

December 7, 2005

For the City Council Meeting
of December 13, 2005

**EXECUTION OF A FRANCHISE AGREEMENT BETWEEN THE CITY OF
HERMOSA BEACH AND VERIZON CALIFORNIA, INC.**

Recommendation:

It is recommended that the Hermosa Beach City Council:

- 1) Conduct a public hearing to gather public input on the proposed cable franchise agreement between the City and Verizon California Inc. ("Franchise Agreement") and to consider the impacts of the proposed Franchise Agreement, as required by California Government Code § 53066.3, 47 U.S.C. § 541(a), and other applicable provisions of law, as well as any applicable provisions of existing franchises;
- 2) Introduce and waive full reading of an ordinance making certain findings, approving the proposed cable franchise agreement and authorizing and directing execution of the proposed Franchise Agreement between the City and Verizon California Inc.

Summary:

Verizon California Inc. ("Verizon") has requested grant of a franchise to operate and provide cable service in the City. A true and correct copy of the proposed Franchise Agreement negotiated with the City's representatives has been available for inspection in the City Clerk's office since November 24, 2005. Notice of public hearing before the City Council to consider the proposed Franchise Agreement was properly published in the Easy Reader on November 24, 2005 and December 1, 2005, in accordance with California Government Code §§ 6066 and 53066.3(a)-(d).

Verizon currently is in the process of upgrading its existing telecommunications facilities in the City by installing a state-of-the-art Fiber to the Premise Telecommunications Network ("FTTP Network"). The FTTP Network will utilize fiber-optic cables and associated optical electronics instead of copper wire to connect customers to the Verizon network. The FTTP Network will use laser-generated pulses of light to transmit voice, data and video signals via the fiber at speeds and capacities far exceeding today's copper-cable systems.

Among the services that Verizon's FTTP Network will enable is cable service. Verizon therefore sought a cable franchise from the City to use the FTTP Network to provide cable service to Hermosa Beach residents in competition with the existing cable operator under the terms and conditions of the proposed Franchise Agreement.

Federal and state law set forth requirements with respect to granting an additional cable franchise. Section 621(a) of the Communications Act requires that the City “assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides” and sets forth certain provisions which shall or may be included in a franchise. 47 U.S.C. § 541(a)(3)-(4); *see also* Cal. Gov’t Code § 53066.3(b), (d). California Government Code § 53066.3 requires that the City conduct a public hearing to identify the impacts on the community of granting an additional cable franchise and the City Council to consider certain enumerated criteria in making its determination whether to grant an additional franchise.

Staff has examined each of the legal requirements for Council approval of the draft cable franchise agreement, as well as any applicable provisions in existing franchises. Based upon the information and representations set forth by Verizon, other evidence presented to staff and its own investigation, we find that the proposed Franchise Agreement meets all of the legal requirements for Council approval. Staff therefore recommends that the City Council approve the proposed cable Franchise Agreement and authorize and direct the City Manager to execute the proposed Franchise Agreement.

As set forth more fully below in this staff report, negotiations between Verizon and the City have resulted in the attached agreement. Approval of the proposed Franchise Agreement will bring wire line cable competition to the residents of Hermosa Beach for the first time, allowing them a choice of more than one provider of cable service.

Background:

Verizon is nearing completion of a “Fiber to the Premises” (“FTTP”) Network in Hermosa Beach, which will be the first communications network to bring a fiber optic line into each residence of the City. In layman’s terms, Verizon argues it already has the legal authority to carry out this installation under its powers as a telephone company. More technically, Verizon is acting under the authority granted it as a common carrier pursuant to Title II of the Communications Act, and in accordance with its certificate of public convenience and necessity issued by the California Public Utilities Commission, Section 7901 of the California Public Utilities Code and General Administrative Order 95. In addition to its regular telecommunications services (voice, high-speed data), Verizon’s FTTP Network will also have the capacity to provide cable television service to the residents of Hermosa Beach.

Verizon seeks to provide cable service to Hermosa Beach residents in competition with the City’s existing cable franchisee, and proposes to operate under the terms and conditions of the attached Franchise Agreement. Under its state and federal authorizations, Verizon already has the authority to offer telecommunications services over this new FTTP network (and like a cable network, Verizon is not obligated to let other providers use this new network, unlike its existing copper network). Because the FTTP network has significantly more transmission ability than the old network, Verizon also desires to use the network to provide cable television service. Verizon acknowledges that in California it must obtain a local franchise to provide cable television service, and so has negotiated the attached Franchise Agreement with staff.

The City's franchising of additional cable providers is governed by California Government Code § 53066.3, Title VI of the Communications Act, and Chapter 5.16 of the Hermosa Beach Municipal Code.

The City Council may approve a franchise agreement subsequent to a public hearing considering the proposed franchise grant. Cal. Gov't Code § 53066.3(a). In reviewing such a request and making its determination whether to approve the proposed franchise agreement, the City Council shall make a decision based upon the documents and testimony received at the hearing and the record as a whole as to whether or not the franchise should be granted. In addition, California Government Code § 53066.3(a) specifically requires the City Council to consider certain enumerated criteria in determining whether to grant an additional cable franchise. These criteria are:

- Whether there will be significant positive or negative impacts on the community being served.
- Whether there will be an unreasonable adverse economic or aesthetic impact upon public or private property within the area.
- Whether there will be an unreasonable disruption or inconvenience to existing users, or any adverse effect on future use of utility poles, public easements, and the public rights-of-way contrary to the intent of Section 767.5 of the California Public Utilities Code.
- Whether the franchise applicant has the technical and financial ability to perform.
- Whether there is any impact on the franchising authority's interest in having universal cable service.
- Whether other societal interests generally considered by franchising authorities will be met.
- Whether the operation of an additional cable system in the community is economically feasible.
- Such other additional matters, both procedural and substantive, as the franchising authority may determine to be relevant.

In addition, California Government Code § 53066.3(d) and Section 621 of the Communications Act contain certain nondiscrimination requirements relating to the grant of the franchise. California Government Code § 53066.3(d) also requires that the proposed cable franchise "contain[s] the same public, educational, and governmental access requirements that are set forth in the existing franchise." Cal. Gov't Code § 53066.3(d).

Staff has examined each of these legal requirements in the context of the provisions of the proposed Franchise Agreement, the information and representations provided by Verizon, other evidence presented to staff and staff's own investigation. Staff sets forth its analysis of each below.

Major Provisions of the Proposed Franchise Agreement:

The City's representatives have negotiated the proposed Franchise Agreement with Verizon based on staff's identification and prioritization of the cable-related needs and interests of the residents of Hermosa Beach, and including public, educational and governmental ("PEG")

service obligations. The proposed Franchise Agreement with Verizon includes the following key provisions:

- Provision of cable service to all residential areas of the City no later than 24 months from the Effective Date of the Agreement. Proposed Franchise Agreement Article 3.
- Quarterly franchise fee payments of five percent (5%) of Gross Revenues, as defined. Proposed Franchise Agreement Article 7.
- A fifteen (15) year term from the Effective Date unless the franchise is earlier revoked as provided in the Franchise Agreement. Proposed Franchise Agreement Article 2.3.
- PEG programming and support that are equivalent to those of the incumbent provider in the City, including dedicated public, educational and governmental access channels and interconnection with the existing cable operator in Hermosa Beach for the carriage of PEG programming. Proposed Franchise Agreement Article 6.
- Extensive customer service requirements, including requirements regarding telephone availability for customer inquiries, billing, installation and service calls, monetary penalties for missed service appointments, complaint procedures, and communications with subscribers. Proposed Franchise Agreement Article 8.
- Liability insurance and indemnification requirements. Proposed Franchise Agreement Article 10.

Other pertinent provisions of the proposed Franchise Agreement include:

- Enforcement and termination provisions. Proposed Franchise Agreement Article 13.
- Technical standards for operation of Verizon's cable system. Proposed Franchise Agreement Article 5.
- Emergency Alert System requirements. Proposed Franchise Agreement Article 5.3.
- Reporting and recordkeeping requirements. Proposed Franchise Agreement Article 9.
- Franchise renewal and transfer procedures. Proposed Franchise Agreement Articles 11, 12.

Because the proposed Franchise Agreement is the product of negotiations, Staff notes that certain provisions of the proposed agreement differ from the City's proposed Cable, Video, and Telecommunications Service Providers Ordinance. Such differences are permitted, and the terms of the Franchise Agreement would control. The specific sections of the ordinance where this difference exists are detailed in Section 2.7.2 of the proposed agreement.

Chapter 5.16.035 does not apply because at the time Verizon approached the City regarding a franchise, no standard application fee had been established under the existing ordinance. However, in the alternative, Verizon has agreed to pay the City \$10,000 as an "acceptance" fee as detailed in Section 14.13 of the agreement.

Section 5.16.050(I)(2) does not apply as it relates to the physical plant of the system. As stated in this report, Verizon is constructing their FTTP system as an upgrade to their existing telephone system and, as such, Verizon contends the system itself is governed under different State laws and regulations than a traditional cable television company.

Sections 5.16.060(A)(B)&(C) do not apply because these sections concern the initial grant of a franchise, and Verizon will have completed those steps if the City Council grants this franchise request.

Article 3 does not apply because the Verizon system, like the system of the current provider, is not considered an "open video system". Simply stated, an open video system is a single physical system that is shared by multiple users. Additionally, only those systems certified by the FCC are considered to be open video systems and would be subject to this article. Verizon will own the system and no other providers will be using it.

Article 4 does not apply because this article governs wireless video systems, and Verizon's proposed system is not a wireless one.

Section 5.16.170(A) does not apply because all relevant terms are instead defined in the franchise agreement itself, and excluding this section will help clarify the definitions to be used.

Section 5.16.180 does not apply as Verizon has proposed specific franchise enforcement and termination provisions contained within the draft agreement.

The draft franchise agreement was reviewed by the Cable Television Advisory Commission at their meeting of December 7, 2005. Verizon representatives were present at that meeting to address the Commission's concerns and answer questions. Overall the Commission was supportive of the agreement and very positive about the possibility of having an additional cable service provider available to Hermosa Beach residents. The Commission's concerns were focused primarily in the area of customer service. The Commission wanted to ensure that both the proposed ordinance and the franchise agreement contained customer service standards that would address residents' service concerns identified through the cable television community survey conducted earlier this year. Staff is of the opinion that sufficient standards are contained within the agreement to provide good customer service. Beyond the minimum standards contained in the agreement and the minimum required under FCC guidelines, Verizon has guaranteed customer credits for missed installation, service or maintenance appointments and quarterly service reports to be submitted to the City. Verizon will also clearly list the City's contact information on their subscribers' bills should customers have unresolved complaints as is done by the current provider. Staff is also of the opinion that the introduction of competition alone will have the greatest impact on customer service provided by both cable service providers.

Analysis of Legal Requirements:

The proposed Franchise is being submitted to the City Council at a properly noticed public hearing, in accordance with the requirements of California Government Code §§ 6066 and 53066.3(a).

Staff has analyzed each of the requirements for the grant of an additional cable franchise, including but not limited to the Council's due consideration of certain criteria enumerated by California law, as follows:

(1) *Whether there will be significant positive or negative impacts on the community being served.* See Cal. Gov't Code § 53066.3(a)(1).

The grant of a nonexclusive cable franchise to Verizon will have no negative impact on the community and the overall impact of Verizon's presence as a cable service provider in Hermosa Beach will be positive. Among the most significant positive impacts of Verizon's presence are those directly related to the benefits that cable competition will bring to the City's residents, including, but not limited to:

- Customer choice for different services that competing providers will offer. Verizon's service will offer an extensive lineup of video programming, both traditional and nontraditional, government access programming and pay-per-view services.
- Competition may result in higher customer service quality, improved programming and lower rates.

Federal, state and local law favors competition in the provision of cable services directly to consumers and it is recognized at all levels of government that cable competition can benefit consumers in several ways.

- The Cable, Video, and Telecommunications Service Providers Ordinance of Hermosa Beach states that one of its purposes and intent is to "promote competition in cable, video, and telecommunications services, minimize unnecessary local regulation of cable, video, and telecommunications service providers, and encourage the delivery of advanced and competitive cable, video, and telecommunications services on the broadest possible basis to local government and to the businesses, institutions, and residents of the City." Proposed Cable Ordinance § 5.16.020(B)(4).
- The State Legislature has similarly specifically proclaimed by statute that: "[t]he Legislature hereby finds and declares that the policies for telecommunications in California are . . . to promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct" and "to remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice." Cal. Pub. Util. Code §§ 709(f) & (g).
- Congress, the General Accounting Office, and the FCC have specifically found that wireline competition in the provision of cable service results in higher customer service quality, improved programming and lower rates. *See, e.g.,* 47 U.S.C. § 521(6)

(stating that it is the purpose of the Cable Act to “promote competition in cable communications”); H.R. Rep. 102-628 (“The Committee continues to believe that competition is essential both for ensuring diversity in programming and for protecting consumers from potential abuses by cable operators possessing market power ... The Committee believes that steps must be taken to encourage the further development of robust competition,” including encouraging “cable overbuilds.”); General Accounting Office, *Wire-Based Competition Benefited Consumers in Selected Markets*, Report to the Subcommittee on Antitrust, Competition Policy and Consumer Rights, Committee on the Judiciary, U.S. Senate (Feb. 2004); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 03-172, FCC 04-5, ¶ 11 (2004).

- Consumer advocates repeatedly have confirmed the positive effects of wireline cable competition. *See, e.g., The Failure of Cable Deregulation: A Blueprint for Creating a Competitive, Pro-Consumer Cable Television Marketplace*, U.S. Public Interest Research Group, August 2003, available at URL: <http://uspirg.org/uspirg.asp?id2=10531&id3=USPIRG&>.

Based on all of the above, Staff recommends the Council determine that by fostering competition, granting of a nonexclusive franchise to Verizon to provide cable services will have a significant positive impact on Hermosa Beach and will not have any negative impact.

(2) *Whether there will be an unreasonable adverse economic or aesthetic impact upon public or private property within the area. See Cal. Gov’t Code § 53066.3(a)(2).*

Staff recommends the Council determine that the grant of a nonexclusive cable franchise to Verizon will not result in any unreasonable adverse economic and aesthetic impacts upon public or private property within Hermosa Beach.

Granting Verizon a franchise to provide cable services should not have an adverse economic impact on the City. To the contrary, granting Verizon a franchise should bring substantial economic and developmental benefits to our City.

- Grant of the franchise will bring competitiveness for video programming service to the residents of Hermosa Beach, which should result in a positive economic impact for subscribers. There may also be a positive impact on Hermosa Beach’s economic development efforts with competitive service providers available. With the grant of a franchise to Verizon, Hermosa Beach will gain another provider for customers to receive a “triple play” of video, voice and data over a wired communications network.
- Granting Verizon a franchise should also increase cable penetration, adding subscribers to the City’s franchise fee base. Some residents who do not currently subscribe to cable service or who are satellite customers today will likely subscribe to Verizon’s video service, thereby increasing the overall number of subscribers generating revenue on which cable franchise fees are paid. The increase in content choices that will result from Verizon’s service offerings has the potential to create

more purchases in the higher cable tiers, increasing the franchise fee revenue base in this manner as well.

Staff recommends the Council find that the grant of a franchise to Verizon will not result in any unreasonable adverse aesthetic impact upon public or private property within Hermosa Beach.

- Verizon is seeking a franchise from the City to provide cable services over Verizon's existing FTTP network, once completed. The FTTP network carrying Verizon's cable services will be constructed, operated and maintained as an upgrade to and/or extension of Verizon's existing telecommunications facilities pursuant to authority granted by the State; thus, Verizon is not required to obtain a franchise from the City to construct its FTTP network. Because the facilities used to provide Verizon's cable services will be the same facilities used to provide the other services that will be carried by Verizon's FTTP network, the grant of a cable franchise to Verizon will have *no* additional adverse aesthetic effect on public or private property beyond that created by the State permitted improvements.
- During the installation of its FTTP network, Verizon has been working in close coordination with the City's Public Works Department to minimize disruptions and adverse impacts to the City's streets. Where Verizon's existing network is placed overhead, on existing utility poles, the upgraded network facilities will be placed overhead; where Verizon's existing network is placed underground, the upgraded network will be placed underground. Some additional equipment boxes will be placed in the public rights-of-way, as permitted by Verizon's statewide telecommunications authority. The construction of Verizon's FTTP network therefore will not result in significant adverse aesthetic changes to public or private property.

(3) ***Whether there will be an unreasonable disruption or inconvenience to existing users, or any adverse effect on future use, of utility poles, public easements, and the public rights-of-way contrary to the intent of Section 767.5 of the Public Utilities Code. See Cal. Gov't Code § 53066.3(a)(3).***

Staff recommends the Council find that there should not be any unreasonable disruptions or inconvenience to existing cable users, nor any adverse effects in the areas noted above. Verizon is seeking a franchise from the City to provide cable services over Verizon's existing FTTP network, once completed. Because the facilities used to provide Verizon's cable services will be the same facilities used to provide the other services that will be carried by Verizon's FTTP network, consistent with Section 767.5 of the Public Utilities Code, the grant of a cable franchise to Verizon will cause *no* additional disruptions or inconvenience to existing users, nor any adverse effects on the future use of utility poles, public easements or public rights-of-way.

(4) ***Whether the franchise applicant has the technical and financial ability to perform (see Cal. Gov't Code § 53066.3(a)(4)).***

Verizon is a very large corporate entity that has committed significant financial resources to construct the system and provide the video service. The system includes not only the facilities

within the City of Hermosa Beach but also redundant transmission facilities located through the country to provide the video service. On that basis, staff recommends the Council find that Verizon has demonstrated the financial and technical qualifications and the ability to provide cable service in Hermosa Beach.

(5) *Whether there is any impact on the franchising authority's interest in having universal cable service. See Cal. Gov't Code § 53066.3(a)(5).*

The grant of a nonexclusive cable franchise to Verizon will have a positive impact on the City's interest in universal cable service. Providing the residents of Hermosa Beach a choice of providers will have a significant positive impact on the City's desire in promoting universal cable service.

(6) *Whether other societal interests generally considered by franchising authorities will be met. See Cal. Gov't Code § 53066.3(a)(6).*

Staff finds that the grant of a nonexclusive franchise to Verizon will meet a variety of societal interests generally considered by franchising authorities. These include: the City's interest in enhancing civic awareness and community participation through the reservation of public educational, and governmental access channels on Verizon's system; the City's interest in community connectivity through Verizon's provision of cable service to City, school district and community facilities; the City's interest in generating additional revenue through the payment of annual franchise fees from Verizon; and the City's interest in continuing economic development in the community, as Verizon's state-of-the-art service offerings and network will add to the value and attractiveness of local residential and business development efforts. Finally, providing our residents with a choice of cable providers will also enhance societal interests in our community by bringing the benefits of competition in the provision of cable services to the City.

(7) *Whether the operation of an additional cable system in the community is economically feasible. See Cal. Gov't Code § 53066.3(a)(7).*

Staff recommends the Council find that it is economically feasible for the community to support a competitive cable service provider. Hermosa Beach is a thriving beach community in the Los Angeles area. With a current population of about 19,600, the City is an attractive place to live that boasts exciting recreational facilities, beautiful beaches, and easy access to major transportation routes.

Verizon intends to bring the City's residents a choice of cable service providers by offering a state-of-the-art video service that will be fully competitive with the existing video offerings in the City. After reviewing the proposed services and the video product offered by Verizon in other jurisdictions, Staff believes that Verizon has a good faith basis to believe that its service offering will be attractive to consumers, that Verizon has committed significant capital to constructing and operating the new system, and that it will therefore be economically feasible for Verizon to provide cable service in Hermosa Beach. In addition, the manner in which Verizon is installing the FTTP network over which its cable service will be delivered – as an upgrade to its existing telecommunications network that will also carry voice and data services – means that minimal additional capital expenditures are needed to allow Verizon to support its cable service

offering. Staff has received repeated requests from residents for direct cable competition over many years. Direct broadcast satellite video service has grown in the City, so therefore Staff believes Verizon's service will be successful in obtaining customers in the City.

(8) ***Such other additional matters, both procedural and substantive, as the franchising authority may determine to be relevant. See Cal. Gov't Code § 53066.3(a)(8).***

(a) PEG Requirements. See Cal. Gov't Code § 53066.3(d).

California Government Code § 53066.3 also requires the City to ensure that competitive franchise agreements contain the same public, educational, and governmental (PEG) access requirements that are set forth in the existing franchise.

The incumbent cable operator in Hermosa Beach provides 3 PEG channels. Staff negotiated the proposed Franchise Agreement to require Verizon to provide three PEG channels and carry the PEG programming on the incumbent provider's cable system as soon as Verizon is able to interconnect with the incumbent provider.

Staff has determined that the proposed cable Franchise Agreement's terms fully ensure that Verizon provides adequate PEG access channel capacity, facilities and financial support and that Verizon's obligations in this area are comparable to those contained in the City's existing cable franchise agreement. Therefore Staff recommends the Council find that Verizon's proposal complies with California Government Code § 53066.3.

(b) Non-Discrimination Requirements. See Cal. Gov't Code § 53066.3(d); 47 U.S.C. § 541(a)(3).

California Government Code § 53066.3(d) and Section 621 of the Communications Act, 47 U.S.C. § 541(a)(3) contain certain non-discrimination requirements. Verizon's proposal will activate cable service throughout the entire City simultaneously, therefore Staff recommends the Council find that Verizon's proposal complies with such requirements.

(c) Rates to Subscribers. See 47 U.S.C. § 543; 47 C.F.R. § 76.900 et seq.

As part of the 1996 amendments to the Communications Act, local communities must be certified by the FCC to regulate cable rates, may regulate only rates for the basic service tier and only for cable operators that are not subject to "effective competition" as defined under the Act. The City's authority to regulate rates of upper programming tiers (or so-called cable programming service tiers) sunset in 1999. 47 U.S.C. § 543(c)(4).

As a new competitive entrant into the cable market, Verizon is, by definition, subject to "effective competition." See 47 U.S.C. § 543(l). As such, the City may not regulate Verizon's cable rates. As noted above, various studies have determined that direct wire line competition in cable service most likely will reduce rates.

(d) System Design and Technical and Performance Quality of the Equipment.

Pursuant to federal law, franchising authorities may not regulate the “facilities, and equipment provided by a cable operator” except as specifically permitted by Title VI of the Communications Act. 47 U.S.C. § 544(a). Nonetheless, the City has an interest in understanding the system planned by Verizon to offer its cable service. Verizon’s therefore has set forth an explanation of its planned system architecture. See Proposed Franchise Agreement Article 5.

(e) Willingness and Ability of the Applicant to Meet Construction Requirements and Abide by Franchise Limitations and Requirements. See; Cal. Pub. Util. Code § 7901; General Administrative Order 95; 47 U.S.C. § 552(a)(2).

Verizon’s FTTP Network is being constructed as a Telecommunications Facility pursuant to Title II of the Communications Act, its Certificate of Public Convenience and necessity issued by the California Public Utilities Commission, Section 7901 of the California Public Utilities Code and General Administrative Order 95. As such, Verizon has an existing authority apart from the proposed cable franchise to construct the FTTP Network. Therefore, the proposed Franchise Agreement recognizes that the City does not, and cannot, regulate Verizon’s Telecommunications Facilities except to the extent specifically permitted by federal and state law. See Proposed Franchise Agreement Articles 2.2, 4. Verizon has complied with all applicable construction and permitting requirements of the City.

(f) Competitive Neutrality Between Proposed Verizon Cable Franchise Agreement and Incumbent Cable Franchise Agreement.

The proposed Franchise Agreement contains a number of significant provisions (outlined above under “Major Provisions”) that are relevant to Verizon’s provision of cable services in the City. In addition, Staff has reviewed the material provisions of the proposed cable franchise agreement between Verizon and the City, negotiated changes to the provisions with the intent of competitive neutrality, and recommends the Council find the Verizon franchise is competitively neutral with the provisions contained in the incumbent franchise agreement. For comparison purposes, we note the incumbent franchise was most recently renewed by a grant of renewal to ML Media Partners, L.P. on September 27, 1994. In addition, Staff believes that the proposed Franchise Agreement with Verizon does not deprive any party of equal protection under the law.

Conclusion:

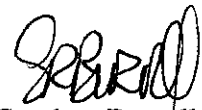
Based on all of the evidence presented to the Council above, as well as at its meeting, Staff recommends that the City Council find that granting a nonexclusive franchise to provide cable services to Verizon is in the public interest, and recommend that the City Council approve and authorize the City Manager to execute the proposed Franchise Agreement. Negotiations between Verizon and the City have resulted in an agreement that is competitively neutral with the incumbent cable franchise agreement and contains a number of provisions designed to protect the best interests of the City and its residents. The franchise agreement may bring substantial economic and developmental benefits to our City, and will be a significant step towards recognizing a variety of the benefits that cable competition can bring to the City and its residents.

Respectfully submitted:

Brad Wohlenberg
City Attorney's Office


Michael Earl
Personnel & Risk Management Director

Concur:


Stephen Burrell
City Manager

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
HERMOSA BEACH GRANTING A NON-EXCLUSIVE FRANCHISE TO
PROVIDE CABLE SERVICE TO VERIZON CALIFORNIA INC.

WHEREAS, the City of Hermosa Beach is a "Franchising Authority" as defined by 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 California Government Code § 53066 and Section _____ of the City of Hermosa Beach Municipal Code;

WHEREAS, Verizon California Inc. ("Franchisee") is in the process of planning and installing a Fiber to the Premise Telecommunications Network ("FTTP Network") that will occupy the Public Rights-of-Way within the City of Hermosa Beach for the transmission of non-cable services pursuant to its status as a telecommunications carrier as set forth in Title II of the Communications Act and under authority granted by the State of California;

WHEREAS, the FTTP Network, once installed, will enable the provision of cable service to the residents of Hermosa Beach;

WHEREAS, negotiations between the Franchising Authority and the Franchisee have resulted in a franchise agreement, which agreement comports with the requirements of applicable law;

WHEREAS, notice of public hearing before the City Council to consider the proposed cable franchise agreement was properly published in the _____ on _____ and _____ in accordance with California Government Code §§ 6066 and 53066.3(a);

WHEREAS, the Franchising Authority has reviewed the legal, technical and financial qualifications of the Franchisee to operate and provide cable service within the City and Franchising Authority's staff has prepared a Staff Report dated December 13, 2005 ("Staff Report") setting forth those qualifications, the future cable-related needs and interest of the City of Hermosa Beach and its residents, and examining each of the requirements and criteria set forth by federal, state and local law with respect to granting an additional cable television franchise, as well as any applicable provisions in existing franchises; and

WHEREAS, after receiving the comments of interested parties at a public hearing affording due process to all parties, in deliberation of the entire record regarding this matter before it, including other pertinent information, and specifically considering each of the requirements and criteria enumerated in California Government Code § 53066.3(a), 47 U.S.C. § 541(a), and all other applicable provisions of law, as well as any applicable provisions in existing franchises, the Franchising Authority determines that is in the public interest to approve the proposed cable television franchise agreement and authorize and direct the execution of the proposed Franchise Agreement;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH DOES
HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council concludes that the cable-related needs and interests of the City of Hermosa Beach, California and the Franchisee's legal, technical, and financial qualifications to operate and provide cable service within the City are accurately identified by the attached Staff Report. The Staff Report, as well as the supporting evidence presented at the public hearing on December 13, 2005, is hereby adopted by the Franchising Authority in its entirety as its ascertainment of the cable-related needs and interests of the City, the Franchisee's qualifications to operate and provide cable service within the City, and the Franchisee's qualifications to operate and provide cable service within the City. The Staff Report and evidence also supports the Franchising Authority's consideration of each of the requirements and criteria enumerated in California Government Code § 53066.3(a), 47 U.S.C. § 541(a), all other applicable provisions of law, as well as any applicable provision in existing franchises.

Section 2. The Franchising Authority determines that it is in the public interest to grant a nonexclusive franchise to operate and provide cable service to Verizon California Inc. As evidence of its consideration of each of the factors enumerated in California Government Code § 53066.3(a), 47 U.S.C. § 541(a)(3), all other applicable provisions of law, as well as any applicable provisions in existing franchises, the Franchising Authority hereby adopts the attached Findings of Fact in support of this determination.

Section 3. The Franchising Authority authorizes the grant of a nonexclusive franchise to the Franchisee to operate and provide cable service within the City. This authorization is made in accordance with the applicable provisions of California Government Code § 53066.3 and Title VI of the Communications Act. A copy of the Franchise Agreement in the form set forth and presented to public hearing on December 13, 2005, is directed to be retained in the office of the City Clerk for the purpose of public inspection.

Section 4. That certain Franchise Agreement in the form set forth and presented to the City Council at this public hearing is approved, and the City Manager is authorized and directed to execute that agreement on behalf of the Franchising Authority following its execution by the Franchisee.

Section 5. The effective date of the Franchise Agreement shall be the date set forth therein.

Section 6. Notice of Adoption. The City Clerk of the City of Hermosa Beach shall certify to the adoption of this Ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the City in a manner permitted under Section 36033 of the California Government Code.

Section 7. This Ordinance shall become effective thirty (30) days after the date of its adoption.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2005.

MAYOR

ATTEST:

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF HERMOSA BEACH)

I, _____, City Clerk of the City of Hermosa Beach, do hereby certify that the foregoing Ordinance was duly adopted by the City Council of the City of Hermosa Beach at a regular meeting thereof, held on the ____ day of _____, 2005 by the following vote of Council:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

CITY CLERK

Findings of Fact By the City Council of the City of Hermosa Beach, California

December 13, 2005

Following thorough evaluation of Verizon California Inc.'s request to provide cable service in the City of Hermosa Beach, California, after receiving the comments of interested parties at a public hearing affording due process to all parties, in consideration of the entire record regarding this matter before it, including a Staff Report from the City Manager's office dated December 13, 2005 and other pertinent information, and considering each of the factors enumerated in California Government Code § 53066.3(a), 47 U.S.C. § 541(a)(3), all other applicable provisions of law, as well as any applicable provisions in existing franchises, the City Council of the City of Hermosa Beach, California determines that it is in the public interest to grant a nonexclusive franchise to provide cable service to Verizon California Inc. ("Verizon"). In exercise of its discretion and legislative authority, the City Council makes the following findings in support of this determination:

1. Federal, state and local law, and the interests of the residents of Hermosa Beach favor competition in the provision of multichannel video programming services directly to consumers. By fostering competition, granting Verizon a nonexclusive franchise to provide cable services will have a significant positive impact on Hermosa Beach and will not have any negative impact. See, without limitation, Cal. Gov't Code § 53066.3(a)(1).
2. Granting Verizon a nonexclusive franchise to provide cable services will not have an adverse economic impact on Hermosa Beach. See, without limitation, Cal. Gov't Code § 53066.3(a)(2). To the contrary, granting Verizon a franchise will bring substantial economic and developmental benefits to Hermosa Beach.
3. Granting Verizon a nonexclusive franchise to provide cable services will not have an adverse aesthetic impact upon the public or private property within Verizon's service area. See, without limitation, Cal. Gov't Code § 53066.3(a)(2).
4. There will be no unreasonable disruptions or inconvenience to existing users, nor any adverse effects on the future use of utility poles, public easements or public rights-of-way contrary to the intent of Section 767.5 of the Public Utilities Code resulting from the grant of a franchise to Verizon. See, without limitation, Cal. Gov't Code § 53066.3(a)(3); Cal Pub. Util. Code § 767.5.
5. Verizon has demonstrated the financial, technical and legal qualifications and ability to provide cable service in Hermosa Beach. See, without limitation, Cal. Gov't Code § 53066.3(a)(4).
6. Granting Verizon a nonexclusive franchise to provide cable services will not adversely impact the City's interest in having universal cable service or societal interests. See, without limitation, Cal. Gov't Code §§ 53066.3(a)(5), (6).
7. Granting a nonexclusive franchise to provide cable services within Verizon's proposed service area is economically feasible. See, without limitation, Cal. Gov't Code § 53066.3(a)(7).
8. The franchise agreement with Verizon fully complies with the statutory nondiscrimination requirements. See, without limitation, Cal. Gov't Code § 53066.3(d); 47 U.S.C. § 541(a)(3).
9. The franchise agreement includes provisions that require Verizon to provide adequate public, educational, and governmental access channel capacity, facilities or financial support in the future. See, without limitation, Cal. Gov't Code § 53066.3(d).

10. Verizon's plans for providing cable services in Hermosa Beach meet or exceed the City's cable-related needs and interests. See, without limitation, Cal. Gov't Code § 53066.3(a)(8).

11. Granting Verizon a nonexclusive franchise to provide cable services will enhance competition, further the ubiquitous availability of a wide choice of state-of-the-art services and enhance the development and deployment of new technologies, consistent with the policies set forth in Public Utilities Code Section 709. See, without limitation, Cal Pub. Util. Code § 709; Cal. Gov't Code § 53066.3(a)(8); accord Telecommunications Act of 1996, § 706, Pub. L. No. 104-104, 110 Stat. 153, reprinted in 47 U.S.C. § 157 note.

12. The material provisions of the franchise agreement between Verizon and the City are competitively neutral with the provisions contained in the incumbent franchise agreement that the City has most recently renewed by a grant of renewal to ML Media Partners, L.P. on September 27, 1994, and provide all parties equal protection under the law. See, without limitation; Cal. Gov't Code § 53066.3(d).

13. Granting a nonexclusive franchise to provide cable services to Verizon is in the public interest. See, without limitation, Cal. Gov't Code § 53066.3(a)(8).

CABLE FRANCHISE AGREEMENT

**BETWEEN THE
CITY OF HERMOSA BEACH
AND
VERIZON CALIFORNIA INC.**

2006

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the City of Hermosa Beach, a duly organized city under the applicable laws of the State of California (the Local Franchising Authority or "LFA") and Verizon California Inc., a corporation duly organized under the applicable laws of the State of California (the "Franchisee").

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

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the State of California and Title 5, Chapter 5.16 of the Hermosa Beach Municipal Code;

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

WHEREAS, LFA has identified the future cable-related needs and interests of LFA and its citizens, 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, LFA has found Franchisee to be financially, technically and legally qualified to operate the Cable System;

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

WHEREAS, LFA 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 LFA's grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise/Service Area of LFA pursuant to and consistent with the Cable Ordinances, 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 Cable Ordinances are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1. *Access Channel*: A video Channel, which Franchisee shall make available to LFA without charge for non-commercial public, educational, or governmental use for the transmission of video programming as directed by LFA.

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

1.3. *Basic Service*: Any service tier, which includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.

1.4. *Cable Ordinances*: Title 5, Chapters 5.16 and 5.17 of the Hermosa Beach Municipal Code, in effect as of the date hereof, and any future enacted additions or revisions to same, including but not limited to, "An Ordinance Of The City Of Hermosa Beach Regulating Cable, Video, And Telecommunications Service Providers, Redesignating Chapters 5.16 And 5.17 Of Title 5 As Uncodified Ordinances, And Amending Title 5 Of The Hermosa Beach Municipal Code By Adding A New Chapter 5.16," all to the extent authorized under and consistent with federal and state law.

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

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

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

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

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

1.10. *Educational Access Channel*: An Access Channel available for the use solely of the local public schools in the Franchise Area.

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

1.12. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This 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 utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

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

1.14. *Franchisee*: Verizon California Inc., and its lawful and permitted successors, assigns and transferees.

1.15. *Government Access Channel*: An Access Channel available for the sole use of LFA.

1.16. *Gross Revenue*: All revenue that Franchisee and its Affiliates (to the extent that either is acting as a provider of Cable Service authorized by this Franchise) derives from the operation of Franchisee's Cable System to provide Cable Service in the Service Area, including but not limited to all Subscriber and customer revenues earned or accrued net of bad debts including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related service or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or otherwise (except sale); (iii) revenues from the sale or lease of Access Channel(s) or Channel capacity; (iv) advertising revenues (as described below); and (v) revenues from home shopping Channel providers. Gross Revenue also includes franchise fees imposed on Franchisee by LFA that are passed through from Franchisee as a line item paid by Subscribers. Revenue of an Affiliate derived from the Affiliate's provision of Cable Services shall be Gross Revenue to the extent the treatment of such revenue as revenue of the Affiliate and not of Franchisee has the intentional or unintentional effect of evading the payment of Franchise fees that would otherwise be payable to LFA hereunder. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue. In no event shall revenue of an Affiliate be Gross Revenue of Franchisee if such revenue is subject to franchise fees to be paid to LFA for Cable Services. Advertising revenue is based upon the ratio of the number of Subscribers as of the last day of the period for which Gross Revenue is being calculated to the number of Franchisee's subscribers within all areas covered by the particular advertising source as of the last day of such period, e.g., Franchisee sells two ads: Ad "A" is broadcast nationwide; Ad "B" is broadcast only within California. Franchisee has 100 Subscribers in LFA, 500 subscribers in California, and 1000 subscribers nationwide. Gross Revenue as to LFA from Ad "A" is 10% of Franchisee's revenue therefrom. Gross

Revenue as to LFA from Ad "B" is 20% of Franchisee's revenue therefrom. Gross Revenue shall not include:

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

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

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

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

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

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

1.16.7. The sale of Cable Services to customers, which are exempt, as required or allowed by LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein;

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

1.16.9. Any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise; provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue;

1.16.10. Sales of capital assets or sales of surplus equipment;

1.16.11. Reimbursement by programmers of marketing costs incurred by Franchisee for the introduction and promotion of programming;

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

1.16.13. Any fees or charges collected from Subscribers or other third parties for PEG Grant payments.

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

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

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

1.20. *Local Franchise Authority (LFA)*: The City of Hermosa Beach, California or the lawful successor, transferee, or assignee thereof.

1.21. *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.

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

1.23. *Normal Operating Conditions*: Those service conditions which are within the control of Franchisee. Those conditions which are not within the control of 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 within the control of Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. See 47 C.F.R. 76.309(c)(4)(ii).

1.24. *PEG*: Public, educational, and governmental.

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

1.26. *Public Access Channel*: An Access Channel available for the sole use of the residents in the Franchise Area.

1.27. *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 LFA. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.28. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area and any additional service areas.

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

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

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

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

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

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

1.35. *Transfer of the Franchise*:

1.35.1. Any transaction in which:

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

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

1.35.2. However, notwithstanding Sub-subsections 1.35.1.1 and 1.35.1.2 above, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any merger of the parent of Franchisee and a third party that results in the transfer of a direct or indirect interest in Franchisee of less than fifty percent (50%); or any merger of an Affiliate of Franchisee and a third party that results in a transfer of a direct or indirect interest in Franchisee of less than fifty percent (50%).

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

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

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Cable Ordinances, LFA hereby grants 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. *LFA Does Not Regulate Telecommunications*: LFA's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance or operation of Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained or operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services.

2.3. *Term*: This Franchise shall become effective (the "Effective Date") thirty (30) days following its approval by LFA's governing authority authorized to grant franchises and its acceptance by Franchisee. Franchisee shall memorialize the Effective Date by notifying LFA in writing of the same, which notification shall become a part of this Franchise. The term of this Franchise shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein.

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

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

2.6. *No Waiver*:

2.6.1. The failure of LFA on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Cable Ordinances or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by LFA, 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 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 LFA from performance, unless such right or performance has been specifically waived in writing.

2.7. Construction of Agreement:

2.7.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives. The parties agree that this Agreement, rather than the Cable Ordinances, contains all terms and conditions applicable to this Franchise. In the event of a conflict between the Cable Ordinances and this Agreement, this Agreement shall prevail.

2.7.2. The following Cable Ordinances provisions not addressed by this Agreement do not apply to this Franchise:

5.16.035

5.16.050(I)(2)

5.16.060(A), (B) & (C)

Article 3

Article 4

5.16.170(A) (definitions of "Franchise fee", "Multichannel video programming distributor" or "video programming distributor", and "Video provider")

5.16.180

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

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

2.8. *Police Powers:* Nothing in the Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of LFA's police powers. However, if the reasonable, necessary and lawful exercise of LFA's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

3. **PROVISION OF CABLE SERVICE**

3.1. *Service Area:*

3.1.1. *Initial Service Area:* Franchisee shall offer Cable Service to multiple Subscribers in residential areas of the Initial Service Area, and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Effective Date of this Franchise (the "Service Date") and to all residential areas of the Initial Service Area within twelve (12) months of the Service Date, except: (A) for periods of Force Majeure; (B) for periods of delay caused by LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; and (F) in developments or buildings that Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density requirement set forth in Sub-section 3.1.1.1.

3.1.1.1. *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Initial Service Area where the average density is equal to or greater than 30 occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Initial Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsections 3.1.1 and 3.1.2 respectively, Franchisee shall provide Cable Service to such area within six (6) months of receiving notice that the density requirements have been met.

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

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Initial 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, all residential dwelling units that are within one hundred twenty-five (125) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed 125 feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings:* Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to the public buildings designated by LFA in Exhibit B; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred twenty-five (125) feet solely to provide service to any such school or public building, LFA shall have the option either of paying

Franchisee's direct costs for such extension in excess of one hundred twenty-five (125) feet, or of releasing Franchisee from the obligation to provide service to such building. 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.

4. **SYSTEM OPERATION**

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

5. **SYSTEM FACILITIES**

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

5.1.1. The System shall be designed with an initial analog passband of 860 MHz.

5.1.2. 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.

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

5.3. *Emergency Alert System:*

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

5.3.2. LFA shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, LFA shall hold Franchisee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

6. **PEG SERVICES**

6.1. *PEG Set Aside:*

6.1.1. 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) dedicated Educational Access Channel, and one (1) dedicated Government Access Channel (collectively, "PEG Channels").

6.1.2. Franchisee shall provide up to two additional PEG Channels dedicated exclusively to PEG purposes pursuant to the following criteria; provided, however, Franchisee shall not be obligated to provide an additional PEG Channel unless all cable providers within the Franchise Area similarly provide such additional PEG Channel:

6.1.2.1. The three PEG Channels described in Section 6.1.1. must be in use and programmed with PEG programming during at least eighty percent (80%) of the weekdays for at least eighty percent (80%) of the time during any consecutive thirteen (13)-hour period for ten (10) consecutive weeks. For this purpose, programming consisting of character-generated text, repeat programming, and programming produced more than six months previously or programming not produced or submitted by a City access user or resident shall not be counted.

6.1.2.2. No more than thirty-three and a third percent (33-1/3%) of the aggregate hours utilized for PEG programming during such ten (10) week period can represent repeat programming.

6.1.2.3. LFA must have a documented need for additional programming capacity that cannot be fulfilled by existing PEG Channels.

6.1.2.4. So long as the origination point is an existing one in the Service Area, any additional PEG Channel shall be made available within 12 months following LFA's written request (which shall constitute LFA's authorization to transmit the PEG Channels within and without the LFA) and verification of compliance with each of the foregoing conditions. If the origination point is not an existing one in the Service Area, the timing of the availability and other conditions will be by mutual agreement of the parties. In no event shall the origination point be located outside the Franchise Area.

6.1.2.5. Each additional PEG Channel may be provided, at the Franchisee's option, on either the Basic Service Tier or a digital tier, and if they are provided on the digital tier, Subscribers will be required to lease or otherwise pay for a set top box in order to receive the additional PEG Channels.

6.1.3. Within ten (10) days after the Service Date, LFA shall notify Franchisee of the programming to be carried on each of the PEG Channels set aside by Franchisee, as listed in Exhibit C. Such notification shall constitute authorization to Franchisee to transmit such programming within and without the LFA. Thereafter, Franchisee shall assign the PEG Channels on its channel line-up as set forth in such notice, to the extent such channel assignments do not interfere with Franchisee's existing or planned channel line up. If a PEG Channel provided under this Article is not being utilized by LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as LFA elects to utilize the PEG Channel for its intended purpose.

6.1.4. *Interconnection Required.* For purposes of public, educational, and governmental programming consistent with this Franchise, Franchisee shall in accordance with this Section 6.1.3, interconnect the Cable System with any other cable system serving the Franchise Area (each an "Other System"). Such interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection.

6.1.4.1. *Interconnection Procedure.* Within 30 days of the Service Date, Franchisee shall initiate negotiations with the owner(s) and operator(s) of all Other System(s) to determine their equitable share of costs for both construction and operation of the interconnection link. Franchisee shall negotiate in good faith with existing cable operator(s) respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms and conditions. LFA shall require the existing cable operator(s) to provide such interconnection to Franchisee on reasonable terms and conditions. The construction costs and ongoing expenses of interconnection shall be fairly shared between Franchisee and the existing cable operator(s). Franchisee and the existing cable operator(s) shall negotiate the precise terms and conditions of an interconnection agreement. LFA shall use its best efforts to facilitate these negotiations.

6.1.4.2. *Relief.* If the parties are unable to reach agreement on the terms of interconnection, including, but not limited to, compensation and timing, the dispute shall be submitted to LFA for resolution. Franchisee shall be granted reasonable extensions of time to interconnect, which shall be granted if Franchisee has negotiated in good faith and has failed to obtain an approval from the owner or operator of the Other System(s). If the cost of interconnection would be unreasonable, interconnection is not technically feasible or would cause an unacceptable increase in Subscriber rates, or if an existing cable operator will not agree to reasonable terms and conditions of interconnection, Franchisee's failure to comply with the obligation to carry PEG programming originating on the cable system of the existing cable operator or to interconnect the Cable System will not be deemed a violation of the franchise enforceable under Article 13 of this Agreement.

6.2. *PEG Grant:*

6.2.1. Franchisee shall provide an annual grant to LFA to be used in support of the production of local PEG programming (the "Annual PEG Grant"). Such grant shall be used by LFA, for PEG access equipment, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities.

6.2.2. The Annual PEG Grant provided by Franchisee hereunder shall be the sum of \$0.35, per month, per Subscriber in the Service Area to Franchisee's Basic Service Tier. The Annual PEG Grant is subject to Franchisee's verification of the incumbent cable operator's actual cost of supporting the production of local PEG programming for LFA to ensure that there is an equal contribution on a per Subscriber basis. The Annual PEG Grant provided by Franchisee will increase based on the verifiable needs of the LFA for PEG programming up to the sum of \$0.65, per month, per Subscriber or decrease to match the future contributions made

by the incumbent cable operator on a per month, per Subscriber basis. The Annual PEG Grant payment, along with a brief summary of the Subscriber information upon which it is based, shall be delivered to LFA within sixty (60) days after the beginning of each calendar year during the Franchise Term. Calculation of the Annual PEG Grant will commence with the first calendar month during which Franchisee obtains its first Subscriber in the Service Area.

6.2.3. LFA shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 6.2.

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

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

7. FRANCHISE FEES

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

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

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

7.4. *Bundled Services:* If Cable Services subject to the Franchise fee required under this Article 7 are provided to Subscribers in conjunction with Non-Cable Services, the

Franchise fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders. Franchisee shall not allocate revenue between Cable Services and Non-Cable Services for the purpose or with the intent of evading or substantially reducing Franchisee's Franchise fee obligations to the LFA. Tariffed telecommunication services that cannot be discounted by state and/or federal regulatory rules are excluded from the allocation basis for the bundle discount.

8. **CUSTOMER SERVICE**

Consumer Protection and Service Standards are set forth in Exhibit D, which shall be binding unless amended by written consent of the parties.

9. **REPORTS AND RECORDS**

9.1. *Annual Report.* Within thirty calendar (30) days of its filing, Franchisee shall provide the LFA with a copy of Verizon Communications Inc.'s most recent annual report filed with the Securities and Exchange Commission. Such annual statement shall be prepared in accordance with generally accepted accounting principles.

9.2. *Audit of Franchise Fee Payments.* Franchisee shall not be required to comply with this Section 9.2 until all other cable operators in the Franchise Area are required to comply with the material provisions of this Section 9.2.

9.2.1. LFA, or its designee, may conduct an audit or other inquiry in relation to payments made by Franchisee no more than once every three (3) years during the Term. As a part of the audit process, LFA or LFA's designee may inspect Franchisee's books of accounts relative to LFA at any time during regular business hours and after thirty (30) calendar days prior written notice.

9.2.2. All records deemed by LFA or LFA's designee to be reasonably necessary for such audit shall be made available by Franchisee in a mutually agreeable format and location. Franchisee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of a written request. Franchisee may provide such responses within a reasonable time after the expiration of the response period above so long as Franchisee has made a good faith effort to procure any such tardy response.

9.2.2.1. If the results of any audit indicate that Franchisee (i) paid the correct franchise fee, (ii) overpaid the franchise fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by five percent (5%) or less, then LFA shall pay the costs of the audit. If the results of the audit indicate Franchisee underpaid the franchise fee by more than five percent (5%), then Franchisee shall pay the reasonable, documented, third-party costs of the audit. LFA agrees that any audit shall be performed in good faith.

9.3. *Access to Books.* Upon reasonable prior written notice to Franchisee, LFA shall have the right to inspect, during Normal Business Hours and on a nondisruptive basis, all books, financial statements, contracts, service complaint logs, performance test results, records of requests for Cable Services that are directly relevant to the Franchisee's compliance with the

requirements and obligations imposed upon it by this Agreement, or applicable law as it relates to this Franchise. The right of LFA to inspect under this Section extends to the material identified above that is in the possession or under direct control of Franchisee, and of any other Person designated by Franchisee for managing and administering the Cable System to the extent that Franchisee has the right to require such other Person to make such records available to LFA. LFA's notice of 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 LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years.

9.4. Franchisee shall report to LFA on a quarterly basis the following measurements: Subscriber service calls by reason; telephone availability performance; on-time performance for installations, maintenance appointments and service interruptions; and technical performance as reflected in dispatched trouble calls and service interruptions.

9.5. *Proprietary Information.*

9.5.1. 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, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. LFA agrees to treat any information disclosed by Franchisee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

9.5.2. Upon a request for confidentiality by the Franchisee, information obtained by the LFA pursuant to this Agreement shall be made available only to persons needing access to the materials in order to perform their responsibilities on behalf of or for the LFA and, as to all other persons, shall be treated as confidential to the extent permitted by law. The LFA shall promptly notify Franchisee whenever a third party seeks access to Franchisee's confidential information, whether pursuant to the Public Records Act or otherwise. Franchisee agrees and acknowledges that LFA does not have any responsibility or obligation to seek legal or equitable relief to prevent the dissemination of the confidential information, unless required by law. Franchisee may, in its sole discretion and expense, take any steps it deems necessary to protect its rights in the confidential information. Franchisee also maintains the right to require that the LFA execute a confidentiality and/or non-appropriation agreement prior to gaining access to any materials under this section. Nothing in this section shall be read to require the LFA or Franchisee to violate the Cable Act, 47 U.S.C. §551, or the California Public Records Act.

9.6. *Records Required:* Franchisee shall at all times maintain:

9.6.1. Records of all written complaints for a period of three 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;

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

9.6.3. Records of service calls for repair and maintenance for a period of three 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;

9.6.4. 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

9.6.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

10. INSURANCE AND INDEMNIFICATION

10.1. *Insurance:*

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

10.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) 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 LFA.

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

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

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

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

10.1.3. Franchisee shall not cancel any required insurance policy without submitting documentation to LFA verifying that Franchisee has obtained alternative insurance in conformance with this Agreement.

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

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

10.2. *Indemnification:*

10.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend LFA, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System, provided that LFA shall give Franchisee written notice of its obligation to indemnify LFA within fifteen (15) days of receipt of a claim or action pursuant to this subsection; provided further that LFA will be in breach of this Section 10.2.1 if LFA provides written notice after such fifteen (15) day period and Franchisee is prejudiced by such notice. Notwithstanding the foregoing, Franchisee shall not indemnify LFA, for any damages, liability or claims resulting from the willful misconduct or negligence of LFA, 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.

10.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 10.2.1, Franchisee shall provide the defense of any claims brought against the LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the LFA, 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 settlement does not include the release of the LFA and the LFA 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 LFA shall in no event exceed the amount of such settlement..

10.2.3. LFA shall hold Franchisee harmless and shall be responsible for damages, liability or claims resulting from willful misconduct or negligence of LFA.

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

11. TRANSFER OF FRANCHISE

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 LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Franchisee in the Franchise or Cable System in order to secure indebtedness, or otherwise excluded under Section 1.34 above.

12. RENEWAL OF FRANCHISE

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

12.2. In addition to the procedures set forth in said Section 626 of the Communications Act, LFA agrees to notify Franchisee of all 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. LFA further agrees to provide Franchisee with a copy of any completed assessments promptly so that Franchisee has adequate time to submit a proposal under Section 626 and complete renewal of the Franchise prior to expiration of its term.

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

12.4. Franchisee and LFA consider the terms set forth in this Article 12 to be consistent with the express provisions of Section 626.

13. ENFORCEMENT AND TERMINATION OF FRANCHISE

13.1. *Security Fund.* Franchisee shall not be required to comply with this Section 13.1 until all other cable operators in the Franchise Area are required to comply with the material provisions of this Section 13.1.

13.1.1. *Creation of Security Fund.* Within sixty (60) days following the Service Date, Franchisee shall establish and provide to LFA a security fund ("Security Fund"), as security for the faithful performance by Franchisee of all material provisions of this Agreement. The Security Fund shall be in the amount of ten thousand dollars (\$10,000) and shall be in the form of an irrevocable letter of credit payable to the order of the LFA with any interest distributable to Franchisee.

13.1.2. *Amount of Security Fund.* The Security Fund shall be maintained at the ten thousand dollar (\$10,000) level throughout the term of the Agreement; provided that Franchisee shall not be required to maintain the ten thousand dollar (\$10,000) level once LFA has begun to assess amounts pursuant to Section 13.1.3 below.

13.1.3. *Procedure for Assessing Security Fund.*

13.1.3.1. If Franchisee fails to perform in a timely manner any material obligation (a "violation") required by this Franchise, and if Franchisee does not take the action set forth in 13.1.3.2., LFA may assess amounts from the Security Fund thirty (30) days after receipt of written notice by the Franchisee of LFA's intention to draw upon the Security Fund. LFA's written notice to Franchisee shall specify all such violations alleged to have occurred.

13.1.3.2. In the event the LFA determines that a violation exists and that Franchisee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation within the thirty (30) day time period described above, LFA may elect to assess an amount of up to two hundred dollars (\$200) per day from the Security Fund.

13.1.3.3. If LFA elects to assess amounts from the Security Fund, then such election shall constitute LFA's exclusive remedy for a period of thirty (30) days. Thereafter, LFA may pursue other remedies set forth in this Article 13.

13.1.4. *Other Representations.* If LFA's assessment is found to be improper by any court or agency of competent jurisdiction, Franchisee shall be entitled to a refund of the funds plus interest and any other award *that* such court or agency shall make.

13.2. *Notice of Violation:* In the event that LFA believes that Franchisee has not complied with the terms of the Franchise and LFA elects not to assess the Security Fund, LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, LFA shall notify Franchisee in writing of the exact nature of the alleged noncompliance.

13.3. *Franchisee's Right to Cure or Respond:* Franchisee shall have fifteen (15) days in the case of the failure of the Franchisee to pay any sum or other amount due the LFA under this Agreement, and thirty (30) days in all other cases, from receipt of the written notice described in Section 13.1 to: (i) respond to LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such default; or (iii) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify LFA of the steps being taken and the projected date that they will be completed.

13.4. *Written Notice From LFA:* In the event that Franchisee fails to respond to the written notice described in Section 13.2 pursuant to the procedures set forth in Section 13.3, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to Section 13.2(iii) above, if it intends to continue its investigation into the default, then LFA shall provide the Franchisee with written notice thereof. Such written notice shall set forth the reasons why LFA believes that Franchisee has not cured the default and shall set forth LFA's proposed action which may include the following:

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

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

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

13.5. *Public Hearing:* Should LFA seek to revoke the Franchise after following the procedures set forth in Sections 13.2 through 13.4 above, LFA shall give written notice to Franchisee of its intent. The notice shall set forth the exact nature of the noncompliance. Franchisee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event LFA has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a public hearing. LFA shall cause to be served upon Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.5.1. At the designated 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 LFA, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

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

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

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

Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

14. **MISCELLANEOUS PROVISIONS**

14.1. *Actions of Parties:* In any action by LFA 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.

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

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

14.4. *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.

14.4.1. Furthermore, the parties hereby agree that it is not LFA'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 LFA and/or Subscribers.

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

14.5.1. Notices to Franchisee shall be mailed to:

Verizon California, Inc.
Attn: Tim McCallion, President - Pacific Region
112 Lakeview Canyon Road
Thousand Oaks, CA 91362

14.5.2. with a copy to:

Verizon Communications Inc.
Attn: Jack H White, VP and Associate General Counsel
1515 North Court House Road
5th Floor, Room 500
Arlington, VA 22201

14.5.3. Notices to LFA shall be mailed to:

Stephen Burrell
City Manager
1315 Valley Drive
Hermosa Beach, CA 90254-3885

14.6. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and LFA. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

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

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

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

14.10. *Franchisee's FTTP Network:* LFA and Franchisee recognize and agree that due to the nature of Franchisee's FTTP Network, certain provisions of the Cable Ordinances are not applicable to Franchisee.

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

14.12. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, any spectrum capacity used for cable service or otherwise, to LFA or any third party. Franchisee shall not be required to remove the FTTP Network(s) or to relocate the FTTP Network(s) as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee

from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

14.13. *Acceptance Fee.* Franchisee shall pay LFA \$10,000 as an acceptance fee within thirty (30) days following the Service Date.

SIGNATURE PAGE FOLLOWS

AGREED TO THIS ____ DAY OF _____, 2006.

CITY OF HERMOSA BEACH

Approved as to form:

By: _____
Peter Tucker
Mayor

Michael Jenkins
City Attorney

VERIZON CALIFORNIA INC.

By: _____
Tim McCallion,
President, Pacific Region

EXHIBITS

Exhibit A: Service Area

Exhibit B: Municipal Buildings to be Provided Free Cable Service

Exhibit C: PEG Channels

Exhibit D: Consumer Protection and Service Standards

EXHIBIT A

SERVICE AREA MAP

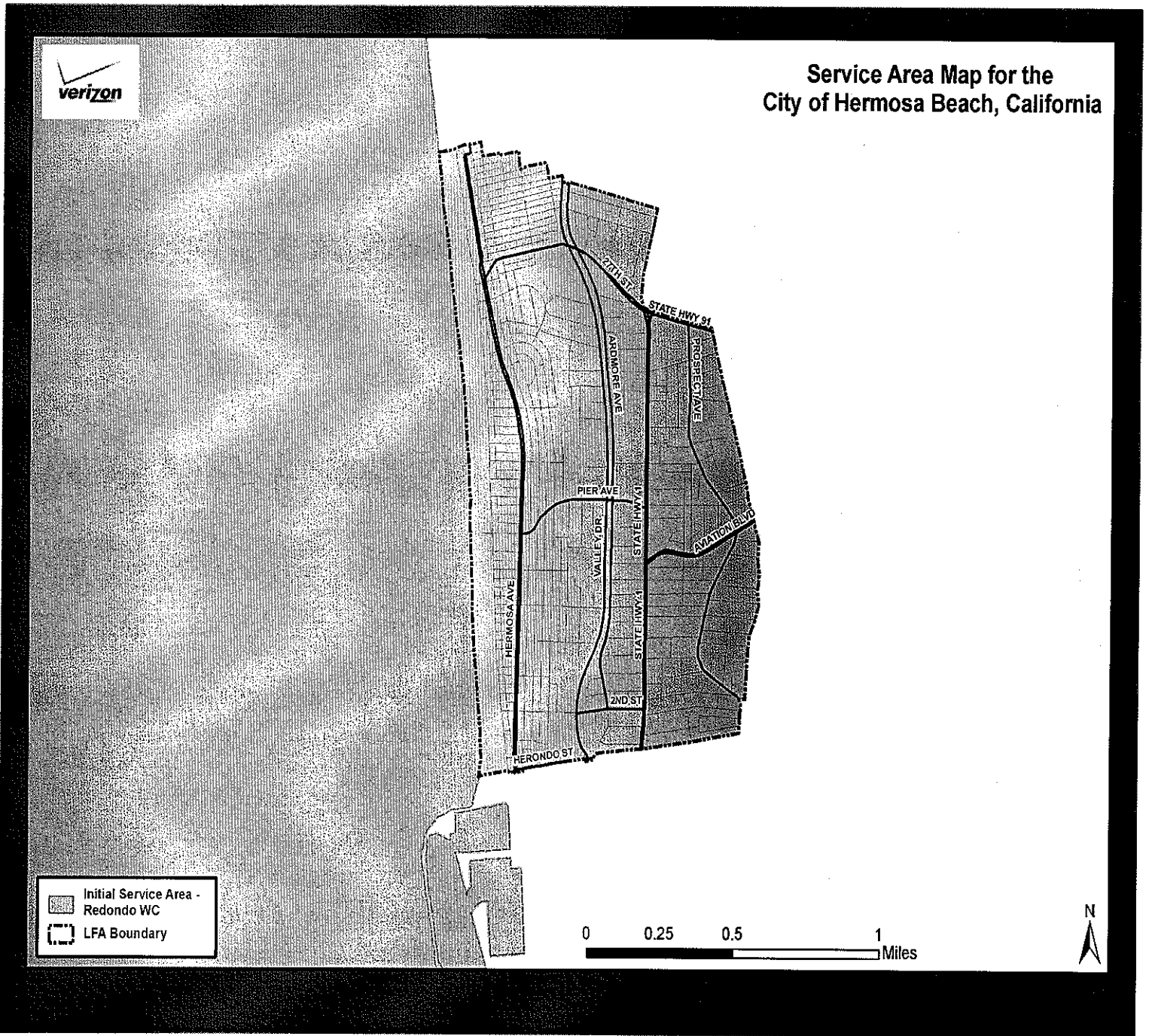


EXHIBIT B

MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

Hermosa Valley School
1645 Valley Drive
Hermosa Beach, CA 90254

Hermosa View School
1800 Prospect Avenue
Hermosa Beach, CA 90254

School District Office
1645 Valley Drive
Hermosa Beach, CA 90254

City Hall Council Chambers
1315 Valley Drive
Hermosa Beach, CA 90254

Library
550 Pier Avenue
Hermosa Beach, CA 90254

Community Center
710 Pier Avenue
Hermosa Beach, CA 90254

Police Station
540 Pier Avenue
Hermosa Beach, CA 90254

Fire Station
540 Pier Avenue
Hermosa Beach, CA 90254

Public Works Yard
555 6th Street
Hermosa Beach, CA 90254

Community Services Administration Building
1035 Valley Drive
Hermosa Beach, CA 90254

EXHIBIT C

PEG CHANNELS

One (1) dedicated Public Access Channel

One (1) dedicated Educational Access Channel

One (1) dedicated Government Access Channel

EXHIBIT D

CONSUMER PROTECTION AND SERVICE STANDARDS

Franchisee's obligations concerning Consumer Protection and Service Standards shall include the following, which shall be binding unless amended by written consent of the parties. These standards shall, starting six months after the Service Date, apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area.

SECTION 1: DEFINITIONS

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

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

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

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

SECTION 2: TELEPHONE AVAILABILITY

(a) The Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or LFA 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, including some evening and weekend hours. 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. 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 LFA, but in no event more than once a quarter thirty (30) days following the end of each quarter, the Franchisee shall report to the LFA 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 Verizon service center as set forth in Subsection 2.E.

Subject to consumer privacy requirements, underlying activity will be made available to the LFA 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 LFA of such a change at least thirty (30) days in advance of any implementation.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

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

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

The Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding customer requests

for connection later than seven (7) days after ONT placement or later than seven (7) days after an order is placed if the ONT is already installed on the customer's premises.

(c) The Franchisee shall provide the LFA with a report upon request from the LFA, but in no event more than once a quarter thirty (30) days following the end of each quarter, 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 LFA 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 LFA of such a change not less than thirty (30) days in advance.

(d) The Franchisee will offer Subscribers "appointment window" alternatives for arrivals 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.

(e) In order to deliver new or replacement equipment to Subscribers, Franchisee may use, among other methods, a prepaid mailer or a visit by a service technician. Additionally, Franchisee may establish locations in or near the Franchise Area that will be open and accessible to the public to make payments and to pick up or drop off equipment.

(f) If Franchisee misses or fails to arrive on time for an installation, maintenance or service appointment, upon request the affected Subscriber will receive either a free installation or \$20 credit.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

(a) The Franchisee shall promptly notify the LFA of any Significant Outage of the Cable Service.

(b) The Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after the LFA and each affected Subscriber in the Service Area have been given fifteen (15) days prior notice of the proposed Significant Outage.

(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 LFA of a Cable Service problem.

(e) 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.

(f) 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.

(g) With respect to service issues concerning cable services provided to LFA facilities, Franchisee shall Respond to all inquiries from the LFA 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 LFA 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 LFA within seventy-two (72) hours. The Franchisee shall notify the LFA of those matters that necessitate an excess of seventy-two (72) hours to resolve, but those matters must be resolved within fifteen (15) days of the initial complaint. The LFA may require reasonable documentation to be provided by the Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

SECTION 6: BILLING

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

B. Every Subscriber with a current account balance sending payment directly to 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 LFA upon request.

H. The Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. 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.

SECTION 7: DEPOSITS, REFUNDS AND CREDITS

A. The Franchisee may require refundable deposits from Subscribers with 1) 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 law.

C. Under Normal Operating Conditions, refund checks will be issued within 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 expressly 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. Cable Service terminated for nonpayment of delinquent accounts 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.

B. 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.

C. Charges for cable service will be discontinued at the time of the requested termination of service by the subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by the Franchisee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Franchisee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by the Franchisee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from the Franchisee and to receive Cable Service or other multi-channel video service from another Person or entity.

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 Subscriber informing them that any complaints or inquiries not satisfactorily handled by the Franchisee may be referred to the LFA.

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

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

(2) A separate electronic notification

E. The Franchisee shall provide reasonable notice to Subscribers of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the 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, unless such advance notice is not possible due to the action or inaction of a programming provider or a taxing entity, and the Franchisee shall provide a copy of the notice to the LFA including how and where the notice was given to Subscribers.

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

(1) Products and Cable Service offered;

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

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

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

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

(6) Procedures for requesting Cable Service credit;

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

A copy of notices required in this Subsection 10.F. will be given to the LFA at least fifteen (15) days prior to distribution to subscribers if the reason for notice is due to a change that is within the control of Franchisee and as soon as possible if not with 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
- (3) The date by which payment is required in order to avoid termination of Cable Service
- (4) The telephone number for the Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.