

OPEN VIDEO SYSTEM AGREEMENT

BETWEEN LOUDOUN COUNTY, VIRGINIA

AND

OPENBAND MULTIMEDIA, L.L.C.

**A FRANCHISE FOR USE OF RIGHTS-OF-WAY FOR THE OPERATION OF AN
OPEN VIDEO SYSTEM GRANTED TO OPENBAND MULTIMEDIA, L.L.C.**

WHEREAS, the County is authorized, pursuant to Section 15.2-2108.1 of the Code of Virginia (1950 as amended), to regulate open video systems in the County; and

WHEREAS, OpenBand Multimedia, L.L.C., (hereinafter referred to as either “OpenBand” or “Grantee”) has agreed to comply with the provisions of Chapter 809 of the Codified Ordinances of Loudoun County entitled “Open Video Systems” (the “OVS Ordinance”); and

WHEREAS, Grantee has proposed to upgrade the existing system facilities and to provide other benefits to the County, its residents and Subscribers; and

WHEREAS, the County has reviewed OpenBand’s overall financial, legal and technical qualifications to hold a franchise and Grantee’s ability to carry out its commitments.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA:

That a Franchise for the operation of an open video system in the County is hereby granted to OpenBand Multimedia, L.L.C., subject to the OVS Ordinance and the terms and conditions set forth below:

1. Definitions.

Capitalized terms in this Franchise Agreement shall have the meanings ascribed to them by the OVS Ordinance, or in Chapter 805 of the Codified Ordinances of Loudoun County entitled “Franchising and Regulation of Cable Television Systems” (the “Cable Ordinance”) unless otherwise defined herein. References to the OVS Ordinance include applicable provisions of the Cable Ordinance. The term “Subscriber” includes individual residents or businesses who receive Cable Service, even when such individual residents or businesses receive service under the terms of an agreement with a homeowner’s association or property owner.

2. Grant and Scope of Authority.

2.1 The County hereby grants to Grantee a nonexclusive Franchise solely for the purpose of engaging in the business of providing Cable Services in the County by means of an Open Video System, and for that purpose, subject to any applicable construction permitting process, to erect, install, construct, repair, replace, rebuild, reconstruct, maintain and retain in, on, over, under, upon, across and along any public streets or ways such poles, wires, cable, fiber optics, conductors, ducts, conduit, vaults, manholes, amplifiers, bridgers, line extenders, power supplies, optical devices, optical-electronic equipment, taps, pedestals, appliances, attachments, and other property as may be necessary or appurtenant to an OVS; and in addition, so to use, operate and provide similar facilities or properties rented or leased from other Persons, including but not limited to any public utility or other Grantee franchised or permitted to do business in the County.

2.2 The Initial Service Area of the Grantee under the Franchise shall consist of the Belmont Hunt, Lansdowne and Broadlands/Broadlands South subdivisions of the County, as more fully described on the attached Exhibit A. In addition, Grantee shall have the right to extend its facilities to serve additional portions of the County, upon approval of the County. If Grantee wishes to extend its service area, Grantee shall submit a written request to the County, describing the additional service area requested (each, an “Additional Service Area”), setting forth Grantee’s proposed construction schedule and construction plan, and enclosing an application fee of \$5000. The County shall process any such application in good faith, in an effort to review and, if appropriate, approve the application within 120 days of submission, provided that the 120-day time period shall not be binding on the County or entitle Grantee to any presumption of approval. The County’s review process shall include review by the County staff, the Cable Television Advisory Committee, and the Board of Supervisors. The provision of service to any Additional Service Area shall be subject to all the terms and conditions of this Franchise Agreement, including the term of the franchise as set forth in Section 3.1. The Initial Service Area and any approved Additional Service Areas shall comprise the “Service Area.”

2.3 The County reserves the right, at its discretion, to grant other Franchises in accordance with the OVS Ordinance.

2.4 Grantee hereby accepts the Franchise, warrants and represents that it has examined all of the provisions of the OVS Ordinance and this Franchise Agreement, accepts and agrees to be bound by all of the provisions contained in the OVS Ordinance and this Franchise Agreement.

2.5 Grantee agrees that it shall at all times during the term of this Franchise be subject to all lawful exercise of the police power of the County and to the absolute right of the County to maintain control over its streets and public ways, and to such reasonable regulations as the County may adopt hereafter. This Franchise Agreement shall not be construed as a limitation on the County's police power. The police power of the County may be exercised through amendment of the OVS Ordinance as well as through enactment of separate ordinances and regulations.

2.6 The authority granted herein, subject to the terms and conditions of this Franchise Agreement and the OVS Ordinance, shall be known as the "Franchise."

3. Term

3.1 This Franchise shall have a term of seven (7) years, beginning on the effective date of the OVS Ordinance.

4. System Construction.

4.1 System Capacity

Grantee's facilities in the Initial Service Area shall consist of three elements: (1) a copper wire network used to transmit voice communications; (2) a fiber-to-the-home network used to transmit Internet services; and (3) a fiber-to-the-curb network using coaxial cable to transmit video services. Grantee's facilities in any Additional Service Areas shall consist of the foregoing architecture, or of a single fiber-to-the-premises network. For purposes of this Agreement, the term "System" refers to any facilities used by Grantee to deliver video programming to Subscribers. In the event of any change in state or federal law that renders cable modem service or other Internet-based services subject to regulation as a "cable service," the term "System" shall also refer to any facilities used by Grantee to deliver cable modem service or Internet service. Grantee's System shall have a capacity of at least 870 MHz, and shall use the spectrum between 50 MHz and 870 MHz to deliver analog standard definition channels, and high-definition digital channels, and digital music programming. The System shall support simultaneous upstream transmission utilizing return path modules, and shall be capable of providing impulse Pay-Per-View service ("PPV") and Video On Demand ("VOD").

4.2 System Design

Grantee shall design the System based on the current industry standards to ensure compliance with applicable technical standards set forth by the FCC in Part 76 of the FCC's Rules, 47 C.F.R. 76.601, including performance tests, technical standards, signal leakage performance and cable television system monitoring. The System design shall include (1) antenna facilities, (2) a headend, (3) distribution facilities or outside plant, and (4) customer premises equipment ("CPE").

A. Antenna Facilities. Grantee shall receive programming content from multiple sources, including both satellite and UHF broadcasts. Grantee's satellite antenna facilities receive signals from Ku-band satellite sources and from a number of C-Band satellites. In addition to satellite antennas, Grantee shall use off-the-air UHF antennas, primarily to receive local programming, both standard and high definition.

B. Headend. Grantee shall construct at least one cable television headend to support delivery of analog, standard and high definition digital programming, and conditional access (subscription control, content encryption, and interactive services, *e.g.*, PPV). Grantee's headend shall include Uninterruptible Power Supplies ("UPS") and a backup diesel generator. In the event of a commercial power failure, the system shall automatically switch to the backup generator, with the UPS providing power during the switch-over to avoid service interruption. The backup generator shall support System operation for 24 hours without refueling, and additional time, if necessary, by refueling the generator.

C. Distribution Facilities. Grantee's outside plant distribution system shall transmit signals from the headend through a dedicated single-mode fiber optic facility to optical nodes deployed in the Initial Service Area and each Additional Service Area. Grantee shall use Broadband Line Extender ("BLE") series amplifiers and taps in its outside plant. All optical nodes and amplifiers shall be equipped with return path modules to support the simultaneous bi-directional transmission required for advanced interactive services. The outside plant components in the Initial Service Area shall be installed in above ground enclosures. Grantee may modify its System over time to use (1) optical node enclosures to house optical nodes and directly attached passive splitters, (2) stand-alone pedestals to house BLE series amplifiers and collocated passive splitters and taps, and (3) combination pedestals to house taps feeding individual residences.

D. Customer Premises Equipment. Subscribers shall receive analog programming without any specialized CPE by connecting a standard television set to a cable service outlet in the house. Special CPE may be required to gain access to digital programming (both standard and high definition) and advanced services. Grantee shall provide Subscribers with set-top terminals that permit Grantee to control the Subscriber's access to different levels of programming upon the Subscriber's request. This will allow Subscribers to use additional services, such as (i) impulse pay-per-view (ordering of pay-per-view events directly from the terminal's remote control), (ii) personal video recording (select models), (iii) access to high-definition programming (select models), (iv) the interactive program guide, and (v) parental control.

E. Extension to Additional Service Areas. If Grantee submits a request for an Additional

Service Area, any such application shall include maps and plans showing how Grantee proposes to link the Additional Service Area with the Initial Service Area. The applicant shall also include maps and plans showing the proposed architecture for serving the Additional Service Area. The County may request that the Grantee include in such plans conduit space or fiber optic lines for County use, to be installed at Grantee's expense.

4.3 Plans and Specifications Required.

If Grantee intends to construct new facilities Grantee shall submit such a construction plan at least ninety (90) days before the start of construction, unless such ninety (90) day time period shall be reasonably shortened by County. If Grantee intends to upgrade, rebuild, replace, or reconstruct existing facilities, Grantee shall submit a construction plan at least sixty (60) days before the start of such work, unless this time period is reasonably shortened by the County. All such plans shall include construction timetables, equipment specifications, and design performance criteria. The Grantee shall make reasonable efforts to avoid negative aesthetic impacts in its plans. The Grantee shall, as part of each such plan, also submit to the County a map of the entire Franchise area which shall clearly delineate the following:

4.3.1 Areas within the Franchise area where the System will be available to Subscribers, including a time schedule of construction or reconstruction for each year that construction or reconstruction is proposed; and

4.3.2 Areas covered by the Franchise where the System cannot be extended due to lack of present or planned development, with such areas clearly marked, and the reasons for not serving them clearly stated on the map.

Such maps, using standard industry designations, shall at a minimum disclose (i) cable routes, (ii) locations and identifications of aerial and above and below ground appurtenances (such as risers, vaults, pedestals and power supplies), and (iii) physical locations and identifications of system components, including but not limited to cables and active and passive electronics. Grantee need not disclose the electrical values of its taps, splitters or directional couplers; however, the County shall have the power to review such materials at Grantee's office.

The County shall have the right to review and approve such plans, to assure that they are consistent with applicable statutes, ordinances, codes, regulations, determinations and rulings governing construction within the public streets of the County, including without limitation the Land Subdivision Development Ordinance, Facilities Standards Manual, Zoning Ordinance and traffic safety standards. Where such plans and specifications are not in compliance with such statutes, ordinances, codes, regulations, determinations and rulings, the Grantee shall modify or revise such plans and specifications so as to achieve such compliance. The County shall also have

the right to review such plans to avoid negative aesthetic impacts. Where timely requested (minimum seven (7) days notice) by the County in response to plans submitted by Grantee pursuant to Section 4.3 hereof, Grantee shall modify its plans in order to reasonably relocate facilities within technical design constraints where such relocation will not result in major material costs. Grantee shall comply with the requirements of applicable state and local statutes, ordinances, codes and regulations governing the location of subsurface installations, including without limitation the provisions of "Miss Utility" with respect to notification to or from a regional notification center concerning proposed excavation work. If after construction begins, the County determines that the planned placement of specific equipment by Grantee may cause a negative aesthetic impact, then the Grantee shall make reasonable efforts to minimize such an impact within technical design constraints where such efforts will not result in major material costs.

4.4 Power Supplies

The Grantee shall maintain alternative power sources (battery back-up) so that in the event of a loss of commercial power all distribution amplifiers and fiber optic nodes may be maintained at full power for at least two (2) hours at seventy (70) degrees Fahrenheit beyond the time when normal power sources serving the System have ceased. For infrastructure deployed within private communities prior to the approval of this agreement, the infrastructure may be upgraded over a reasonable period of time. All new infrastructure deployed after the approval date of this agreement will conform to these requirements from the date of deployment. Standby power shall be available for all head end, tower and head end HVAC systems and equipment for a minimum of twenty four (24) hours, subject to receiving all necessary permits for such installation. The Grantee shall maintain at least one portable generator that can be dispatched to the scene wherever a commercial power outage lasts longer than the batteries can carry the load.

4.5 Line Extension Policy

Within the Grantee's Service Area, as defined in § 2.2 hereof, the Grantee shall extend its system to provide service to any Person, upon request, without charging such Person more than the charges for installing drop lines permitted pursuant to §§ 4.6 and 4.7.

4.6 Service Drops.

4.6.1 Grantee shall make service available to any Subscriber within the Grantee's Service Area upon Subscriber's request and at the standard connection charge if the connection requires a standard drop, defined as no more than one hundred fifty (150) foot aerial or underground drop, measured from the new Subscriber's residence or place of business to the Grantee's nearest coaxial cable distribution pedestal or other coaxial cable service delivery point. Installation of such a connection shall include, without limitation, one (1) outlet and standard materials.

4.6.2 If making service available requires more than a standard drop (such as a wall fish installation), Grantee may, after so informing the Subscriber, charge the Subscriber (i) the standard connection charge and (ii) an amount equal to the reasonable actual labor (including wages, benefits and payroll taxes), material and other costs incurred by Grantee for the additional facilities and work (including a reasonable allowance for overhead); in the alternative, Grantee may charge an appropriate hourly service charge for the entire installation.

4.6.3 Standard aerial drops shall be accomplished, no less than ninety-five percent (95%) of the time measured on a quarterly basis under normal operating conditions, within seven (7) business days of receipt of Subscriber's request unless a later date is requested by Subscriber; a non-standard drop shall be accomplished within fifteen (15) calendar days of a Subscriber's request and payment in accordance with this Section 4.6. Standard underground drops, including the trenching work, shall be completed within fourteen (14) calendar days of the work order. Grantee will not be required to comply with installation requirements and schedules in this paragraph if compliance is not feasible due to weather conditions or lack of necessary permits, easements or marking of underground utilities, but, Grantee will complete installation as soon as feasible.

4.6.4 When the extension of the OVS into Additional Service Areas or post-wiring of multiple dwelling units is required, installation shall be completed within ninety (90) days following satisfaction of each of the conditions set out above, unless otherwise agreed by Grantee and the Subscriber(s); provided, however, that if the construction is in a new residential community, the extension shall be completed within the time period agreed to by the Grantee and the builder or developer, not to exceed thirty (30) days after a certificate of occupancy is issued for any particular home. Grantee shall notify the County in writing whenever installations, measured on a quarterly basis, exceed the periods specified above.

4.7 Aerial and underground drops in excess of 150 feet are not to exceed actual installation costs.

With respect to requests for connection requiring an aerial or underground drop line in excess of one hundred and fifty (150) feet from the nearest coaxial cable distribution pedestal, the Grantee must extend and make available Cable Service to such Subscribers at a connection fee not to exceed (i) the Grantee's standard connection fee, if any, plus the actual installation costs incurred by the Grantee for the distance exceeding one hundred fifty (150) feet, or (ii) the Grantee's hourly service charge for the entire installation as the case may be. Actual installation costs include reasonable actual labor or hourly service charges (including wages, benefits and payroll taxes) and material costs incurred by Grantee for the additional work beyond one hundred fifty (150) feet, together with a reasonable charge for overhead.

4.8 Underground installation not to exceed standard installation if Subscriber provides trenching and conduit.

In the event that a Subscriber independently provides for his or her own trenching and conduit (including any necessary boring, backfilling, replacing and/or replanting), the trenching and conduit must comply with the County's and Grantee's construction standards, the installation charge shall be the same as for a standard installation, if such an installation is standardized, or at reasonable rate and charges; provided, however, that the Subscriber agrees, in writing and in a form acceptable to the Grantee, and the County, to hold the Grantee, and the County harmless for any injury, loss or damage caused by or related to the work so undertaken by the Subscriber, and that the Grantee shall not be responsible for any service problems caused as a result of the work performed by the Subscriber.

5. Customer Service.

5.1 Customer Service Standards.

Grantee agrees to comply with the customer service standards set forth at §§ 805.10(1)-(4), (6)-(12), (14)-(17), and (19)-(21) of the Cable Ordinance. With respect to the customer service standard set forth in § 805.10(19) of the Cable Ordinance, Grantee shall receive a credit for any credit or rebate paid or provided to a Subscriber pursuant to the provisions of any bulk billing or HOA agreement entered into by Grantee, so that Grantee shall not be required to pay a credit or rebate to a Subscriber for a system outage that, in the aggregate, exceeds the requirements set forth in Cable Ordinance § 805.10(19).

5.2 Programming Guide.

Grantee shall continuously maintain on one of its basic service channels a channel dedicated to providing a continuous updated schedule of programming available on its OVS indicating the channel number, specific program description, and the time of day the program can be seen. Alternatively, a printed guide may be made available for each subscriber without charge.

5.3 Changes in Service

Grantee agrees to give the County Administrator thirty (30) days prior written notice of changes in the mix or quality of Grantee's services, including, without limitation, changes in Grantee's channel line-up.

5.4 Billing Practices, Information and Procedures.

Grantee shall provide to all Subscribers at time of installation, or with first billing, complete information pertaining to billing and collection procedures, procedures for ordering changes in or termination of services, refund and credit policies.

Billing Procedures shall be as follows:

- (1) Grantee shall bill all Subscribers in a uniform, non-discriminatory manner, regardless of Subscriber's level of service. In no case shall any Subscriber be required to pay for services in excess of 30 days prior to receipt of such service. No administrative fee (fee for processing of delinquent accounts) shall be imposed for the first twenty (20) days from date of billing.
- (2) Except as otherwise permitted by FCC rules, Grantee agrees that, with regard to limited basic service only, it will not make a monthly charge for multiple cable outlets (in the same living unit) over and above the one initial outlet provided a subscriber upon receipt of Cable Service. The initial installation cost of multiple outlets shall be paid as part of the cost of initial installation charges.
- (3) Grantee shall provide all Subscribers with an itemized monthly bill that contains, at a minimum, the following information:
 - a. A list of each service or package received for that billing period showing individual or package charges, as applicable, for the "Basic Service" tier any optional upper tiers, pay per view usage, each pay TV channel, and each remote control or other devices, etc.
 - b. The period of time over which said services are billed;
 - c. The total charges due for the monthly period, separate from any previous balance due;
 - d. A specific date by which payment is required; and
 - e. Specific information on complaint procedures that are available to Subscribers.

- f. A Subscriber's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.
- g. In cases in which Grantee bulk bills a community's homeowners' association for "Basic Service," Grantee shall provide the association with a bill for the Basic Service, and shall also provide each individual Subscriber with a separate bill for any extra services, such as pay-per-view usage, each pay television channel, and each remote control or other rental equipment.

5.5 Disconnection and Termination of Cable Services

5.5.1 Subscriber termination of Cable Service

A Subscriber may terminate Cable Service at any time without penalty.

5.5.2 Grantee Disconnection of Subscriber Cable Service

Grantee shall only disconnect or terminate a Subscriber's cable for good and just cause, or upon request of the Subscriber. In no event shall Grantee disconnect said Cable Service for nonpayment without the prior written notification to the affected Subscriber at least ten (10) business days prior to such disconnection or termination. In no event shall such disconnection or termination for nonpayment occur in less than 30 days after a Subscriber's failure to pay a bill due. Such notice shall state the minimum time to pay before disconnection may occur. Where the Grantee has improperly discontinued Cable Service to any such Subscriber, Grantee shall provide free reconnection to the System to such Subscriber, within twenty-four (24) hours of being notified by Subscriber.

5.6 Subscriber Surveys as to Programming Interests and Quality of Grantee's Services, and Operations.

Once every three years, the Grantee, at its expense, shall survey the Subscribers to evaluate the Grantee's performance and seek Subscriber programming preferences. The County Administrator/Designee shall be permitted to review the survey instrument prior to issuance and shall also be consulted as to the questions being asked and for any other suggestions that might assure the quality, fairness and statistical validity of the survey. Copies of complete survey results, including raw survey data that does not identify individual respondents, shall be given to the County Administrator/Designee within thirty days of completion of each survey.

5.7 Notice to be Given to Subscribers Regarding Complaint Handling Procedures

The Grantee shall furnish a notice to Subscribers on procedures for receiving Subscriber complaints. Said notice to be provided at the time of initial subscription and annually thereafter.

5.8 Information Requirements to Subscribers.

All information required by the OVS Ordinance, the Cable Ordinance, and this Agreement to be sent to Subscribers shall be provided to all system Subscribers, including all households or individual units that may receive Cable Service through bulk billing arrangements.

5.9 Continuity of Service Mandatory.

5.9.1 It shall be the right of all Subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the System, or the County gives notice of intent to terminate or fails to renew this Franchise, the Grantee shall act so as to insure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances.

The Grantee shall ensure that all Subscribers receive continuous uninterrupted service. At the County's request, the Grantee shall operate its System for a temporary period (the "transition period"), following the revocation or termination of its Franchise or any transfer as necessary to maintain service to Subscribers, and shall cooperate with the County to assure an orderly transition from the Grantee to another grantee. The transition period shall be no longer than the reasonable period required to select another grantee and to build a replacement System, if necessary, and shall not be longer than thirty six (36) months, unless extended by the County for good cause. During the transition period, the Grantee shall continue to be obligated to comply with the terms and conditions of the OVS Ordinance, this Franchise Agreement, and all Applicable Law.

5.9.2 In the event Grantee fails to operate the System for four (4) consecutive days without prior approval of the County or without just cause, the County may, at its option, operate the System or designate an operator until such time as Grantee restores service under conditions acceptable to the County or a permanent operator is selected. If the County operates the System in accordance with this section, the Grantee shall reimburse the County for all costs, expenditures and damages incurred by the County in excess of the revenues derived from the operation of the System.

5.10 Parental Control.

The Grantee shall provide a parental control option, trap or other device to Subscribers requesting the capability of blocking any channel or channels of video programming and its audio track from entering the Subscribers' homes. The device must be provided at the Subscriber's request and Grantee may charge for any such device, provided such charge is permitted under federal law.

6. Services to County Government and Educational Institutions.

6.1 Cable Service to Public Buildings and Other Locations

Upon request of the County Administrator, the Grantee shall provide without charge its most complete (highest) cable service tier (not including pay services) to one outlet in all public buildings (including both existing buildings and future new buildings) located within the Grantee's service area. The County shall insure that such outlets are secured and that such outlets shall not be open to the general public. Nothing herein shall prevent the County from purchasing additional cable programming at standard rates, as deemed necessary. The County may extend its one outlet to additional locations throughout the building at its own installation expense without additional monthly fee. Agencies that are designated for this service include the following, but the County will consider exclusions on a case-by-case basis based on economic feasibility of providing such service:

- All Loudoun County Public School buildings;
- All library buildings;
- All locations occupied or used by the County Government and all locations occupied by fire and rescue operations, including the Training Academy; and
- All locations used by the Sheriff's Office.

In addition, each such site shall be provided a two-way connection to the network, with said connection terminating within each service location at a point approved by the County Administrator or his designee. All connections required by this section shall be installed within 90 days from the effective date of this agreement in the case of existing sites within the Service Area, and within 30 days after the issuance of occupancy permits in the case of new sites acquired or constructed within the Service Area.

6.2 Access Channel Allocations

Grantee shall allocate one full-time channel on its System's lowest service tier exclusively to public access use, another to educational use, and another to government access use. Furthermore, a second government access channel shall be provided for the full-time, exclusive use of the Loudoun County government within six (6) months of the County Administrator's order to do so. The Grantee shall make available to the County a separate, scrambled digital channel for the purpose of transmitting internal government communications and governmental and educational programming between County government and Loudoun County Public School facilities. Channel number assignments for the access channels shall not be changed by the Grantee without said changes being first approved by the County Administrator and the channel user agency or agencies involved. In the event such changes are approved, Grantee shall bear all of the reasonable costs incurred by the County resulting therefrom, including, but not limited to, technical costs, logo modifications, stationery, promotion and advertising. An additional access channel beyond those specified above shall be made available to user agencies promptly upon the County's request whenever utilization of the existing channel or channels is at least six hours per day, five days per week over a continuous period of six weeks.

6.2.1 Underutilized Access Channels to be Used by Others Under Rules Established by The County

Whenever any access channel is utilized less than four (4) consecutive hours per day for six (6) days per week for a continuous period of not less than six (6) consecutive weeks, the County may permit different or additional "interim" uses for said channel. The Grantee, among others, may be permitted to utilize unused access channel capacity under rules and procedures established by the County; however, no access capacity shall be utilized by the Grantee until all other vacant channel capacity on the OVS has been programmed.

6.2.2 Grantee Shall Assure High Technical Quality of Access Channels.

All government and educational access channels shall include the vertical blanking intervals, all other video components, and all aural components, including subcarriers. However, neither the County nor any agency operating a government or educational access channel shall make any commercial use whatsoever of its channel or channels or any of their component parts. The technical quality of the transmission path for access channels from head end to Subscriber shall be at least equal to the same technical quality as the channels used by Grantee to transmit other commercial television broadcast stations and satellite channels. Grantee shall insure that there is no material degradation in the access channel signals that are received by the Grantee for distribution by Grantee over the OVS.

6.3 Service to Public School Buildings

Grantee shall configure its System (or in some other technical way) provide for the delivery of all channels of its most-widely subscribed-to tier of Cable Service to each Loudoun County Public School building within the County located within the Grantee's service area. Upon request, Grantee shall provide without charge up to 6 addressable converters to each school served by the System. It is recognized that the total number of channels delivered may be limited by the internal distribution systems that are in place within certain school buildings.

6.4 Equipment and Funding

Grantee agrees to provide a grant of \$1.20 per Subscriber, per year, to support PEG access. In addition, the Grantee shall bear the cost of the interconnection required by Section 6.6 hereof. The parties agree that this amount meets the requirements of 47 C.F.R. § 76.1505.

6.5 Emergency Alert

Grantee shall install emergency alert equipment capable of transmitting audio and video messages on all channels. Grantee and the County shall, in a timely manner, establish mutually acceptable procedures and protocols for the use of these facilities, including, but not necessarily limited to their use for the dissemination of local government emergency announcements.

6.6 Interconnection

Grantee shall interconnect its System with that of the incumbent cable operator, for the purpose of obtaining access to, and delivering on Grantee's systems, all of the signals transmitted over the PEG access channels. The interconnection shall be completed within 180 days after the effective date of this Agreement. If Grantee and the incumbent cable operator are unable to agree on the terms of interconnection, the County may, in its discretion, establish such terms, pursuant to 47 C.F.R. § 76.1505(d)(3).

6.7 Effect of Renewal

If the incumbent cable operator's cable franchise is renewed during the term of this Agreement, the relevant provisions of this Agreement shall be amended to ensure that the Grantee's PEG access obligations match those established in the incumbent's renewal franchise, as required by 47 C.F.R. § 1505(d)(7).

7. Reporting Requirements

7.1 Quarterly Operational Status Reports

Grantee agrees to provide quarterly reports to County of at least the following statistical information; additional information may be required by County to determine compliance with this Agreement and the OVS Ordinance.

- (1) Number of repair service requests received in the previous quarter.
- (2) Breakdown by type of complaint received (ex. “complete outage” or “snowy picture” etc.)
- (3) Breakdown by cause of problem (ex. “Subscriber equipment” or “drop/converter” or “system” etc.)
- (4) Breakdown by time of response or resolution (e.g. “within 24 hours” or “same day” etc.)
- (5) Subscribers added, each tier and each premium channel.
- (6) Subscribers disconnected, each tier and for each premium channel.
- (7) Average hold time for Subscriber service telephone calls that were received in the previous quarter.
- (8) Percentage of telephone calls that were answered within 30 seconds during the previous quarter.
- (9) Percentage of calls received within the previous quarter which were abandoned before being answered by a live operator.
- (10) Percentage of time when all incoming trunk lines were in a busy condition.

7.2. Financial and Operational Report.

An annual financial and operational report shall be filed with the County Administrator no later than one hundred twenty (120) days after the end of a Grantee's fiscal year and shall include the following information:

- (1) Dated, accurate, and legible map of the System installed showing changes made during the year.
- (2) Financial data of the System showing complete revenue and expense data, balance sheets, sources and uses, and cash flow information; annual summary of Right-of-Way Fee information required in subsection 8.1 below.
- (3) Annual summary of information required in Section 7.1 above.
- (4) Current copy of subscriber rates, rules and regulations and any other information required by the County.

7.3 Regulatory Filings.

The Grantee shall not apply for any waivers, exceptions, or declaratory rulings from the Federal Communications Commission or any other Federal or State regulatory agency which would materially affect the Franchise without providing the County with copies of all such applications. Grantee may claim confidential, privileged, or proprietary rights to such documents only if such confidential rights are determined to be confidential by law or by practices of federal or state agencies or the County prior to disclosure. Such confidential data exempt from public disclosure shall be retained in confidence by the County and its authorized agents and shall not be made available for public inspection.

8. Right-of-Way Fee.

8.1 Each year during the Franchise term, the Grantee shall pay to the County, on a quarterly basis, a fee equal to five percent (5%) of gross revenues. For purposes of this Agreement, "gross revenues" shall be defined as in the OVS Ordinance, and shall include all revenues received by Grantee or its affiliates, including not only the specific categories of revenue set forth in the OVS Ordinance, but amounts paid by a homeowners' association, property owner, or property manager on behalf of individual homeowners, tenants, or residents. For example, if Grantee provides basic tier service to Subscribers pursuant to an arrangement under which the homeowners' association fee paid by residents includes a component allocable to basic cable service, and the homeowner's

association rather than the Subscriber pays Grantee for provision of that tier of service, the amount paid by the homeowner's association shall be included in gross revenues. Furthermore, if Grantee offers any cable service bundled with any other service at a single, reduced rate, Grantee shall not discount the amount of the revenue received under any such arrangement, but shall allocate to gross revenues an amount equal to the unbundled price of the cable service . Such payments shall be made no later than thirty (30) days following the end of each calendar quarter. Each payment shall be accompanied by a report showing total gross revenues for the quarter, and the amount of gross revenues derived from each category of revenue, including, without limitation, each class of cable service, equipment rentals, installation fees, advertising, and carriage fees.

8.2 Nothing contained in the Franchise shall be construed to limit the authority of the Grantee to make payments in support of the use of community programming, such as its own local origination programming, and public education or governmental access channel programming.

8.3 Grantee acknowledges that its obligation to pay the fee required by Section 8.1 began on the effective date of the OVS Ordinance. Grantee shall pay the amount due for the period between the effective date of the OVS Ordinance and the date that this Agreement is approved by the Board of Supervisors, including interest, no later than thirty (30) days after the date of approval by the Board of Supervisors. Such payment shall be accompanied by a report containing the information required by Section 8.1. Thereafter, payments shall be calculated and shall be due and payable in accordance with Section 8.1.

9. Performance Guarantees.

9.1 Insurance.

The Grantee shall maintain at all times liability insurance as required in Section 805.06 of the Cable Ordinance and shall file with the County Attorney's office Certificates of Insurance evidencing the required coverage. The insurance required herein shall include contractual liability insurance applicable to the Grantee's obligation under Section 9.3 (Defense and Indemnification) below.

The Grantee also shall maintain at all times the capability to pay any amount which may be deducted from insurance claim payments pursuant to the terms of the Grantee's insurance policy.

9.2 Letter of Credit.

The Grantee shall maintain with the County, in a form acceptable to the County Attorney, a Letter of Credit, as described in Section 805.14 of the Cable Ordinance, in the amount of twenty-five thousand dollars (\$25,000). Grantee shall structure the Letter of Credit in such a manner so that

if the County at any time draws upon the Letter of Credit, the amount of available credit shall automatically increase to the extent necessary to replenish that portion of the available credit exhausted by the honoring of the draw down. The intent of this Subsection is to make available to the County at all times a Letter of Credit in the amount of \$25,000.

The Letter of Credit shall be used to ensure the faithful performance of all provisions of the Franchise, the OVS Ordinance, and applicable provisions of the Cable Ordinance, and shall be attached to and made a part of this Franchise Agreement.

9.3. Defense and Indemnification.

It is expressly understood and agreed that the Grantee shall defend, indemnify and save harmless the County, its officers, boards, commissions, agents and employees to the extent provided in Section 805.06 of the Cable Ordinance.

9.4 Litigation Expenses.

In the event that the County initiates legal action against Grantee to compel compliance with the OVS Ordinance (including applicable provisions of the Cable Ordinance), or to recover for Grantee's breach of any covenant, agreement, or condition contained in this Franchise Agreement, and prevails, Grantee shall pay the County's reasonable attorneys' fees. In the event that the county initiates any such legal action mentioned above and the Grantee prevails, then each party shall bear their own costs for attorneys' fees.

10. Rates.

The County reserves the right to regulate Grantee's rates and charges, to the extent permitted by Applicable Law.

11. Liquidated Damages.

11.1 The Grantee understands and agrees that failure to comply with any time and performance requirements as stipulated in this Franchise Agreement, the OVS Ordinance, or applicable provisions of the Cable Ordinance, will result in damage to the County, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the parties hereby agree that the County may impose the liquidated damages specified below. In the case of the following classes of violations, no such assessment shall be made for liquidated damages without prior written notice to Grantee of the failure to

comply allowing Grantee a 90-day period to cure following notice, and provided that the non-compliance is not the result of circumstances beyond Grantee's control.

- (1) Failure to submit plans indicating the expected dates of installation of the various parts of the System---one hundred dollars (\$100.00) per day;
- (2) Failure to supply documents, reports or data requested by the County pursuant to the OVS Ordinance or this Franchise Agreement, regarding, for example, installation, construction, rebuild, customers, finances, financial reports, or rate review---fifty dollars (\$50.00) per day;
- (3) Failure to maintain any required bond---one hundred dollars (\$100.00) per day;
- (4) Failure to indemnify the County under the Cable Ordinance or this Franchise Agreement---one thousand dollars (\$1,000.00) per day;
- (5) Failure to restore letters of credit as required in the Cable Ordinance---one hundred dollars (\$100.00) per day;
- (6) Failure to test, analyze and report on the performance of the system, as required herein; the Grantee shall pay one hundred dollars (\$100.00) per day for each day, or part thereof, that such noncompliance continues;
- (7) For breach of any customer service standard, the Grantee shall pay one hundred dollars (\$100.00) per day for each day or part thereof, that such noncompliance continues. A breach shall be interpreted to mean that the County has evidence of repetitive failure to comply with the service standards.

In the case of the following classes of violations, no such assessment shall be made for liquidated damages without prior written notice to Grantee of the failure to comply, allowing Grantee ten (10) business days to cure following notice, and provided that the non-compliance is not the result of circumstances beyond Grantee's control:

- (8) Failure to comply with the Cable Ordinance and this Franchise Agreement concerning subscriber complaints---twenty dollars (\$20.00) per day per complaint;

- (9) Failure to initiate repair and restoration of damaged private property in accordance with the Cable Ordinance and this Franchise Agreement---one hundred dollars (\$100.00) per day for each incident;
- (10) Failure to respond to a Subscriber request for repair or adjustment---twenty dollars (\$20.00) per day per occurrence;
- (11) Failure to activate Subscriber service upon request---twenty dollars (\$20.00) per day per occurrence;
- (12) Failure to otherwise provide service to a Subscriber in accordance with this Franchise Agreement---ten dollars (\$10.00) per day, not to exceed one thousand dollars (\$1,000.00) in the aggregate;
- (13) Failure to pay any fee pursuant to Section 809.06 of the OVS Ordinance, taxes, liens, or other fees---one hundred dollars (\$100.00) per day each day or part thereof, that each violation occurs or continues.
- (14) Failure of the Grantee to pay the County any amounts due and owing to the County by reason of the indemnity provision of Section 805.06 of the Cable Ordinance; failure of Grantee to pay to the County any liquidated damages due and owing to the County; or failure to make any payment required by this Agreement within the time fixed herein; ---five hundred dollars (\$500.00) per day for each day, or part thereof, such noncompliance occurs.
- (15) Failure to pay to the County any damages, claims, costs or expenses which the County has been compelled to pay or incur by the reason of any material act or default by the Grantee; ---five hundred (\$500.00) dollars per day for each day, or part thereof, that such noncompliance occurs.
- (16) Failure to comply with any material provisions of this Franchise Agreement or Cable Ordinance which the County Administrator or his designee reasonably determines can be remedied by an expenditure of an amount from the Letter of Credit or other instrument---five hundred (\$500.00) dollars per day for each day, or part thereof, that such noncompliance occurs.

11.2 If the County Administrator or his designee concludes that the Grantee is in fact liable for liquidated damages pursuant to this Section, the procedures established in the Cable Ordinance shall be followed.

12. Termination, Revocation, Cancellation.

In addition to all other rights and powers retained by the County, the County reserves the right to terminate, revoke or cancel this Franchise and all rights and privileges of the Grantee in the event of a material breach of the terms and conditions of this Franchise Agreement, all as provided in Section 805.16 of the Cable Ordinance.

13. Renewal

The Franchise shall terminate upon the expiration of the term specified in Section 3, unless the parties agree to the terms of a new Agreement on or before that date. If Grantee wishes to renew the Franchise, the Grantee shall notify the County at least 12 months before the expiration date. The County shall then determine whether the Franchise should be renewed. In determining whether the Franchise may be renewed, the County shall consider the standards set forth in § 809.08 of the OVS Ordinance. If the County determines that renewal is not warranted, the County shall so notify the Grantee within a reasonable time after receipt of the Grantee's notice of desire to renew. If the County determines that renewal is warranted, the parties shall commence negotiation of a new Franchise Agreement, provided, however, that a favorable finding by the County shall not be construed as requiring the County to extend or renew the Franchise, and that if the parties are unable to agree on new terms by the expiration date of this Agreement, the Franchise shall terminate on that date.

14. Purchase of Cable System by the County

14.1 Rights to Purchase.

In the event the Grantee forfeits or County revokes this Franchise for cause, or when the renewal of the Franchise has been denied, or at the normal expiration of the Franchise term, the County shall have the right, directly or as an intermediary to purchase the OVS.

14.2 Franchise Valuation.

Under circumstances where the Grantee forfeits the Franchise, when renewal of the Franchise has been denied by the County, or at the normal expiration of the Franchise, the County may purchase the System for its fair market value, determined on the basis of the System as a going concern, with no value allocated to the Franchise itself.

Under circumstances where the Franchise has been revoked for cause by the County, the acquisition shall be at an equitable price. Equitable price shall mean fair market value adjusted downward for the harm to the County or Subscribers, if any, resulting from a Grantee's breach of this Agreement or violation of the OVS Ordinance and as further adjusted to account for other equitable factors.

14.3 Date of Valuation.

The date of valuation shall be no earlier than the day following the date of expiration or termination and no later than the date the County makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

14.4 Transfer to County

Upon exercise of this option and the payment of the above sum by the County, the Grantee shall immediately transfer to the County possession and title to all facilities and property, real and personal, used or useful in the operation of the OVS, free from any and all liens and encumbrances not agreed to be assumed by the County in lieu of some portion of the purchase price set forth above; and the Grantee shall execute such warranty deeds or other instruments of conveyance to the County as shall be necessary for this purpose.

14.5 Arbitration of Value and Costs.

- (1) In the event the County and Grantee cannot agree upon the value of the OVS, either may give notice of demand to the other for arbitration.
- (2) Arbitration shall commence and proceed according to law except as follows:
 - a. The parties shall, within fifteen (15) days of giving and receiving notice of demand for arbitration, appoint one arbitrator each who is experienced and knowledgeable in the valuation of cable television property. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within another fifteen (15) days.
 - b. Within thirty (30) days after appointment of all arbitrators and upon ten (10) days written notice to parties, the board of arbitrators shall commence a hearing on the issue of valuation.

- c. The hearing shall be recorded and transcribed at the request of either party. All hearing proceedings shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn, except as otherwise authorized by law.
- d. Within thirty (30) days after the close of the hearing, the board of arbitrators shall prepare findings and the decision agreed upon by a majority of the board of arbitrators which shall be sent by certified mail to the County and the Grantee.
- e. The decision of the board of arbitrators shall be final and binding upon the parties and may be enforced by any court of competent jurisdiction.
- f. Either party may seek judicial relief in the following circumstances:
 - i. If either party fails to select an arbitrator;
 - ii. the arbitrators fail to select a third arbitrator;
 - iii. specified time limits have been exceeded;
 - iv. the board of arbitrators has not proceeded expeditiously; and
 - v. based upon the record, the board of arbitrators committed fraud, exceeded its authority, or abused its discretion.
- g. In the event a court of competent jurisdiction determines the board of arbitrators has committed fraud, exceeded its authority or abused its discretion, it may order the arbitration procedure repeated and issue findings, orders and directions, with costs of suit to be awarded to the prevailing party.
- h. Costs of arbitration shall be born equally unless the board of arbitrators finds the offer of the County or the demand of Grantee was unreasonable, in which case, cost may be apportioned so that less or none of the costs may be born by one party.

15. Performance Evaluation Sessions

15.1 The County and the Grantee shall hold scheduled performance evaluation sessions once every three years during the term of the Franchise. All such evaluation sessions shall be open to the public.

15.2 Ninety days prior to each performance evaluation session, the Grantee shall submit to the County a written report, in reasonable detail, covering the significant events related to the Grantee's performance or nonperformance of the terms and conditions of its Franchise Agreement and the OVS Ordinance during the period from the submission of the last report. Such reports shall cover significant events including, but not limited to those events related to the following topics:

- (1) compliance with, and any modification necessary with respect to, the financial commitments required under the Franchise Agreement;
- (2) compliance with requirements regarding System characteristics and technical performance and testing requirements;
- (3) compliance with construction terms, standards, and schedules;
- (4) a description of the changes made or contemplated to the mix and quality of programming in the broad categories of video programming or other services on the system. Nothing in this paragraph, however, shall imply the County or other regulatory authority has the power of censorship over the content of programming on the Grantee's channels;
- (5) the status of new communications technologies and the Grantee's efforts to implement such technologies;
- (6) compliance with, and any modification necessary with respect to the Grantee's privacy protection policies;
- (7) a summary of all service interruptions;
- (8) a summary of all significant and representative Subscriber and user complaints and the action taken by the Grantee in response thereto;

- (9) a summary of relevant developments in the legal and regulatory arenas; and
- (10) other events which, the County, or the Grantee may find significant.

15.3 Within sixty (60) days after receipt of the Grantee's report, the County may request additional reasonable and appropriate information on specific topics which the Grantee shall supply the County within sixty (60) days of such request. The County may review the Grantee's performance to determine whether the Grantee has complied with the terms and conditions of the Franchise Agreement and shall, following completion of any such review, keep the Grantee's report on file. Nothing in this Section shall affect the County's remedies provided elsewhere in the Ordinance and this Agreement.

15.4 Special performance evaluation sessions may be held at any time during the term of this Franchise at the request of the County or the Grantee.

15.5 All performance evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice at least (10) days preceding each session. A Grantee shall notify its Subscribers of all evaluation sessions by: (1) a mailing directly to all Subscriber households and units at least (10) days preceding each session or (2) by announcement on at least two (2) channels (within the basic tier) of its system between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days preceding each session. For purposes of this Section, a mailing directly to a Subscriber's household may be accomplished by sending electronic mail to the Subscriber's e-mail address on file with the Grantee. County may waive notice requirements in its discretion.

15.6 Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to: service rate structures; Franchise fees; liquidated damages; free or discounted services; application of new technologies; system performance; services provided; access channels; programming offered; Subscriber complaints; privacy; judicial and FCC rulings; line extension policies; and Grantee, or County rules.

15.7 Within sixty (60) days after the conclusion of any evaluation session, including the clarification period described in Subsection 15.3, the County may prepare a report with respect to the adequacy of system performance and quality of service. If inadequacies are found which result in the apparent violation of any of the material provisions of the OVS Ordinance or this Franchise Agreement, the Grantee shall have a minimum of thirty (30) days to respond and propose a plan for implementing any improvement or correction. Notwithstanding this section, the County is free to pursue any other remedy it may have under applicable law.

16. Reservation of County's Rights.

16.1 Nothing contained herein shall in any way limit or restrict the County with regard to any action it may take in the lawful exercise of police powers.

16.2 The parties understand and agree that this Franchise Agreement may be amended in any manner necessary to comply with Applicable Law. If federal or state law is amended to expand the County's powers pertaining to OVS, the County reserves the right to adopt and incorporate additional terms, conditions, or regulations in the OVS Ordinance that are consistent with such expanded powers.

16.3 The parties also understand and agree that nothing in this Franchise Agreement is intended to represent a statement by the County of the future cable-related needs and interests of the community, and that the County is still in the process of determining such needs and interests for the purposes of conducting franchise renewal negotiations with Benchmark Acquisitions Fund I, LLP ("Adelphia"). At the same time, the parties understand and agree that nothing in this Franchise Agreement is intended to impose obligations on the Grantee that are more favorable or less burdensome to the Grantee than the terms of the cable television franchise now held by Adelphia (the "Adelphia Franchise"). The parties further understand and agree that it is not clear as a matter of law whether the terms of this Franchise Agreement are relevant either for purposes of determining the community's future cable-related needs and interests for purposes of 47 U.S.C. § 546, or for purposes of applying the level-playing field provision of Va. Code § 15.2-2108(C), but it is possible that both provisions are relevant. Therefore, the parties agree that, in the event that the County enters into a renewal of the Adelphia Franchise (the "Renewal Agreement") (which shall include a transfer of the Adelphia Franchise that incorporates, or has the effect of, a renewal of the Adelphia Franchise) during the term of this Franchise Agreement, the County shall have the right to determine, in its sole discretion, whether one or more terms of such Renewal Agreement, or the Renewal Agreement as a whole, impose obligations on Adelphia that are more burdensome or less favorable to Adelphia than the material terms of this Franchise Agreement are to the Grantee. In that event, the County shall have the right to propose the amendment of such material terms to conform to the Renewal Agreement. To exercise this right of amendment, the County shall notify the Grantee in writing of its determination, of which provisions of this Agreement are affected, and of the proposed language of any amendments. The Grantee shall have the right to accept or reject the proposed amendments. The Grantee shall exercise its election by giving the County written notice no later than sixty (60) days after receipt of the notice of amendment. If the Grantee accepts the proposed amendments, the County shall promptly introduce the amendments for approval by the Board of Supervisors. If the Grantee rejects the proposed amendments, this Franchise Agreement shall terminate ninety days (90) days after the date of the Grantee's notice of election to the County. For purposes of this Section, the material terms of this Franchise Agreement are the following sections: 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 5.1, 5.4, 5.5, 5.6, 5.9, 5.10, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7.1, 7.2, 9.1, 9.2, 9.3, 11.1, 11.2, 12, and 15.

16.4 The Franchise is subject to the right of the County:

- (1) To revoke or cancel the Franchise for failure to comply with the provisions of this Franchise Agreement, the OVS Ordinance or any other local, state or federal laws, or FCC rules or regulations.
- (2) To adopt such other regulations as may be determined by the County to be conducive to the health, safety, and welfare of, and service to the public and the County.
- (3) To control and regulate the use of its public ways and public places. The Grantee shall pay such part of the costs of improvement or maintenance of the public ways and public places as shall arise from its use thereof and shall protect, defend, and hold the County harmless from all damages arising from the Grantee's use.
- (4) To install and maintain without charge its own equipment upon the Grantee's poles and in its conduits upon the condition that the County's equipment shall not unreasonably interfere with the operations of the Grantee.
- (5) To inspect, through its designated representatives, all construction or installation work performed subject to the provisions of this Franchise Agreement and the OVS Ordinance and make such inspections as it shall find necessary to insure compliance with the terms of this Franchise Agreement, the OVS Ordinance and other Applicable Law.
- (6) To require the Grantee upon the expiration of the term of the Franchise or upon its termination or cancellation as provided herein or in the OVS Ordinance, to remove at its own expense any and all visible portions of the system from the public ways within the County as designated by the Director of Building and Development. The County may, however, in its discretion, in order to protect public health and safety and to facilitate future use of the right of way, require removal where it is in the best interest of the County. Failure by the Grantee upon direction from the County to remove the system as directed may result in the County Administrator or his designee making a claim on the Letter of Credit as prescribed in Subsection 9.2 above.

17. Miscellaneous

17.1 No Waiver.

The Grantee shall not be excused from complying with any of the terms and conditions of this Franchise Agreement or the provisions of the OVS Ordinance or other applicable law by any failure of the County upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions, unless otherwise agreed by the County.

17.2 Controlling Authorities

The provisions of this Franchise Agreement constitute a valid and enforceable contract between the parties, and shall be construed in accordance with generally accepted rules concerning construction of municipal Franchise contracts. This Franchise Agreement is subject to and shall be governed by the OVS Ordinance and any amendments thereto, and all other Applicable Law. In the event of conflict or ambiguity between the Cable Ordinance and any amendments thereto, and the OVS Ordinance and any amendments thereto, the OVS Ordinance, as amended, shall control unless preempted by federal law or regulation.

17.3 Further Amendments

Grantee agrees to be bound by any future amendments to the County's Codified Ordinances and the OVS Ordinance lawfully adopted in compliance with the County's police powers and to conform to the County's ordinances and to the provisions of state and federal law.

17.4 Interpretation and Administration

The administration and interpretation of this Agreement, including the OVS Ordinance, shall be vested in the County Administrator of Loudoun County, or his or her designee. Grantee agrees that all interpretations and decisions regarding administration of the Agreement and Ordinance, as determined by the County Administrator or his or her designee, are final, binding and conclusive, except that Grantee may appeal the County Administrator's interpretations to the Board of Supervisors by filing a written appeal within thirty (30) days of the decision of the County Administrator. The County Administrator's decision shall be binding unless and until reversed or modified by the Board of Supervisors. The Board shall render a decision within thirty (30) days of the appeal, unless the parties agree otherwise. Grantee agrees that the interpretation of the Board will be final and conclusive unless modified or overturned by a court of competent jurisdiction provided appeal is filed within thirty (30) days or such shorter time as may be required by law.

17.5 Representations and Warranties.

17.5.1 Grantee hereby warrants, represents, acknowledges, and agrees that at or before the effective date of this Agreement it shall submit to the County Attorney, with a copy to the County Administrator, an appropriate document evidencing its warranties that, as of the effective date of this Agreement:

- (1) The Grantee is qualified to do business in Virginia;
- (2) The Grantee has the requisite power and authority under applicable law and Grantee's partnership agreement or other organizational documents, is authorized by resolutions of its Board of Directors or

other governing body, and has secured all consents which are required to be obtained as of the effective date of this Agreement, to enter into and legally bind the Grantee to this Agreement and to take all actions necessary to perform all of its obligations pursuant to this Agreement;

- (3) Grantee guarantees that it is financially able to perform all commitments made in this agreement and agrees to provide financial statements evidencing this ability;
- (4) The Grantee upon accepting this Franchise, does so relying upon its own investigation and understanding of the power and authority of the County to grant the Franchise. Applicable law authorizes the County to grant this Franchise;
- (5) The Grantee has carefully read the terms and conditions of this Franchise and the OVS Ordinance and is willing to and does accept all of the risks of the meaning of such terms and conditions;
- (6) To the best of its knowledge, there is no action or proceeding pending or threatened against the Grantee which questions its performance under this Agreement;
- (7) Insofar as the legal capacity of the Grantee to carry out any obligation pursuant to this Agreement is concerned, the execution of, and performance pursuant to, this Agreement will not result in the breach or violation of any provision of the partnership agreement, by-laws of the Grantee or of any statute, regulation, agreement, judgment, or decree to which it is subject;
- (8) The Grantee enters into this Franchise Agreement willingly and without coercion, undue influence, or duress, has not misrepresented or omitted material facts, has not entered into this Agreement with the intent to act contrary to their provisions, and represents and warrants that, so long as it operates the OVS, it will be bound by the terms and conditions of this Agreement and the OVS Ordinance.

17.5.2 At or before the acceptance of this Agreement, the Grantee shall submit to County Administrator, in a form acceptable to the County Attorney, a statement from the Grantee's Chief Executive Officer (or equivalent), stating that, as of the effective date of this Agreement, the performance of all terms and conditions of this Agreement and the OVS Ordinance are commercially practical at the time of the signing of the Agreement.

17.5.3 The Grantee by acceptance of this Franchise acknowledges that it has not been induced to enter into this Franchise by any understanding or promise or other statement whether oral or written by or on behalf of the County or by any other Person concerning any term or condition of this Franchise not expressed herein or in the OVS Ordinance.

17.5.4 The rights and remedies of the parties pursuant to this Agreement are cumulative, except as otherwise provided in this Agreement, and shall be in addition to and not in derogation of any other rights or remedies which the parties may have with respect to the subject matter of this Agreement. A waiver of any right or remedy by a party at one time shall not affect the exercise of said right or remedy or any other right or other remedy by such party at any other time.

17.5.5 In the event that, after the effective date of this Agreement, any court, agency, commission, legislative body, or other authority of competent jurisdiction; (i) declares this Agreement invalid, in whole or in part, or (ii) requires the Grantee either to: (a) perform any act which is inconsistent with any provision of this Agreement or (b) cease performing any act required by any provision of this Agreement, the County shall reasonably determine whether said declaration or requirement has a material and adverse effect on the Agreement. When the Grantee intends to exercise its rights pursuant to such declaration, the Grantee shall so notify the County of said declaration or requirement. If the County determines that said declaration or requirement does have a material and adverse effect on the Agreement, the Grantee shall then enter into good faith negotiations with the County to amend this Agreement to eliminate any inconsistency or conflict between said declaration or requirement and the provisions of this Agreement and to meet the original intent of the parties as the circumstances warrant and unless prohibited by law.

17.6 Filing Requirements.

When not otherwise prescribed herein, all matters herein required to be filed with the County shall be filed with County Administrator.

17.7 No Person, Firm, or Corporation Shall be Arbitrarily Refused Service.

No person, firm or corporation in the service area of the Grantee shall be arbitrarily refused Cable Service; provided, however, that the Grantee shall not be required to provide Cable Service to any Subscriber who does not pay the applicable connection fee or monthly Cable Service charge.

17.8 Requirements Pertaining to Parties Giving Notice.

All notices which the County may give to the Grantee or which the Grantee may give to County shall be given in writing and may be given by first class mail, postage prepaid. Notice sent to the Grantee shall be addressed to Grantee at 22461 Shaw Road, Dulles, Virginia 20166_. Notice sent to the County shall be addressed to the County at its Government Center, One Harrison Street, S.E., P.O. Box 7000, Leesburg, VA 20177-7000, Attention: County Administrator, Fifth Floor. Such notices, when sent by mail, shall be deemed given one day after deposit in the U.S. Mail.

17.9 Headings to Facilitate Reference Only

The headings contained in the OVS Ordinance and this Agreement are to facilitate reference only, and do not form a part of the Ordinance or this Agreement, and shall not in any way affect the construction or interpretation hereof.

17.10 Force Majeure

With respect to any provisions of this Franchise Agreement, the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or other sanction upon the Grantee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbance, strike or other labor unrest, or similar events, the occurrence of which was not reasonably foreseeable by Grantee and not deemed to be normal operating conditions.

17.11 Time is of the Essence.

Time shall be deemed of the essence and any failure of the Grantee to perform within the time allotted, or within a reasonable time if a period is not specified, shall always be sufficient grounds for the County to invoke liquidated damages or revocation of this Franchise.

17.12 Acceptance and Effective Date of Franchise

This Franchise shall not become effective unless and until all provisions required in this Section are done and completed. All of such provisions being hereby declared to be conditions precedent to the effectiveness of the Franchise granted hereunder. In the event any of such provisions are not done and completed in the time and manner required, this Franchise shall be null and void. The Grantee shall file with the County Administrator, its written acceptance of this Franchise; the warrant document required in Section 17.5 above; together with the Letter of Credit, construction bond and insurance policies required. Written acceptance of this Franchise Agreement and the terms thereof shall be acknowledged by the Grantee before a Notary Public prior to approval by the County, and shall in form and content be satisfactory to and approved by the County Attorney.

17.13 Severability

If any section or provision of this Franchise Agreement or any ordinance, law, or document incorporated herein by reference is held by a Court of competent jurisdiction to be invalid, unconstitutional or unenforceable, such holding shall be confined in its operation to the Section or

provision directly involved in the controversy in which such holding shall have been rendered and shall not in any way affect the validity of any other section or provision hereof, except that the parties shall in good faith renegotiate that section or provision. Both the County and Grantee agree to be bound by all terms and conditions of this Franchise except as may be finally determined to be unenforceable by a Court of competent and appropriate jurisdiction, with the Commonwealth of Virginia being the proper venue for disputes over this Franchise unless otherwise provided by Federal Law or regulation.

17.14 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original.

PASSED AND APPROVED THIS tenth day of May, 2005.

LOUDOUN COUNTY, VIRGINIA

By _____, Chairman, Board of Supervisors

ATTEST:

_____, County Administrator

APPROVED AS TO FORM:

_____, County Attorney

ACCEPTED BY:

OPENBAND MULTIMEDIA, L.L.C.

_____, Chief Executive Officer

ATTEST:

_____, Secretary

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