

SUMMARY OF FRANCHISE HISTORY AND ANNOTATIONS

Date	Franchise/Amendment	County Action
Effective July 1, 1998	Franchisee: Prime Communications - Potomac, LLC Franchise: Between Montgomery County and SBC MEDIA VENTURES, L.P. (base document)	1. Approved Renewal Franchise for SBC; 2. Approved transfer of Renewal Franchise to Prime under terms of June 10, 1998 Settlement Agreement (Ex. D to Franchise)
Effective August 1, 2000	Franchisee: Comcast Prime LLC (subsequently renamed Comcast Cablevision of Potomac LLC) <u>(RED: Franchise amendments associated with this transfer)</u>	1. Approved franchise transfer to Comcast under terms of Transfer Agreement (Resol. 14-593); 2. Approved minor amendments to Transfer Agreement. (Resol. 14-624)
Effective: August 29, 2002	Franchisee and Franchise agreement unchanged	Approved merger of AT&T Broadband's cable assets with Comcast under terms of Transfer Agreement.

A CABLE FRANCHISE AGREEMENT
BETWEEN MONTGOMERY COUNTY, MARYLAND
AND SBC MEDIA VENTURES, L.P.

CABLE FRANCHISE AGREEMENT
MONTGOMERY COUNTY, MARYLAND

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**CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN MONTGOMERY COUNTY, MARYLAND
AND SBC MEDIA VENTURES, L.P.**

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 SBC Media Ventures, L.P., a Delaware Limited Partnership ("Operator" or "Franchisee").

WHEREAS, Operator has asked the County to renew Operator's nonexclusive franchise (the "Prior Franchise") to construct, install, maintain and operate a cable communications system in the County; and

WHEREAS, the County is authorized to grant one or more nonexclusive cable television franchises pursuant to Montgomery County Code Chapter 8A, as amended, and Article 25A, Section 5(B) of the Annotated Code of Maryland, 1957, as amended; and

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; and

WHEREAS, the County has reviewed Operator's performance under the Prior Franchise and the quality of service during the Prior Franchise term, has identified the future cable-related needs and interests of the County and its citizens, has considered the financial, technical and legal qualifications of Operator, and has determined whether Operator's plans for constructing, operating and maintaining its Cable System are adequate, in a full public proceeding affording due process to all parties; and

WHEREAS, the County has relied on Operator'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 Operator has presented to it; and

WHEREAS, the County and Operator have entered into a Settlement Agreement with respect to past known and unknown claims with regard to Operator's Prior Franchise, attached as Exhibit D (the "Settlement Agreement"); and

WHEREAS, the County and Operator wish to establish July 1, 1998, as the effective date of this Franchise and wish to extend the term of the Prior Franchise through June 30, 1998; and

WHEREAS, based on Operator's representations and information, and in response to its request for renewal, the County has determined that, subject to the provisions of Montgomery County Code, Chapter 8A, known as the Cable Communications Law (the "Cable Law"), and the terms and conditions set forth herein, the grant of a new nonexclusive franchise to Operator, to supersede the Prior Franchise, is consistent with the public interest; and

WHEREAS, the County and Operator have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions; and

WHEREAS, Operator has filed an application with the County requesting the transfer of this Franchise to Prime Communications-Potomac, LLC ("Prime"); and

WHEREAS, the County is currently considering Operator's transfer application and if the County approves the transfer Prime will become the Franchisee in lieu of Operator and will be required to assume all the obligations of Operator under this Agreement; and

WHEREAS, certain municipalities located within the County and identified in Exhibit A (the "Participating Municipalities") have requested that the County administer and enforce the

terms of their cable television franchises and intend to grant Operator a new nonexclusive franchise on the same terms and conditions as the County; and

WHEREAS, Operator 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 new franchise to Operator Operator's promise to provide Cable Service to residents of the County pursuant to and consistent with the Cable Law 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 Cable Law 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) *Actual Cost:* The incremental cost to the Franchisee of materials and labor necessary to perform installation, construction, or maintenance of Institutional Network facilities, as further described in Exhibit B.

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

(d) *Basic Service:* Any service tier that includes the retransmission of local television broadcast signals.

(e) *Cable Law:* Montgomery County Code, Chapter 8A -- Cable Communications Law, as it may be amended from time to time.

(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. Cable Service includes the provision of Internet access over the Cable System

(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, 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 communications system or provider of communications services to the full extent permitted by law.

(h) *Channel:* A six Megahertz (MHz) frequency band, which is suitable for carrying either one standard video signal, a number of audio, digital or other non-video signals or some combination of such signals.

(i) *Channel Equivalent:* The system capacity required to provide the transmission of a video signal, with accompanying audio, that is in digital format and capable of producing sound and picture of NTSC quality or better, based on the compression technology then in use in the Cable System.

(j) *Completion:* Such time as the System Rebuild described in Section 6(d) and the Institutional Network described in Sections 7(h)(4)-(5) are accepted by the County pursuant to Sections 6(j) and 7(h)(5)(E).

(k) *Construction Costs:* The Franchisee’s costs for construction of facilities for the County’s use which occurs at the County’s request. The Costs will be calculated as the sum of

incremental costs in additional material and labor (if any) for County requested construction which occurs at the same time along the same strand/trench as the Franchisee's plant and facilities. Should the County request construction of facilities for County use along a separate path, or at a different time as Franchisee's planned construction for its own facilities, then the calculated cost shall be the sum of costs for all construction at a rate not to exceed the Material Costs and Labor Costs to Franchisee.

(l) *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.

(m) *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.

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

(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 Cable Law.

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

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

(r) *Franchisee:* SBC Media Ventures, L.P., a Delaware Partnership, and its lawful and permitted successors, assigns, and transferees.

(s) *Gross Revenues:* Any and all revenues, including cash, credits, property or other consideration of any kind or nature arising from, attributable to, or in any way derived directly or indirectly by the Franchisee, its Affiliates, or by any other entity that is a cable operator of the System, from the operation of the Franchisee's Cable System (including the studios and other facilities associated therewith) to provide cable services. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any basic, optional, premium, per-channel, per-program service, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments, or other consideration received from programmers for carriage of programming on the System and accounted for as revenue under GAAP; revenues from rentals or sales of Converters or other equipment; any studio rental, production equipment, and personnel fees; advertising revenues; barter; revenues from program guides; revenues from the sale or carriage of other cable-related services; and revenues from home shopping, bank-at-home channels, and other revenue sharing arrangements. 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. Gross Revenues shall not include (i) to the extent consistent with generally accepted accounting principles, actual bad debt write-offs not to exceed 2% of annual revenues, provided, however, that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Franchisee which are imposed directly on any Subscriber or user by the state, County, or other governmental unit and which are collected by the Franchisee on behalf of said governmental unit. A Franchise fee is not such a tax.

(t) *Institutional Network or Network*: The two-way optical fiber system linking public, educational, and governmental facilities in the County more fully described in Exhibit B and Section 7(h) herein.

(u) *Labor Costs*: Actual cost to Franchisee of (i) contract labor, or (ii) hourly wages or apportioned salaries of Franchisee's employees plus fully loaded labor costs as set forth in Exhibit B.

(v) *Material Costs*: Actual cost of material to Franchisee, including sales tax and freight paid, plus handling and processing charges equal to 3% of material costs.

(w) *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.

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

(y) *Participating Municipality*: Municipalities within the County which have agreed to have the County administer and enforce the Franchise within their corporate limits, which have signed and entered into this Agreement, and which are identified in Exhibit A, as amended.

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

(aa) *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.

(bb) *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 a 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.

(cc) *Prior Franchise*: The Cable Television Franchise for Montgomery County, Maryland held by SBC Media Ventures, L.P. prior to the effective date of this Franchise.

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

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

(ff) *System Rebuild or Rebuild*: A major improvement or enhancement in the technology or service capabilities made by the Franchisee to the Cable System, as more fully described in Section 6(d) and Exhibit C herein.

(gg) *Transfer of the Franchise.*

Any transaction in which:

(A) 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

(B) the rights held by the Franchisee under this Franchise Agreement are transferred or assigned to another Person or group of Persons.

(hh) *Transfer of an Interest:* The sale or transfer, directly or indirectly, of an existing or newly created equity interest in the Franchisee that does not result in a transfer of control of the Franchisee.

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

(a) *Grant of Authority:*

(1) Subject to the terms and conditions of this Agreement and the Cable Law, the County and the Participating Municipalities hereby grant 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, except to the extent other services may be provided pursuant to Section 7(l) herein. 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 Participating Municipalities, having adopted Chapter 8A of the Montgomery County Code by ordinance, have each requested that the County administer and enforce such ordinance within the corporate limits of the Participating Municipality through one or more County-municipality agreements. The County has agreed to administer and enforce Chapter 8A and the comparable municipal ordinance within the corporate limits of each Participating Municipality. 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 result in the termination of this Franchise Agreement for either the County or the Participating Municipality. 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) 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 under the same terms and conditions of this Franchise Agreement as applicable to the County and other Participating Municipalities.

(b) *Area Served:*

(1) The Franchise is granted for the Franchise Area defined herein.

(2) The Franchisee shall build its System so that it is able to provide service to all areas located within the County limits as they existed on the effective date of this Agreement including areas which may be annexed in the future, in accordance with the provisions of this Agreement, unless this requirement is waived in writing by the County.

(c) *Term:* The Franchise and this Franchise Agreement shall extend for 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 Cable Law.

(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.

(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. By its acceptance of the Franchise, the Franchisee agrees to meet all requirements of the Cable Law.

(g) *Approval, Acceptance, and Effective Date:* This Franchise Agreement shall become effective on July 1, 1998 (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 May 25, 1998, 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 Cable Law 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 Cable Law 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;

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

(5) agrees to reimburse the County for all costs incurred in its review, preparation, evaluation of proposals and qualifications, and negotiations involving this Agreement, up to \$ 200,000.00 and to reimburse the Participating Municipalities for their costs, up to \$25,000. The County and the Participating Municipalities shall provide the Franchisee with an accounting of these expenses, such as consultant fees, and shall supply the Franchisee with invoices for said expenses. Franchisee shall deliver payment to the County and to the Participating Municipalities within thirty (30) days of receipt of said invoices. Such payments are in addition to the Franchise Fee. Failure to make timely payment of said expenses, except for any expenses that are the subject of legitimate dispute, shall constitute a material violation of this Agreement

(i) *Claims Related to Prior Franchise:*

(1) The parties acknowledge that the Franchisee's unconditional acceptance of the Settlement Agreement is a condition of the grant of the Franchise.

(2) Except as may be provided in the Settlement Agreement and in Section 7(j) (Maintenance of G-Net), as of the effective date of this Franchise Agreement, the Prior Franchise is superseded and is of no further force and effect, and the County (including the Participating Municipalities) and the Franchisee mutually release each other from any claims each had, has or may have against the other under the Prior Franchise.

(3) The County and the Franchisee acknowledge that each of the terms of the Settlement Agreement is a condition of the Franchise within the meaning of 47 C.F.R. § 76.925.

(j) *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 Cable Law or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the 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.

(k) *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 Cable Law, whether or not such action or non-action was required by the Franchise, the Agreement or the Cable Law, 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 Cable Law, or otherwise arising out of the Franchise, the Agreement or the Cable Law. The preceding shall not preclude injunctive relief.

(l) *Construction of Franchise Agreement:* The provisions of this Franchise Agreement shall be liberally construed to effectuate its objectives consistent with the Cable Law and the public interest. In the event of a conflict between the Cable Law and this Agreement, the Cable Law shall prevail. References to applicable law or applicable requirements refer to applicable law or requirements as the same may be amended from time to time.

(m) *Effect of Competition:*

(1) The County and the Participating Municipalities desire competition in cable services in Montgomery County and believes competition will benefit the residents of the County and the Participating Municipalities. Further, the County and the Participating Municipalities believe that competition can develop without substantial injury to Franchisee or Franchisee's ability to perform on its promises in this Agreement. The Franchisee has entered this Agreement with a full understanding that the County and the Participating Municipalities intends to encourage the development of competition.

(2) If the County Executive requests, the County, for itself and the Participating Municipalities, may require the Franchisee to increase its Comparable Obligations to the level of the Support Obligations of a Video Competitor if the total Support Obligations of the Video Competitor (excluding franchise fees or comparable fees or taxes) pursuant to any franchise or comparable agreement with the County are greater than the total Comparable Obligations of the Franchisee (excluding franchise fees) under this Franchise and the Settlement Agreement.

(3) If the Franchisee requests, the County, for itself and the Participating Municipalities, shall grant a decrease in Franchisee's Future Obligations under this Agreement to the level of the Future Obligations of a Video Competitor if, at the time of the request:

(A) The Video Competitor serves residential subscribers totaling at least 10% or more of the number of residential subscribers then served by the Franchisee; and

(B) The Franchisee's Comparable Obligations are 10% greater, or more, than the Support Obligations of the Video Competitor.

(4) The Chief Administrative Officer (“CAO”) of the County after meeting and conferring with the Participating Municipalities shall determine when the conditions of this subsection (m) have been satisfied and shall determine by written order the change, if any, required in Franchisee’s Future Obligations. Any such change shall be effective as of the date the request for change was made. If Franchisee believes the decision of the CAO does not comply with the terms of this subsection, Franchisee may request mediation by a third party mutually acceptable to the County and the Franchisee. If mediation is not successful within 90 days of the date of the initial decision by the CAO, the Franchisee may pursue its other remedies at law, provided it has made, and continues to make, the payments required by the CAO’s decision throughout the pendency of any legal action, subject to refund back to the date the request for change was made.

(5) The CAO shall use the following methodology in determining whether a change in Comparable Obligations is required under paragraph 2 or 3 of this subsection (m):

(A) Reduction in Comparable Obligations. The determination of a requested decrease in Franchisee’s Comparable Obligations will compare only Future Obligations as measured from the date of the request, provided that any elements of Franchisee’s Comparable Obligations that are not within the County’s authority to impose on the Video Competitor will not be considered in making the comparison for purposes of reducing Franchisee’s Future Obligations.

(i) Where Future Obligations are based on flat, pre-determined monetary amounts, (whether or not such amounts may be recurring and/or inflation adjusted), such amounts shall be reduced to their Net Present Value as of the date of the request for a

change. In-kind obligations shall be valued at the Actual Cost to the entity providing the in-kind obligation. These amounts shall be expressed as an average monthly per subscriber amount based on the number of months left under the respective agreement and using the number of residential subscribers which the entity serves as of the date of the reduction request.

(ii) Where Future Obligations are imposed based on a specified amount per subscriber, such amounts will be expressed as a monthly dollar amount per residential subscriber based on the number of residential subscribers which the entity serves as of the date of the reduction request.

(iii) Where Future Obligations are imposed based on a specified percentage of gross revenues, the quarterly gross revenues and number of subscribers for the quarterly period immediately preceding the reduction request will be used to calculate an average monthly revenue per subscriber based on the average number of residential subscribers served during that quarter. This average monthly revenue per subscriber will then be multiplied by the specified percentage of gross revenues to arrive at a monthly amount per residential subscriber.

(iv) The total monthly dollar amounts per residential subscriber as of the date of the reduction request will be the basis of comparing the respective obligations of the Franchisee and a Video Competitor to determine if an adjustment is warranted.

(v) If Future Obligations are imposed on any basis other than as set forth above, the CAO will use its best efforts to convert those obligations to a monthly dollar amount per residential subscriber based on the number of residential subscribers which the entity serves as of the date of the reduction request consistent with the principles set forth above.

(B) Increase in Comparable Obligations. An increase in Franchisee's Comparable Obligations will be required if the net present value of the Support Obligations paid or provided by a Video Competitor to the County for PEG and I-Net facilities, equipment and services (but not for franchise fees or comparable taxes or fees) as of the date of the County Executive's request under paragraph 2 of this subsection (m), exceeds the net present value of the Franchisee's Comparable Obligations paid or provided for PEG and I-Net facilities, equipment and services (but not for franchise fees or comparable taxes or fees, and regardless of whether any element of such obligations is within the County's authority to impose on the Video Competitor) under this Franchise and the Settlement Agreement as of the same date, as adjusted for any differences in the relative length of the respective obligations. In this event, the CAO may require the Franchisee to increase its Future Obligations on a going forward basis to eliminate the difference.

(6) At such time as the Video Competitor's market share falls below 10% of the residential subscribers served by Franchisee, and Franchisee has previously received a reduction in its Comparable Obligations under this subsection (m), the Franchisee's remaining Future Obligations will return to the original requirements. If, following such a return to the Franchisee's original requirements, a Video Competitor later obtains a market share totaling 10% or more of the number of residential subscribers served by the Franchisee, the Franchisee may again request a reduction in the Future Obligations, as set forth above; provided, however, that the Franchisee shall not again request such a reduction within five years after returning to the Franchisee's original requirements. The Franchisee promises to meet the future Comparable Obligations, as amended, and to pass through to subscribers the full benefits of any reduced Comparable Obligations.

(7) For purposes of this Section,

(a) “Comparable Obligations” means the Franchisee’s obligations over the relevant period of this Agreement to pay franchisee fees in Section 8(a); Settlement Agreement payments; PEG Capital Equipment Support Grant payments in Section 7(b); Institutional Network payments in Section 7(h); and any Actual Costs caused to Franchisee by the construction of the Institutional Network.

(b) “Future Obligations” means either Support Obligations or Comparable Obligations that will occur within the remaining term of a franchise or other County-granted operating permission. The term includes past and current expenditures that are both amortized and unrecovered under generally accepted accounting principles at the time of the Franchisee’s request. The term does not include obligations past due.

(c) “Support Obligations” means

(i) for a cable operator Video Competitor, any legally enforceable obligations imposed by the County for cable franchise fees or comparable tax or fee, or for PEG services or facilities or equipment, including an institutional network, within the County;

(ii) for an OVS operator Video Competitor, any legally enforceable obligations imposed by the County for cable franchise fees or comparable tax or fee, or for PEG services or facilities or equipment, not including an institutional network; and

(iii) for any other entity providing Cable Service, any legally enforceable obligations imposed by the County for franchise fees or comparable tax or fee, or for PEG services or facilities or equipment.

(d) “Video Competitor” means a Person who is a cable operator, an OVS operator as defined in 47 U.S.C. § 573, or is providing Cable Service in the County pursuant to a prior agreement with the County. A Video Competitor may not be an Affiliate of the Franchisee.

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 5 percent or more, must not occur without prior approval by the County and the Participating Municipalities. However, a Transfer of an Interest to a person who already holds an ownership interest of 25 percent or more does not require such prior approval if Transfer of the Franchise does not occur. A Transfer of the Franchise will not be approved by the County nor by a Participating Municipality when the transferor has held the Franchise less than three years unless the County or the Participating Municipality finds that the transfer is necessary and in the best interests of the County or the Participating Municipality and its residents.

(2) An application to Transfer the Franchise must meet the requirements of section 8A-8(b) of the Cable Law and provide complete information on the proposed transaction, including the legal, character, financial, technical and other pertinent qualifications of the transferee, and on the potential impact of the transfer on subscriber services or rates. The information required in section 8A-8(e)(1) through (3), (10) and (12) of the Cable Law must be provided by the proposed transferee. The information required in section 8A-8(e)(4) through (9) of the Cable Law must also be provided whenever the proposed transferee expects material changes to occur in those areas as a result of the transfer.

(3) An application for Transfer of an Interest in the Franchise must describe the proposed transaction in detail and identify the interest to be transferred, the transferor, and transferee. If the proposed transferee is not a current equity owner of the Franchisee, the application must include the information required by section 8A-8(e)(1) through (2).

(4) A public hearing must be held on an application for Transfer of an Interest in a franchisee of 25 percent or more.

(5) Before approving Transfer of the Franchise, the County and the Participating Municipalities must consider the legal, financial, technical and character qualifications of the transferee to operate the System, and whether operation by the proposed franchisee will adversely affect the cable services to Subscribers or otherwise be contrary to the public interest. Before approving a Transfer of an Interest in the Franchisee, the County and the Participating Municipalities must consider whether the transferee's interest will have any effect on the Franchisee's operation of the System, the Franchisee's qualifications, or the public interest.

(6) The Council must take final action on an application for Transfer of the Franchise after receiving a recommendation from the County Executive. The County Executive may take final action on an application for Transfer of an Interest.

(7) Approval by the County or a Participating Municipality of a Transfer of the Franchise does not constitute a waiver or release of any of the rights of the County or Participating Municipality under the Cable Law or this Agreement.

(8) The County and the Participating Municipalities may impose a grant fee to cover their costs in excess of the filing fee in considering an application for Transfer of the Franchise.

(b) *Anti-Trafficking:* Following the Transfer of the Franchise to Prime Communications-Potomac, LLC, if approved, the Franchise shall not subsequently be transferred prior to the Franchisee's Completion of the System Rebuild described in Section 6(d) herein, including such portions of the Institutional Network described in Section 7(h) herein required to be built concurrently with the System Rebuild, to be constructed by the Franchisee, unless the County and Participating Municipalities find, in their sole discretion, that the Transfer is necessary and in the best interests of the County and Participating Municipalities, and their residents.

(c) *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 Cable Law, 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 Cable Law for all purposes, including renewal, unless the County and Participating Municipalities, in their sole discretion, expressly waive this requirement in whole or in part.

(d) *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, no more than ninety (90) days following 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 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 ninety (90) 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 the right of the County and the Participating Municipalities to purchase the System shall continue, and notice of all subsequent purchase agreements shall be given to the County and each Participating Municipality pursuant to this paragraph. 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.

(3) If the Cable System is sold to the buyer, and the County and the Participating Municipalities have not exercised their option to purchase the Cable System, the County and the Participating Municipalities may condition the approval of the ownership

Transfer upon the consent of the buyer to reasonable changes in the Franchise Agreement that they find necessary.

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 Franchise Area, 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. Notwithstanding the foregoing, the requirements contained in the following sections of this Franchise shall not apply to service provided by the Franchisee to business customers: Section 4(b) (Line Extensions); Section 6(a)(8) (Consumer Equipment); Section 6(a)(11) (Program Security); Section 9(b) (Installations), Section 9(d) (Scheduling and Completing Service), Section 9(f)(3) and Section 9(h) (Rebate Policy). Except as otherwise required under this Franchise, terms and conditions of services provided to businesses are subject to negotiation between the Franchisee and the business requesting the service.

(b) *Line Extension Requirements.*

(1) Requirements. The Franchisee shall extend its Cable System within a reasonable time (but not to exceed ninety (90) days) to provide service to any person or business upon request at no charge other than any applicable installation fees for the individual subscriber's drop, as long as the following conditions are satisfied:

(A) the new subscriber requesting service is located 400 feet or less from the termination of the Cable System; and

(B) the number of dwelling units to be passed by the extension is equal to or greater than 15 per mile measured from any point on the system.

The above requirements may be waived if the Franchisee demonstrates to the County's satisfaction, in its sole discretion, that a waiver is justified due to extraordinary circumstances. In addition, the Franchisee may obtain a waiver of the 90-day time period if it demonstrates to the County's satisfaction that additional time is required to accommodate utilities providing the Franchisee with access to poles, ducts, conduit or right-of-way.

(2) Cost sharing.

(A) If a person has requested Cable Service but the requirement in paragraph (1)(A) above is not met, and the density requirement in paragraph (1)(B) is met, then the Franchisee shall extend its System to serve the person requesting service, provided that the Franchisee may require the person to pay the cost of any line extension in excess of 400feet.

(B) If neither of the requirements in paragraph (1) is met, then the Franchisee must extend its System based upon an equitable and reasonable cost-sharing arrangement with affected potential subscribers, such as the arrangement described below:

(C) The Franchisee shall first determine the total construction costs of the extension. The "total construction costs" are defined as the actual turnkey cost to construct the entire extension including electronics, pole make-ready charges, labor and reasonable associated overhead, but not profit or the cost of the house drop.

(D) The Franchisee shall then determine its share of the total construction costs by multiplying the total construction costs by a fraction, where the numerator equals the number of actual potential subscribers per mile in the area to be served by the extension at the time of the request, and the denominator equals 15.

(E) Persons requesting service can be required to bear the remainder of the total construction costs on a pro rata basis.

(F) If the Franchisee proposes to require a person requesting extension to make a contribution in aid of extension, it must, within 30 days of completion of the extension, furnish the County proof of the total cost of the extension.

5. CONSTRUCTION AND MAINTENANCE.

(a) *Construction Standards.*

(1) The construction, operation, maintenance, and repair of the System shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended; the most current edition of the National Electrical Safety Code and National Electric Code; Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17; Franchisee's Construction Procedures Manual; the Cable Law; applicable local building codes; and 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 and construction codes and laws and accepted industry practices, all as hereafter may be amended or adopted. 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). 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.

(2) 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.

(3) 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.

(4) Without limiting the foregoing, antennae and their supporting structures (towers) shall be designed in accordance with the Building Officials and Code Administrator's National Building Code, as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local laws, codes, and regulations, all as hereafter may be amended or adopted.

(5) Without limiting the foregoing, all of the Franchisee's plant and equipment, including, but not limited to, the antennae site, headend and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel so as not to endanger or interfere with improvements the County or an affected Participating Municipality shall deem appropriate to make or to interfere in any manner with the Public Rights-of-Way or

legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

(6) All safety practices required by law shall be used during construction, maintenance, and repair of the Cable System. The Franchisee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(7) 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.

(8) The Franchisee shall place facilities, equipment, and fixtures where they will minimize effects on any gas, electric, telephone, water, sewer, or other utility facilities, and shall not obstruct or hinder in any manner the various utilities serving the residents of the County and the Participating Municipalities or their use of any Public Rights-of-Way.

(9) 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.

(10) The Franchisee shall, by a time specified by the County or an affected Participating Municipality, and at no cost to the County or an affected Participating Municipality, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the County or an affected Participating Municipality by reason of traffic conditions; public safety; Public Right-of-Way construction; Public Right-of-Way maintenance or repair (including resurfacing or widening); change of Public Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; Public-Right-of-Way vacation; or for any other purpose where the convenience of the County or an affected Participating Municipality would be served thereby; provided, however, that the Franchisee shall, in all such cases, have the privilege of abandoning any property in place.

(11) If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person that is authorized to use the Public Rights-of-Way, the Franchisee shall, after thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The County may resolve disputes as to responsibility for costs associated with the removal, relaying, or relocation of facilities as among entities authorized to install facilities in the Public Rights-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or a state or federal law or regulation.

(12) In the event of an emergency, or where a Cable System creates or is contributing to an imminent danger to health, safety, or property, the County or an affected Participating Municipality may remove, relay, or relocate any or all parts of that Cable System

without prior notice. The County or an affected Participating Municipality shall make reasonable efforts to contact the Franchisee prior to performing such work, or immediately thereafter if prior notice is impossible.

(13) The Franchisee shall, on the request of any Person holding a building moving permit issued by the County or a Participating Municipality, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the requesting Person is the County or a Participating Municipality, in which case no such payment shall be required. The Franchisee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(14) (A) The Franchisee may trim trees or other vegetation owned by the County or a Participating Municipality to prevent their branches or leaves from touching or otherwise interfering with its wires, cables or other structures.

(1) All trimming or pruning provided herein shall be done only with the County's prior approval. If trees to be trimmed are within a participating municipality, approval of the municipality shall be secured.

(2) All trimming or pruning shall be at the sole cost of the Franchisee.

(3) The Franchisee may contract for said trimming or pruning services with any person approved by the County or the affected Participating Municipality prior to the rendering of said services. Any person engaged by the Franchisee to provide tree

trimming or pruning services shall be deemed, for the purpose of this Agreement, to be an employee of the Franchisee when engaged in said activity.

(B) The Franchisee shall obtain the written permission of the owner of any privately owned tree or other vegetation before it trims or prunes the same, unless otherwise provided by the right-of-way agreement.

(15) The Franchisee shall use, with the owner's permission, existing poles, conduits and other facilities whenever technically feasible and economically practical. The Franchisee may not erect poles, conduits, or other facilities in Public Rights-of-Way without the express permission of the County or an affected Participating Municipality, and/or necessary local permits. Copies of agreements for use of conduits or other facilities shall be filed with the County or an affected Participating Municipality upon County or Participating Municipality request.

(16) System cable and facilities may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead, but where no overhead poles exist all cables and facilities, excluding system passive or active electronics that may be housed in low-profile, above-ground pedestals, shall be constructed underground. Whenever and wherever electric lines and telephone lines are moved from overhead to underground placement, all Cable System cables shall be similarly moved.

(17) 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 owned by the Franchisee any wire and pole fixtures that do not unreasonably interfere with the Cable System operations of the Franchisee.

(18) Except as otherwise required by Section 6(e), prior to erection of any poles or conduits or the construction, upgrade, or rebuild of a Cable System, the Franchisee shall first submit to the County for approval, and to any affected Participating Municipality for informational purposes only, a concise description of the Cable System facilities proposed to be erected or installed, including engineering drawings, if required by the County or an affected Participating Municipality, together with a map and plans indicating the proposed location of all such facilities. No such erection or construction shall be commenced by any Person until approval therefor has been received from the County. Nothing in this section shall diminish or detract from the permitting authority of any Participating Municipality.

(19) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of System equipment or for the pruning or removal 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 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.

(20) The County and Participating Municipalities do not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures.

(21) The Franchisee shall be a member of the One Call Notification System (otherwise known as "Miss Utility") and shall comply with all of the marking and location verification requirements of the One Call Notification System.

(b) *System Tests and Inspections.*

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

(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 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, 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 corrective action, retest the locations and advise the County of the action taken and results achieved.

(c) *Restoration:* 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 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-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.

(d) *Publicizing Proposed Construction Work.* The Franchisee shall notify the public prior to commencing any proposed construction that will significantly disturb or disrupt public

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 at least one (1) week prior to commencement of that work by causing written notice of such construction work to be delivered to the County and any affected Participating Municipality and by notifying 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, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice. In addition, before entering onto any Person's property, the Franchisee shall provide prior notification and obtain the property owner's or, in the case of residential property, the resident's permission. If the Franchisee must enter premises, it must schedule an appointment at the convenience of the owner or resident.

(e) *System Maintenance.*

(1) 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.

(2) Maintenance Practices Subject to Regulation. Maintenance of the System shall be performed in accordance with the technical performance and operating standards established by FCC rules and regulations. 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.

(f) *Failure Grounds for Termination.* Failure on the part of the Franchisee to commence and diligently pursue and complete each of the material requirements set forth in this

Section of the Agreement or in plans submitted to the County regarding System design and construction shall be grounds for termination of its Franchise under and pursuant to the terms of Section 14(h); provided, however, that the County in its discretion may extend the time for the completion of construction and installation for additional periods in the event the Franchisee, acting in good faith, experiences delays by reason of circumstances beyond its control.

6. SYSTEM FACILITIES, EQUIPMENT AND SERVICES.

(a) *System Characteristics:* The Franchisee's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

(1) *Compliance With FCC Rules.* All maintenance performed on the Cable System by the Franchisee shall be in accordance with the FCC rules and regulations governing the technical performance and operating standards for such System.

(2) *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 extremely inclement weather or immediately following extraordinary storms that adversely affect utility services or damage major system components.

(3) *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.

(4) *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 FCC 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, pursuant to FCC regulations.

(5) No Deterioration to Access Signals. The System shall be so constructed and operated that there is no significant 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 other channel on the System. Deterioration refers to any signal problem, including but not limited to ghost images and other interference and distortions.

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

(7) 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 duration at the headend, and battery back-up power capability of at least four (4) hours duration for all system hubs with automatic dialer response systems to alert the system headend when commercial power is interrupted. The headend generator shall be tested once per week. The standby power system shall be reviewed and approved by the County as part of System Design Review. The power suppliers serving the nodes and distribution shall be capable of providing power to the system for not less than two (2) hours according to manufacturer specification in the event of an electrical outage. The

Franchisee shall maintain sufficient portable motorized generators to be deployed to a hub site in the event that the duration of a power disruption is expected to exceed four (4) hours.

(8) Cable Ready Television Sets. The Franchisee shall comply with all FCC regulations regarding scrambling or other encryption of signals.

(9) 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 taping 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, 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.

(10) Parental Control. The Franchisee shall provide equipment to enable Subscribers to block out audio and video on any undesired channels on the System.

(11) 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.

(12) Service for the Disabled. All closed-caption programming retransmitted by the System shall include the closed-caption signal. For hearing impaired Subscribers, the Franchisee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, the Franchisee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company. Upon request, the Franchisee shall provide, for purchase or lease, a remote control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited.

(b) *Current System:* The Franchisee is authorized and required to operate its existing System, and to provide service substantially equivalent to its existing service, within the County and each Participating Municipality as of the Effective Date of this Agreement, until such time as the System is rebuilt, as provided herein.

(c) .

(1) In addition to any upgrades required herein, 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 remaining term of the franchise.

(2) To ensure that the Franchisee is carrying out its responsibilities hereunder, the Franchisee shall be required to submit a report on cable technology to the County every three years during the Franchise term. Each report shall describe developments in cable technology, and whether, how, and by what date the Franchisee plans to incorporate those technological developments into the System. In addition, the report shall describe the effect of those

developments on public, educational, and governmental use of the Cable System, and the effect and compatibility of those technological changes on consumer electronic equipment. The report also shall describe how other cable companies have incorporated or are planning to incorporate the technological developments into their Systems and the estimated timetable for doing so.

(d) *System Rebuild:* Within four years after the effective date of this Agreement, the Franchisee shall complete a System Rebuild providing at least the following capabilities:

(1) The rebuilt System shall have a minimum bandwidth capacity of 750 MHz on all active components, at least 750 MHz for all existing passive components, and at least 1 GHz for all new or replaced passive components; an analog bandwidth of 550 MHz; and shall initially have a minimum analog Channel capacity of at least 82 Channels, downstream to all Subscribers, and a minimum digital capacity of 200 MHz. If the Franchisee subsequently decides to change the amount of capacity allocated to analog programming, the Franchisee shall notify the County in writing at least sixty (60) days prior to the effective date of the proposed change.

(2) 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. Fiber optic nodes, segmented into distinct service areas, shall be constructed to serve coaxial copper cable passing no more than 1,500 dwelling units per node. Individual nodes may serve cable passing a *de minimis* number of dwelling units in excess of 1,500, provided there is no effect on the performance characteristics of the node.

(3) The Franchisee shall design the system so that channel capacity may be readily expanded and digital programming delivered to Subscribers through digital video

compression or similar appropriate technology without compromising signal or service quality or requiring significant alterations, upgrading or reconstruction.

(4) The rebuilt System shall provide two-way capability. Except as provided elsewhere in this Agreement, Franchisee, in its sole discretion, may activate such capability based on economic and technical considerations.

(5) The Franchisee may offer high-speed cable modems as a Cable Service.

(6) The Franchisee shall offer service to all Montgomery County residences and businesses subject to Section 4(b).

(7) Service shall be provided to all of the City of Takoma Park.

(8) Other Specifications. The rebuilt System shall further have the minimum technical characteristics and specifications described in Proposed CTM Upgrade Parameters, attached as Exhibit C hereto.

(e) *System Architectural Design Review Process.*

At least ninety (90) days prior to the date of initial construction of the Rebuild, the Franchisee shall deliver to the County a detailed architectural design plan, which shall include at least the following elements:

- (1) Location of headend and all hub sites;
- (2) Technical description of equipment at headend, hubs, and nodes;
- (3) Technical analysis of coaxial cable design or nodal service areas

including, for example, specifications for amplifiers, active and passive devices, fiber coupling equipment and power supplies; and

- (4) 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. The County may review the plan and, within forty-five (45) days of the date the plan is made available for County review, submit comments to the Franchisee. Within fifteen (15) days of receipt of the comments, the Franchisee shall submit a revised plan to the County, either incorporating the comments or explaining why the comments were not included. The County may take any appropriate action it is entitled to take under this Agreement, the Cable Law, or other applicable law if it believes the design plan fails to satisfy or is likely to fail to satisfy the Franchisee's obligations. The County's review shall not operate to excuse any non-performance under this Agreement, the Cable Law or other applicable law.

(f) *System Physical Design Review Process:* The Franchisee shall provide the County with detailed design maps defining the geographical and technical physical design of the System and showing the areas of the County to be served by each hub, as well as the construction and energization schedule by hub area for the upgraded systems. Maps shall be provided at least 45 days prior to release for construction. The County may review the physical system design maps and submit comments to the Franchisee within fifteen (15) days of the date each map is provided to the County for review. The Franchisee shall take any such comments into account in implementing its construction plan.

(g) *Construction Manual and Cut-Over Plan.* No later than sixty (60) days before the date construction of the Rebuild is to begin, the Franchisee shall provide for County review and approval, a Rebuild construction manual, Rebuild cut-over plan, installation manual, and plan for notifying area residents of the Rebuild work process.

(h) *Post-Rebuild Design Modifications.* At least ninety (90) days prior to the date of any construction on the System initiated after completion of the Rebuild intended to implement any modifications to the design of the rebuilt System, the Franchisee shall deliver to the County a detailed description of the proposed design modifications. The description shall include any of the information required by subsection 6(e), relevant to an understanding of the proposed modification. The County may review the plan and, within thirty (30) days of the date the plan is made available for County review, submit comments to the Franchisee.

(i) *System and Institutional Network Rebuild Schedule:*

(1) The Franchisee shall begin construction of the Rebuild within six months of the effective date of the Franchise, and shall complete construction within four years of the effective date of the Franchise, in order to minimize disruption of the Public Rights-of-Way.

(2) The Franchisee's construction plan shall insure that service is extended to low income areas at least as quickly as it is extended to higher income areas.

(3) The System Rebuild shall be completed within the boundaries of each of the Participating Municipalities at the same time as the Rebuild is completed in any adjacent area within the County.

(4) All construction shall be performed in accordance with generally accepted construction standards and applicable provisions of the Cable Law and this Agreement, except where specifically waived in writing by the County.

(j) *System Acceptance Schedule:* The Franchisee shall comply with the following procedures as it completes construction of rebuilt plant:

(1) The Franchisee shall notify the County in writing ten (10) days in advance of completion of construction to and construction of each node. The notice shall include the date

the Franchisee is prepared to conduct an acceptance test prior to or concurrent with activation of service. The County and the Franchisee shall jointly develop the standards and procedures required by the acceptance test on that portion of the System. The County shall have the option of attending the test. Within ten (10) days of completion of the test, the Franchisee shall send the County the results of the test.

(2) Upon substantial completion of construction of each area served by a single hub, the Franchisee shall notify the County in writing ten (10) days in advance of the date Franchisee will conduct a test of a subset, as defined by the County, of the tests required by the FCC semi-annual proof-of-performance tests. The County shall have the option of attending the test. Upon completion of the test, the Franchisee shall send the County the results of the test within ten (10) days.

(3) Successful completion of the first semi-annual FCC proof-of-performance test for an upgraded portion of the System shall constitute the final acceptance test for that portion. The Franchisee shall notify the County of the date at least fifteen (15) days in advance, in writing, that it will conduct such a test. The test must be conducted in the presence of the County's designated observer. If the tested portion of the System passes the performance test, that portion shall be deemed accepted by the County. If the tested portion does not pass, the Franchisee shall take all steps necessary to meet the applicable standards and the affected portion shall be retested in accordance with the above procedures.

(4) Final acceptance of the entire System shall take effect when (i) all nodes as set forth in the system architectural design plan approved by the County pursuant to Section 6(e) have been constructed, activated, and accepted pursuant to paragraph (1) above; and (ii) at

least 80% of the entire System, as measured by the number of nodes, has passed the first semi-annual FCC proof-of-performance test.

(k) *Periodic Progress Reporting.* Following the commencement of construction of the System Rebuild or any similar major construction, the Franchisee shall meet with the County at least every three (3) months until the construction is completed, and provide an update on the progress of the Rebuild according to the Franchisee's general plan, unless the County waives such meeting. Upon request, the Franchisee shall provide detailed written reports to the County on the Franchisee's progress in construction, within ten (10) days of the request.

(1) *Public Notification.* Prior to the beginning of any System Rebuild construction, and periodically during each phase, the Franchisee shall inform the public and its Subscribers about the progress of the rebuild areas where construction crews will be working and any expected temporary interruptions to existing services which may occur.

(2) *Delays in the System Rebuild.* The Franchisee shall not be excused from the timely performance of its obligation to begin and complete any System Rebuild within the times specified herein, except for the following occurrences:

(A) Any "Force Majeure" situation, as described herein;

(B) Delays beyond the control of the Franchisee that the Franchisee could not reasonably have anticipated regarding the availability, shipment and arrival of necessary equipment, cables, electronics or hardware, protracted underground excavation, easement availability, third-party refusal to allow necessary access to poles or other rights-of-way facilities, changes in contractors or contractor personnel, the issuance of necessary governmental permits, or any other valid factor agreed to by the County as fully explained and reasonably justified in writing to the County or its designee.

(3) **Consequences of Delays.** Absent a showing of excusable delay pursuant to subsection (k)(2) above, should the Franchisee be unable to demonstrate the commencement or timely completion of the System Rebuild (including the Institutional Network) by the times specified herein, or be unable to reasonably justify any delays, then the Franchisee shall be in violation of a material provision of this Franchise Agreement and the County may, in its sole discretion, either grant the Franchisee an extension of time to complete such construction or implement any enforcement measures specified in this Agreement or the Cable Law, including but not limited to revocation of the franchise. In the event of excusable delay pursuant to subsection (k)(2), the time for completion shall be extended by the period of such delay.

(1) **Technical Standards.** The Cable System shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards, including any such standards as hereafter may be amended or adopted by the County subject to applicable federal law.

(m) **Types of Service:** Should the Franchisee desire to change the selection of programs or services offered on 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. The Franchisee shall provide thirty (30) days' advance written notice to Subscribers and the County of any change in channel assignment or in the video programming service provided over any channel, unless this requirement is waived by the County or by operation of federal or state law, or due to events beyond the reasonable control of the Franchisee.

(n) **Leased Access Channels:** The Franchisee shall provide leased access channels as required by federal law.

(o) *Interconnection.*

(1) The Franchisee shall design its System so that it may be interconnected with other cable systems or similar communications systems in the area. Interconnection of systems may be made by direct cable connection, microwave link, satellite or other appropriate methods.

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

(3) The County may grant reasonable extensions of time to interconnect or rescind its request to interconnect upon petition by the Franchisee to the County.

(4) No interconnection shall take place without notice to the County, and a demonstration that all signals to be interconnected will comply with applicable FCC technical standards for all classes of signals.

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

(p) *Customer Service Monitoring:* 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, as amended from time to time.

(q) *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, an Emergency Alert System (“EAS”), as required by 47 C.F.R. Part 11.

(2) To the extent permitted by 47 C.F.R. Part 11, the EAS shall be remotely activated by telephone and shall allow a representative of the County to override the audio and video on all channels on the Franchisee's System that may lawfully be overridden, 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 EAS. The Franchisee shall cooperate with the County in any such test.

(r) *Uses of System:* Franchisee must agree to advise the County of all active uses of the System, for both entertainment and other purposes, and the County shall have the right to conduct unannounced audits of such usage.

(s) *Additional Capacity:* Franchisee will notify the County in advance of the installation of any fiber optic capacity not contemplated by the initial design of the System, so that additional fiber may be installed, at the County's expense, on an Actual Cost basis for government and institutional use. If the County wishes to request additional capacity, it may notify the Franchisee within 15 days of receipt of Franchisee's notification that the County will request additional capacity.

(t) *Home Wiring:*

Franchisee will comply with Chapter 8A governing the disposition of subscriber home wiring and home run wiring to the extent consistent with federal law.

(u) *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.

(v) *Mid-Term Technical Review:*

(1) In addition to any periodic performance evaluations conducted pursuant to Section 6(r) herein, the County may also conduct a Mid-Term Technical Review of the Franchisee's Cable System once during the eighth and ninth year of the Franchise. The Franchisee shall fully cooperate and assist the County in conducting 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, including the Institutional Network, 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. Subject to the provisions of this Section 6(s), the County may amend this Franchise Agreement to require the Franchisee to upgrade its System to incorporate technical improvements (the "Upgrade Option").

(3) County's Initial Review: To determine whether to invoke the Upgrade Option, the County shall first commence a review of the Cable System. Such review shall be conducted to enable the County to determine the following: (i) whether the Cable System should be upgraded or rebuilt; (ii) whether the Cable System's technical standards should be revised or

improved; (iii) whether additional channels, equipment, facilities or support are required for public, educational and governmental use of the Cable System; and (iv) in general, whether any other changes in Franchise requirements should be made. Each determination under this paragraph shall be based upon the reasonable cable-related needs and interests of the County and the community, considering the costs to the Franchisee of meeting those needs and interests during the remaining term of the Franchise.

(4) Franchisee's Report: To assist in the County's initial review, the Franchisee shall, at the County's request, promptly submit a report to the County describing advances in cable technology nationwide, the potential benefits and disadvantages of those advances for consumers, and any plans or timetables the Franchisee may have for instituting such changes in technology.

(5) Public Hearings: If, after conducting its initial review, the County determines that a system upgrade may be warranted, it shall hold a public hearing to enable the general public and the Franchisee to comment and to present additional information.

(6) Upgrade Order: Following such hearings, the County shall determine whether the exercise of the Upgrade Option is warranted, based upon the reasonable cable-related needs and interests of the community, considering the costs to the Franchisee of meeting those needs and interests. The County shall issue a written order ("Upgrade Order") stating whether an upgrade is required, describing any upgrade to be implemented, and setting forth the basis for its decision. If an upgrade is required, the County shall set forth any relevant conditions.

(7) Franchisee's Response. Within sixty (60) days after the County issues the Upgrade Order, the Franchisee shall notify the County in writing whether it will comply with the

Order. If the Franchisee does not so notify the County within sixty (60) days, the Franchisee will be deemed to have agreed to comply with the Upgrade Order.

(8) Amendment of the Franchise Agreement. If the Franchisee agrees to comply with the Upgrade Order, the parties shall amend this Franchise Agreement accordingly.

(9) Rejection of the Upgrade Option. If, however, the Franchisee is unwilling to comply with the Upgrade Order, the Franchisee shall, notify the County in writing, pursuant to Section 626 of the Cable Act, that it wishes to commence proceedings to renew the Franchise. If, at the time of such notice, more than three (3) years remain in the term of the Franchise, such notice shall be deemed, by mutual agreement, to shorten the term of the Franchise and this Agreement so that the Franchise and this Agreement shall terminate thirty-one (31) months from the date of the notice.

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

(a) *Access Channels:*

(1) The Franchisee shall provide at least thirteen (13) analog video Channels for non-commercial public, educational and governmental use, which Channels shall be in addition to any capacity provided on the Institutional Network pursuant to Section 7(h). Seven of the thirteen (13) PEG channels shall be allocated as follows:

- (A) One full-time analog video channel for County Government use;
- (B) One full-time analog video channel for Educational Access use by the Montgomery County Public Schools;
- (C) One full-time analog video channel for Educational Access for use by Montgomery College;

(D) One full-time analog video channel for Public Access use by Montgomery Community Television or other County designee;

(E) One full-time video analog channel for Governmental use by the City of Rockville;

(F) One full-time video analog channel for Governmental use by the City of Takoma Park;

(G) One full-time video analog channel for Governmental use by the Montgomery County Chapter of the Maryland Municipal League.

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

(3) Additionally, the Franchisee shall make available up to 10% of the System's total downstream digital capacity for PEG use (the "Digital Set-aside"), subject to a limit of 25 Channel Equivalents. Capacity made available under this section shall be used for PEG purposes only. The County and Franchisee shall work together to implement technical solutions that make the most efficient use of the Digital Set-aside. The requirements of Section 7(d) (Management of Channels), 7(e) (Editorial Control), and 7(f) (Indemnification) shall apply to programming provided over the Digital Set-Aside.

(4) 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 six months notice to the County prior to doing so, and shall reimburse the County and/or PEG users 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.

(5) Any reference to an upstream or downstream analog channel for PEG use refers to a 6 MHz Channel. Any entity that manages an Access Channel may use that capacity to provide one or more channels of service.

(6) Pursuant to Section 8A-28 of the Montgomery County Code, 1994, as amended, the County has provided for certain cable communications plans which govern the expenditure of all access and institutional 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).

(7) The access channels for the City of Rockville, the City of Takoma Park, and the Montgomery County Chapter of the Maryland Municipal League shall be provided on the lowest cost tier of service and shall be provided County-wide, except that the Takoma Park channel may be used for the Gaithersburg City channel within the City of Gaithersburg.

(b) *Capital Grant for Access Equipment and Facilities:*

(1) The Franchisee shall provide a capital grant to the County, on its behalf and on behalf of the Participating Municipalities, of \$2 million for the first year of the Franchise, \$1.2 million in Year 2, and \$200,000 per year, adjusted by CPI for the balance of the Franchise (the "Capital Equipment Support Grant") to be used by the County, in its sole discretion, for PEG equipment (including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment), or for PEG-related facilities

renovation, or construction. Payment of the Capital Equipment Support 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 shall distribute a portion of the Capital Equipment Support Grant provided by the Franchisee to the Participating Municipalities in the following amounts: \$500,000 in the first year of the Franchise, \$400,000 in Year 2, and \$60,000 per year thereafter, adjusted by CPI for the balance of the Franchise. Provided, however, that the County's obligation to distribute a portion of the Capital Equipment Support Grant to the Participating Municipalities is conditioned on appropriation by the Participating Municipalities and encumbrance by the Participating Municipalities, within the same fiscal year, of an equal amount for purposes consistent with Section 7(b)(1). To the extent the Participating Municipalities appropriate and encumber less than the amount otherwise required of the County under this Section 7(b)(2), the amount required of the County shall be reduced to a level equal to the amount actually appropriated and encumbered.

(c) *Return Feed From Facilities:*

(1) The Franchisee shall provide dedicated, bi-directional fiber optic links between the headend and each of the following PEG facilities, at the addresses designated in Exhibit E:

- (i) Montgomery Community Television, Inc.;
- (ii) Montgomery College;
- (iii) Montgomery County Public Schools administration building;
- (iv) Montgomery County Executive Office Building;
- (v) City of Rockville City Hall;

- (vi) City of Takoma Park City Hall
- (vii) Maryland Municipal League;
- (viii) University of Maryland;
- (ix) Chevy Chase Village; and
- (x) Town of Chevy Chase.

These links shall be completed within twelve months of the effective date of the Franchise.

(2) The Franchisee shall provide dedicated return coaxial cable links between the headend and the PEG facilities of Glen Echo and Washington Grove at the locations specified in Exhibit E.

(3) 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, under this Subsection 7(c).

(4) The dedicated connections required by Section 7(c)(1) shall be designed and built to include all equipment required for the transport of video and audio source material, including but not limited to laser transmitters, modulators, and processors, drops and wiring, so that each such center can send signals to the headend on at least two channels initially.

Franchisee shall bear the cost of providing all equipment necessary to meet this requirement.

(d) *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; and/or

(2) on the County's behalf, to program any Public, Educational, or Government Access Channel.

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

(f) *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.

(g) *Cable Service to Certain Facilities:*

(1) Upon the request of the County, the Franchisee shall without charge install one activated outlet at each public and non-profit educational institution, each County, State or municipal and agency building, each facility owned by or leased to the County, each non-profit health care institution with patient beds, and each multi-purpose Community Center, within the Franchise Area, as shall be designated by the County from time to time. Upon request by the County, the Franchisee at its own cost shall provide the signal power level at the outlet at 15 dBmV.

(2) The Franchisee shall provide the highest tier that contains Basic Service, and any equipment necessary to receive such service, free of charge to those facilities specified in subsection (1) herein. At its sole discretion, the Franchisee may also provide higher levels of service to such facilities free of charge.

(h) *Institutional Network:*

(1) Beginning in the second year of the Franchise, the Franchisee shall provide an annual capital grant of \$1.2 million (the "I-Net Capital Grant") to support installation, construction, operations, and maintenance of the County's FiberNet and associated network equipment, and the Institutional Network, subject to the adjustments described below.

(A) Payments of the I-Net Capital Grant shall be made quarterly, on the same dates as the Franchisee's quarterly franchise fee payments under this Agreement.

(B) After the first year of such payments, the amount shall be adjusted annually by CPI.

(C) In each of years 5 through 15 of the Franchise, Franchisee's obligation to provide the I-Net Capital Grant is conditioned on appropriation by the County Council and encumbrance by the County, within the same fiscal year, of an equal amount for purposes consistent with this Section 7(h) (Institutional Network) or with Section 7(i) (Supplemental Institutional Network Services) including costs associated with installation, construction, operation and maintenance of the County's FiberNet and associated network equipment. To the extent the County spends less than the amount otherwise required of the Franchisee under Section 7(h)(1), the amount required of the Franchisee shall be reduced to a level equal to the amount spent by the County.

(D) Funds provided by the Franchisee pursuant to this Section 7(h)(1) may be used by the County for any purpose consistent with this Section 7(h) (Institutional Network) or with Section (i) (Supplemental Institutional Network Services), including maintenance of its FiberNet and associated network equipment.

(2) The County shall reimburse the Franchisee for the Actual Cost incurred by the Franchisee to maintain, pursuant to the standards set forth in Exhibit B, Institutional Network facilities constructed by the Franchisee under Sections 7(h)(4), 7(h)(5) and 7(h)(7).

(3) In each of the first two years of the Franchise, the Franchisee shall provide the County a separate capital grant of \$1.25 million to fund the purchase and installation of electronic interior equipment needed to send and receive transmissions on the County's FiberNet and the Institutional Network. This grant shall be payable quarterly.

(4) As part of the System Rebuild required under Section 6(d) (System Rebuild), the Franchisee shall provide, in each Headend-to-Hub fiber backbone, 6 fibers dedicated for use as part of the Institutional Network.

(5) ~~Concurrent with the installation of fiber optic capacity during the System Rebuild, in addition to the commitment in paragraph 4 above, the Franchisee shall complete construction of an Institutional Network at no cost to the County to the locations listed in Exhibit B, as an extension of the County's existing Fiber Net.~~ Concurrent with the installation of fiber optic capacity during the System Rebuild, in addition to commitments in any other paragraph in this subsection, the Franchisee shall complete construction of an Institutional Network at no cost to the County to the locations listed in Exhibit B, as an extension of the County's existing FiberNet. The Franchisee shall cooperate with the County Council in any review of the

Franchisee's obligations under the Franchise Agreement regarding FiberNet and the Institutional Network.

(A) The Franchisee will provide up to 36 single-mode fiber counts within the sheath used by the Franchisee. To ensure a clear demarcation of fibers between the Franchisee's subscriber network and the Institutional Network, fiber shall be clearly delineated within Franchisee's sheath by utilizing separate buffer tubes of unique color, and, at splice locations, separate splicing trays, also of unique color.

(B) County personnel shall have unrestricted access to the fiber drops dedicated for County usage. The County may enter splice locations and County-designated splice trays without having to notify the Franchisee.

(C) In any area which contains both Franchisee's and the County's fiber cable, County personnel shall notify the Franchisee's technicians in the event of an emergency involving the County's fiber, or when routine maintenance of the County's fiber is required.

(D) The Franchisee shall passively terminate up to six fibers, at the County's request, at the patch panel of the utility room of each location designated in Exhibit B.

(E) Construction of the Institutional Network pursuant to this Section 7(h)(5) shall be deemed accepted by the County upon completion of the following procedures:

(i) The Franchisee shall notify the County in writing fifteen (15) days in advance of completion of construction of each site identified in Exhibit B. The notice shall include the date the Franchisee is prepared to conduct an OTDR test to demonstrate that the fiber connectivity meets manufacturer's specifications. The test must be conducted in the presence of the County's designated observer.

(ii) The County shall also have the option of conducting a physical inspection of the construction and connections to the site. This inspection shall be conducted no later than the date of the test in paragraph (i).

(iii) If the connections to the site pass the performance test required by paragraph (i) and the County does not inform the Franchisee in writing within 10 days that the physical inspection discloses errors in construction or installation or fails to conform with the approved design, the site shall be deemed accepted.

(iv) The Institutional Network shall be deemed accepted when the last site identified by the County meets the foregoing requirements, excluding sites for which the County elects to receive a credit pursuant to paragraph (6) below.

(6) Prior to the Franchisee's submission of a final fiber design plan for each system segment pursuant to Section 6(e) (System Architectural Design Review Process), the County may elect to notify the Franchisee that it wishes to receive a credit in lieu of any portion of construction set forth in paragraphs (4) and (5) above. The amount of such credit shall be the Actual Cost which is avoided by the Franchisee as a result of not performing the construction subject to the credit. The County may use funds received as a credit under this provision for any purpose consistent with this Section 7(h) (Institutional Network) or with Section 7(i) (Supplemental Institutional Network Services) including installation, construction, and capital maintenance of the County's FiberNet and associated network equipment.

(7) All facilities constructed by the Franchisee pursuant to this Section 7(h) shall be maintained in accordance with the standards set forth in Exhibit B. Other than as set forth herein, the Franchisee shall bear no responsibility whatsoever for any installation, construction, maintenance or operation of Institutional Network facilities constructed by the

County. Except as otherwise expressly provided, nothing herein shall limit the County's authority to install, construct, maintain, upgrade, operate, or use the Institutional Network facilities.

(8) The Institutional Network provided by the Franchisee to the County pursuant to this Section is intended to be used for governmental, educational and other noncommercial purposes only. The County shall not sublease, barter, sell, or give away capacity on the Institutional Network to any private entity to use for a commercial purpose without Franchisee's prior consent during the period this Franchise Agreement is in effect. The limitations in this Section 7(h)(8) shall not prevent the County (i) from subleasing, bartering, selling, or giving away capacity on the Institutional Network to any public or nonprofit entity for noncommercial purposes; or (ii) from subleasing, bartering, selling, or giving away any capacity on any portion of the County's FiberNet that is not part of the Institutional Network to any entity including a private entity, to use for a commercial purpose. In this Section 7(h)(8), "commercial purpose" means any activity that competes with any service the Franchisee is permitted to provide under this Franchise Agreement or any other applicable agreement with the County.

(9) The County hereby agrees to hold harmless the Franchisee from any and all liability or other injury (including the reasonable costs of defending claims or litigation) arising from or in connection with any and all claims arising from the County's use of the Institutional Network, to the extent the Institutional Network is constructed and maintained by the Franchisee in accordance with Section 5 of this Agreement and the maintenance standards in Exhibit B. Notwithstanding Section 10(g) (Indemnification), Franchisee shall not be responsible for indemnification of damages assessed against the County resulting from the County's use of the Institutional Network. The Franchisee shall give the County prompt notice of any claim or

the commencement of any action, suit or other proceeding covered by the provisions of this Section. The County will provide the defense of any claims brought against the Franchisee under this Section by selecting counsel of the County's choice to defend the claim, subject to the reasonable consent of the Franchisee; which will not unreasonably be withheld. Nothing herein shall be deemed to prevent the Franchisee from cooperating with the County and participating in the defense of any litigation by its own counsel at its own costs and expense, provided, however, that after consultation with the Franchisee, the County shall have the right to defend, settle or compromise any claim or action arising hereunder, and the County shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the Franchisee does not consent to the terms of any such settlement or compromise, the County shall not settle the claim or action but its obligation to indemnify the Franchisee shall in no event exceed the amount of such settlement.

(10) Upon request, and after acceptance of the Institutional Network pursuant to Section 7(h)(5)(E), the Franchisee shall construct any additional Institutional Network facilities for the County. The County shall reimburse the Franchisee the Actual Cost of any construction requested under this provision.

(11) The County may, at the County's cost, interconnect the Institutional Network with any similar Network, allowing exchange of the full range of signals that may be carried on the I-Net. The County may request that interconnection to the I-Net be permitted at any location, including the Franchisee's headend and hubsite, and major Franchisee fiber runs passing near County network facilities. Permission by the Franchisee shall not be unreasonably denied.

(12) If the County wishes to use transmission capacity on the Cable System beyond its rights to free use under this Agreement, the charges for such use shall be freely negotiated on terms and conditions equal to or more favorable to the County than those offered to any other major user by the Franchisee.

(i) *Supplemental Institutional Network Services:* If and when the Franchisee decides to deploy a cable modem service on the subscriber network, on a commercial basis, the County may request, and the Franchisee shall provide, supplemental institutional network services, as described in Exhibit F.

(j) *Maintenance of G-Net:* The Franchisee shall, at its own expense, continue to maintain the institutional network constructed and maintained pursuant to the Prior Franchise (the "G-Net"), until completion and acceptance of the Institutional Network pursuant to Section 7(h)(5)(E). Thereafter, the County shall be responsible for the Actual Cost of maintaining any portions of the G-Net that the County wishes the Franchisee to retain in service. The County may use the I-Net Capital Grant or credits in lieu of Institutional Network construction to reimburse the Franchisee for such costs.

(k) *Additional County Fiber Capacity:* In addition to any other obligations of the Franchisee under this Agreement, the Franchisee shall provide and install at no cost to the County six optical fibers for County use. Such fiber shall be installed between points in the Franchisee's System on which the Franchisee is installing fiber optic cable for its own use, up to a maximum of eighty (80) miles. The County shall notify the Franchisee where such cable shall be installed in the course of the system design process established pursuant to Sections 6(e) and 6(f). If, upon completion of the system design process, the County has not exercised its right to direct installation of any portion of the eighty miles of fiber to be provided under this Section,

the County may require the Franchisee to install additional fiber as part of the post-rebuild design modifications process described in Section 6(h).

(l) *Costs and Payments Not Franchise Fees:* The parties agree that any costs to the Franchisee associated with the provision of support for PEG or Institutional Network construction pursuant to this Agreement, including without limitation any payments made to the County pursuant to Sections 7(b) and 7(h) of this Agreement, are capital costs and 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.

(m) *Franchise-Related Costs:* The County agrees that the Franchisee may treat the costs to the Franchisee of complying with Sections 2(h)(5), (2)(i), 7(a)(3), 7(b), 7(c), 7(h), and 7(i) of this Franchise Agreement as costs arising from a condition of the Franchise in accordance with 47 C.F.R. § 76.925. The Franchisee agrees that in the first year of this Franchise, it shall remove all franchise-related costs, including without limitation, all costs attributable to the annual grant of 1.5% of gross revenues required by the Prior Franchise, from its base rate and equipment rates before treating such costs as external costs under 47 C.F.R. § 76.925.

(n) *Purchase Right.* Upon termination of the Franchise Agreement for any reason (including, but not limited to, expiration of the Franchise term) and the Franchise has not been renewed, the County shall have the option (at its sole discretion) to purchase from the Franchisee at book cost (original cost less depreciation) the Institutional Network facilities constructed, paid for, and owned by the Franchisee. Title to any Institutional Network facilities constructed by the Franchisee at the Franchisor's expense, under Section 7(h)(10) or otherwise, shall revert to the County upon termination of the Franchise Agreement for any reason (including but not limited to, expiration of the Franchise term.) The rights herein are additional to, and in no way a

limitation upon, the County's rights under the Agreement, including, in particular, Section 3(d) and Section 14(h)(5).

8. FRANCHISE FEE.

(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 fee 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 Chapter 8A-12.

(b) *Increase in Franchise Fee.* The County may, in its sole discretion, increase the amount of the Franchise fee up to the maximum amount permitted under state and federal law at any time. 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. Subject to Franchisee's rights in Section 2(m), the Franchisee shall begin paying the increased fee from the effective date of the amendment to the Franchise Agreement.

(c) *Supporting Information.* Each Franchise fee 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 payment or recomputation amount is not made on or before the required date, the Franchisee shall pay a late charge of five 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 9(a) and (f) herein. The Franchisee shall maintain such records for seven 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 preceding year is increased by more than 5%. 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 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 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 television 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.

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, as the same may be amended from time to time. 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 one hundred seventy-five(175) feet 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 one hundred seventy-five (175) feet in length from the nearest Public Right of Way, the Franchisee may charge a subscriber an additional charge, pursuant to the Franchisee's "long drop" policy, for any drop up to four hundred (400) feet long.

(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 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.

(c) *Telephone and Office Availability.*

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

(2) Each Franchisee will maintain at least one local, toll-free or collect call telephone access line which will be available to subscribers 24 hours a day, seven 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 at least ninety (90) percent of the time, measured quarterly.

(A) Telephone answering time shall not exceed thirty (30) seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds.

(B) A customer will receive a busy signal less than three percent (3%) of the time.

(C) 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. To the extent possible, the after-hours answering service shall comply with the same telephone answer time standard set forth in this Section.

(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 all Franchisees at least 95% of the time, as measured on a quarterly basis:

(1) Prompt Service. Installations located up to 400 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 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 50% 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 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.

(8) Mobility-Limited Subscribers. With regard to mobility-limited Subscribers, upon Subscriber request, the Franchisee shall arrange for pickup and/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).

(e) *Interruptions of Service.*

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 municipal PEG 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 municipal PEG channel operators.

(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 Franchisee'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 subscribers and the County 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.

(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 which 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.

(g) *Billing.*

(1) 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.

(h) *Rebate Policy.*

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. If the Service Interruption is not repaired at the time of the scheduled appointment, the Subscriber will receive a credit of 10% of the Subscriber's normal monthly bill for each 24 hour period, or segment thereof, that the Service Interruption continues beyond the scheduled repair call.

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 G.

(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 Cable Law, 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) 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.

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

(b) *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(b)(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.

(c) *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 Users of the System, and the character and extent of the services rendered to such 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 outages and service degradations for the prior quarter, and identifying separately each planned outage, the time it occurred, its duration, and the estimated area and number of Subscribers affected; each unplanned 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 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 Vice President of 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 copy of updated maps 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 A/B switches;

(14) the Franchisee's policies regarding Subscriber privacy; and

(15) 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.

(d) *Special Reports.* Unless this requirement is waived in whole or in part by the County, the Franchisee shall deliver the following ~~special~~ reports to the County (including, unless waived, a separate copy delivered to the County Council):

(1) The Franchisee shall submit monthly construction reports regarding the System Rebuild to the County and each Participating Municipality in which construction was performed during that month. The first report shall be done 30 days after construction of the

System Rebuild begins, and the last report shall be done 30 days after the System Rebuild is complete. The Franchisee must submit updated as-built system design maps to the County, within sixty (60) days of the completion of system construction in any geographic area. The maps shall be developed on the basis of post-construction inspection by the Franchisee and construction personnel to assess compliance with system design. Any departures from design must be indicated on the as-built maps, to assist the County in assessing the Franchisee's compliance with its obligations.

(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.

(e) *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/or the Cable Law.

(f) *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.

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

(D) 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.

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

(F) A public file showing its plan and timetable for the System Rebuild.

(G) All additional records of data necessary to determine the Franchisee's compliance with the customer service standards in Section 9.

(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.

(g) *Performance Evaluation.*

(1) The County may, at its discretion, hold performance evaluation sessions every three years. The Franchisee may be required by the County to notify subscribers of all such evaluation sessions by announcement on a designated local channel on the System in a manner and with a frequency specified by the County for five (5) consecutive days preceding each session.

(2) Topics that may be discussed at any evaluation session may include, but are not limited to, system performance and construction, Franchisee compliance with the Cable Law 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.

(3) During the evaluation process, the Franchisee shall fully cooperate with the County and shall provide such information and documents as the County may need to reasonably perform its review.

(h) *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. The parties agree that any payments made by the Franchisee pursuant to this paragraph are not a Franchise fee.

(i) *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 all information which must be provided or may be requested under the Cable Law 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. Each Franchisee shall be responsible for redacting any data that federal law prevents it from providing to the County. The County retains 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.

(j) *Waiver of Reporting Requirements.* The County may, at its discretion after notice to the County Council, 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 Cable Law, 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 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/companies licensed to do business in the State of Maryland evidenced by a certificate of insurance and/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) Broadcasters' Liability Coverage, covering errors and omissions and negligent acts and other operations of the Franchisee, committed during the term of the Franchise 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 agrees to provide a one-year discovery period under this policy.

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.

(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) *Endorsements:*

All insurance policies and certificates maintained pursuant to this Agreement shall contain the following endorsement: It is hereby understood and agreed that this

insurance coverage may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until sixty (60) days after receipt by the County, by registered mail, of a written notice of such intention to cancel or not to renew.

(c) *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.

(d) *Policies Available for Review.*

All insurance policies shall be available for review by the County, 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.

(e) *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 any cancellation or reduction in coverage shall not be effective unless sixty (60) days' prior written notice thereof has been given to the County and the Participating Municipalities. 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.

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

(g) *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, 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 or the Institutional Network; 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 Cable Law 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.

(3) The County 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 will provide the defense of any claims brought against the County under this Section of the franchise by selecting counsel of Franchisee' choice to defend the claim, subject to the

consent of the County; which will 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.

(h) *No Limit of Liability.*

Neither the provisions of this Section nor any damages recovered by the County shall be construed to limit the liability of the Franchisee for damages under the Franchise.

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 11(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 \$2,000,000, to ensure the Franchisee's faithful performance of its obligations under the Cable Law 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 Cable Law, 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 sixty (60) 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.”

(4) Reduction of Bond. Upon written application by the Franchisee, the County may, at its sole option, in writing, permit the amount of the bond to be reduced or waive the requirements for a performance bond. Reductions granted or denied upon application by the Franchisee shall be without prejudice to the Franchisee's subsequent applications or to the County's right to require the full bond at any time thereafter. However, no application shall be made by the Franchisee within one (1) year of any prior application.

(b) *Security Fund.*

(1) The Franchisee shall provide a security fund in the amount of \$100,000 to secure its performance of all its obligations under this Agreement and the Cable Law.

(2) 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.

(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 for damages.

(d) *Security Fund Procedures.* The following procedures shall apply to drawing on the Security Fund:

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

(1) After 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

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

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

(B) Within 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 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.

(C) 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.

(D) 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.

(e) *Failure Constitutes Material Violation.*

Failure to maintain or restore the Security Fund shall constitute a material violation of this Agreement.

(f) *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 requirements;

(B) reduce the duration of the Franchisee 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 section 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.

(g) *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 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. To maintain that estimate, the parties agree that the liquidated damage amounts are in 1998 dollars and shall be increased each year by the CPI. The County may draw on the 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: \$400/day for each day the violation continues;

(2) For failure to substantially complete the System Rebuild, including the timeline of completion, in accordance with this Agreement: \$2,000/day for each day the violation continues;

(4) For a Transfer without approval: \$2,000/day for each day the violation continues;

(5) For failure to make PEG capacity available; failure to comply with the Institutional Network provisions of the Franchise; failure to construct required links to PEG facilities; or failure to make payments to support PEG or the I-Net under this Agreement:

\$1,000/day for each day the violation continues, in addition to any monetary payment due under this Agreement or the Cable Law;

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

(7) ~~For violation of customer service standards: \$200 per violation;~~

(A) Beginning six months after the closing date of the sale of the Franchise by Prime-Potomac, LLC, for a violation of any customer service standard measured quarterly:

\$500 for the first violation; \$5,000 for any violation within 18 months after the first; and \$10,000 for any violation within 18 months after the second or any subsequent violation

(\$500, \$1,000, and \$2,500, respectively, after the Franchisee has provided data

demonstrating compliance with each quarterly customer service standard for six

consecutive quarters following completion of the System Rebuild); and

(B) For any other violation of a customer service standard: \$200 per violation;

(8) 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;

(9) For failure to render required payment for reimbursement of any Franchise expenses, or liquidated damages: \$100 per day, in addition to any monetary payment due under this Agreement or the Cable Law;

(10) For failure to file, obtain or maintain any required Security Fund in a timely fashion: \$50 per day;

(11) For failure to restore damaged property: \$50 per day, in addition to the cost of the restoration as required elsewhere herein; and

(12) For violation of technical standards established by the FCC: \$100 per day.

(h) *Shortening, Revocation, or Termination of Franchise.*

(1) Upon completion of the term of this Franchise, if a new, extended, or renewed Franchise is not granted to the Franchisee by the County or a Participating Municipality, 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.

(2) The County shall have the right to revoke the Franchise, or to shorten the term of the Franchise to a term not less than thirty-one (31) months from the date of the action shortening the Franchise term, for the Franchisee's failure to construct, operate, or maintain the Cable System as required by the Cable Law or this Agreement; for defrauding or attempting to defraud the County or Subscribers; or for any other material breach of this Agreement or material violation of the Cable Law.

(3) To invoke the provisions of this Section, the County shall give the Franchisee written notice of the default in its performance. If within thirty (30) calendar days following such written notice from the County to the Franchisee, or such other period as the Franchise Agreement shall require or the Franchisee and the County shall agree, the Franchisee has not taken corrective action to the satisfaction of the County, or diligently commenced corrective action if the nature of the default does not permit completion of such action within 30 days, the County may give written notice to the Franchisee of its intent to revoke the Franchise, stating its reasons; provided that no opportunity to cure shall be provided where the Franchisee is shown to have defrauded or attempted to defraud the County or its Subscribers.

(4) Prior to revoking the Franchise, the County shall hold a public hearing, on thirty (30) calendar days' notice, at which time the Franchisee and the public shall be given an opportunity to be heard. Following the public hearing, the County may determine whether to revoke the Franchise based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to the Franchisee to effect any cure. If the County determines to revoke the Franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Franchisee.

(5) 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 following procedures and rights are effective:

(A) The County may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense and restore affected sites as required in Section 5(c), or permit the former Franchisee to abandon such facilities in place. If the former Franchisee fails to do so within a reasonable period of time, the County may have the removal done at the former Franchisee's and/or surety's expense.

(B) The County may require the former Franchisee to continue operating the Cable System as specified in Section 4(a).

(C) In the event of revocation, the County, and with respect to facilities within a Participating Municipality, the municipal government, by resolution, may acquire ownership of the Cable System at its then-fair market value.

(D) If a Cable System is abandoned by the Franchisee or the Franchisee fails to operate or maintain service to its Subscribers or otherwise terminates the Franchise, the ownership of all portions of the Cable System in Public Rights-of-Way shall

revert to the County or to the Participating Municipality which has jurisdiction over the Public Right-of-Way, and the County and the Participating Municipality may sell, assign, or Transfer all or part of the assets of the System.

15. MISCELLANEOUS PROVISIONS.

(a) *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.

(b) *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.

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

(d) *Force Majeure:* The Franchisee shall not be deemed in default of provisions of this Agreement or the Cable Law 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.

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

(f) *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, but each party may only designate one entity to receive notice.

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

General Manager
Cable TV Montgomery
20 West Gude Drive
Rockville, MD 20850

General Counsel
Prime Communications-Potomac
One American Center
Suite 3000
600 Congress
Austin, TX 78701

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

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

Cable Administrator
Office of Cable Television
1000 Maryland Avenue
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.

(g) *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.

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

(i) *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.

(j) *Extension:* The parties agree to extend all the terms of the Prior Franchise through June 30, 1998, including, without limitation, the annual grant required by Section 31(I)(E)(1)(a) of the Prior Franchise Agreement. This extension is entered into for the convenience of the Franchisee, and the Franchisee waives any argument that payment of such grant is a franchise fee.

AGREED TO THIS ____ DAY OF _____, 1998.

Montgomery County, Maryland

By: _____
Douglas M. Duncan
County Executive

APPROVED AS TO FORM
AND LEGALITY

Office of the County Attorney

SBC Media Ventures, L.P.
A Delaware Limited Partnership

By: SBC Media Ventures, Inc.

By: _____
Name:
Title:

[ADD SIGNATURE PAGES FOR EACH PARTICIPATING MUNICIPALITY]

LIST OF EXHIBITS

- Exhibit A - Participating Municipalities
- Exhibit B - Institutional Network
- Exhibit C - Proposed CTM Upgrade Parameters
- Exhibit D - Settlement Agreement
- Exhibit E - PEG Access Sites
- Exhibit F - Supplemental Institutional Network Services
- Exhibit G - MFD Procurement

EXHIBIT A

PARTICIPATING MUNICIPALITIES

Barnesville
Brookville
Chevy Chase Village
Chevy Chase Section 3
Town of Chevy Chase
Chevy Chase Section 5
Chevy Chase View
Garrett Park
Glen Echo
Kensington
Laytonsville
North Chevy Chase
Poolesville
Rockville
Somerset
Takoma Park
Washington Grove
Village of Martin's Additions

II. Maintenance Standards and Rates.

By using shared fiber optic cable within the County, the Franchisee shall maintain and repair fiber optic cable dedicated for County use and extensions of such fiber from the Franchisee's facilities to the County's facilities, as follows:

1. Within two (2) hours of receiving notice of a maintenance or repair problem, the Franchisee's technicians shall arrive on-site to begin troubleshooting problems within the fiber optic system. The rate for assuring technicians two hour response shall be an amount not to exceed \$10,400/yr., adjusted annually by the CPI.
2. The rate for technicians to provide emergency maintenance/repair service shall be \$65.00/hour per person. This rate shall apply from the time of notification until service is restored and may be adjusted annually by the CPI.
3. All work provided by technicians beyond the time service is restored shall be at the rate of \$50.00/hour per person. This rate may be adjusted annually by the CPI.

Use of all required fiber optic test equipment and fusion splicing are included in the above-listed rates. The technician rates specified in ¶¶ 2 and 3 above do not apply to new construction or construction necessary to repair or maintain the Institutional Network.

Construction rates shall be as specified in Section III below.

Material charges shall be applied whenever the Franchisee uses its own materials for maintenance or repair. The County will be charged the Franchisee's Material Cost.

III. Construction Rates.

The following labor charges will apply to all non-joint use construction labor performed by the Franchisee:

Strand	\$0.31/ft
Aerial cabling (up to 2 cables)	\$0.55/ft
Overlash	\$0.52/ft
Double Overlash	\$0.04/ft
Delash/Relash	\$0.42/ft
Place anchor and guy	\$65.00/location
U/G Cabling (plow/trench up to 2 cables)	\$3.00/ft for 18"
U/G Cabling (plow/trench up to 2 cables)	\$3.50/ft for 24"
U/G Cabling (plow/trench up to 2 cables)	\$4.00/ft for 36"
Fusion Splicing	\$40.00/splice
Installation of Cable-in-Conduit add	\$0.60/ft
Road Bores, Land Bores	\$9.50/ft
Street Cuts	\$24.00/ft
Test Holes	\$425.00/ea
Remove/Replace asphalt and concrete	\$20.00 sq. ft
Installation of Pedestals to DOT spec	\$0.00 to be determined
As-Builts	\$0.05/ft

The above listed fees are based on Franchisee's contract labor rates and are subject to change upon 60 days notice to pass through any change in Franchisee's contract labor rates.

IV. General.

In performing maintenance and repairs and new construction work in Sections II and III above the following shall also apply:

The County shall pay the Actual Costs as defined in the Franchise Agreement for maintenance and repair of its facilities which are commonly located with those of the Franchisee. The Franchisee recognizes that restoration of County services is equally as important as restoration of Cable Service to Subscribers.

The County shall be responsible for absorbing all associated make ready and/or permit costs for work done solely to benefit the County. For joint use construction between the County and the Franchisee, the Franchisee shall absorb all make ready costs.

The County shall be solely responsible for the cost of any relocation work, required at any given time, for cable provided solely for County use.

All new construction shall be performed in keeping with the requirements of Sections 5 and 6 of the Franchise Agreement, as applicable.

EXHIBIT C

PROPOSED CTM UPGRADE PARAMETERS

General

The Montgomery County design incorporates some unique challenges. The distances to be covered, the variable densities (from urban in the Southeastern to rural in the North and West) to be served, and the demographic interests of the community (widest possible range of services) combine to present situations not always seen in these proportions.

Throughout the document we attempt to describe a “best-fit” logic that balances the need for financially responsible plant renewal, the need for sensitive consumer logistics, and the need to accomplish other telecom objectives of the franchise authority.

Synopsis

The renewal platform will be a 750Mhz HFC architecture with fiber trunking, standby powering, and flexibility in accommodating future digital initiatives of the cable industry. Node size will average between 1000 and 1500, but will not be a design constraint, as trafficking and load demand issues are managed in other ways. The consumer impact of the renewal is carefully considered, with contractor selection and methodology optimized for the least practical disruption. Service, in general, is affected for the daylight hours only, on only the day and in the area under reconstruction.

Supporting Discussion

Detailed discussion follows, to the extent possible for this stage of the activity.

Fiber Architecture

The architecture of the fiber distribution system impacts flexibility, performance and cost.

The planned system will employ 1319 nm. YAG transmitters to serve some Hubs, and some hubs will be fed with 1550 nm. transmitters utilizing Erbium Doped Fiber Amplifiers (EDFA's) to optically repeat signals at the hubs as they were originally generated at the Headend. This method offers the greatest efficiencies relative to cost and performance.

Recent experience and laboratory testing with Harmonic Lightwaves dispensed with concerns relative to the use of the 1550 nm. Window in non-Dispersion Shifted Fiber. Also Stimulated Brillouin Scattering (SBS) suppression was demonstrated, alleviating concerns over the issue of SBS, as well as other issues of fiber nonlinearity.

Fiber to Hubs

The walk out of fiber routes to the Hub sites will be completed for both preferred alternate routes. These routes are preliminary routes at this time in distance and type of construction required (aerial vs. underground), and are approximately 450 miles.

We are presently using the following criteria to determine fiber count estimates. The total count is the sum of:

Fiber Counts

1. CATV = N This is the identifier for the number of fibers required to service the currently planned node sites. This will accommodate the design criteria of 4 trunk amps and 3 line extenders in cascade (nominal).
2. CAP = S We will utilize this identifier to indicate the number of fibers required for a CAP effort. This will be held separate from the Telephony or the apartment application for the purpose of this work.
3. Hotel = H This is being used to indicate the capacity required for hotel services in the Backbone fiber that will feed the Hubs for the purpose of delivering Near Video on Demand or other (future) hotel services.
4. Future Nodes = F The growth pattern for new construction is known and with the input from the Commercial Development Department, we can accurately estimate the needs for future Nodes and Hubs; this will be identified by "F".
5. Contingency = C Contingency fibers will be added in the transport backbone to accommodate any possible future plans of reduction in Node sizes.
6. Telephony – T We will assess all of the apartment complexes and will allocate capacity for targeted share tenant offerings.
7. Return = R The return calculation includes (1) one fiber per node through the Backbone to the Head End. This calculation may be balanced with the progress of a return "Stacker" becoming available which would allow us to multiplex a number of return node fibers on one return hub fiber. Costs are not the dominant variable here, but rather reverse data multiplexing and headroom issues are.
8. Bulk "extra" or standard capacity. We will add a future quantity of fibers, generally about 30%, unassigned for now. We call this term "B".
9. Telecom needs of the County: capacity here is reserved for the shared sheath Inet plant to accommodate the needs of the County. We call this term "G".

Performance

The entire system performance budget, in decibels, is allocated up between the Headend to Hub,

Hub to node, and the coaxial plant.

A. Hub Performance

In an optical repeat system, Hub performance is 54 to 55 dB c/n ratio, with -65 dB distortions. In an electrical repeat system, Hub performance would range from 57 to 58 dB c/n ratio prior to remodulation, with -65 dB distortions.

B. Node Performance

In an optical repeat system, node performance would range from 50 to 51.5 dB c/n ratio with -65 dB distortions. In an electrical repeat system, node performance would range from 50 to 51.5 dB c/n ratio with -62 dB distortions due to remodulation.

C. System Performance (Pre-Converter)

Worst case Carrier to Noise ratio would be 47 dB with -52 dB CTB and -51 dB CSO at the input to the converter. Since all distortions are calculated with CW carriers, real world distortion performance would be better by about 6 dB.

Future Issues

Diagnostics or status monitoring has typically been a manufacturer specific product. There is currently a movement underway to integrate various manufacturer's systems under common protocol known as SNMP (Simple Network Management Protocol).

Currently we are evaluating various status monitoring systems in operation for the fiber network. The industry is divided over whether diagnostic effort is best done from digital terminal (modems and digital converter) initiatives or by the monitoring of plant components. We are sympathetic to the argument that diagnostics from terminals are more illustrative of actual conditions, and may be better suited to comparisons and isolation of trouble points.

Contractor Decorum

We intend to select only contractors for the upgrade work that have experience in urban systems reconstruction, and have engineering services to include balance and continuity assurance. The fiber overlays are in place before the coaxial plant is disturbed, and only the sections affected for that day are disturbed, with same day signal restoration. This process has been used before successfully, and, together with design flexibility for maximal facilities reuse, is sensitive to the consumer issues of work done in the utility easements and the time of disruption.

EXHIBIT D

SETTLEMENT AGREEMENT

THIS AGREEMENT is made this ___ day of _____, 1998, by and between:

1. Montgomery County, Maryland, a charter county organized under Maryland law (“County”);
2. SBC Media Ventures, L.P. (“SBC-MV”), a Delaware limited partnership;
and
3. Prime Communications - Potomac, LLC (“Prime”) a Delaware limited liability company.

WITNESSETH:

WHEREAS, on May 25, 1983, the County granted Tribune United Cable of Montgomery County (“Tribune”) a franchise to operate a cable television system in the County (the “Franchise”); and

WHEREAS, SBC-MV now holds the Franchise, as the successor in interest to Tribune;
and

WHEREAS, the Franchise expires on May 25, 1998, and the County and SBC-MV have conducted negotiations for the renewal of the Franchise; and

WHEREAS, SBC-MV, Prime, and Prime II Management, L.P., a Delaware limited partnership, have entered into a Purchase Agreement dated _____ (“Purchase Agreement”), pursuant to which Prime would acquire the cable system owned and operated by SBC-MV in the County; and

WHEREAS, SBC-MV has requested that the County approve the transfer to Prime of the Franchise (“the Transfer”), and that SBC-MV be relieved of all further liability and claims, whether known or unknown, under the Franchise; and

WHEREAS, the County has legal authority under County, state and federal law to approve or disapprove the Transfer if the public interest would be served thereby; and

WHEREAS, the County Executive has concluded that Prime possesses the technical, financial, legal, and character qualifications required for a transferee pursuant to the Franchise Agreement and Montgomery County Code 1994, as amended, Chapter 8A (“County Cable Law”), and that the Transfer would serve the public interest, provided that Prime accepts the Franchise, the renewal of the Franchise on the terms agreed to by SBC-MV, or both, as applicable and further provided that certain actions as set forth in this Settlement Agreement are taken by SBC-MV and Prime to protect the public interest and to address certain risks to the County and its citizens associated with the Transfer;

NOW, THEREFORE, in consideration of the promises and undertakings herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and subject to the Closing of the Proposed Transaction as contemplated by the Purchase Agreement, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

1.1. “Closing” means the closing of the Proposed Transaction in the manner and on the date defined in the Purchase Agreement.

1.2. “Consumer Price Index” or “CPI” means 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.

1.3. “Franchise Agreement” means the Montgomery County Cable Communications Franchise Agreement between the County and SBC-MV, dated May 25, 1983, as it now exists, or may be extended or renewed.

1.4. “Franchisee” means SBC-MV and its lawful and permitted successors, assigns and transferees, including, if and when applicable, Prime.

1.5. “PEG” means public, educational, and governmental.

1.6. “I-Net” or “Institutional Network” means the two-way optical fiber system linking educational and governmental facilities in the County, as more fully described in Exhibit B and Section 7(h) of the renewed Franchise Agreement.

1.7. “Proposed Transaction” means Prime’s acquisition of the cable system owned and operated by SBC-MV pursuant to the Purchase Agreement.

SECTION 2. TRANSFER OF FRANCHISE

2.1. In consideration for the promises and performances of SBC-MV and Prime, as expressed elsewhere in this Settlement Agreement, upon recommendation of the County Executive and approval of the Montgomery County Council (“Council”) and the municipalities that are signatories to the Franchise Agreement (“Participating Municipalities”), the Franchise may be transferred to Prime at the Closing.

2.1.1. It is expressly recognized by the parties that the Transfer is subject to the recommendation of the County Executive and requires the approval of the County Council in accordance with County law. Such approval is a condition precedent to this Settlement Agreement. The execution of this Settlement Agreement in no way binds the Council to approve the Transfer, and this Settlement Agreement will automatically become null and void if the Council does not approve the Transfer.

2.1.2. It is expressly recognized by the parties that the Transfer must be approved by the Participating Municipalities.

2.2. SBC-MV promises in good faith to accept the renewed Franchise Agreement on the terms approved by the County Council, before implementing the Transfer.

2.3. Prime agrees to accept unconditionally the Franchise and the Franchise Agreement, as extended or renewed, at the Closing.

2.4. Prime accepts full and complete responsibility for those known past claims remaining at the time of the Transfer, specifically: any unpaid franchise fees; any unpaid PEG support funds; any known and unresolved consumer complaints; and any construction or facility requirements of the Franchise Agreement which the County has notified SBC-MV are unsatisfied (nothing in this paragraph is intended to alter the terms of any existing contractual arrangements between Prime and SBC-MV).

2.5. The parties agree that this Settlement Agreement settles any claims and disputes regarding the Franchise Agreement at the date of Closing, whether known or unknown, except as enumerated in this Agreement and in the renewed Franchise Agreement.

2.6. SBC-MV agrees to reimburse the County and the Participating Municipalities for all costs incurred in their review of SBC-MV's application for the Transfer, including but not limited to the costs of negotiations, of evaluating the qualifications of the proposed transferee, and of preparing this Settlement Agreement and related documentation, up to \$200,000 for the County and \$25,000 for the Participating Municipalities. The County shall provide SBC-MV with an accounting of these expenses, such as consultant fees, and shall supply SBC-MV with invoices for said expenses. Franchisee shall deliver payment to the County within thirty (30) days of receipt of said invoices. Such payments are in addition to any franchise fee, and notwithstanding Sections 2(i) and 7(m) of the renewed Franchise Agreement, such payments shall not be treated as costs eligible for treatment as conditions of the franchise in accordance with 47 CFR §76.925. Failure to make timely payment of said expenses, except for any expenses that are the subject of legitimate dispute, shall constitute a material violation of this Agreement.

2.7. If Closing does not occur within 180 days of the date of this Settlement Agreement, this Settlement Agreement may be terminated at the option of any party or amended by mutual agreement of the parties.

SECTION 3. NO EFFECT ON FRANCHISE REQUIREMENTS

3.1. Nothing in this Settlement Agreement amends or alters the Franchise Agreement or any requirements therein or the County Cable Law in any way, and all provisions of the Franchise Agreement as hereafter renewed or amended, and the County Cable Law remain in full force and effect and are enforceable in accordance with their terms and with applicable law.

3.2. Each party to this Settlement Agreement, after consultation with its legal counsel as to the facts surrounding this Settlement Agreement, concludes and agrees that no consideration provided pursuant to this Settlement Agreement can be construed to constitute a franchise fee, nor are any payments made under the terms of this Settlement Agreement subject to any limitations on franchise fees under applicable law or in the Franchise Agreement. Every party to this Settlement Agreement hereby waives any current or future claim to the contrary.

SECTION 4. PEG ACCESS SUPPORT

4.1. Effective July 1, 1998, the Franchisee shall pay to the County an amount equal to \$1.5 million in each year of the renewed Franchise Agreement, adjusted annually by the CPI (the "PEG Support Fund"). Payments made under this provision shall be made quarterly. Beginning in the first year of the Franchise, the County shall distribute a portion of the PEG Support Fund equal to \$50,000 per year adjusted annually by the CPI to each of the following PEG Channels: City of Rockville; City of Takoma Park; and the Montgomery Chapter of the Maryland Municipal League. Provided, however, that in each of years 6 through 15 of the Franchise, the County's obligation to distribute a portion of the PEG Support Fund to each PEG Channel is

conditioned on appropriation and encumbrance by the operating authority for each PEG Channel, within the same fiscal year, of a matching amount equal to that distributed to it by the County. To the extent the operating authority for a particular PEG Channel spends less than the amount otherwise required of the County under this Section 4.1, the amount required of the County shall be reduced to a level equal to the amount spent by the Participating Municipalities. The County may use these funds at its discretion for support for PEG access.

4.2. The PEG Support Funds are to be deposited in the County's Cable Television Special Revenue Fund and specifically designated for PEG access purposes. The funds do not constitute franchise fees.

4.3. Nothing in this Settlement Agreement shall replace or remove any obligations of the Franchise Agreement, including but not limited to any obligations regarding the construction, maintenance and operation of the I-Net.

4.4. The County agrees that, subject to Section 7(m) of the renewed Franchise Agreement, the payments of the PEG Support Fund may be treated as costs arising from a condition of the Franchise in accordance with 47 CFR § 76.925.

4.5 SBC-MV and Prime acknowledge that the extension of the Franchise Agreement through June 30, 1998, is for their convenience, and both parties waive any argument that the continued payment of the annual grant required by Section 31(I)(E)(1)(a) of the Franchise Agreement during the extension period is a franchise fee.

SECTION 5. RELEASE

5.1. Upon the unconditional acceptance of the Franchise Agreement by Prime, the County hereby releases all claims, known and unknown, against SBC Communications Inc., parent of SBC-MV, except for those subject to the substitute guarantees described in Section 5.2 herein. This release will be effective as and between the parties hereto only upon execution and

acceptance of the substitute guarantees as described in Section 5.2 herein, the transfer of the Franchise from SBC-MV to Prime, and the unconditional acceptance of this Agreement, and the renewed Franchise Agreement by Prime.

5.1. Upon execution by SBC-MV and acceptance by the County of a substitute guarantee substantially in the form described in the letter agreement attached hereto as Exhibit A, SBC Communications, Inc., shall be released from its Guarantee of Performance, executed July 23, 1996.

SECTION 6. DISPUTES REGARDING THIS SETTLEMENT AGREEMENT

6.1. Neither Prime, SBC-MV, nor any of their affiliates, nor the County, will take any action to challenge any provision of this Settlement Agreement as contrary to the Cable Communications Policy Act of 1984, 47 U.S.C. § § 521 *et seq.*, as amended (“Federal Cable Act”), or to FCC regulations; nor will they participate with any other person or entity in any such challenge.

6.2. If and when any provision of this Settlement 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 Settlement Agreement were fully enforceable.

6.3. If the negotiations described in Section 6.2 do not result in agreement between the parties within sixty days from the date of the final decision referred to in that paragraph, 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 Settlement 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.

SECTION 7. MISCELLANEOUS PROVISIONS

7.1. Entire Agreement. This Settlement Agreement constitutes the entire agreement of the parties with respect to the settlement of the claims addressed herein. No statements, promises or inducements inconsistent with this Settlement Agreement made by any party shall be valid or binding, unless in writing and executed by all parties. This Settlement Agreement may only be modified by written amendments hereto signed by all parties.

7.2. Severability. If any part, section, subsection, or other portion of this Settlement Agreement or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Settlement Agreement, and applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect, subject to Section 6.

7.3. Authority. Each signatory to this Settlement Agreement represents that he or she has the authority to enter into this Settlement Agreement.

7.4. Voluntary Agreement. This Settlement Agreement is freely and voluntarily given by all of 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 Settlement Agreement. Each party hereto acknowledges that this is a full, complete and final mutual release as set forth previously herein.

7.5. Successors and Assigns. This Settlement Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their successors in interest, assigns, personal representatives and heirs.

7.6. Counterparts. This Settlement Agreement may be executed in several 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, notwithstanding that all parties shall not have signed the same counterpart.

7.7. Headings. The headings in this Settlement Agreement are for convenience of reference only and are not a material part of this Settlement Agreement. They shall not be used in determining the intent of the parties.

7.8. Governing Law. This Settlement Agreement shall be governed by and construed, and the legal relations between the parties determined, in accordance with the laws of the State of Maryland.

7.9 Consent to Jurisdiction. SBC-MV and Prime consent to venue and jurisdiction in the U.S. District Court for the District of Maryland and the Circuit Court for Montgomery County, Maryland.

7.10 Participating Municipalities as Third-Party Beneficiaries. This Settlement Agreement has been negotiated by the County as agent for the Participating Municipalities. The Participating Municipalities shall be deemed third-party beneficiaries of this Settlement Agreement and shall be entitled to enforce the same with regard to their respective interests.

IN WITNESS WHEREOF, this Settlement Agreement is executed by the parties as follows:

MONTGOMERY COUNTY, MARYLAND

By _____
Douglas M. Duncan
County Executive

Date

PRIME COMMUNICATIONS - POTOMAC, LLC

By _____

Date

SBC MEDIA VENTURES, L.P.

By: SBC MEDIA VENTURES, INC.

By _____
Name:
Title:

Date

EXHIBIT E

PEG ACCESS SITES

Montgomery Community Television:

7548 Standish Place, Rockville, MD 20855

Montgomery College:

51 Manakee Street, Campus Tower Rm.22, Rockville, MD 20850

Montgomery County Public Schools:

850 Hungerford Drive, Room 27, Rockville, MD 20850

Montgomery County Government:

EOB-DIST, 101 Monroe Street Rockville, MD 20850; and

EOB-Traffic Management Center, 101 Monroe St., Rockville, MD 20850

Rockville:

111 Maryland Avenue, Rockville, MD 20850

Takoma Park:

7500 Maple Ave., Takoma Park, MD 20912

Maryland Municipal League:

3710 Mitchell Street, Kensington, MD 20895

University of Maryland:

Microwave site: 11215 Oak Leaf Drive, Silver Spring

Chevy Chase Village:

5906 Connecticut Avenue, Chevy Chase, MD 20815

Glen Echo:

Massachusetts Avenue and Goldsboro

Washington Grove:

Route 355 & East Deer Park Drive

Town of Chevy Chase:

4301 Willow Lane, Chevy Chase,

EXHIBIT F

SUPPLEMENTAL INSTITUTIONAL NETWORK SERVICES

If the Franchisee provides commercial cable modem service, the County may request use of such service at no charge subject to the conditions specified below. The County recognizes that if its use of this service exceeds the conditions below, the County will initiate corrective action to preclude substantial negative impact on subscriber services.

The Franchisee shall dedicate 2 Mbps of bandwidth, on a per channel basis, for shared cable modem connectivity in a VLAN environment for County locations. The network, with the interconnection described below, will allow each location access to any other location within the Institutional Network and the FiberNet or within the subscriber network in a secure fashion without using the Internet.

The Franchisee shall provide, at no expense to the County, up to 100 cable modems for use by County agencies in connection with services provided under this Exhibit. These modems shall remain the property of the Franchisee and shall be returned to the Franchisee at the end of the Franchise term, or when no longer required by the County to provide connections to the Institutional Network or the FiberNet. The County shall bear the cost of each additional cable modem provided by the Franchisee for this purpose, and any related installation cost. Only cable modems approved for use by Franchise may be placed on the network.

Additional services beyond those described above may be provided pursuant to the terms of Section 7(h)(12) of the Franchise Agreement.

The Franchisee shall also provide a means for establishing connections between the Franchisee's subscriber network and the Institutional Network without using the Internet in order to address the County's desire for a secured environment.

The Franchisee shall provide a single-mode fiber optic cable between the Franchisee and the Institutional Network. The optical cable will be passively terminated at the EOB or COB in a place designated by the County. The County will provide fiber optic modems to be installed at the point of origination and termination of the fiber optic cable. The Franchisee shall provide adequate rack space for the County's modem. The Franchisee shall provide a port on its router for interconnection with the County's fiber optic modem. The County cable modem access to the Internet will be facilitated in the following manner:

1. If requested Internet information is on the Franchisee's server, the server will provide the information to the County's cable modem; and
2. All other access to external networks will go by way of the Franchisee's router to the County's Internet service provider by means of the Institutional Network.

EXHIBIT G

**MONTGOMERY COUNTY
MINORITY-OWNED BUSINESS CONTRACTING REGULATIONS**

7 MINORITY OWNED BUSINESS CONTRACTING

7.1 Purpose

The purpose of Section 7 is to establish procedures to facilitate the goal of the County Government to remedy the effects of discrimination by awarding a percentage of the dollar value of County contracts, including contract modifications and renewals, over \$3,000 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 to provide goods, construction, and services, including professional services, for the performance of governmental functions to facilitate the MFD goal of the County. Procurements under \$3,000, 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 this regulation. Certification is subject to the graduation provisions of Section 7.4.4.
- 7.2.3 This regulation is 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 Section 7 the term Washington, D.C. - Baltimore Consolidated Metropolitan Statistical 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:

- belong to an MFD group for which a goal has been set under Section 7.3.4 in the purchasing category covering the work that is the subject of the subcontract; and
- 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 7.

- (a) contract means a contract identified by Using Departments or the Director as having an estimated dollar value of \$65,000 or more, including renewals; and
- (b) contractor means a contractor that:
 - is not a certified MFD owned business; or
 - if the contractor is a certified MFD owned business, the contractor does not belong to an MFD group for which a goal has 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 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 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 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 latest available federal economic census data, or other reliable means of measuring availability to determine the availability of MFD owned business in the Washington D.C. – Baltimore Consolidated Metropolitan Statistical 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 for each group of MFD owned businesses as a percentage of all available businesses 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 businesses are included in the Disabled owned business group.

7.3.4.5 The Director must determine the percentage of contract dollars awarded to each group of MFD owned business 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 the disparity between the dollar value of contracts and subcontractor awarded to each group of MFD owned business in each purchasing category identified in Section 7.3.4.5. with the availability of that group in each purchasing category. The Director must use, to the extent practicable, a methodology compatible with the methodology used to determine disparity in the Minority, Female, Disabled Disparity Study dated November 26, 1996.

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 period beginning on October 1 and ending on September 30.

- (a) In setting MFD subcontracting goals the CAO must determine if the County has significantly underutilized each group of MFD owned businesses in each purchasing category. The CAO makes this determination 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 has been significantly underutilized, the CAO must set an MFD goal for that group in the applicable

purchasing category. The goal must be related to the availability 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 has not been significantly underutilized, the CAO must not set an MFD goal in the applicable purchasing category. The CAO, nevertheless, may set a goal for an MFD group in a purchasing 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 underutilization and during that year a goal had not been set for the MFD group in the applicable purchasing 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 the State procurement law except for a not for profit entity organized to promote the interests of physically and mentally disabled individuals. In the case of a not for profit entity, the Director must determine that:

- (a) the not for profit entity is certified as a minority business enterprise under State procurement law; and
- (b) 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.

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:

7.4.1.1 Certifications issued by the State.

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

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

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

7.4.2.1 Failure to demonstrate that the business is a certified minority business enterprise under the State procurement law.

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

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

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

7.4.2.5 Graduation of the MFD owned business.

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

7.4.3.1 Fraud, deceit or misrepresentation in obtaining certification.

7.4.3.2 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 which are relevant to its certification.

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

7.4.4. 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.

7.4.4.1 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.

7.4.4.2 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 contracts with businesses to identify, encourage and coordinate participation of MFD owned businesses in the procurement process, including certification. This includes notification to MFD owned businesses of prospective procurement opportunities by telephone or mailings based on the most recent MFD owned business directory, encouragement of MFD owned business participation in procurement, as prime contractors or subcontractors, procurement system education and information for MFD owned 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 non-minority prime contractors 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 this regulation.

17.5.2 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 owned business response to Requests for Proposals and Request for Expressions of Interest and all other procurements.

7.5.2.2 When inviting proposals for services with a dollar value of less than \$65,000, whether by RFP, REOI, Mini-Contract or any other form of procurement, the Using Departments must ensure an effort is made to afford certified MFD owned businesses 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 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 \$65,000 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 an 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 \$65,000 or greater MFD contracting conditions in a form created by the Director and approved by the Office of 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 subcontractor with certified MFD owned businesses in a manner consistent with Section 7.3.3 and 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.

7.8.3.1 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.

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