EXHIBIT NO. 1

ATTACHMENT 2

14
10-11-11

# City of Alexandria, Virginia

## MEMORANDUM

**DATE:** OCTOBER 7, 2011

**TO:** THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

**FROM:** BRUCE JOHNSON, ACTING CITY MANAGER

**SUBJECT:** CONSIDERATION OF RENEWAL OF THE CABLE TELEVISION FRANCHISE AND A FIBER USE AGREEMENT FOR COMCAST OF VIRGINIA, INC.

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**ISSUE**: Consideration of the proposed cable television franchise and fiber use agreement for Comcast of Virginia, Inc. to provide cable television and I-Net services in the City of Alexandria.

**RECOMMENDATION**: That City Council:

(1) Receive this report and set the public hearing on the proposed five-year cable television franchise, and fiber use agreements for **Saturday, October 15;**

(2) After the public hearing, approve the five-year cable television franchise (Attachment 1) and fiber use (Attachment 2) agreements and the letter of understanding and supporting documents (Attachment 3) for Comcast of Virginia, Inc. at the **October 25 legislative meeting**; and

(3) Authorize the Acting City Manager to execute all necessary documents to ensure the five-year renewal of the cable television franchise with Comcast of Virginia, Inc. including the franchise agreement, the fiber use agreement, and the letter of understanding which specifies in greater detail the provisions for cable television service to governmental buildings and how the Public, Educational, Governmental (PEG) and I-Net grants will be used.

**BACKGROUND**: The original cable television franchise was awarded to Alexandria Cablevision Company in 1979. The franchise was transferred to Tribune Company Cable of Alexandria in 1981 and to Jones Intercable in 1986. In 1994, the City granted Jones Intercable of Alexandria, Inc. a 15-year, nonexclusive franchise to provide cable television service and any other telecommunications services the company was legally authorized to provide. The company was purchased and the franchise was transferred to Comcast of Virginia, Inc. in 1999.

Under the 1994 franchise, the franchisee was required to: (1) upgrade the system to a fiber-based (fiber to the neighborhood) system; (2) construct a fiber communications system (Institutional Network [I-Net]) to link governmental and educational facilities in Alexandria that was capable of transmitting voice, data, and video; (3) provide free basic cable service to all government facilities including schools and other educational facilities and each City owned and City-leased residential structure; (4) provide live coverage of all City Council, School Board, Planning Commission, Board of Zoning Appeals, and Boards of Architectural Review meetings and the T.C. Williams High School graduation; and (5) management and operation of the local origination/community channel. The City government also received up to six free 30-minute video productions per year, and free training for staff and community residents who wished to produce programs the community channel (Channel 69). In addition, the City received capital grants which were used to defray I-Net infrastructure costs and purchase broadcast equipment for Council Chambers and the adjacent control room.

In 2006, the General Assembly enacted significant changes in state law that eliminated the City's ability to require these benefits and services in a franchise renewal. In addition, Comcast has changed its position regarding providing technical services and support for PEG operations and I-Net.

**DISCUSSION**: The proposed five-year cable television franchise and fiber use agreements will run concurrently and are interrelated. The franchise provides for the following:

1. Term - The initial term of the franchise is five years, with provisions for up to two extensions of five years (total 15 years). Prior to each extension staff will perform a compliance review to determine whether or not the franchisee (Comcast) has complied with the requirements of the franchise. City Council will base its determination on whether or not to extend the agreement on the degree to which Comcast has complied with the requirements of the franchise.

2. Public, Educational, Governmental (PEG) Access Capital Funding - Comcast will provide an annual fee of three percent of gross revenues to fund PEG access capital needs and the Institutional Network (I-Net) in the form of a recurring PEG Capital Grant. In addition, there is a one-time Initial Capital Grant of $150,000, due no later than 30 days after the effective date of franchise, for the purchase of PEG access equipment and for the renovation of facilities used in or related to PEG programming. This will allow the City to replace the aging analog equipment in City Hall with digital cameras and broadcast equipment.

3. PEG Operating Support - PEG operating costs will be covered, thus allowing the continuation of the cablecasting of the meetings of the City Council, School Board, Planning Commission, Board of Zoning Appeals (BZA), and both panels of the Board of Architectural Review. In addition, Comcast will provide a 12-month transition period during which the company will continue to staff the cablecasting of the aforementioned meetings and the 2012 T. C. Williams High School graduation to assist the City as it assumes the responsibility for the broadcasting of these meetings.

4. Institutional Network (I-Net) - The I-Net, which is owned by Comcast, will be governed by the Fiber Use Agreement that runs concurrent with the franchise agreement. The I-Net was initially used for data and limited video streaming by the City and Schools. The network now carries all of the City's telephone (Voice Over Internet Protocol/VOIP) operations and other major data systems (Financial, real estate, criminal justice, public safety CAD exchange, etc.) The three percent of gross revenues payment will also cover the City's monthly recurring charges under the Fiber Use agreement.

5. Local Office - The new franchise requires Comcast to maintain an office in the City to allow subscribers to request service, pay bills and conduct other business. After normal business hours, Comcast is required to have phone service available 24-hours per day, seven-days per week. (The Comcast office is currently located in the Trade Center Shopping Center on South Pickett Street near the Home Depot.)

6. Free Cable Service - Comcast will continue to provide basic cable television service to each Alexandria public school and other educational facility, and each facility occupied by a City office or agency except residential facilities (group homes) that are City-owned and/or City leased. The costs for the DTAs (boxes/adapters) needed to convert the digital signal to analog format for older television sets is addressed in the Fiber Use agreement.

7. PEG Access Channels - Comcast is required to continue to carry the PEG Access Channels on the Basic Service tier to ensure that all residents who have cable television can view governmental, educational, and community programming.

The five-year fiber use agreement is designed to run concurrent with the cable franchise agreement. The document outlines the terms, conditions and technical requirements for the use of the Comcast fiber network that currently carries data, voice and video for the City and the Schools. The agreement provides for all current governmental and educational facilities to remain connected to the I-Net for a recurring monthly fee. Any new sites added after the effective date of the agreement will be at the City's expense. The Comcast capital grants will cover the majority of the fiber rental fee, and I-Net and PEG capital costs in years one and two, and all of the projected costs during years three thru five. Comcast will remain responsible for the maintenance of the network. The fiber agreement can be renewed at any time following the fourth anniversary of the effective date.

Customer service standards are set forth in the City Code because they are applicable to any cable television operator who seeks a franchise in Alexandria. The companion docket item (#15) details the revisions in the City's Cable Communications Code and the rationale for the change. Article K of the proposed Code revisions sets forth the consumer protections provisions which are summarized briefly (with current Code requirements) as follows:

- The current code requires a franchisee to maintain an office at a convenient location in the City that is open from 8:00 a.m. to 9:00 p.m., Monday through Friday, 8:00 a.m. to 5:00 p.m. on Saturday, and if reasonably necessary 12:00 p.m. to 5:00 p.m. on Sunday to allow subscribers to request service, pay bills and conduct other business. The Code also

required bilingual staff (English/Spanish) and a toll free number staffed 24 hours per day, seven days per week to respond to service outages and requests for service.

Article K of the proposed Chapter 3 of Title 9 of the City Code deletes the requirement for a franchisee's local office to be open during specified hours and on specified days. The new provision requires the franchisee's office in the City to be open during normal business hours which is defined as those which most similar businesses in the community are open to serve customers and includes some evening and/or weekend hours.

- The franchisee now must answer telephone calls within 30 seconds, and transfer the caller to a customer service representative within 30 seconds. This standard must be meet 95 percent of the time, measured quarterly.

  The proposed Code section reduces the percentage to 90 percent to comply with state law which mandate that local customer service standards cannot exceed those in the federal regulations which require that answering time be met 90 percent of the time.

- All appointments for service, installation or disconnection now must be specified by date. Subscribers who experience two missed appointments due to the franchisee's fault receive free installation or other cable services of comparable value. If installation was free, then the subscriber receives three months free of the most widely subscribed-to service tier or other cable services of comparable value. There are specific timeframes for standard installations.

  The proposed Code section eliminates free service credit for missed appointments. Comcast will follow their corporate policy for on time service guarantee (Attachment 4), which gives the franchisee the flexibility to offer alternatives such as promotional packages, etc.

- Now the franchisee must provide written instructions for placing a service call, filing a complaint or requesting an adjustment. The franchisee is also required to provide a schedule of rates and charges, a listing of channel positions, and a description of programming services on an annual basis. All pricing information in promotional materials must be clearly and accurately stated.

  The proposed Code does not change this requirement but the provision above was modified to allow written notice to take the form of a bill insert, direct mail, or e-mail, or another means selected by the operator that ensures that affected subscribers have a reasonable opportunity to become aware of the changes.

- Currently, specific information is required on billing statements to ensure that subscribers have adequate time within the billing cycle to pay their bills, know what they are paying for and that bills can be paid in person at the local office. Credits are provided for outages exceeding four hours during any 24-hour period unless subscriber is at fault or during a planned outage or power outage and timeframes for refunds.

The only change to this provision in the proposed Code section addresses credits to a subscriber's account for interruption of service. The new language states that credits by a franchisee are no longer automatic, but a subscriber must notify the franchisee of service interruption and request a credit.

- When the franchisee retiers or restructures service now, subscribers must receive at least 60 days notice with the right to select any combination of services whether an upgrade or downgrade other than regular service charge, unless installation work is required.

  The proposed Code section requires at least 30 days notice to all subscribers of any significant changes.

- The franchisee now is prohibited from entering into an exclusive contract for the provision of cable service to any person or demanding the exclusive right to serve a person or location as a condition of extending service.

  This provision has been deleted because the Federal Communications Commission (FCC) has adopted rules governing this issue.

Exhibit D of Attachment 1 is a sample confidentiality agreement requested by Comcast to ensure that proprietary and financial information provided to the City is not disclosed.

**FISCAL IMPACT**: The City will receive recurring capital grants for PEG and I-Net equipment equal to three percent of Comcast's the gross revenues from the Alexandria system. An additional $150,000 one-time grant will be made at the beginning of the new franchise to PEG capital expenses as described above. The City will pay to Comcast approximately $1.35 million a year in various fees for various services including: PEG operating costs, the fiber use agreement, and other equipment and capital expenses. The costs will be offset by the capital grants. It should be noted that the City has waived the $25,000 application fee as discussed in Attachment III because current FCC regulations governing franchise renewals do not allow such fees.

**ATTACHMENTS**:
1. Proposed Cable Television Franchise Agreement
2. Proposed Fiber Use Agreement
3. Proposed Letter of Understanding Between the City and Comcast Addressing Cable Television Service in Government Buildings and Use of PEG and I-Net Grant
4. Comcast On Time Guarantee Policy

**STAFF**:
Rose Williams Boyd, Special Assistant to the City Manager/Cable Television Administrator
Tom Trobridge, Chief Information Officer
Karen Snow, Assistant City Attorney

# CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF ALEXANDRIA, VIRGINIA, AND COMCAST OF VIRGINIA, INC.

WHEREAS, on June 18, 1994, the City of Alexandria ("City"), a municipal corporation of Virginia, granted a cable television franchise to Jones Intercable of Alexandria, Inc. ("Jones"), a Colorado corporation ("Prior Franchise"), which authorized Jones to provide cable television service to the City; and

WHEREAS, the Prior Franchise was subsequently transferred to Comcast of Virginia, Inc. (the "Franchisee"); and

WHEREAS, the Franchisee has requested that the City renew the Prior Franchise; and

WHEREAS, the City has reviewed the Franchisee's performance under the Prior Franchise, has identified the future cable-related needs and interests of the Alexandria community, has considered the financial, technical and legal qualifications of the Franchisee, and has determined whether the Franchisee's plans for constructing, operating and maintaining its cable television system are adequate; and

WHEREAS, the City has relied on the Franchisee's representations and has considered all the information that the Franchisee has presented to it; and

WHEREAS, based on the Franchisee's representations and information, and in response to its request for renewal, the City Council of Alexandria has determined that, subject to the provisions of Chapter 3 of Title 9 of The Code of the City of Alexandria, Virginia, 1981, as amended, known as the Alexandria Cable Communications Code (the "Cable Ordinance" or "Ordinance"), and the terms and conditions set forth herein, the grant of a new nonexclusive franchise to the Franchisee, to supersede the Prior Franchise, is consistent with the public interest and has granted a new franchise; and

WHEREAS, the City and the Franchisee have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration for the City's grant of a new franchise to the Franchisee, the Franchisee's promise to provide Cable Service to residents of the City pursuant to and consistent with the Cable Ordinance, the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

**1. Definitions.**

Except as otherwise provided herein, the definitions and word usage set forth in Article B of the Cable Ordinance are incorporated herein and shall apply in this Franchise Agreement. In addition, the following definitions shall apply:

(a) *Cable Ordinance:* Chapter 3 of Title 9 of The Code of the City of Alexandria, 1981, as amended, and as it may be amended from time to time.

(b) *Franchise Agreement or Agreement:* This contract and any amendments, exhibits or appendices hereto.

(c) *Franchisee:* Comcast of Virginia, Inc., a Colorado corporation, and its lawful and permitted successors, assigns, and transferees.

(d) *PEG:* Public, educational and governmental.

(e) *Prior Franchise Agreement:* Nonexclusive Franchise Contract dated June 18, 1994, as amended, assigned to Franchisee by Ordinance No. 3728.

**2. Grant of Authority; Limits and Reservations.**

(a) *Grant of Authority:* Subject to the terms and conditions of this Franchise Agreement and to the provisions of the Cable Ordinance, the Franchisee has been granted by the

City Council of Alexandria a franchise to construct, operate, maintain, repair and replace in, upon, along, across, above and over the Public Rights-of-Way in the City a Cable System for the purpose of providing Cable Service ("Franchise"), and this Agreement confirms the grant of the Franchise. No privilege or power of eminent domain has been bestowed by this grant; nor is such privilege or power bestowed by this Agreement. This Agreement does not confer any rights other than as expressly provided herein or as mandated by federal, state or local law.

(b) *Franchise Area:* The Franchise is issued for the entire present territorial limits of the City of Alexandria and any area annexed thereto during the term of the Franchise.

(c) *Grant Not Exclusive:* The Franchise and the right it grants to use and occupy the Public Rights-of-Way shall not be exclusive and shall not explicitly or implicitly preclude the issuance of other franchises to operate Cable Systems within the City, affect the City's right to authorize use of Public Rights-of-Way by other persons to operate Cable Systems or for other purposes as it determines appropriate, or affect the City's right to itself construct, operate or maintain a Cable System, with or without a franchise.

(d) *Franchise Agreement Subject to Other Laws:* This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of the Cable Act, and any other applicable provision of federal, state, or local law.

(e) *Franchise Agreement Subject to Exercise of Police Powers:* All rights and privileges granted herein are subject to the police powers of the City and its rights under applicable laws and regulations to adopt and amend the Cable Ordinance and to regulate the Franchisee and the construction, operation and maintenance of the Franchisee's Cable System, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the City shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, and the right to adopt and enforce ordinances and regulations containing right-of-way, telecommunications,

utility and cable television consumer protection and service standards and rate regulation provisions.

(f) *Approval and Effective Date:* This Franchise Agreement shall become effective upon its approval by the City Council, and the "Effective Date" shall be the date of such Council approval.

(g) *Effect of Acceptance:* By accepting the Franchise and executing this Franchise Agreement, the Franchisee: (1) acknowledges and accepts the City's legal right to grant the Franchise, to enter this Franchise Agreement, to adopt and amend the Cable Ordinance, and to enact and enforce ordinances and regulations related to the Franchise; (2) accepts and agrees to comply with each provision of this Agreement; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law.

(h) *Claims Related to Prior Franchise Agreement:*

In addition to satisfying all the provisions of this Franchise Agreement, the Franchisee shall remain liable for payments of all franchise fees and other amounts owed under the Prior Franchise Agreement up to the Effective Date of this Franchise Agreement. The grant of the Franchise shall have no effect on the Franchisee's duty under the Prior Franchise Agreement or the Cable Ordinance to indemnify or insure the City against acts and omissions occurring during the period that the Prior Franchise Agreement was in effect.

(i) *Term:*

(1) The term of the Franchise shall consist of an initial term of five years, beginning on the Effective Date (the "Initial Term"), and, subject to the provisions of this Section 2(i), up to two extensions (each an "Extended Term") of five years each. The maximum term of the Franchise shall be fifteen (15) years from the Effective Date.

(2) The term shall be extended for the first Extended Term upon the mutual consent of the City Council and the Franchisee. The City Council shall base its determination upon the results of a compliance review to be conducted by the City. The compliance review

shall consider the degree to which the Franchisee has complied with the requirements of the Franchise. The City shall commence the compliance review no later than eighteen months (18) prior to the end of the Initial Term, and the Franchisee shall cooperate by providing the City with all information requested by the City in connection with such review. The compliance review shall be completed within six (6) months. If the City Council determines that an extension of the Initial Term is warranted, it shall adopt a resolution to that effect, and the extension shall become effective upon its acceptance in writing by the Franchisee. If the Franchisee does not submit such acceptance within thirty (30) days, it shall be deemed to have withheld consent to the extension, and the parties shall continue with renewal proceedings in accordance with 47 U.S.C. § 546 and applicable Virginia law. If the City Council determines that an extension is not warranted, it shall adopt a resolution to that effect, and the parties shall continue with renewal proceedings in accordance with 47 U.S.C. § 546 and applicable Virginia law.

(3) If the parties agree to the first Extended Term, the term shall be extended for the second Extended Term upon the mutual consent of the City Council and the Franchisee, in accordance with the same procedure described in paragraph (2) above.

(k) *No Waiver:*

(1) The failure of either party on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by such party, unless such right or such compliance or performance has been specifically waived in writing.

(2) Waiver of a breach of this Agreement shall not be a waiver of any other breach, whether similar to or different from that waived. Neither the granting of the Franchise, nor any provision herein, nor any action by the City hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the City, including without limitation the right of eminent domain.

(l) *No Recourse:* The Franchisee shall have no recourse against the City or its officials, boards, commissions, agents or employees for any loss, cost, expense, claim, liability or damage arising out of any action or decision undertaken or not undertaken by Franchisee pursuant to the Franchise, this Franchise Agreement or the Cable Ordinance.

(m) *Amendment of Franchise Agreement:* The City shall liberally amend this Franchise Agreement upon the application of the Franchisee whenever necessary to enable the Franchisee to take advantage of developments in the field of telecommunications which, in the City's opinion, will afford the Franchisee an opportunity to serve its Subscribers more efficiently, effectively and economically. Such amendments shall be subject to such mutually acceptable conditions as the City determines are appropriate to protect the public interest.

**3. Regulation and Oversight.**

(a) *Severability:* In the event that a court or agency of competent jurisdiction declares that any nonmaterial provision of this Franchise Agreement is unenforceable according to its terms or is otherwise void, said provision shall be considered a separate, distinct and independent part of this Agreement, and such declaration shall not affect the validity or enforceability of any other provision of this Agreement.

(b) *Preemption:* In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or the Franchisee, and any amendments to this Agreement negotiated

pursuant to subsection (a) as a result of such provision initially being preempted shall no longer be of any force or effect.

4. **Provision of Cable Service.**

The Franchisee shall make Cable Service available to any occupant of a residential or commercial structure who requests such service, including occupants of multiple dwelling unit buildings, except that (i) Franchisee shall not be required to provide service to any structure to which it cannot obtain lawful access, and (ii) Franchisee may deny service for good cause, including but not limited to non-payment or theft of service, vandalism of equipment, or harassment or abuse of its employees or agents.

5. **System Facilities, Equipment and Services.**

(a) *System Characteristics:* The Franchisee's Cable System shall meet or exceed the following requirements:

(1) The System shall be designed with an initial analog and digital passband of 50-750 MHz.

(2) The System shall be designed to be an active two-way plant providing for subscriber interaction as required for selection and use of Cable Service.

(3) The System shall comply with regulations of the FCC regarding the compatibility between cable service and consumer receiving, recording and related equipment.

(4) The Cable System shall be designed, built and operated in a manner such that it is in compliance with FCC standards and requirements with respect to interference. The Cable System shall be operated in such a manner as to minimize interference with the reception of off-the-air signals by a Subscriber. The Franchisee shall insure that signals carried by the Cable System, or originating outside the Cable System wires, cable, fibers, electronics and facilities, do not ingress or egress into or out of the Cable System in excess of FCC standards. In

particular, the Franchisee shall not operate the Cable 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.

(6) The System shall be of a design that will permit additional improvements necessary for reliable service throughout the Franchise Term. The System shall be constructed and maintained using equipment, techniques and standards generally used in reliable, modern systems.

(7) The System shall include facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such standards may be amended from time to time.

(8) All facilities and equipment shall be designed to be capable of continuous twenty-four (24) hour daily operation in accordance with applicable FCC standards.

(9) All facilities and equipment shall be designed, built and operated in such a manner as to protect the safety of the Cable System workers and the public.

(10) The System shall include all facilities and equipment required to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve system problems.

(11) The System shall include facilities and equipment at the headend that shall allow the Franchisee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration, and shall comply with all FCC rules that apply to signal carriage, such as the closed captioning rules.

(12) The Cable System shall comply with applicable sections of the following standards and regulations:

(A) Occupational Safety and Health Administration (OSHA) Safety and Health Standards;

(B) National Electrical Code;

(C) National Electrical Safety Code (NESC);

(D) Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration; and

(E) Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17.

(b) *Institutional Network:* The parties have agreed to the terms of a Fiber Use Agreement (the "Fiber Agreement"), pursuant to which the Franchisee grants the City the continuing right to use the I-Net. The Franchisee acknowledges that the parties have entered into the Fiber Agreement in lieu of agreeing on terms under which the Franchisee would construct and maintain I-Net facilities to meet the City's needs as part of this Franchise Agreement.

(c) *Full Cable Service to Certain Facilities:* Upon the request of the City, the Franchisee shall provide one standard installation, at no cost to the City, and shall provide the Franchisee's Basic Service tier to each school and other educational facility, and each facility occupied by a City office or agency, including, without limitation, City-owned and City-leased residential facilities within the Franchise Area as shall be designated by the City from time to time. Installation at new sites shall be completed within ninety (90) days of a request from the City, unless a line extension is required. There shall be no charge to the City or the entity or agency receiving such service for the cost of service or the cost of installation, except that if the Franchisee provides service to more than one outlet at a City-owned or City-leased residential facility, the City shall be responsible for paying the cost of service to the additional outlet or outlets.. The list of all sites entitled to free or discounted service as of the Effective Date appears at Exhibit A.

(d) *Proof of Performance Tests:*

(1) The Cable System shall meet or exceed the applicable technical standards set forth in 47 C.F.R. § 76.601, and any successor standards. The Cable System shall also comply with any future technical standards addressing performance requirements and testing applicable to transmissions of digital signals. The Franchisee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise, and to ensure that the Cable System components are operating as required. All tests shall be conducted in accordance with federal rules and any applicable United States National Cable Television Association's Recommended Practices for measurement and testing.

(2) The Franchisee shall conduct proof of performance tests, in the manner and with the frequency required by the FCC, and, as part of the annual report required by Section 9-3-148(c) of the Cable Ordinance, shall provide to the City a written report showing the results of such tests. If the tests reveal that the Franchisee is not in compliance with any applicable requirement, the Franchisee shall promptly take whatever steps are necessary to achieve compliance. No later than ten days following completion of the tests which revealed non-compliance, the Franchisee shall conduct additional proof of performance tests to determine whether it has corrected its non-compliance; provided, that the City may extend this ten-day requirement as it deems necessary.

(3) The Franchisee shall conduct testing of the Cable System or a segment thereof, upon request of the City, when Subscriber or User complaints indicate tests are warranted.

(4) The Franchisee shall provide the City with copies of written reports on all proof of performance tests performed pursuant to this Section 5(d) as part of its Annual Report.

(5) If any test indicates that any part or component of the Cable System fails to meet applicable requirements, the Franchisee, without requirement of additional notice or request from the City, shall take corrective action, retest the locations and advise the City of the action taken and results achieved, and supply the City with a copy of the results within thirty days from the date corrective action was completed.

(e) *Programming Information:* The Franchisee shall, as required by applicable law, advise all Subscribers in advance of its programming channel lineups and any changes to those channel lineups. The Franchisee shall provide programming information, including without limitation channel line-ups, in print, in electronic program guide format or in menu-driven format, either through its agents, by reliance on adequate schedules available through guides in the community or through other media, in its discretion, which programming information shall be sufficient to enable each Subscriber to locate and select any programs made available to that Subscriber by the Franchisee. The Franchisee shall provide copies of such programming information to the City upon request.

(f) *Interconnection*: The Franchisee shall design its Cable System so that it may be interconnected with other cable systems and open video systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods. Any such interconnection is subject to the Franchisee and other operator reaching a mutually agreeable interconnection agreement.

(g) *Standby Power*: The Franchisee shall provide standby power generating capacity at the headend and at all nodes. The power supplies serving the distribution plant shall be capable of providing power to the Cable System for not less than four (4) hours, at 70 degrees Fahrenheit, according to manufacturer specifications in the event of an electrical outage. Such

standby power supplies shall cut in automatically on failure of commercial utility AC power, revert automatically to commercial power when it is restored, and prevent the standby power source from powering a "dead" utility line. The Franchisee shall also maintain motorized standby power generators capable of at least twenty-four (24) hours duration at the headend and all nodes, with automatic response systems to alert the Local Management Center when commercial power is interrupted. The headend generator shall be tested once per week.

(h) *Emergency Alert System*: In addition to its obligations under the Cable Ordinance, Franchisee shall comply with the Emergency Alert System requirements of the FCC. This EAS shall at all times be operated in compliance with FCC requirements in order that emergency messages may be distributed over the System. In the event of a state or local civil emergency, the EAS shall be activated by equipment or other acceptable means as set forth in the Virginia State EAS Plan.

(i) *Leased Access Channels:* The Franchisee shall provide leased access channels as required by federal law.

(j) *Parental Control*: The Franchisee shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Cable Services on the System. Such equipment will at a minimum offer as an option that a Person ordering programming must provide a personal identification number or other means provided by the Franchisee only to a Subscriber. Provided, however, that the Franchisee shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

(k) *Local Office*: During the Initial Term, the Franchisee shall maintain an office in the City for the purpose of performing all of the functions specified in Section 9-3-167 of the

Cable Ordinance; such office shall be staffed and equipped in order to effectively perform such functions.

**6. Channels and Facilities for Public, Educational and Governmental Access Use of System.**

(a) *Access Channels:*

(1) In order to ensure universal availability of public, educational and government programming, Franchisee shall provide five (5) Channels on the Basic Service Tier. The Access Channels shall be designated as follows: one (1) dedicated Public Access Channel, two (2) Educational Access Channels dedicated to higher education, one (1) Educational Access Channel dedicated to the Alexandria Public Schools, and one (1) dedicated Government Access Channel (collectively, "PEG Channels"). The Franchisee will provide downstream transmission of such Access Channels on its Cable System at no charge to the City or other PEG access programmers.

(2) In addition to the channels for PEG access programming specified in subsection 6(a)(1), the City may require the Franchisee to make available up to a maximum of four (4) total additional channels, for PEG access programming, whenever any channel set aside for such programming, on average over a ten week period, meets the following conditions:

(A) the channel shows at least 28 hours per week during prime time of locally-sponsored, noncommercial, first-run programming; and

(B) the channel shows at least 50 hours per week of locally-sponsored noncommercial programming of any kind.

(3) For purposes of this subsection 6(a), "prime time" shall mean 6 p.m. to 11 p.m. for all channels provided pursuant to subsection (a)(1) or subsection (a)(6), except governmental access channels for which "prime time" shall mean 7 p.m. to 12 p.m.

(4) For purposes of this subsection 6(a), "first-run programming" means programming that has been shown no more than three times previously in the City.

(5) The Franchisee shall make any additional channel required by the City under subsection 6(a)(2) or subsection (a)(6) available within six (6) months of the City's determination to require it.

(6) All PEG Access Channels required by subsection 6(a)(1) shall be provided as part of the Franchisee's basic cable service, as that term is defined in 47 U.S.C. § 522, unless the City determines otherwise.

(7) Each PEG Access Channel carried as part of an analog service shall consist of a band of frequencies that is capable of carrying one standard National Television Standards Committee ("NTSC") analog television signal. Each PEG Access Channel carried as part of a digital service shall consist of the system capacity required to provide the transmission of a video signal, with accompanying audio, that is in digital format and capable of producing sound and picture of NTSC quality or better based on the standard compression technology then in use in the System.

(8) If the Franchisee chooses to eliminate its analog programming service, the Franchisee shall give each entity that manages a PEG Access Channel at least ninety (90) days notice before ceasing to provide programming in analog format.

(9) The PEG Access Channels shall be carried on the channel numbers assigned to them in Exhibit B. If the Franchisee decides to change the channel designation for any of the PEG Access Channels, it must provide thirty (30) days prior written notice to the City, and shall reimburse the City, and/or PEG users for all reasonable costs incurred by the City or other PEG users, including, but not limited to, technical costs, logo modifications, stationery, promotion, and advertising.

(10) Franchisee shall not interfere with the ability of competing cable operators or other providers of multichannel video programming designated by the City (the

"Competing Operators") to obtain the content of any of the programming on the PEG Channels. Franchisee shall not object to the installation of equipment at such origination points for the PEG Access Channel signals as may designated by the City for the purpose of obtaining access to the PEG Access Channel signals and transporting such signals to their subscribers by means of their own facilities, nor shall Franchisee object to the transmission of the PEG Access Channel signals by Competing Operators. Franchisee shall reasonably cooperate with the City and the Competing Operators with respect to the installation of any equipment needed for the Competing Operators to obtain access to PEG programming, and shall reasonably cooperate with the City and the Competing Operators to determine the cause of any interruption or degradation of the signal output by such equipment. In the event that a Competing Operator connects to the Franchisee's Cable System in order to obtain said PEG programming, it shall do so only after reaching a written interconnection agreement with the Franchisee.

(11) The PEG Access Channels shall be carried on the Basic Service tier in compliance with all applicable FCC rules. All PEG Access Channels shall meet FCC technical standards commensurate with those which apply to the Cable System's commercial channels; provided that the Franchisee shall not be responsible for the production quality of PEG access programming. In addition, in the event the City desires to implement additional functionality on one or more of the PEG Access Channels comparable to additional functionality available on any other channel on the Basic Service tier, the Franchisee shall cooperate with the City to make such functionality available, provided that implementation of such functionality does not require the use of additional capacity on the System, or impose any out-of-pocket cost on Franchisee.

(b) *Capital Grants for Access Equipment and Facilities:*

(1) No later than thirty (30) days after the Effective Date, the Franchisee shall provide an initial capital grant to the City of $150,000 (the "Initial Capital Grant") to be used by the City, in its sole discretion, for PEG capital purposes, including, without limitation, for the purchase of PEG access equipment (including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment), and for the renovation of facilities used in or related to PEG programming. The Initial Capital Grant shall be deemed a prepayment of a portion of the Recurring PEG Capital Grant required by Section 6(b)(2), and the amount of the Initial Capital grant shall be deducted from the first payment of the Recurring PEG Capital Grant.

(2) The Franchisee shall provide to the City a recurring grant in the amount of three percent (3%) of the Franchisee's annual Gross Revenues (the "Recurring PEG Capital Grant"). The Recurring PEG Capital Grant shall be paid on a quarterly basis, beginning on the first day of the first full calendar quarter after the Effective Date. The Recurring PEG Capital Grant may be used for by the City, in its sole discretion, for PEG capital purposes, including, without limitation, for the purchase of PEG access equipment (including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment), for the renovation of facilities used in or related to PEG programming, PEG-related facilities renovation and/or for use of the Institutional Network (including, but not limited to, equipment, capacity, computers, dark fiber, and other similar expenses).

(c) *Return Feed From Facilities:* The Franchisee shall provide all necessary technical equipment and support to provide a high-quality return feed of cable signals from all Current and Future PEG Origination Facilities identified in Exhibit C to the Cable System headend and a feed of all PEG Access Channels dedicated under Section 6(a) to such facilities. The Franchisee shall design, build, and maintain all PEG upstream feeds, interconnection, and distribution facilities so that such feeds function as reliably as the Franchisee's Cable System in the City as a whole. Should the City believe the PEG facilities are functioning

improperly, it may request special tests pursuant to Section 5(d)(3) hereof. Franchisee shall own, maintain, repair and/or replace any Franchisee-owned head end or hub-site audio and/or video signal processing equipment. The City and or any Person responsible for programming an Access Channel ("Access Provider") shall own, maintain, repair and/or replace studio and/or portable modulators and demodulators. The demarcation point between Franchisee's equipment and the City's or an Access Provider's equipment shall be at the output of the City's and/or the Access Provider's modulator(s) at any of the origination locations in Exhibit C.

(d) *Management of Channels:* The City may designate one (1) or more entities, including a non-profit access management corporation, to manage the use of all or part of the Institutional Network, and any or all of the PEG Access Channels.

(e) *Access and Program Support:* For a period of twelve (12) months after the Effective Date (the "Transition Period"), the Franchisee shall continue to provide support for the City's Government Access Channel and the Community Channel (which shall appear on the Public Access Channel during the Transition Period), as provided under the Prior Franchise, and as more specifically described in subsections (f) and (g) below. In addition, during the Transition Period, the Franchisee shall cooperate with the City in developing a training program for City staff and other individuals who will be designated to assume responsibilities previously fulfilled by the Franchisee or its contractors, and Franchisee shall provide all personnel and facilities needed to conduct such training.

(f) During the Transition Period, the Franchisee shall make available sufficient staff to provide to interested members of the public and City staff training in the use of governmental, educational and Local Origination Programming access equipment and assistance in the production of such programming, to provide community education and outreach, to maintain all such access equipment, to provide for the check-in and check-out of such access equipment, to schedule the use of the Franchisee's facilities by persons other than employees of the Franchisee

producing Local Origination Programming, and to perform related matters, up to a maximum staff requirement of one full-time equivalent staff person. In addition, during the Transition Period the Franchise shall produce up to six (6) thirty-minute programs for the City, at the City's request. In the event the City requires the provision of one or more public access and use channels pursuant to Section 6(a)(6), the provisions of this subsection (f) shall apply to such channels.

(g) *Governmental Programming Services:* During the Transition Period, the Franchisee shall, at its sole cost and expense, and at the City's request, provide at least the following services to be distributed on the Governmental access channel; provided that, absent a substantial need, the City may require the Franchisee to provide live coverage of only one of the following events at a time and will, upon the Franchisee's request, identify which such event shall be covered in case of a conflict:

(1) Live coverage of all City Council meetings (including Council work sessions conducted at City Hall) and all Council public hearings, including closed captioning for up to four (4) such meetings or hearings a year as specified by the City;

(2) Live coverage of all Planning Commission, Board of Zoning Appeals, and both panels of the Board of Architectural Review public hearings conducted at City Hall;

(3) Live coverage of the T.C. Williams High School graduation; and

(4) Live coverage of all School Board meetings and public hearings.

(h) *Costs and Payments Not Franchise Fees:* The parties agree that any costs to the Franchisee associated with the provision of support for public, educational or governmental access pursuant to this Franchise Agreement, and any payments made to the City under, pursuant to or outside of this Agreement, do not constitute and are not part of a franchise fee, and fall within one or more of the exceptions to 47 U.S.C. § 542.

(i) *Editorial Control:* Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on the PEG

Channels (except for such programming as the Franchisee may cablecast on such PEG Channels).

(j) *Post-Transition Period:* At the end of the Transition Period, the Franchisee shall have no further responsibility for the provisions of Sections 6(e) through (g) that include but are not limited to staffing, outreach, access to equipment, training, scheduling or production of PEG Access or Local Origination programming, and/or the coverage of meetings or other live events.

7. **Franchise Fee.**

(a) *Communications Tax:* The Franchisee shall comply with the provisions of Section 58.1-645 *et seq.* of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended (the "Communications Tax"), and Sections 7(b) through 7(f) of this Agreement shall not have any effect, for so long as the Communications Tax or a successor state or local tax that would constitute a franchise fee for purposes of 47 U.S.C. § 641, as amended, is imposed on the sale of cable services by the Franchisee to subscribers in the City.

(b) *Payment of Franchise Fee to City:* In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a franchise fee for purposes of 47 U.S.C. § 641, as amended, Franchisee shall pay to the City a Franchise fee of five percent (5%) of annual Gross Revenue, beginning on the effective date of the repeal of such tax (the "Repeal Date"). Beginning on the Repeal Date, the terms of Section 7(b) through 7(f) of this Agreement shall take effect. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than thirty (30) days following

the end of each calendar quarter. Should Franchisee submit an incorrect amount, Franchisee shall be allowed to add or subtract that amount in a subsequent quarter, but no later than ninety (90) days following the close of the calendar year for which such amounts were applicable; such correction shall be documented in the supporting information required under Section 7(c).

(c) *Supporting Information:* Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation, and a breakdown by major revenue categories (such as Basic Service, premium service, etc.). The City shall have the right to reasonably request further supporting information for each Franchise fee payment.

(d) *Limitation on Franchise Fee Actions*: The period of limitation for recovery of any Franchise fee payable hereunder shall be five (5) years from the date on which payment by Franchisee is due.

(e) *Bundled Services*: This Section 7(e) shall only apply if state or federal law does not otherwise address the computation of franchise fees or gross revenues in connection with the provision of Cable Service as part of a bundle or package with any non-Cable Service. If the Franchisee bundles Cable Service with non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the Franchise fee payments under this Agreement. In the event that the Franchisee or any Affiliate shall bundle, tie, or combine Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee), so that subscribers pay a single fee for more than one class of service or receive a discount on Cable Services, a *pro rata* share of the revenue received for the bundled, tied, or combined services shall, to the extent reasonable, be allocated to gross revenues for purposes of computing the franchise fee. To the extent there are published charges

and it is reasonable, the *pro rata* share shall be computed on the basis of the published charge for each of the bundled, tied, or combined services, when purchased separately. However, the parties agree that tariffed telecommunications services that cannot be discounted under state or federal law or regulations are excluded from the bundled allocation obligations in this section.

*(f) Audit:*

(1) No more frequently than once every twenty-four (24) months, the City, or such Person or Persons designated by the City, shall have the right to inspect and copy records, subject to the City or its agent entering into a mutually acceptable nondisclosure agreement with the Franchisee substantially in the form attached as Exhibit D, and the right to audit and to recompute any amounts determined to be payable under this Franchise. If an audit discloses an overpayment or underpayment of franchise fees, the City shall notify the Franchisee of such overpayment or underpayment within ninety (90) days of the date the audit was completed. The City shall provide the Franchisee with at least thirty (30) days notice before commencing an audit and, in consultation with the Franchisee, shall determine the completion date for any audit conducted hereunder. Audit completion is not to be unreasonably delayed by either party. The Franchisee shall be responsible for providing all documents and information reasonably necessary for the audit to be completed, and the Franchisee shall not refuse to provide documents or information on the grounds that they are in the possession of or access is controlled by another entity.

(2) The Franchisee shall be responsible for providing to the City all records necessary to confirm the accurate payment of franchise fees. The Franchisee shall maintain such records for five (5) years. The City's audit expenses shall be borne by the City unless the audit determines the payment to the City should be increased by more than five

percent (5%) in the audited period, in which case the reasonable costs of the audit, up to a maximum of $10,000, shall be paid by the Franchisee to the City within thirty (30) days following written notice to the Franchisee by the City of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid by Franchisee to the City, such amount shall be subject to an interest charge of the Prime rate. If the audit determines that there has been an overpayment by the Franchisee, the Franchisee may credit any overpayment against its next quarterly payment; and, the City shall waive the interest charge on any past due amounts that were a result of such overpayment by the Franchisee. The auditor shall not be compensated on a success based formula, e.g., payment based on a percentage of any underpayment, if any.

(3) Upon the completion of any such audit by the City, the City shall provide to the Franchisee a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Franchisee shall have thirty (30) days from the receipt of the report to provide the City with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the City by the Franchisee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

(4) Any "Finally Settled Amount(s)" due to the Franchising Authority as a result of such audit shall be paid to the City by the Franchisee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Franchisee, the City shall have no further rights to audit or challenge the payment for that period. The City shall bear the expense of its audit of the Franchisee's books and records.

(5) The audit provisions set forth in this subsection shall similarly apply to the Recurring PEG Grant payments specified in subsection 6(b) of this Franchise Agreement.

**8. Performance Guarantees and Remedies.**

(a) *Enforcement*: Subject to applicable federal and state law and the terms and conditions of this Agreement, the City may apply one or a combination of the following remedies if the City determines that the Franchisee is in default of any provision of the Franchise:

(1) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

(2) Commence an action at law for monetary damages or seek other equitable relief; or

(3) In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with the Cable Ordinance;

(4) Assess and collect liquidated damages in accordance with Section 8(d); or,

(5) Apply any other remedy provided for in this Agreement or applicable federal, state or local laws.

(c) *Letter of Credit:* Prior to the Effective Date, to ensure the performance of its obligations under this Franchise, the Franchisee shall establish a security fund in the form of a letter of credit for the City in the amount of one hundred fifty thousand dollars ($150,000). Recovery under the letter of credit shall be in accordance with the procedures set forth in Section 8(e). If at the time of recovery under the letter of credit by the City, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Franchisee to the City until it is paid. Within thirty (30) days of being notified that any amount has been recovered by the City, the Franchisee shall restore the letter of credit to the total amount specified above. This letter of credit shall satisfy the requirements of Sections 9-3-253 and 9-3-254 of the Alexandria Cable Communications Code.

(d) *Liquidated Damages:* Because the Franchisee's failure to comply with provisions of the Franchise and this Franchise Agreement will result in injury to the City, and because it may be difficult to estimate the extent of such injury, the City and the Franchisee agree that liquidated damages will be assessable against the Franchisee for certain violations of the Franchise and of this Agreement, and that such liquidated damages may be drawn from the Letter of Credit up to the limits specified below. Such amounts represent both parties' best estimate of the damages resulting from the specified violation. The parties agree that the liquidated damages specified herein are reasonable and do not constitute a penalty or a fine. On an annual basis from the Effective Date of the Franchise, liquidated damages in total will not exceed thirty thousand dollars ($30,000) (the "Liquidated Damages Cap").

(1) For failure to comply with requirements for PEG use of the System: $250/day for each violation for each day the violation continues;

(2) For failure to supply information, reports, or filings required by the City pursuant to this Agreement or applicable law: $200/day for each violation for each day the violation continues;

(3) For failure to comply, within ten (10) days, with the customer service standards in the Cable Ordinance governing customer complaints, when such failure is reported by the customer to the City and referred to the Franchisee by the City: $250 per day for each day the violation continues;

(4) For violation of applicable technical standards established by the FCC: $250 per day for each for each day the violation continues;

(5) For violation of any or all of the quarterly customer service standards: $1000 for the first violation; $2500 for any violation within 12 months after the first violation; and, $5000 for any violation within 12 months after the second or any subsequent violation;

(6) For failure to file, obtain, maintain or replenish the security fund in a timely fashion: $250 per day for each day the violation continues; and

(7) For any other material violation of the Franchise or this Agreement for which actual damages may not be ascertainable: $200/day for each violation for each day the violation continues.

(e) *Withdrawal Procedures*:

(1) In the event that the City has reason to believe that Franchisee has defaulted in the performance of any or several provisions of this Franchise Agreement, except as excused by force majeure, and the City believes that the assessment of liquidated damages is a suitable remedy for such default, the City shall notify Franchisee in writing, by certified mail, of the provision or provisions of which the City believes Franchisee may have been in default and the details relating thereto. Upon receipt of such notice, the following shall apply:

(A) Franchisee shall have ten (10) business days from the receipt of such notice to respond to the City in writing, contesting the City's assertion of default and providing such information or documentation as may be necessary to support Franchisee's position, or informing the City that it intends to cure the alleged default; and

(B) If Franchisee intends to cure the default, it shall do so within thirty (30) days of receipt of the City's notice and provide written evidence of the same or, in the event that by nature of the default such default cannot be cured within such thirty (30) day period, take reasonable steps to cure said default and diligently continue such efforts until said default is cured. Franchisee shall report to the City, in writing, by certified mail, at reasonable intervals as to Franchisee's efforts, with the intervals to depend on the nature of the default and the time needed to cure, indicating the steps taken by Franchisee to cure said default and reporting Franchisee's progress until such default is cured.

(2) In the event that (A) Franchisee fails to respond to such notice of default, and/or (B) Franchisee fails to cure the default or to take reasonable steps to cure the default within the required thirty (30) day period, the City Manager or the City Manager's designee shall promptly schedule a hearing on the matter no sooner than fourteen (14) days after written notice, by certified mail, to Franchisee. Franchisee shall be provided reasonable opportunity to present its position and be heard at such hearing.

(3) Within thirty (30) days after said hearing the City shall issue a written determination of its findings. In the event that the City determines that Franchisee is in such default, the City may, in its discretion, assess liquidated damages by drawing upon the letter of credit, for an amount

calculated based on the liquidated damages amounts specified in Section 8(d). Liquidated damages shall be assessed beginning with the date on which the City sent the initial notice of default, through the date on which the default is cured.

(4) Nothing in this Section 8(e) shall prevent the City from pursuing any lawful remedy available to it with respect to any default or breach for which the City determines that liquidated damages are not an appropriate remedy.

9. **Transfer of Franchise.**

No transfer of the Franchise shall occur without the prior consent of the City Council, which consent shall not be unreasonably withheld, delayed or conditioned. For purposes of this provision, and irrespective of any statutory definition to the contrary, the term "transfer" shall mean any transaction in which: (1) any ownership or other right, title, or interest of more than twenty percent (20%) in the Franchisee or the Cable System is transferred, sold, assigned, leased, sublet, or mortgaged, directly or indirectly, in whole or in part; or (2) there is any change, acquisition, or transfer of control of the Franchisee; or (3) the Franchise or any of the rights and/or obligations held by the Franchisee under the Franchise are transferred, directly or indirectly, to another party. "Control" for purposes of this Section means the legal or practical ability to exert actual working control over the affairs of the Franchisee, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of Franchisee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation or its successor.

**10. Miscellaneous Provisions.**

(a) *Governing Law:* This Franchise Agreement shall be governed in all respects by the law of the Commonwealth of Virginia.

(b) *Notices:* Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

(1) Notices to the Franchisee shall be mailed to:

Comcast of Virginia, Inc.
2707 Wilson Blvd.
Arlington, VA 22201
Attention: Government Affairs Department

With copies to:

Comcast Cable
1301 McCormick Drive, 4th Floor
Largo, MD 20774
Attention: Government Affairs Department

And to:

Comcast Cable Northeast Division
676 Island Pond Rd.
Manchester, NH 03109
Attention: Government Affairs Department

(2) Notices to the City shall be mailed to:

Alexandria City Hall
Attention: City Manager
301 King Street
Alexandria, Virginia 22314

With a copy to:

Alexandria City Hall
Attention: City Attorney
301 King Street
Alexandria, Virginia 22314

(c) *Time of Essence; Maintenance of Records of Essence:* In determining whether the Franchisee has substantially complied with the Cable Ordinance or this Franchise Agreement, the parties agree that time is of the essence with respect to the performance of Franchisee's obligations. As a result, the Franchisee's failure to complete performance of any obligation imposed by the Cable Ordinance or this Agreement in a timely manner shall constitute a material breach of this Agreement. The maintenance of records and provision of reports in accordance with the Ordinance and this Agreement is also of the essence of this Agreement.

(d) *Captions:* The captions and headings of this Agreement are for convenience and reference purposes only, and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

(e) *Franchisee's Records:* The Franchisee represents and warrants that its current electronic recordkeeping system provides the Franchisee with sufficient information to allow the Franchisee to provide all the information pertaining to outages, service degradations, customer complaints, and service calls required by Section 9-3-148 of the Cable Ordinance.

AGREED TO THIS 25th DAY OF October, 2011.

CITY OF ALEXANDRIA, a municipal corporation of Virginia

By: _____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

COMCAST OF VIRGINIA, INC., a Colorado corporation

By: _____
[title]

_____, 2011

## EXHIBIT A

## COURTESY CABLE SERVICE TO PUBLIC BUILDINGS

City Government Site

| | |
|---|---|
| ALEXCITY REDEVELOPMENT | 600 N FAIRFAX ST ALEXANDRIA,VA 22314 |
| CASEY HEALTH CENTER | 1200 N HOWARD ST ALEXANDRIA,VA 22304 |
| CHARLES H. RECREATION | 901 WYTHE ST ALEXANDRIA,VA 22314 |
| CITY ATTORNEY | 301 RM 1300 KING ST ALEXANDRIA,VA 22314 |
| CITY CHINQUAPIN | 3210 KING ST ALEXANDRIA,VA 22302 |
| CITY DEPT OF TRANS | 2900 BUSINESS CNTR D ALEXANDRIA,VA 22314 |
| CITY MANAGER | 301 RM 3500 KING ST ALEXANDRIA,VA 22314 |
| CITY MENTAL HEALTH | 5801 APT 202 QUANTRELL AVE ALEXANDRIA,VA 22312 |
| CITY MENTAL HEALTH | 5851 APT 410 QUANTRELL AVE ALEXANDRIA,VA 22312 |
| CITY MENTAL HEALTH | 51 APT 201 SKYHILL RD ALEXANDRIA,VA 22314 |
| CITY MENTAL HEALTH | 610 APT 304 NOTABENE DR ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 3105 COLVIN ST ALEXANDRIA,VA 22314 |
| CITY MENTAL HEALTH | 301 APT 205 N BEAUREGARD ST ALEXANDRIA,VA 22312 |
| CITY MENTAL HEALTH | 610 NOTABENE DR ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 803 APT 360 N HOWARD ST ALEXANDRIA,VA 22304 |
| CITY MENTAL HEALTH | 805 APT 140 N HOWARD ST ALEXANDRIA,VA 22304 |
| CITY MENTAL HEALTH | 1639 KENWOOD AVE ALEXANDRIA,VA 22302 |
| CITY MENTAL HEALTH | 1758 DOGWOOD DR ALEXANDRIA,VA 22302 |
| CITY MENTAL HEALTH | 2802 APT 2 DARTMOUTH RD ALEXANDRIA,VA 22314 |
| CITY MENTAL HEALTH | 5250 APT 607 VALLEY FORGE DR ALEXANDRIA,VA 22304 |
| CITY MENTAL HEALTH | 5300 APT 516 HOLMES RUN PKWY ALEXANDRIA,VA 22304 |
| CITY MENTAL HEALTH | 5911 APT 111 EDSALL RD ALEXANDRIA,VA 22304 |
| CITY MENTAL HEALTH | 5911 APT 413 EDSALL RD ALEXANDRIA,VA 22304 |
| CITY MENTAL HEALTH | 6240 APT 402 EDSALL RD ALEXANDRIA,VA 22312 |
| CITY MENTAL HEALTH | 211 ASPEN ST ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 417 E BELLEFONTE AVE ALEXANDRIA,VA 22301 |
| CITY MENTAL HEALTH | 422 APT 304 N ARMISTEAD ST ALEXANDRIA,VA 22312 |

| | |
|---|---|
| CITY MENTAL HEALTH | 424 APT T1 N ARMISTEAD ST ALEXANDRIA,VA 22312 |
| CITY MENTAL HEALTH | 479 APT 102 N ARMISTEAD ST ALEXANDRIA,VA 22312 |
| CITY MENTAL HEALTH | 525 APT 102 N ARMISTEAD ST ALEXANDRIA,VA 22312 |
| CITY MENTAL HEALTH | 610 APT 203 NOTABENE DR ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 716 FOUR MILE RD ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 718 FOUR MILE RD ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 726 APT G1 S FAYETTE ST ALEXANDRIA,VA 22314 |
| CITY MENTAL HEALTH | 726 APT G2 S FAYETTE ST ALEXANDRIA,VA 22314 |
| CITY MENTAL HEALTH | 1114 N HOWARD ST ALEXANDRIA,VA 22304 |
| CITY MENTAL HEALTH | 1521 DOGWOOD DR ALEXANDRIA,VA 22302 |
| CITY MENTAL HEALTH | 2500 APT 127 N VAN DORN ST ALEXANDRIA,VA 22302 |
| CITY MENTAL HEALTH | 2500 APT 328 N VAN DORN ST ALEXANDRIA,VA 22302 |
| CITY MENTAL HEALTH | 3305 APT B COMMONWEALTH AV ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 4525 PEACOCK AVE ALEXANDRIA,VA 22304 |
| CITY MENTAL HEALTH | 4547 SEMINARY RD ALEXANDRIA,VA 22304 |
| CITY MENTAL HEALTH | 6230 APT 101 EDSALL RD ALEXANDRIA,VA 22312 |
| CITY MENTAL HEALTH | 610 APT 101 NOTABENE DR ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 610 APT 102 NOTABENE DR ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 610 APT 201 NOTABENE DR ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 610 APT 202 NOTABENE DR ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 610 APT 301 NOTABENE DR ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 610 APT 302 NOTABENE DR ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 610 APT 303 NOTABENE DR ALEXANDRIA,VA 22305 |
| CITY MENTAL HEALTH | 610 APT 204 NOTABENE DR ALEXANDRIA, VA 22305 |
| CITY MENTAL HEALTH | 633 N COLUMBUS ST ALEXANDRIA,VA 22314 |
| CITY OF ALEXANDRIA IT | 123 STE 250 N PITT ST ALEXANDRIA,VA 22314 |
| CITY OFFICE OF WOMEN | UNDISCLOSED |
| CITY PRESS ROOM | 301 RM 2FLR KING ST ALEXANDRIA,VA 22314 |
| CODE ENFORCEMENT | 301 RM 4200 KING ST ALEXANDRIA,VA 22314 |
| COMMUNICATIONS DEPT | 301 RM 3400 KING ST ALEXANDRIA,VA 22314 |

| | |
|---|---|
| CORA KELLEY REC CTR | 25 W REED AVE ALEXANDRIA,VA 22305 |
| CTV ADMINISTRATOR | 301 RM 1900 KING ST ALEXANDRIA,VA 22314 |
| DEPARTMENT TRANSPORTATION | 3540 WHEELER AVE ALEXANDRIA,VA 22304 |
| DETENTION CENTER – ADMIN | 2003 MILL RD ALEXANDRIA,VA 22314 |
| FIRE DEPT – ADMIN | 900 SECOND ST ALEXANDRIA,VA 22314 |
| FIRE STATION 201 | 317 PRINCE ST ALEXANDRIA,VA 22314 |
| FIRE STATION 202 | 213 E WINDSOR AVE ALEXANDRIA,VA 22301 |
| FIRE STATION 203 | 2801 CAMERON MILLS ALEXANDRIA,VA 22302 |
| FIRE STATION 204 | 900 SECOND ST ALEXANDRIA,VA 22314 |
| FIRE STATION 205 | 1210 CAMERON ST |
| FIRE STATION 206 | 4609 SEMINARY RD ALEXANDRIA,VA 22304 |
| FIRE STATION 207 | 3301 DUKE ST ALEXANDRIA,VA 22314 |
| FIRE STATION 208 | 175 N PAXTON ST |
| FIRE STATION 209 | 2800 MAIN LINE BLVD ALEXANDRIA,VA 22301 |
| FIRE TRAINING CENTER | 1108 JEFFERSON ST ALEXANDRIA,VA 22314 |
| HUMAN RESOURCES | 301 RM 2510 KING ST ALEXANDRIA, VA 22314 |
| HUMAN SERVICES | 2525 MT VERNON AVE ALEXANDRIA,VA 22301 |
| DETENTION CENTER | 2003 STE A MILL RD ALEXANDRIA,VA 22314 |
| JUDGE'S CHAMBERS | 520 KING ST, ALEXANDRIA,VA 22314 |
| LEE ADULT CTR | 1108 JEFFERSON ST ALEXANDRIA,VA 22314 |
| LEE CENTER | 1108 A JEFFERSON ST ALEXANDRIA,VA 22314 |
| MAYOR'S OFFICE | 301 RM 2300 KING ST ALEXANDRIA,VA 22314 |
| MGT & BUDGET | 301 RM 3600 KING ST ALEXANDRIA,VA 22314 |
| MH/MR/SA CITY OF ALEX | 4480 STE 620 KING ST ALEXANDRIA,VA 22302 |
| MH/MR/SA CITY OF ALEX | 4480 STE 629 KING ST ALEXANDRIA,VA 22302 |
| OFFICE MGMT & BUDGET | 301 RM 3630 KING ST ALEXANDRIA,VA 22314 |
| POLICE | 3600 WHEELER AVE, ALEXANDRIA, VA 22314 |
| POLICE - N | 3600 WHEELER AVE, ALEXANDRIA, VA 22314 |
| RANDOLPH GROUP HOME | 213 A E RANDOLPH AVE ALEXANDRIA,VA 22301 |
| REAL ESTATE ALEXANDRIA | 301 RM 2600 KING ST ALEXANDRIA,VA 22314 |

| | | |
|---|---|---|
| SHERIFF DEPT. | 520 | KING ST ALEXANDRIA,VA 22314 |
| T&ES CONFERENCE RM | 301 RM 3200 | KING ST ALEXANDRIA,VA 22314 |
| T&ES MAINTENANCE | 133 | S QUAKER LN ALEXANDRIA,VA 22314 |
| T&ES-RICH BAIER | 301 RM 4100 | KING ST ALEXANDRIA,VA 22314 |
| TRANSIT ALEXANDRIA | 3000 | BUSINESS CNTR D ALEXANDRIA,VA 22314 |
| VOTER REGISTRATION | 132 | N ROYAL ST ALEXANDRIA,VA 22314 |

City School Sites

| | | |
|---|---|---|
| ADAMS SCHOOL | 5651 | RAYBURN AVE ALEXANDRIA,VA 22311 |
| ADMIN | 116 | S QUAKER LN, ALEXANDRIA, VA 22314 |
| BARRETT SCHOOL | 1115 | MARTHA CUSTIS ALEXANDRIA,VA 22302 |
| BURKE | 4701 | SEMINARY RD |
| CROUCH SCHOOL | 530 | S ST ASAPH ST ALEXANDRIA,VA 22314 |
| D MC ART SCHOOL | 1101 | JANNEYS LN ALEXANDRIA,VA 22302 |
| G.W. SCHOOL | 1005 | MT VERNON AVE ALEXANDRIA,VA 22301 |
| HAMMOND SCHOOL | 4646 | SEMINARY RD ALEXANDRIA,VA 22304 |
| HOUSTON SCHOOL | 1501 | CAMERON ST ALEXANDRIA,VA 22314 |
| HOWARD SCHOOL | 3801 | W BRADDOCK RD ALEXANDRIA,VA 22302 |
| MASON SCHOOL | 2601 | CAMERON MILLS ALEXANDRIA,VA 22302 |
| MAURY SCHOOL | 600 | RUSSELL RD ALEXANDRIA,VA 22301 |
| MT VERNO SCHOOL | 2601 | COMMONWEALTH AV ALEXANDRIA,VA 22305 |
| PAT. HEN SCHOOL | 4643 | TANEY AVE ALEXANDRIA,VA 22304 |
| POLK SCHOOL | 5000 | POLK AVE ALEXANDRIA,VA 22304 |
| RAMSEY SCHOOL | 5700 | SANGER AVE ALEXANDRIA,VA 22311 |
| SAMUEL W TUCKER SCHOOL | 435 | FERDINAND DAY ALEXANDRIA,VA 22304 |
| SCHOOL ADMINISTRATIO | 2000 | N BEAUREGARD ST ALEXANDRIA,VA 22311 |
| SCHOOL CORAKELLY | 3600 | COMMONWEALTH AV ALEXANDRIA,VA 22305 |
| T.C.W. SCHOOL | 3330 | KING ST ALEXANDRIA,VA 22302 |

EXHIBIT B

## PEG CHANNEL ASSIGNMENTS

Government Channel - Alexandria City Government Channel – 70
Educational Channel - Alexandria City Public Schools – 71
Higher Education Channel - Northern Virginia Community College – 72
Higher Education Channel - George Mason University – 73
Public Access Channel – Alexandria Community Television - 69

## EXHIBIT C

## CURRENT AND FUTURE PEG ORIGINATION SITES

Current

Alexandria City Hall – 301 King Street
Alexandria City Public School Board Room – 2000 N. Beauregard Street
T. C. Williams High School – 3330 King Street
Alexandria Community Television – 3900 Wheeler Avenue

Future

West End Fire Station
Alexandria Public Access

EXHIBIT D

FORM OF NONDISCLOSURE AGREEMENT

# SAMPLE

## CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (the "Agreement") is made and entered into this ___ day of _____, 20__ ("Effective Date"), by and between COMCAST OF VIRGINIA, INC., on behalf of itself and its Affiliates (collectively, the "Company"), and the City of Alexandria, Virginia, (the "City").

WHEREAS, the Company is willing to disclose to the City and the City is willing to receive from the Company, certain "Confidential Information" (as hereinafter defined) of the Company, subject to the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the foregoing premises and mutual promises set forth below, the City and the Company agree as follows:

1. The purpose of the disclosure hereunder shall be for the City to audit any amounts payable to the City by the Company under the Cable Television Franchise Agreement dated _____ (the "Purpose"). The City agrees to use the Confidential Information solely for such Purpose and only in accordance with the terms of this Agreement. City further agrees not to use the Confidential Information for any purpose other than the Purpose.

2. For purposes of this Agreement, the following terms shall have the meanings ascribed below:

   (a) "**Affiliate**" shall mean any corporation or other legal entity that now or hereafter Controls, is Controlled by, or is under common Control with Company or the City.

   (b) "**Confidential Information**" shall mean and refer to all confidential or proprietary information, documents, and materials, whether printed or in machine-readable form or otherwise, including, but not limited to, processes, hardware, software, inventions, trade secrets, ideas, designs, research, know-how, business methods, production plans, marketing and branding plans, merger plans, human resource policies, programs, and procedures relating to and including but not limited to organizational structure, management, marketing and branding strategies, products and services, customer service, merger integration provisions, human resource and employee benefit policies, programs, and services, internal communication processes, technology tools, and any Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the City. Confidential Information shall include all information that should reasonably have been understood by the City, because of

legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to the Company, regardless of whether such information is marked "Confidential."

(c) "**Control**" means actual management control, or the direct or indirect ownership of sufficient voting securities to exercise ultimate decision making authority. The City shall be liable for any failure to abide by the provisions of this Agreement.

(d) "**Representatives**" shall mean any of the officers, employees, subcontractors or agents having access to Confidential Information disclosed hereunder.

3. The City agrees that with respect to Company's Confidential Information, the City will:

(i) reveal the Confidential Information only to its Representatives, including, but not limited to, _____, who need to know the Confidential Information for the above Purpose, who are informed by the City of the confidential nature of the Confidential Information, and who shall agree to act in accordance with the terms and conditions of this Agreement; and

(ii) at the Company's request, return promptly to such party or destroy (and confirm such destruction in writing to the Company) any and all portions of the Confidential Information disclosed under this Agreement (including copies forwarded to Representatives), together with all copies thereof.

In furtherance thereof, the City shall use the same degree of care to safeguard and avoid disclosure (including, but not limited to, disclosure to any federal, state or local government or any agency or department thereof), publication, dissemination, or use of any or all of the Confidential Information obtained hereunder as it would use with respect to its own Confidential Information or proprietary information, but in any case using no less than a reasonable degree of care. The City shall be responsible for any breach of this Agreement by its Representatives or Affiliates.

4. This Agreement will terminate two (2) years after the Effective Date. The City's obligations with respect to Confidential Information received hereunder will continue in full force and effect after this Agreement terminates or expires. The City and its Representatives shall not, without the prior written consent of the Company, disclose Confidential Information to any third party in any manner whatsoever, in whole or in part.

5. It is understood, however, that the foregoing provisions shall not apply to any portion of the Confidential Information which:

(i) was known to and in the lawful possession of the City prior to disclosure by the Company without obligation of confidentiality;

(ii) is obtained by the City after the date hereof from a third party which is lawfully in possession of such information and is not in violation of any contractual or legal obligation to a Company or other third party with respect to such information;

(iii) is or becomes part of the public domain through no fault of the City or its Representatives;

(iv) is independently ascertained or developed by the City or its Representatives;

(v) is required to be disclosed by administrative or judicial action provided that (A) the City immediately after notice of such action notifies Company of such action to give Company the opportunity to seek any other legal remedies to maintain the confidentiality of such Confidential Information and (B) City discloses such Confidential Information with the highest level of confidentiality designation available under any protective or like order associated with the administrative or judicial action; or

(vi) is approved for disclosure and release by written authorization of the Company.

6. Company makes no representations or warranties, express or implied, with respect to any Confidential Information. Confidential Information is provided "as is", and the Company shall not be liable for the accuracy or completeness of the Confidential Information. Company shall not be liable for any indirect, incidental, or consequential damages of any nature or kind resulting from or arising in connection with this Agreement.

7. All the Confidential Information disclosed to, delivered to, or acquired by City from Company hereunder shall be and remain the sole property of the Company.

8. Disclosure of the Confidential Information shall not constitute any option, grant, or license to the City or its Representatives of such Confidential Information under any patent, know-how, or other rights heretofore, now, or hereinafter owned or held by the Company. Additionally, disclosure of the Confidential Information shall not convey any ownership interests in the Confidential Information to City or its Representatives or any rights in, to or arising from the Confidential Information. It is understood and agreed that the disclosure of the Confidential Information hereunder shall not result in any obligation on the part of either party to enter into any further agreement with the other with respect to the subject matter hereof or otherwise.

9. This Agreement is binding on the parties, their successors and assigns. No modification of this Agreement shall be effective unless in writing and signed by both parties hereto.

10. All notices, demands, requests or other communications given under this Agreement shall be in writing and be given by personal delivery, certified mail, return receipt requested, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to City:

If to the Company:

11. Either party's waiver of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof.

12. This Agreement shall be governed, construed, and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to principles of conflicts of law.

13. This Agreement constitutes the complete agreement between the parties hereto and supersedes and cancels any and all prior communications and agreements between the parties with respect to the disclosure of Confidential Information related to the purpose described herein and the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Confidentiality and Nondisclosure Agreement upon the date first set forth above.

| **CITY OF ALEXANDRIA, VIRGINIA** | **COMCAST OF VIRGINIA, INC.** |
|---|---|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

# FIBER USE AGREEMENT

**THIS FIBER USE AGREEMENT** (the "Agreement") is entered into as of the _____ day of _____, 2011 (the "Effective Date"), between Comcast of Virginia, Inc. (the "Company"), and the City of Alexandria, Virginia ("Grantee" or "City").

WHEREAS, Company has constructed and installed certain fiber optic strands in the City of Alexandria; and

WHEREAS, Grantee historically has had use of certain fiber optic strands pursuant to a cable franchise agreement between the Company and the City; and

WHEREAS, in light of the pre-existing use, Company will permit Grantee, as a governmental entity, to continue to use such fiber optic strands in accordance with the terms and conditions set forth below; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

## 1. USE OF EXISTING FIBER

Pursuant to the terms and conditions of this Agreement, Company will make available to Grantee, for exclusive use by Grantee, four (4) strands of Company's multi-strand single mode fiber optic cable, which strands originate and terminate at the points set forth in Exhibit A, and four (4) strands of Company's multi-strand multi-mode fiber optic cable, which strands originate and terminate at the other points set forth in Exhibit A. A map of these locations is set forth in Exhibit B. These facilities shall be known as the "Existing Fibers." "Grantee" means the City, its departments, divisions and agencies, and all related governmental entities, including without limitation the Alexandria City Public Schools, the Alexandria Redevelopment Housing Authority, and the Alexandria Transit Company (DASH).

## 2. CONSTRUCTION AND USE OF NEW FIBER

A. Pursuant to the provisions of Exhibit C, Company will construct, install, and own certain unlit fiber optic cables, which fibers will be made available for the exclusive use of Grantee during the Term. Until installation and acceptance, such fibers shall be referred to as "Construction Fibers." Upon receipt of a request for new construction from the Grantee, Company shall prepare a design and an estimate of the cost to construct the Construction Fibers for presentation to the Grantee for its review. After acceptance by Grantee (the "Acceptance Date"), Company agrees to complete the installation of the Construction Fibers and to comply with all applicable construction and safety codes in its performance thereof. All installed and accepted fibers provided under this Agreement, as well as all Existing Fibers are hereinafter referred to as the "Facilities."

B. Grantee shall pay Company the fee for the design, construction, and installation of the applicable Construction Fibers (referred to as the "Non-Recurring Charge" or "NRC") within thirty (30) days after the applicable Acceptance Date.

C. Within five (5) days of completion of the initial installation of the Construction Fibers, Company shall conduct acceptance testing in accordance with the acceptance test plan (the "ATP") specified in Exhibit C-2. Company shall notify Grantee at least five (5) days prior to commencement of the ATP. Grantee shall have the right to physically observe any tests conducted by Company as part of the ATP; provided that, at least two (2) days prior to commencement of ATP, Grantee shall notify Company as to the identity(s) of the observer(s) and the nature of the relationship of such observer(s) with Grantee. Delivery and acceptance of the Construction Fibers shall be conducted in accordance with Section 5 of Exhibit C-1. The date of acceptance shall be hereinafter referred to as the "Acceptance Date."

D. Notwithstanding the above, (1) the use of the Construction Fibers for any reason by Grantee prior to the successful completion of the ATP, other than testing, or (2) the passage of seven (7) calendar days following receipt of notice from Comcast of the successful completion of the ATP, regardless of whether Grantee issues written acceptance, shall constitute Grantee's acceptance of the Construction Fibers.

E. Company acknowledges that Grantee has entered into this Agreement in lieu of incorporating institutional network obligations in Company's cable franchise agreement. Company agrees that the MRC represents reimbursement for capital construction costs, and maintenance of such fibers of a capital nature

## 3. TERM; RECURRING CHARGES

A. This Agreement shall become effective on the Effective Date, and it shall remain in full force and effect for a period of five (5) years from the Effective Date, unless terminated earlier in accordance with this Agreement. Following the fourth anniversary of the Effective Date, either party may request renewal of the Agreement, in which case the parties will meet in a timely manner to discuss renewal and renewal terms. If the parties have not reached agreement on the terms of renewal before the end of the initial Term, this Agreement shall go month-to-month, unless and until either party provides the other with written notice of termination at least thirty (30) days prior to the requested date of termination. Notwithstanding the foregoing, this Agreement shall remain in effect during any period after the end of the term of the current cable television franchise granted by the Grantee to the Company, for so long as the parties are engaged in good faith negotiations or proceedings related to the renewal of such franchise, and shall not be terminated until such franchise has been renewed, but in no event shall this Agreement continue more than twenty-four (24) months after its expiration without the mutual written agreement of the parties.

B. Grantee's obligation for the payment of monthly recurring charges ("MRCs") for use of the Facilities, as calculated pursuant to Exhibit D hereof, shall begin as of

the Effective Date. Exhibit D shall be updated periodically to include any new Facilities constructed for Grantee pursuant to Section 2 hereof and added to Exhibit A. Company may bill Grantee monthly in advance for MRCs and in arrears for maintenance and repair charges, which shall be paid by the invoice due date, which shall be at least thirty (30) days from the invoice date.

C. Except as provided in Section 4, Grantee shall be responsible for the maintenance and repair costs and the pro-rata portions of all fees and charges incurred by Company in connection with providing the Facilities, including all applicable right-of-way, franchise, pole attachment, pole rental and/or other permitting, rental or joint use fees in proportion to its activities hereunder, as well as for federal, state and local taxes, surcharges, reimbursements and assessments (other than assessments on Company's income), solely in connection with its use of the Facilities.

D. Grantee's obligations herein are expressly contingent upon receipt of sufficient appropriations from the City Council to cover such obligations. In the absence of sufficient appropriations by the City Council, Company's obligations hereunder shall cease.

## 4. MAINTENANCE AND REPAIR OBLIGATIONS

A. Scheduled maintenance ("Scheduled Maintenance") of the Facilities shall be performed by or under the direction of Company. Comcast will perform and be responsible for all maintenance of the Facilities running from the Curb Locations (in the public right-of-way) through the shared conduit or shared fiber sheath of its network ("Core Facilities"). There shall be no charge for Scheduled Maintenance, other than the MRC, for Facilities running from the Curb Locations across Grantee property to the Demarcation Points ("Lateral Facilities"), provided however, that Company may charge Grantee for emergency maintenance and other non-standard maintenance to Lateral Facilities, at Company's then-prevailing rate for maintenance and repairs. Notwithstanding, Company shall have no obligation to provide any form of maintenance on Lateral Facilities that it determines has ended its economically useful life (based on, among other things, age, use and functionality). In no event shall Scheduled Maintenance of Lateral Facilities include any form of fiber replacement.

B. All emergency maintenance and repair of the Lateral Facilities shall be performed by or under the direction of Company, in accordance with Exhibit E. Grantee may not, nor permit others to, rearrange, disconnect, remove, attempt to repair or otherwise tamper with any of the Facilities or equipment installed by Company, except with the written consent of Company, which consent shall be at Company's sole discretion. As set forth in Exhibit E all emergency maintenance of the Lateral Facilities shall be performed in accordance with industry standards and in compliance with Company's procedures. Grantee shall promptly report the need for emergency maintenance or repair to Company.

C. If Company receives notice of any request, intent, or plan by any third party, including, but not limited to, a governmental entity, to relocate any segment of the Facilities, Company shall give Grantee at least sixty (60) days' (or such lesser period of notice that Company may have received) prior written notice of any such relocation ("Relocation Notice"). To the extent Company is not reimbursed for the cost of such relocation by a third party, Grantee shall either (i) consent to the relocation and pay its reasonable pro rata share of the costs associated with the relocation of the affected Facilities or (ii) within fifteen days of receipt of such Relocation Notice, provide Company with written notice terminating use of the affected Facilities. If Grantee consents to the relocation Company shall relocate the applicable Facilities.

## 5. USE OF FACILITIES

A. Grantee shall use the Facilities solely for the purpose of the transmission of their data, video and voice services between the locations described in Exhibit A, or to such other locations as may be mutually agreed upon in writing by the parties.

B. Grantee shall not use, or permit any other entity or person to use, the Facilities to provide any of the following services to residential or commercial customers: cable television service, high-speed Internet access, telephone service, or any other service that would result in business competition between the Grantee to third parties or that may result in loss of business opportunity for the Company. Notwithstanding the foregoing, the Grantee may provide services to third parties for governmental, non-commercial uses. Grantee may not use, or knowingly permit any other entity or person to use, the Facilities for the provision of any services to or from locations other than the locations set forth in Exhibit A, or to such other locations as may be mutually agreed upon in writing by the parties.

C. Grantee shall not use, or permit any other entity or person to use, the Facilities in violation of this Agreement, any law, rule, regulation or order of any governmental authority having jurisdiction over the Facilities.

D. Company may require Grantee to immediately shut down its transmission of signals if the transmission is causing interference to others. Grantee shall reimburse Company for any and all costs that are incurred by Company in its efforts to eliminate interference caused by Grantee's transmission of signals over the Facilities.

## 6. SERVICE INTERRUPTION: LIMITATIONS OF WARRANTY AND DAMAGES

A. For the purposes of this Agreement, an "Outage" is the complete interruption of service over any Facilities, due to the physical damage or severance of fiber strand(s); except that no interruption of service caused in whole or in part by the act or omission of Grantee, its employees, agents or contractors or any of Grantee's equipment or facilities used in connection with the Facilities or planned outages which have been scheduled and approved in advance by Grantee or an event of Force Majeure shall constitute an Outage.

B. Subject to Section 15 and except when caused by Company's gross negligence or willful misconduct, restoration, replacement or repair to all or part of the Lateral Facilities due to an Outage will be made at Grantee's sole expense. Company will use commercially reasonable efforts to provide Grantee with an estimate for repair/restoration and/or replacement, within five (5) days of notification of an Outage. Within one (1) week of receipt of the estimate and prior to Company beginning any work, Grantee must agree to pay the cost of restoration, replacement and/or repair (except to the extent caused by Company's gross negligence or willful misconduct). If Grantee declines the repair, restoration or replacement work within the stated time period, the affected Lateral Facilities shall be terminated effective immediately.

C. If an Outage, Facilities failure, or disruption in service occurs, Grantee will immediately notify Company by telephone at **1-800-441-6917** or through such other notification procedure as Parties may establish. Both parties agree to provide an escalation list and provide periodic updates to ensure contacts are current.

D. In the event of a Lateral Facilities Outage, Company will not provide Grantee with any type of Credit. If such an Outage lasts for twenty four (24) or more hours, Grantee shall have the right to terminate the affected Facilities effective immediately, and shall have no further liability to Company for such Lateral Facilities. For a Core Facilities Outage, Comcast shall provide Grantee with a credit in accordance with Exhibit E, provided however that no credit shall be provided for a Core Outage caused by Grantee, Grantee's equipment or facilities, or by Force Majeure. This shall be Grantee's sole remedy at law and equity.

## 7. TITLE

All right, title, and interest in the Facilities and any other equipment or facility of Company shall, at all times, remain exclusively with Company.

## 8. LIENS AND ENCUMBRANCES

Neither party, directly or indirectly, shall create or impose any lien on the property of the other party, or on the rights or title relating thereto, or any interest therein, or in this Agreement. Each party will promptly, at its own expense, take such action as may be necessary to duly discharge any lien created by it on the property of the other. However, nothing in this Agreement shall be so construed as to prohibit the owner of any facilities from permitting the creation or imposition of a lien or security interest on facilities that it owns.

## 9. INDEMNIFICATION; WARRANTIES

A. Company agrees to indemnify and hold Grantee harmless against any and all loss, liability, damage and expense (including reasonable attorneys' fees) arising out of any demand, claim, suit or judgment for damages to any property or bodily injury to any persons, including, without limitation, the agents and employees of either party hereto which may arise

out of or be caused by such party, its employees, servants, contractors, and/or agents in connection with the exercise of its rights and obligations under the terms of this Agreement.

B. The Grantee shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the Grantee for which the Grantee is legally responsible, with respect to any activity or function conducted by any Person other than the Company pursuant to this Agreement, subject to any and all defenses and limitations of liability provided by law.

**C. COMPANY MAKES NO WARRANTIES THAT THE FACILITIES ARE COMPATIBLE WITH ALL POSSIBLE USES PLANNED BY THE GRANTEE, INCLUDING BUT NOT LIMITED TO PUBLIC SAFETY USES, AND COMPANY IS NOT RESPONSIBLE FOR DAMAGES OR LOSSES TO GRANTEE OR ANY THIRD PARTY RESULTING FROM ANY USE OF THE FACILITIES**

**D. NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS AGREEMENT, IN NO EVENT SHALL COMPANY BE LIABLE TO GRANTEE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, THOSE BASED ON LOSS OF REVENUES, PROFITS, OR BUSINESS OPPORTUNITIES, FRUSTRATION OF ECONOMIC OR BUSINESS EXPECTATIONS, LOSS OF CAPITAL, COST OF SUBSTITUTE PRODUCT(S), FACILITIES, OR SERVICES, OR DOWN TIME COST, WHETHER OR NOT COMPANY HAD OR SHOULD HAVE HAD ANY KNOWLEDGE, ACTUAL OR CONSTRUCTIVE, THAT SUCH DAMAGES MIGHT BE INCURRED, AND EVEN IF COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**D. ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PURPOSE OR USE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED BY COMPANY.**

## 10. REQUIRED APPROVALS

Grantee shall obtain any government authorizations and approvals required for Grantee's use of the Facilities. Company shall cooperate to that end as reasonably required.

## 11. INSURANCE

Whether self insured or insured through a third party insurer, each Party shall, at its own expense, secure and maintain in force, throughout the term of this Agreement, General Liability Insurance, with competent and qualified issuing insurance companies, including the following coverages: Product Liability; Hazard of Premises/Operations (including explosion, collapse and underground coverages); Independent Contractors; Products and Completed Operations; Blanket Contractual Liability (covering the liability assumed in this Agreement); Personal Injury

(including death); and Broad Form Property Damage in policy or policies of insurance such that the total available limits to all insureds will not be less than $2,000,000 Combined Single Limit for each occurrence and $2,000,000 aggregated for each annual period. To the extent permitted by Virginia law, such insurance may be provided in policy or policies, primary and excess, including the so-called Umbrella or Catastrophe forms and each such policy shall be endorsed to show Company, its parent and affiliates and its and their directors, officers, agents, servants, employees and independent contractors as additional insureds.

## 12. NOTICES

All notices, demands, requests or other communications given under this Agreement shall be in writing and be given by personal delivery, certified mail, return receipt requested, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to City of Alexandria:

Alexandria City Hall
Attention: City Manager
301 King Street
Alexandria, Virginia 22314

With a copy to:

Alexandria City Hall
Attention: City Attorney
301 King Street
Alexandria, Virginia 22314

If to the Company:

Comcast of Virginia, Inc.
2707 Wilson Blvd.
Arlington, VA 22201
Attention: Government Affairs Department

With copies to:

Comcast Cable
1301 McCormick Drive, 4th Floor
Largo, MD 20774
Attention: Government Affairs Department

And to:

Comcast Cable Northeast Division
676 Island Pond Rd.
Manchester, NH 03109
Attention: Government Affairs Department

## 13. DEFAULT AND TERMINATION

A. If Grantee fails to make any payment by the due date of an invoice, and if Company has provided Grantee with at least ten (10) days written notice of such failure, Company's obligation to provide Grantee use of the Facilities shall cease until all required payments have been made in full. If any payment remains in arrears for thirty (30) days after the due date of an invoice, and if Company has provided Grantee with at least thirty (30) days notice of such nonpayment, such nonpayment shall constitute a material default of this Agreement and Company may terminate this Agreement at any time thereafter, and may pursue all other remedies available to Company at law and/or equity.

B. Company may terminate this Agreement, and may pursue all other remedies available to Company at law and/or equity, upon thirty (30) days notice to Grantee if Grantee knowingly uses or attempts to use the provided fibers for any purpose other than the purposes authorized in this Agreement and does not abandon such use immediately upon notice by Company; or (ii) upon thirty (30) days notice to Grantee, if Grantee defaults in any other obligation hereunder and fails to cure such default within the aforesaid thirty (30) day period.

C. Company may terminate this Agreement upon thirty (30) days' prior written notice to Grantee, (i) if Company loses or fails to obtain renewal of any approval, consent, authorization, license, certificate, franchise, or permit required to provide the service hereunder, or if such approval, consent, authorization, license, certificate, franchise, or permit is suspended for a period longer than sixty (60) days and not renewed, or if it is adversely modified by a governmental authority, or (ii) if continuing to provide the fibers as provided for herein would materially interfere with Company's ability to obtain or maintain approvals, consents, authorizations, licenses, certificates, franchises, permits or consents necessary to the operation of its business, or (iii) if continuing to provide the fibers as provided for herein would obligate Company to provide the same terms and conditions to a non-governmental or non-educational entity.

D. Company may terminate this Agreement without notice only to the extent that immediate termination is required by law, regulation or a governmental authority.

E. Grantee may terminate this Agreement upon forty-five (45) days' written notice to Company.

F. Upon termination of this Agreement, all rights of Grantee to the Facilities shall cease and Company may disconnect, terminate, remove or use the Facilities for any other purpose.

G. Grantee may, for any reason, terminate its use of the Existing Fibers serving any Building or Buildings upon at least thirty (30) days' written notice to Company. Effective upon the date specified in the notice, Grantee shall no longer be liable for payment of the MRC for any such Building, and shall no longer have the right to transmit signals over the Facilities serving any such Building. The exercise of Grantee rights under this paragraph shall not affect the rights of either party under this Agreement with respect to any other Facilities or Buildings, and this Agreement shall remain in full force with respect to such Facilities and Buildings. This provision does not apply to new Facilities built after the Effective Date of the Agreement. Notwithstanding the foregoing, at any time after the fifth anniversary of the Effective Date, the Grantee may terminate this Agreement in its entirety, without cause, upon one hundred eighty (180) days' prior written notice to Company.

## 14. LATE PAYMENT CHARGE

To the extent permitted by law, any fees, charges, costs or expenses not paid by Grantee by the due date on an invoice will be subject to a late payment charge calculated by multiplying the past due amount (exclusive of late payment charges) by one-thirtieth of one percent (0.033%) per day or the highest rate allowed by law, whichever is lower.

## 15. WAIVER

The failure of either party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall nevertheless be and remain in full force and effect.

## 16. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the state in which the Facilities are located without reference to its choice of law principles.

## 17. RULES OF CONSTRUCTION

The captions and headings in this Agreement are strictly for convenience and shall not be considered as interpreting it or as amplifying or limiting any of its content.

## 18. ASSIGNMENT

Grantee shall not assign this Agreement, without the express written consent of Company, which consent shall be at Company's sole discretion. Except as identified in this Agreement, Grantee shall not assign, transfer or sublease, directly or indirectly, on an integrated or unintegrated basis, in whole or in part, the Facilities or its right to use the Facilities as granted herein without the express written consent of Company, which consent shall be at Company's

sole discretion. Any assignment by Company of its rights under this Agreement, or of any interest of Company in the Facilities, shall be subject to the terms of this Agreement.

## 19. ENTIRE AGREEMENT

This Agreement, including the Exhibits, which are hereby incorporated herein as an integral part of this Agreement, constitutes the entire agreement between the parties hereto with respect to the subject matter and geographical locations referred to and supersedes any and all prior or contemporaneous agreements whether written or oral. This Agreement cannot be modified except in writing signed by the party against whom enforcement of the modification is sought.

## 20. RELATIONSHIP OF THE PARTIES

The relationship between Grantee and Company shall not be that of partners, agents or joint venturers for one another and nothing contained in this Agreement shall be deemed to constitute a partnership, agency, or joint venture agreement between them. Grantee shall report and pay, or cause to be reported and paid, in a timely manner (i) all wages, salary, health and welfare benefits, social security, unemployment and workers' compensation to which its employees and agents are entitled and (ii) all applicable federal, state and local employment taxes required to be withheld or paid with respect to all compensation paid to its employees and agents.

## 21. FORCE MAJEURE

Company shall not be deemed to be in breach of this Agreement during any period of time in which it is unable to perform its obligations as a result of the occurrence of an event of force majeure, which shall include, but not be limited to, acts of God, act or order of government, denial or access to or loss of utility service or facilities or any other circumstance beyond the reasonable control of Company. The required time for Company's performance hereunder shall be extended to account for any such force majeure event.

## 22. CONDEMNATION

Upon condemnation of all or any material portion of the facilities used by Company to provide service to Grantee, Company, by notice to Grantee, may discontinue or suspend service under this Agreement.

## 23. MISCELLANEOUS

If any provision of this Agreement is found contrary to law or unenforceable by any court, the remaining provisions shall be severable and enforceable in accordance with their terms, unless such unlawful or unenforceable provision is material to the transactions contemplated hereby, in which case the parties shall negotiate in good faith a substitute provision.

## 25. RELEVANT VA PROCUREMENT CODE PROVISIONS

A. Employment Discrimination.

(i) Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin are bona fide occupational qualifications reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

(iii) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

B. Drug-Free Workplace.

(i) During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace.

(ii) For the purposes of this section, *"drug free workplace"* means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract. (§ 2.2-4312 Virginia Public Procurement Act).

C. Immigration Reform And Control Act Of 1986. By signing this agreement, the Contractor certifies that it does not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date.

Comcast of Virginia, Inc.

By: _____
Name: _____
Title: _____

City of Alexandria, Virginia

By: _____
Name: _____
Title: _____

SITE LIST

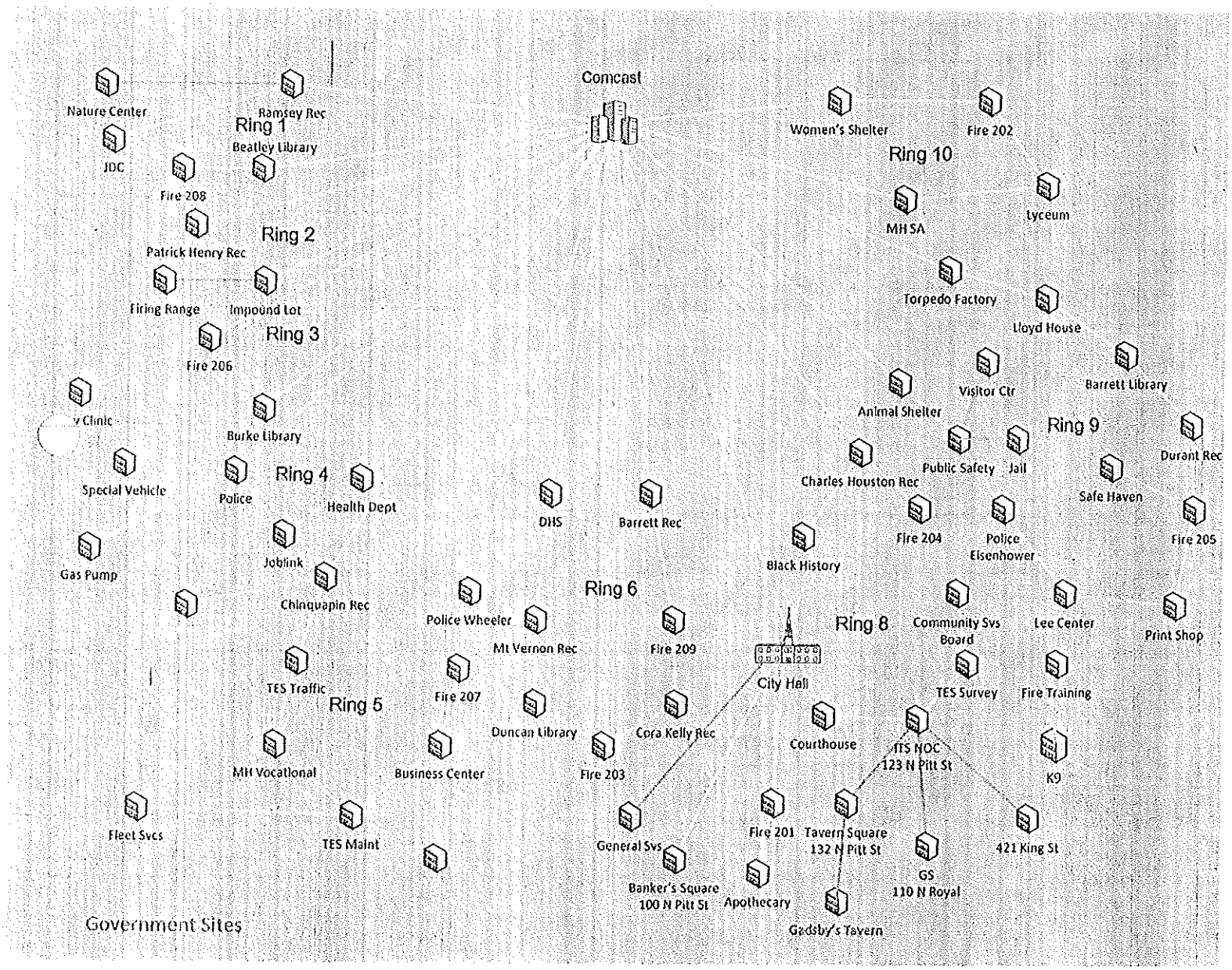
| INET Site Name | Address | Network | Ring | Site | CWDM | Do ream | Connection Path | Building - City Owned / Leased | Conduit Path |
|---|---|---|---|---|---|---|---|---|---|
| Fire Station 208 | 175 North Paxton | City | 1 | 12 | 1570 | | | | |
| Ramsey Recreation Center | 5650 Sanger Avenue | City | 1 | 25 | 1490 | | | | |
| William Ramsey School | 5750 Sanger Avenue | ACPS | 1 | 50 | 1490 | | | | |
| Juvenile Detention Center | 200 South Whiting Street | City | 1 | 72 | 1530 | | | | |
| Juvenile Detention Center School | 200 South Whiting Street | ACPS | 1 | 82 | 1530 | | | | |
| Beatley Library | 5005 Duke Street | City | 1 | 83 | 1510 | | | | |
| Patrick Henry Recreation Center | 4643 Taney Avenue | City | 2 | 27 | 1490 | | | | |
| Patrick Henry School | 4643 Taney Avenue | ACPS | 2 | 41 | 1490 | | | | |
| Impound Lot | 5249 Eisenhower Avenue | City | 2 | 59 | 1530 | | | | |
| Casey Clinic | 1200 N. Howard Street | City | 3 | 102 | SMF | Downstream site | Connects to Fire Station 206 | City Owned | Comcast Conduits and Poles |
| Fire Station 206 | 4609 Seminary Road | City | 3 | 10 | 1490 | | | | |
| Burke Library | 4701 Seminary Road | City | 3 | 36 | 1530 | | | | |
| Burke Center School | 4701 Seminary Road | ACPS | 3 | 86 | 1490 | | | | |
| John Adams School | 5651 Rayburn Avenue | ACPS | 4 | 39 | 1490 | | | | |
| James Polk School | 5000 Polk Avenue | ACPS | 4 | 49 | 1570 | | | | |
| Francis Hammond School | 4646 Seminary Road | ACPS | 4 | 52 | 1610 | | | | |
| School Board Administration | 2000 N. Beauregard Street | ACPS | 4 | 55 | 1530 | | | | |
| Health Department 4480 | 4480 King Street | City | 4 | 87 | 1470 | | | | |
| JobLink & CAC | 1900 N. Beauregard Street | City | 4 | 88 | 1490 | | | | |
| Police APD | 3600 Wheeler Ave | City | 4 | 105 | 1510 | | | | |
| Teen Clinic @ T.C. Williams HS | 3330 King Street | City | 5 | 104 | SMF | Downstream site | Connects to Chinquapin Recreation Center | City Owned | Comcast Conduits and Poles |
| Fire Station 207 | 3301 Duke Street | City | 5 | 11 | 1590 | | | | |
| Chinaquapin Recreation Center | 3210 King Street | City | 5 | 22 | 1470 | | | | |
| TES Maintenance | 133 South Quaker Lane | City | 5 | 28 | 1530 | | | | |
| T.C. Williams High School | 3330 King Street | ACPS | 5 | 51 | 1530 | | | | |
| Minnie Howard School | 3801 West Braddock Road | ACPS | 5 | 54 | 1570 | | | | |
| School Maintenance | 3540 Wheeler Avenue | ACPS | 5 | 56 | 1490 | | | | |
| TES Traffic | 3200 Colvin Street / 116 S Quaker | City | 5 | 58 | 1590 | | | | |

| INET Site Name | Address | Network | Ring | Site | CWDM | Downstream | Connection Path | Building - City Owned / Leased | Conduit Path |
|---|---|---|---|---|---|---|---|---|---|
| Police Wheeler | Undisclosed | City | 5 | 62 | 1570 | | | | |
| MH Vocational | 3105 Colvin Street | City | 5 | 69 | 1570 | | | | |
| Stonewall Jackson Adult Ed | 25 South Quaker Lane | ACPS | 5 | 79 | 1610 | | | | |
| Business Center (T&ES/Rec) | 2914 Business Center Drive | City | 5 | 93 | 1470 | | | | |
| Fire Station 203 | 2801 Cameron Mills Road | City | 6 | 7 | 1470 | | | | |
| DHS | 2525 Mount Vernon Avenue | City | 6 | 18 | 1530 | | | | |
| Cora Kelly Recreation Center | 25 West Reed Avenue | City | 6 | 23 | 1530 | | | | |
| Barrett Recreation Center | 1115 Martha Custis Drive | City | 6 | 24 | 1530 | | | | |
| Mount Vernon Recreation Center | 2601 Commonwealth Avenue | City | 6 | 26 | 1470 | | | | |
| Duncan Library | 2501 Commonwealth Avenue | City | 6 | 37 | 1530 | | | | |
| Charles Barrett School | 1115 Martha Custis Drive | ACPS | 6 | 40 | 1610 | | | | |
| Cora Kelly School | 3600 Commonwealth Avenue | ACPS | 6 | 43 | 1570 | | | | |
| George Mason School | 2601 Cameron Mills Road | ACPS | 6 | 46 | 1490 | | | | |
| Mount Vernon School | 2601 Commonwealth Avenue | ACPS | 6 | 48 | 1530 | | | | |
| Fire Station 209 | 2800 Main Line Blvd | City | 6 | 91 | 1470 | | | | |
| Douglas Macarthur School | 1101 Janneys Lane | ACPS | 7 | 45 | 1490 | | | | |
| Maury School | 600 Russell Road | ACPS | 7 | 47 | 1530 | | | | |
| General Services | 405 Cameron Street | City | 8 | 4 | MMF | Downstream site | Connects to City Hall NOC | City Owned | Comcast Conduits |
| Fire Station 201 | 317 Prince Street | City | 8 | 5 | SMF | Downstream site | Connects to City Hall NOC | City Owned | Comcast Conduits |
| Banker's Square | 100 N. Pitt Street | City | 8 | 17 | SMF | Downstream site | Connects to City Hall NOC | City Owned | Comcast Conduits |
| Black History Museum | 902 Wythe Street | City | 8 | 65 | SMF | Downstream site | Connects to Charles Houston Recreation Center | City Owned | Comcast Conduits and Poles |
| Apothecary Museum | 107 S. Fairfax Street | City | 8 | 103 | SMF | Downstream site | Connects to Fire Station 201 to City Hall | City Owned | Comcast Conduits and Poles |
| City Hall | 301 King Street | City | 8 | 1 | 1590 | | | | |
| Fire Station 204 | 900 Second Street | City | 8 | 8 | 1490 | | | | |
| TES Survey Section | 517 North Saint Asaph Street | City | 8 | 14 | 1470 | | | | |
| Community Services Board | 720 North Saint Asaph Street | City | 8 | 19 | 1510 | | | | |
| Courthouse | 520 King Street | City | 8 | 32 | 1510 | | | | |
| Lyles-Crouch School | 530 South Saint Asaph Street | ACPS | 8 | 44 | 1490 | | | | |

| INET Site Name | Address | Network | Ring | Site | CWDM | Downstream | Connection Path | Building - City Owned / Leased | Conduit Path |
|---|---|---|---|---|---|---|---|---|---|
| Charles Houston Recreation Center | 901 Wythe Street | City | 8 | 64 | 1470 | | | | |
| ITS / NOC | 123 N. Pitt Street | City | 8 | 92 | 1530 | | | | |
| MH Safe Haven | 115 N. Patrick Street | City | 9 | 68 | SMF | Downstream site | Connects to Fire 205 | City Owned | Comcast Conduits and Poles |
| Public Safety Center | 2003 Mill Road | City | 9 | 2 | 1530 | | | | |
| Fire Station 205 | 1210 Cameron Street | City | 9 | 9 | 1570 | | | | |
| Lee Center | 1108 Jefferson Street | City | 9 | 13 | 1510 | | | | |
| Print Shop / Archives | 801 South Payne Street | City | 9 | 31 | 1530 | | | | |
| Barrett Library | 717 Queen Street | City | 9 | 35 | 1530 | | | | |
| Lloyd House | 220 North Washington Street | City | 9 | 38 | 1570 | | | | |
| Jefferson-Houston School | 1501 Cameron Street | ACPS | 9 | 42 | 1490 | | | | |
| Animal Shelter | 4104 Eisenhower Ave | City | 9 | 63 | 1510 | | | | |
| Torpedo Factory | 105 N. Union Street 3rd Floor | City | 9 | 71 | 1510 | | | | |
| Durant Recreation Center | 1605 Cameron Street | City | 9 | 96 | 1510 | | | | |
| Fire Station 202 | 213 East Windsor Street | City | 10 | 6 | 1490 | | | | |
| Substance Abuse Svcs | 2355 Mill Road | City | 10 | 20 | 1490 | | | | |
| George Washington School | 1005 Mount Vernon Avenue | ACPS | 10 | 53 | 1490 | | | | |
| Women's Shelter | Undisclosed | City | 10 | 80 | 1510 | | | | |
| Lyceum | 201 S. Washington Street | City | 10 | 97 | 1510 | | | | |
| Samuel Tucker School | 435 Ferdinand Day Drive | ACPS | 11 | 98 | 1570 | | | | |
| | as of 093011 | | | | | | | | |

**EXHIBIT B**

**FIBER MAP ATTACHED**


Nature Center
Ramsey Rec
Ring 1
Beatley Library
JDC
Fire 208
Patrick Henry Rec
Ring 2
Firing Range
Impound Lot
Ring 3
Fire 206
Burke Library
Special Vehicle
Police
Ring 4
Health Dept
Gas Pump
Joblink
Chinquapin Rec
Comcast
DHS
Barrett Rec
Ring 6
Police Wheeler
Mt Vernon Rec
Fire 209
TES Traffic
Fire 207
Ring 5
Duncan Library
Cora Kelly Rec
MH Vocational
Business Center
Fire 203
Fleet Svcs
TES Maint
General Svs
Banker's Square
100 N Pitt St
Apothecary
Gadsby's Tavern
Fire 201
Tavern Square
132 N Pitt St
City Hall
Courthouse
ITS NOC
123 N Pitt St
GS
110 N Royal
421 King St
K9
Women's Shelter
Fire 202
Ring 10
MH SA
Lyceum
Torpedo Factory
Lloyd House
Visitor Ctr
Barrett Library
Animal Shelter
Ring 9
Charles Houston Rec
Public Safety
Jail
Durant Rec
Safe Haven
Fire 204
Police Eisenhower
Fire 205
Black History
Ring 8
Community Svs Board
Lee Center
Print Shop
TES Survey
Fire Training
Government Sites

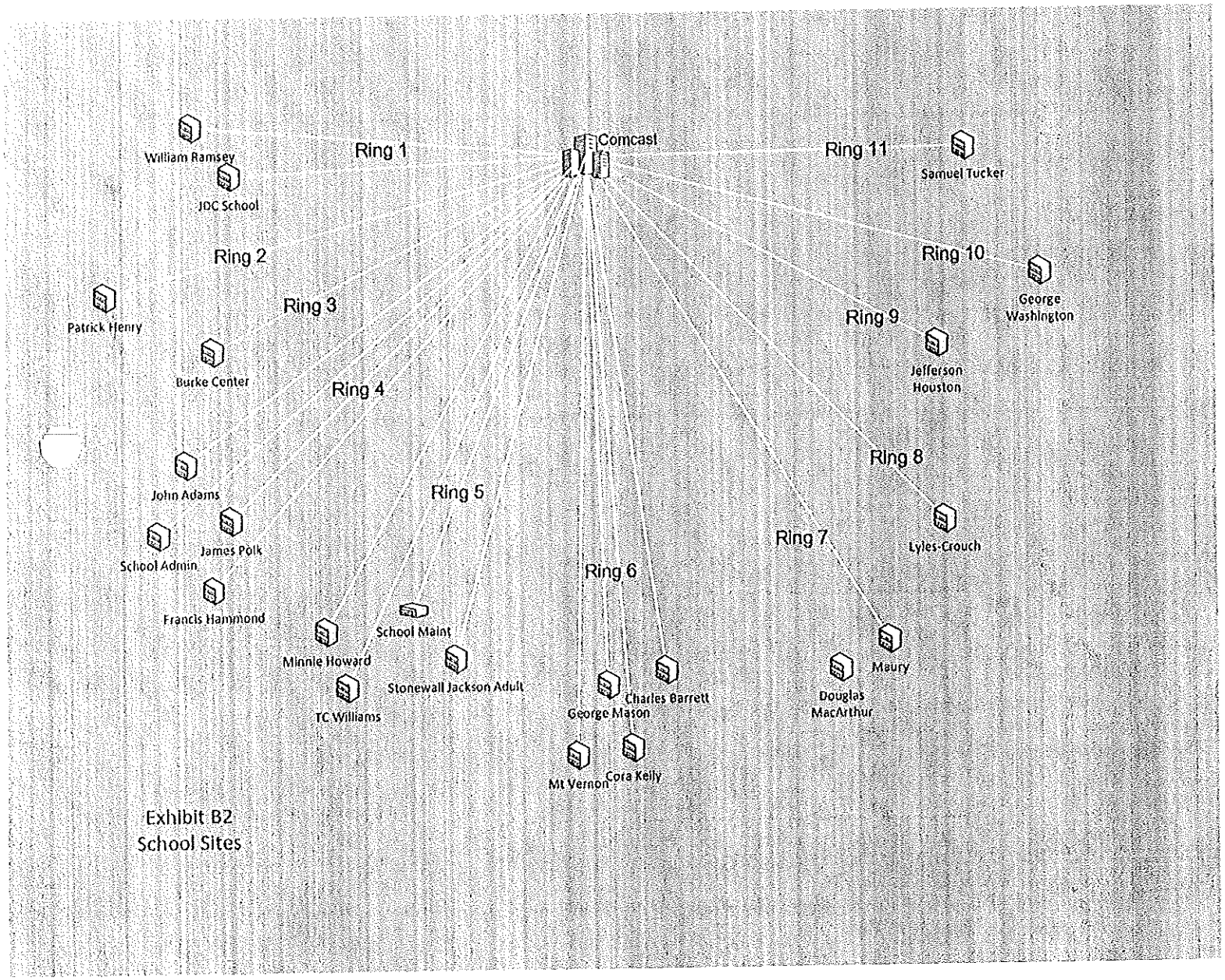



Exhibit B2
School Sites

## EXHIBIT C

## NETWORK DESIGN AND CONSTRUCTION

1. **Network Design and Operation**

   (a) **Design.** The Facilities shall be capable of transporting voice, video and data to and from each Building, and shall be constructed of single mode fiber optic cable. The Facilities shall consist of certain existing segments of dark fiber optic cable (single mode) plant (the "Existing Fibers") and additional dark fiber optic cable (single mode) plant to be installed pursuant to this Agreement (the "Construction Fibers"). Locations for each Existing Building are listed on Exhibit A The Existing Fibers are located as illustrated on the fiber cable plant map attached hereto as Exhibit B.

   (b) **Operation.** Grantee shall be responsible for all terminal equipment and electronics necessary to transmit signals over the Facilities, and Grantee shall be responsible for managing all traffic over the Facilities. Grantee shall have the right to use the full bandwidth provided by the Facilities. Company shall maintain and repair the Facilities and perform maintenance pursuant to the Agreement.

2. **Construction to Future Buildings, Redundant Links, and additional Buildings.** Grantee may make one or more requests to add Future Buildings, Redundant Links, and additional Buildings during the term of the Agreement. Grantee and Company shall add Future Buildings, Redundant Links, and additional Buildings as follows:

   (a) **Grantee request and preliminary proposal.** Grantee shall notify Company of any request for one or more Future Buildings, Redundant Links, or additional Buildings. The notice shall identify Future Buildings and Redundant Links and shall provide in reasonable detail a description of any proposed additional Building. Within one hundred twenty (120) days of receipt of notice, Company shall deliver to Grantee a construction plan. Grantee shall provide reasonable cooperation as requested by Company in developing each construction plan. A construction plan shall include:

      (i) A design map showing Demarcation Points and Curb Locations;

      (ii) A construction schedule for each Future Building, Redundant Link, or additional Building; and

      (iii) A commercially reasonable not-to-exceed construction cost.

   (b) **Construction Plan, acceptance or rejection.** Within sixty (60) days of receipt of a construction plan, Grantee shall deliver to Company notice of acceptance or rejection. The parties shall work in good faith to resolve the basis for rejection. Within sixty (60) days of Company's delivery of a construction plan, Grantee shall deliver to Company Grantee's comments and questions concerning the plan. The parties shall work in good faith to resolve any comments or questions, and, if necessary, Company shall revise the plan accordingly

(c) **Construction.** Upon acceptance of a construction plan and receipt of payment for said construction, Company shall commence construction in accordance with the construction plan.

3. **Construction, Generally.**

(a) **Standards governing Facilities Construction.** During all phases of construction, including construction of Redundant Links, New Buildings, Future Buildings, and additional Buildings, Company, its employees, agents, and contractors shall:

(i) Comply with all County ordinances of general applicability governing work in the rights-of-way;

(ii) Comply with all applicable permits and safety codes;

(iii) Conform to industry standard construction practices;

(iv) Use sound engineering practices; and

(v) Upon the request of Grantee representatives, provide periodic updates and status reports.

(b) **Change Orders.** During construction, if a party determines that changes to a construction plan are necessary or desirable, that party shall deliver notice of the change to the other party. Except for changes involving unanticipated site conditions under Section 3(d), if the proposed change increases construction costs, the party requesting the change shall bear the costs. If the proposed change reduces construction costs, the parties shall share equally the cost reduction for any construction where the cost is shared by the parties. Otherwise, the cost reduction shall benefit the person requesting the change. All change orders shall be in writing and signed by both parties.

4. **Delivery and Acceptance.**

(a) **Company testing.** Upon completion of construction to each Building, Company shall test and physically inspect the Construction Fibers..

(b) **Company delivery and certification.** Upon satisfactory testing by Company, Company shall deliver a certificate of completion to Grantee. The certificate shall certify the following:

(i) Company has completed construction of the Construction Fibers according to this Agreement;

(ii) The Construction Fibers conform with this Agreement in all material respects; and

(iii) The Construction Fibers have been tested and inspected, and have satisfied the acceptance testing and inspection.

## EXHIBIT C - 2
## Dark Fiber Optic Cable Testing Acceptance Standards

### Introduction

This document provides a test plan to determine acceptable optical performance of the Construction Fibers. This test procedure is designed to ensure that the fiber optic plant meets general industry standards, and is suitable to support connectivity to a range of potential dark fiber interface equipment. Testing shall be performed after construction is completed for each of the agreed upon sites. For each site, each link will be tested for continuity and to ensure that there are no unacceptable anomalies in the fiber optic cable. An optical time-domain reflectometer (OTDR) shall be used to measure and document splice and connector locations, and an optical power meter test set shall be used to determine end-to-end optical losses and fiber continuity.

### Testing Criteria

The test must be successfully completed and may be conducted in the presence of GRANTEE's designated observer. The test shall be deemed successfully completed if: (1) maximum fiber losses do not exceed 0.34 dB/km at 1310 nm, (2) maximum fiber losses do not exceed 0.22 dB/km at 1550 nm, (3) individual splice losses do not exceed 0.3 dB, and (4) maximum mated connector losses do not exceed 0.75 dB. These standards are based on the Telecommunications Industry Association (TIA) and the Electronic Industries Alliance (EIA) Optical Fiber Cabling Components Standard (EIA/TIA 568-B.3) for outside plant.

Testing will be performed by designated cable operator personnel, and may be observed by designated representatives of the GRANTEE. GRANTEE personnel may request and perform additional testing.

### OTDR Testing Procedure

An OTDR shall be used to measure and document splice losses and connector losses. To correctly identify abnormalities at a short range, a 100-meter or longer launch cable must be used between the OTDR and the fiber under test. This launch cable should be the same used for all OTDR tests for all fibers and sites. Bi-directional traces shall be acquired for each fiber. If the connection of the launch cable to the patch panel requires optimization by the operator, sampling acquisition will commence upon completion of the optimization.

Each fiber will be identified, and the results of the test for each fiber will be recorded as indicated below in the section "Test Data File Names." The test will be repeated for each of the fibers linking a particular site. All tests will be made at 1310 nm. and 1550nm.

### OTDR Settings

Settings on the OTDR should reflect the following:

- The Refractive Index shall be set for the actual fiber utilized (commonly used Corning SMF-28 single mode fiber has a refractive index of 1.4677 at 1310 nm).
- Pulse width of no greater than 100 ns (10m) for all fiber lengths.

- Scattering coefficient specified by the fiber manufacturer for each wavelength tested.
- A minimum of 10,000 sampling acquisitions (Averages).
- Maximum range set to no more than 10 km for all fiber length less than 10 km; Maximum range set to no more than 25 km for fiber lengths greater than 10 km.
- Event threshold: 0.05 dB

**Test Data File Names**

A uniform file-naming scheme for recorded data should be used, complying with the following conventions:

| Fiber Source and Destination | Naming Scheme |
|---|---|
| GRANTEE Data center to (point "a") | " a" link |
| GRANTEE Data center to (point "b") | " b" link |
| | |
| GRANTEE Data center to (point "n") | " n" link |

(above table to be completed to match other exhibits)

**Test Documentation**

Installed optical fiber OTDR test documentation will include:

- Total fiber length;
- Individual fiber traces for complete fiber length;
- Paper and/or computer disk records of all traces;
- Losses of individual splices and connectors;
- Losses of other anomalies;
- Wavelength tested and measurement directions;
- Manufacturer, model and serial number of the test equipment;
- Most recent calibration date of the test equipment;
- Name, signature, and company of the engineer performing the tests.

All data collected at each location during the tests will be recorded at the time of the tests using electronic means. Both paper and electronic documentation for each fiber at each site will be required.

Optical Power Meter Test Procedure

Optical power meter measurements shall typically be made at the same time as the OTDR tests to determine overall fiber loss and to ensure that fibers have appropriate end-to-end continuity (fibers not crossed).

**Calibration Procedure**

Calibration readings should be taken at the beginning and end of a testing day.

1. Power on both fiber optic power meter and laser light source.

2. Allow each instrument a warm-up period as specified by manufacturer documentation.

3. Clean all connectors, in-line adapters, and the source and meter connections with alcohol, lint-free wipes, and compressed air.

4. Connect a jumper to the light source, and a second jumper to the meter. Connect the jumpers using a bulkhead.

5. Ensure that the wavelength setting on the light source and the power meter is 1310nm.

6. Set the power meter to record absolute (ABS) readings.

7. To ensure that the jumpers are functional and that a proper connection has been established, observe the power reference reading on the meter's main display.

8. Record the measurement on the display, ensuring that the meter is set to display absolute measurements (ABS).

9. Change the wavelength setting on the light source and the power meter to 1550 nm

10. Repeat steps 6, 7, and 8.

11. Power down the light source and the power meter. Disconnect the light source jumper at the bulkhead ONLY. Cap the free connectors on both jumpers.

**Test Procedure**

1. Take the meter to the test site. The jumper cable should remain connected to the meter for the duration of the testing until a post-calibration measurement is performed.

2. For all fibers and sites, the fiber jumpers for both the power meter and the light source should be the same set for all tests.

3. Clean the connectors on both jumpers and both fiber termination points with alcohol, lint-free wipes, and compressed air. This must be done before testing each fiber.

4. Connect the free end of the jumper connected to the light source to the fiber under test.

5. Connect the free end of the jumper connected to the power meter to the fiber under test.

6. Power on both the meter and light source, and allow a warm up period as recommended by manufacturer documentation.

7. Ensure that both the power meter and light source are set to 1310 nm. Relative measurements may be recorded if the power meter is selectable between absolute and relative measurements.

8. Observe the measurement on the main display of the power meter. Record the value shown after the reading stabilizes.

9. If inconsistent/erroneous readings are observed, re-clean the jumpers and fiber termination points and test again before recording final loss value.

10. Change both the power meter and light source to 1550 nm. and repeat steps 8 and 9. Relative measurements may be recorded if the power meter is selectable between absolute and relative measurements

11. Disconnect the jumpers from the fiber under test.

12. To test additional fibers, be sure to clean each connector and termination point with both alcohol and compressed air. This should be done before testing all fibers.

13. Connect the jumpers to the ends of the next fiber to be tested and observe the measurement on the main display.

14. The meter and light source should only be powered off when traveling to a new test site. Follow steps 1-13 at each new site.

15. Recalibrate the light source and meter after each day's testing is completed, following the calibration procedure.

## EXHIBIT D

## SCHEDULE OF FEES

1. **THE MONTHLY RECURRING CHARGES ARE AS FOLLOWS:**

   A. The Facilities consist of Seventy-Five (75) Buildings
   B. The monthly rate per Building is $500.
   C. Based on A x B, the MRC is $37,500.00.

2. **RATES FOR MAINTENANCE/REPAIRS:**

   Rates for maintenance and repair are payable at the time of occurrence at Company's prevailing rate schedule for maintenance and repairs.

## EXHIBIT E

## REPAIR & MAINTENANCE

### 1. REPAIR & MAINTENANCE:

In the event of a Facilities failure, Grantee will notify Company at 800-441-6917. Company's dispatch will contact the Company manager and inform him/her of the situation.. The Company manager will contact appropriate maintenance personnel and implement a detailed plan for restoration.

### 2. INTERRUPTION OBLIGATIONS:

In the event of a Facilities outage, Company shall provide Grantee with a pro-rata credit against the next available invoice not to exceed the MRCs proportionate to the period of the outage, provided that no credit shall be provided for Facilities outages caused by Grantee, Grantee equipment or facilities, or by force majeure.

Company shall provide maintenance and repairs in accordance with the Facilities Response times set forth below. In the event of a disruption or trouble with respect to any portion of the Facilities, Company shall respond to the disruption or trouble within the time frames set forth below (the "Dispatch Period") and clear the disruption or trouble promptly. Company shall notify Grantee within the Dispatch Period that Company has dispatched its personnel or contractors to effect restoration and repair and shall provide Grantee with updates concerning the status of restoration at reasonable intervals. If Company has not provided such confirmation to Grantee within the Dispatch Period or is not clearing the disruption or trouble on a timely basis, Grantee shall have the right, after the expiration of the Dispatch Period, to respond to or to participate in the resolution of the trouble. Company and Grantee shall reasonably cooperate in the development of procedures governing repair and restoration procedures while Grantee is on the premises of Company.

| Severity Level | Network Condition | Response Time | Commitment |
|---|---|---|---|
| CRITICAL | Network is down. No workaround is available. | Response = 2 hour | Company and Grantee work to resolve situation 7x24. |
| HIGH | Network functionality is severely limited. No workaround is available. | Response = 4 hours | Company and Grantee work to resolve situation 7x24. |
| MEDIUM | Limited functionality. Workaround is available. | Response = 12 hours | Company and Grantee work to resolve situation during named business hours. |

| | | | |
|---|---|---|---|
| LOW | General questions, system enhancements, and/or documentation issues in the ordinary course of business. | Response = 24 hours | Company and Grantee work to resolve questions during normal business hours. |

For severity level problems of high or critical nature, the following escalation procedure will be followed:

| | |
|---|---|
| 1- 2 Hours | Company System Engineer or equivalent will be notified and will contact Grantee. |
| 2-4 Hours | Company Director or equivalent will be notified. |

Comcast

1301 McCormick Drive
4th Floor
Largo, MD 20774

October __, 2011

Mr. Bruce E. Johnson
Acting City Manager
City of Alexandria
City Hall
301 King Street
Alexandria, VA 22314

Dear Mr. Johnson:

This letter is to confirm the understanding that has been reached between Comcast of Virginia, Inc. ("Comcast") and the City of Alexandria (the "City") with respect to certain matters addressed by the Franchise Agreement and Fiber Use Agreement that Comcast and the City are entering into on this date, as well as other matters that have been discussed between the parties during negotiation of those agreements. Comcast acknowledges that the terms of this letter constitute a material inducement to the City's agreement to enter into the Franchise Agreement and the Fiber Use Agreement. The term of this letter agreement shall be five (5) years, beginning on October __, 2011 (the "Effective Date"), and may be extended for up to two (2) additional five-year periods unless either party notifies the other in writing at least ninety (90) days prior to the end of the original term or extension period that it does not wish to extend the term. This letter agreement shall terminate in the event the Franchise Agreement is terminated prior to expiration or renewal is denied.

1. Complimentary Service to Government Buildings

The Franchise Agreement, at Section 5(c), requires that Comcast provide "one standard installation, at no cost to the City, and the Franchisee's Basic Service tier" to certain City facilities. Comcast agrees that, notwithstanding the obligation to provide "Basic Service" to those City buildings, it will continue to provide Expanded Basic Service or its equivalent to all City facilities that are entitled to receive Basic Service, at no additional charge, consistent with any and all other existing terms and conditions set forth in the Franchise Agreement. "Expanded Basic Service" means Comcast's most-commonly subscribed to tier of cable service that includes channels in addition to those on the Basic Service tier.

2. Credit for Digital Transport Adapters (DTAs)

Comcast is currently in the process of converting the analog channels in the Alexandria cable system to digital carriage. As part of that process, analog televisions require either a digital converter or a digital transport adapter (DTA) to continue to receive the digital channels. Under its current corporate policy, Comcast is providing up to three (3) DTAs at no charge to each government building that receives complimentary cable service. While the City will be expected to pay the monthly rate card fee (currently

$1.99) for each DTA it requests over and above three per building, Comcast has agreed that it will provide a credit under the Fiber Use Agreement to help the City defray the monthly cost of such DTAs. Comcast agrees to provide a credit to the City from the Monthly Recurring Charges billed to the City under the Fiber Use Agreement in the amount of Fifty Dollars ($50.00) per month for each "Building" served under the Fiber Use Agreement. Initially, there will be 75 Buildings served under that Agreement, so the current monthly credit would be $3,750.00 ($50.00 x 75 Buildings). As of the date of this letter, Comcast has provided the City with 1,319 DTAs.

3. Use of PEG and I-Net Grant

Under the Fiber Use Agreement, Comcast makes available fiber optic cable to the City for the purpose of the transmission of the City's data, video and voice services between certain City locations. The Franchise Agreement provides for a PEG Capital Grant to be used for PEG access and I-Net facilities. The parties agree that that amounts payable to Comcast pursuant to the Fiber Use Agreement constitute reimbursement for capital costs previously incurred, payment for future capital construction costs, or payment for future maintenance costs of a capital nature, in accordance with applicable law, and that amounts payable to Comcast by the City pursuant to the Fiber Use Agreement may be paid from the PEG Capital Grant. For purposes of this agreement, Comcast expressly waives any claim that such use is prohibited by any provision of applicable law, and agrees that it shall not challenge or dispute the usage of the PEG Capital Grant for these purposes.

4. Additional PEG Grant

This letter also documents our agreement that Comcast is providing the City with a one-time Five Thousand Dollar ($5,000) PEG technology grant, and the City waives the application fee for renewal of the franchise. This grant shall be due only for the initial term of this letter and not for any subsequent renewal or extension as set forth herein.

Regarding the above commitments in items 1-4, Comcast agrees that any breach of the foregoing shall be deemed a breach of the Franchise and subject to the same remedies provided for in the Franchise Agreement.

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In addition to the above commitments, the City has asked Comcast to provide information regarding two other matters: its policy for providing equipment to residential subscribers after the conversion from analog to digital carriage and its policy regarding compensating customers for missed service appointments. Both the City and Comcast agree that this information is being provided for information purposes only, and Comcast is not bound to continue or maintain these policies except as may be required by law.

With regard to the digital conversion, Comcast's current policy is to provide subscribers who receive only Basic Service up to three (3) DTAs without charge; while customers who subscribe to higher levels of cable service can receive up to one digital converter and two DTAs at no additional charge. Comcast reserves the right to modify our offers and terms in the future.

With regard to missed appointments, I have enclosed a copy of Comcast's current Customer Guarantee, which sets forth our commitment to provide our customers with superior service.

Both parties acknowledge by signing below that this letter accurately reflects the agreement of Comcast and the City on all matters set forth above.

Sincerely,

COMCAST OF VIRGINIA, INC.

By_____
Name:
Title:

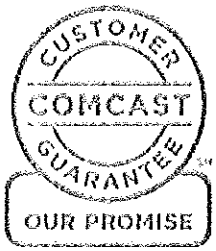
Agreed to and accepted by:

THE CITY OF ALEXANDRIA

By_____
Name:
Title:
Date: _____

# The Comcast Customer Guarantee

## Since 1963, Comcast has been dreaming big.




We bring exciting products and unparalleled choices to customers across America with our state-of-the-art video, high-speed Internet, phone and online services. We push the boundaries of innovation and creativity because we want to exceed our customers' expectations.

We are committed to providing Comcast customers with a consistently superior customer experience. If for any reason something goes wrong, we will work to resolve the issue quickly and as professionally as we can.

### We make the following guarantees to our customers:

1. **We will give you a 30-day, money-back guarantee on our video, voice or high-speed services.**

   If you're not satisfied with these services and wish to cancel for any reason, you can do so in the first 30 days and get your money back. Simply return all equipment in good working order and we'll refund the monthly recurring fee for your first 30 days of service and any charges you paid for standard installation.

2. **We will always be on time within your appointment window or we'll credit you $20 or give you a free premium channel for three months.**

   As a courtesy, we will call you before we arrive at your home. And if we fail to arrive for a scheduled visit during the appointment window, we will credit you $20 or give you a free premium channel for three months.

3. **We will resolve routine issues in one visit or we'll credit you $20 or give you a free premium channel for three months.**

   After the first visit to your home, if we do not satisfactorily complete installation or can't resolve a routine issue, we will credit you $20 or give you a free premium channel for three months. Additionally, we won't charge you for a service visit that results from a Comcast equipment or network problem.

4. **We will treat you and your home with courtesy and respect.**

   Our technicians will display their Comcast identification clearly when they arrive at your home. They will be trained and equipped to complete the job on the first visit. Our Customer Account Executives (CAEs)

will be courteous and knowledgeable when you contact us.

**We're here for you, 24 hours a day, 7 days a week to answer questions at your convenience.**

You can contact us regarding any service-related issue by calling 1-800-COMCAST or in any of the following ways:

Online, via Ask Comcast
Live Chat online with a Comcast Technician
Online community forum
Send us an e-mail and receive a response within 24 hours

**We will offer easy-to-understand packages and provide you with a clear bill.**

Our packages are designed to be straightforward. A call or visit to our website makes it easy to find a package that's right for you. We aim for the same clarity with our bills. You can view your monthly statement and service details anytime by visiting Comcast Customer Central.

**We will continually offer the best and most video choices.**

We're working hard to bring more choices to our customers instantaneously by using the full power of our advanced network and decades of television experience. We will use On Demand to bring you dramatically more content choices, including more movies, more sports, more kids programs, more network TV shows and more HD than anyone else.

Every Comcast employee is dedicated to meeting the commitments above and to exceeding your expectations. We are working very hard to serve our customers better and listen carefully to their feedback. If you have any thoughts or ideas about this Guarantee or about your experience with us, we invite you to share your feedback.

If to City:

If to the Company:

11. Either party's waiver of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof.

12. This Agreement shall be governed, construed, and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to principles of conflicts of law.

13. This Agreement constitutes the complete agreement between the parties hereto and supersedes and cancels any and all prior communications and agreements between the parties with respect to the disclosure of Confidential Information related to the purpose described herein and the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Confidentiality and Nondisclosure Agreement upon the date first set forth above.

| **CITY OF ALEXANDRIA, VIRGINIA** | **COMCAST OF VIRGINIA, INC.** |
|---|---|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

Alexandria City Hall
Attention: City Attorney
301 King Street
Alexandria, Virginia 22314

(c) *Time of Essence; Maintenance of Records of Essence:* In determining whether the Franchisee has substantially complied with the Cable Ordinance or this Franchise Agreement, the parties agree that time is of the essence with respect to the performance of Franchisee's obligations. As a result, the Franchisee's failure to complete performance of any obligation imposed by the Cable Ordinance or this Agreement in a timely manner shall constitute a material breach of this Agreement. The maintenance of records and provision of reports in accordance with the Ordinance and this Agreement is also of the essence of this Agreement.

(d) *Captions:* The captions and headings of this Agreement are for convenience and reference purposes only, and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

(e) *Franchisee's Records:* The Franchisee represents and warrants that its current electronic recordkeeping system provides the Franchisee with sufficient information to allow the Franchisee to provide all the information pertaining to outages, service degradations, customer complaints, and service calls required by Section 9-3-148 of the Cable Ordinance.

AGREED TO THIS 25th DAY OF October, 2011.

CITY OF ALEXANDRIA, a municipal corporation of Virginia

By: _____
City Manager

ATTEST: