

**ORDINANCE NO. 2008-3**

**ORDINANCE OF CONEWAGO TOWNSHIP AUTHORIZING THE EXECUTION OF  
A CABLE FRANCHISE AGREEMENT BETWEEN THE TOWNSHIP AND VERIZON  
PENNSYLVANIA, INC.**

**WHEREAS**, pursuant to Title VI of the Communications Act (see 47 U.S.C. § 601 et seq.), the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, the regulations of the Federal Communications Commission and Pennsylvania law, Conewago Township in Dauphin County is authorized to grant franchises to construct, operate and maintain a cable system utilizing public rights-of-way and properties within the Township’s jurisdiction; and

**WHEREAS**, Verizon of Pennsylvania, Inc. (“Verizon”) is upgrading its existing telecommunications system under Title II of the Communications Act (*see* 47 U.S.C. § 201 *et seq.*) and has applied for a non-exclusive cable franchise from Conewago Township to operate a cable system under Title VI of the Communications Act (*see* 47 U.S.C. § 521 *et seq.*); and

**WHEREAS**, Verizon is in the process of installing a Fiber to the Premise Telecommunications Network (“FTTP Network”) in Conewago Township for the transmission of non-cable services pursuant to authority granted by the Commonwealth of Pennsylvania; and

**WHEREAS**, the FTTP Network will occupy the public rights-of-way within Conewago Township, and Verizon desires to use portions of the FTTP Network once installed to provide cable services in the Township; and

**WHEREAS**, Conewago Township desires to protect and manage the public rights-of-way, require high standards of customer service, receive financial compensation for Verizon’s use of the public rights-of-way as provided by federal law, obtain complimentary services for its public buildings, obtain educational and governmental channels, establish certain reporting requirements, and provide for the future cable-related needs of its residents; and

**WHEREAS**, Conewago Township has determined Verizon to be financially, technically and legally qualified to operate the cable system to provide cable services; and

**WHEREAS**, Conewago Township has determined that the public interest would be served by granting a franchise to Verizon according to the terms and conditions contained in the Cable Franchise Agreement (the “Agreement”) negotiated with representatives of Verizon.

**NOW THEREFORE, BE IT ENACTED AND ORDAINED** by the Conewago Township Board of Supervisors as follows:

**SECTION 1. Grant of Franchise; Execution of Franchise Agreement.**

Conewago Township hereby grants Verizon a non-exclusive cable franchise subject to and in accordance with the terms and conditions of the Agreement. A copy of the Agreement is attached hereto and made a part hereof as Exhibit A.

**SECTION 2. Other Franchises Unaffected.**

Nothing in this Ordinance, including the Agreement, shall alter the terms of any other franchise(s) previously granted by Conewago Township. Such other franchise(s) shall remain in effect according to their particular terms and conditions.

**SECTION 3. Authority of the Capital Region Council of Governments.**

Pursuant to 53 Pa.C.S. § 2305, Conewago Township hereby authorizes the Capital Region Council of Governments to undertake those responsibilities that it is specifically permitted to undertake pursuant to the Agreement.

**SECTION 4. Severability.**

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not render this Ordinance invalid.

**SECTION 5. Enactment.**

**ENACTED AND ORDAINED** this 8 day of October, 2008.

CONEWAGO TOWNSHIP BOARD OF  
SUPERVISORS

\_\_\_\_\_  
John Rochat, Chairman of the Board

ATTEST:

\_\_\_\_\_  
Jay M. Brandt, Vice- Chairman of the Board

\_\_\_\_\_  
Shirley Meyers, Secretary

\_\_\_\_\_  
Galen Shelley, Member of the Board

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Revised: 08/11/2009 11:00 pm.

**Conewago Twp. Ord. No. 2008-3  
Verizon Cable Franchise  
10/08/2008**

**Exhibit A**

**Verizon Franchise Agreement**

**CABLE FRANCHISE AGREEMENT  
BETWEEN  
TOWNSHIP OF CONEWAGO  
AND  
VERIZON PENNSYLVANIA INC.**

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EXHIBIT A –BUILDINGS TO BE PROVIDED FREE CABLE SERVICE

EXHIBIT B –SERVICE AREAS

EXHIBIT C – CUSTOMER SERVICE STANDARDS

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into on this \_\_\_ day of \_\_\_\_\_, 2008 (the “Effective Date” as set forth in Section 2.3) by and between the TOWNSHIP OF CONEWAGO, Dauphin County, a validly organized and existing political subdivision of the Commonwealth of Pennsylvania (the “Local Franchising Authority” or “LFA” or “TOWNSHIP”), and VERIZON PENNSYLVANIA INC., a corporation duly organized under the applicable laws of the Commonwealth of Pennsylvania (the “Franchisee”).

WHEREAS, the Franchisee is upgrading its existing telecommunications system under Title II of the Communications Act (*see* 47 U.S.C. § 201 *et seq.*) and is applying for a non-exclusive cable franchise agreement from LFA to operate a Cable System under Title VI of the Communications Act (*see* 47 U.S.C. § 521 *et seq.*);

WHEREAS, the LFA wishes to grant the Franchisee a nonexclusive franchise to construct, install, maintain, extend, and operate a Cable System in the Township as designated in this Franchise;

WHEREAS, the Franchisee is a “cable operator” and LFA is a “local franchising authority” in accordance with Title VI of the Communications Act (*see* 47 U.S.C. § 522(5), (10)) and the LFA is authorized to grant one or more nonexclusive cable franchises pursuant to applicable state law;

WHEREAS, the Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network (“FTTP Network”) in the Township for the transmission of Non-Cable Services pursuant to authority granted by the Commonwealth of Pennsylvania;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the LFA, and the Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services in the Township;

WHEREAS, the LFA desires to protect and manage the Public Rights-of- Way, require high standards of customer service, receive financial compensation for Franchisee’s use of the Public Rights-of-Way as provided by federal law, obtain complimentary services for its public buildings, obtain educational and governmental channels, establish certain reporting and record access requirements, and provide for the future cable-related needs of its residents;

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

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

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

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

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. **DEFINITIONS**

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

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

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

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

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

1.5 *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), which currently states: "the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service."

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), which currently states "a 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 a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Public Rights-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of this Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric

utility systems.” 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 Township 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 *Capital Region Council of Governments ( Capital Region COG):*

A voluntary organization of local governments in the Commonwealth of Pennsylvania. As of the Effective Date of the Agreement, the Capital Region COG includes, but is not limited to, the following municipalities that collectively negotiated the Franchise with the Franchisee: Camp Hill Borough, Carroll Township, Conewago Township, Derry Township, Dillsburg Borough, East Pennsboro Township, Fairview Township, Hampden Township, Highspire Borough, Hummelstown Borough, Lemoyne Borough, Londonderry Township, Lower Allen Township, Lower Paxton Township, Lower Swatara Township, Mechanicsburg Borough, Middletown Borough, Monaghan Township, New Cumberland Borough, Paxtang Borough, Penbrook Borough, Royaltown Borough, Shiremanstown Borough, Silver Spring Township, South Hanover Township, Steelton Borough, Susquehanna Township, Swatara Township, Upper Allen Township, West Hanover Township, and Wormleysburg Borough.

1.8 *Channel:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), which currently states “a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).”

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

1.10 *Complaint:* Any written communication, including electronic mail, by a Subscriber expressing dissatisfaction with any aspect of Franchisee’s Cable System or cable operations.

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

1.12 *Customer Service Standards:* The standards for customer service as set forth in Exhibit C.

1.13 *Educational Access Channel:* An Access Channel available for the use of the local schools in the Township.

1.14 *EG:* Educational and/or Governmental.

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

1.16 *Fiber to the Premise Telecommunications Network (“FTTP Network”)*: The Franchisee’s network that transmits Non-Cable Services pursuant to the authority granted under the laws of the Commonwealth of Pennsylvania and under Title II of the Communications Act, which Non-Cable Services are not subject to Title VI of the Communications Act, and provides Cable Services from the operation of a Cable System.

1.17 *Force Majeure*: An event or events reasonably beyond the ability of the Franchisee to anticipate and control. This includes, but is not limited to the following: severe or unusual weather conditions, labor strikes, slowdowns, stoppages, and lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, including terrorist attacks, orders of the government of the United States or the Commonwealth of Pennsylvania (including condemnation to the extent not foreseeable), accidents for which the Franchisee is not responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which the Franchisee’s FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials and/or qualified labor was reasonably beyond the ability of Franchisee to foresee or control.

1.18 *Franchisee*: Verizon Pennsylvania Inc., and its lawful and permitted successors, assigns, and transferees.

1.19 *Government Access Channel*: An Access Channel available for the use by LFA for governmental purposes.

1.20 *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, which is derived by the Franchisee or its Affiliates, from the operation of the Cable System to provide Cable Service in the Township, including, but not limited to:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for any service tier other than Basic Service;
- (3) fees charged for premium services;
- (4) fees charged to Subscribers for any optional, per-channel or per-program services;
- (5) revenue from the provision of any other Cable Services;
- (6) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video programming;
- (7) fees for downgrading any level of Cable Service programming;
- (8) fees for service calls;
- (9) fees for leasing of channels;
- (10) fees for rental of any and all equipment, including digital video recorders, converters and remote control devices;
- (11) advertising revenues as set forth herein;
- (12) revenue from the sale or rental of Subscriber lists;

- (13) revenues or commissions from home shopping channels subject to Section 1.20.5 below;
- (14) fees for music services that are Cable Services over the Cable System;
- (15) fees for video-on-demand;
- (16) revenue from sales of program guides;
- (17) late payment fees;
- (18) NSF check charges; and
- (19) franchise fees for the provision of Cable Services over the Cable System in the Township.
- (20) Foregone revenue that Franchisee chooses not to receive in exchange for trades, barter, services, or other items of value consistent with 1.20.8.

Advertising commissions paid to independent third parties shall not be deducted from advertising revenue included in Gross Revenue. 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. By way of illustrative example, Franchisee sells two ads: Ad "A" is broadcast nationwide; Ad "B" is broadcast only within Pennsylvania. Franchisee has 100 Subscribers in LFA, 500 subscribers in Pennsylvania, 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.

Gross Revenue shall not include:

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

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

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

1.20.4 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, internet-derived 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 that are classified as Non-Cable Services; and any other revenues classified as Non-Cable Services in accordance with applicable laws or regulations;

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

1.20.6 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;

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

1.20.8 Any forgone revenue that the 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 the Franchisee and public institutions or other institutions designated in the Franchise; provided, however, that such forgone revenue that the Franchisee chooses not to receive in exchange for trades, barter, services, or other items of value shall be included in Gross Revenue;

1.20.9 Sales of capital assets or sales of surplus equipment that are not deemed to be a Cable Service;

1.20.10 Program launch fees;

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

1.20.12 Any fees or charges collected from Subscribers or other third parties for any EG grant.

1.21 *Incumbent Local Exchange Carrier*: Shall be defined herein as it is defined under Section 251(h) of the Communications Act, 47 U.S.C. § 251(h).

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

1.23 *Initial Service Area*: The portion of the Township as set forth in Section 3.1.1 and outlined in Exhibit B.

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

1.25 *Local Franchise Authority (LFA)*: The Township of Conewago or the lawful successor, transferee, or assignee thereof.

1.26 *Non-Cable Services*: Any service that is not a Cable Service as defined herein, including, but not limited to, Information Services and Telecommunications Services.

1.27 *Normal Business Hours*: Those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and some weekend hours. *See* C.F.R. § 76.309(c)(4)(i).

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

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

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

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

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

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

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

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

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

1.37 *Title II*: Title II of the Communications Act, Common Carriers, as amended, which governs the provision of Telecommunications Services.

1.38 *Title VI*: Title VI of the Communications Act, Cable Communications, as amended, which governs the provision of Cable Services by Franchisee.

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

1.40 *Transfer of the Franchise*:

1.40.1 Any transaction in which:

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

1.40.1.2 at least thirty percent (30%) of the equitable ownership of the Franchisee is transferred or assigned.

1.40.1.3 the rights held by the Franchisee pursuant to this Agreement are transferred or assigned to another Person or group of Persons.

1.40.2 However, notwithstanding subsections 1.40.1.1, 1.40.1.2, and 1.40.1.3, a *Transfer of the Franchise* shall not include transfer of an ownership or other interest in the Franchisee to the parent of the Franchisee or to another Affiliate of the Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of the Franchisee or to another Affiliate of the Franchisee; any action that is the result of a merger of the parent of the Franchisee; or any action that is the result of a merger of another Affiliate of the Franchisee.

1.41 *Video Programming*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20), which currently states programming provided by, or generally considered comparable to programming provided by a television broadcast station.

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

2.1 *Grant of Authority:* Subject to the terms and conditions of this Agreement and applicable laws and regulations, the LFA hereby grants the Franchisee the right to own, construct, operate, and maintain a Cable System to provide Cable Services along the Public Rights-of-Way within the Township. No privilege or power of eminent domain is bestowed or waived by this grant; nor is such a privilege or power bestowed or waived by this Agreement.

2.2 *LFA's Regulatory Authority:* 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 for the provision of Non-Cable Services. The jurisdiction of LFA over Franchisee's Telecommunications Facilities is governed by federal and state law, and LFA will not assert jurisdiction over Franchisee's FTTP Network in contravention of those laws. Therefore, as provided in Section 621 of the Communications Act, 47 U.S.C. § 541, 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. This Agreement shall not be construed to limit the existing regulatory authority LFA has under federal and state law with respect to the FTTP Network facilities.

2.3 *Authority of the Capital Region COG:* Upon the LFA enacting an ordinance pursuant to 53 Pa.C.S. § 2305 presenting lawful authorization, the Capital Region COG, its successors and assigns, shall have the right to receive compliance information from the Franchisee as expressly provided for in Sections 6.2, 8, 13.5.4, as well as Sections 2.G., 3.C., 4.G. and 6.G. of Exhibit C, of this Agreement and undertake the actions expressly provided for in Sections 3.1.4, 6.3, as well as Section 5 of Exhibit C, of this Agreement. Such authorization may be included in the ordinance approving this Agreement. Should the Capital Region COG dissolve for any reason, its rights pursuant to this Agreement shall revert to the LFA.

2.4 *Term:* This Franchise shall become effective on \_\_\_\_\_, 2008 (the "Effective Date"). The term of this Franchise shall be ten (10) years from the Effective Date until \_\_\_\_\_ unless the Franchise is earlier revoked as provided herein.

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

2.6 *Franchise Subject to Federal, State, and Local Law:*

Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal, state, and local laws and regulations.

2.7 *No Waiver:*

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

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

2.8 *Construction of Agreement:*

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

2.8.2 Should any change to federal or state law have the lawful effect of materially altering the terms and conditions of this Agreement making it commercially impracticable for Franchisee to continue the provision of Cable Services in the Township, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on the Franchisee and the LFA of the material alteration. Any modification to this Franchise shall be in writing and signed by both parties. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then upon either party's initiative, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.8.2.1 *Change of Law:* Notwithstanding Section 2.8.2, in the event that there is any other change in federal or state statute or regulation applicable to this Agreement, the LFA or Franchisee may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. Any such amendment or amendments shall be approved by the LFA and Franchisee.

2.9 *Police Powers:* Nothing in this Franchise shall be construed to prohibit the reasonable, necessary, and lawful exercise of the police powers of the LFA. However, if the reasonable, necessary, and lawful exercise of the police power results in any material alteration of the terms and conditions of this Franchise, making it commercially impracticable for Franchisee to continue providing Cable Services in the

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

### 3. **PROVISION OF CABLE SERVICE**

#### 3.1 *Service Area:*

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

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

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

3.1.4 *Service Availability Meeting:* Franchisee agrees that, upon the request of the Capital Region COG, and with no less than thirty (30) days written notice to Franchisee, but no more than twice per calendar year, a representative of the Franchisee will meet with representatives of the Capital Region COG to provide additional information on the status of deployment of Cable Services in the Franchise Area. The Service Availability Meeting may be attended only by representatives of the Capital Region COG, and will not be open to the public. Capital Region COG representatives shall be subject to the confidentiality requirements set forth in Section 8.1 with respect to any information Franchisee discloses at the Service Availability Meeting.

3.2 *Availability of Cable Service:* The Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and the Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which the Franchisee shall provide Cable Service, the Franchisee shall be required to connect, at the Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within two hundred (200) feet of trunk or feeder lines not otherwise already served by the Franchisee's FTTP Network. The Franchisee shall be allowed to recover, from a Subscriber that requests such connection, no more than the actual costs incurred for residential dwelling unit connections that exceed two hundred (200) 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, Basic (or equivalent) Service to the following:

3.3.1 Each municipal building, fire station, police station, public works facility, parks and recreation facility, water treatment plant, and public library in the Township, as designated in Exhibit A; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than two hundred (200) feet solely to provide service to any such public building, LFA shall have the option either of paying Franchisee's direct costs for such extension in excess of two hundred (200) feet, or of releasing Franchisee from the obligation to provide service to such building.

3.3.2 Franchisee shall be permitted to recover, from any municipal building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than two hundred (200) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming provided that the Franchisee has made the LFA aware of those rights with respect to third parties.

3.3.3 In addition to the locations designated in Exhibit A, Franchisee shall provide, without charge, within the Township, up to one (1) service outlet activated for Basic Service to two (2) additional municipal buildings, not including schools, over the life of the contract at a location as mutually agreed upon by the parties subject to all conditions set forth in this Section 3.3.

3.3.4 Notwithstanding the foregoing, Franchisee shall not be required to provide Cable Service to any building set forth in Exhibit A until a reasonable period of time after Franchisee serves the applicable portion of the Township with its Title II FTTP Network, and the applicable wire center serving such building is video enabled.

#### 4. **SYSTEM FACILITIES**

4.1 *Technical Requirement:* Franchisee shall operate, maintain, construct and extend the Cable System so as to provide high quality signals and reliable delivery of one-way and two-way Cable Services for all cable programming services throughout the LFA. The Cable System shall meet or exceed any and all applicable technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and the laws of the Commonwealth of Pennsylvania, to the extent not in conflict with federal law and regulations, as determined by a final order of a court of competent jurisdiction.

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

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

4.2.2 The System shall be designed, constructed and maintained as an active two-way system that allocates sufficient portion of said bandwidth to deliver reliable two-way Cable Services.

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

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

#### 5. **EG SERVICES**

5.1 *EG Set Aside; Interconnection:*

5.1.1 In order to ensure universal availability of Educational and Government Access programming, Franchisee shall reserve on the Basic

Service Tier capacity for the use of one (1) dedicated Educational or Governmental Access Channel (“Reserved EG Channel”); provided, however, that other cable operator(s) providing cable service in the Franchise Area also similarly reserves or provides, as the case may be, a dedicated EG Channel. The Reserved EG channel may be used for Educational programming, Governmental programming, or both. The LFA will comply with all laws and regulations related to use of the Reserved EG Channel. The parties agree that Franchisee shall retain the right to utilize the Reserved EG Channel capacity during the Term of this Franchise until such time as the LFA elects to utilize the Reserved EG Channel for educational and/or governmental purposes and/or if the LFA ceases to use the Reserved EG Channel during the term of this Agreement.

5.1.2 The LFA may activate the Reserved EG Channel by providing Franchisee with written notice to Franchisee one hundred twenty (120) days prior to the date it intends to activate the Reserved EG Channel. Use of the EG Channel may be shared with other members of the Capital Region COG as long as it is reasonably technically and financially feasible to do so. The LFA’s notice pursuant to this Section 5.1.2 shall constitute authorization to Franchisee to transmit the EG Channel within and outside the LFA. Thereafter, Franchisee shall assign the EG Channel on its channel lineup on the Basic Service Tier. The LFA or its designee shall have complete control over the content, scheduling, and administration of the EG Channel and may delegate such functions, or a portion of such functions, to an appropriate designee. Franchisee shall neither exercise nor attempt to exercise any editorial control over EG Channel programming.

5.1.3 Following receipt of the LFA’s or its designee’s notice of activation of the Reserved EG Channel as set forth above, Franchisee shall use reasonable efforts to interconnect its Cable System with the existing cable operator(s) if such operators are providing or have indicated plans to provide an EG Access Channel. After receiving such notice of activation, Franchisee shall initiate interconnection negotiations with the existing cable operator(s) to cablecast, on a live basis, EG Access programming consistent with this Franchise. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Franchisee shall negotiate in good faith with existing cable operator(s) respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms, and conditions. The LFA or its designee shall support and encourage good faith negotiations between Franchisee and existing cable operator(s) for interconnection of the existing cable operator(s)’ cable system(s) with the Cable System on reasonable terms and conditions. Franchisee and the existing cable operator(s) shall negotiate the precise terms and conditions of an interconnection agreement.

5.1.4 If the procedures of Section 5.1.3 do not result in interconnection of Franchisee’s Cable System with the existing cable operator(s) for purposes of providing the EG Channel, the LFA or its designee may require Franchisee to provide a video link, no earlier than twelve (12) months after receipt of the LFA’s notice to activate the Reserved EG Channel pursuant to Section 5.1.2, without charge to LFA, to a mutually agreeable location within LFA where the EG Channel programming is originated for the purpose of cablecasting EG Channel programming. Notwithstanding

the foregoing, Franchisee shall not be obligated to provide the LFA or its designee with either cablecast equipment and facilities or personnel responsible for maintaining and operating such equipment and facilities or generating any such EG Channel programming. Furthermore, Franchisee shall not be required to provide a video link to any location earlier than twelve (12) months after Franchisee serves such location with its Title II FTTP Network, and the applicable wire center serving such location is video enabled.

5.1.5 In the event that direct connection occurs pursuant to Section 5.1.4, Franchisee shall be responsible for maintaining a direct video link to the above location set forth in Section 5.1.4; provided, however, the LFA or its designee is responsible for providing Franchisee with access to these locations and access to the EG equipment within those locations. The LFA or its designee shall provide to Franchisee from this location a video signal and signal feeds that share an EG Access Channel. The location's LFA or its designee shall be responsible for ensuring that the signal feeds are properly connected to the correct EG Access Channel for distribution to Subscribers. Franchisee, upon receipt of a video signal from the location set forth in Sections 5.1.4, shall provide, install, and maintain in good working order the equipment and the fiber necessary for transmitting the signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and such cooperation of the location's LFA or its designee as is reasonably necessary for Franchisee to fulfill such obligations. If access is unavailable, or if the location's LFA or its designee is unable to provide a video signal, or if Franchisee is denied access to existing EG equipment, the location's LFA or its designee is solely responsible for bringing the EG Channel video signal to Franchisee's Cable System at a mutually-agreeable location.

## 5.2 *EG Grant:*

5.2.1 Franchisee shall provide a grant to LFA a lump sum grant (the "EG Grant") and an annual grant (the "Annual EG Grant") as set forth below.

5.2.2 The EG Grant provided by Franchisee hereunder shall be the sum of \$4,051.47. The EG Grant shall be payable to the LFA in the following installations: \$2,633.45 shall be delivered to the LFA within ninety (90) days of the Effective Date; \$709.01 shall be delivered to the LFA within thirty (30) days of the second anniversary of the Effective Date; and \$709.01 shall be delivered to the LFA within thirty (30) days of the fifth anniversary of the Effective Date.

5.2.3 The Annual EG Grant provided by the Franchisee hereunder shall be the sum of six cents (6¢), per month, per Subscriber in the Service Area to the Franchisee's Basic Service tier, subject to activation of the Reserved EG Channel pursuant to Section 5.1.2. After LFA or LFA's designee provides notice to activate the Reserved EG Channel, calculation of the Annual EG Grant shall commence with the first calendar month after LFA provides such notice pursuant to Section 5.1.2.

5.2.4 The Annual EG Grant payment, along with a brief summary of the Subscriber information upon which it is based, shall be delivered to the LFA within sixty (60) days after the beginning of each applicable calendar year during the Franchise Term.

5.2.5 Upon request by Franchisee, LFA shall provide Franchisee with a complete accounting of the distribution of funds granted pursuant to this Section 5.2.

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

5.4 *Recovery of Costs:* To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs of the EG Grant, the Annual EG Grant, or any other costs arising from the provision of EG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection costs to Subscribers. Once Franchisee has recovered the entire amount of the EG Grant or any other costs arising from the provision of EG Services, it shall cease recovering those costs as a separately billed item on Subscribers' bills.

## 6. **FRANCHISE FEES**

6.1 *Payment to the Township:* Franchisee shall begin calculating a franchise fee within sixty (60) days of receiving a written notice from LFA requesting such a fee, provided that the franchise fee may not exceed the maximum amount permitted by federal law and also provided that all other cable operator(s) providing cable service in the Franchise Area are obligated to pay LFA the same franchise fee. 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. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 (for the fourth quarter). In the event that any franchise fee payment is not made on or before the applicable dates, then interest shall be added at the rate of six percent (6%) per year of the amount of franchise fee revenue due to the LFA. No acceptance of any payment shall be construed as an accord that the amount paid is the

correct amount. The 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 ninety (90) days following the close of the calendar year for which such payments were applicable.

6.2 *Supporting Information:* Each franchise fee payment shall be accompanied by a brief report that provides a line item for every source of revenue received and the amount of revenue received from each source and is verified by a financial manager of Franchisee. A copy of such franchise fee report shall be submitted, upon request, to the Capital Region COG, consistent with Section 2.3.

6.2.1 *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment by the Franchisee is due.

6.3 *Audits:*

6.3.1 LFA or the Capital Region COG may conduct an audit or a franchise fee review of Franchisee's books and records no more than once every three (3) years during the Term. Any confidential information provided for review shall be afforded all confidential protection available under state and federal law. Franchisee shall make available at a mutually agreeable location in the Harrisburg, Pennsylvania area all records reasonably requested and necessary to conduct any such audit or franchise fee review. Subject to applicable state and federal privacy provisions, Franchisee shall provide the LFA with copies of audit or franchisee records reasonably necessary to support an audit or franchise fee review's findings upon written request. Franchisee may redact any confidential information from such copies.

6.3.2 Each party shall bear its own costs of an audit; provided, however, that if the results of any audit indicate that Franchisee underpaid the franchise fees by five percent (5%) or more, then Franchisee shall pay the following reasonable, documented, out-of-pocket costs of the audit: up to three thousand dollars (\$3,000) if the LFA conducts an audit or up to fifty thousand dollars (\$50,000) if the Capital Region COG conducts an audit on behalf of all or a majority of the municipalities that collectively negotiated the Franchise as set forth in Section 1.7.

6.3.3 If the results of an audit indicate an underpayment of franchise fees, Franchisee shall remit such underpayment within forty-five (45) days; provided, however, that Franchisee shall be required to remit underpayments to LFA together with interest at five percent (5%) of the amount correctly due from the date such underpayment would have been due.

6.3.4 Any audit shall be conducted by an independent third party. Any entity employed by LFA that performs the audit or franchise fee review shall not be permitted to be compensated on a success based formula e.g. payment based on an underpayment of fees, if any.

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

7. **CUSTOMER SERVICE**

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

8. **RECORDS**

8.1 *Open Books and Records*: Upon thirty (30) days' written notice to the Franchisee, the LFA or the Capital Region COG shall have the right to inspect the Franchisee's books and records pertaining to this Agreement or the Franchisee's provision of Cable Service in the Township at any time during Normal Business Hours, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise that is under review, so that the Franchisee may organize the necessary books and records for appropriate access by the LFA or the Capital Region COG. The books and records to be made available for inspection by LFA or the Capital Region COG shall be made available for inspection at a location in the Harrisburg, Pennsylvania area mutually agreed upon by the parties. The Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than five (5) years. Notwithstanding anything to the contrary set forth herein, the Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to this Agreement or to the provision of Cable Service in the LFA. If the Franchisee claims any information to be proprietary or confidential, it shall provide a written explanation as to the reason it is claimed to be confidential or proprietary. The LFA or the Capital Region COG shall treat any information disclosed by the Franchisee as confidential so long as it is permitted to do so under applicable law, and shall only disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. § 551.

8.2 *Records Required*: The Franchisee shall at all times maintain the following, which may be inspected pursuant to Section 8.1 above:

8.2.1 Records of all Complaints for a period of five (5) years after receipt by the Franchisee. Complaints recorded will not be limited to complaints requiring an employee service call;

8.2.2 Records of outages for a period of five (5) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

8.2.3 Records of service calls for repair and maintenance for a period of five (5) years after resolution by the Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

8.2.4 Records of installation/reconnection and requests for service extension for a period of five (5) years after the request was fulfilled by the Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

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

## 9. **INSURANCE AND INDEMNIFICATION**

### 9.1 *Insurance:*

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

9.1.1.1 Commercial General Liability Insurance in the amount of three million dollars (\$3,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation, and maintenance of the Cable System, and the conduct of the Franchisee's Cable Service business in the LFA.

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

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

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

9.1.2 The LFA shall be designated as an additional insured under each of the insurance policies required in this Article 9 except Worker's Compensation and Employer's Liability Insurance.

9.1.3 The Franchisee shall not cancel any required insurance policy without obtaining alternative insurance prior to the cancellation in conformance with this Agreement.

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

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

## 9.2 *Indemnification:*

9.2.1 The Franchisee agrees to indemnify, save and hold harmless, and defend the LFA, its elected and appointed officials, officers, agents, boards, and employees, from and against any and all claims for injury, loss, liability, cost or expense arising in whole or in part from, incident to, or connected with any act or omission of Franchisee, its officers, agents, or employees, including the acts or omissions of any contractor or subcontractor of Franchisee, arising out of the construction, operation, upgrade, or maintenance of its Cable System. The obligation to indemnify, save, hold harmless and defend the LFA shall include the obligation to pay judgments, injuries, liabilities, damages, penalties, attorneys' fees, expert fees, court costs and all other costs of such indemnification. The LFA shall give the Franchisee timely written notice of its obligation to indemnify the LFA pursuant to this subsection. The LFA shall provide the Franchisee with such written notice within a period of time that allows the Franchisee to take action to avoid entry of a default judgment and does not prejudice the Franchisee's ability to defend the claim or action. Notwithstanding the foregoing, the Franchisee shall not indemnify the LFA for any damages, liability, or claims resulting from the willful misconduct or negligence of the LFA, its elected and appointed officials, officers, agents, employees.

9.2.2 With respect to the Franchisee's indemnity obligations set forth in subsection 9.2.1, the Franchisee shall provide the defense of any claims brought against the LFA by selecting counsel of the Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the LFA, the Franchisee shall have the right to defend, settle, or compromise any claim or action arising hereunder, and the Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the LFA, and the LFA does not consent to the terms of any such settlement or compromise, the Franchisee shall not settle the claim or action, but its obligation to indemnify the LFA shall in no event exceed the amount of such settlement.

10. **TRANSFER OF FRANCHISE**

10.1 *Transfer*: Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, and applicable regulations, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.40 above. Franchisee shall make written application to the LFA of any Transfer and shall provide information required by FCC Form 394 and any other applicable federal and state statutes and regulations regarding transfer or assignment. The LFA shall have one hundred twenty (120) days in accordance with 47 C.F.R. § 76.502 to take action on the Transfer application. Any consent by the LFA for any Transfer shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement.

11. **RENEWAL OF FRANCHISE**

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

12. **ENFORCEMENT AND TERMINATION OF FRANCHISE**

12.1 *Notice of Non-Compliance*: If at any time the LFA believes that Franchisee has not complied with the terms of this Agreement, the LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem in a reasonable time, the LFA shall then notify Franchisee in writing of the exact nature of the alleged noncompliance (for purposes of this Article, the “Noncompliance Notice”). If the LFA does not notify Franchisee of any alleged noncompliance, it shall not operate as a waiver of any rights of the LFA hereunder or pursuant to applicable law. Notwithstanding the foregoing, Franchisee shall not be prohibited from raising any applicable defenses under the law.

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

12.3 *Public Hearing:* In the event that Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by Section 12.2, or in the event that the alleged noncompliance is not cured within thirty (30) days or the date projected pursuant to Section 12.2(iii) above, if LFA seeks to continue its investigation into the alleged noncompliance, then Franchisee may request a public hearing. If such a hearing is scheduled, LFA shall provide Franchisee at least thirty (30) days prior written notice of such public hearing, which will specify the time, place, and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

12.4 *Liquidated Damages:* After the time period set forth in Sections 12.1-12.3 above, in the event that LFA finds that an alleged noncompliance continues to exist and that Franchisee has not corrected the same in a satisfactory manner or has not diligently pursued correction of such violation, Franchisee agrees that LFA may recover liquidated damages from Franchisee in the amounts set forth below following the notice and opportunity to cure provisions set forth in Sections 12.1-12.3 above. Notwithstanding the foregoing, if Franchisee disputes the assessment of any liquidated damages hereunder, Franchisee may request and LFA agrees to schedule a public hearing with regard to such dispute. Following the notice and opportunity to cure periods in Sections 12.1-12.3 above, LFA shall provide Franchisee with written notice that it intends to elect the liquidated damage remedies set forth herein. If LFA elects to recover liquidated damages for any item set forth in this Section 12.4 (including customer service violations), LFA agrees that such recovery shall be its exclusive remedy for the time period in which liquidated damages are assessed; provided, however, once LFA has ceased to assess its liquidated damages remedy as set forth in Section 12.4.2, it may pursue other available remedies.

12.4.1 Pursuant to Section 12.4, the following monetary damages shall apply:

For failure to provide Cable Service as set forth in Sections 3.1-3.3	\$100 per day for each day the violation continues;
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For failure to maintain the FCC technical standards as set forth in Section 4	\$100 per day for each day the violation continues;
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For failure to provide EG Services to the community specified in Section 5	\$100/day for each day the violation continues;
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For failure to permit a franchise fee audit within forty-five (45) days of a request as set forth in Section 6.3	\$100/day for each day the violation continues;
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For failure to provide LFA with any reports records required by this Agreement

within the time period required	\$100/day for each day the violation continues;
For failure to meet customer service requirements with regard to Sections 2, 3, and 4 of the Customer Service Standards set forth in Exhibit C	\$300 for each quarter in which such standards were not met;
For failure to carry the insurance specified in Section 9.1.1	\$100/day for each day the violation continues; and
For a Transfer specified in Section 10 without required approval	\$100/day for each day the violation continues.

12.4.2 The amount of all liquidated damages per annum shall not exceed twelve thousand dollars (\$12,000) in the aggregate. With respect to the damages assessed pursuant to 12.4.1, all similar violations or failures from the same factual events affecting multiple subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any one of the above-referenced categories. Violations or failures shall not be deemed to have occurred or commenced until they are not cured as provided in Section 12.

12.5 *Revocation:* Should LFA seek to revoke this Agreement after following the procedures set forth above in this Article, including any public hearing described in Section 12.3, and LFA chooses not to impose liquidated damages or ceases to impose liquidated damages, LFA shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. Franchisee shall have sixty (60) days from receipt of 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 Agreement at a second 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 Agreement.

12.5.1 At the designated public hearing, Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to request the relevant testimony of the officials, agents, or employees 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.

12.5.2 Following the public hearing(s), Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions to LFA in

writing, and thereafter LFA shall determine (i) whether an event of default has occurred under this Agreement; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured by Franchisee. LFA shall also determine whether it will revoke the Franchise based on the information presented or, in the discretion of LFA, grant additional time to Franchisee to effect any cure. If LFA determines that it will revoke the Franchise, LFA shall promptly provide Franchisee with a written determination setting forth LFA's reasoning for such revocation. Franchisee may appeal such written determination of LFA to an appropriate court of competent jurisdiction, which will have the power to review the determination of the LFA consistent with applicable law. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within the time frame permitted by law.

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

12.6 *Franchisee Termination:* The Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of three (3) years from the Service Date of this Franchise, if at the end of such three (3) year period the Franchisee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System making it commercially impracticable for Franchisee to continue to provide Cable Service in the Township. The Franchisee may consider Subscriber penetration levels outside the Township in this determination. Notice to terminate under this Section 12.6 shall be given to the LFA in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. The Franchisee shall also be required to give its then current Subscribers not less than ninety (90) days' prior written notice of its intent to cease Cable Service operations.

### 13. **MISCELLANEOUS PROVISIONS**

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

13.2 *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors, and assigns. This Agreement is authorized by Ordinance No. \_\_\_ dated \_\_\_\_\_, 2008 of the Township Board of Supervisors.

13.3 *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be

binding on the parties hereto, without the requirement of further action on the part of the LFA.

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

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

13.5.1 Notices to the Franchisee shall be mailed to:

President  
Verizon Pennsylvania Inc.  
1717 Arch Street, Floor 17  
Philadelphia, PA 19103

13.5.2 with a copy to:

Senior Vice President and General Counsel  
Video Services  
Verizon Telecom  
One Verizon Way  
Room VC43E010  
Basking Ridge, NJ 07920-1097

13.5.3 Notices to the LFA shall be mailed to:

Township Manager  
Conewago Township Building  
3279 Old Hershey Road  
Elizabethtown, PA 17022

13.5.4 Consistent with Section 2.3, notices to the Capital Region COG shall be mailed to:

Capital Region Council of Governments  
Attn: COG Director  
230 S. Sporting Hill Road  
Mechanicsburg, PA 17050

13.6 *Entire Agreement*: This Franchise and the Exhibits hereto constitute the entire agreement between the Franchisee and the LFA and supersedes all prior or contemporaneous agreements, representations, or understanding (whether written

or oral) of the parties regarding the subject matter hereof. Any lawful ordinances or parts of ordinances related to the provision of Cable Services over the Cable System in the LFA that conflict with the provisions of this Agreement are superseded by this Agreement.

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

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

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

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

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

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

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

**[SIGNATURE PAGE FOLLOWS]**

AGREED TO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2008.

TOWNSHIP OF CONEWAGO

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

VERIZON PENNSYLVANIA INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBITS

Exhibit A: Buildings to be Provided Free Cable Service

Exhibit B: Service Areas

Exhibit C: Customer Service Standards

CONEWAGO TOWNSHIP

**EXHIBIT A**

**BUILDINGS TO BE PROVIDED FREE CABLE SERVICE<sup>1</sup>**

Conewago Township Building  
3279 Old Hershey Road  
Elizabethtown, PA 17022

<sup>1</sup> In addition to the locations designated in Exhibit A, in the event that the LFA activates an EG Channel pursuant to Section 5, Franchisee shall provide, without charge, within the LFA, up to one (1) service outlet activated for Basic Service at the location where EG programming is originated, subject to all conditions set forth in Section 3.3.

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**EXHIBIT B**

**SERVICE AREAS**

**The service areas are shown in the map set forth below.**

## **EXHIBIT C**

### **CUSTOMER SERVICE STANDARDS**

These standards shall, starting six (6) months after the Service Date, apply to the Franchisee to the extent it is providing Cable Services over the Cable System in the Township.

#### **SECTION 1: DEFINITIONS**

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

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 two hundred (200) 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 Township and/or residents regarding Cable Service. The Franchisee representatives trained and qualified to answer questions related to Cable Service in the Service Area must respond to customer telephone inquiries during Normal Business Hours. Such representatives must be available to respond to Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty five (45) hours per week. The Franchisee representatives shall identify themselves by name when answering this number.

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

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

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

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

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

F. At the Franchisee's option, the measurements above may be changed from calendar quarters to billing or accounting quarters. The Franchisee shall notify the LFA of such a change at least thirty (30) days in advance of any implementation. Franchisee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply.

G. Upon request from the LFA or the Capital Region COG, 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 or the Capital Region COG the following for the applicable call center receiving calls from Subscribers in the LFA, 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, the underlying activity will be made available to the LFA or the Capital Region COG for review upon reasonable request.

### **SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS**

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

B. The Standard Installation shall be performed within seven (7) business days after an order is placed if the ONT is already installed on the customer's premises. If the ONT is not installed at time of service order, installation shall be performed no later than fourteen (14) business days after order is placed.

The Franchisee shall meet this standard for ninety five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding customer requests for connection later than fourteen (14) 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 or the Capital Region COG with a report upon request, but in no event more than once a 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 or the Capital Region COG for review upon reasonable request.

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

D. The Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls, and other activities of a maximum four (4) hours scheduled time block during Normal Business Hours. At Franchisee's discretion, 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. The Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If a technician is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

#### **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. Notwithstanding the foregoing, the Franchisee may perform modifications, repairs, and upgrades to the System between 12.01 a.m. and 6 a.m. which may interrupt service, and this Section's notice obligations

respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual Subscriber notice.

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

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

(1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls respecting Service Interruptions in the Service Area and shall diligently pursue to completion.

(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 and shall diligently pursue to completion.

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

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

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

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

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

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

#### **SECTION 5: CUSTOMER COMPLAINTS**

A. Under Normal Operating Conditions, the Franchisee shall investigate Subscriber complaints referred by the LFA or the Capital Region COG within seventy-two (72) hours. The Franchisee shall notify the LFA or the Capital Region COG 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 or the Capital Region COG 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 Subscriber’s complaint and advise the Subscriber of the results of that investigation.

#### **SECTION 6: BILLING**

A. Subscriber bills shall be clear, concise, and understandable. Bills shall be fully itemized to include all applicable service tiers and, if applicable, all related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. The Franchisee shall maintain records of the date and place of mailing of bills.

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

C. 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;

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

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

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

D. 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.

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

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

G. The LFA hereby requests that the Franchisee omit the LFA's name, address, and telephone number from Subscriber bills as permitted by 47 C.F.R. § 76.952 and replace this information with the name, address and telephone number of the Capital Region COG.

#### **SECTION 7: RATES, FEES, AND CHARGES**

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

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

#### **SECTION 8: DISCONNECTION /DENIAL OF SERVICE**

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

B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which

Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Service Interruption was reported by the Subscriber.

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

## **SECTION 9: 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. 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.

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

E. 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 9.D., 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 9.E. will be given to the LFA at least fifteen (15) days prior to distribution to Subscribers if the reason for notice is due to a change that is within the control of the Franchisee and as soon as possible if not within the control of the Franchisee.

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

G. 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.

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

- (1) The name and address of the Subscriber whose account is delinquent;

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

**SECTION 10: PRIVACY**

The Franchisee shall protect and abide by the rights of privacy of every Subscriber and shall not violate such rights through the use of any device or signal associated with the Cable System. The Franchisee shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and state privacy laws and regulations.

**Notes:** *Conewago Online* and *Conewago.us* are not affiliated with the township government. This computer version of a public record ©2009 by Joel Buckley. Accuracy is not guaranteed. Revised: 08/11/2009 11:00 pm.