

CABLE TELEVISION LICENSE

Granted to Verizon New England, Inc.

December 5, 2016

Martin J. Walsh, Mayor
City of Boston



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A G R E E M E N T

This license agreement (“License” or “Agreement”) entered into as of this 5th day of December, 2016, by and between Verizon New England, Inc., a corporation organized under the applicable laws of the State of New York (“Verizon” or “Licensee”), and Martin J. Walsh, Mayor of the City of Boston and Issuing Authority for the award of cable television licenses under Chapter 166A of the Massachusetts General Laws (M.G.L.):

W I T N E S S E T H

WHEREAS, the Issuing Authority, pursuant to M.G.L. c 166A, as amended, wishes to grant Licensee a nonexclusive revocable License for the purpose of installing, operating and maintaining facilities and related equipment capable of delivering Cable Television Services within the City of Boston (“City” or “Issuing Authority”);

WHEREAS, Licensee is in the process of upgrading its existing Telecommunications Facilities through the installation of a Fiber to the Premises Telecommunications Network (“FTTP Network”) to be built throughout designated Service Area(s) in the City, subject to negotiated exceptions as set forth in this License, which transmits certain Non-Cable Services pursuant to authority granted by M.G.L. c. 166 and Title II, which Non-Cable Services are not subject to Massachusetts Cable Law or Title VI of the federal Communications Act;

WHEREAS, the FTTP Network will occupy Public Rights-of-Way within the City, and Licensee desires to use portions of the FTTP Network, once installed, to provide Cable Services delivered over the FTTP Network;

WHEREAS, the parties intend this License to be limited to those FTTP Network facilities that constitute a Cable System under federal law, and those Cable Services which are subject to fees or regulation under Massachusetts Cable Law or Title VI;

WHEREAS, the parties do not intend for this License to confer any rights with respect to facilities that are not a Cable System or Non-Cable Services; or to supersede or alter pre-existing rights that Licensee may have with respect to non-Cable System facilities or Non-Cable Services under M.G.L. c. 166 or Title 47, Chapter 5, Subchapter II of the United States Code;

WHEREAS, on April 12, 2016, the Issuing Authority formally commenced a solicitations process for additional nonexclusive cable television licensees in the City pursuant to M.G.L. c. 166A and other applicable law;

WHEREAS, on May 16, 2016, Licensee provided an application on Massachusetts Department of Telecommunications and Cable (“Department” or “DTC”) Form 100 for a license to operate and maintain a Cable System in Service Areas within the City (“Application”);

WHEREAS, pursuant to 207 CMR 3.03(4) and other authority the City issued on June 2, 2016 an Issuing Authority Report (“IAR”) responding to the Application, and Verizon submitted an amended application (“Amended Application”) and a response to the IAR, with exhibits and attachments (“IAR Response”), all dated July 6, 2016;

WHEREAS, in August and December 2016, after duly published notice, the City of Boston conducted public hearings and found Licensee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, the Issuing Authority and Licensee have reached agreement on the terms and conditions set forth herein for a Cable Television License and the parties have agreed to be bound by those terms and conditions;

WHEREAS, the Issuing Authority and Licensee jointly requested, and received approval of, a waiver of the requirement to reach agreement on a Provisional Cable Television License prior to agreement on a final License;

NOW THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound, the parties agree as follows:

SECTION 1. DEFINITIONS

For the purpose of this License the following words, terms, phrases, and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning.

When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Access Channel means any video Channel made available by Licensee to the City and/or its designee(s) without charge for non-commercial public, educational, or municipal ("PEM") access for the transmission of Video.

Affiliate means any Person or entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.

Basic Cable Service means in accordance with applicable law, that Cable Service tier which includes all signals of the Boston Designated Market Area ("DMA") broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the Cable System); and any public, educational, and municipal access programming required by the License to be carried on the basic tier.

Cable Service shall be defined herein as it is defined under Section 602(6) of the Communications Act, 47 U.S.C. § 522(6).

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

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

City or City of Boston means the municipal corporation organized under the laws of the Commonwealth of Massachusetts and its corporate territorial limits as they exist upon the execution of the License.

CMR means the Code of Massachusetts Regulations.

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

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

Department or DTC means the Department of Telecommunications and Cable established pursuant to Massachusetts General Laws Chapters 25C and 166A (“M.G.L. c. 25C” and “M.G.L. c. 166A”), and any predecessor or successor agency.

Drop means the fiber service wire or cable that connects a home or building to the Subscriber Network or Public Institutional Network.

Effective Date means the date on which the document is signed by the Licensee.

FCC means the Federal Communications Commission or any successor agency.

Force Majeure means an event or events reasonably beyond the ability of Licensee or the Issuing Authority to anticipate and control. With respect to the Licensee, Force Majeure includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection,

riots, act of public enemy, actions or inactions of any government instrumentality or utility (including, but not limited to, other authorized users of the Public Rights-of-Way which may collocate their facilities with those of Licensee; provided, however, that the foregoing shall only be deemed an event of Force Majeure pursuant to this Section to the extent Licensee has diligently exercised its access rights in accordance with applicable rules and regulations), including condemnation, accidents for which the Licensee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by unavailability of materials to perform the work necessary not attributable to Licensee's own materials allocation decisions.

Franchise Fee means the same as **License Fee**.

FTTP Network means the network described in the recitals to this Agreement.

Gross Revenue: All revenue as determined in accordance with generally accepted accounting principles, which is derived by the Licensee from the operation of the Cable System to provide Cable Service in the Service Area.

Gross Revenue includes, without limitation:

- (a) all revenue derived from Subscribers in the Service Area for the provision of Cable Services, including, without limitation (i) Basic Service, premium Cable Service, pay-per-view Cable Service, and video-on-demand Cable Service; (ii) installation, disconnection or reconnection of Cable Service; (iii) the provision of converters, remote controls, digital video recorders ("DVRs"), additional outlets and/or other Cable Service related Subscriber premises equipment; and (iv) late or delinquent charge fees;
- (b) revenues from the sale or lease of access channel(s) or channel capacity on the Cable System in the Service Area, including but not limited to leased access revenues pursuant to 47 U.S.C. § 532;

(c) revenue derived from the promotion or exhibition or sales of any products or services on the Cable System in the Service Area), such as “home shopping” or a similar channel; and

(d) revenue derived from the sale of advertising on the Cable System in the Service Area. For the avoidance of doubt, Gross Revenue shall include the amount of Licensee’s gross advertising revenue (*i.e.*, without netting advertising commissions paid to third parties), calculated in accordance with generally accepted accounting principles as reflected on the Licensee’s books and records.

Gross Revenue shall not include:

(a) revenue received by any Affiliate or other Person in exchange for supplying goods or services used by Licensee to provide Cable Service over the Cable System;

(b) bad debts written off by Licensee in the normal course of its business and in accordance with generally accepted accounting principles (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected);

(c) any revenue foregone as a result of (i) refunds, rebates or discounts made to Subscribers or other third parties; or (ii) the Licensee’s provision of free or reduced cost Cable Services to any Person, including without limitation, employees of the Licensee and public institutions or other institutions designated in the License (provided, however, that such foregone revenue which Licensee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue);

(d) any revenue which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System (provided, however, that portion of such

revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue);

(e) any revenue from the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect License Fees from purchaser's customer;

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

(g) any revenue from the sale of capital assets or surplus equipment;

(h) program launch fees, i.e., reimbursement by programmers to Licensee of marketing costs incurred by Licensee for the introduction of new programming; and,

(i) any revenue derived from Non-Cable Services.

If (i) Cable Services are provided to Subscribers in conjunction with Non-Cable Services (collectively, "bundled services"), and (ii) the Licensee provides a discount to Subscribers who receive bundled services, then the calculation of Gross Revenues shall be adjusted to include only the value of Cable Services billed to Subscribers, as reflected on the books and records of the Franchisee in accordance with applicable rules, regulations, standards or orders, provided that the value of Cable Services billed to Subscribers shall in no event be less than the pro rata share of Cable Services in relation to all bundled services. As used herein, "pro rata share" shall be based on the retail price charged by the Licensee to its Subscribers for each service on a standalone basis. Notwithstanding the foregoing, if the Licensee bundles Cable Services with Non-Cable Services, the Licensee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading Franchise Fee payments under this License.

Information Services shall be defined herein as it is defined under the Communications Act, 47 U.S.C. § 153(24).

Issuing Authority is, as defined by M.G.L. c 166A, the Mayor of the City of Boston.

License Fee means the payments to be made pursuant to Sections 8 and 10.

Licensee means Verizon New England, Inc. or any corporate successor in accordance with the terms and conditions of this License.

Monitoring means observing a cable communications signal, or the absence of same, where the observer is not the Subscriber whose signal is being observed, whether the signal is observed by visual, aural or other electronic means.

Massachusetts Cable Law shall mean Chapter 166A of the General Laws of the Commonwealth of Massachusetts and regulations applicable to Cable Licensees, Cable Systems and/or Cable Services lawfully issued by the Department, including those at 207 CMR §§ 1.00 et seq.

Multiple Dwelling Units or **MDU** shall mean residential properties including three (3) or more contiguous (whether vertically or horizontally integrated) individual residential living units in a single building structure.

Municipal Access Channel or **Municipal Access** means the right or ability of the City, the Issuing Authority or his designee to use designated facilities, equipment or channels of the Cable Television System for municipal access within the meaning of 47 U.S.C. § 522 (16)(A).

Municipal Use means any City-provided service that is provided pursuant to applicable law or regulation.

Non-Cable Services shall mean any service provided by Licensee that does not constitute the provision of Cable Services, including, but not limited to, Information Services and Telecommunications Services.

Normal Business Hours shall mean those hours during which Licensee's retail locations in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

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

Outlet means an interior receptacle that connects a television set to the Cable Television System.

PEM Access Designee shall mean any entity designated by the Issuing Authority for the purpose of owning and/or operating the equipment and facilities used in the production and/or broadcast of PEM Access Channel programming for the Issuing Authority, including but not limited to any Access Corporation.

Person means any individual, firm, corporation, joint venture, partnership, association, or any other legally recognized entity.

Produce, for the purpose of community video programming in Sections 6.9 and 6.10, means to individually, or by means of contract with another, compose, create, or bring out by intellectual or physical effort.

Public Access Channel shall mean an Access Channel provided to the City pursuant to the terms and conditions of this License for PEM programming and available for the use by the residents in the City and managed by the Issuing Authority and/or its Public Access Designee(s).

Public, Educational and Municipal Access Programming or **PEM** means non-commercial programming produced or sponsored by any Boston resident, organization, school and government entity and the use of designated facilities, equipment and/or channels of the Cable System in accordance with 47 U.S.C. § 531 and supported by any License.

Public Building means any building (1) which as of the Effective Date of this Agreement is eligible for a connection to the Cable System in a Service Area without charge as a result of a City designation and (2) buildings owned or leased by the Issuing Authority for government administrative purposes, and shall not include buildings owned by Issuing Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed or (3) any building listed on Exhibit 3 hereto.

Public Housing Community means all housing developments owned or managed by the Boston Housing Authority as state or federally funded public housing developments, including all developments in which the Boston Housing Authority has any land interest or that contain state or federally funded public housing units, at the Effective Date and at any time in the future. The parties agree that all of the foregoing defined Public Housing Communities that currently exist in the City are described in Exhibit 3 hereto.

Public Institutional Network or **PIN** or **Network** means the six (6) fiber bi-directional network as more particularly described in Section 6.11 and Exhibit 2 of this License.

Public Rights-of-Way means the surface of and the space above and below any and all public ways and places in the City of Boston, including without limitation all public streets, ways, lanes, alleys, parkways, bridges, tunnels, freeways or highways, sidewalks, courts, including public utility easements and public lands and waterways used as Public Rights-of-Way, and all property with respect to which the City has, or hereafter acquires, an easement or right-of-way.

Public Works Department or **Public Works** means the Public Works Department of the City of Boston.

Residential Household means an individual, noncommercial occupied dwelling or residence or an individual occupied unit within a Public Housing Community, residence, apartment, condominium, cooperative building, Multiple Dwelling Unit or other residential structure.

Service Area or **Service Areas** mean the portion or portions or the entirety of the City where Cable Service is being offered pursuant to the License, or subsequent amendment thereto, with the initial Service Area being described in Exhibit 1 hereto.

Service Date means the date on which Licensee first provides Cable Service on a commercial basis to multiple subscribers in the City, which is memorialized by notifying City in writing of same following execution of the License.

Signal means any transmission of electromagnetic or optical energy which carries Video Programming from one location to another.

Service Interruption has the same meaning as that found in Part 76 of Title 47 C.F.R.

Standard Installation means those installations that are within one hundred and twenty-five feet (125') aerial and one hundred twenty-five feet (125') underground of the Cable System, as defined with more specificity in Section 3.1.

State or Commonwealth means the Commonwealth of Massachusetts.

Subscriber means a Person who lawfully receives Cable Service from Licensee in the City.

Subscriber Network means the bi-directional Cable System to be operated by Licensee and designed for the delivery of video and other services to residential and non-residential Subscribers.

Telecommunications Facilities means Licensee's Telecommunications Services and Information Services facilities, including the FTTP Network.

Telecommunication Services shall be defined herein as it is defined in the Communications Act, 47 U.S.C. § 153(53).

Title II means Title II of the Communications Act, Common Carriers.

Title VI means Title VI of the Communications Act, Cable Communications.

Transfer shall mean any transaction in which:

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

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

User means any Person other than Licensee who utilizes the Cable Television System, studio or channel facilities, with or without charge.

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

Video Service Provider or VSP means any entity using any portion of the Public Rights-of-Way to provide Video Programming services to multiple subscribers within the territorial boundaries of the City, for purchase, barter, or free of charge, regardless of the transmission method, facilities or technologies used.

SECTION 2. GRANT OF LICENSE

Section 2.1 Grant of License

(a) Subject to the terms and conditions of this License and the Massachusetts Cable Law, the Issuing Authority hereby grants the Licensee the right to operate and maintain a Cable System within the City, for the purpose of providing Cable Service. Reference herein to "Public Rights-of-Way" shall not be construed to be a representation or guarantee by the City that its property rights are sufficient to permit its use for any purpose, or that the Licensee shall gain or be permitted to exercise any rights to use property in the City greater than those already possessed by the City or which is inconsistent with the purposes for which it was taken, purchased and/or dedicated. This License grants no authority for the Licensee to use the Public Rights-of-Way within the City for any other purpose unless otherwise provided herein. However, nothing in this License shall be construed to prohibit the Licensee from offering any service over the Cable System that is not prohibited by federal or State law provided that any requirements for City authorization or permitting not inconsistent with federal and State law are satisfied. The Licensee's FTTP Network in the Public Rights-of-Way, which the Licensee has upgraded under its Title II authority, is subject to M.G.L. c. 166. The Licensee shall adhere to all applicable City ordinances and lawful regulations of the City regarding Public Rights-of-Way and public works matters, including rights-of-way management requirements with regard to

public safety and other legitimate municipal concerns. Nothing in this Section 2.1 shall be deemed to prohibit the right of the Licensee to challenge the legality of such a City ordinance or regulation. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this License.

(b) Jurisdiction and venue over any dispute, action or suit shall be in any court or agency of appropriate venue and subject matter jurisdiction located in the Commonwealth of Massachusetts and the parties by this Agreement subject themselves to the personal jurisdiction of said court or agency for the entry of any such judgment and for the resolution of any dispute, action, or suit.

Section 2.2 Licensee's Telecommunications Facilities, Non-Cable Services and Reserved Authority

The parties recognize that the Licensee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities for the provision of Non-Cable Services. The jurisdiction of the City over such Telecommunications Facilities is restricted by federal and State law, and the City does not assert jurisdiction over the Licensee's FTTP Network in contravention of those limitations. Therefore, the Issuing Authority's regulatory authority under Title VI and applicable State law is not applicable to the construction, installation, maintenance or operation of the FTTP Network to the extent the FTTP Network is constructed, installed, maintained and operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services, provided, however, that the Issuing Authority retains regulatory authority under Title VI and applicable state law with respect to the delivery of Cable Services over the Cable System.

Section 2.3 Term of License

Subject to the provisions of Section 2.4, the term of the License shall commence upon its execution by the Issuing Authority and Licensee defined herein as the Effective Date, and shall continue for a period of ten (10) years, unless sooner terminated.

Section 2.4 Termination Generally

Notwithstanding any provision herein to the contrary, Licensee may terminate this License and all obligations hereunder at any time during the term of this License for any reason, in Licensee's sole discretion, upon twenty-four (24) months' written notice to the Issuing Authority during the first five (5) years of the License and upon eighteen (18) months' written notice to the Issuing Authority during the second five (5) years of the License. In the event the Licensee terminates this License during its term, Sections 6.11 and 6.12 hereof and the Licensee's obligations under those provisions shall survive such termination and shall continue in full force and effect until the end of the original ten (10) year term of the License.

Section 2.5 Modification/Termination Based on VSP Requirements

If the Issuing Authority, after the Effective Date hereof, enters into any franchise, agreement, license, or grants any other authorization to another VSP to provide Video Programming to residents of the City in the Service Area using the Public Rights-of-Way and which is competitive with the Cable Services offered by Licensee over its Cable System, the Issuing Authority agrees that, notwithstanding any other provision of law or this Agreement, upon Licensee's written notice, Licensee and the Issuing Authority shall, within thirty (30) days of the Issuing Authority's receipt of such notice, commence negotiations to modify this Agreement to ensure competitive equity between Licensee and other VSPs, taking into account all conditions under which other VSPs are permitted to provide Video Programming to customers in the City. If, after good faith negotiations, the parties cannot reach agreement on the

above-referenced modifications to the Agreement, then, at Licensee's option, the parties shall submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

Section 2.6 Non-Exclusivity of Grant

This License shall not affect the right of the Issuing Authority to grant to any other Person a license or right to occupy the Public Rights-of-Way for the installation, operation or maintenance of a cable television system within the City; or the right of the Issuing Authority or the City to permit the use of the public ways and places of the City for any purpose whatever. Licensee hereby acknowledges the Issuing Authority's right to make such grants and permit such uses and the City's right to permit such issues.

Section 2.7 Police and Regulatory Powers Reserved

Nothing in this License shall be construed to prohibit the reasonable, necessary, and lawful exercise of the City's police powers, including the powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public. Licensee shall comply with all lawful and applicable laws and ordinances of general applicability enacted by the City pursuant to any such power; provided, however, that should a conflict occur between the terms of this License and any present or future lawful exercise of the City's police and regulatory powers, Licensee reserves its legal rights relative to legal review in a court of appropriate jurisdiction.

Section 2.8 No Waiver

(a) The failure of the Issuing Authority on one or more occasions to exercise a right or to require compliance or performance under this License, the Massachusetts Cable Law or any other applicable law, bylaw or lawful regulation shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the Issuing Authority, nor to excuse

Licensee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by the Issuing Authority.

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

Section 2.9 FTTP Network Status

In the event of a lawful termination or non-renewal of the License, the legal status of the FTTP Network in the Public Rights-of-Way will revert to whatever status it has as a system providing only Non-Cable Services. In implementation of the intent of the preceding sentence, if and so long as the Licensee shall have separate lawful authority to maintain facilities providing services of the type being carried over the FTTP Network in the City's Public Rights-of-Way, the Licensee shall not be required to remove or relocate the FTTP Network or any portion thereof as a result of License revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Licensee from providing Cable Service.

SECTION 3. INSTALLATION

Section 3.1 Provision of Cable Service

(a) Service Area: Licensee shall offer Cable Service over its Cable System to all Residential Households in the Service Area at a pace of not less than ten percent (10%) of the deployment in the Service Area each year and shall offer Cable Service over its Cable System to all occupied Residential Households in the Service Area within six (6) years of the Effective Date of this License, except: (A) for periods of Force Majeure; (B) due to an inability to obtain necessary access to public or private rights-of-way; (C) in Multiple Dwelling Units,