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April 22, 2009

Jennifer S. Huber
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VIA OVERNIGHT COURIER

Town Manager
Town of Elsmere
11 Poplar Avenue
Elsmere, DE 19805

Re: Town of Elsmere, DE Cable Franchise Agreement - Executed

Dear Sir or Madam:

Enclosed is an original executed Cable Franchise Agreement by and between the Town of Elsmere, Delaware and Verizon Delaware.

If you have any questions or concerns, please do not hesitate to contact me.

Best regards,

Jennifer S. Huber

JSH/cet

Enclosure

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BY: 



Resolution 09 – 06

A RESOLUTION ADOPTING A CABLE FRANCHISE BETWEEN THE TOWN OF ELSMERE AND VERIZON DELAWARE LLC

Sponsored By: Mayor Richard Herold
Councilman John Jaremchuk, 1st District Councilman
Councilman Charles McKewen 4th District Councilman.

Proposed: April 09, 2009 Council Meeting:

Results:

Resolution 09 – 06

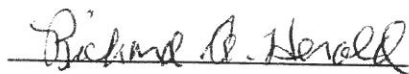
A RESOLUTION ADOPTING A CABLE FRANCHISE BETWEEN THE TOWN OF ELSMERE AND VERIZON DELAWARE LLC

WHEREAS, the Mayor and Council of the Town of Elsmere, Delaware, pursuant to applicable law, at a regularly scheduled meeting pursuant to a full and public hearing at which the Mayor and Council gave consideration to a proposal presented concerning a cable franchise agreement with Verizon Delaware LLC, and on the basis thereof:

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Town of Elsmere adopts and approves the cable franchise agreement between the Town of Elsmere and Verizon Delaware LLC. ("Franchise Agreement").
2. The Mayor of the Town of Elsmere is authorized to sign the Franchise Agreement on behalf of the Town of Elsmere.

RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF ELSMERE,
THIS 9TH DAY OF APRIL 2009.



Richard A. Herold, Mayor



Joann I. Personti, Secretary

CABLE FRANCHISE AGREEMENT
BETWEEN
TOWN OF ELSMERE, DELAWARE
AND
VERIZON DELAWARE LLC

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the TOWN OF ELSMERE, DELAWARE, a validly organized and existing political subdivision of the State of Delaware (the "Local Franchising Authority" or "LFA"), and VERIZON DELAWARE LLC, a corporation duly organized under the applicable laws of the State of Delaware (the "Franchisee").

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

WHEREAS, the LFA is a "franchising authority" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. § 522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to applicable state law;

WHEREAS, the Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the State of Delaware;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the LFA, and the Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered the financial, technical, and legal qualifications of the Franchisee, and has determined that the Franchisee's plans for its Cable System are adequate, in a full public proceeding affording due process to all parties;

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

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

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

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

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act (as hereinafter defined) are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1 *Access Channel*: A video Channel that the Franchisee shall make available to the LFA without charge for non-commercial Public, Educational, or Governmental use for the transmission of video programming as directed by the LFA.

1.2 *Additional Service Area*: Shall mean any such portion of the Service Area added pursuant to Section 3.1.3 of this Agreement.

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

1.4 *Basic Service*: Any service tier that includes the retransmission of local television broadcast signals as well as any PEG Channel required by this Franchise.

1.5 *Cable Service* or *Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6).

1.6 *Cable System* or *System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), meaning the Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area. The Cable System shall be limited to the optical spectrum wavelength(s), bandwidth, or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

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

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

1.9 *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of the Franchisee's affairs.

1.10 *Educational Access Channel*: An Access Channel available for use of the LFA for educational purposes.

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

1.12 *Fiber to the Premise Telecommunications Network ("FTTP Network")*: The Franchisee's network that transmits Non-Cable Services pursuant to the authority granted under the laws of the State of Delaware and under Title II of the Communications Act, which Non-Cable Services are not subject to Title VI of the Communications Act.

1.13 *Force Majeure*: An event or events reasonably beyond the ability of the Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which the Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.14 *Franchise Area*: The incorporated area (entire existing territorial limits) of the LFA and such additional areas as may be included in the corporate (territorial) limits of the LFA during the term of this Franchise.

1.15 *Franchisee*: Verizon Delaware LLC, and its lawful and permitted successors, assigns, and transferees.

1.16 *Government Access Channel*: An Access Channel available for the use of the LFA for governmental purposes.

1.17 *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, which is derived by the Franchisee from the operation of the Cable System to provide Cable Service in the Service Area, provided, however, that Gross Revenue shall not include:

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

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

1.17.3 Refunds, rebates, or discounts made to Subscribers or other third parties;

1.17.4 Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by the Franchisee to

Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards, or orders;

1.17.5 Any revenue of the Franchisee or any other Person that is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, notwithstanding that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise, which portion shall be included in Gross Revenue;

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

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

1.17.8 Any revenue forgone as a result of the provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of the Franchisee and public institutions or other institutions designated in the Franchise; provided, however, that revenue foregone in exchange for trades, barter, services, or other items of value shall be included in Gross Revenue;

1.17.9 Sales of capital assets or sales of surplus equipment;

1.17.10 Program launch fees;

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

1.17.12 Any fees or charges collected from Subscribers or other third parties for any PEG access.

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

1.19 *Initial Service Area*: The portion of the Franchise Area as outlined in Exhibit B.

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

1.21 *Local Franchise Authority (LFA)*: The Town of Elsmere, DE or the lawful successor, transferee, or assignee thereof.

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

1.23 *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/or some weekend hours.

1.24 *Normal Operating Conditions*: Those service conditions that are within the control of the Franchisee. Those conditions that 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. Those conditions that are ordinarily 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. See 47 C.F.R. § 76.309(c)(4)(ii).

1.25 *PEG*: Public, Educational, and Governmental.

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

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

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

1.29 *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area and any Additional Service Areas.

1.30 *Service Date*: The date that the Franchisee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Franchise Area. The Franchisee shall memorialize the Service Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise.

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

1.32 *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with the Franchisee's express permission.

1.33 *Telecommunications Facilities*: The Franchisee's existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

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

1.35 *Title II*: Title II of the Communications Act.

1.36 *Title VI*: Title VI of the Communications Act.

1.37 *Transfer of the Franchise*:

1.37.1 Any transaction in which:

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

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

1.37.2 However, notwithstanding subsections 1.37.1.1 and 1.37.1.2, a Transfer of the Franchise shall not include transfer of an ownership or other interest in the Franchisee to the parent of the Franchisee or to another Affiliate of the Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of the Franchisee or to another Affiliate of the Franchisee; any action that is the result of a merger of the parent of the Franchisee; or any action that is the result of a merger of another Affiliate of the Franchisee.

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

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

2.1 *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Communications Act, the LFA hereby grants the Franchisee the right to own, construct, operate, and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2 *The LFA Does Not Regulate Telecommunications*: The LFA's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance, or operation of the Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained, or operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services.

2.3 *Term*: This Franchise shall become effective on April 9, 2009 (the "Effective Date"). The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein.

2.4 *Grant Not Exclusive:* The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the LFA reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this Franchise. Any such rights that are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or the Franchisee's FTTP Network.

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

2.6 *No Waiver:*

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

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

2.7 *Construction of Agreement:*

2.7.1 The provisions of this Franchise shall be liberally construed to effectuate their objectives.

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

2.7.3 Should any change to state law have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modification to this Franchise shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then the Franchisee may terminate this Agreement without further obligation to the LFA or, at the Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.8 *Police Powers:* Nothing in this Franchise shall be construed to prohibit the reasonable, necessary, and lawful exercise of the police powers of the LFA. However, if the reasonable, necessary, and lawful exercise of the police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the

mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee of the material alteration. Any modification to this Franchise shall be in writing. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then the Franchisee may terminate this Agreement without further obligation to the LFA or, at the Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

3. PROVISION OF CABLE SERVICE

3.1 *Service Area:*

3.1.1 *Initial Service Area:* The Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas of the Initial Service Area and may make Cable Service available to businesses in the Initial Service Area, within twenty-four (24) months of the Service Date of this Franchise, and shall offer Cable Service to all residential areas in the Initial Service Area within five (5) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the LFA; (C) for periods of delay resulting from the Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in areas, developments, or buildings where the Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by the Franchisee; and (F) in areas, developments, or buildings where the Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density requirements set forth in subsection 3.1.1.1.

3.1.1.1 *Density Requirement:* The Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than thirty (30) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Initial Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, the Franchisee shall provide Cable Service to such area within twelve (12) months of receiving notice from the LFA that the density requirements have been met.

3.1.2 *Additional Service Areas:* Except for the Initial Service Area, the Franchisee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any Renewals thereof. If the Franchisee desires to add Additional Service Areas within the Franchise Area, the Franchisee shall notify the LFA in writing of such Additional Service Area at least ten (10) days prior to providing Cable Services in such areas.

3.2 *Availability of Cable Service:* The Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and the Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas

in which the Franchisee shall provide Cable Service, the Franchisee shall be required to connect, at the Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred twenty five (125) feet of trunk or feeder lines not otherwise already served by the Franchisee's FTTP Network. The Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred twenty five (125) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3 *Cable Service to Municipal Buildings:* Subject to Section 3.1, the Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each public school, public library, and such buildings used for municipal purposes as may be designated by the LFA, and also required of other cable operators in the Service Area, in Exhibit A; provided, however, that if it is necessary to extend the Franchisee's trunk or feeder lines more than one hundred twenty five (125) feet solely to provide service to any such school or municipal building, the LFA shall have the option either of paying the Franchisee's direct costs for such extension in excess of one hundred twenty five (125) feet, or of releasing the Franchisee from the obligation to provide service to such building. Furthermore, the Franchisee shall be permitted to recover, from any school or other municipal building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than one hundred twenty five (125) feet of drop cable; provided, however, that the Franchisee may charge for additional equipment for any additional outlets. Cable Service may not be resold or otherwise used in contravention of the Franchisee's rights with third parties respecting programming. Equipment provided by the Franchisee, if any, shall be replaced at retail rates if lost, stolen, or damaged. Notwithstanding the foregoing, Franchisee shall not be required to provide Cable Service to any building set forth in Exhibit A until a reasonable period of time after Franchisee serves the applicable portion of the Franchise Area with its Title II FTTP Network, and the applicable wire center serving such building is video enabled.

4. **SYSTEM OPERATION**

The parties recognize that the Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The jurisdiction of the LFA over such Telecommunications Facilities is restricted by federal and state law, and the LFA does not and will not assert jurisdiction over the Franchisee's FTTP Network in contravention of those limitations.

5. **SYSTEM FACILITIES**

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

5.1.1 The System shall be initially designed with a digital carrier passband between 54 and 863 MHz.

5.1.2 The System shall be designed to be an active two-way plant for Subscriber interaction, if any, required for the selection or use of Cable Service.

5.2 *Interconnection:* The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

5.3 *Emergency Alert System:*

5.3.1 The Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

6. **PEG SERVICES**

6.1 *PEG Set Aside; Interconnection:*

6.1.1 In order to ensure universal availability of Public, Educational, and Government Access programming, the Franchisee shall reserve on the Basic Service Tier use of one (1) dedicated PEG Access Channel (the "PEG Channel").

6.1.2 The LFA hereby authorizes the Franchisee to transmit PEG programming within and without the LFA's jurisdictional boundaries. The Franchisee specifically reserves its right to make or change channel assignments in its sole discretion. The parties agree that Franchisee shall retain the right to utilize the reserved PEG Channel capacity during the term of this Franchise until such time as LFA elects to utilize the PEG Channel for its intended purpose and/or ceases to use the PEG Channel during the term of the Agreement.

6.1.3 The LFA may activate the reserved PEG Channel during the term of this Agreement by providing Franchisee with written notice (the "PEG Activation Notice") one hundred eighty (180) days prior to the date it intends to activate the PEG Channel so long as all other cable operators in the Franchise Area are similarly obligated. Following receipt of the PEG Activation Notice as set forth above, the Franchisee may capture PEG Channel programming for distribution by, at the Franchisee's option, either interconnection or direct connection as set forth herein. Should the Franchisee choose to direct connect, the Franchisee shall obtain the PEG Channel programming via a dedicated fiber connection to the Town Hall, 11 Poplar Avenue, Elsmere, DE, 19805, on terms and conditions acceptable to the Franchisee. Should the Franchisee choose to pursue interconnection, it shall use reasonable efforts to interconnect its Cable System with the existing cable operator(s). The Franchisee shall initiate interconnection negotiations with the existing cable operator(s) to cablecast, on a live basis, PEG access programming consistent with this Franchise. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The Franchisee shall negotiate in good faith with existing cable operator(s) respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms, and conditions. The LFA shall require the existing cable operator(s) to provide such interconnection to the Franchisee on reasonable terms and conditions. The Franchisee and the existing cable operator(s) shall negotiate the precise terms and conditions of an interconnection agreement. The LFA shall use its best efforts to facilitate these negotiations. If the Franchisee is unable to reach such an agreement within thirty (30) days after

requesting in writing to interconnect with other local cable operator(s), upon request of the Franchisee, the LFA shall assist in mediating such dispute. If no agreement is reached within an additional thirty (30) days, the LFA shall designate the point of interconnection with the objective of designating an interconnection point at the closest technically feasible location on the Franchisee's Cable System permitting the transmission of high quality signals between cable systems for the least cost. If the cost of interconnection would be unreasonable, or if interconnection is not technically feasible or would cause an unacceptable increase in Subscriber rates, or if an existing cable operator will not agree to reasonable terms and conditions of interconnection, or if the Franchisee cannot provide a direct connection on acceptable terms and conditions, the Franchisee will be under no obligation to carry PEG programming. In no case shall the Franchisee be obligated to provide the LFA with either cablecast equipment and facilities or personnel responsible for maintaining and operating such equipment and facilities or generating any PEG Channel programming.

6.2 *Indemnity for PEG:* The LFA shall require all local producers and users of any of the PEG facilities or PEG Channel to agree in writing to authorize the Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless the Franchisee and the LFA from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations, or other requirements of local, state, or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name, or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which results from the use of a PEG facility or PEG Channel. The LFA shall establish rules and regulations for use of PEG facilities consistent with, and as required by, 47 U.S.C. § 531.

6.3 *Recovery of Costs:* To the extent permitted by federal law, the Franchisee shall be allowed to recover from Subscribers any costs arising from the provision of PEG services and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, the Franchisee may externalize, line-item, or otherwise pass-through interconnection costs to Subscribers.

7. **FRANCHISE FEES**

7.1 *Payment to the LFA:* The Franchisee shall pay to the LFA a Franchise fee of five percent (5 %) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. The Franchisee shall be allowed to correct any payments, and may increase or decrease future Franchise fee payments in connection with the quarterly Franchise fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable.

7.2 *Supporting Information:* Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of the Franchisee showing the basis for the computation.

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

7.4 *Bundled Services:* If Cable Services subject to the Franchise fee required under this Article 7 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise fee shall be applied only to the value of the Cable Services, as reflected on the books and records of the Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards, or orders.

8. **CUSTOMER SERVICE**

Customer Service Requirements are set forth in Exhibit C, which shall be binding unless amended by written consent of the parties.

9. **REPORTS AND RECORDS**

9.1 *Open Books and Records:* Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days' written notice to the Franchisee, the LFA shall have the right to inspect the Franchisee's books and records pertaining to the Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise that is under review, so that the Franchisee may organize the necessary books and records for appropriate access by the LFA. The Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. The LFA shall treat any information disclosed by the Franchisee as confidential and shall only disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. § 551.

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

9.2.1 Records of all written complaints for a period of three (3) years after receipt by the Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or the Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.2.2 Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.2.3 Records of service calls for repair and maintenance for a period of three (3) years after resolution by the Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.2.4 Records of installation/reconnection and requests for service extension for a period of three (3) years after the request was fulfilled by the Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

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

10. **INSURANCE AND INDEMNIFICATION**

10.1 *Insurance:*

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

10.1.1.1 Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation, and maintenance of the Cable System, and the conduct of the Franchisee's Cable Service business in the LFA.

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

10.1.1.3 Workers' Compensation Insurance meeting all legal requirements of the State of Delaware.

10.1.1.4 Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: one hundred thousand dollars (\$100,000); (B) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) employee limit; and (C) Bodily Injury by Disease: five hundred thousand dollars (\$500,000) policy limit.

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

10.1.3 The Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

10.1.4 Each of the required insurance policies shall be with sureties qualified to do business in the State of Delaware, with an A.M. Best Financial Strength rating of A- or better.

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

10.2 *Indemnification:*

10.2.1 The Franchisee agrees to indemnify, save and hold harmless, and defend the LFA, its officers, agents, boards, and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by the Franchisee's negligent construction, operation, or maintenance of its Cable System, provided that the LFA shall give the Franchisee written notice of its obligation to indemnify the LFA within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Franchisee shall not indemnify the LFA for any damages, liability, or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors, or third parties or for any activity or function conducted by any Person other than the Franchisee in connection with PEG access, EAS, or the distribution of any Cable Service over the Cable System.

10.2.2 With respect to the Franchisee's indemnity obligations set forth in subsection 10.2.1, the Franchisee shall provide the defense of any claims brought against the LFA by selecting counsel of the Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with 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 LFA, the Franchisee shall have the right to defend, settle, or compromise any claim or action arising hereunder, and the Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the LFA, and the LFA 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 LFA shall in no event exceed the amount of such settlement.

10.2.3 The LFA shall hold harmless and defend the Franchisee from and against, and shall be responsible for damages, liability, or claims resulting from or arising out of, the willful misconduct or negligence of the LFA.

10.2.4 The LFA shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the LFA for which the LFA is legally responsible, subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify the LFA for acts of the LFA that constitute willful misconduct or negligence on the part of the LFA, its officers, employees, agents, attorneys, consultants, independent contractors, or third parties.

11. **TRANSFER OF FRANCHISE**

11.1 Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed, or conditioned. No such consent shall be

required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.37 above.

12. **RENEWAL OF FRANCHISE**

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

12.2 In addition to the procedures set forth in said Section 626 of the Communications Act, the LFA shall notify the Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Franchisee under the then current Franchise term. The LFA further agrees that such assessments shall be provided to the Franchisee promptly so that the Franchisee has adequate time to submit a proposal under 47 U.S.C. § 546 and complete renewal of the Franchise prior to expiration of its term.

12.3 Notwithstanding anything to the contrary set forth herein, the Franchisee and the LFA agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the LFA and the Franchisee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise, and the LFA may grant a renewal thereof.

12.4 The Franchisee and the LFA consider the terms set forth in this Article 12 to be consistent with the express provisions of 47 U.S.C. § 546.

13. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

13.1 *Notice of Violation:* If at any time the LFA believes that the Franchisee has not complied with the terms of the Franchise, the LFA shall informally discuss the matter with the Franchisee. If these discussions do not lead to resolution of the problem in a reasonable time, the LFA shall then notify the Franchisee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article, the "Noncompliance Notice").

13.2 *The Franchisee's Right to Cure or Respond:* The Franchisee shall have thirty (30) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if the Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such thirty (30) day period, initiate reasonable steps to remedy such noncompliance and notify the LFA of the steps being taken and the date by which cure is projected to be completed. Upon cure of any noncompliance, the LFA shall provide written confirmation that such cure has been effected.

13.3 *Public Hearing:* The LFA shall schedule a public hearing if the LFA seeks to continue its investigation into the alleged noncompliance in the event that: (1) the Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (2) in the event that the Franchisee has not remedied the alleged noncompliance

within thirty (30) days or the date projected pursuant to Section 13.2(iii) above. The LFA shall provide the Franchisee at least thirty (30) business days' prior written notice of such public hearing, which will specify the time, place, and purpose of such public hearing, and provide the Franchisee the opportunity to be heard.

13.4 *Enforcement:* Subject to applicable federal and state law, in the event that the LFA, after the public hearing set forth in Section 13.3, determines that the Franchisee is in default of any provision of this Franchise, the LFA may:

13.4.1 Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

13.4.2 Commence an action at law for monetary damages or seek other equitable relief; or

13.4.3 In the case of a substantial material default of a material provision of this Franchise, seek to revoke the Franchise in accordance with Section 13.5.

13.5 *Revocation:* Should the LFA seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 13.3, the LFA shall give written notice to the Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event that the LFA has not received a satisfactory response from the Franchisee, it may then seek termination of the Franchise at a second public hearing. The LFA shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.5.1 At the designated public hearing, the Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees, or consultants of the LFA, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

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

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

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

14. MISCELLANEOUS PROVISIONS

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

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

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

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

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

difficulties and hardship being placed upon the Franchisee that outweigh the benefit to be derived by the LFA and/or Subscribers.

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

14.5.1 Notices to the Franchisee shall be mailed to:

President
Verizon Delaware LLC
901 N. Tatnall St.
Wilmington, DE 19801-1605

14.5.2 with a copy to:

John F. Raposa, Esq.
Senior Vice President and General Counsel - Telecom
Verizon
One Verizon Way
Room VC44E232
Basking Ridge, NJ 07920

14.5.3 Notices to the LFA shall be mailed to:

Town Manager
Town of Elsmere
11 Poplar Avenue
Elsmere, DE 19805

14.6 *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between the Franchisee and the LFA and supersedes all prior or contemporaneous agreements, representations, or understanding (whether written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

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

14.8 *No Third Party Beneficiaries:* Except as expressly provided in this Agreement, this Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

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

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

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

14.12 *Modification*: This Franchise shall not be modified except by written instrument executed by both parties.

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

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

14.15 *Counterparts*: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and the parties may become a party hereto by executing a counterpart hereof. This Agreement and any counterpart so executed shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

[SIGNATURE PAGES FOLLOW]

AGREED TO THIS 9th DAY OF April, 2009.

TOWN OF ELSMERE, DELAWARE

By: Richard A. Herold

Print: Richard A. Herold

Title: Mayor

[SIGNATURES CONTINUE ON NEXT PAGE]

VERIZON DELAWARE LLC

By: _____

William Allan

President, Verizon Delaware LLC

FORM APPROVED

Attorney _____

Date _____

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service

Exhibit B: Initial Service Area

Exhibit C: Customer Service Standards

EXHIBIT A

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Elsmere Town Hall
11 Poplar Avenue
Elsmere, Delaware 19805

Elsmere Public Works Department
220 New Road
Elsmere, Delaware 19805.

Elsmere Fire Company
1107 Kirkwood Highway
Elsmere, Delaware 19805

Elsmere Bureau of Police
19 Poplar Avenue
Elsmere, Delaware 19805

Elsmere Recreation Inc.
11-A Poplar Avenue
Elsmere, Delaware 19805

Greater Oak Grove Senior Center
11-B Poplar Avenue
Elsmere, Delaware 19805

Corpus Christi School
907 New Road
Elsmere, Delaware 19805

EXHIBIT B

INITIAL SERVICE AREA

The initial service area is shown in the map set forth below.

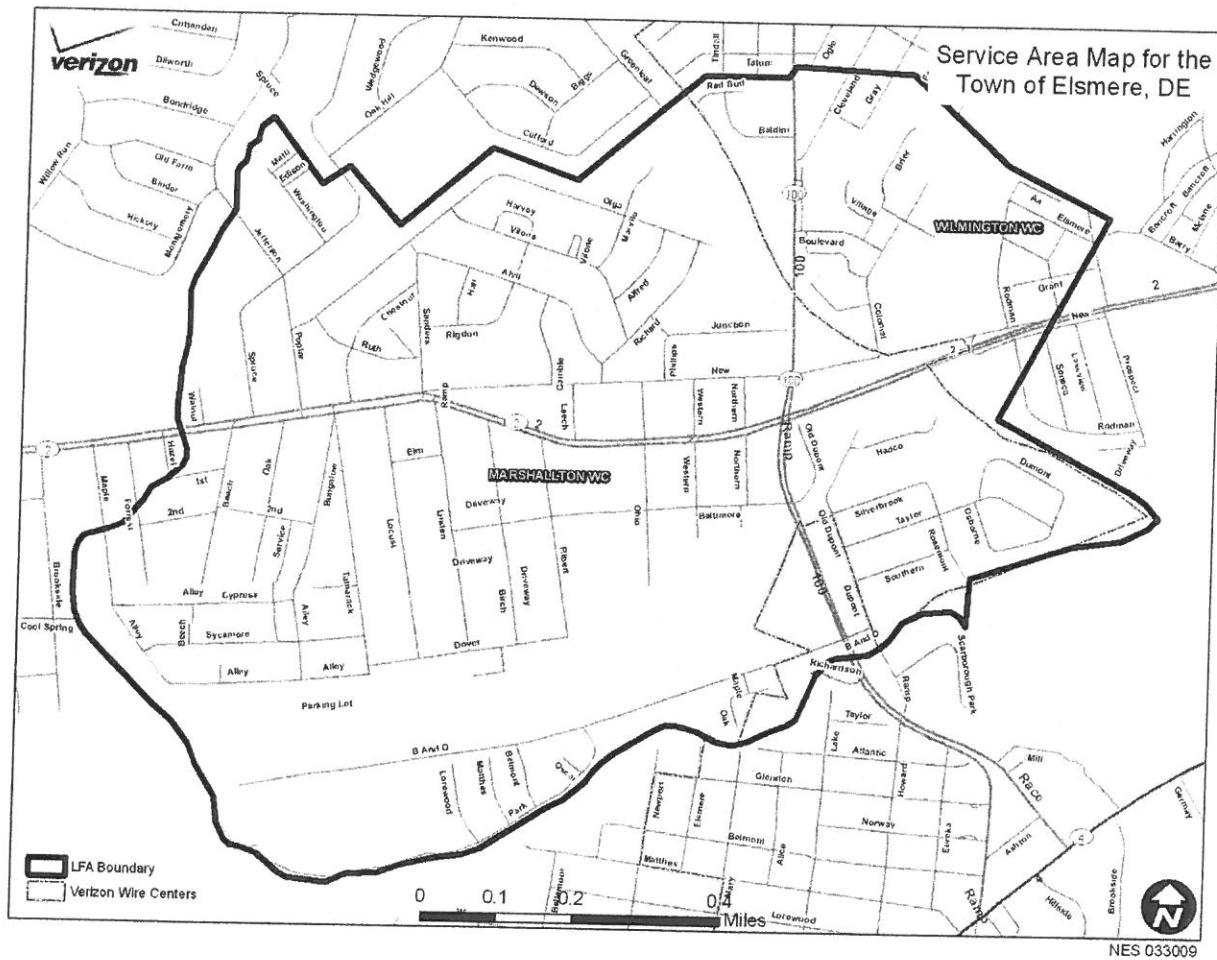


EXHIBIT C

CUSTOMER SERVICE STANDARDS

These standards shall, starting twenty-four (24) months after the Service Date, apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise Area.

SECTION 1: DEFINITIONS

A. Respond: The Franchisee's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.

B. Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.

C. Service Call: The action taken by the Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.

D. Standard Installation: Installations where the Subscriber is within one hundred twenty five (125) feet of trunk or feeder lines.

SECTION 2: TELEPHONE AVAILABILITY

A. The Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. The Franchisee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty four (24) hours a day, seven (7) days a week, and other inquiries at least forty five (45) hours per week. The Franchisee representatives shall identify themselves by name when answering this number.

B. The Franchisee's telephone numbers shall be listed, with appropriate description (e.g. administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by the Franchisee.

C. The Franchisee may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. The Franchisee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

D. Under Normal Operating Conditions, calls received by the Franchisee shall be answered within thirty (30) seconds. The Franchisee shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by the Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after thirty (30) seconds of call waiting.

E. Under Normal Operating Conditions, callers to the Franchisee shall receive a busy signal no more than three percent (3%) of the time during any calendar quarter.

F. At the Franchisee's option, the measurements above may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the LFA of such a change at least thirty (30) days in advance of any implementation.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

A. All installations will be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Franchisee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after the placement of the Optical Network Terminal ("ONT") on the customer's premises or within seven (7) business days after an order is placed if the ONT is already installed on the customer's premises.

The Franchisee shall meet this standard for ninety five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding customer requests for connection later than seven (7) days after ONT placement or later than seven (7) days after an order is placed if the ONT is already installed on the customer's premises.

C. At the Franchisee's option, the measurements of above may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the LFA of such a change not less than thirty (30) days in advance.

D. The Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls, and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 a.m. unless it is deemed appropriate to begin earlier by location exception. At the Franchisee's discretion, the Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

A. The Franchisee shall notify the LFA of any Significant Outage of the Cable Service.

B. The Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty four (24) hour period only after the LFA and each affected Subscriber in the Service Area have been given fifteen (15) days' prior notice of the proposed Significant Outage. Notwithstanding the foregoing, the Franchisee may perform modifications, repairs, and upgrades to the System between 12.01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual Subscriber notice.

C. The Franchisee representatives who are capable of responding to Service Interruptions must be available to Respond twenty four (24) hours a day, seven (7) days a week.

D. Under Normal Operating Conditions, the Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

(1) Within twenty four (24) hours, including weekends, of receiving Subscriber calls respecting Service Interruptions in the Service Area.

(2) The Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the LFA of a Cable Service problem.

E. Under Normal Operating Conditions, the Franchisee shall complete Service Calls within seventy two (72) hours of the time the Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy two (72) hour period.

F. The Franchisee shall meet the standard in Subsection E of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis.

G. At the Franchisee's option, the above measurements may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the LFA of such a change at least thirty (30) days in advance of any implementation.

H. Under Normal Operating Conditions, the Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Franchisee to verify the problem if requested by the Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

I. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty four (24) consecutive hours, the Franchisee

shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected Subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by the Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

SECTION 5: CUSTOMER COMPLAINTS

Under Normal Operating Conditions, the Franchisee shall investigate Subscriber complaints referred by the LFA within five (5) business days. The Franchisee shall notify the LFA of those matters that necessitate an excess of five (5) business days to resolve, but those matters must be resolved within fifteen (15) days of the initial complaint. The LFA may require reasonable documentation to be provided by the Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Franchisee shall perform those actions which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

SECTION 6: BILLING

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. The Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes, and/or other governmentally imposed fees. The Franchisee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to the Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

C. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill that lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.B. above.

D. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

(1) The Subscriber pays all undisputed charges;

(2) The Subscriber provides notification of the dispute to the Franchisee within five (5) days prior to the due date; and

(3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

(4) It shall be within the Franchisee's sole discretion to determine when the dispute has been resolved.

E. Under Normal Operating Conditions, the Franchisee shall initiate investigation and resolution of all billing complaints received from Subscribers within five (5) business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

F. The Franchisee shall provide a telephone number and address on the bill for Subscribers to contact the Franchisee.

G. The Franchisee shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the LFA upon request.

H. The Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. The Franchisee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of the Franchisee, the payment alternative may be limited.

I. The LFA hereby requests that the Franchisee omit the LFA's name, address, and telephone number from Subscriber bills as permitted by 47 C.F.R. § 76.952.

SECTION 7: DEPOSITS, REFUNDS, AND CREDITS

A. The Franchisee may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuse to provide credit history information to the Franchisee, or 3) who rent Subscriber equipment from the Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit the Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit the Franchisee may charge for Subscriber equipment is the cost of the equipment that the Franchisee would need to purchase to replace the equipment rented to the Subscriber.

B. The Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. The Franchisee shall pay interest on other deposits if required by law.

C. Under Normal Operating Conditions, refund checks will be issued within the next available billing cycle following the resolution of the event giving rise to the refund (e.g., equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by the Franchisee or its authorized agent. Appropriate time considerations shall be included in the Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

SECTION 8: RATES, FEES, AND CHARGES

A. The Franchisee shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to the Franchisee equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to a situation in which the Subscriber reconnects Franchisee equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect the Franchisee's equipment (for example, a dog chew).

B. The Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

SECTION 9: DISCONNECTION /DENIAL OF SERVICE

A. The Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless the Franchisee mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

B. Cable Service terminated in error must be restored without charge within twenty four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

C. Nothing in these standards shall limit the right of the Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Franchisee's equipment, abusive and/or threatening behavior toward the Franchisee's employees or representatives, or refusal to provide credit history information or refusal to allow the Franchisee to validate the identity, credit history, and credit worthiness via an external credit agency.

SECTION 10: COMMUNICATIONS WITH SUBSCRIBERS

A. All Franchisee personnel, contractors, and subcontractors contacting Subscribers or potential Subscribers outside the office of the Franchisee shall wear a clearly visible identification card bearing their name and photograph. The Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of the Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have the Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for the Franchisee shall

have the contractor's/subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Franchisee.

B. All contact with a Subscriber or potential Subscriber by a Person representing the Franchisee shall be conducted in a courteous manner.

C. The Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Franchisee may be referred to the LFA.

D. All notices identified in this Section shall be by either:

(1) A separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or

(2) A separate electronic notification.

E. The Franchisee shall provide reasonable notice to Subscribers of any pricing changes or additional changes (excluding sales discounts, new products, or offers) and, subject to the foregoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of the Franchisee, and the Franchisee shall provide a copy of the notice to the LFA including how and where the notice was given to Subscribers.

F. The Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of the Franchisee:

(1) Products and Cable Service offered;

(2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees, and other fees charged by the Franchisee related to Cable Service;

(3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

(4) Channel positions of Cable Services offered on the Cable System;

(5) Complaint procedures, including the name, address, and telephone number of the LFA, but with a notice advising the Subscriber to initially contact the Franchisee about all complaints and questions;

(6) Procedures for requesting Cable Service credit;

- (7) The availability of a parental control device;
- (8) Franchisee practices and procedures for protecting against invasion of privacy; and
- (9) The address and telephone number of the Franchisee's office to which complaints may be reported.

A copy of notices required in this Subsection 10.F. will be given to the LFA at least fifteen (15) days prior to distribution to Subscribers if the reason for notice is due to a change that is within the control of the Franchisee and as soon as possible if not within the control of the Franchisee.

G. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

H. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

I. Every notice of termination of Cable Service shall include the following information:

- (1) The name and address of the Subscriber whose account is delinquent;
- (2) The amount of the delinquency for all services billed;
- (3) The date by which payment is required in order to avoid termination of Cable Service; and
- (4) The telephone number for the Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.