



MURIEL BOWSER

MAYOR

APR 28 2017

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Ave., NW, Suite 504
Washington, D.C. 20004

2017 APR 28 PM 2:51
OFFICE OF THE
SECRETARY

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is proposed emergency legislation "Approval of the Transfer of Control of Open Video System Franchisee Starpower Communications, L.L.C. and Open Video System from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P. Emergency Declaration Resolution of 2017," and the corresponding emergency declaration resolution. The legislation approves the transfer of control of RCN, one of the three cable service providers to District residents. Approval of the transfer will further enhance RCN's ability to provide quality cable services to District residents pursuant to its Open Video System Franchise Agreement. Also enclosed for the Council's consideration and approval is the temporary version of this proposed legislation.

Emergency legislation is needed to ensure that the District approves the transfer in order to secure certain benefits under the transfer of control agreement negotiated with RCN. Those benefits include six high definition peg channels and a parental guaranty of performance.

As always, I am available to discuss any questions you may have regarding this legislation. In order to facilitate a response to any questions, please have your staff contact Angie M. Gates, Director of the Office of Cable Television, Film, Music & Entertainment.

I urge you to take prompt and favorable action regarding the enclosed legislation.

Sincerely,

A handwritten signature in black ink that reads "Muriel Bowser".

Muriel Bowser

Enclosures




Chairman Philip Mendelson
at the request of the Mayor

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7 **A BILL**
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11 **IN THE COUNCIL OF THE DISTRICT OF COLUMBIA**
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15 To grant the consent, on an emergency basis, of the Council of the District of Columbia
16 to the transfer of control of the open video system franchisee Starpower
17 Communications, L.L.C. and its District of Columbia cable television system
18 from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P.
19

20 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

21 That this act may be cited as the “Approval of the Transfer of Control of Open Video
22 System Franchisee Starpower Communications, L.L.C. and Open Video System from
23 Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P. Emergency Act of 2017.”

24 Sec. 2. Consent and Approval of Transfer.

25 The Council’s consent to, and approval of, the transaction transferring control of
26 Starpower Communications, L.L.C. (the “Franchisee”) and the open video system serving
27 the District (the “Transfer”) from Yankee Cable Partners, L.L.C. to Radiate Holdings,
28 L.P., (“Radiate”) (a company controlled by private equity investment firm TPG Advisors
29 (“TPG”) through its ownership of Radiate Holdings, GP, LLC), is hereby **GRANTED** in
30 accordance with section 2(b) of the Cable Television Reform Act of 2002, effective
31 October 9, 2002 (D.C. Law 14-193; D.C. Official Code § 34-1255.01 (2012 Repl.)) and
32 the franchise agreement between the Franchisee and the District dated June 28, 2005 (the
33 “Franchise Agreement”), subject to the following conditions:

1 (a) that the District and the Franchisee, RCN Telecom Services, L.L.C., and
2 Radiate Holdings, GP, LLC on behalf of itself and Radiate Holdings, L.P.
3 (collectively the “Companies”) enter into a transfer agreement substantially in
4 the form of Exhibit A, attached hereto (“Transfer Agreement”) effective as of
5 February 1, 2017;

6 (b) that Radiate Holdings GP, LLC provide a signed guarantee of performance
7 substantially in the form of Exhibit 1 to the Transfer Agreement;

8 (c) that the transfer conform to all terms and conditions described in the Transfer
9 Agreement, in the Transfer Petition filed with the Office of Cable Television,
10 Film, Music and Entertainment on September 7, 2016 as supplemented by
11 responses to all subsequent information requests, and in the Warranty Letter
12 from TPG.

13 Sec. 3. Denial of Transfer If Conditions Not Satisfied.

14 If any of the conditions specified in Section 2 are not satisfied, then the Council's
15 consent to, and approval of, the Transfer is hereby **DENIED** as of the date hereof.

16 Sec. 4. Authorization.

17 The Mayor are hereby authorized to execute the Transfer Agreement on behalf of
18 the District.

19 Sec. 5. Fiscal Impact Statement.

20 The Council adopts the attached fiscal impact statement as the fiscal impact
21 statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
22 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

23 Sec. 6. Effective date.

1 This act shall take effect following approval by the Mayor (or in the event of veto
2 by the Mayor, action by the Council to override that veto), and shall remain in effect for
3 no longer than 90 days, as provided for emergency acts of the Council of the District of
4 Columbia in section 412(a) of the District of Columbia Home Rule Act, approved
5 December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman Philip Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To grant the consent, on a temporary basis, of the Council of the District of Columbia to the transfer of control of the open video system franchisee Starpower Communications, L.L.C. and its District of Columbia cable television system from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the “Approval of the Transfer of Control of Open Video System Franchisee Starpower Communications, L.L.C. and Open Video System from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P. Temporary Act of 2017.”

Sec. 2. Consent and Approval of Transfer.

The Council’s consent to, and approval of, the transaction transferring control of Starpower Communications, L.L.C. (the “Franchisee”) and the open video system serving the District (the “Transfer”) from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P., (“Radiate”) (a company controlled by private equity investment firm TPG Advisors (“TPG”)), is hereby **GRANTED** in accordance with section 2(b) of the Cable Television Reform Act of 2002, effective October 9, 2002 (D.C. Law 14-193; D.C. Official Code § 34-1255.01 (2012 Repl.)) and the franchise agreement between the Franchisee and the District dated June 28, 2005 (the “Franchise Agreement”), subject to the following conditions:

1 (a) that the District and the Franchisee, RCN Telecom Services, L.L.C., Radiate
2 Holdings, L.P., and Yankee Cable Partners, L.L.C. (collectively the
3 “Companies”) enter into a transfer agreement substantially in the form of
4 Exhibit A, attached hereto (“Transfer Agreement”) effective as of February 1,
5 2017;

6 (b) that Radiate Holdings GP, LLC provide a signed guarantee of performance
7 substantially in the form of Exhibit 1 to the Transfer Agreement;

8 (c) that the transfer conform to all terms and conditions described in the Transfer
9 Agreement, in the Transfer Petition filed with the District on September 7,
10 2016 as supplemented by responses to all subsequent information requests,
11 and in the Warranty Letter from TPG.

12 Sec. 3. Denial of Transfer If Conditions Not Satisfied.

13 If any of the conditions specified in Section 2 are not satisfied, then the Council's
14 consent to, and approval of, the Transfer is hereby **DENIED** as of the date hereof.

15 Sec. 4. Authorization.

16 The Mayor is hereby authorized to execute the Transfer Agreement on behalf of
17 the District.

18 Sec. 5. Fiscal Impact Statement.

19 The Council adopts the attached fiscal impact statement as the fiscal impact
20 statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
21 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

22 Sec. 6. Effective date.

23 (a) This act shall take effect following approval by the Mayor (or in the event

1 of veto by the Mayor, action by the Council to override the veto), a 30-day period of
2 Congressional review as provided in section 602 (c)(1) of the District of Columbia Home
3 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02
4 (c)(1)), and publication in the District of Columbia Register.

5 (b) This act shall expire after 225 days of its having taken effect.


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: January 19, 2017

SUBJECT: Fiscal Impact Statement – Approval of the Transfer of Control of Open Video System Franchisee Starpower Communications, LLC and Open Video System from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P. Emergency Act of 2017

REFERENCE: Draft Bill as shared with the Office of Revenue Analysis on January 17, 2017

Conclusion

Funds are sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill.

Background

The bill approves a transfer agreement between the District and Starpower Communications, L.L.C., RCN Telecom Services, L.L.C., and Radiate Holdings, L.P. that approves Radiate Holdings' acquisition of RCN. Starpower Communications is one of the District's official cable television franchisees and is a wholly owned subsidiary of RCN.

The terms of the existing franchise agreement will not change under the new ownership structure, but the transfer agreement details additional benefits the cable company will provide to the District if the agreement is approved on or before January 30, 2017. These benefits include \$30,000 to cover the Office of Cable Television, Film, Music & Entertainment's (OCTFME) administrative costs for reviewing the transfer application, the continuation of any obligations RCN previously committed to the District, and the activation of six new high-definition Public Education and Government channels.¹

¹ These stations are currently provided only in standard definition and include DCTV, DCC, DCN, DKN, DCTV2, and UDCTV. The channels will be simulcast in both standard and high definition resolutions.

The Honorable Phil Mendelson

FIS: "Approval of the Transfer of Control of Open Video System Franchisee Starpower Communications, LLC and Open Video System from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P. Emergency Act of 2017," Draft Bill as shared with the Office of Revenue Analysis on January 17, 2017

Financial Plan Impact

Funds are sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill. RCN's ownership change does not change the underlying cable television franchise agreement with the District and it is not expected to impact RCN's service delivery in the District. Radiate Holdings will pay \$30,000 to cover OCTFME's costs for reviewing the ownership transfer application.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



KARL A. RACINE
ATTORNEY GENERAL

LEGAL COUNSEL DIVISION

MEMORANDUM

TO: Angie M. Gates
Director
Office of Cable Television, Film, Music and Entertainment

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: February 13, 2017

SUBJECT: Legal Sufficiency Review of Draft Legislation, the "Approval of the Transfer of Control of Open Video System Franchisee and Open Video System from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P. Emergency Declaration Resolution of 2017," and Accompanying Emergency and Temporary Acts
(AD-17-034-B)

This is to Certify that this Office has reviewed the above-referenced legislation and has found it to be legally sufficient. If you have questions regarding this certification, please do not hesitate to contact me at 724-5524.


Janet M. Robins

TRANSFER AGREEMENT

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TRANSFER AGREEMENT

THIS AGREEMENT is made by and among:

- 1.1.1. The District of Columbia (the "District"); and
- 1.1.2. Starpower Communications, L.L.C. ("Franchisee");
- 1.1.3. RCN Telecom Services, L.L.C. ("RCN");
- 1.1.4. Radiate Holdings, GP, LLC ("RHGP") on behalf of itself and Radiate Holdings, L.P. ("Radiate Holdings" or the "Transferee");
- 1.1.5. Franchisee, RCN, RHGP and Radiate Holdings may be referred to herein individually as "Company," and jointly as "Companies."

RECITALS

WHEREAS, the District granted the Franchisee a nonexclusive franchise (the "Franchise") for a term of five (5) years pursuant to D.C. Cable Televisions Communications Act and Cable Television Reform Amendment Act (D.C. Law 4-142; D.C. Law 14-193; D.C. Official Code Section 34-1251 et. seq.), as amended (the "D.C. Cable Act"), and the Open Video System Franchise Agreement between the Franchisee and the District dated June 28, 2005 (the "Franchise Agreement");

WHEREAS, the Franchise Agreement's term expired in June 2010, but Franchisee continues to exercise the Franchise under the Franchise Agreement, pending agreement on a renewal franchise agreement ("Renewal Agreement");

WHEREAS, Franchisee is a wholly owned subsidiary of RCN, which is a wholly-owned subsidiary of Yankee Cable Acquisition, L.L.C., which is a wholly-owned subsidiary of Yankee Cable Parent, L.L.C. ("Cable Parent");

WHEREAS, pursuant to a transaction described in a Federal Communications Commission Form 394 dated September 7, 2016 (the "Transaction") and other written materials ("Application"), Radiate Holdings would acquire control of the Franchisee and the cable system serving the District (the "System");

WHEREAS, more specifically, the Transaction contemplates the purchase by Radiate HoldCo, L.L.C. of the outstanding equity interests of Cable Parent from Yankee Cable Partners, L.L.C. pursuant to that certain Membership Interest Purchase Agreement by and among Yankee Cable Partners, L.L.C., Yankee Cable Parent, L.L.C., and Radiate HoldCo, L.L.C., dated August 12, 2016;

WHEREAS, under the Transaction, Cable Parent becomes a wholly owned subsidiary of Radiate HoldCo, L.L.C., which is a wholly owned subsidiary of Radiate TopCo L.L.C., which is a wholly owned subsidiary of Radiate Holdings. Radiate Holdings is 100 percent controlled by RHGP, a Delaware Limited Liability Company of which TPG Advisors VII, Inc. is the sole member;

WHEREAS, the Franchisee will continue to own and operate the System and will continue to hold the Franchise, but control of the Franchisee will be transferred to Radiate Holdings;

WHEREAS, the City Council of the District of Columbia has legal authority under Section 34-1255.01 of the D.C. Cable Act to require approval of the transfer of a franchise;

WHEREAS, Section 10.2 of the Franchise Agreement provides that the prior approval of the District is required for this transfer of control, and Section 10.4 provides that the District must act on the transfer request within 120 days of receipt of a complete Application;

WHEREAS, the Application requests that the District approve the Transaction;

WHEREAS, on October 7, 2016, after reviewing the Application and finding it incomplete, the District requested additional information regarding the Transaction (the "Information Request");

WHEREAS, on October 31, 2016, Franchisee responded to the Information Request;

WHEREAS, the District believes the deadline for the District to act on the Application for consent to the Transaction is not earlier than February 28, 2017 and the Franchisee believes the deadline is as early as January 8, 2017;

WHEREAS, pursuant to Section 10.6 of the Franchise Agreement, in reviewing the Transaction, the District may inquire, among other things, into whether the entity or entities that will own or control the System after the transaction has or have: (i) been properly certified by the FCC to operate an Open Video System within the Franchise Area; (ii) agreed to accept and fully comply with all terms of the Franchise Agreement; and (iii) provided reasonable assurances that it is or they are able to and will comply with the terms of the Franchise Agreement and applicable law;

WHEREAS, pursuant to Section 10.7 of the Franchise Agreement, the District may require any entity or entities that will own or control the System to execute an agreement providing that (i) such entity or entities assumes and agrees to be bound by all applicable provisions of the Franchise Agreement; and (ii) such entity or entities agrees that approval of the transfer petition does not waive the District's right to consider past breaches and other past performance problems in future renewal or other proceedings;

WHEREAS, the Companies have represented to the District that, under the Transaction, the Franchisee will continue to be run by highly experienced, well-qualified personnel, and that the Transaction will not adversely affect the System, or have a detrimental effect on, or result in material change to, the service provided to existing customers and to the District;

WHEREAS, the Franchisee reaffirms its continuing obligations under the Franchise Agreement and the D.C. Cable Act and agrees to abide by and accept all terms of the Franchise Agreement and the D.C. Cable Act, as they may be amended, and that Franchisee will continue to be responsible for the obligations and liabilities, and continue to have responsibility for all acts and omissions, known and unknown, under the Franchise Agreement, the D.C. Cable Act, and the FCC's rules governing Open Video Systems for all purposes, including renewal, unless waived, in whole or in part, by the District;

WHEREAS, the District has reviewed the Application and followed all required procedures to consider and act upon the Application; WHEREAS, The Transaction was consummated on February 1, 2017, and the District has approved the Transaction effective as of the date of the consummation; and

WHEREAS, the District and the Companies have reached agreement on the terms and conditions set forth herein, and the Companies agree to be bound by those terms and conditions.

NOW, THEREFORE, THE PARTIES DO HEREBY AGREE as follows:

1. **TRANSFER**

1.1. The foregoing recitals are true and correct and are incorporated herein by reference.

2. **ACCEPTANCE OF FRANCHISE OBLIGATIONS**

2.1. Except as provided in Section 6 below, nothing in this Transfer Agreement amends or alters the Franchise Agreement or any requirements therein in any way, and all provisions of the Franchise Agreement remain in full force and effect and are enforceable in accordance with their terms and with applicable law.

2.2. The Companies agree that neither the Transaction nor the District's approval of the Transaction shall in any respect relieve the Franchisee or any of its successors in interest of responsibility for past acts or omissions, known or unknown. Franchisee hereby agrees that it shall continue to be liable for any such acts and omissions, known and unknown, including liability for any and all previously accrued but unfulfilled obligations to the District under the Franchise Agreement, and applicable law, for all purposes, including but not limited to review of past performance for purposes of determining whether the Franchise should be renewed. Franchisee agrees that all acts and omissions of Franchisee occurring prior to this Agreement will continue to be deemed to be those of Franchisee. The Transaction shall not restrict or expand the rights of the Franchisee under or related to the Franchise Agreement as compared to those that could have been exercised by the Franchisee prior to the Transaction.

2.3. The Companies shall ensure that all records pertaining to the Franchise, including financial records, shall continue to be available after the Transaction in the same way and to the same extent such information was available prior to the Transaction.

2.4. Franchisee, RCN, and Radiate Holdings agree that, from and after the consummation of the Transaction, they will not take any action inconsistent with the promises contained in the Franchise Agreement and shall comply and cause Franchisee to fully comply with all of the terms and conditions set forth in the Franchise Agreement and, when executed and delivered, this Transfer Agreement.

2.5. Transferee shall provide a guarantee, using the form attached as Exhibit 1, from RHGP guaranteeing performance by Franchisee of all of Franchisee's obligations under the Franchise Agreement and this Transfer Agreement. The guarantee shall state that the financial condition of the Franchisee or any parent or affiliate of the Franchisee shall not limit the ability of the Franchisee to properly and fully comply with the terms of the Franchise Agreement. The signed guarantee must be provided within three (3) business days of Council's consent to, and approval of the Transfer.

3. RESERVATION OF RIGHTS

3.1. The District reserves all rights not expressly granted in this Transfer Agreement, including without limitation those specified below.

3.2. The District waives none of its rights with respect to the Franchisee's compliance with the requirements set forth in the Franchise Agreement. At no time will the Companies contend, either directly or indirectly, that the District is barred, by reason of the Transaction, from considering, or raising claims based on, any defaults of Franchisee, any failure by Franchisee to provide reasonable service in light of the community's needs, or any failure by Franchisee to comply with the terms and conditions of the Franchise Agreement or with applicable law. The District's approval of the Transaction shall in no way be deemed a representation by the District that the Franchisee is in compliance with all of its obligations under the Franchise Agreement.

3.3. Neither this Transfer Agreement, nor any other action or omission by the District at or before the execution of this Transfer Agreement, shall be construed to grant the District's consent to any future transfer of the Franchise and/or the System, and/or any future change in

ownership and/or control of the Franchise and/or the System, or to mean that the District's consent to any future transaction is not required.

3.4. Any consent given by the District to the Transaction is made without prejudice to, or waiver of, the District's right to investigate and take into account any lawful considerations during any future franchise renewal or transfer process.

3.5. This Transfer Agreement does not affect and shall not be construed to affect the rights and authority of the District to regulate or authorize, by ordinance, license or otherwise, use of the public rights-of-way for purposes other than for cable service. To the extent that the Companies may seek to provide a service other than cable service over the System, the District reserves the right to require any additional authorizations regarding such services that it may lawfully require. Consent to the Transaction shall not be deemed to be consent to the use of the public rights-of-way by any of the Companies or any of their affiliates for any purpose other than the provision of cable service.

3.6. The District reserves all of its rights regarding the charging of a franchise fee or other compensation for the right to provide cable modem service, broadband service, information services, and any other service that the System has the technical capability of delivery using the rights-of-way within the District. The District's consent to the Transaction shall not relieve the Franchisee of any obligation to pay such compensation, past, present, or future. Nor shall the District's consent be deemed to permit the Franchisee to recover the amounts of any past payments from subscribers, or to itemize the amount of any fee related to cable modem service on subscriber bills.

3.7. The District reserves all of its rights to regulate cable modem service, broadband service, information services, and any other service that the System has the technical capability of delivering under applicable law, including, without limitation, the right to adopt rules related to subscriber privacy and customer service.

4. EFFECT ON PENDING RENEWAL

4.1. This Transfer Agreement shall remain in effect until a new franchise becomes effective; or until the franchise is either renewed, terminated, or final action is taken not to renew the franchise in accordance with the Franchise Agreement, the Federal Cable Act and other applicable law, whichever occurs first.

4.2. The parties agree to work to complete a renewal franchise agreement expeditiously. The parties agree that the terms of a renewal agreement addressing the number of HD PEG channels shall include the terms at Section 6 herein. The parties may agree to terms in a renewal agreement that are more favorable to the District than those terms set forth herein.

5. REPRESENTATIONS AND WARRANTIES

5.1. Each of the Companies hereby represents and warrants that at the time of the execution of this Agreement: (a) it is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; (b) the Franchise Agreement and, assuming due execution hereof by the other parties hereto, this Transfer Agreement constitute legal, valid, and binding obligations of such Company enforceable in accordance with their terms; (c) the execution and delivery of, and performance by such Company under, this Transfer Agreement and the Franchise Agreement, where applicable, are within such Company's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite corporate or limited liability company action on the part of such Company and are not in contravention of such Company's limited liability company operating agreement, charter, bylaws, and/or other organizational documents; and (d) no representation made to the District by such Company is incomplete, untrue, or inaccurate in any material respect.

5.2. Franchisee represents and warrants that neither the Transaction nor this Transfer Agreement will adversely affect its ability to meet the requirements of the Franchise Agreement.

5.3. The Companies represent and warrant that the Transaction will not have any adverse financial effect on the System, or adversely affect either the performance of the System or the Franchisee's financial obligations with regard to the System.

5.4. The Companies represent and warrant that neither the Transaction nor this Transfer Agreement will result in any increase in subscriber rates.

5.5. Franchisee represents and warrants that after the Transaction, Franchisee's financial qualifications will be such as shall enable it to maintain and operate its system in the District.

5.6. Franchisee represents and warrants that the Transaction will not in any respect reduce the quality of customer service in the District.

5.7. Franchisee represents and warrants that the Transaction will not reduce the quality of existing system maintenance or repair.

5.8. Franchisee represents and warrants that it has not and will not grant any other entity any right to use the System or any portion of the System, whether by means of a lease, irrevocable right of use, or any other type of grant or conveyance, without the prior written consent of the District, to the extent such consent, which shall not be unreasonably withheld, would be required under the Franchise Agreement or applicable law. Nothing herein shall be interpreted to require Franchisee to obtain the District's approval before providing capacity on the System to an unaffiliated video programming provider as required by Section 653 of the Cable Act (47 U.S.C. § 573) or any successor thereto.

6. COMMITMENTS BY THE FRANCHISEE

6.1. Franchisee agrees to pay a fee in the amount of \$30,000 to cover administrative costs incurred by the District in the course of the consideration of the Application and to account for the fee in a manner consistent with the requirements of Section 8.2 of the Franchise Agreement. The fee shall be delivered to the District within thirty (30) days of execution of this Agreement. Failure to make timely payment of this fee shall constitute a material violation of this Agreement.

6.2. The Franchisee shall continue to bear the requirement of providing Cable Service and equipment at no charge to such locations as may be required by the Franchise Agreement.

6.3. Notwithstanding Section 10.2 of the Franchise Agreement, Franchisee agrees to the following commitments:

6.3.1. *HD PEG Capacity and Associated Equipment.* Within ninety (90) days after the closing of the Transaction, Franchisee shall, at no cost to the District, activate four (4) high-definition (“HD”) channels for PEG use by the District, for transmission in HD format of channels 10 (DCTV), 13 (DCC), 16 (DCN), and 18 (DKN). Within the same period, Franchisee shall also, at no cost to the District, provide all equipment necessary to deliver the HD signal upstream from any PEG origination site without any alteration or deterioration, including updating all analog modulators and demodulators to a digital format. In addition, within sixty (60) days of a written request of the District (which may be provided at anytime *after* the first eight (8) months following the closing of the Transaction), Franchisee shall, at no cost to the District, activate two (2) high-definition (“HD”) channels for PEG use by the District, for transmission in HD format of DCTV2 (11) and UDCTV (19) upon the same terms as the initial four HD channels. The District may request these two HD channels separately or jointly.

6.3.2. *Channel Content.* The content of programming on any requested HD PEG channel shall be a simulcast of the existing standard-definition (“SD”) PEG channel in HD format.

6.3.3. *HD-Delivery Requirements.* Franchisee shall deliver the HD signal to subscribers so that it is viewable without degradation, provided that it is not required to deliver a PEG Channel at a resolution higher than the highest resolution used in connection with the delivery of local broadcast signals to the public. Franchisee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal as accessible, functional, useable and of a quality equivalent from the perspective of the viewer to other HD channels carried on the cable system.

6.3.4. *Subscriber Equipment.* The District acknowledges that HD programming

may require the viewer to have special viewer equipment (such as an HDTV and an HD-capable digital device/receiver), but any subscriber who can view an HD signal delivered via the System at a receiver shall also be able to view the HD PEG channels at that receiver, without additional charges or equipment. By agreeing to make PEG available in HD format, Franchisee is not agreeing to provide free HD equipment to customers including complimentary accounts, nor to modify its equipment or pricing policies in any manner. The District acknowledges that not every customer may be able to view HD PEG programming (for example, because they do not have an HDTV in their home or have chosen not to take an HD-capable receiving device from Franchisee or other equipment provider) on every television in the home.

6.3.5. *Inclusion in Renewal Agreement.* Franchisee agrees to include at least the preceding language in the Renewal Agreement when completed by the parties. Without prejudice to the District's rights to raise other issues, Franchisee understands that the District may request an IP-based PEG delivery system and Internet services/Ethernet connections as part of the renewal, and agrees that provision of a non-IP based transport devices pursuant to Section 6.3 provides no basis for objecting to that request.

6.3.6. *Continuation of Existing PEG Channels.* Franchisee shall continue to provide the PEG channels required under the Franchise Agreement. Franchisee acknowledges that nothing in this Transfer Agreement, including the District's right to obtain additional HD channels, permits Franchisee to discontinue or degrade the delivery of any PEG channel as that channel is delivered on the Effective Date.

7. INDEMNIFICATION

7.1. Each Company agrees to indemnify and hold the District, its elected and appointed officers, officials, employees, agents, and contractors, harmless against third party claims any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) caused by any representation or warranty made by such Company herein which is determined by the parties or by a court of competent jurisdiction to be untrue or inaccurate in any material respect.

7.2. Franchisee shall indemnify and hold the District, its elected and appointed officers, officials, employees, agents, and contractors, harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) incurred by the District in connection with any action or proceeding commenced by a third party (not one of the parties to this Transfer Agreement) claiming or asserting any liability of the District relating to or arising from the Transaction or this Transfer Agreement.

8. ADDITIONAL CONDITIONS

8.1. In the event the Transaction closes on terms that are in any material respect different from the terms disclosed to the District in writing, then any District consent to the Transaction shall be void and of no force or effect, and the Transaction deemed to have been timely denied.

8.2. The Companies hereby waive any and all claims that they may have that any denial of the Application that results from failure of the conditions in Section 8.1 fails to satisfy the deadlines established by applicable law including, without limitation, claims based on, arising out of, or relating to 47 U.S.C. § 537, as amended, and agree that they shall be deemed to have agreed to an extension of the time to act on the Application as required to make any such denial effective.

9. BREACHES

Any breach of this Transfer Agreement or any exhibit thereto shall be deemed a breach of the Franchise Agreement and shall be subject to all remedies available for a breach of the Franchise Agreement, in addition to any other remedies the parties may have under this Transfer Agreement at law or equity.

10. MISCELLANEOUS PROVISIONS.

10.1. **Effective Date:** This Transfer Agreement shall be effective and binding upon the signatories beginning on the date of approval of the Transaction by the District Council.

10.2. **Binding Acceptance:** This Transfer Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof. Any purported assignment of this Transfer Agreement is void without the express written consent of the signatories.

10.3. **Voluntary Agreement:** This Transfer Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Transfer Agreement. Neither any of the Companies, nor any of their affiliates, nor the District, will take any action to challenge any provision of this Transfer Agreement; nor will they participate with any other person or entity in any such challenge.

10.4. **Severability:** If any term, condition, or provision of this Transfer Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

10.5. **Counterparts:** This Transfer Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

10.6. **Conforming Amendments to Franchise Agreement:** Radiate Holdings and Franchisee agree to accept Franchise Agreement amendments that may be adopted by the District to the extent necessary to conform the Franchise Agreement to the Transaction or the provisions of this Transfer Agreement.

10.7. **Governing Law:** This Transfer Agreement shall be governed in all respects by the law of the District of Columbia.

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

AGREED TO BY THE PARTIES:

**THE CITY OF WASHINGTON,
DISTRICT OF COLUMBIA**

Date

By: _____

By: _____

APPROVED AS TO FORM:

STARPOWER COMMUNICATIONS, L.L.C.

Date

By: _____

Its: _____

RCN TELECOM SERVICES, LLC

Date

By: _____

Its: _____

**RADIATE HOLDINGS GP, LLC ON BEHALF
OF ITSELF AND RADIATE HOLDINGS, L.P.**

Date

By:

Its:

EXHIBIT 1

GUARANTEE OF PERFORMANCE

WHEREAS, the District has granted Starpower Communications, L.L.C. (the "Franchisee") a nonexclusive franchise (the "Franchise") for a term of five (5) years pursuant to pursuant to the D.C. Cable Televisions Communications Act and Cable Television Reform Amendment Act (D.C. Law 4; 142; D.C. Law 14-193; D.C. Official Code Section 34-1251 et. seq.), as amended (the "D.C. Cable Act"), and the Open Video System Franchise Agreement between the Franchisee and the District dated June 28, 2005 (the "Franchise Agreement");

WHEREAS, the Franchise Agreement's term expired in June 2010, but Franchisee continues to exercise the Franchise under the Franchise Agreement, pending renewal;

WHEREAS, Radiate Holdings GP, LLC (the "Guarantor") will control Radiate Holdings, L.P., the parent of the Franchisee, and will have a substantial interest in the Franchise, in the conduct of the Franchisee, and in the Franchise Agreement, which are incorporated herein by this reference;

NOW, THEREFORE, the Guarantor hereby unconditionally guarantees the due and timely performance of any and all obligations of the Franchisee required by the Franchise Agreement and the Transfer Agreement, whether the obligation, or the failure to perform arose before or after Radiate Holdings, L.P., became the parent of Franchisee. The financial condition of the Franchisee or any parent or affiliate of the Franchisee shall not limit the ability of the Franchisee to properly and fully comply with the terms of the Franchise Agreement and Transfer Agreement. This Guarantee, unless terminated, substituted or canceled as hereinafter provided, shall remain in full force and effect for the term of the Franchise (including under any renewal franchise agreement); provided, however, that upon the District's prior written approval of a substitute guarantor, which approval shall not be unreasonably withheld, this Guarantee may be terminated, substituted or canceled upon written notice from the Guarantor to the District and the Franchisee; and provided, further, however, that the District's prior approval, written or otherwise, of a substitute guarantor shall not be required if, due to intracorporate reorganization that would not require District approval under Section 10 of the Franchise Agreement (or, if applicable, any renewal franchise agreement in force at the time of such intracorporate reorganization), the Guarantor's board no longer is the controlling board of the Franchisee, the entity whose board (or similar governance structure) will be similarly situated in terms of control of the Franchisee post-restructuring signs and becomes the Guarantor hereunder, and at least thirty (30) days' advance written notice has been given to the District of the substitution. Any such substitution of the Guarantor will be implemented in a manner that ensures that the substitute guarantee is in place and effective prior to or contemporaneously with the termination, substitution or cancellation of this Guarantee so that there is no breach in coverage.

Any such notice to be given hereunder shall be addressed to the District at

Lawrence N. Cooper | General Counsel
Government of the District of Columbia
Office of Cable Television, Film, Music & Entertainment (OCTFME)
1899 9Th Street, NE | Washington, DC 20018
Main 202.671.0066 | Direct 202.671.2139 | Fax 202.332.7020
lawrence.cooper@dc.gov

with a copy to the Franchisee. Such termination shall not affect liability incurred or accrued under this Guarantee prior to the effective date of such termination or cancellation.

By: _____

Name: _____

Title: _____



Government of the District of Columbia

CERTIFICATE OF CLEAN HANDS

RCN TELECOM SVCS LLC
RCN TELECOM SERVICES 196 VAN
HERNDON A, VA 20170

EIN : *****1198

As reported in the Citywide Clean Hands system, the above referenced individual or entity has no outstanding liability with the District of Columbia. As of the date herein, you have complied with the following official DC code and therefore are issued this Certificate of Clean Hands.

TITLE 47. TAXATION, LICENSING, PERMITS, ASSESSMENTS AND FEES
CHAPTER 28. GENERAL LICENSE LAW
SUBCHAPTER II. CLEAN HANDS BEFORE RECEIVING A LICENSE OR PERMIT
D.C. Code § 47-2862 (2006)
§ 47-2862. Prohibition against issuance of license or permit.

Authorized By Bobby Tucker
Chief Collection Division

Date: Thursday this 2nd day of February 2017 07:25 PM

Tracking#: 619013

This document is a certified, complete and true copy.



Government of the District of Columbia

CERTIFICATE OF CLEAN HANDS

STARPOWER COMMUNICATIONS LLC
10000 DEREKWOOD LN
LANHAM, MD 20706-4387

EIN : *****1905

As reported in the Citywide Clean Hands system, the above referenced individual or entity has no outstanding liability with the District of Columbia. As of the date herein, you have complied with the following official DC code and therefore are issued this Certificate of Clean Hands.

TITLE 47. TAXATION, LICENSING, PERMITS, ASSESSMENTS AND FEES
CHAPTER 28. GENERAL LICENSE LAW
SUBCHAPTER II. CLEAN HANDS BEFORE RECEIVING A LICENSE OR PERMIT
D.C. Code § 47-2862 (2006)
§ 47-2862. Prohibition against issuance of license or permit.

Authorized By Bobby Tucker
Chief Collection Division

Date: Wednesday this 1st day of March 2017 04:00 PM

Tracking#: 629075

This document is a certified, complete and true copy.

OPEN VIDEO SYSTEM FRANCHISE AGREEMENT

between

The District of Columbia

and

Starpower Communications, LLC

June 28, 2005

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APPENDICES

THIS AGREEMENT, executed in duplicate this ____ day of _____, 2004, by and between THE DISTRICT OF COLUMBIA (hereinafter referred to as the "District"), by the Mayor of the District and the Chairman of the Council of the District, party of the first part, and STARPOWER COMMUNICATIONS, LLC (hereinafter referred to as the "Company"), party of the second part:

W I T N E S S E T H:

WHEREAS, Pursuant to the D.C. Cable Act (as defined in SECTION 1 hereof), as amended, the District, acting through the Council (as defined in SECTION 1 hereof), has the power to grant and renew franchises for Cable Services (as defined in SECTION 1 hereof) within the District delivered via an Open Video System; and

WHEREAS, Pursuant to the federal Cable Act (as defined in SECTION 1 hereof), the Congress established certain cable franchising procedures and standards in order to, among other purposes, encourage the growth and development of cable systems, assure that cable systems are responsive to the needs and interests of the local community, assure that cable communications provide and are encouraged to provide the widest possible diversity of information services and other services to the public and assure that access to Cable Service is not denied to any Person (as defined in SECTION 1 hereof) and the Congress, in the Telecommunications Act of 1996, made certain requirements of the Cable Act also applicable to Open Video Systems; and

WHEREAS, The District has been in the forefront among cities nationally in fostering cable competition, for the benefit of District consumers; and

WHEREAS, The District successfully negotiated with the Company in 1998 to bring one of the first Open Video Systems in the country to the District, as a result of which, the majority of District households now have access to a choice of local cable and telephony providers and enjoy the benefits of competition, which include lower cable rates and better service; and

WHEREAS, The federal Cable Act strictly limits the scope of the District's regulatory authority with respect to an Open Video System to management of the public rights-of-way, collection of a percent of gross revenues fee, and oversight of the Company's obligation to provide public, educational, and governmental ("PEG") support, notwithstanding which the Company has agreed to commit itself, through this Agreement, to provide substantial additional public benefits to the District, including in-kind contributions and commitments regarding non-discrimination, local employment and purchasing, reporting, and technical System specifications; and

WHEREAS, The District and the Company entered into an Interim Open Video Systems Agreement ("Interim OVS Agreement") approved by the Mayor on October 26, 1998, and approved by the Control Board on December 10, 1998. The Interim OVS Agreement commenced December 10, 1998, for a term of one year, with a one-time automatic six-month extension, which commenced on December 10, 1999 and was scheduled to expire on June 10, 2000;

WHEREAS, The District, following said public hearing, determined that this Agreement granting the Company a nonexclusive franchise to operate an Open Video System complies with the federal Cable Act, as amended by the Telecommunications Act of 1996, the D.C. Cable Act (as defined in SECTION 1 hereof), and all other applicable laws and regulations; and

WHEREAS, The Council adopted an Act authorizing the Mayor and the Chairman of the Council to execute this Agreement and granting the Company a nonexclusive franchise to operate an Open Video System on the terms and conditions set forth in this Agreement; and

WHEREAS, The District intends to exercise the full scope of its powers, including both its police power and contracting authority, to promote the public interest; to protect the health, safety and welfare of its residents; and to assure the widespread availability of cable services; and, in pursuit of these goals, among other purposes, desires to maximize the diversity of programming provided over the System and access to the System by Persons other than the Company; to promote access to advanced services and technologies for District residents and institutions; to develop innovative programming and services by the District and its institutions for delivery to the public over the System; to experiment with and implement uses for Open Video Systems (as defined in SECTION 1 hereof), including the System, in connection with the District's operations; and to utilize the System as a means of providing a wide range of Cable Services and Noncable Services (as defined in SECTION 1 hereof) for public, educational and governmental use; and

WHEREAS, The Company, through arm's-length negotiation of the terms and conditions of this Agreement between the Company and the District, has knowingly and voluntarily agreed to such terms and conditions;

NOW, THEREFORE, In consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

SECTION 1 DEFINED TERMS

For purposes of this Agreement, the following terms, phrases, words and their derivations shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this SECTION 1.

1.1 "Abandonment" means the cessation, by act or failure to act of the Company or any Affiliated Person, of the provision of all, or substantially all, of the Services then

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 Title II of the Communications Act of 1934, approved June 19, 1934 (48 Stat. 1070; 47 U.S.C. § 201 et seq.), as amended, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) of the Cable Act (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an Open Video System that complies with Section 653 of the Cable Act (47 U.S.C. § 573) (or any successor thereto) and the rules promulgated thereunder; or (E) any facilities of any electric utility used solely for operating its electric utility systems. The foregoing definition of “Cable Communications System” shall not be deemed to circumscribe the valid authority of any governmental body, including the District, to regulate the activities of any other communications system or provider of communications services.

1.10 “Cable Service” means, subject to Section 3.4 hereof: (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.

1.11 “Channel” means a band of frequencies in the electromagnetic spectrum utilizing various means of transmission (including, without limitation, optical fibers or any other means now available or that may become available), which band of frequencies is capable of carrying one (1) or more video Signals, audio Signals, voice Signals or data Signals.

1.12 “Closing” means the event described in Section 2.2 hereof.

1.13 “Company” means Starpower Communications, LLC.

1.14 “Control” of or “Controlling Interest” in a Person or in the Company or the Franchise granted herein, means working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of such Person or of the Company or of the Franchise granted herein. A rebuttable presumption of the existence of Control of, or a Controlling Interest in, a Person shall arise from the beneficial ownership, directly or indirectly, by any Person or group of Persons acting in concert (other than underwriters during the period in which they are offering securities to the public) of twenty percent (20%) or more (for voting interests), or fifty percent (50%) or more (for non-voting interests), of such Person. Control or Controlling Interest as used herein may be held simultaneously by more than one (1) Person or group of Persons. Notwithstanding the preceding sentence, if one (1) Person owns a majority of the voting interests of a Person, the Company or the Franchise, such owner shall have sole Control of and shall possess the sole Controlling Interest in such Person, the Company or the Franchise unless another Person exercises de facto control (as that term is defined under the precedents of the Federal Communications Commission) of the Controlled Person, the Company or the

1.25 "District Resident" means a natural person who is domiciled in the District of Columbia and who maintains a place of abode in the District of Columbia as his or her actual, regular and principal place of occupancy. (This definition is for purposes of SECTION 6 only; for all other purposes, see the definition of "Resident" in Section 1.53 hereof.)

1.26 "Downstream" means the direction of Signals on the System from any location and going toward a Subscriber.

1.27 "Economically and Technically Feasible and Viable" means capable of being provided: (i) through technology which has been demonstrated to be feasible for its intended purpose; (ii) in an operationally workable manner; and (iii) in a manner whereby the Company has a reasonable likelihood of being operated on reasonably profitable terms.

1.28 "Educational Channel" means a PEG Channel on the System which the Company shall make available to the District, at no charge, for use as provided in Section 4.1.8 hereof and Appendix A to this Agreement.

1.29 "Effective Date" means the date on which this Agreement shall take effect, as further defined in Section 2.1 herein.

1.30 "Executive Director" means the executive director of the Office of Cable Television and Telecommunications ("OCTT"), the executive director's designee or any successor thereto.

1.31 "FCC" means the Federal Communications Commission, its designee or any successor thereto.

1.32 "Franchise Area" means all the area within the boundaries of the District of Columbia for which the PROW are under the jurisdiction of the District.

1.33 "Governmental Channel" means a PEG Channel on the System which the Company shall make available to the District, at no charge, for use as provided in Section 4.1.6 hereof and Appendix A to this Agreement.

1.34 "Gross Revenue" means all revenue, as determined in accordance with generally accepted accounting principles, which is derived by the Company and by each Affiliated Person from the operation of the System to provide Cable Services, including, without limitation, late fees and other revenues that may be posted in the general ledger as an offset to an expense account and all earned and accrued revenues. Gross Revenue shall also include, to the extent it is received by the Company, all revenue of any other Person, including, without limitation, PEG Channel programmers or UVPPs, which is derived from the operation of the System to provide Cable Services. Gross Revenue, for purposes of Section 8.1 hereof, shall also specifically include: (i) the fair market value of any nonmonetary (i.e., barter) transactions between the Company and any Affiliated Persons but not less than the customary prices paid in connection with equivalent

1.36 "Inspector General" means the Inspector General of the District, the Inspector General's designee or any successor thereto.

1.37 "Liability" or "Liabilities" means any and all encumbrances, defects of title, easements, mortgages, security interests or agreements, pledges, liens, charges, damages, expenses, penalties, fines, costs, conditional sales agreements, title retention agreements, claims, assessments, restrictions, liabilities, obligations, debts, commitments, undertakings, taxes, covenants, attorneys' and other fees and responsibilities of every kind and character, known and unknown, contingent or otherwise, or arising or existing by operation of law, by judicial decree or judgment, by contract or otherwise, including, without limitation, those evidenced by contracts, agreements, memoranda, indentures, mortgages and security agreements and conditional sales and other title retention agreements. "Liability" or "Liabilities" shall also mean any damage or loss to any real or personal property of, or any injury to or death of, any Person or the District.

1.38 "Local Ad Insertion Channel" means any Channel on the Subscriber Network on which the Company or any Affiliated Person, or any Person on behalf of or authorized by the Company or any Affiliated Person, sells time for local commercial advertisements which are inserted by the Company or any Affiliated Person at a headend, hub or other local facility serving the System.

1.39 "Marketing Plan" means the marketing plan described in Section 4.1.2 hereof to be developed by the Company to inform Subscribers of a change in the frequency allocation, Channel assignment or Dial Location of a PEG Channel.

1.40 "Material Provision" means any provision in this Agreement, the breach of which has a material effect on the rights or benefits either party to this Agreement has secured pursuant to this Agreement.

1.41 "Mayor" means the chief executive officer of the District, the Mayor's designee or any successor to the executive powers of the present Mayor.

1.42 "Noncable Service" means any Service which is distributed over the System, other than a Cable Service.

1.43 "Non-Residential Subscriber" means a Subscriber, other than a Residential Subscriber, who lawfully receives any Service the Company provides through its System.

1.44 "OCTT" means the Office of Cable Television and Telecommunications of the District, its designee or any successor thereto.

1.45 "OHR" means the Office of Human Rights of the District, its designee or any successor thereto.

1.46 "Open Video System" means the cable facilities, including the set of closed transmission paths and associated signal generation, reception, and control equipment, that are designed to provide cable service to multiple subscribers within the

the System after negotiation of terms and conditions mutually satisfactory to the District, the Company and the appropriate public utility.

1.57 "Public Schools" means the public school system of the District, its designee and any successor thereto.

1.58 "Region" shall mean the District of Columbia; Montgomery County and Prince George's County, Maryland; the City of Alexandria and Arlington County and Fairfax County, Virginia; and any incorporated municipalities within such counties.

1.59 "Resident" means an occupant who: (i) resides in a dwelling which has or is entitled to receive from the District a residential certificate of occupancy, including, without limitation, a private dwelling or a multiple dwelling; or (ii) has continuously resided in the same building for at least six (6) months or who takes occupancy pursuant to a lease (or other similar arrangement) of at least sixty (60) days duration, including, but not limited to, occupants of any buildings not included in subsection (i) above, and including occupants of hotels, apartment houses, one (1) and two (2) family dwellings, apartment hotels, motels, lodging or rooming houses, rectories, convents, monasteries, school dormitories, hospitals, prisons, reformatories, nursing homes, mental institutions, clinics, orphanages, day nurseries, homes for the aged and sanitariums, whether or not such buildings have or are entitled to receive from the District residential certificates of occupancy, provided, however, that (a) with respect to prisons, reformatories and mental institutions, the Company's obligation shall be only to provide Services to common areas in such facilities, to the extent that the Company can obtain the consent of such prison, reformatory or mental institution for the provision of such Services, and (b) in the case of any other commercial or institutional facility (such as a hotel, a dormitory, a hospital, a nursing home, etc.), the Company shall negotiate the terms of providing Services to Residents in such institutional facility. (For purposes of SECTION 6 only, "District Resident" is defined in Section 1.24 hereof.)

1.60 "Residential Subscriber" means a Resident who lawfully receives any Service on the Subscriber Network, except to the extent that such Services are used by such Subscriber in connection with a trade, business or profession, either directly or indirectly, unless such use is incidental.

1.61 "Security Fund" means the fund established in Section 12.2 hereof.

1.62 "Service" means (i) any Cable Service, including any Basic Service, or any other service, whether originated by the Company or any other Person, which is offered to any Person in conjunction with, or distributed over, the System, but shall not include any service distributed over the System by a UVPP; and (ii) any Noncable Service provided for public, educational or governmental use.

1.63 "Service Related Activity" means any activity or function associated with the production or distribution of any Service over the System, including, without limitation, use of studio or other facilities or equipment, billing, audience promotion or installation or lease of equipment.

Chairman of the Council and the Company shall execute, by signing, this Agreement, provided that, prior to such execution by the Mayor and the Chairman of the Council, the following conditions have occurred unless the District has waived the closing condition in question:

(i) Council Act. The Council shall have adopted an act approving this Agreement, and the period for congressional review shall have passed without Congress taking action to disapprove, amend or modify such act;

(ii) Certified Copies of Resolutions. The Company shall have furnished the District with a certified copy of the resolution(s) duly adopted by the Board of Directors of the Company, approving the execution, delivery and performance of this Agreement by the Company and approving the execution, delivery and performance by the Company of all other documents, certificates, guarantees and other instruments required to be furnished to the District by and pursuant to the terms of this Agreement, and such resolutions shall have been transmitted to the Council in connection with its review of this Agreement;

(iii) Representations and Warranties. The Company shall have provided the District with a certificate executed by an authorized officer of the Company, certifying that the representations and warranties made by the Company in this Agreement are true and correct as of the Closing;

(iv) Performance Bond. The Company shall have furnished to the District the performance bond, pursuant to Section 5.10 hereof, or, in the event that the issuer will not issue the bond until this Agreement has been fully executed, the Company shall have furnished to the District the form of the performance bond, pursuant to Section 5.10 hereof accompanied by a letter from the issuer stating that it shall issue a bond in the form of the performance bond not later than thirty (30) days after the Effective Date;

(v) Liability Insurance Policy. The Company shall have secured its liability insurance policy (or policies) pursuant to Section 11.2.1 hereof and shall have delivered the certificate(s) of insurance to OCTT and the Attorney General, together with evidence that the premiums for such policy (or policies) have been paid, that such policy (or policies) shall be in effect on or before the Effective Date, and that such policy (or policies) is (or are) in accordance with Section 11.2 hereof;

(vi) Security Fund. The Company shall have deposited the Security Fund with an approved financial institution pursuant to Section 12.2 hereof;

(vii) Permitting and Licensing Compliance. DDOT shall have certified that the Company is in compliance with all applicable permitting and licensing requirements under District law;

Agreement or the Franchise granted pursuant to this Agreement except to the extent provided in Section 2.3.6 hereof.

2.3 Nature of Franchise, Term, Grant of Franchise, and Effect of Termination

2.3.1 Nature of Franchise.

On the Effective Date, the Company's nonexclusive Franchise for the occupation and use of the PROW within the Franchise Area for the construction, operation, maintenance, upgrade, rebuild, enhancement, repair and removal of the System, for the purpose of providing Cable Services in accordance with the provisions of this Agreement, shall commence. The Franchise granted herein shall, consistent with Sections 9.2 and 14.20 hereof, be subject to the terms and conditions of this Agreement.

2.3.2 Noncable Services.

The Franchise granted herein does not authorize the Company to provide any Noncable Services, provided that this limitation shall not limit the use of the in-kind benefits provided by the Company set forth on Appendix D and the PEG Channels by the PEG Entities. The Company's provision of Noncable Services shall be subject to separate additional approval by the District if permitted by applicable law. Any use of the System for Noncable Services shall be reported in writing to OCTT at least fifteen (15) days after the Company has begun such use. Nothing in this Agreement shall be interpreted to prevent the District from imposing additional lawful conditions, including additional compensation provisions, for use of the PROW if the Company provides any service other than Cable Service.

2.3.3 Franchise Term. Unless the Franchise is sooner revoked, there has been an Abandonment or the term of the Agreement expires, the Franchise shall remain in force for a period of five (5) years, which period of time is herein referred to as "the term of the Franchise."

2.3.4 Renewal. The District reserves the right to grant or deny renewal of the Franchise granted herein; provided that any renewal may be based upon the Company's agreement to comply fully with the terms of the renewed franchise and agreement.

2.3.5 Effect of Termination. In the event of a termination as set forth in Section 2.2.4 hereof and except as provided in Section 2.3.6 hereof, the term of the Franchise shall expire and the Franchise shall be revoked; all rights of the Company in the Franchise shall cease, with no value allocable to the Franchise itself; and the rights of the District and the Company to the System, or any part thereof, shall be determined as provided in Sections 12.5 and 12.6 hereof.

2.3.6 Limited Extension. In the event the Company has properly sought a renewal of the Franchise in accordance with applicable law, the Company is engaged in good-faith negotiations with the District regarding a renewal of the franchise,

U.S.C. § 542(g)(2)(A)); and (iii) shall not be an offset against the compensation or other payment the Company, an Affiliated Person or other Person is required to pay to the District or any other entity pursuant to SECTION 4 and Section 8.1 hereof.

2.4.4 Closing of PROW. Nothing in this Agreement shall be construed as a waiver or release of the rights of the District in and to the PROW. In the event that all or part of the PROW within the Franchise Area are closed, all rights and privileges granted pursuant to this Agreement with respect to such PROW, or any part thereof so closed, shall cease upon the effective date of such closing, and the Company shall remove its facilities and equipment from such PROW. However, if such closing of any PROW is undertaken for the benefit of any private Person, the District shall, as appropriate, condition its consent to such closing of such PROW on the agreement of such private Person to (i) grant the Company the right to continue to occupy and use such PROW or (ii) reimburse the Company for its reasonable costs to relocate the affected part of the System.

SECTION 3 VOLUNTARY SERVICE OBLIGATIONS

3.1 Provision of Service.

3.1.1 Parity with Neighboring Jurisdictions. If the Company or an Affiliated Person provides a new Cable Service on a commercially deployed basis to any area of the Region, then the Company, within thirty-six (36) months, shall provide such Cable Services on the System unless the Company reasonably determines and demonstrates in writing to the District, within eighteen (18) months of such commercial deployment, that doing so would not be Economically and Technically Feasible and Viable.

3.1.2 Current Technology Report. As part of the first annual report submitted, pursuant to Section 9.5 [Required Annual Report], after the fourth (4th) anniversary of the Effective Date of this Agreement, the Company shall explain in such report what it has done or plans to do to keep pace with Current Technology, including keeping pace with a new or improved level of technical or service performance provided in neighboring jurisdictions pursuant to Section 3.1.1 hereof. At a minimum, such report shall identify (i) new Services which have been or are scheduled to be offered to Subscribers; (ii) new technologies which have been or are scheduled to be deployed in connection with the System; and (iii) new equipment which has been or is scheduled to be deployed as part of the System. OCTT or the Council may, but shall not be obligated to, schedule a public hearing, roundtable or meeting to discuss such report and the deployment of Current Technology in the System. Pursuant to Section 9.3 hereof, the Company shall participate in such public hearing, roundtable or meeting.

up to six (6) months after the start date for the first Subscriber to whom they are offered; or (iv) any discounts, promotions or reduced charges allowed by law or regulation.

Nothing in this Section 3.1.4 is intended to prevent the Company from reasonably conditioning its provision of Services to a Person with an impaired credit history. Such restrictions shall be lifted to the extent such Person demonstrates to the Company's reasonable satisfaction that such Person subsequently has established a positive payment history (i.e., that such Person has paid his, her or its bills in full and on time).

3.1.5 Special Obligation for Interactive Services. Subject to Section 3.1.4 hereof, the Company shall not discriminate in the deployment of interactive Services in the District of Columbia on the basis of the income of the Residents of any area, and the Company shall comply at all times with applicable law relating to nondiscrimination.

In addition, while the Company and the District acknowledge that the throughput rate of the cable modem service will vary as a result of a number of different factors, the Company shall not discriminate in the quality of the cable modem service provided to Subscribers on the basis of the income of the Residents of any area in the District of Columbia. For the purposes of this Section 3.1.5, throughput shall mean the actual amount of useful and non-redundant information which is received by the end user after being transmitted or processed.

3.1.6 Requests for Service. The Company shall fulfill all requests for Services (including any upgrades to inside wiring necessary to transmit the full range of its Services for Residential Subscribers living in multiple dwelling unit buildings) within the time periods set forth in applicable law. The Company shall charge its standard installation fee to Residents for installation of connections that do not require in excess of two hundred fifty (250) feet of underground trenching per drop, or two hundred fifty (250) feet of aerial wiring per drop. In each case in which the Company needs to obtain access to property for providing or upgrading its Services, the Company shall adhere to the requirements of all applicable federal and District law.

3.1.7 Channel Capacity. The Subscriber Network shall be capable of passing frequencies of at least eight hundred sixty (860) MHz cable bandwidth. The Subscriber Network shall have a Downstream bandwidth of at least eight hundred eight (808) MHz, ranging from fifty-two (52) MHz to eight hundred sixty (860) MHz. The Downstream bandwidth shall be allocated between Analog Channels and Digital Services, and the allocation may change over time. The Subscriber Network shall be capable of delivering eighty (80) six (6) MHz Analog Channels (counting Channels A-1 and A-2) of television programming. The Subscriber Network shall also be capable of providing over two hundred (200) Digital Services, which may include television, audio, data and cable modem services. The Upstream bandwidth shall be not less than thirty-five (35) MHz, ranging from five (5) MHz to forty (40) MHz and, as of the Effective Date, is anticipated to be used exclusively for digital Signals.

SECTION 4
PUBLIC SERVICES

4.1 PEG Channels

4.1.1 Minimum Channels. At all times throughout the term of this Agreement, the Company shall make available, without charge, to the District, for the transmission of television, data, audio and video Signals for the purpose of public, educational and governmental access, at least eight (8) Downstream Analog Channels. In addition, the Company, without charge, shall make up to eight (8) Digital Television Channels available to the District as follows: one (1) such Digital Television Channel shall be made available not later than sixty (60) days after each time the Company receives from OCTT either an approved PEG Operating Agreement or other notice for such Digital Television Channel or a notice that such Digital Television Channel shall be the Training Channel described in Section 4.1.10 hereof. If the Company upgrades the System to be capable of passing frequencies of one (1) GHz or greater during the term of the Franchise, the Company, without charge, shall make up to four (4) additional such Digital Television Channels (for a total of twelve (12) Digital Television Channels) available to the District as follows: one (1) such Digital Television Channel shall be made available not later than sixty (60) days after each time the Company receives from OCTT either an approved PEG Operating Agreement or other notice for such Digital Television Channel or a notice that such Digital Television Channel shall be the Training Channel described in Section 4.1.10 hereof. Not later than sixty (60) days after each time OCTT notifies the Company that it wishes to swap one (1) of the Downstream Analog Channels previously made available to the District in exchange for one (1) Digital Television Channel, the Company shall effect such a swap.

The equipment needed for digital compression and other processing equipment required for all Digital Television Channels provided pursuant to this Section 4.1, except for Subscriber converters, shall be supplied by the Company without charge. The Analog Channels and Digital Television Channels supplied to the District and other PEG Entities pursuant to Section 4.1.1 and Section 4.1.12(i) hereof shall be known as the PEG Channels. The PEG Channels shall be allocated to the PEG Entities as specified in Section 4.1.3.

4.1.2 Frequency Allocations, Channel Assignments and Dial Locations; Channel Change. In the event that the District requests that an analog PEG Channel be included in the Expanded Basic Service (B2) tier instead of the Basic Service (B1) tier, the Company shall make a good-faith effort to accommodate the District's request.

The PEG Channels shall be distributed at frequency allocations, Channel assignments and Dial Locations to be specified, as an initial matter, in Appendix C hereof. Thereafter, the Company shall seek to minimize changes in such frequency allocations, Channel assignments and Dial Locations. For purposes of this Section 4.1.2, the frequency allocation, Channel assignment and Dial Location of a Digital Television

(f) Without charge to the District, the Company shall feature prominently all affected PEG Entities in a quarter-page (¼-page) advertisement. The Company shall run such advertisement in the Washington Post at least once two (2) weeks preceding and at least once two (2) weeks after such change and ten (10) times over the same time period in other print media published in the District of Columbia (of such ten (10) times, the advertisement shall be run in the Washington Afro-American two (2) times).

(g) The Company shall make full payment for costs, limited to Ten Thousand Dollars (\$10,000.00), reasonably and actually incurred by each PEG Entity operating an affected Analog Channel and associated with the replacement of stationery, letterhead, business cards, promotional materials, channel identification materials, mailings, etc., the replacement of which is caused by the Company's change of frequency allocation, Channel assignment or Dial Location of the affected PEG Entity. Nevertheless, in the case of the first change affecting a Government Channel, the limit on reimbursement of OCTT shall be Twenty-Five Thousand Dollars (\$25,000.00), regardless of whether one (1) Government Channel or more than one (1) is affected; for any subsequent change, the limit on reimbursement of OCTT shall be Ten Thousand Dollars (\$10,000.00), regardless of whether one (1) Government Channel or more than one (1) is affected. At the option of each affected PEG Entity, such payments shall be made either to such PEG Entity or its vendor(s); in either case, such payments shall be made not later than thirty (30) days after receipt of an invoice from such PEG Entity or its vendor(s).

Solely for purposes of this component (g) of the Marketing Plan, a Digital Television Channel that either has been swapped for an Analog Channel pursuant to the last sentence of the first paragraph of Section 4.1.1 hereof or has been exchanged for an Analog Channel pursuant to Section 4.1.12(i) hereof shall be deemed to be an Analog Channel, and a change in the frequency allocation, Channel assignment or Dial Location of such a Digital Television Channel shall continue to trigger reimbursement rights under this component (g) of the Marketing Plan.

(iii) Not later than sixty (60) days after the date of a change covered by Section 4.1.2(i) hereof, the Company shall certify to OCTT in writing or shall submit such other written evidence satisfactory to OCTT that the notices required by Sections 4.1.2(i)-(ii) hereof were provided on time and in the required manner.

(iv) Notwithstanding Section 4.1.2(i) hereof, if the change in frequency allocation, Channel assignment or Dial Location does not result from the election of the Company, the affected PEG Entities, taken as a whole, and the Company shall each pay one half (½) of the costs incurred, pursuant to the Marketing Plan,

Company changes the location of its headend or other facilities and such change requires a new connection for one or more of the direct connection links discussed in this section, the Company, at its own expense, shall directly connect each then-directly connected PEG Entity location with such new headend or other facility prior to activating the new headend or other facility. In addition, the Company, at its own expense, shall supply and maintain at the headend, hubs and the locations specified in Appendix C to this Agreement all modulators, processors, encoder/decoders, transmitters, receivers and any associated equipment necessary for the appropriate PEG Entity to transmit programming on each PEG Channel.

In the event that any PEG Entity changes a location listed in Appendix C, and not later than one hundred twenty (120) days after receiving notice of the new location from the affected PEG Entity, the Company shall directly connect the new location with the Subscriber Network at the headend if, prior to the move, such location was connected to the Subscriber Network, or with such other location with which the old location was directly connected pursuant to the preceding paragraph. The Company shall perform the first such move of each single end of each direct connection link listed in Appendix C or installed pursuant to the third sentence of the first paragraph of this Section 4.1.4 at its own expense, provided that, during the term of the Franchise, the Company shall pay an Actual Cost not to exceed Thirty Thousand Dollars (\$30,000.00) for such move. In the event that any PEG Entity, for which the Company previously has provided interconnection at the Company's expense, requests a subsequent move of such single end of each direct connection link, the Company shall, not later than one hundred twenty (120) days after receiving such request and at the expense of the PEG Entity, directly connect the new location with the Subscriber Network at the headend if, prior to the move, such location was connected to the Subscriber Network, or with such other location with which the old location was directly connected pursuant to the preceding paragraph.

The direct connection links described in the preceding two (2) paragraphs shall be described as the PEG Direct Connections, and the capacity provided thereon shall be described as PEG Direct Connection Capacity.

At its own cost, the Company shall supply and maintain all hardware and equipment (including, but not limited to, digital compression and processing equipment such as encoder/decoders and modulators) at the headend, hubs and PEG Entities' production and distribution sites that are necessary for the appropriate PEG Entity to transmit programming on all of its PEG Channels and over the PEG Direct Connections. (With respect to the PEG Direct Connections, the parties intend the preceding sentence to permit the PEG Entities to use the hardware and equipment supplied by the Company to transmit their programming over the PEG Direct Connections in digitally transmitted analog format, which the Company shall digitize further at the headend as necessary.) If a PEG Entity develops a new Service that requires the Company to purchase new equipment not currently used in the Company's normal course of business, the PEG Entity shall pay the Company for the Actual Cost of the acquisition, maintenance and installation of such equipment. The PEG Entity's use of the Company's equipment shall

The Company, via its or an Affiliated Person's Network Operations Center(s) ("NOC(s)"), through the status monitoring system described in Appendix C hereof, shall monitor the continuity of the PEG Direct Connections. In the event of any outages or other failures of such an interconnection or the headend or hub facilities, the Company shall respond within four (4) hours of receiving notice by telephone to a Company-designated telephone number or in writing from a PEG Entity; at all times, the Company shall have provided up-to-date written notice to each PEG Entity of such telephone number and the name and contact information (e.g., facsimile telephone number, mail address and electronic mail address) for the person(s) to receive such communications. The Company shall restore service through such failed interconnection or facility as soon as reasonably possible, but not later than twenty-four (24) hours after such receipt of notice from a PEG Entity, provided that, as consistent with and subject to Section 14.4 hereof, such time may be extended to account for any delays and failures beyond the control of the Company.

As a general principle, in the event that the Company makes any change in the System or in Signal delivery that affects signal quality or transmission, the Company shall ensure, at its expense, that the signal quality of PEG Channels is not diminished or adversely affected by such change.

In the event the Company upgrades the headend modulators or signal processing equipment for at least thirty percent (30%) of the combined basic and expanded basic tier Channels, or at an earlier time by mutual consent, then the Company, at its expense, shall upgrade such equipment for the PEG Direct Connections. Further, the Company shall upgrade, at its expense, the transport and terminal equipment for the PEG Direct Connections when it has upgraded the transport and terminal equipment for the top quarter (1/4) of commercial broadcast Channels (measured in terms of signal quality on the Subscriber Network). An equipment change shall be viewed as an upgrade for purposes of this paragraph if a significant improvement in operational functionality, reliability or signal quality would result.

4.1.6 Use of Governmental Channels. The Governmental Channels placed under the jurisdiction of the Mayor and the Council shall be used for any purpose permitted by applicable law, as limited by Section 4.2.4 hereof. The Company shall not exercise editorial control over programming or distribution of Services over any Governmental Channel used by any Person(s), except where the Company is utilizing any such Governmental Channel pursuant to the fallow time rules described in Section 4.1.9 hereof. OCTT may designate one (1) or more additional PEG Entities to use Governmental Channels.

4.1.7 Use of Public Channels. Subject to Section 4.2.4 hereof, the Public Channels placed under the jurisdiction of the Public Access Corporation shall be used for the purpose of distributing Services by the public. The Company shall not exercise editorial control over programming or distribution of Services over any Public Channel used by any Person(s), except where the Company is utilizing any such Public Channel pursuant to the fallow time rules described in Section 4.1.9 hereof or except as

Digital Services. After the Company receives from OCTT the approved PEG Operating Agreement or other notice which authorizes the first use of a PEG Digital Service, the Company shall announce this availability to each such Subscriber (i) at the time of any request for Service and (ii) not less than annually thereafter. The Company shall not charge for the use of such limited digital cable converters (exclusive of any applicable security deposit, which shall not exceed the security deposit for full-service digital cable converters) more than eighty percent (80%) of its normal monthly charge for full-service digital cable converters.

4.1.12 Digital Transition. At such time as the Company offers all programming Services as Digital Services, the Company shall take the following steps:

(i) In satisfaction of its obligations under the first paragraph of Section 4.1.1 hereof, the Company shall make available to the District without charge twenty (20) Digital Television Channels using digital compression for the transmission of television and data Services for the purpose of public, educational and governmental access. Subject to the terms of its PEG Operating Agreement, if any, each PEG Entity then operating a Downstream Analog Channel shall be allocated one (1) Digital Television Channel for each such Downstream Analog Channel it operates. The remaining Digital Television Channels and any additional Digital Television Channels described below in this Section 4.1.12(i) shall be allocated in accordance with Section 4.1.3(iv) hereof. In further satisfaction of its obligations under the first paragraph of Section 4.1.1, the Company, without charge, shall make up to seven (7) additional Digital Television Channels available to the District as follows: one (1) such Digital Television Channel shall be made available not later than sixty (60) days after each time the Company receives from OCTT either an approved PEG Operating Agreement or other notice for such Digital Television Channel or a notice that such Digital Television Channel shall be the Training Channel described in Section 4.1.10 hereof. Activation of all the Digital Television Channels allocated to PEG Entities would result in a maximum total of twenty-seven (27) Digital Television Channels allocated to PEG Entities.

(ii) The Company shall pay for all digital compression, transmission and processing equipment necessary for the PEG Entities to transmit, on the Subscriber Network, Digital Television Channels instead of Services on Analog Channels.

(iii) The Company shall enter into good-faith negotiations with OCTT over the frequency allocation, Channel assignment and Dial Location of the new PEG Digital Television Channels prior to making such assignments.

4.1.13 Advanced Services. In a timely fashion, the Company shall notify the District of the technical characteristics of the methodology for offering a commercially deployed advanced Service, including, but not limited to, an interactive Service or a video-on-demand Service, in order to allow for the process set forth in this Section 4.1.13. Thereafter, at the request of the District, the Company shall meet with

and other activities to be paid for or supplied by the Company pursuant to or in connection with its performance under this SECTION 4 and Appendices C, D and E to this Agreement (including any Exhibits to Appendices C, D and E) are for the benefit of all Subscribers and the public. The Company agrees that such contributions, services, equipment, facilities, support, resources and other things of value are not within the meaning of the term “franchise fee” as defined by Section 622(g)(1) of the Cable Act (47 U.S.C. § 542(g)(1)) (or any successor thereto), are not payments in lieu of franchise fees for purposes of Section 653(c)(2)(B) of the Cable Act (47 U.S.C. § 573(c)(2)(B)), and are within one (1) or more exclusions to the term “franchise fee” provided by Section 622(g)(2)(A)-(D) of the Cable Act (47 U.S.C. § 542(g)(2)(A)-(D)) (or any successor thereto). The Company further agrees that such contributions, services, equipment, facilities, support, resources and other things of value shall not be deemed to be: (i) “Payments-in-kind” or involuntary payments chargeable against the compensation to be paid to the District by the Company pursuant to Section 8.1 hereof or (ii) part of the compensation to be paid to the District by the Company pursuant to Section 8.1 hereof.

4.2.4 Restrictions on Use of PEG Contributions. The District and the Company agree that the equipment, facilities, PEG Channels and PEG Direct Connection Capacity provided by the Company through in-kind contributions or cash support pursuant to Sections 4.1-4.2 of this Agreement shall be used solely for noncommercial PEG purposes or for any other purpose to which the Company might agree in writing. Such noncommercial PEG purposes shall include the following:

(i) Each PEG Entity may (1) lease its PEG Channels for a fee to other PEG Entities, governmental entities or nonprofit organizations, but not to other programmers, provided that such lessees shall not use the PEG Channels in any manner prohibited by this Section 4.2.4, and (2) use its PEG Channels to transmit any material that would not be unlawful for a public broadcast station to transmit under 47 U.S.C. § 399B(b) (or any successor thereto). In addition, any Governmental Channel may carry programming promoting tourism or other economic development in the District, and any Public or Educational Channel may carry programming (such as auctions, telethons and similar programming) to raise funds to support its or any other PEG Entity’s programming operations, a governmental entity or a nonprofit organization.

(ii) The foregoing limitations shall not prevent the District or the Public Access Corporation from (1) making available, for a fee or otherwise, programming, information or data created or collected by the District or (2) providing production and post-production services to the public for a fee or otherwise.

(iii) For purposes of Section 4.2.4(i), no programming shall be construed to be prohibited (as unlawful for a public broadcast station to transmit under 47 U.S.C. § 399B(b) (or any successor thereto)) on account of (a) audio or visual content that is captured incidentally in the course of the production of the

and Thirteen (4,713) thirty-second advertising spots on the System to the District for noncommercial public, educational or governmental purposes, provided that the Company shall have the right to designate the Channel(s) and time slot(s) for such advertisements; provided that ads will be inserted on a run of schedule ("ROS") basis throughout the day (i.e., day and evening) and are subject to preemption by paid advertisements from clients. The District may request that ads appear on certain of the programming networks on which the Company inserts advertisements on the System, but the Company has the final right to determine the Channel(s) on which such advertisements shall appear. All District requests for such advertising time on behalf of any PEG entity shall be coordinated with the Company through OCTT. The Company will provide the District affidavits on a quarterly basis verifying the number of insertions which aired during such quarter and identifying the PEG Entity requesting such advertisement through OCTT. Advertising time not used by the District within a calendar year shall not be carried over or credited to any future calendar year, and the District shall not be entitled to any payment in lieu of such unused advertising time.

4.4.4 Technology Grant. The Company shall provide, on an annual basis over the course of each year of the term of the Franchise, Ten Thousand Dollars (\$10,000) to be used by OCTT to fund the District's efforts relating to technology training, including, but not limited to, OCTT's hiring of students to teach on-the-job skills relating to the operation and management of the city's municipal cable television channels. The aggregate commitment shall be Fifty Thousand Dollars (\$50,000). The Company will make the first payment of \$10,000 at the Closing of this Agreement and additional payments of \$10,000 each will be made on the anniversary date of the Effective Date for the succeeding years of the Franchise. The payments made pursuant to this Section are in addition to (and not in lieu of) any other commitments, fees or taxes owed by the Company to the District, whether pursuant to this Agreement or otherwise.

SECTION 5 CONSTRUCTION AND TECHNICAL REQUIREMENTS

5.1 General Requirement. Throughout the term of this Agreement (and for such other time as it may take the Company to remove the System pursuant to Section 12.6 hereof), the Company agrees to comply with each of the terms set forth in this SECTION 5 governing construction and technical requirements for any construction, repair, maintenance, upgrade, rebuild, enhancement and removal of the System and any other lawful requirements or procedures pertaining to construction and technical requirements which are specified by the District and consistent with this Agreement. The Company further agrees to maintain the System such that it meets the minimum technical specifications set forth in Appendix A to this Agreement throughout its term.

5.2 Quality. All work involved in the construction, operation, repair, maintenance, upgrade, rebuild, enhancement and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable

the federal government, the Washington Metropolitan Area Transit Authority and any other public or quasi-public entity, and all federally and locally designated landmarks and districts, as well as all other structures within any designated landmark district. The Company shall not alter any public structure in the PROW without prior approval of the District and all other appropriate authorities. Any such alteration shall be made by the Company, at no cost or expense to the District or such other appropriate authorities, and in a manner reasonably prescribed by the District and all other appropriate authorities. Pursuant to Section 704(f) of the D.C. Cable Act (D.C. Official Code § 34-1257.04(f)), the District shall perform any permanent restorations of the PROW at the Company's expense. For other replacements, repairs and restorations, the Company agrees that it shall be liable, at no cost or expense to the District or such other appropriate authorities, to replace or repair and restore, in a manner and within a reasonable time period as may be specified by the District and all other appropriate authorities, any PROW or any public structure involved in the construction, operation, maintenance, repair, upgrade, enhancement, rebuild or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company pursuant to this Agreement. In the event the District or other appropriate authorities do not specify the manner of replacement, repair or restoration, the Company shall replace, repair or restore the PROW or public structure, within thirty (30) days, to good condition consistent with industry standards and the requirements of the most recent edition of DDOT's Standard Specifications of Highways and Structures (currently, this is the 1996 edition, which was published by the District of Columbia Department of Public Works). In the event the Company refuses or neglects to replace, repair or restore any PROW or any public structure, the District shall have the right to replace, repair or restore such PROW or structure, and the Company shall pay to the District the costs incurred in connection with such replacement, repair or restoration.

5.6 No Obstruction. In connection with the construction, operation, maintenance, repair, upgrade, rebuild, enhancement or removal of the System, the Company shall not obstruct the PROW, subways, railways, passenger travel, river navigation or other traffic to, from or within the Franchise Area without the prior consent of all appropriate public or private authorities.

5.7 Movement of Cables, Wires and Other Equipment. The Company shall, upon written notice delivered not less than ten (10) days in advance by the District or any Person holding a permit that authorizes an activity that requires movement of cables, wires or other equipment, move its cables, wires and other equipment to allow the permitted activity (including, but not limited to, movement of a structure) to be completed in a timely manner. The Company may impose a charge, not to exceed its Actual Cost, on any such permit holder other than the District, for any such movement of its cables, wires and other equipment. This Section 5.7 shall not be construed to be a limitation on Section 2.4.2 hereof.

5.8 Safety Precautions. The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, watchmen

in effect during the term of this Agreement and such later date as provided in Section 12.5 hereof.

5.10.3 Indemnification. The performance bond shall indemnify the District, up to the full face amount of the bond, for: (i) the cost of restoration of the PROW disturbed by any construction, upgrade, rebuild or enhancement of the System in the Franchise Area; (ii) any loss or damage to any municipal structure during the course of any construction of the System; (iii) any other costs, losses or damages incurred by the District as a result of the Company's use of the PROW pursuant to this Agreement; and (iv) the removal of all or any part of the System from the PROW; provided, however, that the District may not seek recourse against such bond for any costs or damages for which the District has previously been compensated in full through a withdrawal from the Security Fund or otherwise by the Company.

5.10.4 Form. The performance bond shall be in a form approved by the Attorney General and shall be furnished to the Attorney General, with a copy to OCTT, on or before the Closing. Such initial bond and any replacement bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled or not renewed by the surety nor may the intention to cancel or not to renew be stated by the surety until at least sixty (60) days' written notice to the Attorney General and OCTT of the surety's intention to cancel or not renew this bond."

5.10.5 Responsibilities of the Company. If the Surety Cancels or Fails to Renew a Performance Bond. Prior to the effective date of any cancellation or failure to renew a performance bond by the surety, the Company shall obtain a replacement performance bond from a corporate surety and trust company that meets the requirements set forth in the first paragraph of Section 5.10.1 as of the effective date of such replacement performance bond, and is otherwise acceptable to the Attorney General. Such replacement performance bond shall be in a form approved by the Attorney General and, prior to such effective date, shall have been furnished to the Attorney General, with a copy to OCTT.

5.10.6 Not a Limit on Liability. The acceptance by the District of the bond required by this Section 5.10 shall not limit the requirement of faithful performance by the Company pursuant to this Agreement or the Liability of the Company pursuant to this Agreement.

5.11 Interconnection. The Company shall construct, operate, maintain, repair, upgrade, rebuild and enhance the System such that it is capable of transmitting and receiving Signals to and from any other Cable Communications Systems or Open Video Systems in the District or the Region. At the request of the District, the Company shall consider whether it is commercially reasonable to interconnect the System with another Cable Communications System or Open Video System where such interconnection does not already exist. As part of such consideration, if an Affiliated Person does not operate the other Cable Communications System or Open Video System, the Company shall initiate good-faith discussions with such operator regarding the commercial reasonableness of an interconnection.

the District of Columbia Office of Local Business Development (or any successor agency). The Company shall keep such Memorandum of Understanding current throughout the term of the Agreement. The Memorandum of Understanding shall require that the Company make at least good-faith efforts to contract and procure at least 35% of its goods and services with local, small, and disadvantaged business enterprises.

6.8 Equal Employment Opportunity. The Company shall comply with applicable law pertaining to equal employment opportunity, pursuant to Section 634 of the Cable Act (47 U.S.C. § 554) and the rules and regulations promulgated thereunder. The Company shall provide to OCTT copies of any reports required to be submitted to the FCC pursuant to Section 634 of the Cable Act. Every year, no later than a date specified by OHR, and for as long as the Company operates the System, the Company shall submit to such agency the written plan(s) relating to equal employment opportunity and affirmative action required by such agency, consistent with the applicable rules and regulations of OHR pertaining to equal employment opportunity and affirmative action.

6.9 Job Training and Apprenticeship Programs. At all times during the term of this Agreement, the Company shall maintain an apprenticeship program that is registered with, pursuant to Section 5 of the Amendments to An Act to Provide for Voluntary Apprenticeship in the District of Columbia Act of 1978, effective March 6, 1979 (D.C. Law 2-156; D.C. Official Code § 32-1431) (or any successor thereto), and approved by the District of Columbia Apprenticeship Council (or any successor agency). Such program shall be designed to provide District Residents, particularly unskilled and semi-skilled disadvantaged youth, with job skills, job opportunities and upward mobility, both within the cable television industry and the Company's workforce. In addition, the Company shall apply good faith efforts throughout the term of this Agreement to maintain on-the-job training opportunities for existing employees both to assist them in their current jobs and to prepare them for future opportunities. One purpose of such on-the-job training opportunities shall be to assist the Company in meeting its goal of promoting internal candidates, including District Residents hired pursuant to Section 6.4 of this Agreement, to management and supervisory level positions pursuant to Section 6.5 of this Agreement. Such apprenticeship and on-the-job training programs shall apply to all appropriate job categories in the Company's workforce.

6.10 Enforcement. The Company shall take steps to ensure that the requirements of section 6 are adhered to by (i) the Company, (ii) its officers and employees and (iii) any Affiliated Person that is regularly performing functions in the District of Columbia with respect to the System that normally are performed by an operator in the operation of a cable system.

SECTION 8
COMPENSATION AND OTHER PAYMENTS

8.1 Compensation

8.1.1 **Franchise Fees.** As compensation for the Franchise, the Company shall pay to the District an amount equal to five percent (5%) of Gross Revenue. All such payments pursuant to this Section 8.1.1 shall be made on a quarterly basis and shall be remitted simultaneously with the submission of the Company's quarterly report required pursuant to Section 8.1.2 hereof.

8.1.2 **Payment Due.** The Company shall submit to OCTT, with copies to the D.C. Treasurer, a report, in such form and containing such detail as OCTT and the Company shall agree, not later than thirty (30) days after the last day of each March, June, September and December throughout the term of this Agreement setting forth the Gross Revenue for the quarter ending on said last day of such month. The report shall contain a reconciliation between the Gross Revenue shown in the report and the financial statements for the Company, prepared in accordance with generally accepted accounting principles, over the relevant time period. In the event of any transfer of the System to any Person pursuant to this Agreement, the Company, as an additional condition to the approval of any such transfer, shall remit to the District prior to the effective date of the transfer the balance due of the payment required by Section 8.1.1 based on the Gross Revenue as of the date of the transfer.

8.1.3 **Reservation of Rights.** No acceptance of any such payment by the District shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the District may have for further or additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to audit and recomputation by the District.

8.1.4 **Itemization.** If the Company chooses to designate that portion of a Subscriber's bill attributable to the amount of any compensation payment to be made by the Company or any other Person (including payments made on behalf of any other Person for whose Services the Company bills Subscribers) to the District pursuant to this Agreement, it shall do so in a manner that does not mischaracterize the nature of such compensation payment and is consistent with applicable law. Not less than thirty (30) days prior to mailing a bill containing such a designation (or a modification thereof) for the first time, the Company shall submit to OCTT a sample bill showing the proposed contents of such designation. The Company shall consider any comments received from OCTT on the sample bill.

8.1.5 **Ordinary Business Expense.** Nothing contained in this Section 8.1 or elsewhere in this Agreement shall prevent the Company or any Affiliated Person from treating the compensation and other payments that it, they or either of them may pay pursuant to this Agreement as an ordinary expense of doing business and,

to reopen such audit or review for a period of twelve (12) months after the date of such notice or at any time upon the discovery that the Company or an Affiliated Person has provided fraudulent information or acted in bad faith during the course of the audit or review. There shall be no more than one (1) audit for each fiscal year in any twelve (12) month period, except in extraordinary circumstances.

8.2 Future Costs. The Company shall pay a fee in the amount of Thirty Thousand Dollars (\$30,000.00) to cover administrative costs of the District in connection with the consideration of each transfer requiring Council approval as described in Sections 10.1 or 10.2. Such fee shall constitute the full amount owed pursuant to Title II, Section 502 of the D.C. Cable Act (D.C. Official Code § 34-1255.02). Such fee shall not be passed through to Subscribers in any form, itemized on Subscriber bills, or, for rate regulation purposes, attributed to capital costs, operating expenses or external costs of the System. Payments of such fees, costs and expenses shall not be deemed payments in lieu of franchise fees for purposes of Section 653(c)(2)(B) of the Cable Act (47 U.S.C. § 573(c)(2)(B)), and such payments shall not be deemed to be (i) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the District by the Company pursuant to Section 8.1 hereof or chargeable against the payments to any PEG Entity by the Company pursuant to Section 4.2 hereof, or (ii) part of the compensation to be paid to the District by the Company pursuant to Section 8.1 hereof or part of the payments to any PEG Entity by the Company pursuant to Section 4.2 hereof.

8.3 Not Franchise Fees. The Company expressly acknowledges and agrees that:

(i) Except for the payments expressly required by Section 8.1 hereof, none of the payments or contributions made by, or the services, equipment, facilities, support, resources or other activities to be provided or performed by the Company pursuant to this Agreement, or otherwise in connection with the construction, operation, maintenance, repair, removal, upgrade, rebuild or enhancement of the System (including specifically, but not by way of limitation, such payments, contributions, services, equipment, facilities, support, resources or other activities as described in or provided for in Section 4 hereof and in Appendices C, D and E to this Agreement) are franchise fees chargeable against the compensation payments to be paid to the District by the Company pursuant to Section 8.1 hereof; and

(ii) As applicable, except for the compensation payments to the District expressly required by Section 8.1 hereof, each of the payments or contributions made by, or the services, equipment, facilities, support, resources or other activities to be provided by the Company, are within the exclusions from the term "franchise fee" set forth in Section 622(g)(2) of the Cable Act (47 U.S.C. § 542(g)(2)) (or any successor thereto) and, accordingly, are not payments in lieu of franchise fees for purposes of Section 653(c)(2)(B) of the Cable Act (47 U.S.C. § 573(c)(2)(B)); and

(iii) The compensation payments due from the Company to the District pursuant to Section 8.1 hereof, shall take precedence over all other payments,

SECTION 9
OVERSIGHT AND REGULATION

9.1 Oversight. The District shall have regulatory oversight over the System, including, but not limited to, the right to regulate and inspect the construction, maintenance, repair, upgrade, rebuild, enhancement and removal of the System, and all parts thereof to ensure compliance with the terms and conditions of this Agreement and applicable law. The Company shall establish and maintain managerial and operational standards, procedures, records and controls to enable the Company to be, at all times throughout the term of this Agreement, in compliance with each term and condition of this Agreement. Notwithstanding the foregoing provision, but subject to Section 9.7.2 hereof with respect to documents pertaining to financial matters, the Company shall retain such records for a period of not less than three (3) years.

9.2 District Reservation of Authority. To the extent consistent with federal law, the District, including OCTT, reserves the right to adopt or issue such statutes, rules, regulations, orders or other directives governing the Company or the System as it shall find necessary or appropriate in the exercise of its police power or other governmental power, and the Company expressly agrees to comply with all such lawful statutes, rules, regulations, orders or other directives. No rule, regulation, order or other directive issued pursuant to this Section 9.2 shall constitute an amendment to this Agreement. In addition to other rights reserved in this section, the District reserves its rights to enact and enforce laws to prohibit or regulate exclusive contracts and anticompetitive acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service, including exclusive programming agreements, and exclusive contracts with vendors to provide equipment, materials or services. The Company reserves its Constitutional contract rights as applicable to its rights and obligations as set forth in the Agreement.

9.3 Meetings or Hearings

9.3.1 Council Meetings or Hearings. At the request of the Council, the Company's General Manager (or the person holding the equivalent position if there is no General Manager) and other personnel of the Company with relevant expertise in the designated subjects shall, absent extraordinary circumstances, attend and participate as witnesses at any meeting or hearing held by the Council regarding the System, this Agreement or the Franchise. The Company personnel shall bring to such meeting or hearing any documents requested by the Council, including any documents reasonably known by the Company to be responsive to the Council's request even if such documents are not specifically identified by such request. Also, the documents or information shall be relevant to determining compliance with this Agreement or applicable law. Any confidential or proprietary information or documents requested for such meeting or hearing pursuant to this Section 9.3.1 may be provided to the Council in advance of the meeting or hearing. Whether they are provided at or in advance of the meeting or hearing, any such confidential or proprietary information or documents shall be subject to Section 9.7.2(iv) of this Agreement.

chronological series which lead to questions about the earlier reports). Subject to Section 9.7.2(iv) of this Agreement, the Company or such Affiliated Person shall provide the requested information to OCTT as soon as reasonably possible but in no event later than thirty (30) days after receipt of such request, except that extenuating circumstances approved by OCTT may justify a longer period of time.

9.4.5 Designated Officers and Employees. Throughout the term of this Agreement, the General Manager of the Company or a person in an equivalent position, or such other person whom the Company designates in writing to OCTT, shall be responsible for overseeing the Company's reporting obligations pursuant to this Agreement and for responding to the District's questions regarding the Company's compliance with the terms and conditions of this Agreement. The Company must, within five (5) days of a change in the designation of such responsible person, notify OCTT in writing of such change.

9.5 Required Annual Report. On July 1 of every year during the term of this Agreement, the Company shall submit an annual report to both OCTT and the Council committee with jurisdiction over OCTT. OCTT, after consultation with the Company, may reasonably specify the form of and details covered by any such annual report, provided that the failure of OCTT so to specify shall not relieve the Company of its obligation to submit such report annually to OCTT and such Council committee. In the event that OCTT's staff and the Company's personnel disagree regarding such specification of the form of or details covered by a report, the issue shall be referred to the Executive Director and the Company's General Manager (or a person in an equivalent or higher position) for resolution.

Such report shall, in reasonable detail, specifically address, at a minimum, the following areas, and shall state whether there has been any material change in the information or plans regarding such areas from the information or plans the Company previously has provided to the District:

- (i) compliance with any plans or specifications submitted by the Company in connection with any construction, upgrades, rebuilds and enhancements of the System, as provided in SECTION 5 hereof;
- (ii) compliance with all requirements related to PEG Channels, including support for PEG Entities, PEG Direct Connections and signal quality and transmission on the PEG Channels, as provided in Sections 4.1 and 4.2 hereof and Appendix C to this Agreement; and
- (iii) a financial report consisting of (a) a copy of the publicly available annual financial report with respect to the fiscal year most recently ended for each of the Company's parent companies that produce such reports and (b) on a confidential basis, subject to the provisions of Section 9.7.2(iv) hereof, a copy of the Company's annual financial statements, including its balance sheet and income statement.

(i) All such documents, records and other information of the Company to which this Section 9.7.2 refers shall be made available at a mutually agreed upon location within fifty (50) miles of OCTT's office in order to facilitate said inspection, examination or audit.

(ii) Provided that the request is not unreasonably voluminous and subject to Section 9.7.2(iv) of this Agreement, OCTT, the Attorney General, the Inspector General or their designated representative(s) shall have the right to require the production and delivery, at the sole expense of the Company, of all such documents, records and information to the offices of such agency, official or representative(s). The Company shall complete such production and delivery within twenty-one (21) Business Days after receipt of such request, unless extenuating circumstances, as approved by the requesting body, which approval may not be unreasonably withheld or delayed, warrant a longer or shorter period of time.

(iii) All such documents which pertain to financial matters which may be the subject of an audit by the District shall be retained by the Company for a minimum of six (6) years following termination of this Agreement.

(iv) Access by the District to any of the documents, records or other information covered by this Section 9.7.2(iv), or otherwise to be provided to the District under this Agreement, shall not be denied by the Company on the grounds that such documents, records or other information are alleged by the Company to contain confidential or proprietary information, provided that this requirement shall not be deemed to constitute a waiver of the Company's right under title 2 of the District of Columbia Administrative Procedure Act (also known as the Freedom of Information Act of 1976), effective March 29, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), as amended, or other applicable law to assert that the confidential or proprietary information contained in such documents, records or other information should not be disclosed to unauthorized Persons, provided further that the public body receiving such documents, records or other information has agreed to protect such documents, records or other information in the manner described in Section 9.7.2(v) hereof. The District agrees that OCTT shall protect such documents, records or other information in such manner. To invoke the right to such protections with respect to a document, record or other information or to a portion thereof, the Company shall physically mark each page of such document, record, other information or portion in a manner that conspicuously indicates that such page contains confidential or proprietary information and shall provide such document, record or other information to the public body with a cover letter invoking such right.

Solely for the purpose of determining whether documents, records or other information submitted by the Company to a public body solely pursuant to this Agreement are subject to disclosure under title 2 of the District of Columbia Administrative Procedure Act or other applicable law, the District agrees, to the

records or other information to an unauthorized Person so that the Company shall have an opportunity to seek judicial relief enjoining such disclosure, provided that such notice period may be shortened to the extent necessary for such public body to comply with an order of a court of competent jurisdiction; after the expiration of such notice period, such public body shall not have to continue to comply with Clause (a) of this Section 9.7.2(v).

Notwithstanding Section 14.5 hereof, any notice to be provided to the Company pursuant to this Section 9.7.2(v) shall be provided by hand delivery and facsimile transmission to the General Manager's attention.

The Company shall serve such public body with a copy of any court filing it makes seeking to enjoin disclosure of such documents, records or other information to an unauthorized Person.

(vi) During normal business hours and consistent with any notice or other requirement provided by this Agreement, OCTT or its designated representative(s) may inspect and examine any other aspect of the System, including the facilities and equipment thereof.

SECTION 10 RESTRICTIONS AGAINST ASSIGNMENT AND OTHER TRANSFERS

10.1 Transfer of Interest. Excepting conveyances of real or personal property in the ordinary course of business and transfers of interest from one of the current joint owners of the Company, RCN Corporation and Pepco Communications, Inc., to the other, neither the Franchise granted herein, nor any rights or obligations of the Company in the System or pursuant to this Agreement shall be encumbered, assigned, sold, transferred, pledged, leased or sublet, in whole or in part, to any Person, nor shall all or substantially all of the capacity of the System be encumbered, assigned, sold, transferred, pledged, leased or sublet to any Person, nor shall title therein, either legal or equitable, or any right or interest therein, pass to or vest in any Person, either by act of the Company, by act of any Person holding Control, directly or indirectly, of any interest in the Company or in the System or the Franchise granted herein, by operation of law or otherwise, without prior notice to and approval by the Council. The approval of the Council of any action described in this Section 10.1 shall not be unreasonably withheld. Nothing herein shall be interpreted to require the Company to obtain the Council's approval before providing capacity on the System to a UVPP as required by Section 653 of the Cable Act (47 U.S.C. § 573) (or any successor thereto).

10.2 Transfer of Control or Stock. The Company represents and warrants that, notwithstanding any other provision of this Agreement, except as provided in Section 10.8 hereof, no change in Control of the Company, the System, the assets of the System or the Franchise granted herein shall occur after the Closing, by act of the

required by this Section 10.3. Unless OCTT notifies the Company otherwise, approval of the petition by the Council shall be necessary, as provided in Section 10.6.

10.4 Transfer Review Period

10.4.1 Length and Commencement of Period. The District shall have one hundred twenty (120) days to act on a transfer request. The Company agrees that any time required for Congressional review of District legislation relevant to such transfer request shall not count against such transfer review period. Such transfer review period shall not commence until all of the information required by Section 10.3 hereof is submitted to the District.

10.4.2 Extensions. The Company and the District may, at their discretion and by mutual agreement, increase the time period for review of the transfer request.

10.5 OCTT Decision. Upon review of the petition, OCTT shall either (i) notify the Company in writing if OCTT determines that the consent of the Council is not required or (ii) submit to the Council, together with a recommendation for action on the petition, the Company's petition requesting approval or, if OCTT has determined that approval of the Council is required and a petition requesting approval has not been submitted by the Company, such additional information as the Company submits in response to any request of OCTT pursuant to Section 10.3.

10.6 Scope of Inquiry. For the purpose of determining whether the Council shall grant its approval, the District, consistent with Section 653 of the Cable Act (47 U.S.C. § 573) may inquire into whether the entity or entities that will own or control the System after the proposed action has or have: (i) been properly certified by the FCC to operate an Open Video System within the Franchise Area; (ii) agreed to accept and fully comply with all terms of this Agreement; and (iii) provided reasonable assurances that it is or they are able to and will comply with the terms of this Agreement and applicable law. Further, the District may perform an audit of the Company's performance under the terms and conditions of Sections 4 [Public Service], 5 [Construction and Technical Requirements], and 8 [Compensation and Other Payments] of this Agreement, but the performance of such audit shall not operate to extend the transfer review period set forth in Section 10.4 hereof, unless otherwise agreed by the parties. The Company shall provide all reasonably requested assistance to the District in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all Persons involved in said action.

10.7 Conditions. As a condition to the granting of any approval required by Section 10.1 hereof, the entity or entities that will own or control the System after the proposed action, in connection with a transfer of interest under Section 10.1 hereof, shall make the same representations and warranties to the District that the Company has made in this Agreement, and the District may require that the entity or entities that will own or control the System after the proposed action shall execute an agreement providing that (i) such entity or entities assumes and agrees to be bound by all applicable provisions of

document request pursuant to this section shall not toll the transfer review period under Section 10.4.01 of this Agreement, provided that, if the Company does not respond within ten (10) days to such additional information and document request, which the District has reasonably determined in good faith to be necessary for a determination of the transferee's qualifications and/or plans to address outstanding compliance issues, the transfer review period under Section 10.4.01 of this Agreement shall be tolled from the end of such ten (10) day period until the Company does respond.

SECTION 11 LIABILITY AND INSURANCE

11.1 Liability and Indemnity

11.1.1 Company. As between the District and the Company, except as provided in Section 11.1.6 hereof, the Company shall be responsible for any Liability of the District or the PEG Entities occasioned by any act or failure to act of the Company, any Affiliated Person, or any officer, employee, agent or subcontractor of either the Company or any Affiliated Person in connection with the construction, operation, maintenance, repair, upgrade, enhancement or removal of the System and arising out of or in connection with the construction, operation, maintenance, repair, upgrade, enhancement, rebuild or removal of the System; any Service Related Activity; or the distribution of any Service over the System. The Company shall, at its own cost and expense, replace, repair or restore any damaged property to its prior condition and shall pay compensation in the event of any personal injury, death or property damage occasioned by any act or failure to act of the Company, any Affiliated Person, or any officer, employee, agent or subcontractor of either the Company or any Affiliated Person in connection with the construction, operation, maintenance, repair, upgrade, enhancement or removal of the System. Nothing in this Section 11.1.1 is intended to permit third parties to file claims to enforce this Section 11.1.1; rather, the parties intend that only the District may take action to enforce this Section 11.1.1.

11.1.2 No Liability of the District for Liability of the Company. The District, its officers, employees, agents, attorneys, consultants and independent contractors shall not be liable for any Liability of the Company, any Affiliated Person or any other Person, arising out of or in connection with the construction, operation, maintenance, repair, upgrade, rebuild, enhancement or removal of, or other action or event with respect to, the System, any Service Related Activity or the distribution of any Service over the System.

11.1.3 Moving Wires, Etc. The District may, at any time, in case of fire, disaster or other emergency, in its sole discretion, cut or move any of the wires, cables, fibers, amplifiers, appliances or other parts of the System, in which event the District shall not incur any Liability to the Company, any Affiliated Person or any other Person. When reasonable circumstances permit, the Company shall be consulted prior to any such cutting or movement of its wires, cable, fibers, amplifiers, appliances or other

person in an equivalent or higher position) for resolution. The Company shall not be required to indemnify the District for settlements entered into by the District without the Company's prior knowledge and consent. The Company shall, at its own cost and expense, replace, repair or restore any damaged property to its prior condition and shall pay compensation in the event of any personal injury, death or property damage occasioned by any act or failure to act of the Company, any Affiliated Person, or any officer, employee, agent or subcontractor of either the Company or any Affiliated Person in connection with the construction, operation, maintenance, repair, upgrade, enhancement or removal of the System. Nothing in this Section 11.1.6 is intended to permit third parties to file claims to enforce this Section 11.1.6; rather, the parties intend that only the District may take action to enforce this Section 11.1.6.

11.1.7 Limitations. As between the District and the Company or any Affiliated Person, the foregoing Liability and indemnity obligations of the Company pursuant to this Section 11.1 shall not apply to: (i) any willful misconduct or gross negligence of any District officer, employee, agent, attorney, consultant or independent contractor proximately causing any claim or damages; (ii) any Liability arising out of the content of Services over the Governmental Channels to the extent that such claim does not arise out of an act or failure to act by the Company; or (iii) any Liability arising out of the content of Services over Public Channels and Educational Channels to the extent that such claim does not arise out of an act or failure to act by the Company.

11.2 Insurance

11.2.1 Specifications. At or before the Closing, the Company shall, at its own cost and expense, obtain a liability insurance policy or policies, in a form acceptable to the Attorney General, together with evidence acceptable to the Attorney General, demonstrating that the premiums for said policy or policies have been paid and evidencing that said policy or policies shall take effect and be furnished at or before the Effective Date. Such policy or policies shall be issued by companies duly authorized by the Superintendent of Insurance of the District to do business in the District and acceptable to the Attorney General. Such companies must carry a rating by A.M. Best Company of not less than "A." Such policy or policies shall insure (i) the Company and (ii) the District and its officers, boards, commissions, elected officials, agents, contractors and employees (through appropriate endorsements if necessary) against each and every form of Liability of the Company referred to in SECTION 5 and Section 11.1 hereof in the minimum combined amount of Five Million Dollars (\$5,000,000.00) for bodily injury and property damage and a maximum deductible of One Million Dollars (\$1,000,000.00) as aggregated across all policies of any given type of liability insurance. The District and its officers, boards, commissions, elected officials, agents, contractors and employees shall be named as additional insureds by such policies.

Prior to the expiration of any liability insurance policy the Company obtains pursuant to this Section 11.2.1, the Company shall provide to OCTT and to the Attorney General evidence acceptable to the Attorney General of such policy's renewal or replacement. Further, the Company shall report to OCTT and the Attorney General any

remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by the District shall not release the Company from its obligations or from any Liability under this Agreement, except (i) with regard to any breach for which liquidated damages are paid as provided in Section 12.3.3, (ii) as expressly provided for in this Agreement or (iii) as necessary to avoid duplicative recovery from or payments by the Company.

12.2 Security Fund

12.2.1 Obligation to Maintain. Throughout the term of this Agreement, or for as long as the Company operates the System or until the Company completes the removal of the System, whichever period is longest, and for at least one hundred twenty (120) days thereafter, the Company shall maintain the Security Fund in the amount specified in Section 12.2.2 hereof.

12.2.2 Amount. At or before the Closing, and as a condition precedent to the Closing, the Company shall deposit, in the name of the District, with a financial institution in the District approved by OCTT the amount of One Hundred Fifty Thousand Dollars (\$150,000.00), of which at least Thirty Thousand Dollars (\$30,000.00) shall be provided in cash, with the balance in the form of an irrevocable, unconditional letter of credit or other instrument in a form acceptable to the Attorney General, which letter of credit or other instrument shall in no event require the consent of the Company prior to the collection by the District of any amounts covered by such letter of credit or other instrument. The amount of such cash and such letter of credit to be provided under this Section 12.2.2 shall constitute the Company's Security Fund. The Company shall be entitled to interest on the cash portion of the Security Fund at a rate equal to whatever rate the District is actually earning on such cash. Any interest, costs or fees to obtain or maintain the letter of credit shall be borne by the Company. Not later than ten (10) Business Days after receiving notice that OCTT has a new Executive Director (including, but not limited to, someone holding the position on an interim, acting or similar basis for a term that either is indefinite or exceeds one (1) month), the Company shall update the name of the Executive Director in such financial institution's records of the Security Fund to enable the new Executive Director to have full access to the Security Fund pursuant to the terms of this Agreement.

12.2.3 Purposes. The Security Fund shall serve as security for: (i) the faithful performance of the Company's obligations pursuant to this Agreement and any costs, losses or damages incurred by the District as a consequence of the Company's performance or nonperformance of the terms and conditions of this Agreement; (ii) any expenditure (excluding any outside attorneys' fees for enforcement of this Agreement), damage or loss incurred by the District occasioned by the Company's failure to comply with all rules, regulations, orders, permits and other directives of the District issued pursuant to this Agreement or applicable law; (iii) all payments due the District from the Company pursuant to this Agreement; (iv) the loss of any payments required to be made by the Company to the District which would have been received by the District but for

12.2.5 Replenishment. Within fifteen (15) Business Days after receipt of notice from OCTT that any amount has been withdrawn from the Security Fund, as provided in Section 12.2.4 hereof, the Company shall restore the Security Fund to the amount specified in Section 12.2.2 hereof and provide to OCTT evidence satisfactory to OCTT that the Company has done so. If a court determines that said withdrawal by the District was improper, the District shall restore the improperly withdrawn amount to the Security Fund, together with interest, from the date of the withdrawal at the rate specified in Section 8.4 hereof during the period from such withdrawal until such restoration.

12.2.6 Confirmation of Withdrawals. Within five (5) Business Days after each of the foregoing withdrawals, OCTT shall notify the Company of the date and amount thereof.

12.2.7 Return of Security Fund. Within one hundred twenty (120) days after the termination of this Agreement due to the expiration of the term of the Franchise granted herein, the Company shall be entitled to the return of the Security Fund deposited pursuant to Section 12.2 hereof, or such portion thereof as remains on deposit at said termination, provided that all offsets necessary to compensate the District for any uncured failure to comply with any provision of this Agreement have been taken by the District. Notwithstanding the foregoing sentence, if the Company continues to operate the System following the termination of this Agreement or if the District orders the Company to remove the System as provided in Section 12.6 hereof, the Company shall not be entitled to a return of the Security Fund until one hundred twenty (120) days after the end of such continued operation or the completion of removal of the System, whichever is later. In the event of a termination of this Agreement for cause due to a material breach by the Company pursuant to Section 12.4 hereof or otherwise, such Security Fund shall become the property of the District to the extent necessary to satisfy the purposes of the Security Fund as set forth in Section 12.2.3 hereof, including the covering of any costs, loss or damage incurred by the District as a result of such termination or material breach, provided that any amounts in excess of such costs, loss or damage shall be refunded to the Company.

12.3 Liquidated Damages

12.3.1 Liquidated Damages. The Company shall be liable to the District or the specified intended third-party beneficiary for the amounts specified in this Section 12.3.1 for any of the following failures set forth as 12.3.1(i), (ii), and (iii) below by the Company to comply with the provisions of this Agreement, unless, within twenty (20) Business Days after receipt of notice by the Company from OCTT, or such longer period as OCTT shall specify, the Company has cured the failure in a manner acceptable to OCTT, resolved the matter to the satisfaction of OCTT, presented facts and argument in refutation or excuse of each such failure or matter that satisfy OCTT or provided a cure plan and schedule that satisfy OCTT. At the option of OCTT, such amounts may be withdrawn from the Security Fund and paid to the District (in addition to the withdrawals authorized by any other Section of this Agreement) or shall be paid in such other manner as may be determined by OCTT.

hereof or part of the payments to any PEG Entity by the Company pursuant to Section 4.2 hereof. Nothing contained in this Section 12.3.1 shall be construed to permit duplicative recovery from or payment by the Company.

12.3.2 No Pass-Through of Liquidated Damages. The costs associated with payment of liquidated damages pursuant to Section 12.3 shall not be passed through to Subscribers in any form, itemized on Subscriber bills, or, for rate regulation purposes, attributed to capital costs, operating expenses or external costs of the System.

12.3.3 Availability of Additional Remedies; Breach Procedures Not Applicable. To the extent that the District elects to assess liquidated damages as provided in this Section 12.3 and such liquidated damages have been paid to the satisfaction of OCTT, such damages shall be the District's sole and exclusive remedy. Nothing in this Section 12.3.3 is intended to preclude the District from exercising any other right or remedy with respect to (i) a breach that continues past the time the District stops assessing liquidated damages for such breach or (ii) the District's use of a past breach or past portion of a continuing breach to support a claim of material breach or another claim, one (1) of the elements of which is a previous, continuing or repeated violation of this Agreement or applicable law. Further, the Company's payment of such liquidated damages shall not preclude the District from considering the breaches for which such liquidated damages were paid in any decision the District makes on whether to renew this Franchise. The procedures set forth in Section 12.3.1 hereof shall apply to liquidated damages and the withdrawal of any such liquidated damages from the Security Fund. The breach procedures set forth in Section 12.4.3 hereof shall apply solely to the remedies for material breach set forth in Section 12.4.1 hereof.

12.4 Material Breach

12.4.1 Remedies for Material Breach.

(i) In the event of breach of a Material Provision of this Agreement, including (i) any substantial breach that is not cured within thirty (30) days of written notice; or (ii) any persistent failure by the Company to comply after having received written notice of a failure to comply, then, in accordance with the procedures provided in Section 12.4.3 hereof, the District may, at any time during the term of this Agreement, to the extent lawful and in addition to any other remedies the District may have under this Agreement or at law or in equity:

(a) Require the Company to take such actions, which are reasonably related to the cure of the breach, that the District deems appropriate in the circumstances; and/or

(b) Seek money damages from the Company as compensation for such material breach (it being acknowledged that seeking money damages for a material breach shall not preclude seeking money damages for a breach which is not material); and/or

with such determination, OCTT may consider the Company's performance during the term of this Franchise, to substantiate a pattern or practice of the Company's failure to comply with such Material Provision.

(iii) If OCTT determines that a failure to comply with a Material Provision has occurred and that such failure is not excusable and has not been or will not be cured by the Company in a manner and in accordance with a schedule satisfactory to OCTT, then OCTT may (a) take any action set forth in Sections 12.4.1(i)(a) and 12.4.1(i)(b); or (b) submit a report to the Council, as provided in Sections (iv) below, recommending that the Council take any action set forth in Section (c). If OCTT determines to take any action set forth in Sections 12.4.1(i)(a) or 12.4.1(i)(b) hereof, OCTT shall provide written notice and a copy of its determination to the Company and to the Council. The Company shall comply with OCTT's determination promptly, but in no event later than thirty (30) days after such determination, or such other time as may be specified by OCTT, unless: (1) the Company seeks review of OCTT's determination by the Council within twenty (20) days after receipt of notice of OCTT's determination, and (2) the Council reverses or modifies OCTT's determination within forty-five (45) days (excluding days that the Council is recessed or not in session) after the Company has timely requested Council review. OCTT may submit additional information to the Council in response to the Company's request for Council review. If the Council fails to take any action within the thirty (30) day period, or the Company fails to request Council review in a timely manner, OCTT's determination shall be deemed to be ratified, and the Company shall comply with OCTT's determination within five (5) Business Days of such determination or such other period of time as may be specified by OCTT. Any proceeding before the Council shall afford the Company such procedural rights as are available under the Council's rules and procedures.

(iv) In the event OCTT recommends that the Council take any action set forth in Section 12.4.1(i)(c), OCTT shall prepare a written report to the Council regarding the failure to comply with a Material Provision that has occurred and recommending the action that should be taken. OCTT shall provide notice of such determination and a copy of such report to the Company at the time the report is transmitted to the Council. In the event the Council determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the Council, or that such failure is excusable, such determination shall conclude the investigation. In the event the Council determines that such failure has occurred, and has not been and will not be cured in a manner and in accordance with a schedule satisfactory to the Council, and that such failure is not excusable, the Council may take, or direct OCTT to take, any of the actions provided in Section 12.4.1 hereof. Any final determination by the Council pursuant to this Section 12.4.3(iv) shall be subject to such judicial review as applies to legislative determinations.

inconsistent with applicable law, the District shall have the right to: (a) declare that all rights, title and interest to those portions of the System within the District of Columbia (or outside the District of Columbia but used exclusively for the System) belong to the District with all rights of ownership, including, but not limited to, the right to operate the System or to effect a transfer of the System to another Person for operation; or (b)(1) authorize removal of the System, including all associated repair of PROW and other public property, by another Person at the Company's cost; and (2) declare that, to the extent not inconsistent with applicable law, any portion of the System within the District of Columbia (or outside the District of Columbia but used exclusively to serve Persons within the District of Columbia) not designated by the District for removal shall belong to and become the property of the District without compensation to the Company and the Company shall execute and deliver such documents, as OCTT shall request, in form and substance acceptable to OCTT, to evidence such ownership by the District.

Notwithstanding the foregoing, the Company may dispose of any portion of the System not designated by the District for removal during such twelve (12) month period, provided, however, that if the Company fails to complete the removal of the portion(s) of the System designated for removal by the District within such period, then all such portion(s) of the System not disposed of and all amounts collected for any portion(s) of the System disposed of by the Company during such period shall belong to the District, with no amount due to the Company.

SECTION 13 SUBSEQUENT ACTION

13.1 Procedure for Subsequent Action. In the event that, after the Effective Date, 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 Company 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, including any obligations with respect to compensation or other financial obligations pursuant to this Agreement, then the Company shall promptly notify OCTT of such fact. Upon receipt of such notification, the District, acting in good faith, shall determine whether such declaration or requirement has a material and adverse effect on this Agreement. If the District, acting in good faith, determines that such declaration or requirement does not have a material and adverse effect on this Agreement, then the Company shall comply with such declaration or requirement. If the District, acting in good faith, determines that such declaration or requirement would materially frustrate or impede the ability of the Company to carry out its obligations pursuant to, and the purposes of, this Agreement, then the Company and the District shall enter into good faith negotiations to enable the Company to perform obligations and provide Services for the benefit of the District and others equivalent to those immediately prior to such declaration or requirement, to the maximum extent consistent with said declaration or

and burdens imposed by this Agreement are to the Company. The Company may submit to OCTT a written statement of those factors it believes to be relevant to such inquiry.

(ii) If OCTT determines that the Other OVS Franchise Agreement bestows benefits and imposes burdens on the third party which, on balance, are materially more advantageous to the third party than the benefits bestowed and burdens imposed by this Agreement are to the Company, then upon the Company's request, OCTT and the Company shall enter into good faith negotiations to modify this Agreement to bestow benefits and impose burdens which, on balance, create overall economic comparability between this Agreement and the Other OVS Franchise Agreement.

(iii) If OCTT and the Company have not completed this negotiation within six (6) months, or if OCTT determines that the Other OVS Franchise Agreement does not bestow benefits and impose burdens on the third party which, on balance, are materially more advantageous to the third party than the benefits bestowed and burdens imposed by this Agreement are to the Company, then the Company may petition the Council for appropriate relief under appropriate rules of procedure the Council may have in effect at the time.

SECTION 14 MISCELLANEOUS

14.1 Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in such Appendices, incorporated herein by reference and expressly made a part of this Agreement.

14.2 Action Taken by District. Any action to be taken by the District and/or OCTT pursuant to this Agreement shall be taken in accordance with the applicable provisions of District law, as said law may be amended or modified throughout the term of this Agreement.

14.3 Entire Agreement. This Agreement, including all Appendices hereto, along with any other document executed on the Effective Date, embody the entire understanding and agreement of the District and the Company with respect to the subject matter hereof and merges and supersedes all prior representations, agreements and understandings, whether oral or written, between the District and the Company with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any Appendix to this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the District or the Company, provided, however, that between the date of execution by the Company and the Effective Date, the Company shall comply with the terms and conditions of the Interim OVS Agreement, as amended.

14.6.1 Organization, Standing and Power. The Company is a limited liability company, duly organized, validly existing and in good standing under the laws of Delaware, and is duly authorized to do business in the District. The Company has all requisite power and authority to own or lease its properties and assets, to conduct its businesses as currently conducted and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby. Certified copies of the Company's organizational documents, as amended to date, have been delivered to OCTT and are complete and correct. The Company is qualified to do business and is in good standing in each jurisdiction in which it conducts business.

14.6.2 Authorization; Non-Contravention. The execution, delivery and performance of this Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the Company has furnished the District with a certified copy of the resolutions of the board of directors or managing member(s), as the case may be, of the Company, authorizing the execution and delivery of this Agreement. This Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Company, and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms, subject to the qualifications that the availability of the remedy of specific enforcement, of injunctive relief or of other equitable relief is subject to the discretion of the court before which any proceeding therefor may be brought, and that the enforcement of the rights and remedies created hereby is subject to bankruptcy, insolvency, reorganization and similar laws of general application affecting the rights and remedies of creditors and secured parties, provided that nothing in the foregoing qualifications is intended to diminish or affect the rights and remedies of the District under this Agreement at law or in equity. The Company has obtained the requisite authority to approve, authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and the Company warrants that no other proceeding or other action is necessary on the part of the Company to approve and authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The Company has not made any representations, warranties or agreements inconsistent with or with respect to the subject matter of this Agreement. Neither the execution and delivery of this Agreement by the Company nor the performance of its obligations contemplated hereby will:

- (i) conflict with, result in a material breach of or constitute a material default under (or with notice or lapse of time or both result in a material breach of or constitute a material default under) (a) any governing document of the Company or, to the Company's knowledge, any shareholders' agreement or other similar agreement among security holders or other owners of the Company or (b) any statute, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which the Company is a party or by which it (or any of its properties or assets) is subject or bound;
-

14.6.7 Fees. The Company has paid all franchise, license or other fees and charges which have become due pursuant to any prior franchise or permit and has made adequate provisions for any such fees and charges which have accrued.

14.6.8 Licenses and Permits. The Company has duly secured all material permits and licenses in connection with the design, construction, operation, maintenance, repair, upgrade, rebuild or enhancement of the System, or any part thereof, from, and has filed all required registrations, applications, reports and other documents with, the FCC. Further, no event has occurred which could (i) result in the revocation or termination of any such license or authorization, or (ii) materially and adversely affect any rights of the Company. No event has occurred which permits, or after notice or lapse of time or both would permit, revocation or termination of any such license or which materially and adversely affects or, so far as the Company can now foresee, will materially and adversely affect the System or any part thereof. The Company has obtained all material leases, easements and equipment-rental or other agreements necessary for the maintenance and operation of the System as now conducted.

14.6.9 Ownership Interests. Appendix F represents a current, complete and accurate description of the ownership structure of the Company and a current, complete and accurate list of all Persons which hold, directly or indirectly, a five-percent (5%) or greater interest in the Company, and all Persons in which the Company, directly or indirectly, holds a five-percent (5%) or greater interest.

14.7 Additional Covenants. Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, in consideration of the Franchise granted herein, the Company agrees that it will comply with the following affirmative covenants, unless the District otherwise consents in writing:

14.7.1 Compliance with Laws; Licenses and Permits. Consistent with Sections 10.2 and 14 of this Agreement, the Company shall comply with: (i) all applicable laws, rules, regulations, orders, writs, decrees and judgments (including, but not limited to, those of the FCC and any other federal, state or local agency or authority of competent jurisdiction); and (ii) all laws and all rules, regulations, orders, writs, decrees, judgments or other directives of the District, including OCTT, issued pursuant to this Agreement or applicable law. The Company shall have the sole responsibility, at its own cost, for obtaining all permits, licenses and other forms of approval or authorization necessary to construct, operate, maintain, upgrade, rebuild, enhance, replace or repair the System, or any part thereof.

14.7.2 Maintain Existence. The Company will preserve and maintain its existence, its business and all of its rights and privileges necessary or appropriate for the normal conduct of said business. The Company shall maintain its good standing in the District of Columbia and continue to qualify to do business and remain in good standing in each jurisdiction in which it conducts business.

by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Except as provided in SECTION 13 hereof, such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

14.12 Headings and Interpretation. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement and shall not in any way affect the construction or interpretation hereof. Terms such as “hereby,” “herein,” “hereof,” “hereinafter,” “hereunder” and “hereto” refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term “may” is permissive; the terms “shall” and “will” are mandatory, not merely directive. All references to any gender shall be deemed to include all others, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires. “Number” shall include “amount” and vice versa.

14.13 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the District.

14.14 Governing Law. This Agreement shall be deemed to be executed in the District of Columbia, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the District of Columbia, as applicable to contracts entered into and to be performed entirely within that jurisdiction.

14.15 Survival of Representations and Warranties. After the term of the Agreement and any extension thereof, the District may seek any lawful remedy for any breach by the Company or any Affiliated Person of any representation or warranty made by such Person and contained in this Agreement, provided that such breach occurred during the term of the Agreement or any extension thereof or, for a representation or warranty specifically limited to being true as of the Effective Date, that such breach occurred as of the Effective Date.

14.16 Delegation of District Rights. Except where this Agreement specifies that an action is to be taken by the Council, the District reserves the right to delegate and redelegate, from time to time, any of its rights or obligations under this Agreement to any body, organization or official. Except where this Agreement specifies that an action is to be taken by the Council or a specific District government agency or where the District informs the Company that it has delegated such rights or obligations to a certain body, organization or official, the District delegates to OCTT the rights and obligations under this Agreement held or to be performed by the District. Any such delegation by the District shall be effective upon written notice by the District to the Company of such delegation. Upon receipt of such notice by the Company, the Company shall be bound by all terms and conditions of the delegation not in conflict with this Agreement. Any such delegation, revocation or redelegation, no matter how often made, shall not be

14.22 Time of the Essence. Time is of the essence in the execution and performance of each of the terms of this Agreement.

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[signatures appear on the following page]*

APPENDICES

APPENDIX A

System Specifications

The system is constructed using a combination of fiber optics and coaxial radio frequency ("RF") distribution. The system has an analog passband of 860 MHz and meets or exceeds NCTA system specifications. The system has the flexibility to allocate a portion of the analog bandwidth to support digitally compressed video channels to support significantly higher channel capacity with the deployment of digital set-top converters. The system has a minimum analog Channel capacity of at least 94 Channels, downstream to all Subscribers, and a minimum digital capacity of 110 MHz. If the Company subsequently decides to change the amount of capacity allocated to analog programming and to dedicate such capacity to other programming, the Company shall notify the District in writing at least sixty (60) days prior to the effective date of the proposed change. The system backbone connections utilize fiber optic links (headend to hubs, hubs to hubs, and hubs to nodes). The system is designed and engineered with redundant paths between the headend and all hubs.

The basic system consists of a combination of 1550 nanometer (nm) and 1310 nm optical components connected to an optical node which converts the optical signals to an RF signal to serve an area no larger than 500 homes. Each optical node shall be constructed with at least a 12-fiber bundle of single mode type fibers. This design accommodates any further communication needs of area residents. Each optical node and its RF distribution is powered using a zero transfer standby power supply to minimize interruptions of service caused by power outages. The coaxial cable is of the jacketed variety for durability and performance in this environment. All splicing and RF connections use integral sleeve pin type connectors and are shielded with heat shrinkable tubing for weather protection.

The system is designed and constructed to be an active two-way plant utilizing the return bandwidth of 5-40 MHz to permit such services as impulse pay-per-view and other interactive services. These return signals are transmitted back to the primary headend or hub using the optical return laser in the node. The optical return laser has a return passband of 5-200 MHz to allow for additional future bandwidth requirements.

The system is capable of continuous twenty-four (24) hour daily operation without severe material degradation of signal except during extremely inclement weather or immediately following extraordinary storms that adversely affect utility services or damage major system components, or atmospheric conditions such as sun spots which may impact satellite services.

The system is capable of operating over an outdoor temperature range of -20 degrees to +120 degrees Fahrenheit and over variation in supply voltages from 105 to 130 volts AC without catastrophic failure or irreversible performance changes. The system

The Company shall operate the System in such a manner as to minimize the interference with the reception of off-the-air signals by a Subscriber. The Company shall insure that signals carried by the System, or originating outside the System wires, cables, fibers, electronics and facilities, do not ingress or egress into or out of the System in excess of FCC or other applicable standards. In particular, the Company shall not operate the System in such a manner as to pose unwarranted interference with emergency radio services, aeronautical navigational frequencies or any airborne navigational reception in normal flight patterns, or any other type of wireless communications, pursuant to FCC regulations.

The System shall use equipment generally used in high-quality, reliable, modern systems of similar design.

The Company shall provide equipment to enable Subscribers to block out audio and video on any undesired channels on the System. To the extent that the converter box or other equipment necessary to enable such blocking is not provided as part of a subscriber's service tier, the Company may charge a reasonable fee for such equipment.

The System shall include equipment so that any pay-per-view programming can only be activated by the positive action of a Subscriber.

All closed-caption programming retransmitted by the System shall include the closed-caption signal. For hearing impaired subscribers, the Company shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, the Company must have TDD/TTY (or equivalent) equipment at the Company's offices, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the Company. Upon request, the Company will provide, for purchase or lease, a remote control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited.

System Testing

The Company shall perform all tests necessary to demonstrate compliance with the requirements of this Agreement and other performance standards established by law

APPENDIX B

Initial Cable Services and Rate Report

[NOTE: Current information to be inserted at closing]

APPENDIX C

Public, Educational and Governmental Access

I. PAYMENT OF CAPITAL FUNDS

Section 4.2.1 of this Agreement sets forth the total amount of capital funds that the Company is obligated to pay to the PEG Entities collectively and refers to this Appendix C to this Agreement for the allocation of those capital funds among the PEG Entities. The allocation shall be as set forth below.

A. Initial Allocation

Subject to Section I.B hereof, the District shall allocate the funds it receives for PEG Entity capital support as follows:

1. Public Access Corporation: One third ($\frac{1}{3}$) of each quarterly payment.
2. Public Schools: One sixth ($\frac{1}{6}$) of each quarterly payment.
3. UDC: One sixth ($\frac{1}{6}$) of each quarterly payment.
4. District: One third ($\frac{1}{3}$) of each quarterly payment.

B. Changes to Allocation

The District shall have the right to adjust the allocation provided in Section I.A of this Appendix C to account for changes in the number of PEG Entities or the numbers of PEG Channels they operate or for such other reasons as the District deems (1) necessary or appropriate and (2) in the public interest.

II. PEG OPERATING AGREEMENTS; DESIGNATION OF ADDITIONAL PEG ENTITIES

A. Description of PEG Operating Agreements

1. OCTT shall enter into a PEG Operating Agreement with each PEG Entity that will operate a PEG Channel (other than the District with respect to the Governmental Channels or the Training Channel (as defined in Section 4.1.10 of this Agreement) and other than the Public Access Corporation).

III. INITIAL ALLOCATIONS

The initial frequency allocations, channel assignments and Dial Locations for PEG Channels shall be as follows:

PEG Entity	Frequency Allocation (MHz)	Channel Assignment	Dial Location
Public Access Corporation		10	10
Public Access Corporation		11	11
OCTT		13	13
OCTT		16	16
UDC		19	19
Public Schools		18	18

IV. MODIFICATIONS AND AMENDMENTS

This Appendix C shall not be modified or amended without the prior approval of the District.

APPENDIX D

Contribution of In-Kind Benefits

The Company shall provide the following:

1. Continued use of the 24-count fiber strands provided by the Company, connecting the District's two data centers, 222 Massachusetts Avenue, NW and 3919 Benning Road, NE, granted to the District pursuant to the Indefeasible Right of Use ("IRU") Agreement between the Company and the District, dated May 16, 2001.
2. Continued use of the 24-count fiber ring in South Capital Loop / Downtown Horseshoe Segment provided by the Company, pursuant to the Temporary Use Agreement between the Company and the District, dated August 13, 2002.
3. One (1) DS-3 circuit, with a full throughput of 45 MBps, at OCTT's headquarters, including all necessary hardware equipment to facilitate OCTT use of the circuit to administer Internet applications such as "on demand" Internet-based video applications, including a DS-3 router and a firewall supporting up to sixteen (16) Internet protocol (IP) addresses and Network Address Translation (NAT) addressing. In connection with the provision of the DS-3 circuit, OCTT will receive sixteen (16) IP addresses.
4. Cable Television service to all offices, commons, and production areas, and two (2) high speed T-1 circuits for Internet connections, at no monthly fee, to, Public Access Corporation headquarters.

APPENDIX E

Subscriber Services to Governmental Facilities

I. FREE CABLE SERVICE AND ASSOCIATED INSTALLATION AND EQUIPMENT

14.23 A. Free Cable Service and Installation

- 14.24 1. Upon the written request of OCTT, the Company shall, at no charge and according to the priority code set forth in Exhibit I to this Appendix E, provide one (1) high-amplitude building drop (of at least +19 dB/mV as measured at the tap port closest to the drop location) from the external distribution plant of the Subscriber Network to each facility listed in Exhibit I to this Appendix E.¹ Each such building drop shall terminate inside the building at a demarcation point reasonably close to where the cable for such building drop enters the facility. Service to such building drops, which shall be provided at no charge by the Company, shall consist of Basic Service.
- 14.25 2. Without charge to the District, as of October 1, 2004, the Company shall provide one high-amplitude building drop (of at least +19dB/mV as measured at the tap port closest to the drop

¹ Subject to the priority code deadlines, installations shall be completed within sixty (60) days of the receipt of all necessary permits, licenses or other authorizations (DPW, Verizon, PEPCO, etc.).

In individual circumstances which involve nonstandard connections (*i.e.*, those involving connections requiring in excess of two hundred fifty (250) feet of underground trenching or two hundred fifty (250) feet of aerial wiring per drop as measured from the closest point on the System to such facility), the District shall pay for the Actual Cost of such excess trenching or wiring.

Further, in individual circumstances where, despite the Company's best efforts to gain access to existing conduit, the Actual Cost to provide service to the specified location exceeds the Company's standard and reasonable cost to provide service to comparable commercial buildings in the Franchise Area, the District, at its option, shall (i) reimburse the Company for the excess of such Actual Cost over such standard and reasonable cost or (ii) delete the specified location from Exhibit I to this Appendix E and add an alternate location in its place.

14.26 B. Free Cable Modem Service

14.26.1 1. The Company shall provide, at no cost to the District, Two-Way cable modem service to each location listed in Exhibit 1 to this Appendix E. Such Two-Way cable modem service shall include five (5) service connections for each such facility. Such five (5) service connections shall consist of one (1) cable modem, one (1) hub and five (5) network interface cards. The Company shall not charge the District for installation² or service. If the Company offers various tiers of cable modem service and the District requests that a higher tier of service be provided to some or all of such facilities, the District may purchase such higher tier of service at the lowest price extended to a public facility in any other franchise area served by the Company, provided that the District meets any volume requirements associated with the upgrade price in such other franchise area.

14.26.2 2. The District shall take reasonable steps to ensure the security of the equipment provided by the Company pursuant to this Appendix while such equipment is located at the District's facilities and shall exercise reasonable care in using such equipment. Lost, stolen or damaged equipment shall be replaced at the cost and expense of the District department, agency, board or institution to which said equipment was provided by the Company, provided that such District department, agency, board or institution's liability shall be limited to the Company's Actual Cost for the replacement equipment. District departments, agencies,

² Subject to the priority code deadlines, installations shall be completed within sixty (60) days of the receipt of all necessary permits, licenses or other authorizations (DPW, Verizon, PEPCO, etc.).

In individual circumstances which involve nonstandard connections (*i.e.*, those involving connections requiring in excess of two hundred fifty (250) feet of underground trenching or two hundred fifty (250) feet of aerial wiring per drop as measured from the closest point on the System to such facility), the District shall pay for the Actual Cost of such excess trenching or wiring.

Further, in individual circumstances where, despite the Company's best efforts to gain access to existing conduit, the Actual Cost to provide service to the specified location exceeds the Company's standard and reasonable cost to provide service to comparable commercial buildings in the Franchise Area, the District, at its option, shall (i) reimburse the Company for the excess of such Actual Cost over such standard and reasonable cost or (ii) release the Company from the obligation to serve the specified location.

<i>SITE OR AGENCY</i>	<i>ADDRESS</i>	<i>Agency Code</i>	<i>Has Cable</i>	<i>No Cable</i>	<i>Priority Code</i>
1. Office of Cable Television and Telecommunications	3007 Tilden Street NW	OCTT	X		1
2. Department of Employment Services	2626 Naylor Rd. SE	DOES		X	1
3. Dept. Of Corrections/FEMA Headquarters	1923 Vermont Ave. NW	FEMA		X	3
4. Department of Banking & Financial Institutions	1400 L Street NW	DBFI		X	3
5. Mayor's Suite	1350 Pennsylvania Ave. NW	EOM		X	3
6. DC H. Carl Moultrie I Court House	500 Indiana Ave. NW	DCSC		X	3
7. Department of Public Works	2000 14 th Street NW	DPW		X	3
8. Engine Company 7	1101 Half Street SW	FEMS		X	3
9. Engine Company 10	1342 Florida Ave. NE	FEMS		X	3
10. DOES IT Satellite Career Center	401 M Street, SW	DOES		X	3
11. DOES South Capitol Career Center	4049 S. Capitol St., NW	DOES		X	3
12. Lincoln Theatre	1215 U Street NW	DCAH		X	3
13. DHS Congress Heights	4001 S. Capitol St., SE	DHS		X	3
14. DHS OIS	3919 Benning Rd. SE	DHS		X	1
15. DOES	500 C Street, NW	DOES		X	3
16. DPW/Financial Info Systems/Payroll	410 E Street NW	DPW		X	3
17. Housing Finance Authority	815 Florida Ave. NW	HFA		X	3
18. Medical Examiner Office/Dept. of Public Works/Detox CTR/TB Clinic	1900 Massachusetts Ave. SE	OCME		X	3
19. Lederer Environmental Educational Center	4801 Nannie Helen Burroughs Ave. NE	DCPS		X	1
20. The Arc	2102 Mississippi Ave. SE	DOH		X	1
21. University of D.C. (several	4200 Connecticut	UDC		X	3

	Street NW				
42. Guy Mason Community Center	3600 Calvert Street NW	DCPR		X	3
43. Banneker Community Center	2500 Georgia Avenue, NW	DCPR		X	3
44. N. Michigan Park Recreation Center	13 th and Emerson St. NE	DCPR		X	2
45. Barry Farm Recreation Center	1230 Sumner Rd. SE	DCPR		X	3
46. Benning Park Community Center	51 st & Fitch Street SE	DCPR		X	1
47. Benning Stoddert Community Center	100 Stoddert Pl. SE	DCPR		X	3
48. Capper Recreation Center	901 5 th Street SE	DCPR		X	3
49. Chevy Chase Community Center	5601 Connecticut Ave. NW	DCPR		X	1
50. Stoddert Recreation Center	39 th & Calvert Street, NW	DCPR		X	3
51. Lincoln Multicultural Center	Hiatt Place & Irving Street, NW	DCPR		X	3
52. Chevy Chase Recreation Center	41 st & Livingston Street, NW	DCPR		X	1
53. Mitchell Park Recreation Center	23 rd & S. Street, NW	DCPR		X	3
54. Orr Recreation Center	22 nd Street & Minnesota Ave. SE	DCPR		X	3
55. P.R. Harris Recreation Center	4600 Livingston Rd. SE	DCPR		X	1
56. Ridge Recreation Center	Ridge & Nicholson Streets, NE	DCPR		X	3
57. River Terrace Recreation Center	420 34 th Street, NE	DCPR		X	3
58. Ronald H. Brown Recreation	48 th & Meade Street, NE	DCPR		X	2
59. Rose Park Recreation Center	26 th & O Street, NW	DCPR		X	3
60. Douglas Community Center	20 th Street & Stanton Rd. SE	DCPR		X	3
61. Edgewood Recreation Center	3000 Evert Street NE	DCPR		X	3
62. Fort Davis Community Center	1400 41 st Street SE	DCPR		X	3
63. Fort Greble Recreation Center	200 Chesapeake St. SW	DCPR		X	3
64. Fort Stanton Community	1800 Erie Street SE	DCPR		X	3

Center	SE				
90. Ft. Lincoln Recreation Center	3100 Ft. Lincoln Dr. NE	DCPR		X	3
91. Hine Recreation Center	7 th & C Streets, SE	DCPR		X	3
92. Payne Recreation Center	15 th & C Street, SE	DCPR		X	3
93. Shaw Recreation Center	10 th Street & Rhode Island Ave. NW	DCPR		X	3
94. Taft Recreation Center	18 th & Perry Street, NE	DCPR		X	3
95. Takoma School Recreation Center	7010 Piney Branch Rd. NW	DCPR		X	3
(c) DC LIBRARIES					
96. <i>Cleveland Park Library</i>	3310 Connecticut Ave. NW	DCPL		X	3
97. <i>Mt. Pleasant Library</i>	3160 16 th Street NW	DCPL		X	3
98. <i>Tenley Friendship Library</i>	4450 Wisconsin Ave. NW	DCPL		X	3
99. Georgetown Library	3260 R Street NW	DCPL		X	3

(ii) Legend for Priority Codes

Priority 1- Facilities to be connected by March 31, 2004

Priority 2- Facilities to be connected by December 31, 2004

Priority 3- Facilities to be connected within one hundred and twenty (120) days after such time as the System is extended to reach within two hundred and fifty (250) feet of the listed address

APPENDIX F

Ownership Interests and Approved Mortgages, Pledges and Leases

Starpower Communications, LLC is a joint venture between RCN Telecom Services, Inc., of Washington, DC (“RCN-DC”), and Pepco Communications, LLC (“Pepco LLC”). RCN-DC is a wholly-owned subsidiary of RCN Telecom Services, Inc., a Pennsylvania Corporation, which is, in turn, a wholly-owned subsidiary of RCN Corporation. RCN-DC owns 50% of the equity interest in Starpower Communications, LLC, and Pepco LLC owns the remaining 50% interest. RCN Corporation is a Delaware corporation that is publicly traded on the NASDAQ National Market under the symbol RCNC. Pepco LLC is a wholly owned subsidiary of Pepco Communications, Inc., which is a wholly owned subsidiary of Pepco Holdings, Inc. Pepco Holdings, Inc. is a corporation organized under the laws of the State of Delaware that is publicly traded on the New York Stock Exchange under the symbol POM.

APPENDIX G

Required Information for Transfer Petitions

Pursuant to Section 10.4 of this Agreement, the District's time to approve or deny a transfer request shall not commence until all of the information required by Section 10.3 of this Agreement and the information listed below is submitted to the District:

1. A statement whether the request is for a transfer (assignment) of the franchise or a transfer of control of the Company.
 2. The proposed effective date of the transfer.
 3. A copy of the contract or agreement that provides for the transfer (including any exhibits or schedules thereto). Confidential trade, business, pricing or marketing information may be redacted.
 4. The legal name, assumed name used for doing business (if any), mailing address, and telephone number of the transferee, including (a) the names, addresses and ownership information of all Persons with a twenty percent (20%) or more voting interest, or a fifty percent (50%) or more non-voting interest, in the transferee; (b) the names and addresses of the Persons who Control the transferee and a description of how they exercise such Control; (c) the names and addresses of all officers and directors of the transferee; and (d) any other Cable Communications System ownership interest of each named Person who Controls the transferee.
 5. Information describing the transferee's technical ability to maintain and operate the System, including identification of key personnel, to the extent such information regarding personnel is available.
 6. The name, mailing address, and telephone number of the person(s) to contact for the transferee.
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APPENDIX H

"Map of the District's Fire Zone"