definition digital video channel for Governmental use by the City of Takoma Park;

(7) One full-time standard definition digital video channel for Governmental use by the Montgomery County Chapter of the Maryland Municipal League.

The remaining PEG channels shall be allocated by the County in its sole discretion.

(b) *High Definition Access Channels:*

(1) The County shall provide the necessary asynchronous serial interface ("ASI") feeds to the Franchisee's connection point located within the County Technical Operations Center ("County TOC") enable the Franchisee to activate up to thirteen (13) PEG Access Channels in high definition ("HD") digital format.

(2) The County shall provide the Franchisee with ninety (90) days prior written notice, requesting that Franchisee provide and activate the HD digital format channels in accordance with the schedule set forth below in Section 7(b)(3).

(3) Subject to Subsection 7(b)(2), the County may request activation of HD video channels consistent with the anticipated schedule listed below:

(A) Four (4) full-time HD digital video channels by June 30, 2016.

(B) Three (3) additional full-time HD digital video channels by June 30, 2017.

(C) Two (2) additional full-time HD digital video channels by June 30, 2018.

(D) Four (4) additional full-time HD digital video channels shall be made available upon a schedule to be mutually agreed upon by the County and the Franchisee. The Franchisee may, but shall have no obligation to, provide these four HD channels prior to December 31, 2017, and the County may require these four additional HD channels to be provided within seven (7) years after the effective date of this agreement.

(4) All Access Channels carried in high definition format must also continue to be carried in standard definition format, except in the following circumstances:

(A) The Franchisee demonstrates to the satisfaction of the County that its high definition services penetration rate is eighty (80) percent of Subscribers' service outlets or greater, the Franchisee shall not be required to simulcast in standard definition format the high definition channels in Section 7(b)(1); and

(B) The Franchisee requests that the County relieve the Franchisee of its obligation to carry any Access Channels in standard definition format in addition to high definition format when the Franchisee can demonstrate to the County's satisfaction and in the County's sole discretion that the Franchisee has permanently ceased to carry any local over-the-air broadcast networks in standard definition format.

(5) If the Franchisee carries channels in more than one high definition format, it shall advise the County, and the County may select the desired high definition format for its Access Channels.

(c) *Access Channel Assignments:* Access Channels shall be provided without additional fees or charges to every Cable Service Subscriber. Existing Access Channels are assigned to the following linear channel numbers as specified in Exhibit C. The parties shall mutually agree to the assignment of specific linear channel numbers for each additional Access Channel provided hereunder. Access Channel assignments should not be changed unless there is good cause and the entity responsible for managing the Access Channel consents to the change. Such consent to a channel assignment change shall not be unreasonably withheld. Access channel assignments should be the same throughout the System. If the Franchisee decides to change the channel designations for Access Channels, it must provide ninety (90) days notice to

the County prior to doing so, shall provide on-screen information on non-Access Channels notifying subscribers of the Access Channel number change in a manner similar to on-screen notifications of similar commercial channel additions or channel number changes, and shall reimburse the County and PEG Access Channel operators for any costs incurred for purchasing or modifying any equipment or for making logo changes necessitated by the channel designation changes. Alternatively, the Franchisee may choose to supply such equipment itself, provided such equipment is satisfactory to the County or PEG users.

(d) *Payments to Third Parties:* Pursuant to Section 8A-27 of the Montgomery County Code, the County has provided for certain cable communications plans which govern the expenditure of all PEG and Institutional Network grants required by the Franchise Agreement. The Franchisee agrees that where an approved item of such plan involves implementation by use of agreements with a third party contractor, then the Franchisee shall execute such agreements and make payments thereunder at the direction of the County or its designee(s).

(e) *Equivalency to Primary Local Broadcast Signals:* All Access Channels shall be provided to all Subscribers with all Metadata, and grouped with the majority of channels a Subscriber receives as part of the lowest cost tier of service offered on the System that contains other channels delivered in the same format. The Access Channels shall be distributed to Subscribers without material degradation and in a manner that treats the Access Channel signals the same as primary local over-the-air broadcast signals. If the primary local broadcast signal is delivered to subscribers in multiple formats, Access Channels shall be delivered in the same formats, except as otherwise provided herein. From the Subscriber's perspective, there should be no difference between the broadcast Channels and Access Channels (other than differences attributable to the signal delivered to Franchisee), as to accessibility, functionality, recordability, quality, or any other matter.

(f) *On-Screen Guide Program Information:* The Franchisee shall continue to make Access Channels names, specific program names, and other program-related information (including, but not limited to, accessibility options such as "CC" closed captioning logo) provided to it available to Subscribers on the System's on-screen program guide. Further, the Franchisee shall ensure that Access Channels have the same functionality as other commercial channels and that Subscribers can perform the same program guide functions and commands for the Access Channels and programs (such as searching and recording) as are available for any commercial channels and programs displayed on the program guide.

(g) *Access Channel Countywide Availability:* All Access Channels shall be provided Countywide. Notwithstanding the foregoing, the Franchisee agrees to add the Takoma Park Access Channel to its channel lineup within the City of Gaithersburg within one (1) year of the Effective Date of this Agreement and to make good faith efforts to deliver the Takoma Park Access Channel. The Franchisee will use its best efforts to operate on the same channel number within the City of Gaithersburg as other cable operators serving the County within the City of Gaithersburg.

(h) *Advanced Formats:* If Franchisee carries local affiliates of national broadcast networks or their equivalents in other advanced formats (other than high definition) in the future,

it shall also carry the Access Channels in such formats upon a schedule to be mutually agreed with the County which may include carriage in more than one format for a transition period.

(i) *On-Demand Access Programming:*

(1) The Franchisee shall designate sufficient capacity on its video-on-demand service to permit the County to make available to Subscribers at any given time a total of forty (40) hours of PEG programming of the County's choosing, including with respect to the format of the same. This capacity shall increase by ten (10) hours annually to a maximum of one hundred (100) hours. The County and Franchisee agree to periodically review the sufficiency of this requirement to meet the community's interest in on-demand PEG programming based on usage and comparable usage of non-commercial programming. The County and Franchisee shall agree on a mechanism for uploading and updating the on-demand PEG programming pursuant to the Franchisee's guidelines. The Franchisee agrees to work cooperatively with the County and Access Channel programmers to resolve mapping, folder, and technical issues necessary to enable effective and non-discriminatory subscriber access to PEG video-on-demand programming.

(2) All of the menu features and other functions that are available to Subscribers with respect to commercial programming available through the Franchisee's video-on-demand service shall also be made available in connection with the PEG video-on-demand programming.

(3) The Franchisee shall make the on-demand PEG programming available, free of charge, without restriction to all Subscribers who have access to the Franchisee's video-on-demand service.

(4) The Franchisee shall, upon the County's request, provide aggregate information (excluding personally identifiable information) as to Subscriber viewership of PEG programming made available through the Franchisee's video-on-demand service.

(j) *Return Feed From Facilities:*

(1) The Franchisee shall provide dedicated, bi-directional fiber optic links between the System headend and the County TOC to obtain all Access Channel signals ("Access Connection"). Should the County relocate the County TOC, the Franchisee shall bear its own costs of relocating any facilities it is providing pursuant to this subsection, including the Access Connection.

(2) The Franchisee shall provide and install all equipment for amplification, conversion, receiving, transmitting, routing, and headend processing of signals to be used for public, educational, and governmental purposes on the System, consistent with this Franchise Agreement.

(3) Within the County TOC, the County shall be responsible for all equipment necessary to transmit SD and HD ASI feeds to the Franchisee, and the Franchisee shall provide all equipment necessary for the County to monitor the quality of the SD and HD signals.

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

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

(2) On the County's behalf, to program any Public, Educational, or Government Access Channel; and

(3) To facilitate distribution of Access Channel programming and community media information.

(l) *Editorial Control:* Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on Access Channels (except for such programming as the Franchisee may produce and cablecast on such Channels).

(m) *Indemnification by PEG Programming Producers and Users:* All local producers and users of any of the PEG facilities or channels shall agree in writing to hold harmless the Franchisee, the County and the Participating Municipalities, from any and all liability or other injury (including the reasonable cost of defending claims or litigation) arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which claims result from the use of a PEG facility or channel.

(n) *Cable Service to Certain Facilities:*

(1) The Franchisee shall provide at no charge, the most commonly subscribed to Cable Service tier to four (4) locations in the City of Takoma Park, MD as specified in Exhibit D, as well as all equipment necessary to receive such Cable Service at up to 30 outlets allocated within these locations.

(2) When the Franchisee serves at least one hundred (100) subscribers within the Area Served of a Participating Municipality other than the City of Takoma Park, upon request, the Franchisee shall provide the most commonly subscribed to tier of Cable Service at no charge at one public, educational or governmental location within the Participating Municipality as designated by the Participating Municipality; provided however, that the Franchisee shall provide installation up to two hundred feet (200') from the Public-Right-of-Way in those areas where Franchisee is currently providing service. The Participating Municipality shall be responsible for all inside wiring and all costs to install a drop cable that exceeds two hundred feet (200').

(3) The Franchisee shall provide, at no charge, the most commonly subscribed to Cable Service tier to all facilities owned or operated by Montgomery County, or by the Board

of Education of Montgomery County, located within five hundred feet (500') of the Franchisee's Cable System, as well as all equipment necessary to receive such Cable Service at outlets within these locations. The Franchisee shall install Cable Service at such facilities within thirty (30) days of receiving a request for service from the County, provided however, that the Franchisee shall provide installation up to two hundred feet (200') from the Public-Right-of-Way and the County shall be responsible for all inside wiring and the incremental cost to install the drop cable beyond two hundred feet (200'), if applicable. The County may require the Franchisee to provide maps of the Cable System to determine the proximity of facilities owned or operated by the County, or by the Board of Education of Montgomery County, to Franchisee's Cable System.

(4) To the extent that Cable Service is provided by the Franchisee in alternative formats, the Cable Service will be provided to the County and Participating Municipality locations in this Section 7(n) in alternative formats upon request by the County.

(o) *Institutional Network:* Franchisee shall provide an institutional network acceptable to the County, or may, in lieu of the same, agree to provide contributions to support deployment of an institutional network by the County, or provide other facilities or services to provide functionalities that could be provided via an institutional network. The failure to provide the Institutional Network, or the contributions, facilities or services provided in lieu of the same shall be treated as a material breach of this agreement.

8. FRANCHISE FEES AND PEG AND I-NET GRANTS

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

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

(b) *PEG and I-Net Grant:*

(1) The Franchisee shall provide a grant to the County, on its behalf and on behalf of the Participating Municipalities, consisting of three (3) percent of the Franchisee's Gross Revenues to be used by the County for PEG and Institutional Network purposes as determined by the County (the "PEG and I-Net Grant"). Payment of the PEG and I-Net Grant shall be made quarterly, concurrently with the Franchise fee payment. The first payment shall be due on the same date as the first Franchise fee payment made by the Franchisee under this Agreement.

(2) The County may distribute a portion of the PEG and I-Net Grant provided by the Franchisee to the Participating Municipalities in accordance with any agreements between the County and Participating Municipalities.

(3) Costs and Payments Not Franchise Fees: The parties agree that any costs to the Franchisee associated with the provision of support for PEG or the Institutional Network pursuant to this Agreement, including without limitation any payments made to the County pursuant to Sections 8 of this Agreement, are PEG support costs. The parties agree that these costs do not constitute and are not part of a franchise fee and fall within one or more of the exceptions to 47 U.S.C. § 542. The Franchisee waives any claim to the contrary.

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

(d) *Late Payments:* In the event any Franchise fee or PEG and I-Net Grant payment or recomputation amount is not made on or before the required date, the Franchisee shall pay a late charge of five (5) percent of the amount of payment plus interest charges computed from such due date at an annual rate equal to the annual rate then charged for unpaid federal income taxes.

(e) *Audit:*

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

(2) The Franchisee shall be responsible for providing to the County all records necessary to confirm the accurate payment of Franchise fees, without regard to by whom they are held. Such records shall be made available pursuant to the requirements of Sections 11(a) and 11(f) herein. The Franchisee shall maintain such records for seven (7) years.

(3) The County's audit expenses shall be borne by the Franchisee as a cost incidental to the enforcement of the Franchise, if the audit determines the annual payment to the County for the preceding year is increased by more than five (5) percent. Any additional amounts due to the County as a result of the audit shall be paid within thirty (30) days following written notice to the Franchisee by the County of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid to the County, such amount shall be subject to the interest charge described in subsection (d), above. If the audit

determines that there has been an overpayment by Franchisee, the Franchisee may credit any overpayment against its next quarterly payment.

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

(f) *No Limitation on Taxing Authority:*

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

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

(g) *Allocation of Revenues Among Bundled Services:* If the Franchisee bundles Cable Service with non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the Franchise fee payments under this Agreement. For purposes of determining Gross Revenues, any revenue received or discounts provided shall be allocated proportionally, consistent with GAAP. In the event that Franchisee bundles or combines Cable Services (which are subject to the Franchise fee) with Non-Cable Services (which are not subject to the Franchise fee) so that Subscribers pay a single fee for more than one class of service resulting in a discount on Cable Services, Franchisee agrees that for the purpose of calculation of the Franchise fee, it shall allocate to Cable Service revenue no less than a *pro rata* share of the revenue received for the bundled or combined services. The *pro rata* share shall be computed on the basis of the stand-alone retail rate available to Montgomery County Subscribers at the time of the purchase for each service in the bundled or combined classes of services when purchased separately.

9. CUSTOMER SERVICE

(a) *General Provisions:* This Section 9 sets forth customer service standards that the Franchisee must satisfy. In addition, the Franchisee shall at all times satisfy any additional or stricter requirements established by FCC regulations, or other applicable federal, state, or local law or regulation. Nothing in this section in any way relieves the Franchisee of its obligation to comply with other applicable consumer protection laws.

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

(1) Standard Installations. Except as federal rate regulations may otherwise require, the Franchisee shall not assess a Subscriber any cost other than a standard installation charge for service drops of two hundred feet (200') or less, to the primary outlet, unless the Franchisee demonstrates to the County's satisfaction that extraordinary circumstances justify a higher charge. Except as applicable law may otherwise require, where a drop exceeds two hundred feet (200') in length from the nearest Public Right of Way, the Franchisee may charge a subscriber an additional charge. Standard Installations shall be performed within seven (7) business days after an order has been placed, at a later date as requested by the Subscriber.

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

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

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

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

(6) Mobility-Limited Subscribers. With regard to mobility-limited Subscribers, upon Subscriber request, the Franchisee shall arrange for pickup or replacement of

converters or other Franchisee equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

(7) Pre-Paid Mailers. The Franchisee shall offer all Subscribers the option to use a postage-prepaid mailer to return, exchange, or replace equipment.

(c) *Telephone and Office Availability*:

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

(2) The Franchisee will maintain at least one local, toll-free or collect call telephone access line which will be available to subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives of the Franchisee shall be available to respond to Subscriber telephone inquiries during Normal Business Hours.

(3) Under Normal Operating Conditions, the following standards shall be met by the Franchisee.

(A) As measured in any twelve (12) hour period, telephone answering time shall not exceed an average of thirty (30) seconds, and the time from answering to completing, at the caller's option, the transfer of the call to a customer service representative (including hold time and phone tree time) shall not exceed an average of an additional thirty (30) seconds.

(B) A customer will receive a busy signal, as measured in any four (4) hour period, less than three (3) percent of the time.

(C) During Normal Business Hours, whenever telephone hold times for a customer are predicted to exceed five (5) minutes, the Franchisee's automated telephone answering system shall provide the customer with a call back option that allows the customer to connect to an answering machine or service capable of receiving and recording service complaints and inquiries, and leave a number where the customer can be reached. Such inquiries must be responded to by a trained representative of the Franchisee by the next business day.

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

(E) Franchisee shall maintain automated measuring equipment to measure call center performance and report according to these standards.

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

(d) *Scheduling and Completing Service:* Under Normal Operating Conditions, each of the following standards shall be met by Franchisee:

(1) Prompt Service. Installations located up to two hundred (200) feet from the nearest Public Right-of-Way shall be completed within seven (7) business days after the order is placed or Miss Utility marking, or at a later time if requested by the Subscriber. Repairs and maintenance for Service Interruptions and other repairs not requiring work within a Subscriber's premises must be completed within twenty-four (24) hours of the time the Subscriber reports the problem to the Franchisee or its representative or the interruption or need for repairs otherwise becomes known to the Franchisee. Work on all other requests for service shall be scheduled for the next available appointment, or at a later time mutually agreeable to the Franchisee and the Subscriber. Franchisee shall exercise its best efforts to complete such work within three (3) days from the date of the initial request, except installation requests, provided that the Franchisee shall complete the work in the shortest time possible where, for reasons beyond the Franchisee's control, the work could not be completed in those time periods even with the exercise of all due diligence; the failure of the Franchisee to hire sufficient staff or to properly train its staff shall not justify the Franchisee's failure to comply with this provision.

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

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

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

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

(6) Other Inquiries. Under Normal Operating Conditions, billing inquiries and requests for service, repair, and maintenance not involving Service Interruptions must be acknowledged by a trained customer service representative within twenty-four (24) hours, or

prior to the end of the next business day, whichever is earlier. The Franchisee shall respond to all other inquiries within five (5) business days of receipt of the inquiry or complaint.

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

(e) *Interruptions of Service:*

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

(2) For Service Interruptions affecting more than twenty (20) percent of the Subscribers (whether intentionally caused by the Franchisee or not), including during any period that may qualify as a Force Majeure event, the Franchisee shall provide a best estimate of Service restoration time to any individual affected Subscriber who contacts the Franchisee about such Service Interruption.

(f) *Notice to Subscribers*:

(1) The Franchisee shall provide the following materials to each Subscriber at the time Cable Service is installed, at least annually thereafter, and at any time upon request. Copies of all such materials provided to Subscribers shall also be provided to the County.

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

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

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

(D) Written instructions for placing a service call;

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

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

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

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

(2) Subscribers and the County will be notified of any changes in rates, programming services or channel positions, and any significant changes in any other information required to be provided by this section, as soon as possible through announcements on the Cable System and in writing. Notice must be given to the County a minimum of thirty (30) days in advance of notice to subscribers and to subscribers a minimum of thirty (30) days in advance of such changes and other significant changes if the change is within the control of the cable operator. Notwithstanding the forgoing, notice may be provide simultaneously to the County and to subscribers thirty (30) days in advance of programming service or channel position changes, or other minor changes that do not affect service or equipment rates or terms and conditions of service.

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

(4) The Franchisee shall maintain a public file containing all notices provided to Subscribers under these customer service standards, as well as all promotional offers made to Subscribers. Copies of all notices, promotional or special offers sent to Subscribers and any agreements used with Subscribers shall be filed promptly with the County. All forms and notices distributed to customers that describe customer service policies and procedures shall be subject to County approval. County response to Franchisee's requests for review shall be made within five (5) working days of Franchisee's submission, and approval shall not be unreasonably withheld. The Franchisee shall make a good faith effort to maintain an online public file accessible by Subscribers and the County to view all notices provided to Subscribers regarding customer service standards, practices and terms and conditions.

(g) *Billing:* Bills shall be clear, concise, and understandable. Bills must be fully itemized with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits. The Franchisee shall make a good faith effort to institute

practices which inform subscribers of the expiration of promotional rates thirty (30) days prior to expiration and to inform subscribers of the non-promotional rate at the time and in the same matter that promotional rates are confirmed.

(h) *Rebates, Refunds and Credits Policies:*

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

(2) The Franchisee shall adopt general policies to provide Subscribers with refunds and credits consistent with FCC regulations, including, but not limited to, 47 C.F.R. § 76.942, and the following requirements.

(A) Refund checks shall be issued promptly, but no later than the following:

(i) The Subscriber's next billing cycle following resolution of the request or thirty (30) days following resolution of the request, whichever is earlier, or (ii) the date that equipment supplied by the Franchisee for use to receive service is returned to Franchisee, if such service was terminated.

(ii) Credits or refunds for service or equipment will be issued no later than the Subscriber's next billing cycle following the determination that a credit or refund is owed.

(iii) The Franchisee shall also offer Subscribers the option of receiving credits or refunds via automatic payment if the Subscriber has enrolled in the Franchisee's program, or a similar program that automatically makes recurring bill payments to the Franchisee from a checking account, savings account or credit card.

10. EMPLOYMENT, TRAINING, AND PROCUREMENT REQUIREMENTS

(a) *Employment:*

(1) The Franchisee shall, in accordance with Federal, State, County and local laws and regulations, afford equal opportunity and non-discrimination in employment to all individuals, regardless of their race, color, religion, age, sex, national origin, sexual orientation

or handicap. The Franchisee shall comply will all applicable requirements of the Americans with Disabilities Act.

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

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

(c) *Procurement:*

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

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

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

11. REPORTS AND RECORDS

(a) *Open Books and Records:*

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

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

(3) The Franchisee shall keep such records and maintain such monitoring equipment as are required to enable the County to determine whether the Franchisee is

complying with all telephone answering standards required by applicable customer service regulations.

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

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

(b) *System Mapping:* The Franchisee shall upon request, provide the County with system level trunking maps to illustrate the architecture of the system. The architectural design shall be shown on maps of industry standard scale using standard symbology, and shall depict all electronic and physical features of the cable plant, and shall be viewable in the County's Geographic Information System.

(c) *Communication with Regulatory Agencies:*

(1) The Franchisee shall file with the County in a form acceptable to the County all reports and materials submitted to or received from the FCC, the Security and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the Franchisee's System, including, but not limited to, any proof of performance tests and results, Equal Employment Opportunity reports, and all petitions, applications, and communications of all types regarding the Cable System, or a group of Cable Systems of which the Franchisee's Cable System is a part, including any such material submitted by or received by the Franchisee, an Affiliate, or any other Person on the behalf of the Franchisee.

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

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

(1) A summary of the previous year's activities in development of the Cable System, including but not limited to descriptions of services begun or dropped, the number of subscribers gained or lost for each category of service, the number of pay units sold, the number of subscribers using converters, the amount collected annually from Subscribers and users of the

System, and the character and extent of the services rendered to such Subscribers and users, including Leased Access Channel users;

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

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

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

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

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

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

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

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

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

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

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

(13) The Franchisee's policies regarding Subscriber privacy; and

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

(e) *Special Reports:* Upon request, the Franchisee shall deliver the following reports to the County:

(1) The Franchisee shall provide upgrade plans, technical specifications and build-out schedules regarding any Significant Upgrade. Such information may include updated as-built system design maps viewable in the County's Geographic Information System within sixty (60) days of the completion of system construction in any geographic area.

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

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

(4) The Franchisee must submit to the County any additional information required to determine the Franchisee's compliance with each customer service standard in Section 9, including the raw data required to calculate any standard that is measured as a periodic average.

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

(g) *Records Required*:

(1) The Franchisee shall at all times maintain:

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

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

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

(ii) Records of service calls for repair and maintenance indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved.

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

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

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

(h) *Performance Evaluation:*

(1) The County may, at its discretion, periodically evaluate the performance of the Franchisee. Evaluation topics may include, but are not limited to, system performance and construction, Franchisee compliance with the Montgomery County Code and this Agreement, customer service and complaint response, Subscriber privacy, services provided, programming offered, service rate structures, Franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions. The Franchisee shall fully cooperate with the County and shall provide such information and documents as the County may need to reasonably perform its evaluation.

(i) *Voluminous Materials*: If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at some other location, provided that:

(1) The Franchisee must make necessary arrangements for copying documents selected by the County after review; and

(2) The Franchisee must pay all travel and additional copying expenses incurred by the County in inspecting those documents or having those documents inspected by its designee.

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

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

12. RATE REGULATION

(a) *All Rights Reserved:* The County reserves all of its rights to regulate the Franchisee's rates to the maximum extent permitted by law.

(b) *Geographical Uniformity:* To the extent consistent with the requirements of Section 8A-15 of the Montgomery County Code, the Franchisee's residential rates throughout the Franchise Area shall be uniform.

13. INSURANCE, SURETY, AND INDEMNIFICATION

(a) *Insurance Required:*

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

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

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

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

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

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

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

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

(c) *Policies Available for Review:* All insurance policies shall be available for review by the County and the Participating Municipalities, and the Franchisee shall deliver to the County a copy of the required certificates of insurance, evidencing that the required policies are in effect, no later than thirty (30) days after such policy is required to be effective.

(d) *Additional Insureds; Prior Notice of Policy Cancellation:* All liability insurance policies shall name the County, the Participating Municipalities, their officers, boards, commissions, commissioners, agents, and employees as additional insureds and shall further

provide that sixty (60) days prior written notice must be been given to the County and the Participating Municipalities for any material change, cancellation or reduction (except as a result of the payment of claims). The Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance satisfactory to the County which complies with this Agreement.

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

(f) *Indemnification:*

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

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

(3) The County or any affected Participating Municipality shall give the Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Franchisee shall provide the defense of any claims brought against the County and any affected Participating Municipality under this Section of the Franchise Agreement by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the County, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the County from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the County, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the County does not consent to the terms of any such settlement or compromise, the

Franchisee shall not settle the claim or action but its obligation to indemnify the County shall in no event exceed the amount of such settlement.

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

(g) *No Limit of Liability:* Neither the provisions of this Section, nor any damages recovered by the County or a Participating Municipality, shall be construed to limit the liability of the Franchisee for damages under the Franchise Agreement.

14. PERFORMANCE GUARANTEES AND REMEDIES

(a) *Performance Bond:*

(1) Franchisee shall obtain and maintain during the entire term of the Franchise, and any renewal or extensions thereof, except as provided in Section 15(a)(4) below, a performance bond or an irrevocable letter of credit in favor of the County and the Participating Municipalities in the amount of $250,000, to ensure the Franchisee's faithful performance of its obligations under the Montgomery County Code and this Agreement.

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

(A) There shall be recoverable by the County and the Participating Municipalities, from the principal and surety, any and all fines and penalties due to the County and the Participating Municipalities and any and all damages, losses, costs, and expenses suffered or incurred by the County or the Participating Municipalities resulting from the failure of the Franchisee after notice and opportunity to cure to faithfully comply with:

(i) the material provisions of this Agreement, the Montgomery County Code, and other applicable law;

(ii) all orders, permits and directives of the County, a Participating Municipality, or other body having jurisdiction over its acts or defaults;

(iii) payment of fees due to the County or any Participating Municipality; or (iv) payment of any claims or liens due the County or any Participating Municipality. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

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

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

(ii) the Franchisee carries out a Transfer of the Franchise without the express written consent of the County and the Participating Municipalities as

provided herein. The County and the Participating Municipalities shall apply any funds received under the performance bond to defray any damages, fees, costs and expenses attributable to or arising from the abandonment of the System or Transfer of the Franchise. Any funds remaining upon final resolution of all claims and payment of all damages, costs, fees, and expenses shall be returned to the bonding company.

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

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

(b) *Security Fund:* The Franchisee shall provide a security fund in the amount of $10,000 to secure its performance of all obligations under this Agreement and the Montgomery County Code. The Security Fund shall be released only upon expiration of the Franchise and if there is no outstanding default or unpaid amounts by the Franchisee. The following procedures shall apply to drawing on the Security Fund:

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

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

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

(4) The County must promptly notify the Franchisee of the amount and date of any withdrawal.

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

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

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

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

(d) *Remedies:*

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

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

(B) Reduce the duration of the Franchise Agreement on any basis the County determines is reasonable and affords the Franchisee reasonable due process;

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

(D) Revoke the Franchise.

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

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

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

(e) *Liquidated Damages:* Because the Franchisee's failure to comply with provisions of the Franchise and this Franchise Agreement will result in injury to the County, and because it will be difficult to estimate and prove the extent of such injury, the County and the Franchisee agree to the following liquidated damages for the following violations of the Franchise and of this Agreement, which represent both parties' best estimate of the damages resulting from the

specified violation. Both parties intend payment of such liquidated damages to serve as compensation and they do not intend for such payment to serve as a penalty for failure to comply with provisions of the Franchise Agreement or applicable law. The parties further agree to increase the liquidated damage amounts, but also to delay implementation of the increase until January 1, 2022, to postpone enforcement of increased liquidated damage amounts until after the expiration of other Cable franchises in effect within the County as of the Effective Date of this Agreement. Such liquidated damages shall not be a substitute for actual performance by the Franchisee of a financial payment, but shall be in addition to any such actual performance. The failure of a Franchisee to hire sufficient staff or to properly train its staff shall not preclude the application of the provisions in this Section. The County, or its designee, shall have the authority to waive or reduce the liquidated damage amounts herein for good cause. Cure periods listed below shall begin to run at the time the Franchisee is notified in writing of a violation by the County, unless otherwise specified below. The County may draw on the Performance Bond or Security Fund to recover any liquidated damages.

(1) For failure to submit any required plans indicating expected dates of installation of various parts of the System: $200 per day for each day the violation continues.

(2) For a Transfer without approval: $2,000 per day for each day the violation continues.

(3) For failure to make PEG capacity available, or failure to provide an institutional network or contributions, facilities or services provided in lieu of an institutional network, failure to construct required links to PEG facilities, or failure to make grant payments required under this Agreement: $1,000 per day for each day the violation continues, in addition to any monetary payment due under this Agreement or the Montgomery County Code.

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

(5) For violation of customer service standards: $200 per violation increasing to $500 per violation in 2022.

(6) For failure, unless such failure is beyond the Franchisee's control, of the Emergency Alert System to perform in the event of a public emergency or vital information situation: $250 per occurrence increasing to $500 per occurrence in 2022.

(7) For failure to render required payment for reimbursement of any Franchise expenses, or liquidated damages: $100 per day increasing to $200 per day in 2022, in addition to any monetary payment due under this Agreement or the Montgomery County Code.

(8) For failure to file, obtain or maintain any required Security Fund in a timely fashion: $50 per day increasing to $200 per day in 2022.

(9) For failure to restore damaged property or to correct a Cable System inspection violation notice issued by the County: $50 per day increasing to $500 per day in 2022, in addition to the cost of the restoration as required elsewhere herein.

(10) For violation of technical standards established by the FCC: $100 per day increasing to $200 per day in 2022.

(11) For violation of technical, construction or right-of-way standards, other than those established by the FCC, agreed to by Franchisee in this Agreement: $100 per day increasing to $200 per day in 2022.

(12) For violations of this Agreement or the Montgomery County Code: $200 per day for each violation for each day the violation is not remedied beyond a thirty (30) day cure period.

(13) For violation of any material provision of the Franchise Agreement: $500 per day.

(14) For habitual, persistent, repeated or uncured violations, the liquidated damages amounts specified above shall escalate as follows:

(A) If a violation is not cured within twenty (20) working days of written notice of the violation pursuant to Section 9(f)(4), the applicable liquidated damages amount specified in (1) through (13) shall henceforth be doubled, and shall double again every ten (10) working days thereafter that such violation remains uncured.

If a violation for which liquidated damages is assessed pursuant to (1) through (13) occurs, any subsequent violation of the same category that occurs within the next twelve (12) months shall be assessed liquidated damages at double the rate specified.

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

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

(2) The Franchisee agrees that the County may revoke the Franchise pursuant to the Montgomery County Code. The Franchisee further agrees that the County may revoke the Franchise if the Franchisee defrauds or attempts to defraud the County or Subscribers, or if the Franchisee breaches any other material breach of this Agreement or violates the Montgomery County Code.

(3) There shall be no opportunity to cure if the Franchisee is shown to have defrauded or attempted to defraud the County, a Participating Municipality, or its Subscribers.

(4) If the County revokes the Franchise, or if for any other reason the Franchisee abandons, terminates, or fails to operate or maintain service to its Subscribers, the parties agree that:

(A) The County may take any action authorized by the Montgomery County Code.

(B) If the County requires the former Franchisee to remove its facilities and equipment at the former Franchisee's expense and the former Franchisee fails to do so within a reasonable period of time, the County may effect the removal at the former Franchisee's or surety's expense.

15. MISCELLANEOUS PROVISIONS

(a) *Actions of Parties:* In any action by the County or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditions, and timely manner.

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

(c) *Preemption:* In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the County or Participating Municipality.

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

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

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

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

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

Stanford Ames, E. V. P., General Manager
Starpower Communications, LLC
1000 Derekwood Lane
Lanham, MD 20706

with a copy to:

Tom Steel
E. V. P. Government Affairs
115 West First Street
South Boston, MA 02127

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

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

with a copy to:

Cable & Broadband Administrator
Office of Cable and Broadband Services
100 Maryland Avenue
Suite 250
Rockville, MD 20850

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

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

(i) *Captions and References:*

(1) The captions and headings of sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

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

(j) *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they have been originally set forth herein.

(k) *Exhibits:* The exhibits to the Agreement (the "Exhibits"), attached hereto and portions thereof, are, except as otherwise specified in such Exhibits, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Exhibits shall be the same as those applicable to any amendment or modification hereof, except as specified in such Exhibit or elsewhere in this Agreement.

(l) *Severability:* If any section, subsection, sentence, paragraph, term, or provision of this Agreement shall, to any extent, be held to be illegal, invalid, or unenforceable, the remainder hereof shall be valid in other respects and continue to be effective.

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

2015 CABLE FRANCHISE AGREEMENT BETWEEN MONTGOMERY COUNTY, MARYLAND AND STARPOWER, L.L.C.

AGREED TO THIS 15th DAY OF September, 2015.

Montgomery County, Maryland

By: _____

Isiah Leggett
County Executive

APPROVED AS TO FORM AND LEGALITY

_____

Clifford L. Royalty
Division Chief, Office of the County Attorney

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

By: _____

Name Printed: _____

Title: _____

EXHIBIT A

PARTICIPATING MUNICIPALITIES

Town of Chevy Chase*

Chevy Chase Section 3

Chevy Chase Section 5*

Chevy Chase View

Chevy Chase Village

Garrett Park

Glen Echo

Kensington

Village of Martins Addition*

Village of North Chevy Chase*

Rockville

Somerset

Takoma Park*

Washington Grove

*RCN Subscribers in these municipalities in 2015

EXHIBIT B

AREA SERVED

EXHIBIT C

STARPOWER PEG ACCESS CHANNEL NUMBER ASSIGNMENT

Channel 2	Assigned at the Discretion of Montgomery County
Channel 6	Montgomery County
Channel 10	Montgomery College
Channel 11	City of Rockville
Channel 13	City of Takoma Park
Channel 16	Montgomery County Chapter of the Maryland Municipal League
Channel 18	Assigned at the Discretion of Montgomery County
Channel 19	Assigned at the Discretion of Montgomery County
Channel 21	Montgomery County's Community Media Designee
Channel 88	Assigned at the Discretion of Montgomery County
Channel 89	Montgomery County Public Schools

EXHIBIT D

TAKOMA PARK SERVICE LOCATIONS

Takoma Park City Hall
7500 Maple Ave.
Takoma Park, MD 20912

Takoma Park Public Works
31 Oswego Ave.
Takoma Park, MD 20910

New Hampshire Avenue Recreation Center
7315 New Hampshire Ave.
Takoma Park, MD 20912

Heffner Park
41 Oswego Ave.
Takoma Park, MD 20910

EXHIBIT E
MONTGOMERY COUNTY
MINORITY-OWNED BUSINESS CONTRACTING

7.1 Purpose

The purpose of 11B.00.01.07 is to establish procedures to facilitate the goal of the County Government to remedy the effects of discrimination by awarding a percentage of County contracts, including contract modifications and renewals, with a dollar value of $10,000 or more to minority owned businesses (MFD owned business or MFD), as defined in Chapter 11B of the County Code, in proportion to the availability of MFD owned businesses to perform work under County contracts.

7.2 Policy

7.2.1 The Director, with the assistance of Using Departments and employees involved in contracting and purchasing, must actively and aggressively recruit certified MFD owned businesses for which a goal has been set to provide goods, construction, and services, including professional services, for the performance of governmental functions to facilitate the MFD goal of the County. Procurements less than or equal to $10,000, grants that are appropriated by the County Council to specific grantees, utilities, intragovernmental procurements, and certain intergovernmental procurements including certain bridge contracts identified by the Director are excluded from the base against which the goal is measured.

7.2.2 Businesses that are certified as a minority business enterprise under State procurement law and certain non-profit entities organized to promote the interests of persons with a disability are eligible to be certified as an MFD business in accordance with these regulations. Certification is subject to the graduation provisions of Section 7.4.5.

7.2.3 These regulations are the County's exclusive procedure for the certification, recertification and decertification of MFD owned businesses.

7.2.4 Using Department Heads should seek the advice and concurrence of the Director in the development of internal operating procedures to implement the provisions of this procedure.

7.3 General

7.3.1 In 11B.00.01.07 the term "relevant geographic market area" has the same meaning as it has in Chapter 11B. The term "MFD group" or "group of MFD owned businesses" has the same definition as "socially or economically disadvantaged group" in Chapter 11B.

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

7.3.2.1 belong to an MFD group for which a goal has been set under Section 7.3.4 in the purchasing category and source selection method covering the work that is the subject of the subcontract; and

7.3.2.2 be certified as an MFD owned business under Section 7.4.

7.3.3 MFD Subcontracting Program.

7.3.3.1 Unless the context indicates otherwise, in Section 11B.00.01.07,

(a) contract means a contract identified by Using Departments or the Director as having an estimated dollar value of $50,000 or more, including renewals; and

(b) contractor means a contractor that:

(1) is not a certified MFD owned business; or

(2) if the contractor is a certified MFD owned business, the contractor does not belong to an MFD group for which a goal had been set in the purchasing category covering significant work to be undertaken in the contract.

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

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

(a) identify each MFD subcontractor;

(b) identify the amount the contractor has agreed to pay each MFD subcontractor;

(c) provide a copy of the language used in each MFD subcontract which requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the contractor and the MFD subcontractor. The language must describe how the costs of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize an MFD subcontractor for filing an arbitration claim; and

(d) be made a part of the contract between the contractor and the County. County approval of the Subcontractor Performance Plan must not establish a contractual relationship between the County and the MFD subcontractor.

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

(a) the contractor to notify the Director of any proposed change to the Subcontractor Performance Plan;

(b) the contractor to provide in each subcontract with an MFD owned business a provision requiring the use of binding arbitration to resolve disputes between the contractor and the MFD owned business;

(c) that failure to submit documentation showing compliance with the Subcontracting Performance Plan is grounds for imposing liquidated damages unless failure to comply with the Plan is the result of an arbitration decision in favor of the contractor or a waiver granted by the Director. Liquidated damages under this provision should equal the difference between all amounts the contractor has agreed under its plan to pay MFD subcontractors and all amounts actually paid MFD subcontractors considering any relevant waiver or arbitrator's decision; and

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

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

(a) it is unusually difficult or impossible for the contractor to meet a subcontracting requirement because, for example, a qualified MFD owned business is not available for subcontracting or the contractor's good-faith efforts to subcontract with available MFD owned businesses have failed;

(b) reasonable grounds exist to waive a subcontracting requirement because, for example, the subcontracting requirement would undermine the purpose of a contract for personal services, subcontracting would be inconsistent with the requirements for confidentiality, or the contract is awarded under an emergency procurement; or

(c) the contractor belongs to a class of nonprofit entities for which the Director has determined that it would be impractical to require participation in the MFD Subcontracting Program.

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

7.3.4 The MFD subcontracting goal is set as follows:

7.3.4.1 By September 1 of each year the Director must determine for the previous fiscal year the availability of each group of MFD owned businesses with one or more employees. The Director must use the most recent report that the County Executive must submit under Section11B-61(b) of the County Code to determine the availability of MFD owned businesses in the relevant geographic market area to perform work under County contracts.

7.3.4.2 Fiscal year means July 1 through June 30.

7.3.4.3 The Director must state the availability by source selection method for each group of MFD owned businesses as a percentage of all businesses available to perform work under County contracts awarded through formal solicitation in the purchasing categories of:

(a) construction;

(b) goods;

(c) professional services; and

(d) other services

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

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

(a) construction;

(b) goods;

(c) professional services; and

(d) other services.

7.3.4.6 The Director must determine by source selection method the disparity between the dollar value of contracts and subcontracts awarded to each group of MFD owned businesses in each purchasing category identified in Section 7.3.4.5 with the availability of that group in each purchasing category by source selection method. The Director must use, to the extent practicable, a methodology compatible with the methodology used to determine disparity in the most recent report submitted under Section 11B- 61(b) of the County Code.

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

7.3.4.8 After receiving the Director's report, the CAO must set by September 30 of each year MFD subcontracting goals for the current fiscal year.

(a) In setting MFD subcontracting goals the CAO must determine by source selection method if the County has significantly underutilized each group of MFD owned businesses in each purchasing category. The CAO makes this determination under each source selection method by considering the disparity between the availability of each group of MFD owned businesses in each purchasing category with the contract dollars awarded to each group of MFD owned businesses in each purchasing category.

(b) If the CAO determines that a group of MFD owned businesses in a specific purchasing category under a particular source selection method has been significantly underutilized, the CAO must set an MFD goal for that group in the applicable purchasing category for that source selection method. The goal must be related to the availability by source selection method of the group of MFD owned businesses in the purchasing category.

(c) If the CAO determines that a group of MFD owned businesses in a specific purchasing category under a particular source selection method has not been

significantly underutilized, the CAO must not set an MFD goal in the applicable purchasing category for that source selection method. The CAO, nevertheless, may set a goal for an MFD group in a purchasing and source selection category (even though a finding of significant underutilization has not been found) if, in at least one out of the last 4 years, the CAO had determined the MFD group had been significantly underutilized and during that year a goal had not been set for the MFD group in the applicable purchasing and source selection category.

(d) The CAO must set for each purchasing category for which an MFD goal has been set an overall MFD subcontracting goal that contractors must meet under Section 7.3.3. The overall MFD subcontracting goal for each purchasing category must be related to the availability of all groups of MFD owned businesses for which a goal is set in that purchasing category.

7.4 Certification of MFD Owned Businesses

7.4.1 The Director may certify an entity as an MFD owned business if the business is certified as a minority business enterprise under Federal or State procurement law, or other non-self-certifying public entity certification program, as determined to be acceptable by the Director.

7.4.2 If the business is a not-for-profit entity organized to promote the interests of physically and mentally disabled individuals, the Director must determine whether:

7.4.2.1 the not for profit entity is certified as a minority business enterprise under Federal or State procurement law, or other non-self-certifying public entity certification program that the Director has determined to be acceptable; and

7.4.2.2 at least 51% of the individuals used by the not for profit entity to perform the work or manufacture the goods contracted for by the County are individuals with a physical or mental disability.

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

7.4.3.1 Certifications issued by the Federal or State governments, or by another public entity, provided that the public entity's program is not based on vendor self-certification.

7.4.3.2 Employment records, health records, and/or educational records of the employees of a not for profit entity seeking MFD certification.

7.4.3.3 Other relevant information concerning the operation of a not for profit entity.

7.4.4 A request for certification or recertification as an MFD business may be denied by the Director for any of the following reasons:

7.4.4.1 Failure to demonstrate that the business is a certified minority business enterprise under Federal or State procurement law, or through another non-self-certifying public entity certification program determined to be acceptable by the Director.

7.4.4.2 Failure to provide sufficient and timely information for the Director to make a certification or recertification determination.

7.4.4.3 Refusal to permit an on-site inspection by the Director.

7.4.4.4 Failure to comply with a request by the Director for information or access to records.

7.4.4.5 Graduation of the MFD owned business.

7.4.5 Certification as an MFD owned business by the County may be revoked for any one of the following reasons:

7.4.5.1 Fraud, deceit or misrepresentation in obtaining certification.

7.4.5.2 Failure to report in writing to the Director within 30 days of the date of the occurrence of any changes in the status of the certified MFD owned business that are relevant to its certification.

7.4.5.3 Failure to demonstrate at the request of the Director that the entity continues to be an MFD owned business.

7.4.6 Certification is subject to the graduation provisions of this Section. The Director must not certify an entity as a MFD owned business for a period of time that exceeds 5 years. The Director, however, may certify a business as an MFD owned business for 8 years if during the first 5 years of certification, the MFD owned business:

7.4.6.1 has not received at least

(a) 4 subcontracts awarded under Chapter 11B of the County Code; and

(b) the cumulative value of the subcontracts has not exceeded $120,000.

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

7.5 Responsibilities

7.5.1 Director

7.5.1.1 The Director is responsible for contacts with businesses to identify, encourage and coordinate participation of MFD owned businesses in the procurement process, including certification. This includes notification to all businesses of prospective procurement opportunities by electronic communication based on the most recently available business directories, encouragement of MFD owned business participation in procurement, as prime

contractors or subcontractors, procurement system education and information for all businesses, and referrals to resources such as technical consultants, sureties and financing.

7.5.1.2 The Director maintains up-to-date mailing lists, and other references of County certified MFD owned businesses for use by Using Departments, contractors, and for public information.

7.5.1.3 The Director provides Using Departments with a list of certified MFD owned businesses who have stated an interest in providing services required by the Using Department.

7.5.1.4 The Director assists Using Departments, as needed, in developing internal operating procedures to use certified MFD owned businesses in accordance with the provisions of this section.

7.5.1.5 The Director cooperates with other governments and governmental agencies in exchanging information regarding certified MFD owned businesses.

7.5.1.6 The Director distributes to potential prime contractors for whom a goal has not been set a current list of certified MFD owned businesses with a requirement that one or more be contacted if the work is being subcontracted.

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

7.5.2 Using Departments

7.5.2.1 The Using Departments should request and use the most recent list of certified MFD owned businesses furnished by the Director to encourage certified MFD owned businesses for whom a goal has been set to response to Requests for Proposals, Requests for Expressions of Interest, and all other procurements.

7.5.2.2 When inviting proposals for services with a dollar value of less than $50,000, whether by RFP, REOI, Mini-Contract or any other source selection method of procurement, the Using Departments must ensure an effort is made to afford certified MFD owned businesses for whom a goal has been set an opportunity to participate in the award of the contract. Periodically, or at the request of the Director, Using Departments must provide to the Director written documentation including contract documents that indicate the results of efforts to provide an opportunity for certified MFD owned businesses for whom a goal has been set to submit proposals. The Using Departments should also cooperate with the Director in efforts to encourage MFD contractor participation by, among other things, establishing minority business procurement objectives consistent with Chapter 11B of the County Code and by developing and implementing techniques to encourage greater MFD owned business participation.

7.5.2.3 The Using Departments must notify the Director when an Invitation for Bid, a Request for Proposal or a Request for Expression of Interest is expected to have a dollar value of $50,000 or more. Notification should be as early as possible, but not later than the Using Department's official request to the Director to commence a procurement action.

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

7.6 Procedures for Certification/Recertification of MFD Businesses

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

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

7.6.3 The Director reviews the MFD Application form submitted to determine, in accordance with this procedure, whether the business should be certified or recertified as an MFD owned business. Upon determination of eligibility as a MFD owned business, the Director certifies the business as an MFD owned business.

7.6.4 If a business is not certified or recertification is denied, the Director informs the applicant, in writing, of the denial, the reasons for denial and the right to request reconsideration of the decision to the Director within 5 days of the date of the decision. This notice of denial should indicate that the business may request a hearing.

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

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

7.7 Procedures for Decertification

7.7.1 The Director, based upon a written determination that there are grounds for concluding that the entity is no longer entitled to be certified as an MFD owned business, makes a proposal to revoke the certification. The entity must be notified, in writing, of this proposed decertification.

7.7.2 The entity may submit any written information to the Director within the time limits specified by the Director, which must not be less than 3 working days of receipt of notification of the proposed decertification.

7.7.3 The Director must review the proposed decertification and any information submitted by the entity and decide whether to revoke the certification after the expiration of the

time specified by the Director for submitting information. The Director must inform the entity of the decision, in writing, and the right to request a reconsideration of the decision within 5 days.

7.7.4 The entity must submit to the Director a written reconsideration request regarding the decertification within the 5 day limit or waives all rights of appeal.

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

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

7.8 Special Solicitation Requirements

7.8.1 The Director must include in all formal competitive solicitations (and resulting contracts) with an estimated value of $50,000 or greater MFD contracting conditions in a form created by the Director and approved by the Office of the County Attorney.

7.8.2 These conditions must include the following provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

7.9 Reporting Requirements

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

7.10 Monitoring Procedures

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

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

EXHIBIT F

2015 SETTLEMENT AGREEMENT

THIS SETTLEMENT is made between Starpower Communications, L.L.C. ("Franchisee") and Montgomery County, MD ("the County"). Franchisee and the County may be individually referred to hereafter as a "Party" or jointly as the "Parties."

WHEREAS, Franchisee and the County have negotiated the terms of a renewal Cable Television Franchise Agreement ("the 2015 Franchise Agreement");

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

WHEREAS, the County has reviewed Franchisee's performance under the Prior Franchise and the quality of service during the franchise term, has identified the future cable-related needs and interests of the County and its residents and businesses, and has considered the financial, technical and legal qualifications of the Franchisee;

WHEREAS, the financial conditions in the cable industry are uncertain and are being financially impacted by technological innovations, consolidation of cable systems, and the presence of competitive alternatives;

WHEREAS, the Franchisee has represented to the County that because of such conditions it would financial impracticable for the Franchisee to commit to expand construction of its Cable System throughout the County in the 2015 Franchise Agreement;

WHEREAS, in lieu of having the obligation to serve the entire Franchise Area, the Franchisee desires to have the obligation only to serve the Area Served and to have the discretion to expand the Area Served, and the County is willing to allow the Franchisee this discretion so long as the Franchisee complies with the terms of this Agreement;

WHEREAS, the Franchisee has requested that it be permitted to satisfy certain obligations of the 2015 Franchise Agreement through alternative performance;

WHEREAS, in lieu of providing an institutional network acceptable to the County, the Franchisee desires to provide, and the County is willing to accept, contributions, facilities and services to support deployment of an institutional network and the functionalities that could be provided via an institutional network so long as the Franchisee complies with the terms of this Agreement; and

WHEREAS, in lieu of providing free cable television connections to public buildings and to other public locations throughout the Franchise Area, the Franchisee seeks to work with the County to devise an alternative means of distributing such programming.

NOW THEREFORE, in exchange for the mutual benefits and undertakings described herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. OBLIGATIONS IN LIEU OF INSTITUTIONAL NETWORK

In lieu of the Franchisee constructing and providing an institutional network acceptable to the County as provided in Section 7(o) of the 2015 Franchise Agreement, to support the County's ability to use public, educational, or government access facilities and channel capacity on the County's Institutional Network for public, educational, or government use, the Franchisee agrees to that it would be more effective and efficient to provide the following services, facilities, and contributions:

(a) *Definitions:* Capitalized terms not defined in the recitals or elsewhere herein shall have the same meaning as those terms in the 2015 Franchise Agreement

(1) Cable Modem Service: Internet access service provided by the Franchisee over the Cable System that enables the County or Participating Municipalities to connect to the Internet.

(2) County Metro Ethernet: Fiber connection between the County's Institutional Network and the Franchisee's Internet Protocol ("IP") Network that enables the County to connect to the Internet

(3) DHCP-assigned: Use of Dynamic Host Configuration Protocol ("DHCP") on an Internet Protocol ("IP") network to dynamically distribute interfaces and services, including IP addresses, automatically without manual configuration from a DHCP server.

(4) PEG and I-Net Grant: Payment by the Franchisee specified in Section 8(b) of the 2015 Franchise Agreement (*i.e.*, three percent (3%) of the Franchisee's Gross Revenues to be used by the County for PEG and institutional network purposes as determined by the County).

(5) Takoma Park Metro Ethernet: Fiber connection between the Takoma Park Institutional Network and the Franchisee's Internet Protocol ("IP") Network that enables Takoma Park to connect to the Internet.

(b) *Cable Modem Service:*

(1) Takoma Park. The Franchisee shall continue to maintain a fiber connection from the Takoma Park City Hall to the Franchisee's IP network. The Franchisee shall continue to provide Cable Modem Service to the City of Takoma Park, MD at the four locations specified in Appendix D. The Franchisee shall continue to make two cable modems available for use the Takoma Park City Hall and one cable modem available for use at each of

the three other locations. The Franchisee shall continue to provide the Cable Modem Service without charges for such Cable Modem Service or cable modem equipment.

(2) Other Participating Municipalities. When the Franchisee serves at least one hundred (100) subscribers within a Participating Municipality other than the City of Takoma Park, upon request the Franchisee shall provide Cable Modem Service and cable modem equipment at no charge at one location within the Participating Municipality. The Cable Modem Service provided shall be at the highest speed offered to a business or residential customer, unless the County specifies otherwise. The Franchisee shall provide at its cost, installation up to two hundred feet (200') from the Public-Rights-of-Way. The Participating Municipality shall be responsible for all inside wiring and the costs to install that portion of the drop cable that exceeds two hundred feet (200'), if any.

(3) IP Addresses. The Franchisee shall provide up to 30 DHCP-assigned IP addresses for Cable Modem Service as requested by the County or Participating Municipalities. The Franchisee shall assist the County and Participating Municipalities in maintaining current IP addresses and port existing IP addresses to new equipment or network configurations.

(c) *Takoma Park Metro Ethernet:* The Franchisee shall provide and maintain for Takoma Park's use, a Metro Ethernet connection at the Takoma Park City Hall. The Metro Ethernet connection shall permit Takoma Park to access the Internet at a minimum of 20 megabits per second (Mbps). All Metro Ethernet speeds specified herein are symmetrical. The Franchisee shall continue to provide the fiber connection and Metro Ethernet service without charges for such service or equipment.

(d) *County Metro Ethernet:* The Franchisee shall provide and maintain for County's use, a Metro Ethernet connection at the data center within the County Council Office Building (100 Maryland Avenue, Rockville, MD 20850) or, upon notice, to such other location as the County may designate. All Metro Ethernet speeds specified herein are symmetrical.

(1) The Metro Ethernet connection shall permit the County to access the Internet at a minimum of 1 gigabit per second (Gbps). Within sixty (60) days of execution of this Settlement Agreement, the Franchisee shall install at its sole cost and expense all additional Metro Ethernet equipment necessary to enable the County to access the Internet at ten (10) Gbps. Upon completion of this equipment installation, the Franchisee shall immediately permit the County to use the Metro Ethernet connection to access the Internet at five (5) Gbps until such time as the County requests an increase in the Gbps connection speed.

(A) Franchisee may deduct from the PEG and I-Net Grant by five thousand five hundred dollars ($5,500) per month for as long as the County uses the Metro Ethernet connection to access the Internet at five (5) Gbps or less. Upon request by the County to increase the Gbps connection speed to greater than five (5) Gbps, the Franchisee may deduct an additional one thousand one hundred dollars ($1,100) per month from the PEG and I-Net Grant payment for each additional one (1) Gbps increase in the Metro Ethernet connection speed. Nothing in this Settlement Agreement shall prohibit the Parties from negotiating more favorable terms for the County of deductions from the PEG and I-Net Grant.

(B) For administrative convenience, the Franchisee shall reduce its PEG and I-Net Grant payment on a quarterly basis to reflect all monthly deductions for the Metro Ethernet connection incurred during the quarter for which the PEG and I-Net Grant payment is due. The County may terminate or reduce the monthly deduction at any time by providing written notice to the Franchisee of the County's intent to reduce or eliminate use of the Metro Ethernet connection or to support such Metro Ethernet connection by a means other than an offset to the PEG and I-Net Grant.

(2) Upon request by the County, the Franchisee shall assist in relocating the Metro Ethernet connection to an alternate location selected by the County. The County shall be responsible for all construction costs incurred by Franchisee for providing a fiber connection from such alternate location to the nearest point of available interconnection to the Franchisee's IP network. The Franchisee shall work in good faith to the assist the County in cost-effectively deploying this fiber optic connection, such as but not limited to permitting fiber overlashing or purchase of spare fiber capacity to reach the Franchisee's IP network.

(3) The Franchisee shall provide the same level of technical and customer service for the Metro Ethernet, including, but not limited to, preventative maintenance, service response and restoration standards, and repairs, as the Franchisee provides for business customers that receive similar levels of Internet service. The Franchisee shall provide the technical and customer service for the Metro Ethernet as specified within the Franchisee's Service Level Agreement for similar business customers, a copy of which has been provided to, and is on file with, the County. The Service Level Agreement may be revised by the Franchisee, provided however, that a revised Service Level Agreement is filed with County and the County receives the same or better technical and customer service as business customers receiving Internet service equivalent to the Metro Ethernet.

2. OBLIGATIONS IN LIEU OF CERTAIN CABLE TELEVISION OBLIGATIONS

The Franchisee shall provide Cable Service and equipment at no charge to such locations as may be required by the 2015 Franchise Agreement. In lieu of constructing individual drops to locations in Section 7(n)(3) of the 2015 Franchise Agreement, the Franchisee agrees that to the extent commercially practicable and otherwise in compliance with this Section 2, it would be more effective and efficient to provide the following services, facilities, and contributions:

(a) *Cable Channels Provided to the County:*

(1) The Franchisee shall provide at no charge, the (unencrypted) high definition ("HD") and standard definition ("SD") cable Channels listed in Attachment 1, and all PEG Access Channels now existing or hereafter activated, to the County TOC or other designated County location. The Franchisee shall provide additional HD and SD Channels to the County as such rights are acquired by the Franchisee. The County and Franchisee may agree to amend the channel line-up in Attachment 1 by mutual consent.

(2) The Franchisee will permit and assist the County in converting these cable Channels into Internet protocol television ("IPTV") signals that may be distributed over the

County's Institutional Network. The County intends to use IP multicast equipment to convert the cable signals provided by the Franchisee into IPTV signals that may be delivered via the County's Institutional Network to public, educational, and government locations, and then be further distributed within buildings at these locations using Ethernet, fiber, passive optical networking ("PON"), or similar means to televisions equipped with ITPV converter boxes, monitors or computers. The County intends to minimize the need to replace coaxial wiring to enable distribution of cable signals within buildings, and to minimize the need to deploy converter boxes or other decryption devices within these locations; provided, however, that the County will use its Institutional Network network access controls to ensure that cable service is made available only at authorized Institutional Network locations.

(3) The Franchisee shall provide such data or services as necessary to enable the County to develop an interactive program guide or otherwise facilitate the ability of an IPTV viewer to identify, select, and record programming.

(4) The Franchisee will work in good faith to resolve legal or technical issues to enable the Franchisee to deliver cable Channels to the County in a format that can be converted into and distributed by the County in an IPTV format.

(5) The Franchisee shall work in good faith to the extent such actions are legally permissible and commercially practicable to obtain all contractual, copyright licenses, and other legal rights from the providers of the Channels necessary to permit the County to: (i) convert such Channels into IPTV signals using any method or technology the County deems appropriate and technically and economically feasible; and (ii) distribute the IPTV signals over the County's Institutional Network to PEG locations served by the County's Institutional Network without the need for the County to obtain additional contractual, copyright licenses, or other legal rights from the providers of the Channels or individual programmers whose programming is carried on the Channels.

(6) The County agrees that the IPTV signal redistributed by the County may only be used for non-commercial purposes and that the County will use reasonable security to ensure that only authorized entities receive the programming.

(7) The County further agrees that it shall not be a material violation of the 2015 Franchise Agreement if the Franchisee is unable to obtain necessary legal rights to, resolve contractual restrictions related to, or is otherwise prohibited by State or Federal law from permitting the County to, distribute the Channels in an IPTV format.

3. OTHER OBLIGATIONS

(a) *Contributions:* For so long as the Franchisee continues to operate in the Public Rights-of-Way while the 2015 Franchise Agreement remains in force, for any period during which the Agreement is extended or renewed, or for any period during which the Franchisee operates pursuant to that Agreement or its substitute, any PEG and I-Net Grant provided by Franchisee (including the grant identified in Section 8(b) of the 2015 Franchise Agreement) may be used by the County, and by any Participating Municipalities to which portions of the PEG and

I-Net Grant may be distributed by the County, in their sole discretion for capital or non-capital support for PEG purposes. Such PEG purposes shall include operation of the County's Institutional Network and payment of any monetary obligations which may arise for the County or any Participating Municipalities pursuant to this Agreement.

(b) *Renewal Costs:* Pursuant to the Code of Montgomery County Regulations Chapter 8A.08.01.02, the Franchisee will submit an application filing fee of Ten Thousand Dollars ($10,000) with its application for renewal.

(c) *Transfer Costs:* Should the Franchisee seek approval of a Transfer pursuant to Section 3 of the 2015 Franchise Agreement, the Franchisee will pay all reasonable out-of-pocket costs (including, but not limited to, consultant fees) incurred by the County and the Participating Municipalities in their review of such Transfer approval request in an amount not to exceed Ten Thousand Dollars ($10,000) per Transfer approval request. In order to obtain payment, the County and the Participating Municipalities shall provide the Franchisee with an accounting of these out-of-pocket costs, including copies of invoices for said costs. Within thirty (30) days of receipt of said invoices, Franchisee shall either deliver full payment to the County and to the Participating Municipalities or, if Franchisee disputes in good faith any of the amounts, Franchisee shall provide payment of all undisputed amounts together with a written explanation detailing the basis for such dispute. Franchisee shall negotiate in good faith to resolve such disputed costs as expeditiously as possible. Failure to comply with any of the requirements of the two foregoing sentences shall constitute a material violation of this Agreement.

(d) *Costs, Not Franchise Fees:* The parties agree that any costs to Franchisee associated with the fulfillment of its obligations in this Agreement, including without limitation any payments made to the County and to Participating Municipalities do not constitute and are not part of a Franchise fee and fall within one or more of the exceptions to 47 U.S.C. § 542, and the Franchisee waives any claim to the contrary. If any claim is made, County may require a substitute performance, such as construction of an institutional network.

4. MISCELLANEOUS

(a) *Binding on Successors and Assigns:* This Agreement shall inure to the benefit of, and shall be binding on the Parties' respective successors and assigns to the Franchise, or to the operation of the Cable System in the County.

(b) *Modification:* This Agreement may not be modified or amended, nor any of its terms waived, except by a writing signed by duly authorized representatives of the Parties.

(c) *Construction:* This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland without regard to conflicts of law principles. All actions or suits brought hereunder or arising out of this Agreement shall be brought in the appropriate State or Federal courts in Maryland.

(d) *Participating Municipalities:* This Agreement has been negotiated by the County as agent for the Participating Municipalities. The Participating Municipalities shall be deemed

third-party beneficiaries of this Agreement and shall be entitled to enforce the same with regard to their respective interests.

(e) *Voluntary Agreement:* This Agreement is freely and voluntarily entered into by the parties, without any duress or coercion, and after each party has consulted with its counsel. Each party hereto has carefully and completely read all of the terms and provisions of this Agreement. Each party acknowledges that this is a full, complete and final mutual release as set forth previously herein.

(f) *Enforcement:* Neither party, nor any of its Affiliates, will take any action to challenge any provision of this Agreement as contrary to federal or state law or FCC regulations; nor will they participate with any other person or entity in such challenge. If any 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 the County and cable system users and subscribers substantially in the same position as if this Agreement were fully enforceable. If the negotiations do not result in agreement between the parties within sixty days from the date of the final decision referred to in the preceding sentence, then either party may call for binding arbitration within thirty days. Such arbitration shall have the goal of placing the parties in the same positions they would occupy if this Agreement had been fully enforceable. The Parties shall select an independent, mutually acceptable arbitrator, who shall have available the full range of appropriate remedies. The arbitrator's decision shall be final and binding on both parties. The parties will each pay their own costs to appear before the arbitrator and will share the arbitrator's costs equally.

(g) *Execution in Counter Part:* This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto.

(h) *Severability*: If any section, subsection, sentence, paragraph, term, or provision of this Agreement shall, to any extent, be held to be illegal, invalid, or unenforceable, the remainder hereof shall be valid in other respects and continue to be effective.

(i) *Effective Date:* The Effective Date of this Agreement shall be _____.

IN WITNESS WHEREOF, the Parties have caused this 2015 Settlement Agreement to be executed by duly authorized representatives of each Party as follows:

AGREED TO THIS 8th DAY OF September, 2015.

Montgomery County, Maryland

By: _____

Isaiah Leggett

County Executive

APPROVED AS TO FORM AND LEGALITY

_____

Clifford L. Royalty

Division Chief, Office of the County Attorney

Starpower Communications, L.L.C.

A Delaware Limited Liability Company

By: _____

Name Printed: _____

Title: _____

ATTACHMENT 1

STARPOWER HIGH DEFINITION AND STANDARD DEFINITION CABLE CHANNELS

Channel #	Channel Name	Channel #	Channel Name	Channel #	Channel Name
4.1	WRC 04 (NBC) HD	19.3	Investigation Discovery HD	36.3	Centric
4.2	Cozi TV	20.1	Disney West	37.1	AMC HD
4.3	Disney Jr. HD	20.2	Qubo	37.2	WE HD
5.1	WTTG 05 (FOX) HD	21.1	ABC Family HD	38.1	USA HD
6.1	WPXW 66 (ION)HD	21.2	TV Land HD	38.2	Bravo HD
7.1	WJLA 07 (ABC) HD	22.1	TNT HD	39.2	TVOne
7.2	MeTV	22.2	TBS HD	39.3	Reelz
7.3	WDCW (The CW) HD	23.1	EWTN	39.4	Fox Movie Channel
8.1	WDCA 20 (My20) HD	23.2	Inspiration Network	39.5	Jewelry TV
8.2	WGN 09 HD	23.3	The Word	39.6	Shop NBC
9.1	WUSA 09 CBS HD	23.4	TBN	39.7	Outdoor Channel HD
9.2	Bounce	23.5	C-SPAN	43.1	Lifetime HD
10.1	Antenna TV	23.6	C-SPAN 2	43.2	Lifetime Movie Network HD
10.2	WMPT 22 (PBS) HD	23.7	C-SPAN 3	43.3	mun2
10.3	MPT Select	23.8	NASA TV	43.4	CBS College Sports
10.4	V-Me	23.9	Pentagon Channel	44.1	VH1 HD
10.5	WETA Kids	24.1	HGTV HD	44.2	MTV HD
10.6	WETA UK	24.2	Food Network HD	44.3	CMT HD
12.1	WETA 26 (PBS) HD	25.1	A&E HD	45.1	ESPN HD
12.2	WHUT 32 (PBS) HD	25.2	History HD	45.2	ESPN2 HD
14.1	THISty	26.1	Destination America HD	46.1	ESPN-U HD
14.2	WFDC (Univision) HD	26.2	Animal Planet HD	46.2	Big Ten Network HD
14.3	WMDO (TeleFutura) HD	26.3	OWN HD	46.3	NBC Sports Network
15.1	WZDC (Telemundo)	27.1	TLC HD	47.1	MASN HD
15.2	EWTN Espanol	27.2	National Geographic HD	47.2	MASN 2 HD
15.3	MHz 1 MHz Worldview	28.1	Discovery HD	48.1	Comcast SportsNet Plus
15.4	MHz 2 NHK World (Japan)	28.2	The Weather Channel HD	48.2	Comcast SportsNet HD
15.5	MHz 3 MCN (Chinese)	29.1	News Channel 8 HD	48.3	Fox Soccer HD
15.6	MHz 4 RT (Russia)	29.2	ABC News Now	49.1	Fox Sports 1 HD
15.7	MHz 6 Native	29.3	CNN International	49.2	ESPN News HD
15.8	MHz 7 France 24	29.4	Fox Business News HD	72.1	HBO HD
15.9	MHz 8 RT Espanol	30.1	CNN HD	72.2	HBO 2 HD
15.10	MHz 10 Ethiopian	30.2	CNBC HD	73.1	HBO Zone HD
15.11	Ebru TV	31.1	Travel Channel HD	73.2	HBO Family HD
16.1	DCTV 1	31.2	Fox News Channel HD	74.1	HBO Signature HD
16.2	DCTV 2	32.1	E! HD	74.2	HBO Comedy HD
16.3	City Cable 13	32.2	MSNBC HD	75.1	HBO Latino HD
16.4	City Cable 16	32.3	Bloomberg HD	82.1	Showtime HD
16.5	District Knowledge	33.1	Headline News HD	82.2	Showtime 2 HD
16.6	UDC TV	33.2	Comedy Central HD	83.1	Showcase (East) HD
17.1	QVC HD	34.1	FX HD	83.2	Showtime Extreme HD
17.2	HSN HD	34.2	Syfy HD	83.3	TMC xtra West HD
18.1	Nickelodeon HD	35.1	truTV HD	84.1	TMC xtra HD
18.2	Cartoon Channel HD	35.2	Turner Classic Movies HD	84.2	Showtime Showcase (West) HD
19.1	Disney Channel HD	36.1	Spike HD	85.1	The Movie Channel HD
19.2	Disney XD HD	36.2	BET HD	85.2	Showtime 2 West HD

Report to the County Executive

Regarding the Proposed Grant

of a Cable Television Franchise Renewal

to

Starpower Communications L.L.C., dba RCN

by

The Office of Cable and Broadband Services,

Montgomery County Department

Of Technology Services

September 1, 2015

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I. EXECUTIVE SUMMARY

This report addresses the proposed Renewal Franchise Agreement ("Franchise Agreement") between Montgomery County and Starpower Communications L.L.C. dba RCN ("RCN"), and one related proposed agreement between the County and RCN: a Settlement Agreement. RCN entered the Montgomery County cable service market by overbuilding the cable system of the incumbent provider to serve County residents. RCN initially agreed to serve the entire County on terms equivalent to the incumbent provider, but subsequently requested relief from the County due to changed market conditions. In order to support competitive choice, the County agreed to allow RCN to provide Internet service to the County government buildings and schools in exchange for a reduction in build-out requirements.

RCN submitted the proposed Franchise Agreement and related Settlement Agreement to the County pursuant to Section 8A-22(f) of the Montgomery County Code. The proposed agreements are the products of extended negotiations with the County through the Office of Cable and Broadband Services, Montgomery County Department of Technology Services ("Cable Office"). The Franchise Agreement renews RCN's cable franchise, which authorizes RCN to use County rights-of-way to provide cable services. The proposed renewal Franchise Agreement does not alter RCN's existing geographic service area, but together with the Settlement Agreement, provides for enhanced County-wide benefits in other ways which complement the commitments of other cable providers serving the County.

For example, in lieu of constructing institutional network connections, RCN has agreed to provide Metro Ethernet service at highly discounted rates, and in lieu of building additional free cable service connections to government buildings and schools, RCN has agreed to work

with the County to deliver cable service in an IP format , using the County's Institutional Network as the distribution network. If successful, it will allow the County to avoid costly upgrades to inside wiring in government buildings and schools that might otherwise be required to continue to receive such programming. The Cable Office recommends that the County Executive approve the proposed Franchise Agreement and related Settlement Agreement because the proposed agreements will serve the interests of cable subscribers and the County.

II. THE PROPOSED FRANCHISE AGREEMENT.

a. Overview.

The Cable Office, with the assistance of the Office of the County Attorney negotiated the terms of the proposed Franchise Agreement with representatives of RCN. The Cable Office has considered the interests of all the affected parties - including County residents, cable subscribers, the municipalities within the County, the Montgomery County Public Schools, Montgomery College, County government, and outside agencies - in an effort to achieve an equitable balance among all of those interests. We have also considered the effects of the proposed Franchise Agreement on the County's agreements with other cable operators, Verizon Maryland Inc. and Comcast of Potomac, LLC.

b. Summary of the Proposed Franchise Agreement.

The proposed Franchise Agreement permits RCN to serve all parts of the County, but continues only to require RCN to serve the more limited area which it currently serves. However, the proposed Franchise Agreement now requires RCN to serve businesses as well as residents in its service area which supports the County's economic development goals. In

addition, RCN may expand this service area at any time through a mechanism that allows the County to ensure that expansions are non-discriminatory. Despite this limited service area, the Franchise Agreement requires RCN to work with the County to provide community-wide benefits that would allow the County to deliver programming to schools and public buildings via the Institutional Network ("I-Net"). The Franchise Agreement also provides the County and participating municipalities with grants for PEG and Institutional Network purposes. The value of these commitments is enhanced by the separate Settlement Agreement. Through the Settlement Agreement, the County and participating municipalities will be able to use PEG and I-Net Grants for capital or non-capital support for PEG purposes.

The general terms of the proposed Franchise Agreement related to police powers, use of rights of way, bonding and the like are modeled on the existing franchise except where updates were deemed necessary or advisable. Customer service provisions were updated to address current practices and trends. These general terms are at least as favorable and in some respects are more favorable for the County than the general terms of the Comcast and Verizon franchises.

The principle terms of the proposed Franchise Agreement are as follows:

i. *Term.* The Franchise Agreement will have a term of 15 years and will expire in 2030.

ii. *Service Territory.* RCN may serve the entire County, but must serve a limited franchise area within the County. Within its service area, RCN must provide cable service to all individuals, residences, businesses, and other legal entities, including owners or occupants of multiple dwelling units that request cable service, except for multiple dwelling unit buildings to which RCN cannot legally obtain access or cannot reach an agreement for access after good faith negotiation with the building owner.

iii. *Franchise Fee.* RCN must pay a 5% franchise fee on gross revenues derived from the operation of the cable system to provide cable service. This is the same as the fee

Verizon and Comcast have been paying, and the same as RCN is paying under its existing franchise.

iv. *PEG and I-Net Support.*

1.RCN will continue to pay 3% of its gross revenues to the County as a "PEG and I-Net Grant". These funds can be used for the PEG and Institutional Network purposes as determined by the County . Verizon also pays 3% as would Comcast under its proposed renewal franchise. Under the Settlement Agreement, the County will be able to use RCN's PEG and I-Net Grants for capital or non-capital support for PEG purposes (see discussion below).

2. RCN has an obligation to provide courtesy cable service to all facilities owned or operated by Montgomery County or the Board of Education of Montgomery County within the RCN service area. However, under the Settlement Agreement, RCN is allowed to satisfy this obligation through alternative performance requirements (see discussion below) that are beneficial to the County.

v. *PEG Channels.*

1. RCN now provides 13 PEG channels in standard definition, or SD. Under the proposed Franchise Agreement, RCN will provide at least 13 PEG channels in standard definition and at least 13 PEG channels in high definition or HD. RCN also commits to work with Takoma Park to add a channel to its lineup in Gaithersburg that would allow residents there to view the Takoma Park PEG channel. Up to nine HD channels may be activated by December 13, 2017, and the County may require the remaining 4 HD channels to be activated within seven years of the effective date of the Franchise Agreement. All PEG channels carried in HD format must also continue to be carried in SD format, unless RCN demonstrates to the satisfaction of the County that its HD services penetration rate is eighty (80) percent of Subscribers' service outlets or greater.

2. The proposed Franchise Agreement requires RCN to treat the PEG channels the same way it treats the local broadcast channels it carries. The channels must be accessible from program guides, recordable in the same way, and be equivalent in quality from the perspective of the viewer.

vi. *I-Net.* The County relies on an I-Net (also referred to as "FiberNet") for critical data and video communications. The proposed Franchise Agreement requires RCN to provide an institutional network acceptable to the County, but permits RCN to agree to provide contributions to support deployment of an institutional network by the County, or provide other facilities or services to provide functionalities that could be provided via an institutional network. In the Settlement Agreement, RCN agrees to provide alternative services, facilities and contributions (see discussion below).

III. THE SETTLEMENT AGREEMENT.

a. Summary of the Proposed Settlement Agreement.

The proposed Settlement Agreement permits RCN to satisfy certain obligations under the Franchise Agreement through alternative performance which provides community-wide benefits which are complementary to the commitments of other cable providers serving the County.

i. In lieu of providing an institutional network acceptable to the County, RCN agrees:

1. To provide and maintain for the County's use, a Metro Ethernet connection (minimum of 1 Gbps) at the data center within the County Council Office Building, which will be upgraded to 5 Gbps immediately upon installation of additional equipment by RCN that would enable the County to access the Internet at ten (10) Gbps (which equipment is to be installed within 60 days of signing the Settlement Agreement). This connection may be further upgraded upon the County's request. RCN may deduct $5,500 per month from the PEG and I-Net Grant for as long as the County uses the Metro Ethernet connection to access the Internet at 5 Gbps or less, and may deduct an additional $1,100 per month from the PEG and I-Net Grant payment for each additional 1 Gbps increase in the Metro Ethernet connection speed. [The competitive current market rate for 1 Gbps service is estimated to be $3,000 per month.]

2. To provide the same level of technical and customer service for the Metro Ethernet as RCN provides for business customers that receive similar levels of Internet service.

3. To assist in relocating the County's Metro Ethernet connection to an alternate location as the County may designate.

4. To provide the City of Takoma Park, MD:
    a. free cable modem service and equipment at four locations, and a fiber connection from the Takoma Park City Hall to RCN's IP network; and
    b. a free Metro Ethernet connection at a minimum of 20 Mbps (symmetrical) at the Takoma Park City Hall;

5. To provide free cable modem service and equipment at one location to any participating municipalities with at least 100 RCN subscribers (other than Takoma Park), upon request;

6. To provide up to 30 DHCP-assigned IP addresses for cable modem service as requested by the County or participating municipalities, and to assist in maintaining current IP addresses and port existing IP addresses to new equipment or network configurations.

ii. In lieu of certain free cable service obligations and the obligation to construct individual cable service drops to County buildings and schools, RCN agrees to the extent commercially practicable to provide the following services, facilities, and contributions:

1. Provide at no charge, a select list of HD and SD cable channels (which may be amended) and all PEG Access Channels now existing or hereafter activated, to the County TOC or other designated County location;

2. Permit and assist the County in converting these cable channels into Internet protocol television (IPTV) signals that may be distributed over the I-Net which would allow more agencies can get access to important news and weather programming, and schools locations get more access to educational programs, with minimal new investment required by the County;

3. Provide such data or services as necessary to enable the County to develop an interactive program guide for the IPTV signals;

4. Work in good faith to resolve legal and technical issues and develop commercially practicable solutions to obtain contractual, copyright licenses, and other legal rights needed by the County to convert and distribute the channels for non-commercial purposes.

iii. RCN also agrees that:

1. The County participating municipalities may use the PEG and I-Net Grant, in their sole discretion for capital or non-capital support for PEG purposes, including the operation of the I-Net and payment of any monetary obligations arising pursuant to the Settlement Agreement;

2. RCN will submit a filing fee of $10,000 with its application for franchise renewal and pay up to $10,000 towards the cost of review of any future transfer approval request by RCN.

RECOMMENDATION.

Overall, the Cable Office believes that the agreements in combination represent a reasonable compromise that serves what were the County's major goals going into renewal, including preservation of PEG channels and grants additional support and enhancements for the I-Net. There could be substantial risks associated with rejecting the proposed Franchise Agreement, and a loss of the significant benefits provided under the Settlement Agreement with respect to use of PEG and I-Net grants for non-capital support. Therefore, the Cable Office recommends approval of both agreements.

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

IN THE MATTER OF: Starpower Communications, LLC Franchise Renewal

Whether the Renewal Franchise Agreement and Settlement Agreement between RCN/Starpower Communications and Montgomery County, MD should be renewed

BEFORE: Michael L. Subin, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

In accordance with § 8A-23, Cable Communications Transfers, of the Montgomery County Code (1974), as amended, a public hearing was held on November 3, 2015, regarding the proposed franchise renewal between Starpower Communications, LLC, dba "RCN", and Montgomery County, MD. RCN currently holds a Franchise Agreement (the "Franchise") with Montgomery County, MD (the "County"). The issue to be resolved is whether the Franchise currently held by RCN should be renewed in light of the following two (2) documents: a proposed Renewal Franchise Agreement ("RFA") and a Settlement Agreement ("SA"). The RFA resolves various issues with respect to RCN' s past performance and provides for enhanced countywide benefits. The SA requires RCN to install the equipment necessary to enable the County to access the internet at 5 gigabytes per second at no additional cost.

The County's Cable Office has recommended that the County Executive approve the Settlement Agreement and the Renewal Franchise Agreement because they represent a reasonable compromise that addresses past performance problems and serves the public interest.

I. Summary of Testimony and Evidence

At the hearing, Mr. Phil Roter, the County's Cable. and Broadband Administrator, spoke in favor of renewing the Agreement. Mr. Roter stated that the agreements are the product of extended negotiations between the County and RCN. The RFA proposes renewing the franchise through 2031, and maintains the benefits of the 1999 Franchise Agreement, with appropriate changes to reflect advances in technology and anticipated future developments.

Mr. Roter stated that the negotiations focused on five (5) areas: consumer protection; Metro Ethernet services; shared internet access to government buildings; PEG access; and, services to Takoma Park.

1. Consumer protection: The RFA contains extensive consumer protection provisions designed to require RCN to provide better consumer service.
2. Metro Ethernet service: RCN agreed to provide Metro Ethernet service to the County at highly discounted rates for distribution to government buildings and schools.
3. Shared internet access to government buildings and schools: The new SA requires RCN to install the equipment necessary to enable the Country to access the internet from 1 to 5 gigabytes per second at no additional cost.
4. PEG education and government access channels: Under the negotiated PEG provisions, RCN is required to pay three (3) percent of its gross revenues for PEG Capital Grants, while allowing those grants to be used for operating expenses; it allows for the launch of up to thirteen (13) HD PEG channels.
5. Services to Takoma Park: RCN has agreed to provide the City of Takoma Park: free cable modem service and equipment at four (4) locations; a fiber connection from the Takoma Park City Hall to RCN's IP network; a free Metro Ethernet connection at Takoma Park's City Hall; and a five (5) percent franchise fee.

Mr. Roter concluded by stating that absent approval of the RFA, the parties will be required to return to the negotiating table or go through a time consuming renewal process as prescribed by Federal law.

Thomas K. Steele, Jr., Vice President and Regulatory Counsel for RCN, testified on their behalf. Mr. Steele agreed with Mr. Roter that the RFA and SA are mutually beneficial compromises between RCN and the County. He recognized that the competitive environment between RCN, Comcast, and Verizon has been a great benefit to Montgomery County's citizens. Mr. Steele mentioned what he considered to be a creative move by the County: the consideration of using IPTV to serve cable service to schools and government buildings which would: 1. eliminate the need for converter boxes; 2. be more cost effective to government; and, 3. be innovative for RCN.

Suzanne Ludlow, Takoma Park's City Manager, was the final speaker. Ms. Ludlow stressed that the City staff operates on a "shoe string" budget because of a lack of operating funds. She stated that she supports the Franchise Agreement because of the many benefits that

it would provide to Takoma Park and Montgomery County. In addition to those benefits identified by Mr. Roter, she acknowledged RCN's commitment to work with Takoma Park to add a lineup in Gaithersburg. However, she did reiterate two (2) concerns she noted in the Comcast renewal hearing: that the municipalities be granted a voting seat on the PEG Governance Board and the need for an MOU between the City and the County.

III. Conclusions and Recommendations

Based upon a thorough review of all testimony and evidence on the record, I find that the proposed Renewal Franchise Agreement ("RFA") and the Settlement Agreement ("SA") between Montgomery County, MD and RCN are in the public interest. The "public interest" is a broad concept that manifests itself in a variety of contexts. When, as is the case here, the issue is to be considered "public interest" is whether either the RFA or SA either the RFA or SA will promote the general health and safety of the citizenry; protect the environment; or, otherwise advance the community's quality of life. *(See* City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 701 (1999)) I find that the proposed RFA will advance the community's quality of life.

Signature Page Follows

Based upon a thorough review of all testimony and evidence on the record, I conclude that the proposed Renewal Franchise Agreement and the Settlement Agreement between Montgomery County, MD and Starpower Communications, LLC, dba RCN should be APPROVED.

Respectfully submitted,

Michael L. Subin

March 7, 2016
Date

I have reviewed the Hearing Officer's recommendations regarding the Starpower Communications, LLC, dba RCN Renewal Franchise Agreement and the Settlement Agreement between Montgomery County, MD and RCN/Starpower and they are hereby APPROVED.

Isiah Leggett, County Executive

March 7, 2016
Date