

9/29/06

NOTE TO BOS -

THIS REMAINS THE LATEST DRAFT OF THE AGREEMENT. NEGOTIATIONS ARE STILL ONGOING AND CHAIRMAN FOSTER IS INVOLVED. WE ARE HOPEFUL THAT AN ACCEPTABLE AGREEMENT WILL BE AVAILABLE FOR BOARD CONSIDERATION ON TUESDAY, OCTOBER 3.

DRAFT - 9/19/06

*you*

CABLE TELEVISION  
FINAL LICENSE

GRANTED TO  
VERIZON NEW ENGLAND, INC.

THIS DRAFT DATED  
SEPTEMBER 19, 2006

BOARD OF SELECTMEN  
TOWN OF ACTON,  
MASSACHUSETTS

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THIS CABLE LICENSE AGREEMENT (this "License") is entered into by and between the Board of Selectmen of the Town of Acton, as Issuing Authority for the grant of the cable television license pursuant to the Massachusetts Cable Law (M.G.L. c. 166A), and Verizon New England, Inc., a corporation duly organized under the applicable laws of the State of New York (the "Licensee").

WHEREAS, the Issuing Authority wishes to grant Licensee a nonexclusive License to install, maintain, extend and operate a Cable System in the Town as designated in this License;

WHEREAS, the Issuing Authority is a "franchising authority" in accordance with Title VI (as hereinafter defined) (see 47 U.S.C. § 522(10)) and is authorized to grant one or more nonexclusive cable licenses pursuant to the Massachusetts Cable Law;

WHEREAS, Licensee is in the process of upgrading its existing Telecommunications Facilities through the installation of a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Town which transmits Non-Cable Services pursuant to authority granted by M.G.L. c. 166 and Title II, which Non-Cable Services are not subject to the Massachusetts Cable Law or Title VI;

WHEREAS, the FTTP Network occupies the Public Rights-of-Way within the Town, and Licensee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Town;

WHEREAS, Licensee submitted an application dated March 14, 2006, on Cable Division Form 100 for a license to operate and maintain a Cable System in the Town;

WHEREAS, pursuant to 207 CMR 3.03(3), the Issuing Authority released an Issuing Authority Report dated June 28, 2006, and Licensee submitted an amended application dated July 26, 2006;

WHEREAS, pursuant to 207 CMR 3.03(4), the Issuing Authority held a public hearing to assess the qualifications of Licensee, and has found Licensee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the Issuing Authority has determined that, in accordance with the provisions of the Massachusetts Cable Law, the grant of a nonexclusive License to Licensee is consistent with the public interest; and

WHEREAS, the Issuing Authority and Licensee 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 Issuing Authority's grant of a License to Licensee, Licensee's promise to provide Cable Service to residents of the Town pursuant to the terms and conditions set forth herein, and for 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 are incorporated herein and shall apply in this License. For the purpose of this License, the following words, terms, phrases and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning in which case such other meaning shall apply. When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word shall is always mandatory and not merely directory. In addition, the following definitions shall apply:

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

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

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

1.4. *Cable Division*: The Cable Television Division of the Massachusetts Department of Telecommunications and Energy.

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

1.6. *Cable System* or *System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7).

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

1.8. *CMR*: The Code of Massachusetts Regulations.

1.9. *Communications Act*: The Communications Act of 1934, as amended (47 U.S.C. § 101 et seq.), which includes the Cable Communications Policy Act of 1984, as amended (including as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996).

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

1.11. *Educational Access Channel*: An Access Channel provided to the Town pursuant to the terms and conditions of this License and available for the use of the local public schools in the Town and/or of a non-profit entity, as designated by the Issuing Authority.

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

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

1.14. *Franchise Fee*: Shall have the meaning as set forth in Section 622 (g) of the Communications Act (47 U.S.C. §542(g)).

1.15. *FTTP Network*: Shall have the meaning set forth in the recitals of this License.

1.16. *Government Access Channel*: An Access Channel provided to the Town pursuant to the terms and conditions of this License and available for use of the Issuing Authority and/or its designee(s).

1.17. *Gross Revenue*: All revenue which is derived by Licensee and/or its Affiliates from the operation of the Cable System to provide Cable Service in the Town, including, without limitation, the following items: fees, charges and payments collected from Subscribers for Cable Services (including, but not limited to, basic and premium Cable Services and pay-per-view Cable Services); installation, reconnection, change-in-service (upgrades, downgrades, etc.) and similar charges; revenues received from rentals or sales to Subscribers of converters, remote controls and other Subscriber equipment used to provide Cable Service over the Cable System; fees from third parties for leased access programming; revenues that the Licensee receives from home shopping channels for the use of the Cable System to sell merchandise as prorated to include such revenue attributable to the Cable System in the Town; advertising revenues as prorated to include such revenue attributable to the Cable System in the Town; and all fees imposed on the Licensee by this License and applicable law that are passed through and paid to the Licensee by Subscribers (including the License Fee (Section 6.1) and the PEG Access Support (Section 5.4)). Gross Revenue shall include revenue of an Affiliate only to the extent that such Affiliate revenue relates to the provision of Cable Services over the Cable System in the Town, and not the revenues of any such Affiliate that are not related thereto. In no event shall revenue of an Affiliate be Gross Revenue to the Licensee if such revenue is otherwise subject to Franchise Fees and paid to the Issuing Authority.

Provided, however, that Gross Revenue shall not include:

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

System, except to the extent that such revenues are derived from the operation of the Cable System to provide Cable Service in the Town;

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

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

1.17.4. Any revenues classified as Non-Cable Services revenue under federal or State law including, without limitation, revenue received from Telecommunications Services; or revenue received from Information Services, including, without limitation, Internet Access Service, electronic mail service, electronic bulletin board service, or similar online computer services;

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

1.17.6. Revenues from the sale of Cable Services on the Cable System to a reseller, when the reseller is required by law to pay (and does pay) Franchise Fees and other cable license fees to the Town on the resale of the Cable Services. Nothing under this Section is intended to limit the rights of the Town pursuant to Section 622(h) of the Communications Act (47 U.S.C. § 542(h));

1.17.7. Any tax of general applicability imposed by a Town, State, federal or any other governmental entity and required to be collected from Subscribers by Licensee and remitted to the taxing entity (including, but not limited to, sales/use taxes and non-cable license fees);

1.17.8. Any revenue foregone as a result of the Licensee's provision of free or reduced cost Cable Services as required by this License to any Person, including without limitation, employees of Licensee and public institutions or other institutions as required or permitted herein and to other customers which are exempt, as required or allowed by the Town; provided, however, that such foregone revenue which Licensee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue;

1.17.9. Revenues from the sales of capital assets or sales of surplus equipment;

1.17.10. Program launch fees; and

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

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

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

1.20. *Issuing Authority*: The Board of Selectmen of the Town of Acton.

1.21. *License Fee*: The payments to be made by the Licensee to the Town, which shall have the meaning as set forth in Section 9 of the Massachusetts Cable Law.

1.22. *Licensee*: Verizon New England, Inc., and its lawful and permitted successors, assigns and transferees.

1.23. *Massachusetts Cable Law*: Chapter 166A of the General Laws of the Commonwealth of Massachusetts.

1.24. *Non-Cable Services*: Any service that does not constitute the provision of Cable Services, including, but not limited to, Information Services and Telecommunications Services.

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

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

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

1.28. *PEG Channel*: An Access Channel that the Licensee provides to the Town pursuant to the terms and conditions of this License, and managed by the Issuing Authority and/or its designee(s).

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

1.30. *Public Access Channel*: An Access Channel provided to the Town pursuant to the terms and conditions of this License and available for the use by the residents in the Town and managed by the Issuing Authority and/or its designee(s).

1.31. *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 Town.

1.32. *Service Area*: The geographic boundaries of the Town, as outlined in **Exhibit A**.

1.33. *Service Date*: The date that the Licensee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Town. The Licensee shall memorialize the Service Date by notifying the Issuing Authority in writing of the same, and the date set forth in such notice shall become a part of this License.

1.34. *Service Interruption*: The loss of picture or sound on one or more cable Channels.

1.35. *State*: The Commonwealth of Massachusetts.

1.36. *Subscriber*: A Person who lawfully receives Cable Service in the Town.

1.37. *Telecommunications Facilities*: Licensee's existing Telecommunications Services and Information Services facilities, including the FTTP Network.

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

1.39. *Title II*: Title II of the Communications Act, Common Carriers.

1.40. *Title VI*: Title VI of the Communications Act, Cable Communications,.

1.41. *Town*: The Town of Acton.

1.42. *Transfer*: Any transaction in which:

1.42.1. an ownership or other interest in Licensee is transferred or assigned, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Licensee is transferred; or

1.42.2. the rights held by Licensee under the License are transferred or assigned to another Person or group of Persons.

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

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

2.1. *Grant of Authority*: Subject to the terms and conditions of this License and the Massachusetts Cable Law, the Issuing Authority hereby grants the Licensee the right to operate and maintain a Cable System within the Town, for the purpose of providing Cable

Service. Reference herein to "Public Rights-of-Way" shall not be construed to be a representation or guarantee by the Town that its property rights are sufficient to permit its use for any purpose, or that the Licensee shall gain or be permitted to exercise any rights to use property in the Town greater than those already possessed by the Town or which is inconsistent with the purposes for which it was taken, purchased and/or dedicated. This License grants no authority for the Licensee to use the Public Rights-of-Way within the Town for any other purpose unless otherwise provided herein. However, nothing in this License shall be construed to prohibit the Licensee from offering any service over the Cable System that is not prohibited by federal or State law provided that any requirements for Town authorization or permitting not inconsistent with federal and State law are satisfied. The Licensee's FTTP Network in the Public Rights-of-Way, which the Licensee has upgraded under its Title II authority, is subject to M.G.L. c. 166 and as such is subject to regulation by the Town consistent with that law, including all lawful and applicable Town bylaws and regulations regarding rights-of-way and public works matters, including rights-of-way management requirements with regard to public safety and other legitimate municipal concerns. Nothing in this Section 2.1 shall be deemed to prohibit the right of the Licensee to challenge the legality of such a Town bylaw or regulation. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this License.

2.2. *Issuing Authority Does Not Regulate Telecommunications:* The parties recognize that the Licensee'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 the Town over such Telecommunications Facilities is restricted by federal and State law, and the Town does not assert jurisdiction over the Licensee's FTTP Network in contravention of those limitations. Therefore, the Issuing Authority's regulatory authority under Title VI is not applicable to the construction, installation, maintenance or operation of the FTTP Network to the extent the FTTP Network is constructed, installed, maintained and operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services.

2.3. *Term:* This License shall become effective on \_\_\_\_\_, 2006 (the "Effective Date"). The term of this License shall be fifteen (15) years from the Effective Date unless this License is earlier revoked or terminated as provided herein. The Licensee shall have the right to terminate this License within ninety (90) days after the end of the three (3) year period plus thirty (30) days from the Effective Date of this License, if at the end of such period, the Licensee has not achieved a reasonable level of Subscriber penetration on its Cable System. The Licensee may consider Subscriber penetration levels outside the Town in this determination. Notice to terminate under this Section 2.3 shall be given to the Town in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. The Licensee shall also be required to give its then current Subscribers not less than ninety (90) days notice of its intent to cease Cable Service operations.

2.4. *Grant Not Exclusive:* This License and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the Issuing Authority reserves the right to grant other licenses for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use

themselves, at any time during the term of this License. Any such rights shall not be in conflict with the authority as granted by this License. Disputes between the Licensee and other parties regarding use of Public Rights-of-Way shall be resolved in accordance with applicable law.

2.5. *License Subject to Federal and State Law; Preemption:* This License is subject to and shall be governed by all applicable provisions of federal and State law and regulations as they may be amended, including but not limited to the Communications Act and the Massachusetts Cable Law. In the event that federal or State law, rules, or regulations preempt a provision or limit the enforceability of a provision of this License, 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 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 parties hereto. Notwithstanding the foregoing, if subsequent to the Effective Date, there is a change in federal or State law that eliminates the authority of the Issuing Authority to require, grant or maintain this License, then to the extent permitted under law this License shall survive such legislation and remain in effect for the term of this License.

2.6. *No Waiver:*

2.6.1. The failure of the Issuing Authority on one or more occasions to exercise a right or to require compliance or performance under this License, the Massachusetts Cable Law or any other applicable law, bylaw or lawful regulation shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the Issuing Authority, nor to excuse Licensee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by the Issuing Authority.

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

2.7. *Construction of Agreement:*

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

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

2.7.3. Should any change to local bylaws, rules or regulations cause the Licensee's provision of Cable Services in the Town to be commercially impracticable, then the parties shall modify this License to the mutual satisfaction of both parties to ameliorate such commercial impracticability. If the parties cannot reach agreement on the above-referenced modification to this License, then, at the Licensee's option the parties shall submit the matter to binding arbitration.

2.8. *Police Powers:* Nothing in this License shall be construed to prohibit the reasonable, necessary and lawful exercise of the Town's police powers. However, if the reasonable, necessary and lawful exercise of the Town's police powers causes the Licensee's provision of Cable Services in the Town to be commercially impracticable, then the parties shall modify this License to the mutual satisfaction of both parties to ameliorate such commercial impracticability. If the parties cannot reach agreement on the above-referenced modification to this License, then, at the Licensee's option, the parties shall submit the matter to binding arbitration.

### 3. PROVISION OF CABLE SERVICE

#### 3.1. *Service Area:*

3.1.1. *Service Area:* Licensee shall offer Cable Service to a significant number of residents in the Service Area within twelve (12) months of the Effective Date, and shall offer Cable Service to all occupied residential dwelling units of the Service Area within five (5) years of the Effective Date, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the Town; (C) for periods of delay resulting from Licensee's inability to obtain authority to access rights-of-way in the Town; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; and (E) in developments or buildings that Licensee cannot obtain permission to access under reasonable terms and conditions after good faith negotiation, as reasonably determined by Licensee; and (F) in buildings where Licensee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis. The "Service Date" notice that the Licensee provides to the Issuing Authority pursuant to Section 1.33 above shall include a description of the areas of the Town to be served as of the Service Date.

3.2. *Availability of Cable Service:* Licensee shall make Cable Service available to all residential dwelling units within the Town in conformance with Section 3.1 and Licensee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Licensee provides Cable Service, the Licensee shall be required to connect, at Licensee's expense other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of the Licensee's existing FTTP Network trunk or feeder lines or the Public Right-of-Way. Where a residential connection exceeds such lengths, the Licensee shall be allowed to recover from such Subscriber the actual cost of connection attributable to the distance in excess of the lengths above.

3.3. *Availability of Cable Service To Businesses:* The Licensee, may make Cable Service available to businesses. The Licensee may recover the actual cost incurred to connect any business to the Cable System for the provision of Cable Service.

3.4. *Cable Service to Public Buildings:* Licensee shall provide a cable drop, an outlet and monthly Basic Service at no cost to public buildings in the Town. Without limiting the foregoing, Licensee shall comply with Section 5(e) of the Massachusetts Cable Law. The current list of public buildings is set forth on **Exhibit B**.

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

4.1. *System Characteristics:* Licensee's Cable System shall meet or exceed the following requirements and/or have at least the following characteristics:

4.1.1. The Cable System shall be designed with an initial analog and digital passband of 50-860 MHz.

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

4.1.3. The Cable System shall comply with applicable FCC technical standards, as such standards may be amended from time to time.

4.1.4. The Cable System shall conform in all material respects to the following standards to the extent applicable: Occupational Safety and Health Administration regulations, the Massachusetts Electrical Code, the National Electrical Code, the National Electrical Safety Code, the Massachusetts State Building Code, and the rules and regulations of the Cable Division and the FCC.

4.2. *Interconnection With Other Cable Systems:*

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

4.2.2 The Licensee shall in good faith cooperate with the Issuing Authority in implementing interconnection of the Cable Service with communications systems beyond the boundaries of the Town; provided that the cost of any such interconnection shall be borne by the Issuing Authority and/or the party seeking such interconnection.

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

4.4. *Parental Control Capability:* The Licensee shall comply with all applicable requirements of federal law(s) governing Subscribers' capability to control the reception of any channels being received on their television sets.

4.5. *Leased Access:* The Licensee shall comply with applicable provisions of Section 612 of the Communications Act (47 U.S.C. §532) with respect to making channel capacity available for commercial use.

#### **5. PEG SERVICES AND SUPPORT**

5.1. *PEG Channels:*

5.1.1. In order to ensure universal availability of Acton PEG programming to Subscribers in the Town, Licensee shall provide capacity on its Basic Service tier for three (3) Channels for Public Access, Educational Access and Government Access (collectively, "PEG Channels").

5.1.2. The PEG Channel designations (i.e. Public Access Channel, Educational Access Channel or Government Access Channel) for each of the PEG Channels set aside by the Licensee are reflected on **Exhibit C**. The Issuing Authority hereby authorizes the Licensee to transmit PEG programming within the Town's jurisdictional boundaries and outside the Town's jurisdictional boundaries to other areas that are served out of the same central offices as those that serve the Town. Licensee specifically reserves the right to make or change PEG Channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the Town or its designee for a period of 120 days, the Licensee may utilize such PEG Channel, in its sole discretion, until such time as the Town elects to utilize the PEG Channel for its intended purpose. In the event that the Town determines to again use such PEG capacity, the Town shall provide Licensee with 120 days' prior written notice.

5.2. *PEG Interconnection and Cablecasting:* The Licensee shall use reasonable efforts to interconnect its Cable System at a location selected by the Licensee in the Town ("Town Source Location") and/or with the existing cable operator(s) cable system so as to ensure carriage of all the PEG Channels and PEG Programming over the Cable System. With respect to any location(s) owned and operated by the Town, the Licensee shall have one hundred eighty (180) days after the Effective Date to effect such interconnection; provided that the Town shall cooperate with the Licensee with respect to such interconnection, to the extent within the Town's authority, including, without limitation, providing Licensee with sufficient access to the location. With respect to any locations(s) owned and operated by the existing cable operator(s) in the Town, the Licensee shall expeditiously negotiate with the existing cable operator(s) for an interconnection agreement respecting reasonable, mutually convenient, cost-effective and technically viable interconnection points, methods, terms and conditions so as to ensure carriage of all the PEG Channels and PEG programming over the Cable System, and shall have twelve (12) months from the Effective Date to enter into such interconnection agreement. The Issuing Authority shall use its best efforts to facilitate these negotiations. If no agreement is reached within the above time frame, then the Licensee shall have an additional six (6) months (i.e., eighteen (18) months from the Effective Date) to use an alternative methodology to obtain and transmit the PEG programming to its Subscribers, provided that the Issuing Authority shall cooperate with the Licensee's efforts pursuant to this Section to the extent within its authority. The Licensee shall provide, install, maintain, repair and replace all equipment necessary to receive and transmit such PEG programming from the Town Source Location to Subscribers. The Licensee shall monitor the PEG Channels for technical quality and shall ensure that they are maintained at standards the same or better than those which apply to the Cable System's commercial channels, provided, however, that the Licensee is not responsible for the production quality of PEG programming productions, nor for any deficiencies in the source signal it receives from any party over which the Licensee has no control.

5.3. *PEG Grant:* Licensee shall provide a grant to the Issuing Authority or its designee(s) to be used for PEG equipment and facilities, an institutional network/video transport

facility, or other cable related purposes. The PEG Grant provided by Licensee hereunder shall be Five Hundred Fifty Thousand Dollars (\$550,000), payable as follows: (i) One Hundred Fifty Thousand Dollars (\$150,000) within thirty (30) days of the Effective Date; (ii) One Hundred Fifty Thousand Dollars (\$150,000) on or before the third (3<sup>rd</sup>) anniversary of the Effective Date; (iii) One Hundred Fifty Thousand Dollars (\$150,000) on or before the fifth (5<sup>th</sup>) anniversary of the Effective Date; and (iv) One Hundred Thousand Dollars (\$100,000) on or before the tenth (10<sup>th</sup>) anniversary of the Effective Date. The PEG Grant shall not be counted against either the PEG Access Support payment required by Section 5.4, or any Franchise Fee/License Fee required by Section 6.1. The Issuing Authority and/or its designee(s) shall own all facilities and equipment purchased with the PEG Grant. The Licensee shall have no obligation to maintain, repair, replace or insure any equipment or facilities purchased with the PEG Grant.

5.4. *PEG Access Support:*

5.4.1. The Licensee shall provide annual funding to the Issuing Authority and/or its designee(s) for PEG Access operating support or other PEG Access costs and expenses in the amount of five percent (5%) of the Licensee's annual Gross Revenue, subject to the limitation in Section 6.2. The PEG Access payments made directly to the Issuing Authority shall be placed by the Issuing Authority in a restricted account for cable related purposes in the nature of a grant account and not into the general fund, which account will be under the control of the Issuing Authority.

5.4.2. The PEG Access support payments (Section 5.4.1) shall be made no later than forty-five (45) days following the end of each calendar quarter. The final PEG Access support payment shall be made no later than forty-five (45) days following the expiration of the License term. Each payment made pursuant to this Section 5.4.2 shall be accompanied by a statement certified by a duly authorized representative of the Licensee documenting, in reasonable detail, the Gross Revenues.

5.4.3. In no case shall said five percent (5%) payment(s) include: (i) the PEG Grant required by Section 5.3 above; (ii) the costs of PEG interconnection and cablecasting obligations required by Section 5.2 above; or (iii) any other fees or payments required by applicable law; provided, however, that said five percent (5%) payments shall be a Franchise Fee, and subject to the five percent (5%) cap on Franchise Fees pursuant to Section 622(b) of the Communications Act (47 U.S.C. §542(b)).

5.5. *PEG Operational Rules:* The Issuing Authority or its designee shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize the Licensee to transmit programming consistent with this License. The Issuing Authority or its designee shall establish rules and regulations for use of PEG facilities consistent with, and as required by, Section 611 of the Communications Act (47 U.S.C. § 531).

5.6. *Recovery of Costs.* To the extent permitted by federal law, the Licensee shall be allowed to recover the costs of the PEG Grant (Section 5.3), costs of PEG interconnection (Section 5.2), the PEG Access support payments (Section 5.4), and any other costs arising from the provision of PEG services and related payments, required by this License,

from Subscribers and to accurately reflect such costs as a separately billed line item on each Subscriber's bill.

5.7. *Late Payments:* In the event that the PEG Grant (Section 5.3), the PEG Access Support fee (Section 5.4) or the License Fee (Section 6.1) is not paid on or before the due date set forth in this License for such payments, then interest shall accrue from the due date until the date paid at the rate equal to the lesser of (i) two percent (2%) per annum above the Prime Rate, or (ii) eighteen percent (18%) per annum, in either case compounded annually.

5.8. *Listing of PEG Access Channels On Licensee's Electronic Program Guide:* If the Licensee lists PEG Access programming on its electronic program guide in any other city or town in the State (other than on a test or trial basis), then it shall, upon request of the Issuing Authority, discuss in good faith with the Issuing Authority the suitability of listing the Town's PEG Access programming on the Licensee's electronic program guide.

5.9. *PEG Access Video-On-Demand:* If the Licensee provides any other city or town in the State with PEG Access "video-on-demand" (VOD) (other than on a test or trial basis), it shall, upon request of the Issuing Authority, discuss in good faith with the Issuing Authority the provision of PEG Access VOD in the Town, provided that, as a result of said discussions, the Licensee shall be under no obligation to provide PEG Access VOD in the Town.

5.10. *Censorship:* Subject to Section 611(e) of the Communications Act (47 U.S.C. §531(e)), the Licensee shall comply with applicable federal laws restricting censorship or control of the content of PEG programming over the Cable System.

5.11. *Non-Commercial Programming:* The Issuing Authority and its designee(s) shall not use the PEG Channels to provide for-profit commercial programming. Nothing in this Section 5.9 shall prohibit the Issuing Authority or its designee(s) from having memberships, sponsorships, underwriting or acknowledgements (such as underwriting and acknowledgements accepted by PBS), to the extent not otherwise prohibited by applicable law and regulation.

## **6. FRANCHISE AND LICENSE FEES**

6.1. *License Fee:* Pursuant to Massachusetts Cable Law, (M.G.L. c. 166A, Section 9), the Licensee shall pay to the Town, throughout the term of this License, a license fee equal to fifty cents (\$.50) per Subscriber per year (the "License Fee"), or such other amount as may in the future be designated by applicable State law.

6.2. *Maximum Franchise Fee Obligation:* The Licensee shall not be liable for a total Franchise Fee, pursuant to this License and applicable law in excess of five percent (5%) of its annual Gross Revenues; provided that said five percent (5%) shall include (i) the License Fee payable to the Town (Section 6.1), (ii) the License Fee payable to the State pursuant to Section 9 of the Massachusetts Cable Law, and (iii) the PEG Access Support funding (Section 5.4), but it shall not include: (A) the PEG Grant (Section 5.3), (B) PEG interconnection costs (Section 5.2), (C) any payments, expenses, or replenishment of the performance bond pursuant to

Article 10 below; and (D) any other exclusions to the term “Franchise Fee” pursuant to Sections 622(g)(2) of the Communications Act.

6.3. *Payment Information:* In determining the License Fee, the number of Subscribers shall be measured as of December 31 of the preceding calendar year. The License Fee shall be paid no later than March 15 of each year during the term of this License.

6.4. *Limitation on Actions:* The parties agree that the period of limitation for recovery of any payment obligation under this License shall be three (3) years from the date on which payment by Licensee is due.

6.5. *Method of Payment:* The PEG Grant, the PEG Access Support and the License Fee shall be made payable to the Town and provided to the Issuing Authority, unless the Licensee is otherwise notified in writing by the Issuing Authority.

6.6. *Other Payment Obligations and Exclusions:*

6.6.1. Unless otherwise required by applicable law, the License Fee payments shall be in addition to and shall not constitute an offset or credit against any and all taxes or other fees or charges of general applicability which Licensee or any Affiliate shall be required to pay to the Town, or to any State or federal agency or authority, as required herein or by law; the payment of said taxes, fees or charges shall not constitute a credit or offset against the License Fee payments all of which shall be separate and distinct obligations of the Licensee and each Affiliate.

6.6.2. In accordance with Section 622(h) of the Cable Act (47 U.S.C. §542(h)), nothing in the Communications Act or this License shall be construed to limit any authority of the Issuing Authority to impose a tax, fee or other assessment of any kind on any Person (other than the Licensee) with respect to Cable Service or other communications service provided by such Person over the Cable System for which charges are assessed to Subscribers but not received by the Licensee. For any twelve (12) month period, the fees paid by any such Person with respect to any such Cable Service or other communications service shall not exceed five percent (5%) of such Person’s gross revenues derived in such period from the provision of such service over the Cable System.

6.7. *Affiliates Use of System:* Use of the Cable System and the provision of Cable Services within the Town by Affiliates shall be in compliance with applicable federal and State laws and regulations.

6.8. *Recomputation and Audit:*

6.8.1. Tender or acceptance of any payment made pursuant to Article 5 or 6 shall not be construed as an accord that the amount paid is correct, nor shall such acceptance of payment be construed as a release of any claim that the Issuing Authority may have for additional sums.

6.8.2. If the Issuing Authority has reason to believe that any payments made pursuant to Article 5 or 6 are incorrect, it may conduct an audit no more than once every

three (3) years during the term of this License. If, after such audit and recomputation, an additional fee is owed to the Town, such fee shall be paid within thirty (30) business days after such audit and recomputation. If the discrepancy is more than five percent (5%) or Five Thousand Dollars (\$5,000), whichever is greater, the Licensee shall reimburse the Issuing Authority's reasonable, documented, third-party costs of such audit, which costs shall be limited to Five Thousand Dollars (\$5,000). Any auditor employed by the Issuing Authority shall not be compensated on a success-based formula (e.g., payment based on a percentage of underpayment, if any). The Licensee shall be provided a reasonable opportunity to review the results of any audit and to dispute any audit results which indicate an underpayment to the Town.

## **7. CUSTOMER SERVICE**

Customer Service Requirements are set forth in **Exhibit D**, which shall be binding unless amended by written consent of the parties. Licensee shall comply with the billing and termination of service provisions set forth in 207 CMR 10.00, as amended, which shall supersede any conflicting provisions set forth in **Exhibit D**.

## **8. REPORTS AND RECORDS AND PERFORMANCE EVALUATIONS**

8.1. *Open Books and Records:* Upon reasonable written notice to the Licensee and with no less than thirty (30) business days written notice to the Licensee, the Issuing Authority or its designated authorized representative(s) shall have the right to inspect Licensee's books and records including all documents in whatever form maintained, including electronic media, pertaining to the Cable System or the Licensee's provision of Cable Service in the Town at any time during Normal Business Hours and on a nondisruptive basis as are reasonably necessary to ensure compliance with the terms of this License. Such notice shall specifically reference the purpose of the review, so that Licensee may organize the necessary books and records for appropriate access by the Issuing Authority. Licensee shall not be required to maintain any books and records for License compliance purposes longer than three (3) years, except if required by applicable law or regulation. If any books, records, Service Area maps, plans, or other requested documents are too voluminous, not available locally, or for security reasons cannot be copied and moved, then the Licensee may request that the inspection take place at the Licensee's designated offices within the State (or other location mutually agreed to by the Issuing Authority and the Licensee), provided that (i) the Licensee must make necessary arrangements for copying documents selected by the Town after its review; and (ii) the Licensee must pay all travel and additional copying expenses incurred by the Town (above those that would have been incurred had the documents been produced in the Town) in inspecting those documents or having those documents inspected by its designee.

8.2. *Proprietary Books and Records:* If Licensee believes that the requested information is confidential and proprietary, the Licensee must provide the following documentation to the Town: (i) specific identification of the information; (ii) statement attesting to the reason(s) Licensee believes the information is confidential; and (iii) statement that the documents are available at the Licensee's designated offices within the State for inspection by