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#12380998

**CITY OF WOBURN
FINAL CABLE LICENSE**

THIS FINAL CABLE LICENSE AGREEMENT (this "License" or "Agreement") is entered into by and between the Mayor of the City of Woburn, as Issuing Authority for the grant of the cable television license pursuant to the Massachusetts Cable Law, and Verizon New England, Inc., a corporation duly organized under the applicable laws of the State of New York (the "Licensee").

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

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

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

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

WHEREAS, Licensee submitted an application dated April 20, 2005, on Cable Division Form 100 for a license to operate and maintain a Cable System in the City;

WHEREAS, pursuant to 207 CMR 3.03(3), the Issuing Authority released an Issuing Authority Report dated July 19, 2005, and Licensee submitted an amended application dated August 3, 2005;

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

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

WHEREAS, the Issuing Authority and Licensee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the Issuing Authority's grant of a License to Licensee, Licensee's promise to provide Cable Service to residents of the City pursuant to the terms and conditions set forth herein, and for other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

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THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in the Communications Act are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

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

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

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

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

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

1.6. *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), meaning Licensee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service, which includes video programming, and which is provided to multiple Subscribers within the City. The Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the City and shall not include the tangible Telecommunications Facilities of Licensee subject in whole or in part to Title II or of an Information Services provider.

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

1.8. *City*: The City of Woburn.

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

1.10. *Communications Act*: The Communications Act of 1934, as amended.

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

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1.12. *Educational Access Channel*: An Access Channel available for the use of the local public schools in the City.

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

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

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

1.16. *Government Access Channel*: An Access Channel available for use of the Issuing Authority.

1.17. *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, which is derived by Licensee from the operation of the Cable System to provide Cable Service in the City, provided, however, that Gross Revenue shall not include:

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

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

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

1.17.4. Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access Service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed by Licensee to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders;

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

1.17.6. The sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable license fees from purchaser's customer;

1.17.7. The sale of Cable Services to customers which are exempt, as required or allowed by the City including, without limitation, the provision of Cable Services to public institutions as required or permitted herein;

1.17.8. 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);

1.17.9. Any foregone revenue which Licensee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Licensee and public institutions or other institutions designated in this 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;

1.17.10. Sales of capital assets or sales of surplus equipment;

1.17.11. Program launch fees;

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

1.17.13. Any fees or charges collected from Subscribers or other third parties for the License Fee, PEG Grant or PEG Access Support.

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

1.19. *Initial Service Area*: The portion of the City as outlined in **Exhibit A**.

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

1.21. *Issuing Authority*: The Mayor of the City of Woburn.

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

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

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

1.25. *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the City including, but not limited to, Information Services and Telecommunications Services.

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

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

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

1.29. *PEG Channel*: Shall have the meaning set forth in Section 6.1.1 of this Agreement.

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

1.31. *Public Access Channel*: An Access Channel available for the use by the residents in the City.

1.32. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the City. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

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

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

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1.35. *Subscriber*: A Person who lawfully receives Cable Service of the Cable System with Licensee's express permission.

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

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

1.38. *Title II*: Title II of the Communications Act, Common Carriers, as amended, under which Licensee has upgraded its network with the FTTP Network.

1.39. *Title VI*: Title VI of the Communications Act, Cable Communications, as amended, which governs only the provision of Cable Services by Licensee.

1.40. *Transfer of the License*:

1.40.1. Any transaction in which:

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

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

1.40.2. However, notwithstanding Sections 1.40.1.1 and 1.40.1.2 above, a Transfer of this License shall not include transfer of an ownership or other interest in Licensee to the parent of Licensee or to another Affiliate of Licensee; transfer of an interest in this License or the rights held by the Licensee under the License to the parent of Licensee or to another Affiliate of Licensee; any action which is the result of a merger of the parent of the Licensee; or any action which is the result of a merger of another Affiliate of the Licensee.

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

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Massachusetts Cable Law, the Issuing Authority hereby grants the Licensee the right to own, operate and maintain a Cable System along the Public Rights-of-Way within the City, in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2. *Issuing Authority Does Not Regulate Telecommunications*: The Issuing Authority's regulatory authority under Title VI does not extend to the construction, installation, maintenance or operation of the FTTP Network to the extent the FTTP Network is constructed,

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installed, maintained or operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services.

2.3. *Term:* This License shall become effective on October 13, 2005 (the "Effective Date"). The term of this License shall be fifteen (15) years from the Effective Date unless this License is earlier revoked or terminated as provided herein.

2.4. *Grant Not Exclusive:* This License and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the Issuing Authority reserves the right to grant other Licenses for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of this License. Any such rights which are granted shall not adversely impact the authority as granted under this License and shall not interfere with the Cable System or the FTTP Network.

2.5. *License Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this License is subject to and shall be governed by all applicable provisions of federal law as it may be amended, including but not limited to the Communications Act.

2.6. *No Waiver:*

2.6.1. The failure of the City 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 shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City, nor to excuse Licensee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

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

2.7. *Construction of Agreement:*

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

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

2.7.3. Should any change to state law have the lawful effect of materially altering the terms and conditions of this License, then the parties shall modify this License to the mutual satisfaction of both parties to ameliorate the negative effects on the Licensee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to this License, then Licensee may terminate this Agreement without further obligation to the City or, at Licensee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

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2.8. *Police Powers:* Nothing in this License shall be construed to prohibit the reasonable, necessary and lawful exercise of the City's police powers. However, if the reasonable, necessary and lawful exercise of the City's police power results in any material alteration of the terms and conditions of this License, then the parties shall modify this License to the mutual satisfaction of both parties to ameliorate the negative effects on the Licensee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to this License, then Licensee may terminate this Agreement without further obligation to the City or, at Licensee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

3. PROVISION OF CABLE SERVICE

3.1. *Service Area:*

3.1.1. *Service Area:* Licensee shall offer Cable Service to significant numbers of Subscribers in residential areas of the Initial Service Area, and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Effective Date, and shall offer Cable Service to all residential areas of the City within three (3) years of the Effective Date of this License, except: (A) for periods of Force Majeure; (B) for periods of delay caused by the City; (C) for periods of delay resulting from Licensee's inability to obtain authority to access rights-of-way in the City; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that Licensee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Licensee; and (F) in areas, developments or buildings where Licensee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density requirement set forth in Section 3.1.2. To the extent that the City is expanded due to annexation, then, subject to the limitations set forth above, Licensee shall offer Cable Service to such portions of the annexed area for which Licensee's FTTP Network facilities are deployed and in which the Licensee is offering Cable Services.

3.1.2. *Density Requirement:* Licensee shall make Cable Services available to residential dwelling units in all areas of the City where the average density is equal to or greater than 30 occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should, through new construction, an area within the Initial Service Area or the City meet the density requirements after the time stated for providing Cable Service as set forth in Section 3.1.1, Licensee shall provide Cable Service to such area within six (6) months of receiving notice from the Issuing Authority that the density requirements have been met.

3.2. *Availability of Cable Service:* Licensee shall make Cable Service available to all residential dwelling units, and may make Cable Service available to businesses, within the City in conformance with Section 3.1 and Licensee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Licensee shall provide Cable Service, Licensee shall be required to connect, at Licensee's expense, all

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residential dwelling units that are within one hundred twenty five (125) feet of trunk or feeder lines not otherwise already served by Licensee's FTTP Network. Licensee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred twenty five (125) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings:* Subject to Section 3.1, Licensee shall provide, without charge within the City, one service outlet activated for Basic Service to each fire station, public school, police station, public library, and such other public buildings as are designated by the Issuing Authority and set forth **Exhibit B**. Licensee shall be permitted to recover, from any school or other public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than one hundred twenty five (125) feet of drop cable; provided, however, that Licensee shall not charge for the provision of Basic Service to the additional service outlets once installed.

4. SYSTEM OPERATION

The parties recognize that the FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or an extension of Licensee's existing Telecommunications Facilities under Title II and M.G.L. c. 166. The jurisdiction of the City over such Telecommunications Facilities is restricted by federal and state law, and the City does not and will not assert jurisdiction over Licensee's FTTP Network, in contravention of those limitations.

5. SYSTEM FACILITIES

5.1. *System Characteristics:* Licensee's Cable System shall meet or exceed the following requirements:

5.1.1. The Cable System shall be designed with an initial analog passband of 860 MHz.

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

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

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

6. PEG SERVICES AND SUPPORT

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6.1. *PEG Set Aside; Interconnection:*

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

6.1.2. Within ten (10) days after the Effective Date, the City shall notify Licensee of the programming to be carried on each of the PEG Channels set aside by Licensee, as listed in **Exhibit C**. Such notification shall constitute authorization to Licensee to transmit such programming within and without the City. Thereafter, Licensee shall assign the PEG Channels on its channel line-up as set forth in such notice, to the extent such channel assignments do not interfere with Licensee's existing or planned channel line-up or contractual arrangements related thereto. If a PEG Channel provided under this Article is not being utilized by the City, Licensee may utilize such PEG Channel, in its sole discretion, until such time as the City elects to utilize the PEG Channel for its intended purpose. In the event that the City determines to use such PEG capacity, the City shall provide Licensee with 120 days' prior written notice of such request.

6.1.3. Licensee shall use reasonable efforts to interconnect its Cable System with the existing cable operator(s). Prior to the Service Date, the Licensee shall initiate interconnection negotiations with the existing cable operator(s) to cablecast, on a live basis, PEG programming consistent with this License. Interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection. Licensee shall negotiate in good faith with existing cable operator(s) respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms and conditions. The Issuing Authority shall require the existing cable operator(s) to provide such interconnection to the Licensee on reasonable terms and conditions. The Licensee and the existing cable operator(s) shall negotiate the precise terms and conditions of an interconnection agreement. The Issuing Authority shall use its best efforts to facilitate these negotiations. If Licensee is unable to reach such an agreement within thirty (30) days after requesting in writing to interconnect with other local cable operator(s), the Issuing Authority shall assist in mediating such dispute. If no agreement is reached within an additional thirty (30) days, Licensee agrees that Issuing Authority shall designate the point of interconnection. If the cost of interconnection would be unreasonable, interconnection is not technically feasible or would cause an unacceptable increase in Subscriber rates, or if an existing cable operator will not agree to reasonable terms and conditions of interconnection, the Licensee will be under no obligation to carry PEG programming originating on the cable system of the existing cable operator or to interconnect the Cable System.

6.2. *PEG Grant and PEG Access Support:*

6.2.1. Licensee shall provide an annual equipment grant to the City or its designee to be used for PEG equipment and facilities (the "PEG Grant"). Such grant shall be used by the City or its designee for PEG access equipment, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities, or for other technological needs as determined by the Issuing Authority, in all cases consistent with Licensee's right to recover such

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costs pursuant to federal law and Section 6.4 below. The PEG Grant provided by Licensee hereunder shall be the sum of Four Hundred Thirty Five Thousand Dollars (\$435,000), payable as follows:

- \$35,000 no later than thirty (30) days of the Effective Date
- \$100,000 no later than the third anniversary of the Effective Date (October 13, 2008)
- \$100,000 no later than the fourth anniversary of the Effective Date (October 13, 2009)
- \$100,000 no later than the fifth anniversary of the Effective Date (October 13, 2010)
- \$100,000 no later than the sixth anniversary of the Effective Date (October 13, 2011)

6.2.2. Licensee shall provide an annual payment to the City or its designee to be used to support ongoing operations of PEG access programming (the "PEG Access Support"). Such payment shall be used by the City or its designee solely for personnel, operating and other related expenses incurred in connection with PEG access programming operations. Subject to the limitations in Section 7.2, the PEG Access Support provided by Licensee hereunder shall be up to four and one-quarter percent (4.25%) of Licensee's annual Gross Revenues and paid on an annual basis. The PEG Access Support payments shall be made no later than March 15 of each year during the term of this License. For purposes of the PEG Access Support payment, the annual period for determining Gross Revenues shall be the preceding calendar year. If Cable Services subject to the calculation of Gross Revenues are provided to Subscribers in conjunction with Non-Cable Services, the amount of such revenue included in the calculation of Gross Revenues shall be only the value of the Cable Services, as reflected on the books and records of Licensee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders.

6.3. The City shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Licensee to transmit programming consistent with this License and to hold harmless and defend Licensee and the City from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. Pursuant to Section 611 of the Communications Act (47 U.S.C. § 531), the City shall establish rules and procedures regarding the use of the PEG Channel capacity.

6.4. To the extent permitted by federal law, the Licensee shall be allowed to recover the costs of the PEG Grant, the PEG Access Support and any other costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Licensee may externalize, line-item, or otherwise pass-through interconnection costs to Subscribers.

7. LICENSE FEES

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7.1. *License Fee:* Pursuant to Section 9 of the Massachusetts Cable Law, the Licensee shall pay to the City, throughout the term of this License, a license fee equal to fifty cents (\$.50) per Subscriber per year (the "License Fee").

7.2. *Maximum Financial Obligation:* The Licensee shall not be liable for a total financial commitment pursuant to this License and applicable law in excess of four and one-quarter percent (4.25%) of its annual Gross Revenues; provided that such four and one-quarter percent (4.25%) shall include (i) the License Fee payable to the City (Section 7.1), (ii) the license fee payable to the Commonwealth of Massachusetts pursuant to Section 9 of the Massachusetts Cable Law, and (iii) the PEG Access Support (Section 6.2.2), but it shall not include the PEG Grant (Section 6.2.1).

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

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

8. CUSTOMER SERVICE

Customer Service Requirements are set forth in **Exhibit D**, which shall be binding unless amended by written consent of the parties.

9. REPORTS AND RECORDS

9.1. *Open Books and Records:* Upon reasonable written notice to the Licensee and with no less than thirty (30) business days written notice to the Licensee, the Issuing Authority shall have the right to inspect Licensee's books and records pertaining to Licensee's provision of Cable Service in the City at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this License. Such notice shall specifically reference the section or subsection of this License which is under review, so that Licensee may organize the necessary books and records for appropriate access by the Issuing Authority. Licensee shall not be required to maintain any books and records for License compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, Licensee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the City. The Issuing Authority shall treat any information disclosed by Licensee as confidential and shall only disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. Licensee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. § 551.

9.2. *Records Required:* Licensee shall at all times maintain:

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9.2.1. Records of all written complaints for a period of three years after receipt by Licensee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Licensee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.2.2. Records of outages for a period of three years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.2.3. Records of service calls for repair and maintenance for a period of three years after resolution by Licensee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.2.4. Records of installation/reconnection and requests for service extension for a period of three (3) years after the request was fulfilled by Licensee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.2.5. A map showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

10. INSURANCE AND INDEMNIFICATION

10.1. Insurance:

10.1.1. Licensee shall maintain in full force and effect, at its own cost and expense, during the term of this License, the following insurance coverage:

10.1.1.1. Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the operation and maintenance of the Cable System, and the conduct of Licensee's Cable Service business in the City.

10.1.1.2. Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

10.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the Commonwealth of Massachusetts.

10.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$500,000 policy limit.

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10.1.1.5. Excess liability or umbrella coverage of not less than three million dollars (\$3,000,000).

10.1.2. The City shall be designated as additional insured under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance.

10.1.3. Licensee shall not cancel any required insurance policy without submitting documentation to the Issuing Authority verifying that the Licensee has obtained alternative insurance in conformance with this Agreement.

10.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of Massachusetts, with a B+ or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

10.1.5. Upon written request, Licensee shall deliver to the Issuing Authority Certificates of Insurance showing evidence of the required coverage.

10.2. Indemnification:

10.2.1. Licensee shall indemnify and hold the City, its officials, boards, commissions, committees, agents and/or employees harmless at all times during the term of this License from any and all claims for injury and damage to persons or property, both real and personal, caused by the actions of Licensee, its employees, officers or agents arising out of the installation, operation, or maintenance of any structure, equipment, wire or cable authorized to be installed pursuant to this License, provided that the City shall give Licensee written notice of its request for indemnification within ten (10) days of receipt of a claim pursuant to this subsection. Notwithstanding the foregoing, Licensee shall not indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Licensee in connection with PEG Access, use of the City's Institutional Network or the EAS, or the distribution of any Cable Service over the Cable System.

10.2.2. With respect to Licensee's indemnity obligations set forth in Section 10.2.1, Licensee shall, at its own expense, provide the defense of any claims brought against the City by selecting counsel of Licensee's choice to defend the claim, subject to the consent of the City, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the City from cooperating with the Licensee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the City, Licensee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Licensee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such settlement do not include the release of the City and the City does not consent to the terms of any such settlement or compromise, Licensee shall not settle the claim or action but its obligation to indemnify the City shall in no event exceed the amount of such settlement.