

**TOWN OF ACTON  
MASSACHUSETTS**

**ISSUING AUTHORITY REPORT**

**CABLE TELEVISION LICENSE PROCESS**

**Verizon of New England, Inc.**

**By Its  
Board of Selectmen**

**June 28, 2006**

## I. INTRODUCTION

The Town of Acton, having been informed by Verizon of New England, Inc. of its interest in providing cable service in the Town, wrote the Massachusetts Cable Division to request a waiver of two of the requirements contained in 207 CMR 3.03(2). More specifically, it was requested that the sixty (60) day notice requirement for public notice in a newspaper of general circulation be reduced to thirty (30) days, and that the requirement for publication in a “trade journal” be fully waived. The Cable Division, through its Executive Director, granted the Town’s request for waivers.

Legal notices requesting applications for initial cable television license proposals were published.

Verizon of New England Inc. has submitted a proposal for a cable television license, including a Form 100 application, to the Town of Acton.

207 CMR 3.03(3) provides, in pertinent part, that the “[I]ssuing [A]uthority shall issue a written report that includes specifications for the cable license as it deems appropriate. Those specifications are contained herein, and are also referred to as “cable-related community needs and interests.”

In accordance with 207 CMR 3.03(3), the Board of Selectmen hereby sets July 28, 2006 at 4:30 p.m.<sup>1</sup> as the deadline for receipt of Verizon’s amendments to its application for a cable television license (commonly referred to as the Amended Application). The Board of Selectmen reserves the right, in its sole discretion, to extend this deadline if it deems such extension to be in the best interest of the Town of Acton.

The Board of Selectmen, as the Issuing Authority, shall hold a public hearing “to assess the qualifications of the applicant”, as required by 207 CMR 3.03(4), after the receipt of the Amended Application (or the deadline therefor). (Public notice of said hearing shall be provided in accordance with 207 CMR 2.02.) “Assessment of the applicant[’s] qualifications shall be limited to the information provided in the applications on file, any amendments to such applications, the issuing authority report on license specifications, oral testimony given during the hearing and other relevant information included in the hearing record.”

Pursuant to 207 CMR 3.03(5), within sixty (60) days following the close of the hearing, the Board of Selectmen shall approve or deny the application of Verizon

In the event the Board of Selectmen approves the application of Verizon, it is the preference of the Board of Selectmen to issue the Final License simultaneously with the Preliminary License, unless otherwise prohibited or restricted by applicable law.

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<sup>1</sup> This was the date originally planned by the Selectmen and the Cable Advisory Committee. This document was corrected on 7 July 2006 to agree with the original date and the extension request from Verizon.

## **II. PROCEDURAL REQUIREMENTS FOR AMENDED APPLICATION**

### **A. Procedural Requirements - General**

1. The deadline for submission of the Amended Application is set as July 28, 2006 at 4:30 p.m. (The Board of Selectmen reserves the right, in its sole discretion, to extend this deadline if it deems such extension to be in the best interest of the Town of Acton.)
2. One (1) original and three (3) copies of the Amended Application must be submitted to the Board of Selectmen, Acton Town Hall, 472 Main Street, Acton, Massachusetts 01720
3. Any questions regarding this Issuing Authority Report and/or the completion/submission of an Amended Application, including, but not limited to questions regarding procedures or interpretation, shall be posed to Frits Riep, Chairman of the Cable Advisory Committee, Acton Town Hall, 472 Main Street, Acton, Massachusetts 01720 with a copy to Don Johnson, Town Manager, Acton Town Hall, 472 Main Street, Acton, Massachusetts 01720, Acton Town Hall, 472 Main Street, Acton, Massachusetts 01720 (978-264-9612). Questions posed by faxed correspondence and/or telephone calls must be followed-up in writing by mailing or delivery of said inquiry to the above referenced persons, in order to be deemed a formal inquiry. The submission of a question(s) shall not extend the deadline for submission of the Amended Application, absent an extension of the deadline, as referenced above. The applicant, by submitting its Amended Application in response to this Issuing Authority Report, shall have evidenced the fact that it has no unanswered questions concerning this Report and its specifications and requirements, and shall have no basis for modifying or withdrawing its Amended Application on the basis of misunderstanding.
4. The Board of Selectmen reserves, to the fullest extent allowed by applicable law, the right to waive any informalities and/or technicalities in its consideration of the Amended Application.

### **B. Submission Requirements**

1. Proposed Final License - In addition to providing any responses required by this Issuing Authority Report or which the Applicant deems necessary and/or appropriate, the Applicant should submit as part of, or together with, its Amended Application a proposed and complete Final License, which reflects in detail the Amended Application submitted by the Applicant.
2. Financial Information - The Applicant should submit the following financial information with respect to each of the following: (i) the Acton franchise area; (ii) the system/general ledger which includes the Acton franchise area; and (iii) Verizon of New England Inc
  - a) Full Financial Statements, including all of the following for each of the last five (5) years:

- i. Income statements
    - ii. Balance sheets
    - iii. Cash flow statements
    - iv. Any footnotes that are or may be necessary to understand the above
  - b) Financial projections for the next fifteen (15) years, including:
    - i. Income statements
    - ii. Balance sheets
    - iii. Cash flow statements
    - iv. All footnotes indicating assumptions made, including projected operating statistics.
- 3. Projected Operating Statistics - The Applicant should submit its projected operating statistics for each of the fifteen (15) years of a license term in the Town of Acton, including:
  - a) Number of miles of distribution plant
  - b) Number of homes passed
  - c) Number of cable subscribers by type.
- 4. Anticipated Operating Projections - The Applicant should submit its anticipated Operating Projections for each of the fifteen (15) years of a license term in the Town of Acton, including:
  - a) Detailed revenue by type, including:
    - i. Subscriber Revenues
      - (a) Installation Income
      - (b) Equipment Revenue
      - (c) Basic/Other Tier Subscriber Revenue
      - (d) Premium Channel Revenue
      - (e) Pay Per View Revenue
      - (f) On Demand/Interactive Cable Revenue
      - (g) Other Subscriber Revenue - including all revenue attributable to cable operations not included above.
    - ii. Non Subscriber Revenues
      - (a) Advertising Income
      - (b) Home shopping Revenue
      - (c) Other Income - all other income including income attributable to leasing or

sale of time or facilities.

b) Detailed expenses by type, including:

i. Direct Operating Expenses

- (a) Programming Expenses
- (b) Net Bad Debt and Collection Expenses
- (c) Salaries and Benefits
- (d) Repairs and Maintenance
- (e) Light, Heat, Power
- (f) Pole and Duct Rental
- (g) Administration - Office and Billing
- (h) Marketing
- (i) Local Origination
- (j) Other - All other direct operating costs not included above.

ii. Depreciation and Amortization

- (a) Depreciation
- (b) Amortization

c) Capital Expenditures

The Applicant is encouraged to submit any other financial information reflecting upon the financial condition and/or financial qualifications of each of the above referenced three (3) levels (i) the Acton franchise area; (ii) the system/general ledger which includes the Acton franchise area; and (iii) Verizon of New England, Inc.

### **III. SPECIFICATIONS FOR CABLE LICENSE (CABLE RELATED COMMUNITY NEEDS AND INTERESTS)**

#### **A. Comcast's Current Cable Television Renewal License – Incorporated By Reference**

Comcast's current Cable Television Renewal License, originally granted to Cablevision of Massachusetts, Inc., with an effective date of June 29, 2000 and an expiration date of June 28, 2010, is incorporated by reference herein. The Applicant should carefully review this Renewal License prior to responding to each and every section of this Issuing Authority Report. (The Town will provide a copy of the current Cable Television Renewal License to the Applicant, if requested<sup>2</sup>.)

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<sup>2</sup> A scanned copy in Portable Document Format is available from the Town document server via the URL <http://tinyurl.com/e57dq>

At the time of the effective date of the Cable Television Renewal License with Cablevision, the Town of Acton had approximately 5,258 cable subscribers. At the current time, Acton has approximately 6,098 cable subscribers. (Based on the statistics of the Massachusetts Cable Television Division.) The increased subscriber base should be one of the factors considered with respect to the amount of the capital payments made by the Applicant/Licensee.

### **B. License Term**

1. The Town preference is also for an initial Final License of fifteen (15) years. The terms of the License must meet the Town's cable related community needs and interests. The below referenced financial support requirements assumes a 15-year license term.
2. It is the Town's position that the License make no provision for the Licensee to terminate or surrender the Final License or otherwise cease providing cable service in the Town for any reason, including, but not limited to a business determination by the Licensee or a change in applicable law or regulation<sup>3</sup>. If the Applicant includes in its Amended Application a provision it must be limited to termination based on a financial decision that the Licensee shall completely cease providing cable service and further said provision shall preclude the Licensee from providing cable service or any other video programming by any other means, including, but not limited to a license or other approval granted by the State or Federal Government. The Applicant shall provide a detailed explanation of the reason for the inclusion of such provision and a specific listing and description of when and how it could be used by the Applicant as a Licensee. Nothing herein should be interpreted to mean that any such termination provision will be acceptable to the Issuing Authority.

### **C. Preemption By Federal and/or State Law - Compliance With License Terms**

The Licensee must comply with all terms and condition of a Final License (including all franchise/license fee payments, Institutional Network payments and requirements, Public, Educational, and Government (PEG) access operating payments, and capital, facilities and equipment payments by the Licensee to the Town and/or its designee(s)), regardless of any change in Federal and/or State law.

### **D. Grant and Construction of License**

#### **1. Cable Television System/Cable Service**

The License, if granted by the Town, through its Issuing Authority, will be for the construction, installation, operation and maintenance of a Cable System for the provision of Cable Service, as those terms are defined by applicable Federal law:

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<sup>3</sup> For purposes of this Issuing Authority Report, the term law shall include federal, state, and local laws and regulations.

**Cable Service** - Section 602 of the Cable Act (47 U.S.C. § 522(6))

(A) The one-way transmission to Subscribers of (i) Video Programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

**Cable System** - Section 602 of the Cable Act (47 U.S.C. § 522(6))

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 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) 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 573 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility system;

The Amended Application should not attempt to redefine or “clarify” either of the above referenced federally defined terms, or any other terms defined by the Cable Act. The use of terms different from the federal definitions would create uncertainty and confusion. To the extent these terms are the subject of interpretation by an administrative agency, such as the FCC, or by a court of law, the Licensee should not be able to argue that the terms as used in the Acton License have a different meaning than the federally defined terms interpreted by said administrative agency or court.

**2. Verizon’s Cable System and Cable Service Is Not Exempt From Cable License Provisions Or From Federal, State Or Local Laws and Regulations Because Its Infrastructure Is Also Used For Title II Telecommunications Services Or For Information Services.**

The Final License should not, directly or indirectly, exempt Verizon of New England Inc.’s cable system from cable license provisions, nor from federal, state or local law because Verizon’s infrastructure is also used for Title II telecommunication services or for information services. Nowhere in the Federal Cable Act does it state that a mixed-use facility is exempt from cable regulations once that system is used to provide cable service. To the extent that the Applicant’s Amended Application claims such an exemption(s) for its infrastructure, said exemption should be as narrow as possible, and the Applicant should explain its position in detail, including what, if any, federal, state and/or local laws or regulations govern its infrastructure and how its infrastructure is so governed.

**3. Non-exclusive License**

The License shall be non-exclusive, as required by applicable federal and state law.

**4. Level Playing Field**

It is the position of the Town that the legal rights of a licensee, if any, with respect to competition from other multi-channel video providers, including other cable licensees, is governed by the Cable Act, specifically by 47 U.S.C. §545 (Section 625 of the Cable Act) regarding modification of franchise obligations resulting from “commercial impracticability”.

**5. License Guarantee By Ultimate Corporate Parent**

Absent the submission of adequate evidence of the financial capability of the Applicant (Verizon of New England Inc.) to provide the services, facilities and equipment set forth in its application and as required by the Town, the obligations contained in a License must be guaranteed by the ultimate parent of the Applicant - Verizon Communications Inc.

**6. No Waiver**

The failure of the Town (or its Issuing Authority) or the Licensee on one or more occasions to exercise a right or to require compliance or performance under the License shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the respective party, nor to excuse the other party from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

**7. Police Powers**

The License shall provide that the Licensee shall comply with all applicable laws, and regulations and that nothing in the License shall be construed to prohibit the reasonable, necessary or lawful exercise of the Town’s police powers. Any conflict between the terms of the License and any present or future exercise of the Town's police powers shall be resolved in favor of the latter. Nothing in the License shall be deemed to prohibit or restrict the authority of the Licensee to challenge the legality of any law or regulation.

**8. Transfer of License or Control Thereof**

**a) Written Consent of Issuing Authority Required**

Neither the License, nor control thereof, shall be transferred, assigned or disposed in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any person, company and/or other entity holding such License to any other person, company and/or other entity, without the prior written consent of the Issuing Authority in accordance with applicable law. If requested by the Applicant, the License may provide that a transfer or transfer of control will not include certain transfers to the parent of the Licensee or to an affiliate of the Licensee where the

affiliate is controlled by the Licensee or the parent of the Licensee and the Town is provided evidence and/or security satisfactory to the Town, that said parent or affiliate has the financial, legal, management and technical ability to meet all License requirements.

*b) No Waiver or Release of Rights and Obligations*

The consent or approval of the Issuing Authority to any transfer or assignment of the License or control thereof granted to the Licensee shall not constitute a waiver or release of the rights of the Town in and to the streets and public ways or any other rights of the Town under this License, and any such transfer shall, by its terms, be expressly subordinate to the terms and conditions of this License. Any proposed controlling or owning person or transferee approved by the Town shall be subject to all of the terms and conditions contained in this License.

*c) Reimbursement For Issuing Authority's Reasonable Expenses*

The Licensee shall reimburse the Issuing Authority for reasonable expenses incurred in reviewing its application, including but not limited to, whether the transferee/assignee has the technical, legal, financial and operational ability to operate the cable system to provide cable service and to comply with the existing License. In no case shall the Licensee be required to reimburse the Issuing Authority for expenses exceeding Five Thousand Dollars (\$5,000.00). Failure of the Licensee (or transferee) to promptly reimburse the Issuing Authority after written request is made shall be a material breach of the License that may give rise to termination of the franchise or other remedy available to the Issuing Authority under the License as a result of the Licensee's material breach thereof.

**E. Use of Public Rights-of-Ways**

1. Reference in the License to "public rights-of-ways, public ways, public places" or similar terms referencing public property over which the Licensee may construct, install, operate and maintain its Cable Television System, 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.
2. The Licensee shall not endanger or unreasonably interfere with the lives of persons, with any installations of the Town, any public utility serving the Town or any other persons permitted to use public ways and places.
3. Grant of a License shall not establish priority for use over other present or future permit holders or the Town's own use of public rights-of-way. Disputes between the Licensee and other parties regarding use of public ways and places shall be resolved in accordance with applicable Town by-laws, regulations and policies.

## **F. Provision of Cable Service**

### **1. Service Area**

- a) The service area shall be the entire Town of Acton.
- b) There shall be no density requirement for the provision of Cable Service to residences in the Town. All residences shall be offered service.
- c) Cable service must be offered to all commercial establishments in the Town provided that said establishment(s) agrees to pay for installation and monthly subscription costs as established by the Licensee.
- d) The Applicant must indicate in its Amended Application by what date it will commit to making Cable Service available to all residences and commercial establishments in the Town. The date for the initial service area, which shall include, but not be limited to all areas of Acton in which the Applicant's infrastructure has been completed as of said date, shall be no later than twelve (12) months after the Effective Date of the Final License. The date for remainder of the Town of Acton shall be no later than twenty-four (24) months after the Effective Date of the Renewal License. If contrary to this sub-paragraph (d), the Applicant proposes to make cable service available to any portion of the Town after said twenty-four (24) month period, the Applicant must state in detail the specific reasons for this proposed delay. This request for an explanation should not be interpreted to mean that any provision for a completion time greater than twenty-four (24) months after the Effective Date will be acceptable to the Issuing Authority.

### **2. Standard Drop/Connection Distance**

The first one hundred fifty feet (150') from the Cable System's trunk and distribution system to a residential dwelling unit, whether aerial or underground, shall be connected by the Licensee at its expense.

### **3. New Areas/Trenching**

As new areas of Acton are developed, the Licensee shall extend its cable system via underground facilities to all such areas served by public power and telephone within a reasonable period of time, but in no event later than three (3) months after the completion of the power and telephone services (unless there is a delay in obtaining pole or conduit licenses or permission from pole/conduit owners not caused by the act(s) or omission(s) of the Licensee) and at the Licensee's expense. In order to help obviate the need for unnecessary retrenching to retrofit feeder and/or drops to support future Cable Service to residences in newly constructed subdivisions, the Licensee shall make reasonable efforts to coordinate the installation of conduit with developers and/or contractors constructing subdivisions. Cable Service shall be available to any new dwelling constructed in the Town no later than thirty (30) days after the issuance of an occupancy permit or a written request by a resident residing in the new area, whichever is sooner.

#### **4. Cable Service to Public Buildings**

The Licensee shall provide, at its sole cost, service outlet(s), drop(s) and digital converter(s), together with monthly Basic and Expanded Basic Service and the most commonly subscribed to digital tier to all municipal, school and public buildings in the Town as designated by the Issuing Authority, including the access studio. A list of municipal, school and public buildings requiring a cable outlet and drop and cable service is attached hereto as Appendix A<sup>4</sup>. Future municipal and school buildings shall be connected and served as required herein, no later than one hundred twenty (120) days after written notice of said new building by the Issuing Authority or its designee to the Licensee.

### **G. Cable System and Facilities**

#### **1. System Characteristics**

The Cable System shall meet or exceed the following requirements:

- a) Analog portions of the Cable System, if any, shall be designed with an initial analog passband of 860 MHz or more.
- b) The Licensee shall retransmit all closed-captioned signals received with programming to facilitate viewing by handicapped persons. The Licensee shall maintain all necessary equipment to make second audio programming features and Program and System Information Protocol (PSIP) or equivalent information transmitted by the broadcast or non-broadcast programming source available to Subscribers, except equipment required on a Subscriber's premises.
- c) The Cable System shall be designed to be an active two-way plant utilizing the return bandwidth to permit such services as impulse pay-per-view and other interactive services.
- d) All Programming provided to the Licensee in Stereo and/or other enhanced audio formats shall be cablecast to Subscribers in the original format.
- e) The Cable System shall at all times conform to the applicable FCC Technical Specifications (currently FCC Rules and Regulations, §76.605 - Technical Standards).
- f) The Cable System shall comply with all requirements of federal law and regulation governing Subscribers' capability to control the reception of any channels being received on their television sets (i.e. parental control capability).
- g) The Cable System shall be erected and maintained so as not to interfere with vehicular or pedestrian traffic over Public Ways and places. The erection and location of all poles, towers and other obstructions shall be in accordance with all applicable state and local laws and regulations.

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<sup>4</sup> [This appendix is being prepared by Mark Hald and will be included in a future draft. This footnote will be removed.]

## **2. Underground Facilities**

The Town has a community need and interest that Verizon's cable system meet the following requirements:

- a) In the areas of the Town in which telephone lines and electric utility lines are currently, or in the future specified to be, underground, whether required by law or not, all of the Licensee's lines, cables and wires shall be underground. At such time as telephone lines or electric utilities are placed underground at the sole cost and expense of the respective telephone company or electric utility or are lawfully required by the Town to be placed underground at the sole cost and expense of the respective utility, the Licensee shall likewise place its facilities underground at its sole cost and expense. At such time as telephone lines or electric lines are placed underground but at no cost to the Town, the Licensee shall likewise place its facilities underground at no cost to the Town.
- b) Underground cable lines shall be placed beneath the pavement subgrade in compliance with applicable code, Town by-laws, rules, regulations and/or standards. It is the policy of the Town that existing poles for electric and communication purposes be utilized wherever possible and that underground installation is preferable to the placement of additional poles.
- c) The Town shall make best efforts to notify the Licensee of any underground grant-of-location requests submitted to the Town by a utility.

***If Verizon requests that the Cable License not include specific requirements regarding undergrounding its facilities, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding undergrounding which currently apply to Verizon's telephone infrastructure and which will apply to Verizon's so-called FTTP Network.***

## **3. Pedestals and other encasements for wiring and equipment located in public view**

In any cases in which Pedestals housing active and passive devices are to be utilized, in public ways or within the Town public lay-out, such equipment must be: (i) flush to the ground or at sufficient height on poles to not endanger the public, of rural character in look and a color consistent with the landscaping, and (ii) installed in accordance with applicable Town bylaws, rules, and regulations. All such Pedestals or encasements shall be shown on the construction maps submitted to the Town.

***If Verizon requests that the Cable License not include specific requirements regarding pedestals and encasements, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding pedestals and encasements, their type, placement and other characteristics which: (i) currently apply to Verizon's telephone infrastructure and/or (ii) which will apply to Verizon's so-called FTTP Network.***

#### **4. Cable System Interconnection**

- a) The Acton Cable System shall, at a minimum, be capable of being directly interconnected with Verizon's Boxborough cable system. Upon the request of the Town of Boxborough's Issuing Authority, and a subsequent vote by the Acton Board of Selectmen reaffirming Acton's authorization for the interconnection, the Acton and Boxborough cable systems shall be interconnected by the Licensee. The interconnection shall be completed at no cost to Acton Subscribers.
- b) The Licensee shall, if requested by the Issuing Authority, use its best efforts to provide for the interconnection of the Acton Cable System with any other cable system, other than the Boxborough system for which specific provision is made above. Interconnection of systems or channels shall be accomplished by direct cable connection, microwave link, satellite, or other appropriate and economically feasible method. Upon receiving a request of the Issuing Authority to interconnect a system or channel(s), the Licensee shall initiate negotiations with the other affected system(s) in order that costs may be appropriately shared for the interconnection link. The Town shall rescind its request for interconnection if the Licensee has negotiated in good faith and has failed to obtain an approval from the system or systems of the proposed interconnection, or that the cost of the interconnection would cause an unreasonable or unacceptable increase in Subscriber rates, or if the system architectures involved are incompatible for purposes of interconnection. The foregoing is contingent on the willingness of the other Licensee(s) and the Issuing Authority(s) to participate on equitable terms and the foregoing being in accordance with applicable laws.

#### **H. Emergency Alert/Override Capacity**

1. In accordance with the provisions of FCC Rules and Regulations Part 11, Subpart D, Section 11.51(h)(1), and as such provisions may from time to time be amended, the Licensee shall install, maintain and comply with an Emergency Alert System (EAS). As allowed by FCC Order FCC 97-338, Paragraph 33, the Licensee shall transmit all national, state, and local activations of the Federal EAS, utilizing the four-part message protocol specified in FCC Rules and Regulations Part 11, Subpart B, or successor protocols. This shall include such local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or other authorities identified and defined within FCC Rules and Regulations, Part 11 or the Local and State Plans provided for under those rules.
2. The Licensee shall provide to the Town without human intervention by Licensee, in times of an emergency endangering the Town or its residents and for periodic (e.g. – monthly) testing by the Town, the right and the capability to directly access by remote control the video and audio of all channels to create and cablecast either or both of the following: (i) a specific message crafted by an authorized Town official and/or (ii) one of two pre-established video scroll messages as reasonably determined by the Issuing Authority (such as "Acton Residents, this is a TEST of the Town of Acton Emergency Alert System. In an actual emergency you will be advised to tune to Acton Channel

for details" or "Acton Residents, the Town of Acton is issuing an Emergency Alert. Please tune to Acton Channel \_\_ for further details.") and a pre-established audio alert message with the same text as the video scroll message. The pre-established messages (1) may be changed by the Town from time to time to another reasonable message, and (2) shall advise Acton residents to tune to the Acton Channel or the equivalent thereof. Federal EAS alerts (meaning national, state and local alerts on the Federal EAS) and tests shall take precedence over and automatically override the Acton video scroll messages and audio alert messages (including, in each case, test messages) provided for herein, and the Licensee shall obtain and maintain appropriate hardware and software to accomplish the preceding. The Issuing Authority acknowledges that in the event that the Town's use of the emergency override causes an override of or interference with a national emergency alert, the Licensee shall not be responsible therefor.

## **I. Maintenance of the Cable System**

### **1. Construction, Maintenance and Safety Standards**

- a) The Licensee shall install, operate, maintain and remove the Cable System in conformance with Occupational Safety and Health Administration regulations, the Massachusetts Electrical Code, the National Electrical Code, the National Electrical Safety Code, the rules and regulations of the Cable Division and the FCC, all State and lawful local laws and regulations as the same exist or may be amended hereafter. In the event of a conflict among the codes and standards, accepted cable industry practices shall control, except insofar as such practices, if followed, would result in the Cable System not meeting the express requirements of applicable law or regulations, or in instances in which such practices are expressly preempted.

***If Verizon requests that the Cable License not require the Cable System to conform to the above referenced codes, laws and regulations, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices which: (i) currently apply to Verizon's telephone infrastructure and/or (ii) which will apply to Verizon's so-called FTTP Network.***

- b) Any contractor or subcontractor used for work or construction, installation, operation, maintenance or repair of the Cable System must be properly licensed, and each contractor or subcontractor shall have the same obligations with respect to the work as the Licensee would have if the work were performed by the Licensee. The Licensee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the requirements of this License and applicable laws and regulations. The Licensee shall be responsible for the acts and omissions of its contractors and subcontractors, including responsibility for promptly correcting such work.

## **2. Cable System Tests and Inspections**

- a) The Town by its designee(s) shall have the right to inspect the plant, equipment and other property of the Licensee in the Town, including, but not limited to, all construction, installation and/or upgrade work performed, and to make such tests as deemed necessary to ensure compliance with the terms and conditions of this License and all other applicable law and regulations. Any such inspection shall be conducted after reasonable notice and shall not interfere with the Licensee's operations, except in emergency situations.
- b) The Issuing Authority shall notify the Licensee of any violations found during the course of an inspection(s). The Licensee must bring violations specified in the written notice that are within the Grantee's control into compliance as follows: (i) safety violations must be made safe within twenty-four (24) hours of the receipt of written notice; and (ii) all other violations must be brought into compliance within seven (7) days of receiving said written notice. After the specified time period, the Licensee shall submit a written report to the Issuing Authority, describing the steps it has taken to bring itself into compliance. Inspection by the Issuing Authority or its designee(s) does not relieve the Licensee of its obligation to comply with this License and applicable law and regulations.

***If Verizon requests that the Cable License not provide for the above referenced inspections and testing, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding inspection and/or testing which: (i) currently apply to Verizon's telephone infrastructure and/or (ii) which will apply to Verizon's so-called FTTP Network.***

## **3. Strand Maps**

The Licensee shall maintain a complete set of strand maps of the Cable System plant, and shall provide a copy of all strand maps to the Town Public Works Department and Town Information Technology Department. In addition to paper strand maps, said maps shall also be provided to the Town in electronic format. The Licensee shall not be required to provide a particular type of electronic format which is different from the electronic format the Licensee maintains. If changes are made in the Cable System, the Licensee shall file an updated map(s), including in electronic format, not later than fourteen (14) days after the respective change(s). The electronic format shall be a source format commonly used in the industry, non-proprietary, and capable of being imported into municipal geographical information systems (GIS), and shall include precise geographic coordinates (e.g. GPS).

***If Verizon requests that the Cable License not require strand maps, as provide for above, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding inspection and/or testing which: (i) currently apply to Verizon's telephone infrastructure and/or (ii) which will apply to Verizon's so-called FTTP Network.***

#### **4. Dig Safe**

The Licensee shall comply with all applicable “Dig Safe” provisions, pursuant to M.G.L. Chapter 82, Section 40.

***If Verizon requests that the Cable License not require compliance with all applicable Dig Safe provisions, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding the application of the Dig Safe law and requirements, which: (i) currently apply to Verizon’s telephone infrastructure and/or (ii) which will apply to Verizon’s so-called FTTP Network..***

#### **5. Relocation of Fire Alarms**

The Licensee shall reimburse the Town at cost for any reasonable expense, including materials and labor, caused by relocation of any fire alarm cable or equipment to make poles ready for the Licensee’s cable or equipment. The Town shall cooperate in this relocation so as to minimize delay in the Licensee’s installation, maintenance and repair schedule.

***If Verizon requests that the Cable License not require compliance with all applicable practices regarding the relocation of fire alarms, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding the relocation of fire alarms which: (i) currently apply to Verizon’s telephone infrastructure and/or (ii) which will apply to Verizon’s so-called FTTP Network.***

#### **6. Construction Projects**

During the course of any construction undertaken during the term of this License, including a rebuild or upgrade of the Cable System, that lasts longer than thirty (30) days, the Licensee shall submit weekly status reports to the Issuing Authority or its designee until such construction is complete.

***If Verizon requests that the Cable License not require the above referenced construction reports, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding construction status reports to the Town which:(i) currently apply to Verizon’s telephone infrastructure and/or (ii) which will apply to Verizon’s so-called FTTP Network.***

#### **7. Service Interruptions**

Except where there exists an emergency situation necessitating a more expeditious procedure, the Licensee may interrupt Service for the purpose of non-routine repairing, constructing or testing of the Cable Television System only during periods of minimum use and, when practical, only after a minimum of seven (7) days notice to all affected Subscribers.

***If Verizon requests that the Cable License not require compliance with the above***

*referenced service interruption procedures, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding service interruptions which: (i) currently apply to Verizon's telephone infrastructure and/or (ii) which will apply to Verizon's so-called FTTP Network.*

#### **8. Tree Trimming**

In installing, operating and maintaining equipment, cable and wires, the Licensee shall avoid damage and injury to trees in and along Public Ways. The Licensee shall be subject to M.G.L. Chapter 87 and shall comply with all Town bylaws and regulations regarding trees.

*If Verizon requests that the Cable License not require compliance with the above referenced tree trimming requirements, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding tree trimming which: (i) currently apply to Verizon's telephone infrastructure and/or (ii) which will apply to Verizon's so-called FTTP Network.*

#### **9. Moving Buildings**

The Licensee shall temporarily raise or lower its wires and other equipment upon the reasonable request of any Person holding a building moving permit issued by the Town. The expense of such raising and/or lowering shall be paid by the party moving the building, unless otherwise required or permitted by applicable law, however in the event said raising or lowering is necessitated as a result of moving a: (i) structure owned or controlled by the Town or (ii) structure of historical significance, including a structure on the Historic Register, the expense of raising and/or lowering said wires and other equipment shall be borne by the Licensee, unless otherwise required by applicable law. The Licensee shall be given reasonable prior notice of such move.

*If Verizon requests that the Cable License not require compliance with the above referenced requirements regarding the movement of its infrastructure as a result of the movement of a building(s), Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices arising from the movement of building, which:(i) currently apply to Verizon's telephone infrastructure and/or (ii) which will apply to Verizon's so-called FTTP Network.*

#### **10. Disconnection and Reconnection**

The Licensee shall, without charge to the Town, protect, support, temporarily disconnect, relocate in the same Street or other Public Way, or remove from any Street or any other Public Ways, any of its property as required by the Issuing Authority and/or its designee(s) by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure by any Town department acting in a governmental capacity.

***If Verizon requests that the Cable License not require compliance with the above referenced disconnection and reconnection requirements, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding disconnection and reconnection, which: (i) currently apply to Verizon's telephone infrastructure and/or (ii) which will apply to Verizon's so-called FTTP Network.***

#### **11. Restoration of Public Property To Prior Condition**

Whenever the Licensee takes up or disturbs any pavement, sidewalk, landscaping or other improvement of any Public Way, the same shall be repaired or replaced and the surface restored to its previous condition or better, as determined under the circumstances by the Town. Said repair, replacement and restoration shall be made by the Licensee as soon as possible, but in no event more than thirty (30) days after the damage has occurred, unless otherwise agreed to in writing by the Town. If the Licensee fails to make such restoration within a reasonable time, the Issuing Authority may fix a reasonable time for such restoration and repairs and shall notify the Licensee in writing of the restoration and repairs required and the time fixed for performance thereof. Upon failure of the Licensee to comply with the specified time period, the Issuing Authority may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by the Licensee upon demand by the Issuing Authority.

***If Verizon requests that the Cable License not require compliance with the above referenced restoration of public property requirements, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding restoration of public property which:(i) currently apply to Verizon's telephone infrastructure and/or (ii) which will apply to Verizon's so-called FTTP Network.***

#### **12. Private Property**

The Licensee shall be subject to all laws, by-laws and/or regulations regarding private property in the course of constructing, upgrading, installing, operating and maintaining the Cable Television System in the Town. The Licensee shall at its sole cost and expense, promptly repair, replace and restore all private property, real and personal, including landscaping, damaged or destroyed as a result of the construction, installation, operation or maintenance of the Cable System. Said repair, replacement and restoration shall be made by the Licensee as soon as possible, but in no event more than thirty (30) days after the damage has occurred, unless otherwise agreed to in writing by the private property owner.

***If Verizon requests that the Cable License not require compliance with the above referenced restoration of private property requirements, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding restoration of private property which: (i) currently apply to Verizon's telephone infrastructure and/or (ii) which will apply to Verizon's so-called FTTP Network.***

### **13. Double Poles - Removal of Licensee's Wiring Other Attachments From Poles**

The Licensee shall, conditioned upon a minimum of a forty-eight (48) hour notification by a distribution company (as defined in M.G.L. c.164, Section 1), if applicable, of the starting date for removal of an existing pole(s) and the installation of a new pole in place, shall remove its (the Licensee's) wiring and other attachments from the pole(s) in a timely manner (i.e. in a manner consistent with the distribution or telephone company's obligation pursuant to M.G.L. c.164, Section 34B to remove the existing pole(s) from the site within ninety (90) days from the date of the installation of the new pole.) The Licensee shall not be responsible for the acts or omissions of the distribution or telephone company, or of any other non-Affiliate who is a user of the pole(s). Nor shall the Licensee be responsible for a failure to remove its wiring and other attachments from the poles in accordance herewith, to the extent such failure is caused by a distribution or telephone company or any other non-Affiliate.

*If Verizon requests that the Cable License not require compliance with the above referenced double pole requirements, Verizon must submit as part of its Amended Application, a complete listing and description of all laws, regulations, codes, written policies, other requirements, and practices regarding the removal of double poles which: (i) currently apply to Verizon's telephone infrastructure and/or (ii) which will apply to Verizon's so-called FTTP Network. Additionally, Verizon must submit a written record of each of the following since January 1, 2001: (i) all double poles in the Town of Acton owned by Verizon of New England or an affiliated company, which remained after ninety (90) days from the date of the installation of the new pole, and (ii) all double poles its facilities were or are located on ninety (90) days from the date of the installation of the new pole, regardless of the ownership of said pole(s).*

## **J. Services and Programming**

### **1. Basic Service**

The Licensee shall make available Basic Service to all Subscribers, which shall include all Signals which are required to be carried by a cable television system serving the Town pursuant to applicable law or regulation, and (ii) the PEG (Public, Educational, and Government) Access Channels required by this License, except to the extent prohibited by applicable law.

### **2. Programming**

- a) Pursuant to Section 624 of the Cable Act, the Licensee shall maintain the mix, quality and broad categories of Programming: Broadcast Stations; News; Public Affairs; Financial and Business; Children's Programming, Arts and Cultural; Science and Health, and Public Broadcasting.
- b) The Licensee shall provide the Issuing Authority and all Subscribers with notice of its intent to substantially change the Programming line-up at least thirty (30) days before any such change is to take place. At the same time, the Licensee shall also

provide Subscribers with a channel line-up card or suitable marker showing the new channel line-up.

### **3. Leased Channels**

Pursuant to Section 612(b)(1)(B) of the Cable Act, the Licensee shall make available channel capacity for commercial use by Persons unaffiliated with the Licensee.

### **4. Continuity of Service**

It shall be the right of all Subscribers to receive Cable Service insofar as their financial and other obligations to the Licensee are honored; provided, however, that the Licensee shall have no obligation to provide Cable Service to any Person who or which the Licensee has a reasonable basis to believe is utilizing an unauthorized Converter and/or is otherwise obtaining any Cable Service without required payment thereof. The Licensee shall ensure that all Subscribers receive continuous, uninterrupted Cable Service, except for necessary Cable Service interruptions. When necessary non-routine Cable Service interruptions can be anticipated, the Licensee shall notify Subscribers of such interruption(s) in advance.

## **K. Institutional Network**

### **1. Institutional Network Obligation of Incumbent Cable Operator**

Section 3.2 of the Cable Television Renewal License granted to Cablevision of Massachusetts on June 29, 2000, currently held by Comcast, required the incumbent cable operator to construct an Institutional Network ("I-Net"). The License provided/provides that:

The Licensee shall provide, no later than July 1, 2001 [Phase I of the I-Net was finished prior to December 31, 2002 and Phase II of the I-Net was completed in early 2003], and maintain, without charge to the Town, an Institutional Network ("I-Net") to be utilized by the Town and the Acton-Boxborough Regional Schools in accordance with the terms herein. (For purposes of this Section 3.2, the term "Town" when used in the phrase "at no cost to the Town", shall include the Acton-Boxborough Regional Schools.)

- a) The backbone architecture of the I-Net shall be dedicated point to point Single Mode fibers emanating from the Acton Town Hall and running to each Town and School Building identified on Exhibit 3.2A<sup>5</sup> of this Renewal License. An additional link shall be provided between the Town Hall<sup>6</sup> and the Licensee's Head end. No point to point fiber link shall consist of less than two (2) fibers [four (4) fibers as amended, June 27, 2002] The distribution portion of the I-Net within municipal buildings and schools shall be coaxial cable and coaxial cable associated components. The typical topology is as depicted on Exhibit 3.2D<sup>7</sup>

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5 Available at <http://tinyurl.com/e57dq>

6 As constructed this link is from the Town Library, adjacent to Town Hall, and consists of six fibers.

7 Available at <http://tinyurl.com/e57dq>

- b) The Licensee shall be responsible for providing, installing and maintaining, at no cost to the Town, all electronics and hardware necessary for the operational pathway from the Licensee Head end to each user wall plate within each municipal/school building as needed to make the sites operable. This is to include, but not be limited to, all optical lasers, optical splitters, optical jumpers, optical receivers, in both the downstream and the upstream directions, and internal building components required to accommodate distribution from the coaxial output of the Licensee provided optical receiver to distribution drop wall plate within a municipal building. Internal building distribution components are to include, but not be limited to, coaxial distribution cable, taps, splitters, connectors, bi-directional amplifiers, power supplies, re-insertion equipment, distribution drop coaxial cable, faceplate hardware, and any other items necessary to make the system operational to the faceplates. Re-insertion equipment includes, but is not limited to, rack and accessories, filters, combining network and any other items necessary to make the system operational for local insertion of channels inside of each school/municipal building. Should the Town have a party other than the Licensee (or the Licensee's contractor(s)/agent(s)) provide the above referenced equipment or electronics, other than with the permission of the Licensee or as a result of the failure of the Licensee to meet its commitments pursuant to this Section 3.2, the Licensee shall not be responsible for the maintenance of the equipment or electronics provided by said third party(s).
- c) The Licensee, at its sole cost and expense, shall maintain and repair existing distribution drops previously provided by the Licensee that currently exist within the Town's municipal and school buildings identified on Exhibit 3.2B<sup>8</sup> of this Renewal License, attached hereto and incorporated herein. The Licensee, at no cost to the Town, shall also provide, maintain and repair an additional one hundred (100) distribution drops within ninety (90) days after identification of location by the Town. The one hundred (100) drops will be selected by the Town from the list of drops identified on Exhibit 3.2C<sup>9</sup>. Additional drops required beyond the count of one hundred (100) referenced herein, shall be provided and installed by the Licensee at the expense of the Town, at a cost not to exceed the Licensee's cost for materials and labor (under rate rulings, if applicable) plus 11.25%, the cost of which may, at the Issuing Authorities discretion, be deducted from the funds to be paid by the Licensee to the Town in Year Three (3) pursuant to the Access and Technology Fund (Section 6.9). Maintenance and repair of these drops (beyond the one hundred (100) drops provided by the Licensee) shall be the sole responsibility of the Town, however, if requested by the Issuing Authority or its designee, the Licensee shall maintain and/or repair said drops at the cost of the Town, at a cost not to exceed the Licensee's cost for materials and labor (under rate rulings, if applicable) plus 11.25%, which cost, may at the Issuing Authority's discretion, be deducted from the funds to be paid by the Licensee from the Access and Technology Fund in the subsequent year; however, in the last year of this

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8 Available at <http://tinyurl.com/e57dq>

9 Available at <http://tinyurl.com/e57dq>

Renewal License such maintenance and/or repair cost shall be paid for by the Town or its designee within thirty (30) days of a bill from the Licensee. A distribution drop, for purposes of this section of the document, is defined as the coaxial cable running from the I-Loop distribution equipment (taps) to the wall plate(s) located within rooms throughout the various buildings. The Licensee shall coordinate the location of each Drop and/or Outlet with each of the aforementioned institutions.

- d) The Licensee shall supply, maintain and repair at its sole cost and expense, 30 converters to be used for the Educational and Municipal Access to Residential Programming (EMARP) combining network located at the Town Hall<sup>10</sup>. The EMARP topology is as depicted on Exhibit 3.2E<sup>11</sup>. The Licensee shall provide the aforementioned converters within forty-five (45) days after a written request(s) for the converter(s) by the Issuing Authority or its designee. The converters shall be capable of converting all programming that has been agreed on by both parties, to a usable format for re-broadcast onto the I-Net.
- e) The Licensee shall, at its sole cost and expense, provide, repair and maintain an adequate number of tap ports from the residential network to the Town Hall<sup>12</sup>. These tap ports are to be terminated in the immediate proximity of the I-Net combining network, for purposes of allowing the Town and the Acton-Boxborough Regional Schools the ability to pick channels from the residential network for re-broadcast on to the I-Loop through the use of the Licensee provided de-scrambling converters and Licensee provided channel processors (although filters may be provided, instead of channel processors, at the sole discretion of the Issuing Authority or its designee). The Licensee shall provide, repair and maintain, at its sole cost and expense, all components and hardware necessary to establish de-scrambled, clean Signals for re-broadcast, to include de-scrambling converters and processors. The Licensee shall, at its sole cost and expense, design, provide, repair and maintain a combining network at the Town Hall<sup>13</sup> capable of supporting the upstream and downstream channels referenced in Subparagraph (f) below.
- f) The I-Net shall be capable of transmitting between municipal buildings and public schools, among other things, video, electronic mail, data, interactive teaching, Internet access, municipal building energy management monitoring, security monitoring, telephony services and municipal training.
- g) The Town shall have exclusive use of the I-Net, however, the Town shall not act as a commercial Internet Service Provider by distributing or transmitting such services for commercial purposes over the I-Net or Subscriber Network to residential or commercial Subscribers. No other parties will be permitted to broadcast on the I-Net except for Town and/or school business and with approval from the Town (including the Acton School Department) and/or the Acton-

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10 As constructed, Town Library.

11 Available at <http://tinyurl.com/e57dq>

12 Town Library

13 Town Library

Boxborough Public Schools. The Licensee shall provide the Town with reasonable engineering assistance, subject to reasonable availability, by its staff during the term of this license to assist in developing channel allocation/assignment of applications and services on the I-Loop.

- h) Unless otherwise provided herein, the Town and its designated I-Net users shall be solely responsible for the purchase, maintenance and replacement of any and all user terminal equipment such as data modems and televisions. The Licensee shall be solely responsible for the purchase, maintenance and replacement of all I-Net Fiber Optic system equipment head end equipment, I-Net hub site equipment, Internal distribution components, distribution drops, processors/modulators, de-scrambling converters or other equipment necessary to make the I-Net function. The Town and its designated I-Net agents shall retain the right to manage and operate said equipment. Upon request, the Town agrees to exercise best efforts to provide the Licensee with appropriate space for I-Net equipment. The Licensee shall also be responsible for equipment to enable the I-Net to interact with the Subscriber Network such that I-Net Signals may be transmitted upstream to the Licensee Head end via I-Net channels and downstream on the appropriate Residential Access Channels.
- i) The Licensee, at its sole cost and expense, shall be responsible for maintenance and repair of the I-Net in accordance with the following provisions:
  - i. Licensee shall maintain I-Net video Signal quality as prescribed by FCC Rules and Regulations, Part 76.
  - ii. Licensee shall reasonably determine, and assign the transmit and receive frequencies for all I-Net users subject to reasonable consultation with the users.
  - iii. Licensee shall determine and design the correct Signal strength levels necessary to accommodate a quality distribution system throughout the I-Net, as prescribed by FCC Rules and Regulations, Part 76.
  - iv. The I-Net shall be usable for Ethernet service at 10Mbps. Licensee shall not interfere or in any way prohibit user interconnection of multiple work stations/computers or school or municipal local area networks to multi-user modems provided by municipal or school departments. Upon written request of the Town, the Licensee shall provide the Town with reasonable engineering assistance, subject to reasonable availability, by its staff during the term of this Renewal License to assist in developing the use of the I-Net or return capability. The I-Loop shall comply with current and future industry standard operational parameters for broadband data networks. Standards shall include, but not be limited to, DOCSIS (under development), IEEE 802.3 10-Broad36, IEEE 802.7.
  - v. The I-NET shall be capable of supporting telephony services within three (3) years to allow for voice telephony between municipal buildings, schools, and commercial voice carriers. Nothing herein shall be construed to require the Licensee to provide additional equipment needed to provide telephony

services.

- vi. The operational availability of the I-NET shall be 100%, ensuring uninterrupted use of services and applications running across the I-NET. At no time shall operational availability fall below 99% during prime business hours, as defined in Section 3.2 sub-section (j) of this Renewal License, or below 95% during non-prime business hours. The Licensee shall perform monitoring of the system acceptable to the Town's I-Net Administrators or their designee to show uptime is in compliance with the aforementioned operational availability percentages.
  - vii. The Licensee shall be responsible for all necessary inspections and performance tests of the I-Net facilities under its jurisdiction, as described above, and shall make a good-faith effort to support related testing of the I-Net infrastructure deemed to be required by the I-Net Administrator(s) for User interface fault isolation. Scheduled I-Net infrastructure tests shall be performed at least once per year. Tests, at a minimum, shall show that the system is in compliance with industry accepted parameters for over-all spectrum response, carrier to noise, cross-modulation, second order beating, composite triple beat, ingress/egress and end to end system balance to ensure the operational integrity of the optical transmission equipment, optical receiving equipment, and other I-Loop equipment. The Licensee shall perform any and all tests on the I-Loop that become a recommendation and/or requirement set forth by the FCC or other governing authority for I-Nets in the future. Test results shall be submitted to the I-Net Administrator(s) within thirty (30) days of test completion.
- j) The following requirements shall apply to the parties with respect to outages and repairs:
- i. The Town and/or Acton-Boxborough Regional Schools agree to appoint an I-Net Administrator(s) and notify Licensee of the name and telephone number(s) for contact of such person(s) within thirty (30) days after execution of this License.
  - ii. The hours 7:00 AM to 4:00 PM Monday through Friday are defined as Prime Business Hours for the Town. During Prime Business Hours, the Licensee shall make its best efforts to initiate action(s) to correct critical outages, as brought to the attention of the Licensee by the Town's and/or Acton-Boxborough Regional School I-Net Administrator(s), within one (1) hour of the time that it is notified of any such outage by the I-Net Administrator(s). Notwithstanding the foregoing, the Licensee shall respond to all critical outages occurring within Prime Business Hours within two (2) hours of the time that it is notified of any such outage by the I-Net Administrator(s). A critical outage is an outage of the I-Net which disrupts operation of time sensitive business.
  - iii. For critical outages occurring outside of Prime Business Hours, the Licensee shall initiate action(s) to correct such outages not later than the next Prime

Business Hour.

- iv. For all non-critical outages, the Licensee shall respond within six (6) hours during Prime Business Hours, unless otherwise agreed to by the parties hereto.
- v. For scheduled I-Net maintenance or upgrade activities, and any scheduled Subscriber Network maintenance activities that may impact the I-Net, whether initiated at the Town's request or by the Licensee, the Licensee shall provide a minimum of one (1) week notice to the I-Net Administrator(s), unless otherwise agreed to by the I-Net Administrator.
- vi. For all other non-emergency (scheduled or otherwise) I-Net activities or Cable System/Subscriber Network activities that may impact the I-Net or likely to create any outage of I-Net service, the Licensee shall notify the I-Net Administrator(s) at least forty-eight (48) hours prior to the commencement of any such activities. For all other maintenance activities, including emergency maintenance, the Licensee shall provide as much notice as is reasonably possible under the circumstances.
- vii. All Town requests for I-Net maintenance and Licensee's notices of the same shall be coordinated with the I-Net Administrator(s).
- viii. In the event that the Subscriber Network and the I-Net experience an outage simultaneously, it is the understanding of the parties hereto that the Licensee's first priority is to repair the Subscriber Network. Notwithstanding the foregoing, if the I-Net outage is a critical outage, repair of the I-Net shall instead take priority, except in the case wherein a simultaneous critical outage of the Subscriber Network is so widespread as to affect more than twenty five (25) Acton Subscribers.
- k) Upon written request of the Issuing Authority, the Licensee shall, at no cost to the Town, make extensions to the I-Net, new dedicated point to point Single Mode fibers emanating from the Acton Town Hall, to accommodate new municipal buildings and schools during the life of this Renewal License.
- l) In the event that applicable federal and state law or regulation allows the Licensee to incorporate any cost of the I-Net in its Subscriber rates, the Licensee may only do so to the extent allowed under said laws and regulations, including, but not limited to, compliance with 47 CFR 76.922. It is the parties' understanding and agreement that this means that only amounts above the first One Hundred Thousand Dollars (\$100,000) [Amended to One Hundred Seventy Thousand Dollars (\$170,000 on June 27, 2002)] of I-Net costs can be included in said Subscriber rates. If requested to do so by the Issuing Authority, the Licensee shall provide a detailed written explanation of any such I-Net costs in sufficient detail to enable the Issuing Authority to understand the costs and how they have been allocated, passed-through, line-itemed or otherwise incorporated in charges to Subscribers. Unless agreed to otherwise, the Licensing Authority shall provide said written explanation of costs to the Issuing Authority, in writing, within fourteen (14) days of a written request to do so by the Issuing Authority.

The I-Net sites, as constructed and as currently configured, are as follows:

<u>Site</u>	<u>Address</u>	<u>Applications</u>
Memorial Library	486 Main St.	Hub Site, Data, Video
Citizens Library	21 Windsor Ave.	Data and Video
Council on Aging	50 Audubon Rd.	Data and Video
Emergency Management	3 School St.	Data and Video
Fire – Central Station	7 Concord Rd.	Data and Video
Fire – South Station	54 School St.	Data and Video
Fire – West Station	256 Central St.	Data and Video
Highway Dept.	14 Forest St.	Data and Video
NARA Park	25 Ledge Rock Way	Data and Video
Public Safety Building	371 Main St.	Data and Video
Sewer Treatment Plant	20 Adams St.	Data and Video
Town Hall	472 Main St.	Data and Video
Windsor Building	18 Windsor Ave.	Data and Video
Woodlawn Cemetery	104 Concord Rd.	Data and Video
A/B Buildings & Grounds	23 Charter Rd.	Data and Video
Conant School	80 Taylor Rd.	Data and Video
Douglas School	21 Elm St.	Data and Video
Gates School	75 Spruce St.	Data and Video
High School	36 Charter Rd.	Data and Video
Junior High School	16 Charter Rd.	Data and Video
Merriam School	15 Charter Rd.	Data and Video
Twin School	11 Charter Rd.	Data and Video
Highway Guard House	14 Forest Rd.	Data and Video
Vailencourt Building	17 Woodbury Lane	Data and Video
Fire – North Station	667 Main St.	Data and Video
Veterans' Memorial Field	673 Main St.	Data and Video
Morrison Facility	116 Concord Rd.	Data and Video
Commuter Facility	6 Central St.	Data and Video
Pump Station 1	133 River St.	Data
Pump Station 2	110 Main St.	Data
Pump Station 3	135 Prospect St.	Data
Pump Station 4	386 Mass. Ave.	Data
Pump Station 5	27 Charter Rd.	Data
Pump Station 6	6 Railroad St.	Data
Pump Station 7	16 Adams St.	Data
Pump Station 8	19 Hillcrest Dr.	Data
Pump Station 9	1 Cover Hill Rd.	Data
Pump Station 10	22 Robert Rd.	Data

**2. Cost To Incumbent Cable Operator of Constructing and Equipping the Institutional Network**

The total cost to the incumbent cable operator of constructing and equipping the

Institutional Network was Nine Hundred Twenty-Three Thousand Five Hundred Eighty-Three Dollars (\$923,583). (Constructed in Two Phases – Phase 1 - \$427,816 and Phase II - \$495,767) (See most recent worksheet submitted with most recent FCC Form 1240 Rate Form.)

**3. Annual Cost to Incumbent Cable Operator for Institutional Network Maintenance**

The annual cost to the incumbent cable operator for I-Net Maintenance (based on most recent Comcast worksheet submitted with most recent FCC Form 1240 Rate Form) is Sixteen Thousand, Nine Hundred Eighty-Four Dollars (\$16,984).

**L. Public, Educational and Government (PEG) Access**

**1. PEG Access - Continuing To Build and Improve**

There is a cable-related community need and interest in continuing to build, improve, and expand public, educational and governmental ("PEG") access operations and programming.

**2. PEG Access/Community Programming/Access and Technology Funding - Current Licensee (Comcast)**

The current Licensee's PEG Access, Community Programming, and Access and Technology funding obligations, pursuant to its Renewal License (Article 6 of Renewal License), include the following:

**Section 6.1 PEG ACCESS GENERALLY**

The Licensee shall continue to be responsible for providing: (i) public, educational and governmental ("PEG") access, and (ii) government and community (hereinafter referred to as "Community Programming"- programming, facilities, equipment and support to all residents of the Town and to students attending and using such programming, facilities and equipment at the Acton-Boxborough Regional Schools and the Acton Public Schools, pursuant to the provisions of this Article 6. To this end, the Licensee shall:

- a) Continue to maintain and operate the PEG/Community Programming studio and staff in accordance herewith;
- b) Continue to employ the staff for Acton PEG/Community Programming in accordance herewith;
- c) Continue to manage the annual budget for Acton PEG/Community Programming in accordance herewith;
- d) Purchase, install, operate, maintain and repair equipment, with the funds allocated for such purposes in accordance herewith;
- e) Schedule, operate and program the PEG Access Channels provided in accordance herewith;
- f) Purchase PEG/Community Programming equipment in accordance herewith;

- g) Continue to manage PEG/Community Programming in accordance herewith;
- h) Establish rules, procedures and guidelines for the use and operation of the PEG Access Channels in accordance herewith;
- i) Provide outreach, notices and other support services to PEG Access Users;
- j) Assist PEG Access Users in the production of Programming of interest to Subscribers;
- k) Accomplish such other tasks relating to the operation and management of the PEG Access channels, facilities and equipment as appropriate and necessary.

**Section 6.2 PEG ACCESS FACILITIES AND STAFF**

- a) The Licensee shall continue to operate, equip, maintain, staff and manage, at no charge to the Town or Access Users, a complete color television Studio at the Acton-Boxborough Regional High School for the production and cablecasting of PEG/Community Programming. The studio and all equipment shall be maintained in good and safe working order.
- b) The studio shall be open not less than forty (40) hours per week, including some evening and weekend hours, for PEG Access Users. The studio shall be staffed not less than thirty-five (35) hours per week, including some evening and weekend hours, as measured on a quarterly basis, by the Access Coordinator. The specific hours shall be based upon the reasonable needs of PEG studio users to be arrived at by mutual agreement between the Licensee and the Issuing Authority or its designee, and shall be subject to approval by the Superintendent of the Acton-Boxborough Regional Schools or his/her designee. The Licensee shall inform the public of the days and hours when the studio will be open and also available for use by appointment. The Licensee shall notify, in writing, the Issuing Authority and the Cable Advisory Committee of any change in the regular hours of the studio. Notice of such change shall also be cablecast by the Licensee on the Public Access Channel, with notice also being published, by the Licensee at its cost, no less than twice in a local newspaper of general distribution in the Town. The Licensee shall make good faith efforts to reasonably accommodate requests for appointments unless prior scheduling commitments conflict with such request(s).
- c) Notwithstanding the provisions of subparagraph (b), above, the Audiovisual Media Department Director (or successor position) and his/her designees, shall have priority use of the studio Monday to Friday from 7:00 a.m to 3:00 p.m. At all other times, the Audiovisual Media Department Director (or successor position) and his/her designees shall have the right to use the studio as long as it does not unreasonably interfere with the PEG/Community Programming operation of the studio.
- d) The studio shall be for the exclusive use of Acton PEG users (which shall include students at Acton-Boxborough Regional Schools and the Acton Public Schools) and the Community Programming staff for Acton PEG Channel purposes only, on

a first come, first-serve basis. The Acton-Boxborough Regional Schools and the Acton Public Schools, and any teachers and staff assigned by them, shall have full use of the studio for any educational purpose, including, but not limited to the teaching of classes and for instruction. The Licensee and the Schools shall cooperate with respect to the use of the studio. The studio shall not be used for any other purpose or for the benefit of any other persons than those referenced herein, unless otherwise agreed to by the Issuing Authority or its designee in advance of such intended use.

- e) The Licensee shall continue to employ, at its sole cost, one full time (40 hours per week) Access Coordinator at the above referenced studio. This Access Coordinator shall provide the combined functions of Access Coordinator, PEG Producer and PEG Production Studio Technician. The responsibilities of this staff person shall include:
  - i. Producing and cablecasting PEG/Community Programming as defined and specified in Section 6.6
  - ii. Providing outreach services to encourage Acton residents, students attending public schools in Acton, and public and private institutions and groups, including, but not limited to senior citizen and youth organizations in Acton to use the studio and to produce PEG programming. A minimum of eighty (80) hours per year shall be spent on outreach services to the general public (not including students), including, but not limited to informing the residents of the Town of PEG Access and opportunities for participation and speaking to civic groups. These outreach services shall be documented in writing, with a copy provided to the Issuing Authority and Cable Advisory Committee no less than once per year;
  - iii. Assisting PEG volunteers in the production of video programming of interest to Subscribers a minimum of fifteen (15) hours per week. If less than fifteen (15) hours are required for such assistance, the staff person shall spend the difference between the time spent for this purpose and said fifteen (15) hours either producing programming of interest to Subscribers in Acton (“Community Programming”), including such programming suggested by Town residents, or actively seeking PEG producers;
  - iv. Teaching a minimum of six (6) sets of training classes per year (not only students) for residents of the Town. Notices of training classes shall be cablecast on the appropriate bulletin board no less than four (4) times a day during the two (2) weeks prior to the beginning of the training class and notice shall be published at least once in a local newspaper of general distribution in the Town;
  - v. Conduct regular training classes for Acton students, in coordination with the Acton-Boxborough Regional Schools and/or the Acton School Department, throughout the school year and in the summer, on the skills necessary to produce quality PEG Access programming;

- vi. Provide assistance to the Acton-Boxborough Regional Schools and the Acton Public Schools in the development and production of educational programming;
- vii. Cooperate with the Acton Memorial Library in the development of a coordinated program of PEG Access education and skills training; and
- viii. Engage in such other tasks relating to the operation, scheduling and/or management of PEG Access Channels and PEG/Community Programming facilities and equipment, as appropriate and necessary for an access studio.

Unless otherwise engaged in one of the activities referenced above, the Access Coordinator shall be providing PEG Access services at the studio. The Licensee shall provide the Issuing Authority or its designee with a quarterly report regarding the progress of the Access Coordinator in relation to the responsibilities set out in this Section 6.2.

- f) A Production Technician, who shall not be the same individual as the PEG Access Director, shall spend a minimum of forty (40) hours per month, as averaged over a three (3) month period, at the Acton studio working on and assisting with technical and related matters arising from or related to the Acton PEG channels and their operation and distribution.
- g) The Licensee shall maintain an accurate time sheet(s) of all hours worked by the Access Coordinator and the Production Technician at the Acton studio. A copy of that time sheet(s) shall be provided to Issuing Authority or its designee at the end of every month.
- h) The Licensee recognizes that the staffing of the studio by the Licensee is an important and sensitive issue. The Licensee shall take every step necessary in the staffing process and in the management of its staff at the studio to insure the appropriate conduct and environment required in an institution of learning. The Licensee shall consult with the Superintendent of the Acton-Boxborough Regional Schools or the Superintendent's designee (hereinafter referred to as the Superintendent in this subparagraph) whenever deemed appropriate or necessary by the Licensee or requested by the Superintendent. Should the Superintendent contact the Licensee's program director, or other person in charge of, or responsible for, the Licensee's staff at the Acton studio, with information that there is an issue with conduct of one of the Licensee's employees, the Licensee shall meet with the Superintendent and shall work in good faith to properly address the matter. If the Licensee does not, in the reasonable opinion of the Superintendent, properly address the matter, the Superintendent shall have the right to request the removal of the subject employee from the Acton studio and their replacement by another qualified person. The Town recognizes that the replacement of the employee by another qualified person may, in some instances, not be immediate. Until such time as a qualified replacement employee is assigned to the Acton studio, the Licensee shall make its best effort to provide the coverage and fulfill the obligations required of it pursuant to this Section 6.2 of

this Renewal License. However, nothing herein shall relieve the Licensee from diligently trying to fill the subject position which is vacant as a result of the Superintendent acting in accordance with the provisions of this subparagraph (h).

### **Section 6.3 MINIMUM PEG ACCESS BUDGET FOR ACCESS STAFF**

- a) The annual budget for the operation of the studio, not including: (i) utility costs; (ii) insurance costs, including, but not limited to workers compensation insurance, comprehensive general liability insurance and property insurance; (iii) Internet equipment and services; (iv) cleaning services; and accounting and legal services, shall be not less than Fifty Thousand Dollars (\$50,000) for the first year of this Renewal License and shall increase each year thereafter by five percent (5%).
- b) The Licensee shall not include any amounts related to operating costs for the studio, referenced in Section 6.3(a) above, as external costs, as defined and used in the FCC regulations, in any future subscriber rate filing, nor as operating costs in a cost of service rate filing, nor shall such operating costs be separately itemized, added on to maximum permitted rates, or otherwise incorporated into charges to Subscribers.

### **Section 6.4 PEG ACCESS/COMMUNITY PROGRAMMING EQUIPMENT AND FACILITIES**

- a) All studio and portable equipment deemed by both the Licensee and Issuing Authority or its agent(s) to be in good condition shall continue to be deployed in the studio. An inventory of the equipment which shall continue to be deployed shall be provided to the Issuing Authority within thirty (30) days of the Effective Date of this Renewal License.
- b) The Licensee shall, no later than February 1, 2001, expend the sum of One Hundred Ten Thousand Dollars (\$110,000) as follows: (i) Ten Thousand Dollars (\$10,000) to rewire the studio; and (ii) One Hundred Thousand Dollars (\$100,000) for studio and portable equipment. Any portion of the Ten Thousand Dollars not used for the rewiring of the studio shall be expended on studio and portable equipment.
- c) The Licensee shall also provide, at its sole cost and expense, new studio and portable equipment within three (3) months of the fifth anniversary of the Effective Date of this Renewal License costing and valued at no less than Fifty Thousand Dollars (\$50,000).
- d) With respect to studio and portable equipment provided by the Licensee pursuant to Subparagraphs (b) and (c), above, prior to the purchase of any equipment, but after initial deliberations with the Issuing Authority or its designee, the Licensee shall provide said Issuing Authority or its designee for its approval, a list of the new equipment proposed to be provided or purchased, together with the actual quoted price to be paid for each item. Within thirty (30) days after the completion of the rewiring and the installation of equipment, the Licensee shall submit to the Issuing Authority, a copy of the actual invoices for all services (including

installation) and equipment. In the event of a disagreement between the Town and the Licensee as to the type of any equipment to be purchased and/or the cost, the Issuing Authority shall have the right to require the Licensee to provide a capital grant in the same amount to the Town for the purchase of such new equipment. The Licensee shall not be in non-compliance with the time periods set out in Subparagraphs (b) and (c) above, if the delay results from the Issuing Authority review or a disagreement regarding equipment prior to any decision by the Issuing Authority to require a capital grant in lieu of equipment pursuant to this subparagraph.

[e] The Licensee shall not include the first One Hundred Forty Thousand Dollars (\$140,000) in capital costs for the studio as external costs, as defined and used in the FCC regulations, in any subscriber rate filing, nor as capital or other costs in a cost of service rate filing, added on to maximum permitted rates or otherwise incorporated into charges to Subscribers.

[f] The Licensee shall own (other than as provided for in the final sentence of this subparagraph (d)), install, maintain, repair, insure and replace all PEG equipment purchased pursuant to this Section 6.3 at its sole cost and expense. All such equipment shall continue to be deployed in the studio and portable equipment shall be available at all reasonable times for live transmission or video taping outside the studio. In the event that any such equipment must be repaired and such repair shall take in excess of fourteen (14) days, the Licensee shall provide replacement equipment. Any permanent affixations to the studio, including, but not limited to internal wiring, conduits or fixtures, shall become the property of the Acton-Boxborough Schools, at such time, if any, that the School Superintendent notifies the Licensee in writing of the same.

[g] The Licensee shall, upon reasonable request by the Issuing Authority or its designee, provide the use of a mobile production van to the Town or its designee. Said mobile production van shall be provided to the Town or its designee at the Licensee's sole cost and expense up to twelve (12) times per year. Thereafter, beginning on the 13th day of use in any one year, the cost of the van to the Town or its designee shall be Seven Hundred Fifty Dollars (\$750) per day for each day the van is used thereafter that calendar year. The Licensee shall not include any amounts related to the provision of a mobile production van as an external costs, as defined and used in the FCC regulations, in any subscriber rate filing, nor as capital or other costs in a cost of service rate filing, nor shall such costs be separately itemized, added on to maximum permitted rates or otherwise incorporated into charges to Subscribers. All parties, including Town Departments and the Acton-Boxborough Regional Schools shall obtain the approval of the Issuing Authority or its designee prior to obtaining use of the van.

## **Section 6.7 COMMUNITY PROGRAMMING**

a) The Licensee hereby voluntarily commits to cablecast live, unless otherwise requested by the Issuing Authority or the subject governmental body being cablecast, the below listed events of interest to Acton Subscribers (hereinafter also

referred to as “events” or singularly as an “event”). All cameras shall be staffed by the Licensee unless otherwise provided herein or agreed to by the Issuing Authority, its designee or the subject government body being cablecast. If the Licensee is unable in a particular instance to have the Access Coordinator or other trained and qualified employee of the Licensee cablecast one of the below listed events, the Licensee may provide a trained and qualified volunteer to cablecast said event. If the Licensee is unable to provide an employee or a volunteer, as referenced above, to cablecast the event, and is aware of such inability at the time, it shall notify the Issuing Authority or its designee of such inability at least seventy-two (72) hours prior to the event, and shall continue to communicate with the Issuing Authority or its designee regarding any changes in the particular situation or alternate personnel or volunteers that may become available. If the Licensee in a particular circumstance becomes aware of its inability to so live cablecast an event within said seventy-two (72) hour period, it shall nevertheless make its best effort to have the event cablecast live. Notwithstanding the above processes, the Issuing Authority recognizes that despite the best efforts of the Licensee, there may be some events which are not cablecast because of particular circumstances.

- i. All meetings of the Board of Selectmen;
  - ii. All town meetings;
  - iii. All Acton and Acton Boxborough School Committee meetings;
  - iv. Significant public, town government and school events, including:
    - Acton-Boxborough Regional High School graduation
    - Other significant public, town government and school events within the Town. Both parties shall work cooperatively to make determinations in good faith regarding the significance of particular events, recognizing the significance of public, town government and school events to the Subscribers;
  - v. Bulletin Boards, which shall be the responsibility of the Licensee with the cooperation of both the Town and school administrations. The Town and/or school administrations shall have the right to maintain the respective bulletin board(s) serving their needs if they choose to do so. In such event, the Licensee shall provide the managerial and technical support required for such operation.
- b) The Licensee shall also cablecast PEG programming produced by PEG Access volunteers or pursuant to Section 6.2(e)(iii), above.
  - c) The Licensee is encouraged to cablecast live, or taped if a meeting cannot be cablecast live for scheduling reasons, significant events which are produced in, by, or for or to be shown on Boxborough Public, Educational and Governmental Access Channels, which are of interest to Acton Subscribers.

- d) Nothing herein shall require the Licensee to cablecast obscene programming or programming whose content is otherwise in violation of applicable federal or state law.
- e) In the event the Issuing Authority grants other non-exclusive licenses during the term of this License, the Licensee agrees to develop and implement a written operating procedure, by which, subject to approval by the Issuing Authority, government meetings, which are cablecast pursuant to Section 6.7(a) above, receive live coverage and are cablecast over the cable system(s) without duplication of personnel and equipment present at the meetings, and that the live meetings are carried on the respective cable systems through an interconnection. The cost of an interconnection shall be borne by the additional license(s).

### **Section 6.9 ACCESS AND TECHNOLOGY FUND**

- a) The Licensee shall provide the Town with a grant for PEG access and technology, including, but not limited to I-NET related facilities and equipment, cable system end-user equipment, and PEG Access within thirty (30) days after the Effective Date of this Renewal License and on each anniversary date thereafter during the term of this Renewal License in the following amounts: Year One of the Renewal License - 3% of Gross Annual Revenues or Seventy-Five Thousand Dollars (\$75,000), whichever is greater. Year Two of the Renewal License - 3% of Gross Annual Revenues or Seventy-Eight Thousand Seven Hundred Fifty Dollars (\$78,750), whichever is greater. Years Three through Ten of the Renewal License - 3% of its Gross Annual Revenues. The Gross Revenue amounts shall be calculated, as defined in this Renewal License, based on the twelve (12) month period ending the prior June 30th.
- b) The Licensee may request in writing a report of the expenditures from the Fund from the Issuing Authority within thirty (30) days of the close of the Town's fiscal year, and the Issuing Authority will provide a report within sixty (60) days of receiving the request.
- c) The Issuing Authority shall be responsible for all decisions as to how funds from the Access and Technology Fund shall be allocated.
- d) Any equipment purchased by the Town with funds from the Access and Technology Fund shall be owned, maintained and replaced by the Town or its designee.
- e) In the event that applicable federal and state law or regulation allow the Licensee to incorporate any cost of the service to public buildings in its subscriber rates, the Licensee may only do so to the extent allowed under said laws and regulations, including, but not limited to, compliance with 47 CFR 76.922. If requested to do so by the Issuing Authority, the Licensee shall provide a detailed written explanation of any such costs, in sufficient detail to enable the Issuing Authority to understand the costs and how they have been allocated, passed-through, line-itemed or otherwise incorporated in charges to Subscribers. Unless agreed to otherwise, the Licensing Authority shall provide said written explanation of costs

to the Issuing Authority, in writing, within fourteen (14) days of a written request to do so by the Issuing Authority.

**3. PEG Access Annual Funding – To Be Provided By Applicant (Verizon)**

- a) The Applicant's/Licensee's PEG Access Annual Funding should be Five Percent (5%) of the Licensee Gross Annual Revenues, and shall be paid quarterly to the Issuing Authority and/or its designee(s), within forty-five (45) days of the close of each quarter.
- b) "Gross Annual Revenues" shall mean all consideration of any kind or nature including without limitation cash, credits, property and in-kind contributions (services or goods) derived by Licensee from the operation of License's Cable System to provide Cable Service within the Town. Gross Annual Revenue shall include, but not be limited to all consideration paid to the Licensee and its Affiliates (to the extent either is acting as a provider of a Cable Service authorized by this License). Gross Revenue shall include, but not be limited to, consideration from:
  - i. Fees charged to Subscribers for any and all Cable Service provided by the Licensee, including for Basic Service, Expanded Basic Service, Premium Service, Pay Cable, Pay-Per-View, digital Cable Service, and video-on-demand;
  - ii. Cable Service fees, including, but not limited to, fees and/or charges received from Subscribers for installation, reconnection, downgrade, upgrade and any similar fees and charges;
  - iii. Fees from third party unaffiliated programmers for leased access Programming;
  - iv. Any franchise fee and license fee imposed on the Licensee by this Agreement (including, but not limited to, any fees for support of PEG Access operations and PEG Access capital and facilities, that is/are passed through and paid by Subscribers);
  - v. Fees paid on all Subscriber fees;
  - vi. Interest collected on Subscriber fees and/or charges;
  - vii. Commercial Cable Service Subscriber revenues;
  - viii. Fees paid for channels designated for commercial use;
  - ix. Converter, remote control and other equipment rentals, and/or leases or and/or sale;
  - x. Advertising revenues. Gross Revenue includes a pro rata portion of all revenue derived by Licensee or its Affiliates pursuant to compensation arrangements for advertising derived from the operation of Licensee's Cable System to provide Cable Service within the Town. The allocation shall be based on the number of Subscribers in the Town divided by the total number of subscribers in relation

to the relevant regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue;

- xi. Compensation received by Licensee or its Affiliates that is derived from the operation of Licensee's Cable System to provide Cable Service with respect to commissions that are paid to Licensee as compensation for promotion or exhibition of any products or services on the Cable System, such as a "home shopping" or a similar channel; and
- xii. Revenue of an Affiliate derived from the Affiliate's provision of Cable Service shall be Gross Revenue to the extent the treatment of such revenue as revenue of the Affiliate and not of Licensee has the effect (whether intentional or unintentional) of evading the payment of franchise fees which would otherwise be paid to the Town. In no event shall revenue of an Affiliate be Gross Revenue to the Licensee if such revenue is otherwise subject to franchise fees to be paid to the Town.

Gross Revenue does not include any revenue not actually received, even if billed, (e.g., bad debt - provided, however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in Gross Annual Revenues in the period so collected.)

*c) Bundled Services*

In the event that the Licensee or any Affiliated, during the term of this License, bundles, ties, or combines the sale of some or all of its services, whether authorized or not by this License, and if it is necessary to separately determine Gross Revenues attributable to particular services in order to determine fees owed to the Town, the following proportional methodology shall be applied:

The combined bundled revenues derived from a Subscriber shall be allocated to each of the bundled, tied or combined services in the proportions that the standard published rate for each of the services, as realistically offered by the Licensee or an Affiliate to, and paid by, Subscribers who receive only the individual service, bears to the sum of such rates for all of the bundled, tied or combined services;

except that the Licensee may use an alternative methodology if the results of such alternative allocation reasonably approximate the results which would be derived from the proportional methodology specified in this Section. The Licensee shall bear any burden of proof regarding whether the actual methodology used reasonably approximates the proportional methodology.

**4. PEG Access and Technology Capital Funding - Amount**

- a) The PEG Access/Technology capital funding for to be provided by the Applicant/Licensee should, over the first ten (10) years of the License, be the equivalent of the incumbent Licensee's Institutional Network and PEG Access capital payments:

\$923,583 + 160,000 = \$1,083,583

- b) Given the new entry into cable service by the Applicant in the Town, the Town is prepared to accept the above referenced capital payment over the course of the first ten (10) years of the License term. Said payments must not, however, be back loaded, and they must be guaranteed regardless of the status of federal or state law or legal options provided by said law for the applicant. (See also Severability Section (S-1) below.)
- c) The PEG Access/Technology Capital payment(s) for the final five (5) years of a fifteen (15) year License must meet the anticipated cable related needs and interests of the Town, including the expansion of the Town's (including the Public School's) PEG Access facility and equipment needs. If requested by the Applicant, the Town will provide a proposed PEG Access capital plan for the final five (5) years of the proposed License term.

**5. Institutional Network (Operational and Associated Equipment) Annual Funding**

The Applicant/Licensee should provide Institutional Network (Operational and Associated Equipment) Annual Funding in an amount roughly equivalent to the I-Net maintenance costs currently incurred by the incumbent cable operator. (See Section K-3 above – annual I-Net maintenance cost - \$16,984).

**6. PEG Access Channels**

**a) Three (3) PEG Access Channels**

Three (3) PEG Access Channels are required - One channel for each of the following: Public Access, Educational Access and Government Access. (See also Section regarding PEG transition to digital formats).

**b) Fourth (4th) PEG Access Channel**

The Issuing Authority may initiate a process to determine the need for and merits of a fourth PEG Access Channel. Said process shall include a survey of Subscriber interest in programming options which shall be conducted with input from the Licensee and at the Licensee's expense. After the completion of said process and a full and fair review of the information obtained, including the survey, at a public hearing at which the Licensee may make a presentation on the issue, the Issuing Authority shall determine whether a fourth PEG channel shall be added. If the Issuing Authority determines that a fourth PEG Access Channel shall be added, the Licensee shall have three (3) months in which to add the Access Channel to the programming line-up.

**c) Location of PEG Channels**

Any channel assignment must be to a channel within the first twenty-two (22) channels. The Licensee shall locate the PEG channels on the same channel numbers as currently on the cable system of the incumbent cable operator unless otherwise

prohibited by a current contractual obligation. In analog portions of the system, if any, the Licensee shall place PEG channels at frequencies not susceptible to ingress.

*d) Movement of PEG Channel Placement/Reimbursement*

While the Licensee retains sole discretion for channel placement, the Licensee shall attempt to minimize the number of access channel assignment changes. The Licensee shall not move or otherwise relocate the channel locations of the PEG Access Channels without the advance, written notice to the Issuing Authority. In the event that the Licensee does relocate a PEG Access Channel, the Licensee shall provide reasonable assistance, including financial and advance marketing assistance to the Town and Schools (and an Access Corporation, if any).

*e) Listing of PEG Programming On Licensee's Electronic Program Guide*

The Licensee shall assist the Issuing Authority and its designee(s) so that PEG Programming can be listed on the Licensee's electronic program guide. The Licensee shall not be responsible for such electronic program guide listing(s) absent the timely cooperation of the Issuing Authority and its designee(s).

*f) PEG Channel Quality*

The Licensee shall monitor the PEG Access 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 and shall comply with the applicable FCC Technical Standards, provided, however, that the Licensee is not responsible for the production quality of PEG Access Programming productions, nor for any deficiencies in the source signal it receives from any party over which the Licensee has no control.

*g) Non-Commercial Programming*

The PEG Access Channels shall not be used to provide for-profit commercial programming. Nothing shall prohibit the Issuing Authority or its designee from having memberships, sponsorships, underwriting or acknowledgments (such as the underwriting and acknowledgments displayed by the Public Broadcasting System), to the extent not otherwise prohibited by applicable law or regulations.

**7. PEG Access Cablecasting**

*a) Carriage of current analog PEG programming*

Acton citizens currently have the benefit of a wide range of PEG programming, including government meetings, school events, sporting events, and a critically-acclaimed show for senior citizens. Our citizens should continue to have access to all of this programming independent of their choice of cable provider.

The Licensee shall, within sixty (60) days of the Effective Date of the License, be required to obtain all PEG Access Programming (unless lawfully prohibited by another party), including all PEG Access Programming originating from Town

locations, and transmit (cablecast) all such PEG Access Programming to its Subscribers. Verizon shall explain in reasonable detail, its plans and methodology to comply with this requirement. The Licensee may select its point(s) of connection and interconnection with buildings, structures and/or facilities, subject to consulting with the Issuing Authority and its designee(s) regarding such locations and further subject to the approval of the Issuing Authority and/or its designee(s). The Town shall cooperate with the Licensee, but only to the extent within the Town's authority. The Town and/or its designee(s) shall not be required to provide video by means of any format other than composite video format.

*b) PEG transition to digital formats*

It is anticipated that at a future time PEG programming will transition to a digital format. Licensee shall be prepared to accept video from the Town and/or its designee(s) in appropriate industry-standard digital formats, mutually agreed upon.

**8. Video (PEG Access Channels) On Demand**

The Licensee shall provide the Issuing Authority and/or its designee(s) with PEG Access capacity for Video Programming that may be accessed by Subscribers, at no cost for such selection, through use of standard digital equipment compatible with the Cable System using the Grantee's "on demand" capabilities. The PEG Access Programming shall be as accessible as commercial Programming to Subscribers on all relevant parameters, including menu access, but not including storage capacity. The Licensee shall provide storage capacity of up to twenty (20) hours of on-demand PEG Access Programming at any given time. The Licensee shall provide the Town and/or its designees the means for conveniently and timely programming the Licensee's servers from the PEG Access studio either directly or through the Licensee's personnel or agents. The Issuing Authority and/or its designee(s) shall manage what specific Access Programming is loaded in the allocated storage capacity. The Issuing Authority and the Licensee may by mutual agreement arrange for additional capacity on terms to be determined at the time of such agreement.

**9. Additional Cable System Capacity For PEG Access**

- a) In addition to video-on-demand, the Licensee shall provide and/or dedicate additional system capacity or facilities in a form other than a forward PEG Access channel to support the distribution of PEG Access content to Subscribers if required in accordance with the within provision. Such additional system capacity or facilities may include, but shall not be limited to, interactive Service or Programming.
- b) Proposals for additional system capacity or facilities to support the distribution of PEG Access content to Cable Service Subscribers, not otherwise agreed to by the Issuing Authority and the Licensee, shall be evaluated using the following criteria and process:
  - i. The Issuing Authority shall submit in writing to the Licensee, the proposal for

additional system capacity or facilities (including its application) to support the distribution of PEG Access content to Subscribers. The proposal shall describe:

- (a) The use or functionality for which the capacity and/or facilities will be used and include any current mechanisms or operating expenditure this new functionality might be used to replace;
  - (b) Examples of its use;
  - (c) The cable-related community need that the additional system capacity or facilities is intended to address, how such community need has been ascertained, and how that need will be met by PEG application requested;
  - (d) The equipment and facilities, initial and ongoing operating and capital expenditures necessary to implement the request;
  - (e) The estimated cost of the additional system capacity or facilities (or its application);
  - (f) How the use or functionality can be sustained, financially;
  - (g) Why the use or functionality requested is consistent with current or planned PEG Access; and
  - (h) Other reasonable materials deemed necessary by the Licensee to consider such proposal.
- ii. The Licensee shall review and respond to the Issuing Authority's proposal for additional system capacity or facilities (including its application) to support the distribution of PEG Access content, as follows:
- (a) Provide the Issuing Authority with a written acknowledgment of receipt of the proposal and confirmation that the proposal is complete. If the proposal is not complete, the cable operator shall so inform the Issuing Authority within forty-five (45) days, together with an explanation of how the request is incomplete and a description of the information that is needed to complete the request.
  - (b) Once a proposal is complete, the Licensee shall review and respond in writing to the request within sixty (60) days. If an extension is necessary for adequate review or extenuating circumstances, the Licensee shall inform the Issuing Authority of its need for an extension, including a reasonable time frame for responding to the proposal. The Issuing Authority shall grant any reasonable request for an extension of time.
  - (c) If requested by the Issuing Authority, the Licensee shall offer the Issuing Authority or its designee(s), an opportunity to discuss the proposal with regard to the criteria listed in Section 6.11(b)(ii)(d) below, and mutually investigate possible alternatives should any aspect of the proposal be problematic.

- (d) The Licensee shall evaluate the Issuing Authority's proposal for additional system capacity or facilities (including its application) to support the distribution of PEG Access content to Subscribers using the following criteria – whether the proposal is reasonable to meet the cable-related community needs and interests, taking into account the cost of meeting such needs and interests. In considering this criteria, the Licensee may consider, in addition to other relevant factors, whether it has the capacity to meet the proposal taking into consideration existing and other potential uses.
- (e) If the Licensee denies a proposal for additional system capacity or facilities (including its application) to support the distribution of PEG Access content to Subscribers, it must provide a written explanation, addressing the criteria in Section 6.11(b)(ii)(d) above, and the grounds for denial.
- (f) If the Issuing Authority disagrees with the Licensee's determination with respect to the Issuing Authority's request for additional system capacity or facilities (including its application) to support the distribution of PEG Access content to Subscribers, the request shall be forwarded by both parties to a mutually agreed upon third party who is experienced with or knowledgeable, about PEG Access for a determination as to whether the Issuing Authority's request is reasonable. The determination of the mutually agreed upon third party shall be final, without further right of appeal by either party, however the Issuing Authority shall not be prohibited from making the same or a similar proposal to the Licensee at a later time, as long as said proposal is not made within two (2) years of the submission date of the earlier proposal. To the extent, if any, said third party concludes that all or a part of the Issuing Authority's proposal should be implemented, the Licensee shall implement such additional system capacity or facilities (including its application) to support the distribution of PEG Access content to Subscribers within the time specified by the third party or such later date as may be granted by the third party pursuant to a subsequent request for an extension of time by the Licensee.

#### **10. PEG Access Costs**

There shall be no charges by the Licensee to the Town, its designee(s) or PEG Access Users for transmitting content over the PEG Access Channels.

#### **11. PEG Access Memberships, Sponsorships, Underwriting and Acknowledgments**

Nothing in the Final License shall prohibit the Issuing Authority or its designee(s) from having memberships, sponsorships, underwriting or acknowledgments (such as underwriting and acknowledgments accepted by PBS), to the extent not otherwise prohibited by applicable law and regulation.

## **M. Payment By The Licensee**

### **1. Late Payment**

In the event a payment required by the License is not tendered on or before the fixed date(s), interest due on such fee shall accrue from the date due at a percentage rate to be agreed upon between the Town and the Applicant prior to the grant of a License and reflected in the License. Such rate should, at a minimum, be two percent (2%) above the prime rate, and should not be limited to any set amount, but should rise and fall with the prime rate of interest. Any such interest payment shall not be deemed to be part of the License Fees to be paid to the Town pursuant to Section 7.1 hereof and shall be within the exclusion to the term "franchise fee" for requirements incidental to enforcing the License pursuant to Section 622(g)(2)(D) of the Cable Act.

### **2. Audit/Recomputation/Limitation on Action**

- a) Tender or acceptance of any payment made pursuant to the License 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 including interest payable under the License. All amounts paid shall be subject to audit and recomputation by the Issuing Authority.
- b) If the Issuing Authority has reason to believe that any such payments are incorrect, the Licensee shall, upon a request from the Issuing Authority, provide the Town with additional information documenting and verifying the accuracy of any such payment(s). In the event that the Issuing Authority does not believe that such documentation supports the accuracy of such payment(s), the Issuing Authority may conduct an audit of such payment(s). The Licensee shall be responsible for making available to the Issuing Authority or its designee(s) all records which the Issuing Authority or its designee(s) reasonably deem necessary or relevant to determine the accuracy of a payment or its recomputation.
- c) If after such audit and recomputation, an additional payment is owed to the Town, such fee shall be paid within thirty (30) days after demand by the Town. If an additional payment is owed by the Licensee to the Town, the Licensee shall be responsible for the costs of such audit. The interest on such additional fee shall be charged from the due date.
- d) The period of limitation for recovery by the Town of any payment required by the License shall be no less than the applicable statute of limitations for such action.

## **N. Rates and Charges**

### **1. Rate Regulation**

The Town reserves all rights under applicable law and regulation, throughout the term of the License, with respect to rate regulation.

## **2. Franchise Related Costs - Externalizing, Line-Iteming and Passing-Through**

- a) In the event that applicable state and/or federal laws and/or regulations allow the Licensee to externalize, line-item and/or otherwise pass-through any franchise related costs, the Licensee may only do so in compliance with said laws and/or regulations.
- b) If requested to do so by the Issuing Authority, the Licensee shall provide a written explanation of any externalized, line-itemed and/or passed-through such PEG Access costs, in sufficient detail to enable the Issuing Authority to understand how such costs have been externalized, line-itemed and/or passed-through as allowed or required by applicable law(s). Unless agreed to otherwise, the Licensee shall provide said written explanation to the Issuing Authority, in writing, within thirty (30) days of a request to do so by the Issuing Authority.

## **O. Insurance, Performance Bond/Letter of Credit, and Indemnification**

### **1. Insurance**

At all times during the term of the License, including the time for removal of facilities provided for herein, the Licensee shall obtain, pay all premiums for, and file with the Issuing Authority, on an annual basis, copies of the certificates of insurance for the following policies:

- a) A commercial general liability policy, written on an occurrence basis, on all claims on account of injury to or death of a person or persons occasioned by the construction, installation, maintenance, operation or removal of the Cable System or alleged to have been so occasioned, with a minimum liability of One Million Dollars (\$1,000,000.00). The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for personal injury, broad form property damage, products and completed operations liability, independent contractor's liability, coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.
- b) A property damage insurance policy, written on an occurrence basis, naming the Town, its officers, boards, commissions, committees, agent and employees as additional insureds and save them harmless from any and all claims of property damage, real or personal, occasioned or alleged to have been so occasioned by the construction, installation, maintenance or operation of the Cable Television System, with a minimum liability of One Million Dollars (\$1,000,000.00).
- c) Automobile liability insurance for owned automobiles and trucks, non-owned automobiles and trucks and/or rented automobiles and trucks in the amount of One Million Dollars (\$1,000,000.00) per occurrence, combined single limit. For bodily injury and property damage.
- d) Workers Compensation in the minimum amount of the statutory limit.

- e) The Licensee shall carry excess liability, written on an occurrence basis, in the minimum amount of Five Million Dollars (\$5,000,000.00) in umbrella form over all liability insurance referenced in Subparagraphs a - c above.
- f) The following conditions shall apply to the insurance policies required herein:
  - i. Such insurance shall commence no later than the Effective Date of the License.
  - ii. Such insurance shall be primary with respect to any insurance maintained by the Town and shall not call on the Town's insurance for contributions.
  - iii. Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in the State with an A or better rating for financial condition and performance by Best's Rating Guide, Property/Casualty Edition or a guide equivalently respected in the insurance industry.
  - iv. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those required herein.
  - v. The Licensee's failure to obtain, to procure or maintain the required insurance shall constitute a material breach of the License under which the Town may immediately suspend operations under the License.
  - vi. The Licensee shall require that every one of its contractors and their subcontractors are covered by the Licensee's insurance as required herein or, in the alternative, carry in full force and effect, the same insurance in the same minimum amounts and meeting the same minimum requirements as required herein.
  - vii. The Licensee shall be responsible for all deductibles.
  - viii. The Town, its Issuing Authority, other officials, and employees shall be named as "additional insureds" on all liability insurance policies.
  - ix. Neither these insurance requirements, nor the provision of insurance or insurance proceeds pursuant hereto, shall limit the liability of the Licensee pursuant to this License.
  - x. All certificates of insurance must be filed with the Issuing Authority.
  - xi. All insurance policies shall have a thirty (30) day notice of cancellation or amendment.

## **2. Performance Bond/Security Fund**

- a) The Licensee shall maintain, without charge to the Town, throughout the term of the License, a faithful performance bond running to the Town and in a form satisfactory to the Issuing Authority with good and sufficient surety licensed to do business in the Commonwealth of Massachusetts in the sum of One Hundred Fifty Thousand Dollars (\$150,000). Said bond shall be upon the terms and conditions specified in M.G.L. c. 166A, § 5(k) and the faithful performance and discharge of all obligations of this License.
- b) Said bond shall be a continuing obligation of the Renewal License and thereafter until the Licensee has satisfied all of its obligations to the Town pursuant to the terms and conditions of such bond. In the event that the Town recovers from said surety, the Licensee shall take immediate steps to reinstate the performance bond to no less than the required amount.
- c) The bond shall have a a thirty (30) day notice of cancellation or amendment.
- d) In addition to the Performance Bond, the Licensee shall establish and maintain during the term of the License, at its sole cost and expense, a Security Fund in an escrow account for the Town of Acton. The Security Fund shall be funded initially in the amount of Five Thousand Dollars (\$5,000). It shall be used to insure the faithful performance by the Licensee of all material provisions of the License. If the Licensee fails to comply with any of the provisions of the License, the Board of Selectmen may after finding a default, make a demand upon the Security Fund. The Town shall be paid within ten (10) business days of making the demand for payment from the Security Fund. In the event the Town draws on the Security Fund and the initial Five Thousand Dollars ((\$5,000) is depleted, the Licensee shall reinstate the fund to a total of Ten Thousand Dollars (10,000).

Neither the requirement for, existence of or payment from the above referenced insurance, performance bond or Security fund, shall limit the liability of the Licensee or its indemnification obligation under the License or applicable law.

## **3. Indemnification<sup>14</sup>**

The Licensee shall, at its sole cost and expense, indemnify, hold harmless, and faithfully defend (if requested by the Issuing Authority) the Town, its officials, boards, commissions, committees, agents and/or employees against all claims, suits, causes of action, proceedings, judgment, damages, liabilities, costs and expenses, whether arising in law or in equity, arising out of or relating to: (i) this License, (ii) the construction, installation, operation, maintenance or removal of the Cable System by the Licensee, its officers, employees or agents, or (iii) the acts or omissions of the Licensee its officers, employees or agents, including by way of example, but not limitation, damages, injuries

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<sup>14</sup> With respect to the Applicant seeking indemnification from the Town, please note that the Town and its Board of Selectmen are unable under Massachusetts Law to indemnify another party. Even if the Town and the Board of Selectmen were allowed under law to indemnify another party, by doing so the Town would be unable to avail itself of the tort cap protection of M.G.L. c. 258, §2 (\$100,000 limit). Accordingly, for this and other reasons the Town, would not indemnify another party, including a cable licensee, even if it were legally able to do so.

(personal or otherwise) or death to any persons or damage to real or personal property. Indemnified expenses shall include, without limitation, all out-of-pocket expenses, such as attorneys' fees, including the reasonable value of any services rendered by the Town Counsel. The Town shall give the Licensee timely written notice of any claim(s) for which indemnification is sought. (The Town will not agree to a fixed deadline for such notice since it would unfairly prejudice or harm the Town in the event the Licensee's involvement in the matter and/or indemnification requirement is not readily apparent, including, but not limited to third party claims against the Town for contribution.)

**P. Breach of the License, Liquidated Damages and License Revocation**

1. The Licensee should be subject to clear requirements for demonstrating compliance with its License and all legal requirements, including the provision to the Town of all relevant documents and information. No documents or information needed by the Town to determine the Licensee's compliance with the License and applicable legal requirements should be withheld from the Town for any reason, including any claim that the document or information is proprietary or confidential. (To the extent, if any, documents or information are reasonably deemed by the Licensee to be proprietary or confidential, and the Town is so informed, in writing, by the Licensee, the Town will take reasonable steps to protect their proprietary and confidential nature, cooperating with the Licensee's exercise of its rights to protect its confidential information from public disclosure, subject, however, to applicable law.
2. The Licensee must provide the Town with effective reports and tools to monitor, enforce, and insure full compliance with the License, legal and regulatory requirements.
3. The Applicant should, in its Amended Application, propose a timely process by which a breach of the License is determined by the Issuing Authority. There should not be more than one notice and hearing requirement with respect to any alleged breach or for any remedy sought by the Town. That provision should provide a fair, but not unduly long hearing process through which the Issuing Authority may determine whether there has been and/or exists a material breach and/or default of the Final License by the Licensee. In the event that the Issuing Authority determines that the Licensee is in such default, the Issuing Authority may determine to pursue any of the following remedies:
  - a) Seek specific performance of any provision in the License that reasonably lends itself to such remedy as an alternative to damages;
  - b) Assess liquidated damages as described in Subparagraph (4) below;
  - c) Commence an action at law for monetary damages;
  - d) Foreclose on all or any appropriate part of the security provided pursuant to the License;
  - e) Declare the License to be revoked; and/or

- f) Invoke any other lawful remedy available to the Town.
4. Liquidated damage amounts should reflect the monetary damages the Town and those it represents may face with respect to a failure of the Licensee to meet License and/or legal requirements, and realistically discourage such failures. Liquidated damages should be provided for in the License for the breach of any material provision of the Final License. Higher liquidated damage amounts should be imposed for more serious license violations, including, but not limited to: (i) a failure to provide cable service to a residence or business in accordance with the terms of the Final License, (ii) a failure to install and provide cable service to municipal, school and public buildings; (iii) a failure to comply with FCC technical standards, (iv) a failure to comply with a provision of PEG Access section, (v) the failure to comply with customer service standards; (vi) a failure to submit a required report; or (vii) a failure to obtain written consent for a transfer or assignment of the License or control thereof. Liquidated damages shall be calculated from the receipt of the Issuing Authority notice by the Licensee. Each day the violation continues shall be a separate violation. There should be no limit or cap on the total of liquidated damages which accrue as a result of the breaching of the License by the Licensee.

## **Q. Customer Service and Privacy Standards**

### **1. Customer Service Office**

- a) A local office provides an important point of contact for a cable operator to get to understand, and sometimes know, its customers. Of particular importance, in today's busy world, is the ability of choosing when to address and/or remedy a cable matter or problem, particularly as respects equipment matters. Few people are easily able to stay home for service windows of three (3) to four (4) hours in order to address a cable matter. In fact, in many respects, the local office is more important than ever. A nearby customer service office is, frankly, just good business, particularly in a community that uses, understands, and appreciates the benefits of a customer service office.
- b) The Licensee shall, throughout the term of the License, operate, maintain and staff a full-time customer service office which is reasonably convenient to Acton residents. (The Renewal License of Comcast, requires the Licensee to "maintain, operate and staff a full-time customer service office within the Town of Acton or in any of the following Towns: Hudson, Boxborough, Carlisle, Littleton, Maynard or Stow....) [Due to mergers since the renewal of the Comcast license, an additional Comcast office in Westford is now available and is more convenient to most of the Town than Hudson.] Said office shall be open for walk-in business Monday through Friday, during Normal Business Hours, for the purpose of, among other things, receiving monthly bill collections, installation and change of service and service call requests, exchanging/replacing customer equipment, receiving all customer inquiries and Complaints, made in person, including without limitation, those regarding billing, Service, installation, equipment malfunctions; and

answering general inquiries.

- c) The specific location of said reasonably convenient customer service office may be changed at the sole discretion of the Licensee; provided, however, that (i) the new location is also reasonably convenient to Acton residents, (ii) the Licensee shall give the Issuing Authority at least sixty (60) days advance, written notice of any such change(s); and (iii) without prejudice to the Licensee's discretion to choose the location of a new customer service office (as long as it is reasonably convenient to Acton residents), the Licensee shall take into account and consider in good faith any possible concerns raised by the Issuing Authority regarding such possible new location.

## **2. Customer Service Obligations**

- a) The Licensee shall comply with: (i) the FCC's Customer Service Obligations, codified at 47 U.S.C. 76.309, as may be amended from time to time, and (ii) all customer service regulations of the Massachusetts Cable Division (i.e. the Billing and Termination of Service provisions of 207 CMR 10.00), all of which shall be incorporated by reference into the License.
- b) The Amended Application shall include and specify: (i) additional customer service standards or obligations it intends to meet and (ii) those standards and obligations it proposes to be in a License granted by the Issuing Authority. If the Applicant is not proposing to include specific customer service standards and/or obligations in its Amended Application or the License, which have been included in any other cable franchise executed to date by Verizon (not limited to Verizon of New England Inc.) or any entity whose ultimate parent is Verizon Communications, Inc., regardless of the state in which the cable franchise was granted, please identify those provisions and explain their exclusion. Customer service obligations include, but are not limited to: telephone call centers procedures and access, installation and service visits, scheduling and equipment policies and complaint procedures.

## **3. Subscriber Privacy**

- a) The Licensee shall comply with all applicable laws and regulations regarding Subscriber privacy, as may be amended from time to time, and which shall be incorporated by reference into the License.
- b) The Amended Application shall include and specify additional privacy standards it intends to meet. If the Applicant is not proposing to include specific customer service requirements which have been included in any other cable franchise executed to date by Verizon (not limited to Verizon of New England Inc.) or any entity whose ultimate parent is Verizon Communications, Inc., regardless of the state in which the cable franchise was granted, please identify those subscriber privacy provisions and explain their exclusion from the Amended Application.
- c) The Applicant should state whether it will comply with the Subscriber privacy

provisions contained in Sections 13.11 through 13.21 of the Comcast Renewal License. If the Applicant states in its Amended Application that it will not comply with any one or more of said Subscriber privacy provisions, the Applicant must provide a clear written explanation as to the reasons it will not so comply.

#### **4. Franchising Authority Contact Information On Bill**

The Town will not agree to the omission or deletion of contact information regarding the franchising authority (the Town) on subscriber bills.

### **R. Reports and Investigation**

#### **1. Reports Required To Be Submitted By Law**

The Licensee shall submit to the Town all reports required to be submitted to the Town under applicable law and/or regulation.

#### **2. Reports Generally**

- a) Upon the written request of the Issuing Authority, the Licensee shall promptly submit to the Issuing Authority and/or its designee(s) any records, documents and/or information regarding the Licensee, its business and operations, and/or any Affiliated Person, with respect to the Cable System, in such form and containing such detail as may be reasonably specified by the Town pertaining to the License.
- b) If any records, documents or information are too voluminous, or for security reasons cannot be copied and moved, then the Licensee may request that the inspection take place at a location mutually agreed upon by the Licensee and the Issuing Authority, provided that: (i) the Licensee must make necessary arrangements for copying documents selected by the Issuing Authority and/or its designee(s) after its/their review; and (ii) the Licensee must pay all travel and additional copying expenses incurred by the Issuing Authority and/or its designee(s) in inspecting those records, documents or information.

#### **3. In-House Telephone Reports**

In-house telephone reports which shall include the following information and any other information that may be required by applicable law(s): (1) confirmation that, under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made (which standard shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis); and (2) confirmation that, under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

#### **4. Investigation**

Subject to applicable law and regulation, the Licensee and any affiliates shall cooperate fully and faithfully with any lawful investigation, audit or inquiry conducted by the Town

or a Town governmental agency; provided, however, that any such investigation, audit or inquiry is for the purpose of establishing the Licensee's compliance with its obligations pursuant to this License.

### **5. Dual Filings**

Either party shall notify the other, in writing, of any petitions, communications, and/or requests for waiver or advisory opinion with any State or federal agency or commission pertaining to any material aspect of the Cable System operation hereunder, and shall provide the other party with copies of any such petitions, communications or requests, at its own expense.

## **S. Miscellaneous Provisions**

### **1. Severability**

In the event that a court or agency or legislature of competent jurisdiction acts or declares that any nonmaterial provision of this License is unenforceable according to its terms, or is otherwise void, said provision shall be considered a separate, distinct, and independent part of this License, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court or agency or legislature of competent jurisdiction acts so that any material provision of this License is unenforceable according to its terms, or is otherwise void, the parties agree to immediately enter into negotiations in good faith and make equitable amendments to restore the relative burdens and benefits of this License. Notwithstanding the foregoing, if a party believes a provision is not material, it must so notify the other party within thirty (30) days of a request by such other party that it enter into negotiations to make amendments, or else the claim of non-materiality is waived. The obligation to negotiate is not tolled, and the parties must discharge their negotiation responsibility notwithstanding a dispute as to materiality. The remedies provided for herein do not prevent a party from contending that a particular provision is enforceable, or foreclose any remedies if a provision is enforceable.

### **2. Acts or Omissions of Affiliates**

During the term of the License, the Licensee shall be liable for the acts or omission of its Affiliates while such Affiliates are involved directly or indirectly in the construction, installation, maintenance or operation of the Cable System as if the acts or omissions of such Affiliates were the acts or omissions of the Licensee.

### **3. Force Majeure**

The Force Majeure provision of the License (which shall be applicable to both parties) must include the following or similar provisions:

- a) That the party invoking force majeure takes immediate and diligent steps to comply as soon as possible under the circumstance with the License without endangering the health or safety of the Licensee's employees or property, or the health or safety of the Town or the public, or their property;

- b) In the event that any such delay in performance or failure to perform affects only part of the Licensee's capacity to perform, the Licensee shall perform to the maximum extent it is able to do so in as expeditious a manner as possible; and
- c) the party Licensee invoking force majeure shall notify the other party, in writing, of the occurrence of an event covered by the force majeure License Provision, within five (5) business days of the date upon which the invoking party learns of its occurrence.

#### **4. Jurisdiction**

Jurisdiction and venue over any dispute, action or suit arising from this License shall be as follows: (i) with respect to a legal action brought in the District Court of Massachusetts, the venue shall be the Concord Division; (ii) with respect to an action brought in the Superior Court of Massachusetts, the venue shall be the Middlesex Superior Court; and (iii) with respect to an action brought in the Federal District Court, the venue shall be the Federal District Court for the Eastern District of Massachusetts, located in Boston, Massachusetts. The parties shall subject themselves to the personal jurisdiction of said courts for the entry of any such judgment and for the resolution of any dispute, action, or suit.

#### **T. Payment For Licensing Costs**

Has Verizon (not limited to Verizon of New England Inc.) or any entity whose ultimate parent is Verizon Communications, Inc., entered into a cable franchise, regardless of the state in which the cable franchise was granted, in which it was agreed or the franchise document provided that Verizon would pay some of the franchising authority's costs associated with the grant of the franchise? If so please describe. If so, please state whether the Applicant is willing to pay all or some of the costs associated with the Town of Acton's grant of a Cable License to the Applicant. If so, please provide specifics. If not, please explain why not.

#### **U. Cable Equipment Including Set Top Boxes, Cable-Ready Set Compatibility, Remote Controls, DVR's, and Re-Use of Existing vs., New Wiring To and Inside Homes**

##### **1. Equipment supplied by the licensee**

Please fully describe all matters of interest and concern to Subscribers regarding cable equipment, including set top boxes, cable-ready set compatibility, remote controls, VCR/DVD/DVR and cable compatibility, A/B switches, DVR's, and re-use of existing vs. new wiring to and inside homes.

##### **2. Internal Home Wiring**

Subscribers may, to the extent compatible with the Cable System and not in violation of any signal leakage requirements, use their own home wiring and outlets for

interconnection to use the Cable System and outlets and additional outlets , subject to applicable law. The Licensee shall, upon request, make available to Subscribers its specifications and policies concerning the requisites of home wiring compatibility with the Cable System. The parties acknowledge the Licensee has a right to disconnect such home wiring interconnections to the Cable System in the event signal leakage is occurring and is in violation of FCC signal leakage requirements.

### **3. Compatibility with Consumer Home Theatre Equipment**

Subscribers may directly connect, without the requirement for set-top converters, consumer home video equipment which is compatible with applicable and current standards such as CableCard and OpenCable Unidirectional Receiver (OCUR). The Licensee's Cable System shall make a best-effort endeavor to provide compatibility with these existing standards and any new standards as they are developed within one (1) year of their availability in local consumer video retail stores. In addition, programming for at least the lowest tier (Basic, including all local broadcast and PEG channels) and where possible higher tiers, shall be available unencrypted, so that this programming may be received by any compatible Digital Cable Receiver (such as the current QAM standard or future similar standards), even without the use of the CableCard or other Digital Rights Management system.

## **V. Internet Services To Be Made Available To The Town And Schools**

The Town has a need and interest in Internet Service being provided by Verizon to all public schools and libraries in Acton. The Applicant must describe the Internet Services it plans to make available to the Town, including its Public Schools and the Public Library. The Internet Services Plan shall address the following questions: 1) What Internet Services does the Applicant plan to make available to the Town, including its Public Schools? 2) Will Internet Service be provided at no cost or for a reduced cost? If not, why not? 3) Has Verizon (not limited to Verizon of New England Inc.) or any entity whose ultimate parent is Verizon Communications, Inc., entered into a cable franchise, regardless of the state in which the cable franchise was granted, in which it was agreed or the franchise document provided that Verizon would provide free or discounted Internet Access to the franchising authority or its designee(s)? If so please describe.

## **W. Senior Discount**

The Town has a requirement for a senior discount. A significant discount is provided by the incumbent cable provider (Comcast) and required by the terms of the Comcast license. The applicant will be required to offer a senior discount in the Town of Acton comparable to the discount offered by the incumbent provider and to memorialize the terms of the discount in the license. The issuing authority is not willing to permit a new license to be granted in the Town of Acton which would have the potential to negatively impact our senior citizens through a possible invocation of the level-playing-field provision of the Comcast license with respect to the senior discount.

## APPENDIX A

Municipal, school and public buildings requiring a cable outlet and drop and cable service.

<u>Site</u>	<u>Address</u>
Memorial Library	486 Main St.
Citizens Library	21 Windsor Ave.
Council on Aging	50 Audubon Rd.
Emergency Management	3 School St.
Fire – Central Station	7 Concord Rd.
Fire – South Station	54 School St.
Fire – West Station	256 Central St.
Highway Dept.	14 Forest St.
NARA Park	25 Ledge Rock Way
Public Safety Building	371 Main St.
Sewer Treatment Plant	20 Adams St.
Town Hall	472 Main St.
Windsor Building	18 Windsor Ave.
Woodlawn Cemetery	104 Concord Rd.
A/B Buildings & Grounds	23 Charter Rd.
Conant School	80 Taylor Rd.
Douglas School	21 Elm St.
Gates School	75 Spruce St.
High School	36 Charter Rd.
Junior High School	16 Charter Rd.
Merriam School	15 Charter Rd.
Twin School	11 Charter Rd.
Highway Guard House	14 Forest Rd.
Vailencourt Building	17 Woodbury Lane
Fire – North Station	667 Main St.
Veterans' Memorial Field	673 Main St.
Morrison Facility	116 Concord Rd.
Commuter Facility	6 Central St.