

Cable Franchise Agreement

by and between

the City of Fredericksburg, Virginia

and

**COXCOM, Inc., d/b/a/
COX Communications Northern Virginia and/or
Cox Communications, Inc.**

TABLE OF CONTENTS

ARTICLE	PAGE
1. DEFINITIONS.....	3
2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS	7
3. PROVISION OF CABLE SERVICE	8
4. CONSTRUCTION AND SYSTEM FACILITIES	10
5. PEG SERVICES	13
6. COMMUNICATIONS SALES AND USE TAX.....	16
7. CUSTOMER SERVICE	16
8. REPORTS AND RECORDS	16
9. INSURANCE AND INDEMNIFICATION	18
10. TRANSFER OF FRANCHISE.....	19
11. RENEWAL OF FRANCHISE.....	20
12. ENFORCEMENT AND TERMINATION OF FRANCHISE	20
13. MISCELLANEOUS PROVISIONS.....	23
EXHIBIT A - INITIAL SERVICE AREA	27
EXHIBIT B - MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE.....	28
EXHIBIT C – CUSTOMER SERVICE STANDARDS	29

THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between City of Fredericksburg, Virginia, a duly organized city under the applicable laws of the Commonwealth of Virginia (the Local Franchising Authority or "City") and COX COMMUNICATIONS, INC. a corporation duly organized under the applicable laws of Delaware (the "Franchisee").

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

WHEREAS, the City is a "franchising authority" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to the Code of Virginia, Va. Code Ann. § 15.2-2108;

WHEREAS, Franchisee currently operates a Cable System in the Franchise Area for the transmission of Cable Services in the Franchise Area;

WHEREAS, Franchisee desires a renewal of the Franchise under which it currently operates;

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

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

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

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

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

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

Agreement. References in this section to any federal or state law shall include amendments thereto as may be enacted from time-to-time. In addition, the following definitions shall apply:

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

1.2. *Affiliate*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning in relation to any Person, another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

1.3. *Basic Service or Basic Service Tier*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning the Cable Service tier that includes (i) the retransmission of local television broadcast Channels and (ii) PEG Channels required to be carried in the basic tier

1.4. *Cable Communications Ordinance*: Chapter 46, Article II of the City of Fredericksburg Code.

1.5. *Cable Service or Cable Services*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning the one-way transmission to subscribers of (i) Video Programming or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable service does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).

1.6. *Cable System or System*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within the Service Area, except that such term shall not include (i) a system that serves fewer than twenty (20) Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only Subscribers without using any Public Rights-of-Way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric system; (vi) any portion of a system that serves fewer than fifty (50) Subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

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

spectrum which is used in a cable system and which is capable of delivering a television channel, as defined by the Federal Communications Commission by regulation.

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

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

1.10. *Educational Access Channel*: An Access Channel available for the use solely of the local public schools in the Franchise Area and other higher level educational institutions in the Franchise Area.

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

1.12. *Force Majeure*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning an event or events reasonably beyond the ability of Franchisee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Franchisee's facilities are attached or to be attached or conduits in which Franchisee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

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

1.14. *Franchisee*: COXCOM, Inc., d/b/a/ COX Communications Northern Virginia and/or Cox Communications, Inc., and its lawful and permitted successors, assigns and transferees.

1.15. *Government Access Channel*: An Access Channel available for the use solely of the City.

1.16. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20) meaning the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

1.17. *Local Franchise Authority (LFA or City)*: The City of Fredericksburg or the lawful successor, transferee, or assignee thereof.

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

1.19. *Normal Business Hours*: Shall be defined herein as it is defined under 47 C.F.R. § 76.309(c)(4)(i), meaning those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

1.20. *Normal Operating Conditions*: Shall be defined herein as it is defined under 47 C.F.R. § 76.309(c)(4)(ii), meaning those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System.

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

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

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

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

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

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

1.27. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46), meaning the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

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

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

1.30. *Transfer of the Franchise*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, §15.2-2108.19, meaning any transaction in which (i) 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 majority control of the Franchisee is transferred; or (ii) the rights and obligations held by the Franchisee under the Franchise are transferred or assigned to another person or group of persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the cable franchise shall not include (a) transfer of an ownership or other interest in the Franchisee to the parent of the Franchisee or to another affiliate of the Franchisee; (b) transfer of an interest in the cable franchise granted under this article or the rights held by the Franchisee under the Franchise to the parent of the Franchisee or to another affiliate of the Franchisee; (c) any action that is the result of a merger of the parent of the Franchisee; (d) any action that is the result of a merger of another affiliate of the Franchisee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or the Cable System used to provide Cable Services in order to secure indebtedness.

1.31. *Video Programming*: Shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, §15.2-2108.19, meaning programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

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

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

2.2. *Non-Cable Services*. The City and the Franchisee each reserves any rights it may have with respect to the Franchisee's use of the Cable System and the Public Rights-of-Way to carry services other than Cable Service.

2.3. *Term*: This Franchise shall become effective on February 1, 2008 (the "Effective Date"). The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier surrendered or revoked as provided herein.

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

2.5. *Franchise Subject to Federal and State Law*: Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all

applicable provisions of federal and state law as it may be amended, including but not limited to the Communications Act.

2.6. *No Waiver:*

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

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

2.7. *Construction of Agreement:*

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

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

2.7.3. *Precedence of Documents:* In the event of an inconsistency between the Cable Communications Ordinance and this Agreement, this Agreement shall prevail.

2.8. *Police Powers:* Except as otherwise provided in this Agreement, Franchisee's rights under this Agreement shall be subject to the lawful police powers of the City to adopt and enforce ordinances of general applicability necessary to protect and preserve the health, safety and welfare of the public. The Franchisee shall comply with all applicable general laws and ordinances lawfully enacted by City pursuant to such police powers, except where an exercise of such powers, would impair the obligations of this Agreement.

3. **PROVISION OF CABLE SERVICE**

3.1. *Service Area:* Franchisee shall offer full cable television service to all dwelling units within the corporate limits of the City of Fredericksburg east of I-95, including all territory hereafter annexed by the City east of I-95, assuming that Franchisee can obtain all necessary landowner or other consents to obtain access to subscribers.

3.1.1. In any territory hereafter annexed by the City in which Franchisee must provide service pursuant to Section 3.1, Franchisee shall make Cable Services available to residential dwelling units wherever the average density is equal to or greater than thirty (30)

occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active Cable System trunk or feeder line. Should, through new construction, an area within such annexed part of the Service Area meet the density requirements, Franchisee shall provide Cable Service to such area within six (6) months of receiving notice from City that such density requirements have been met.

3.2. *Similar Cable Service:* At all times during the term of this Agreement, Franchisee shall make available Cable Services and Subscriber equipment to the residents of the City that are substantially similar to the Cable Services and Subscriber equipment that Franchisee makes available to other local franchise authorities that are contiguous to the City, except for PEG and local origination programming and Cable Services provided to private developments.

3.3. *Availability of Cable Service:* Franchisee shall make Cable Service available to all occupied residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred twenty five (125) feet of trunk or feeder lines. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred twenty five (125) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.4. *Cable Service to Municipal Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each fire station, public school, police station, public library, and any other local government building as may be designated by the City and also required of other cable operators whose systems pass the site, including but not limited to those described in Exhibit B. Furthermore, Franchisee shall be permitted to recover, from any school or other public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than one hundred twenty five (125) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged. The requirements of this Section 3.4 shall not apply in cases where it is not technically feasible for the Franchisee to comply.

3.5. *Regulation of Cable Service Rates:* The City reserves any rights it may have to regulate Cable Service rates consistent with applicable law. The City acknowledges that any such rights are subject to federal law and regulation.

4. CONSTRUCTION AND SYSTEM FACILITIES

4.1. *Right of Inspections.* The City shall have the right to inspect all construction and installation work performed subject to the provisions of this franchise, and shall make such tests as it shall find necessary to ensure compliance with the terms of this franchise and other pertinent provisions of the law.

4.2. *Construction Procedures.* Franchisee shall extend the system and conduct any reconstruction in accordance with the construction procedures described in the Application and the National Cable Television Association's construction guidelines.

4.3. *System Characteristics:* Franchisee's Cable System shall meet or exceed the following requirements:

4.3.1. The System shall be designed with an initial analog and digital carrier passband between 50 and 860 MHz.

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

4.3.3. Modern design when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the term of the Agreement.

4.3.4. Protection against outages due to power failures, so that back-up power is available at a minimum for at least 24 hours at each headend, and conforming to industry standards, but in no event rated for less than four hours, at each power supply site.

4.3.5. Facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design.

4.3.6. Facilities and equipment sufficient to comply with any applicable FCC technical standards and to ensure that the Cable System remains in compliance with the standards specified in subsection 4.3.18.

4.3.7. Facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such standards may be amended from time to time.

4.3.8. All facilities and equipment designed to be capable of continuous twenty-four (24) hour daily operation in accordance with applicable FCC standards except as caused by a Force Majeure event.

4.3.9. All facilities and equipment designed, built and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by a subscriber.

4.3.10. All facilities and equipment designed, built and operated in such a manner as to protect the safety of the Cable System workers and the public.

4.3.11. Sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable Franchisee to substantially comply with applicable law, including applicable customer service standards and including requirements for responding to system outages.

4.3.12. All facilities and equipment required to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve system problems.

4.3.13. Design capable of interconnecting with other cable systems in the Franchise Area as set forth in Section 4.6 of this Agreement.

4.3.14. Facilities and equipment at the headend shall allow Franchisee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted over the Cable System shall include the closed-captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning.

4.3.15. Shall be capable of transmitting in high definition any Channels that are received in high definition format. Actual carriage of any such high definition Channels will be at the Franchisee's sole discretion.

4.3.16. Shall provide adequate security provisions that allow parental control over the use of Cable Services on the System. Such security provisions shall at a minimum include as an option to Subscribers the choice or assignment of a personal identification number that is required when ordering specified programming. In addition, Franchisee may offer other practicable control systems and/or devices at its sole discretion. Provided, however, that Franchisee shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

4.3.17. The provision of additional channels, channel capacity, and/or upgrades of any kind to the Cable System is solely within the control and discretion of the Franchisee, except to the extent otherwise provided in Section 3.2.

4.3.18. With the exception of any PEG Channels, all content and programming of Cable Services, including the mix, level, and/or quality of such content and programming, remains in the sole discretion of the Franchisee.

4.3.19. The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, which the City is permitted by a change in law to enforce, and

shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures:

4.3.19.1. Occupational Safety and Health Administration (OSHA)
Safety and Health Standards;

4.3.19.2. National Electrical Code;

4.3.19.3. National Electrical Safety Code (NESC);

4.3.19.4. Obstruction Marking and Lighting, AC 70/7460 i.e.,
Federal Aviation Administration;

4.3.19.5. Constructing, Marking and Lighting of Antenna
Structures, Federal Communications Commission Rules, Part 17; and

4.3.19.6. The Virginia Uniform Statewide Building Code.

4.4. *General Description:* The Cable System shall meet or exceed applicable FCC's technical standards (Subpart K of Part 76 of the FCC's Rules).

4.5. *System and Performance Tests:*

4.5.1. The Franchisee shall perform all tests necessary to demonstrate compliance with the requirements of this Agreement, and to ensure that the Cable System components are operating as required. All tests shall be conducted in accordance with federal rules and any applicable United States National Cable Television Association's Recommended Practices for measurement and testing.

4.5.2. The Franchisee shall conduct tests as follows:

4.5.2.1. Proof of performance tests on the Cable System as required by FCC rules (Subparts K and V of Part 76), except as federal law otherwise limits the Franchisee's obligation. The Franchisee shall retain written reports of the results of any such tests, and such reports shall be submitted to the City upon the City's request. The Cable System monitor test points shall be established in accordance with good engineering practices and consistent with FCC guidelines.

4.5.2.2. When Subscriber complaints indicate tests are warranted, the Franchisee shall, upon the City's request, conduct special proof of performance tests.

4.5.2.3. If any test performed pursuant to this Subsection 4.5.2 indicates that any part or component of the Cable System fails to meet applicable requirements, the Franchisee, without requirement of additional notice or request from the City, shall take corrective action, retest the locations and advise the City of the action taken and results achieved.

4.5.2.4. The Franchisee shall provide reasonable notice to the City of all tests performed pursuant to this Subsection 4.5.2. Contingent upon and subsequent to the execution of any applicable non-disclosure agreement(s) that may be required by the Franchisee, the City shall have the right to witness and/or review such tests.

4.5.2.5. To the extent permissible under applicable federal and state law, the City shall use the reports and records provided under this Agreement as the basis for performance evaluation and system operation monitoring, and shall not require Franchisee participation in any other periodic reevaluations or renegotiations.

4.6. *Interconnection:* The Franchisee shall maintain all existing interconnections with cable systems in the Franchise Area. The Franchisee shall ensure that any upgrades or changes to the Cable System are designed in a manner that permit the Cable System to be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

4.7. *Emergency Alert System:*

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

4.7.2. Franchisee shall also continue to provide the all-channel audio emergency alert system for use by the City that has been under Franchisee’s prior franchise. That system allows emergency messages to be initiated from any push button telephone with touch-tone service by any person who has the appropriate access code. Persons to be provided with access codes shall be selected by the City Manager.

5. **PEG SERVICES**

5.1. *PEG Set Aside:*

5.1.1. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide on the Basic Service Tier one (1) dedicated Public Access Channel, one (1) Educational Access Channel, and one (1) dedicated Government Access Channel (collectively, “PEG Channels”). If a PEG Channel provided under this subsection 5.1.1 is not being utilized by the City, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as City elects to utilize the PEG Channel for its intended purpose.

5.1.2. The City hereby authorizes Franchisee to transmit PEG programming within and without City jurisdictional boundaries. Franchisee specifically reserves its right to make or change channel assignments in its sole discretion; however, the Franchisee shall not arbitrarily or capriciously change PEG Channel assignments. Should the Franchisee decide to change PEG Channel assignments, Franchisee will, to the extent commercially practicable, provide thirty (30) days’ notice of such change to the City.

5.1.3. Franchisee shall use reasonable efforts to interconnect its Cable System with other cable operator(s). The Franchisee shall initiate interconnection negotiations with any other cable operator(s) in the City to cablecast, on a live basis, public, educational and governmental access programming consistent with this Franchise. Interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection. Franchisee shall negotiate in good faith with other cable operator(s) respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms and conditions. The City shall require such other cable operator(s) to provide such interconnection to the Franchisee on reasonable terms and conditions. If the Franchisee and other cable operator(s) cannot agree on an interconnection agreement within one hundred and eighty (180) days of a request to interconnect by the Franchisee, then the City shall require other cable operator(s) to interconnect, and shall determine an interconnection point with the objective of designating an interconnection point at the closest technically feasible location on Franchisee's Cable System permitting the transmission of high quality signals between cable systems for the least cost.

5.1.4. Franchisee shall provide 20 hours of Entertainment-on-Demand ("EOD") capacity for PEG use that provides features and functionality (including signal quality) for PEG EOD equivalent to the features and functionality provided for commercial EOD via one virtual PEG EOD channel.

5.1.4.1. The maximum storage capacity for all PEG EOD content shall be 20 hours.

5.1.4.2. Storage capacity can be appointed or subdivided for storage of PEG EOD programs between government, public and educational access programming as the City deems necessary, as long as the total does not exceed 20 hours of storage capacity.

5.1.4.3. Subscribers shall access the PEG programs through a menu system that has the same level of menu, graphic and text display provided for commercial services.

5.1.4.4. The City and Franchisee shall agree on a simple method for promptly removing programming and metadata from the server that is outdated and providing new content generally on a quarterly basis.

5.2. PEG Connections. Franchisee shall maintain the cable lines, modulators and return path for the three existing origination points for public, educational and governmental access (PEG) programming. Franchisee shall accept up to three additional origination points and provide any necessary cable installation to these new facilities, which shall be capable of two-way transmission. As currently planned, such origination points would be located at:

5.2.1. Executive Plaza Building, 601 Caroline St., Fredericksburg, VA 22401;

5.2.2. Police Headquarters, 2200 Cowan Blvd., Fredericksburg, VA 22401; and

5.2.3. Circuit Court building, 815 Princess Anne St., Fredericksburg, VA 22401.

When it requests the construction of such origination points, the City may specify other locations for these three origination points in its sole discretion, provided that the total actual incremental cost to Franchisee of constructing the three connections shall not exceed the total actual incremental cost it would have incurred to construct the connections to the three sites listed in this Section 5.2. The City may require construction to sites that would exceed that amount if the City pays the difference in actual incremental cost.

Franchisee shall maintain the cable lines and modulators required for the new origination points. The City shall be responsible for providing all modulation and production equipment needed for such additional origination points and for the installation of such equipment. The City (or a nonprofit corporation or other entity designated by the City for community access) agrees that it shall use the existing return paths on the PEG Channels for such new origination points and shall be responsible for arranging any necessary time-sharing of such return paths.

5.3. *PEG Grant:*

5.3.1. The Franchisee shall provide to the City a one-time lump sum grant of Forty-two Thousand Five Hundred Dollars (\$42,500.00) to be used by the City to support the capital costs of PEG Channel facilities (the "Initial PEG Grant"). Payment of the Initial PEG Grant shall be made no later than thirty (30) days following the Enactment Date of this Agreement. No application, application fee, application filing fee, or similar fee shall be required by the City for grant of this Franchise.

5.3.2. A PEG Capital Fee shall also be paid to the City in the amount of \$.20 per Subscriber per month, subject to the terms and conditions herein. Calculation of the PEG Capital Fee will commence with the first calendar month after the Enactment Date of this Agreement, and the Franchisee shall remit such payments no later than thirty (30) days following the end of each calendar quarter. Franchisee shall be allowed to submit, correct, or be refunded any PEG Capital Fee payments that were incorrectly remitted within 90 days following the close of the quarter for which such payments were made. Notwithstanding the foregoing, Franchisee may, with respect to the PEG Capital Fee, as partial reimbursement for a portion of the Initial PEG Grant, retain up to One Thousand Dollars (\$1,000.00) per calendar quarter for a period of up to twenty (20) calendar quarters commencing with the first calendar month after the Enactment Date of this Agreement.

5.3.3. The City shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 5.3.

5.4. City shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the City from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws,

rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. City may establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. § 531.

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

6. **COMMUNICATIONS SALES AND USE TAX**

6.1. The parties shall comply with all applicable requirements of the provisions of Section 58.1-645 of the Code of Virginia (the "Communications Sales and Use Tax") in its current form and as it may be amended. Franchisee shall provide the City with a brief report or return showing the basis for computation of amounts paid in substantially the same form as that submitted pursuant to the Communications Sales and Use Tax. Should at any time during the term of this Franchise the Communications Sales and Use Tax be amended or repealed, each party reserves all rights under applicable federal or state law..

7. **CUSTOMER SERVICE**

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

8. **REPORTS AND RECORDS**

8.1. *Open Books and Records:* Upon not less than thirty (30) business days written notice to the Franchisee), 1 and no more frequently than once every twenty-four (24) months, the City shall, after submitting a written request for inspection ("Request for Inspection"), have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such Request for Inspection shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City. Should the City determine, after commercially reasonable efforts and a good faith review of any documents made available by the Franchisee pursuant to a Request for Inspection, that it is necessary to amend or revise such Request for Inspection, the City shall be permitted to do so at any time within thirty (30) business days of the

date of such Request for Inspection. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years.

8.2. *Proprietary and/or Confidential Information:* Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, or to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. If the Franchisee believes that any requested information is confidential and/or proprietary, the Franchisee must provide the following documentation to the City: (i) specific identification of the information; (ii) a statement attesting to the reason(s) Franchisee believes the information is confidential and/or proprietary; and (iii) a statement that the document(s) are available for inspection by the City. Such inspection shall take place at a mutually agreed location. The Franchisee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains any confidential and/or proprietary information. If the City receives a demand from any Person for disclosure of any information identified as "Confidential" pursuant to this Section 8.2, the City shall, so far as consistent with applicable law, advise Franchisee and, if such demand was made in writing, provide Franchisee with a copy such written demand. Unless otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by applicable law, it shall deny access to any information identified as "Confidential" as set forth in this Section 8.2 to any Person. If the City determines that it must, in the course of enforcing this Agreement or for any other reason, disclose any information identified as "Confidential" as set forth in this Section 8.2, the City shall provide reasonable advance notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. § 551.

8.3. *Records Required:* Franchisee shall at all times maintain or have the ability to produce:

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

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

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

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

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

9. INSURANCE AND INDEMNIFICATION

9.1. *Insurance:*

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

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

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

9.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the Commonwealth of Virginia.

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

9.1.2. The City shall be designated as an additional insured under each of the insurance policies required in this Article 9 except Workers' Compensation and Employers' Liability Insurance.

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

9.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the Commonwealth of Virginia, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

9.1.5. The Franchisee shall deliver to the City Certificates of Insurance showing evidence of the required coverage.

9.2. *Indemnification:*

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

9.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 9.2.1, Franchisee shall provide the defense of any claims brought against the City by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the City, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the City 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 City, 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 terms of any such proposed settlement includes the release of the City and the City does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the City shall in no event exceed the amount of such settlement.

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

10. **TRANSFER OF FRANCHISE**

10.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior consent of the City, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for transactions excluded under Section 1.30 above.

10.2. In the case of any transaction excluded under Section 1.30 involving the Franchisee, the transferee or assignee shall, prior to consummation of any transaction, agree to be bound by the terms of this Franchise and to assume the liabilities to the City of its predecessor under this Franchise.

11. RENEWAL OF FRANCHISE

11.1. The City and Franchisee agree that any proceedings undertaken by the City that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546, or Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.30, as applicable.

11.2. In addition to the procedures set forth in Section 626 or Section 15.2-2108.30, the City shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. The City further agrees that such assessments shall be provided to Franchisee promptly so that Franchisee has adequate time to submit a proposal under Section 626 or Section 15.2-2108, and complete renewal of the Franchise prior to expiration of its term.

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

11.4. Franchisee and the City consider the terms set forth in this Article 11 to be consistent with the express provisions of Section 626 and Section 15.2-2108.30.

12. ENFORCEMENT AND TERMINATION OF FRANCHISE

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

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

12.3. *Public Hearing:* The City shall schedule a public hearing if the City seeks to continue its investigation into the alleged noncompliance in the event that: (1) Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (2) in the event that Franchisee has not remedied the alleged noncompliance within thirty (30) days or the date projected pursuant to Section 12.2(iii) above. The City shall provide Franchisee at least thirty (30) business days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

12.4. *Enforcement*: Subject to applicable federal and state law, in the event the City, after the public hearing set forth in Section 12.3, determines that Franchisee is in default of any provision of this Franchise, the City may:

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

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

12.4.3. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 12.5; or

12.4.4. . Enforce liquidated damages for violations and amounts set forth in Subsections 12.4.4.1 through 12.4.4.4 of this Agreement, because such violations result in injury or damage to the City and it is impracticable to determine the actual amount of such damage in the event of delay or nonperformance:

12.4.4.1. Failure to materially comply with reporting requirements set forth in Section 8 and Exhibit C of this Agreement: One hundred dollars (\$100) per day for each day the violation continues..

12.4.4.2. Failure to materially comply with carriage of PEG Channels as set forth in Section 5.1 of this Agreement: Fifty dollars (\$50) **per day** for each day the violation continues.

12.4.4.3. Failure to materially comply with timely and full payment of fees payable pursuant to this Franchise: One hundred dollars (\$100) per day for each day the violation continues.

12.4.4.4. Failure to materially comply with Customer Service Standards set forth in Exhibit C of this Agreement: One hundred dollars (\$100) per day for each day the violation continues, except where compliance is measured quarterly, in which case liquidated damages shall be as follows: (a) Quarterly measuring periods shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1, through December 31; (b) Franchisee shall be liable for liquidated damages in the amount of five hundred dollars (\$500) for each quarter in which such standards were not met if the failure was by less than five percent (5%); one thousand dollars (\$1,000) for each quarter in which such standards were not met if the failure was by five percent (5%) or more but less than fifteen percent (15%); and two thousand dollars (\$2,000) for each quarter in which such standards were not met if the failure was by fifteen percent (15%) or more.

12.4.4.5. For purposes of any liquidated damages assessments, all similar violations or failures from the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any single one of the above-referenced categories. Violations or failures shall not be deemed to have occurred or commenced until they are deemed not cured as provided in Section 12.2.

12.4.4.6. Payment by the Franchisee of any of the foregoing liquidated damages assessments shall be due within thirty (30) days after the date of the public hearing referenced in Section 12.3. If Franchisee does not make payment within that period, the City may withdraw from Franchisee's Letter of Credit the amount assessed pursuant to Subsection 12.6.2 of this Agreement.

12.4.4.7. The amount of all liquidated damages per annum shall not exceed ten thousand dollars (\$10,000) in the aggregate.

12.4.4.8. The Franchisee hereby waives any defense as to the validity of any liquidated damages stated in this Franchise Agreement on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages. Liquidated damages shall not apply when arising out of violations caused by Force Majeure events.

12.5. *Revocation:* Should the City seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 12.3, the City shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a second public hearing. The City shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

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

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

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

12.6. *Letter of Credit:*

12.6.1. Franchisee shall maintain throughout the term of this Agreement, an irrevocable letter of credit in the amount of twenty thousand dollars (\$20,000) (the "Letter of Credit") from a federally insured lending institution licensed to do business in Virginia ("Lending Institution"). A copy of the existing Letter of Credit is attached hereto as Exhibit D; copies of any relevant replacement or re-issued Letters of Credit will be provided to the City by the Franchisee subsequent to issuance by the Lending Institution. The Letter of Credit shall be the sole collateral provided by the Franchisee to the City, and shall be used to ensure Franchisee's substantial compliance with the material terms and conditions of this Agreement.

12.6.2. If, subject to the terms and conditions of this Agreement, the City notifies the Franchisee in writing of any amounts lawfully due to the City pursuant to the terms of this Agreement, and the Franchisee does not make such payment within thirty (30) days, the City may draw upon the Letter of Credit by presentation of a draft at sight drawn on the Lending Institution, accompanied by a written certificate signed by the City Manager certifying that Franchisee has failed to comply with this Agreement and citing the specific provision of the Agreement at issue and the specific basis for the amount being withdrawn.

12.6.3. In the event the Lending Institution serves notice to the City that it elects not to renew the Letter of Credit, the City may withdraw the entire amount of the Letter of Credit unless the Franchisee provides, before the effective Letter of Credit expires, a substitute Letter of Credit from a Lending Institution, in substantially the same form as that attached hereto as Exhibit D.

12.6.4. No later than thirty (30) days after receipt by the Franchisee of notification by certified mail, return receipt requested, of a withdrawal under the Letter of Credit, the Franchisee shall restore the amount of the Letter of Credit to the total amount specified herein.

12.6.5. No recovery by the City of any sum by reason of the Letter of Credit required in this Section 12.6 shall be any limitation upon the liability of Franchisee to the City under the terms of this Agreement, except that any sums so received by the City shall be deducted from any recovery which the City shall establish against Franchisee under the terms of this Agreement.

13. **MISCELLANEOUS PROVISIONS**

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

13.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees,

successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

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

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

13.4.1. Furthermore, the parties hereby agree that it is not the City's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by the City and/or Subscribers.

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

13.5.1. Notices to Franchisee shall be mailed to:

Cox Communications
3080 Centreville Road
Herndon, Virginia 20171
Attn: Government Affairs

13.5.2. with a copy to:

Cox Communications
1400 Lake Hearn Drive
Atlanta, Georgia 30319
Attn: Legal Department

13.5.3. Notices to the City shall be mailed to:

City Manager, City of Fredericksburg
715 Princess Anne St.
P.O. Box 7447
Fredericksburg, VA 22404

13.5.4. with a copy to:

City Attorney, City of Fredericksburg
710 Princess Anne St.
P.O. Box 7447
Fredericksburg, VA 22404

13.6. *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the City, and it supersedes all prior or contemporaneous agreements, representations or understanding (whether written or oral) of the parties regarding the subject matter hereof.

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

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

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

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

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

13.12. *Governing Law and Venue*: This Agreement shall be governed in all respects by the law of the Commonwealth of Virginia unless preempted by the Communications Act, and the parties agree that this Agreement is subject to the jurisdiction of the Federal District Court of the Eastern District of Virginia.

13.13. *Communications with Regulatory Agencies*: Upon request, Franchisee shall provide the City with a copy of any document (redacted and confidential information excluded) filed by Franchisee with any regulatory agency or other legislative body (other than publicly available agency mailings or publications) that materially and expressly pertains to the provision of Cable Services within the Service Area.

13.14. *Equal Opportunity Employment*: Franchisee shall comply with all federal and state laws and regulations regarding equal opportunity and non-discrimination in employment to all individuals, regardless of their race, color, religion, age, sex or national origin.

13.15. *Protection of Privacy*: Franchisee agrees to comply with all practices and procedures for protecting against invasion of privacy as set forth in 47 U.S.C. § 551.

SIGNATURE PAGE FOLLOWS

AGREED TO THIS 4th DAY OF February, 2008.

City of Fredericksburg, Virginia

By: Philip L. Rodenberg
Philip L. Rodenberg,
City Manager

Approved as to form:
Kathleen Dooey
Kathleen Dooey
City Attorney

Cox Virginia Inc.

By: Janet H. Barnard
Janet H. Barnard
Vice President and Region Manager
Cox Communications of Northern Virginia

EXHIBITS

Exhibit A: Initial Service Area

Exhibit B: Municipal Buildings to be Provided Free Cable Service

Exhibit C: Customer Service Standards

Exhibit D: Existing Letter of Credit

9812:03:00128164.DOC

February 2008

44

Philip F. Robinson

David M. ...

... ..

EXHIBIT A

INITIAL SERVICE AREA

The initial service area is shown in the attached map.

EXHIBIT B

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

EXHIBIT C

CUSTOMER SERVICE STANDARDS

These standards shall apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area.

SECTION 1. DEFINITIONS

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

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

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

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

SECTION 2. TELEPHONE AVAILABILITY

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

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

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

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

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

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

F. Upon request from the City, but in no event more than once a quarter thirty (30) days following the end of each quarter, the Franchisee shall report to the City the following for all call centers receiving calls from Subscribers except for temporary telephone numbers set up for national promotions:

(1) Percentage of calls answered within thirty (30) seconds as set forth in Subsection 2.D.

(2) Percentage of time customers received busy signal when calling the Franchisee's service center as set forth in Subsection 2.E.

Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request.

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

SECTION 3. INSTALLATIONS AND SERVICE APPOINTMENTS

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

B. Standard Installations shall be performed within seven (7) business days after an order is placed. The Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding cases where the customer requests the Franchisee to schedule the connection later than seven (7) days after the order is placed.

C. The Franchisee shall provide the City with a report upon request from the City, but in no event more than once a quarter thirty (30) days following the end of each quarter, a report noting the percentage of Standard Installations completed within the seven (7) day period, excluding those requested outside of the seven (7) day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request. At the Franchisee's option, the measurements and reporting of above

may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the City of such a change not less than thirty (30) days in advance.

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

SECTION 4. SERVICE INTERRUPTIONS AND OUTAGES

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

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

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

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

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

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

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

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

G. The Franchisee shall provide the City with a report upon request from the City, but in no event more than once a quarter within thirty (30) days following the end of each calendar quarter, noting the percentage of Service Calls completed within the seventy-two (72) hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the seventy-two (72) hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to the City for review upon reasonable request. At the Franchisee's option, the above measurements and reporting may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the City of such a change at least thirty (30) days in advance.

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

I. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, the Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected subscribers in the amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on Subscriber billing statements within the next available billing cycle following the outage.

J. With respect to service issues concerning Cable Services provided to City facilities, Franchisee shall Respond to all inquiries from the City within four (4) hours and shall commence necessary repairs within twenty-four (24) hours under Normal Operating Conditions. If such repairs cannot be completed within twenty-four (24) hours, the Franchisee shall notify the City in writing as to the reason(s) for the delay and provide an estimated time of repair.

SECTION 5. CUSTOMER COMPLAINTS

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

SECTION 6. BILLING

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

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

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

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

- (1) The Subscriber pays all undisputed charges;
- (2) The Subscriber provides notification of the dispute to Franchisee within five (5) days prior to the due date; and
- (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.
- (4) It shall be within the Franchisee's sole discretion to determine when the dispute has been resolved.

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

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

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

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

I. *City Information:* City hereby requests that Franchisee omit City name, address and telephone number from Franchise bill as permitted by 47 C.F.R. 76.952.

SECTION 7. DEPOSITS, REFUNDS AND CREDITS

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

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

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

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

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

SECTION 8. RATES, FEES AND CHARGES

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

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

SECTION 9. DISCONNECTION / DENIAL OF SERVICE

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

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

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

SECTION 10. COMMUNICATIONS WITH SUBSCRIBERS

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

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

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

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

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

(2) A separate electronic notification.

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

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

- (1) Products and Cable Service offered;
- (2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Franchisee related to Cable Service;
- (3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;
- (4) Channel positions of Cable Services offered on the Cable System;
- (5) Complaint procedures, including the name, address and telephone number of the City, but with a notice advising the Subscriber to initially contact the Franchisee about all complaints and questions;
- (6) Procedures for requesting Cable Service credit;
- (7) The availability of a parental control device;
- (8) Franchisee practices and procedures for protecting against invasion of privacy; and
- (9) The address and telephone number of the Franchisee's office to which complaints may be reported.

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

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

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

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

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

EXHIBIT D

Existing Letter of Credit

9812\03\00128164.DOC