

FINAL DRAFT

Attachment 1

OPEN VIDEO SYSTEM AGREEMENT
BETWEEN LOUDOUN COUNTY, VIRGINIA
AND
OPENBAND MULTIMEDIA, L.L.C.

**Recommended for approval
CableTV/OVS Commission
March 9, 2011**

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

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

WHEREAS, in May 2005 the County granted OpenBand Multimedia, L.L.C., (hereinafter referred to as either “OpenBand” or “Grantee”) a franchise to operate an Open Video System (“OVS”) in the County (the “Prior Franchise”); and

WHEREAS, the Prior Franchise has expired and OpenBand has requested that the County grant OpenBand a renewed franchise (the “Franchise”); and

WHEREAS, OpenBand has agreed to comply with the provisions of Chapter 809 of the Codified Ordinances of Loudoun County entitled “Open Video Systems” (the “OVS Ordinance”); and

WHEREAS, the County has reviewed OpenBand’s performance under the Prior Franchise, OpenBand’s overall financial, legal and technical qualifications to hold a franchise, and OpenBand’s ability to carry out its commitments; and

WHEREAS, the parties acknowledge that, as of the date of the grant of the Franchise, the Grantee has entered into agreements with various homeowners’ associations in the County (the “HOA Agreements”), the terms of which are not altered by the terms of this Franchise, and that individuals residing in areas subject to the HOA Agreements may benefit from rights afforded under the terms of the Franchise.

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

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

1. Definitions.

Capitalized terms in this Franchise Agreement shall have the meanings ascribed to them by the OVS Ordinance, or in Chapter 805 of the Codified Ordinances of Loudoun County entitled “Franchising and Regulation of Cable Television Systems” (the “Cable Ordinance”) unless otherwise defined herein. References to the OVS Ordinance include applicable provisions of the Cable Ordinance. The term “Subscriber” includes individual residents or businesses who receive Cable Service, even when such individual residents or businesses receive service under the terms of an agreement with a homeowner’s association or property owner. The term “Basic Service” means the service provided over any tier of service that includes the transmission of local television broadcast signals as well as the PEG Channels required by Section 6.1 hereof.

2. Grant and Scope of Authority.

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

2.2 The Initial Service Area of the Grantee under the Franchise shall consist of the Lansdowne, Broadlands/Broadlands South, and Lansdowne Town Center, as more fully described on the attached Exhibit A. In addition, Grantee shall have the right to extend its facilities to serve additional portions of the County, upon approval of the County. If Grantee wishes to extend its service area, Grantee shall submit a written request to the County, describing the additional service area requested (each, an “Additional Service Area”), setting forth Grantee’s proposed construction schedule and construction plan, and enclosing an application fee of \$5000. The County shall process any such application in good faith, in an effort to review and, if appropriate, approve the application within 120 days of submission, provided that the 120-day time period shall not be binding on the County or entitle Grantee to any presumption of approval. The County’s review process shall include review by the County staff, the Cable Television Advisory Committee, and the Board of Supervisors. The provision of service to any Additional Service Area shall be subject to all the terms and conditions of this Franchise Agreement, including the term of the franchise as set forth in Section 3.1. The Initial Service Area and any approved Additional Service Areas shall comprise the “Service Area.” The County reserves the right to consider all lawful factors in its consideration of any application for an Additional Service Area, including, without limitation, whether the terms of any agreement between the Grantee and any third party will give the Grantee any exclusive rights to serve the Additional Service Area.

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

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

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

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

3. Term

3.1 This Franchise shall have a term of twelve (12) years, beginning on June 17, 2009 (the "Effective Date"), and ending on June 16, 2021.

4. System Construction and Design.

4.1 System Capacity

Grantee's facilities in the Initial Service Area shall consist of either: (1) a copper wire network used to transmit voice communications; a fiber-to-the-home network used to transmit Internet services; and a fiber-to-the-curb network using coaxial cable to transmit video services; or (2) a Passive Optical Network (PON) using RF-overlay technology over fiber for video delivery. Grantee's facilities in any Additional Service Areas shall consist of either of the foregoing architectures. For purposes of this Agreement, the term "System" refers to any facilities used by Grantee to deliver video programming to Subscribers. In the event of any change in state or federal law that renders cable modem service or other Internet-based services subject to regulation as a "cable service," the term "System" shall also refer to any facilities used by Grantee to deliver cable modem service or Internet service. Grantee's System shall have a capacity of at least 870 MHz, and shall use the spectrum between 50 MHz and 870 MHz to deliver analog standard definition channels, and high-definition digital channels, and digital music programming. The System shall support simultaneous upstream transmission utilizing return path modules, and shall be capable of providing impulse Pay-Per-View service ("PPV") and Video On Demand ("VOD"). Grantee shall use best efforts to expand and improve its headend facility throughout the term of the Franchise to accommodate future needs of Subscribers and the County.

4.2 System Design

4.2.1 Grantee shall design the System based on the current industry standards to ensure compliance with applicable technical standards set forth by the FCC in Part 76 of the FCC's Rules, 47 C.F.R. 76.601, as amended from time to time, including performance tests, technical standards, signal leakage performance and cable television system monitoring. Within thirty (30) days of completing semi-annual Proof of Performance testing, as required by the FCC, the Grantee shall inform the County, in writing, of the completion of the test, and shall, upon request, provide a

copy of the test results to the County. In the event that the Grantee fails any part of such a test, Grantee shall explain to the County the reason for the failure, describe the actions planned to correct the failure, and notify the County when the Grantee is in compliance with the test parameters.

4.2.2 The System design shall include (1) antenna facilities, (2) a headend, (3) distribution facilities or outside plant, and (4) customer premises equipment (“CPE”).

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

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

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

Grantee will also utilize PON technology, which will allow for video delivery over an all-fiber passive outside plant infrastructure. With PON architecture, the distribution network will consist of a Local Convergence Point (LCP), housing passive optical splitters that will carry video signal from the headend feed to the Subscriber. The distribution network will terminate on Optical Network Units (ONU) that will provide interface between the outside plant and a Subscriber’s inside wiring. The ONU will provide optical-to-RF conversion for the delivery of signal to the subscriber’s in-home coaxial wiring.

D. Customer Premises Equipment. Subscribers shall initially receive analog programming without any specialized CPE by connecting a standard television set to a cable service outlet in the house. Special CPE may be required to gain access to digital programming (both standard and high definition) and advanced services. Grantee shall provide Subscribers

with set-top terminals that permit Grantee to control the Subscriber's access to different levels of programming upon the Subscriber's request. This will allow Subscribers to use additional services, such as (i) impulse pay-per-view (ordering of pay-per-view events directly from the terminal's remote control), (ii) personal video recording (select models), (iii) access to high-definition programming (select models), (iv) the interactive program guide, and (v) parental control. Grantee shall also provide Subscribers with standards-compliant CableCards that will allow access to protected digital content using subscribers' own CableCard compatible TV sets, DVRs, and other equipment.

Effective January, 1, 2012, Grantee shall begin the phase-out of SA 2200 converters. At that time, Grantee shall offer a newer model converter to all customers who request replacement of their SA 2200 converter. Grantee shall provide such a replacement converter within ten (10) days of receiving such a request, contingent upon the customer's availability to permit installation, and cooperation with Grantee regarding installation of the replacement converter.

E. Extension to Additional Service Areas. If Grantee submits a request for an Additional Service Area, any such application shall include maps and plans showing how Grantee proposes to link the Additional Service Area with the Initial Service Area. The applicant shall also include maps and plans showing the proposed architecture for serving the Additional Service Area. The County may request that the Grantee include in such plans conduit space or fiber optic lines for County use, to be installed at Grantee's expense. Maps and plans shall be provided in hard copy and in electronic format acceptable to the County.

F. Interconnection. The Grantee shall design its OVS 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 connections, microwave link, satellite, or other appropriate methods.

4.3 Plans and Specifications Required.

If Grantee intends to construct new facilities Grantee shall submit a construction plan at least ninety (90) days before the start of construction, unless the ninety (90) day time period is reasonably shortened by the County, with notice to Grantee. If Grantee intends to upgrade, rebuild, replace, or reconstruct existing facilities, Grantee shall submit a construction plan at least sixty (60) days before the start of such work, unless this time period is reasonably shortened by the County, with notice to Grantee. All such plans shall include construction timetables, equipment specifications, and design performance criteria in both hard and soft copies in a format acceptable to the County. The plans shall be considered confidential information unless so marked by Grantee in compliance with the Virginia Freedom of Information Act. The Grantee shall make reasonable efforts in its plans to avoid negative aesthetic impacts during and after construction. The Grantee shall, as part of each such plan, also submit to the County a map of the entire Franchise area which shall clearly delineate the following:

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

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

Such maps, using standard industry designations, shall at a minimum disclose (i) cable routes, (ii) locations and identifications of aerial and above and below ground appurtenances (such as risers, vaults, pedestals and power supplies), and (iii) physical locations and identifications of system components, including but not limited to cables and active and passive electronics. Grantee need not disclose in its public submission the electrical values of its taps, splitters or directional couplers; however, the County shall have the right to review relevant documents containing information on such matters at Grantee's office during normal business hours or at some other mutually agreeable place and time..

The County shall have the right to review and approve such plans, to assure that they are consistent with applicable statutes, ordinances, codes, regulations, determinations and rulings governing construction within the public streets of the County, including without limitation the Land Subdivision Development Ordinance, Facilities Standards Manual, Zoning Ordinance and traffic safety standards. Upon a finding that such plans and specifications are not in compliance with such statutes, ordinances, codes, regulations, determinations and rulings, the Grantee shall modify or revise such plans and specifications so as to achieve such compliance. The County shall also have the right to review such plans to avoid negative aesthetic impacts. Upon a minimum of seven (7) days notice by the County in response to plans submitted by Grantee pursuant to Section 4.3 hereof, Grantee shall modify its plans in order to reasonably relocate facilities within technical design constraints where such relocation will not result in major material costs. Grantee shall comply with the requirements of applicable state and local statutes, ordinances, codes and regulations governing the location of subsurface installations, including without limitation the provisions of "Miss Utility" with respect to notification to or from a regional notification center concerning proposed excavation work. If after construction begins, the County determines that the planned placement of specific equipment by Grantee may cause a negative aesthetic impact, then the Grantee shall make reasonable efforts to minimize such an impact within technical design constraints where such efforts will not result in major material costs.

4.4 Power Supplies

The Grantee shall maintain alternative power sources (battery back-up) so that in the event of a loss of commercial power all distribution amplifiers and fiber optic nodes may be maintained at full power for at least two (2) hours at seventy (70) degrees Fahrenheit beyond the time when normal power sources serving the System have ceased. Within two years following the approval of this franchise agreement by the County, the Grantee shall extend the capacity of the alternative power source described above from at least two (2) hours to at least four (4) hours. Standby power shall be available for all head end, tower and head end HVAC systems and equipment for a minimum of twenty four (24) hours, subject to receiving all necessary permits for such installation. The Grantee shall maintain at least one portable generator that can be dispatched to an area suffering from loss of signal in cases in which a commercial power outage lasts longer than the batteries can carry the load.

4.5 Line Extension Policy

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

4.6 Service Drops.

4.6.1 Grantee shall make Cable Service available to all residential dwelling units and businesses within the Service Area, and Grantee shall not discriminate between or among any Persons in the availability of service. In the areas in which Grantee shall provide service, Grantee shall be required to connect all residential dwelling units and business units that are within one hundred fifty (150) feet of trunk or feeder lines not otherwise already served by the System. Grantee shall be allowed to recover, from a potential Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber. Installation of such a connection shall include, without limitation, one (1) outlet and standard materials.

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

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

4.6.4 When the extension of the OVS into Additional Service Areas or post-wiring of multiple dwelling units is required, installation shall be completed within ninety (90) days following satisfaction of each of the conditions set out in this section 4.6, unless otherwise agreed to by Grantee and the Subscriber(s); provided, however, that if the construction is in a new residential community, the extension shall be completed within the time period agreed to by the Grantee and the builder or developer, not to exceed thirty (30) days after a certificate of occupancy is issued for any particular home. Grantee shall notify the County in writing whenever installations, measured on a quarterly basis, exceed the periods specified above.

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

With respect to requests for connection requiring an aerial or underground drop line in excess of one hundred and fifty (150) feet from the nearest trunk or feeder lines, the Grantee must

extend and make available Cable Service to residential Subscribers at a connection fee not to exceed (i) the Grantee's standard connection fee, if any, plus the actual installation costs incurred by the Grantee for the distance exceeding one hundred fifty (150) feet, or (ii) the Grantee's hourly service charge for the entire installation as the case may be. Actual installation costs include reasonable actual labor or hourly service charges (including wages, benefits and payroll taxes) and material costs incurred by Grantee for the additional work beyond one hundred fifty (150) feet, together with a reasonable charge for overhead. Grantee shall be allowed to recover actual costs incurred to connect any non-residential dwelling unit Subscriber.

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

In the event that a Subscriber independently provides for his or her own trenching and conduit (including any necessary boring, backfilling, replacing and/or replanting), the trenching and conduit must comply with the County's and Grantee's construction standards, and the installation charge shall be the same as for a standard installation, if the installation is otherwise to be a standard installation. If the installation is non-standard, Grantee may assess reasonable charges, as provided in Sections 4.6 and 4.7. In all such cases, however, the Subscriber shall agree, in writing and in a form acceptable to the Grantee and the County, to hold the Grantee and the County harmless for any injury, loss or damage caused by or related to the work so undertaken by the Subscriber, and shall agree that the Grantee shall not be responsible for any service problems caused as a result of the work performed by the Subscriber.

5. Customer Service.

5.1 Customer Service Standards.

5.1.1 Grantee agrees to comply with the customer service standards set forth at §§ 805.10(a)(1)-(4), (6)-(12), (14)-(17), and (20)-(21) of the Cable Ordinance.

5.1.2 In lieu of the credits required by § 805.10(a)(19) of the Cable Ordinance, Grantee shall automatically issue a credit to all affected Subscribers in the event of a loss of Cable Service, under normal operating conditions, affecting all channels received by a Subscriber and lasting four consecutive hours or longer. The amount of the credit shall equal, at a minimum, the amount of each affected Subscriber's current monthly bill multiplied by the ratio between the length of the loss of service and the number of hours in the month.

5.1.3 In cases in which a Subscriber reports one or more recurring service quality issues, Grantee may deem it necessary to deploy a signal monitoring device (referred to as a "probe") to temporarily monitor service quality at the Subscriber's premises. When Grantee determines that a probe might be useful in identifying a service quality issue, Grantee shall inform the Subscriber of this option and offer to install such a probe. Alternatively, in cases in which a Subscriber reports one or more recurring service quality issues, the Subscriber may request a probe, which will be deployed at the discretion of the Grantee to verify that the signal parameters at the customer's residence conform to the applicable technical standards. The County may also request deployment of a probe. In all cases, the deployment of any such probe will be contingent on the Subscriber's availability to permit installation, the Subscriber's

cooperation with Grantee regarding installation and operation of the probe, and reasonable limitations on the number of probes available for installation.

5.2 Programming Guide.

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

5.3 Changes in Service

Grantee agrees to give the County Administrator, or the Administrator's designee, thirty (30) days prior written notice of changes in the mix or quality of Grantee's services, including, without limitation, changes in Grantee's channel line-up. Grantee shall provide the County with a copy of all promotional material provided to Subscribers regarding changes in service, rates, or special programming rates thirty (30) days prior to the effective date of such promotion. Subject to applicable law, notice of changes to rates and programming will be considered confidential information until such time as the Grantee makes the information publicly available.

5.4 Billing Practices, Information and Procedures.

Grantee shall provide to all Subscribers at time of installation, or with a Subscriber's first billing statement, complete information pertaining to Grantee's billing and collection procedures, procedures for ordering changes in or termination of services, refund and credit policies. Grantee shall also provide Subscribers with such information upon request.

Billing Procedures shall be as follows:

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

- d. A specific date by which payment is required; and
- e. Specific information on complaint procedures that are available to Subscribers.
- f. A Subscriber's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.
- g. In cases in which Grantee bulk bills a community's homeowners' association for "Basic Service," Grantee shall provide the association with a bill for the Basic Service, and shall also provide each individual Subscriber with a separate bill for any extra services, such as pay-per-view usage, each pay television channel, and each remote control or other rental equipment.

5.5 Disconnection and Termination of Cable Services

5.5.1 Subscriber termination of Cable Service

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

5.5.2 Grantee Disconnection of Subscriber Cable Service

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

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

Once every two (2) years, the Grantee, at its expense, shall survey the Subscribers to evaluate the Grantee's performance and seek Subscriber programming preferences. The County Administrator/Designee shall be permitted to review the survey instrument prior to issuance and shall also be consulted as to the questions being asked and for any other suggestions that might assure the quality, fairness and statistical validity of the survey. Copies of complete survey results, including raw survey data that does not identify individual respondents, shall be given to the County Administrator/Designee within thirty (30) days of completion of each survey.

5.7 Notice to be Given to Subscribers Regarding Complaint Handling Procedures

The Grantee shall furnish a written notice to Subscribers describing the procedures for submitting Subscriber complaints to Grantee. The Grantee shall provide the notice at the time of initial subscription and annually thereafter. Grantee shall also state in the notice that if a Subscriber reaches an impasse with the Grantee regarding a complaint, the Subscriber may contact the County's Cable Administrator for assistance in resolving the complaint.

5.8 Information Requirements to Subscribers.

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

5.9 Continuity of Service Mandatory.

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

The Grantee shall ensure that all Subscribers receive continuous uninterrupted service. Any construction or reconstruction of the System shall not obviate Grantee's obligation to provide continuous service. Subject to Loudoun County Code Section 805.9(h), services may be interrupted during scheduled maintenance or extended maintenance windows during system construction/reconstruction. At the County's request, the Grantee shall operate its System for a temporary period (the "Transition Period"), following the revocation or termination of its Franchise or any transfer as necessary to maintain service to Subscribers, and shall cooperate with the County to assure an orderly transition from the Grantee to another grantee. The Transition Period shall be no longer than the reasonable period required to select another grantee or, if necessary, for a new grantee to build a replacement System. The Transition Period shall not be longer than thirty six (36) months, unless extended by the County for good cause. During the Transition Period, the Grantee shall continue to be obligated to comply with the terms and conditions of the OVS Ordinance, this Franchise Agreement, and all Applicable Law.

5.10 Parental Control.

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

5.11 Interference.

The OVS shall be operated in a manner such that it is in compliance with FCC standards and requirements with respect to interference. The OVS shall be operated in such a manner as to minimize interference with the reception of off-the-air signals by a Subscriber. The Grantee shall insure that signals carried by the OVS, or originating outside the OVS wires, cables, fibers, electronics and facilities, do not ingress or egress into or out of the OVS 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.

5.12 High Definition Service.

Grantee shall offer to Subscribers no fewer than 20 additional high definition (“HD”) channels by May 1, 2011, for a total of 71 HD channels. The Grantee shall offer a total of 40 additional HD channels by December 31, 2011, for a total of 91 HD channels. Thereafter, Grantee shall exercise its best efforts to maintain a number of HD channels on the System comparable to that offered by other OVS or cable franchise holders in the County.

5.13 Video on Demand.

Grantee anticipates the installation of additional “catcher” equipment in Summer 2011 to allow the introduction on the System of a greater quantity and variety of video on demand (VOD) programming through an additional VOD content aggregator agreement. In addition, the Grantee shall launch High Definition Video on Demand (HD VOD) no later than October 31, 2011. Thereafter, Grantee shall use best efforts to maintain a VOD service offering that is comparable to that of other OVS or franchise holders in the County.

6. Services to County Government and Educational Institutions.

6.1 Cable Service to Public Buildings and Other Locations

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

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

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

6.2 Access Channel Allocations

In order to ensure universal availability of public, educational and government programming, Grantee shall provide five (5) channels on the Basic Service tier. The PEG

Channels shall be designated as follows: one (1) dedicated public access channel, one (1) educational access channel dedicated to George Mason University or another institution of higher education of the County's choosing, one (1) dedicated County government access channel, one (1) government access channel dedicated to carrying programming related to towns within the County, and one (1) educational access channel dedicated to the Loudoun County Public Schools (collectively, the "PEG Channels"). In addition to the aforementioned channels, the County may request an additional PEG Channel, but no more than three (3) Channels over the Term of the Franchise, when the cumulative time on all the existing PEG Channels combined meets the following standards: at least eighty percent (80%) of the cumulative time of sixty (60) hours per week over a consecutive (16) week period has been programmed with original, non-duplicative programming. Each PEG Channel carried as part of an analog service shall consist of a band of frequencies which is capable of carrying one standard National Television Standards Committee ("NTSC") analog television signal. Each PEG Channel carried as part of the 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. Channel number assignments for the PEG Channels shall not be changed by the Grantee without said changes being first approved by the County Administrator and the entity or entities responsible for managing the channels (the "PEG Users"). In the event such changes are approved, Grantee shall bear all of the reasonable costs incurred by the County and the PEG Users resulting therefrom, including, but not limited to, technical costs, logo modifications, stationery, promotion and advertising. The PEG Channels shall be carried on the Basic Service tier in a format that is technically equivalent to and provides the same technical capabilities as the majority of the other channels carried on the Basic Service tier.

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

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

6.2.2 Grantee Shall Assure High Technical Quality of PEG Channels.

All PEG Channels shall include the vertical blanking intervals, all other video components, and all aural components, including subcarriers. However, neither the County nor any agency operating a PEG Channel shall make any commercial use whatsoever of its channel or channels or any of their component parts. Commercial use does not include sponsorship of a program by the County or a PEG User when that sponsorship funding is used to offset the cost of the program or providing PEG service. The identification of a sponsor providing sponsor support is limited to a program video credit at the end or beginning of the program. The technical quality of the transmission path for access channels from head end to Subscriber shall be at least equal to the same technical quality as the channels used by Grantee to transmit other commercial television broadcast stations and satellite channels. Grantee shall insure that there is no material degradation in the access channel signals that are received by the Grantee for distribution by Grantee over the OVS. Grantee shall inspect the picture and audio quality of the PEG channels at least twice daily, in the

same fashion as it does for commercial channels. Any video or audio quality concerns identified on PEG channels shall be reported to the County.

6.3 Service to Public School Buildings

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

6.4 Equipment and Funding

Beginning on the Effective Date, Grantee shall provide a grant of \$1.00 per Subscriber, per month, to support the PEG Channels and institutional network. The amount of the grant due for the period between the Effective Date and December 31, 2010, less a credit for any amounts paid in the interim, shall be paid by Grantee within thirty (30) days after the date of approval of this Franchise Agreement by the Board of Supervisors, and shall be accompanied by a brief summary of the Subscriber information upon which it is based. Thereafter, the grant, along with a brief summary of the Subscriber information upon which it is based, shall be delivered to the County within sixty (60) days after the beginning of each calendar year during the term of this agreement. In addition, the Grantee shall bear the cost of the interconnection required by Section 6.6 hereof. The parties agree that this amount meets the requirements of 47 C.F.R. § 76.1505. To the extent permitted by federal law, the Grantee shall be allowed to recover the costs arising from the provision of the foregoing PEG grant from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. The parties agree that none of such costs constitutes or is part of any Franchise fee, and all such costs fall within one or more of the exceptions listed in 47 U.S.C. § 542.

6.5 Emergency Alert

Grantee shall install emergency alert equipment capable of transmitting audio and video messages on all channels. Grantee and the County shall, in a timely manner, establish mutually acceptable procedures and protocols for the use of these facilities, including, but not necessarily limited to their use for the dissemination of local government emergency announcements. Grantee shall maintain the emergency alert system in proper working order and shall notify the County as soon as practical of any interruption in the operation of the system that exceeds twelve (12) hours. Grantee acknowledges the importance of a functioning emergency alert system and shall endeavor to have available all parts necessary to accomplish this responsibility.

6.6 PEG Interconnection

Grantee shall maintain the existing interconnection of its System with that of the incumbent cable operators, for the purpose of obtaining access to, and delivering on Grantee's systems, all of the signals transmitted over the PEG Channels. Grantee shall ensure that such interconnection remains in full working order and capable of transmitting the PEG Channel signals in accordance with industry standard specifications for sound and picture quality and signal degradation.

In the event that the incumbent cable operators notify the County that they intend to cease

to make any or all PEG Channel signals available via interconnect, the Grantee shall receive advance notice from the County of such change. Upon receipt of this notice, the Grantee will pursue alternative (e.g., direct) source feeds for affected PEG Channels and shall have one hundred and twenty (120) days from receipt of such notice to deliver PEG Channels from alternative source(s).

6.7 Digital Conversion

If the Grantee chooses to eliminate its analog programming service, the Grantee shall give each entity that manages a PEG Channel at least ninety (90) days notice before ceasing to provide programming in analog format. In addition, if the Grantee chooses to eliminate its analog programming service, and it becomes necessary for any entity that manages a PEG Channel to replace existing equipment or purchase new equipment in order to produce or transmit programming of the same quality or better than that which was being produced and transmitted prior to the elimination of analog programming, then the Grantee shall reimburse each such entity for the reasonable costs incurred for replacing all such equipment. Alternatively, the Grantee may choose to supply such equipment itself, provided that in the reasonable judgment of the entity, the equipment provided by the Grantee meets the entity's needs.

6.8 PEG Channels on Basic Tier

The PEG Channels shall be carried on the Basic Service tier in a format that is technically equivalent to and provides the same technical capabilities as the majority of the other Channels carried on the Basic Service tier.

7. Reporting Requirements

7.1 Quarterly Operational Status Reports

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

- (1) Number of repair service requests received in the previous quarter, identified monthly.
- (2) Breakdown by number and type of complaint received (ex. "complete outage" or "snowy picture" etc.), identified monthly.
- (3) Breakdown by cause of problem (ex. "Subscriber equipment" or "drop/converter" or "system" etc.), identified monthly.
- (4) Breakdown by time of response or resolution of each complaint (e.g. "within 24 hours" or "same day" etc.)
- (5) Number of Subscribers added to, or disconnected from, each tier and each premium channel.
- (6) Average hold time for Subscriber service telephone calls that were received in the previous quarter, identified by month.

- (7) Percentage of telephone calls that were answered within 30 seconds during the previous quarter, by month.
- (8) Percentage of calls received within the previous quarter, identified by month, which were abandoned before being answered by a live operator.
- (9) Percentage of time when all incoming trunk lines were in a busy condition during the previous quarter, identified by month. Grantee shall explain if there was a special promotion, or other circumstance, that Grantee believes may have contributed to the busy condition. Under normal operating conditions, a busy signal should not be received more than three (3%) of the time, as measured quarterly.

7.2. Financial and Operational Report.

An annual financial and operational report shall be filed with the County Administrator or the Administrator's designee no later than one hundred twenty (120) days after the end of a Grantee's fiscal year in both hard copy and in an electronic format (soft copy) acceptable to the County, and shall include the following information:

- (1) Dated, accurate, and legible map of the System, as installed, showing changes made during the year.
- (2) Financial data of the System showing complete revenue and expense data, balance sheets, sources and uses, and cash flow information; annual summary of Right-of-Way Fee information required in subsection 8.1 below.
- (3) Annual summary, by calendar quarters, of information required in Section 7.1 above.
- (4) Current copy of subscriber rates, rules and regulations and any other information required by the County or provided to Subscribers by the Grantee. If Grantee has been providing the County with copies of the Subscriber information on a timely basis, a listing of the documents and dates provided to the Subscriber is acceptable rather than providing the documents again.

7.3 Regulatory Filings.

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

8. Right-of-Way Fee.

8.1 Communications Tax.

Grantee 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 8.2 through 8.6 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 County.

8.2 Payment of Franchise Fee to County.

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, Grantee shall pay to the County 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 8.2 through 8.6 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 8.3 below.

8.3 Supporting Information.

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

8.4 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.

8.5 Bundled Services.

This Section 8.5 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 Grantee 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 Grantee 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.

8.6. Audit

8.6.1. The County, or such Person or Persons designated by the County, shall have the right to inspect and copy records and the right to audit and to recompute any amounts determined to be payable under this Franchise, without regard to by whom they are held. If an audit discloses an overpayment or underpayment of franchise fees, the County shall notify the Grantee of such overpayment or underpayment within ninety (90) days of the date the audit was completed. The County, in its sole discretion, shall determine the completion date for any audit conducted hereunder. Audit completion is not to be unreasonably delayed by either party.

8.6.2. The Grantee shall be responsible for providing to the County all records necessary to confirm the accurate payment of franchise fees. The Grantee shall maintain such records for five (5) years. The County's audit expenses shall be borne by the County unless the audit determines the payment to the County should be increased by more than five percent (5%) in the audited period, in which case the costs of the audit shall be paid by the Grantee to the County within thirty (30) days following written notice to the Grantee by the County of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid by Grantee to the County, such amount shall be subject to an interest charge of the Prime rate of the County's principal depository bank plus one percent (1%). If the audit determines that there has been an overpayment by the Grantee, the Grantee may credit any overpayment against its next quarterly payment; and, the Grantee shall waive the interest charge on any past due amounts that were a result of such overpayment by the Grantee. The auditor shall not be compensated on a success based formula, e.g., payment based on a percentage of any underpayment, if any.

8.6.3. The audit provisions set forth in this subsection shall similarly apply to the PEG and I-NET support payments required by Section 6.4 of this Franchise.

9. Performance Guarantees.

9.1 Insurance.

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

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

9.2 Letter of Credit.

The Grantee shall maintain with the County, in a form acceptable to the County Attorney, a Letter of Credit, as described in Section 805.14 of the Cable Ordinance, in the amount of twenty-five thousand dollars (\$25,000). Grantee shall structure the Letter of Credit in such a manner so that if the County at any time draws upon the Letter of Credit, the amount of available credit shall automatically increase to the extent necessary to replenish that portion of the available credit exhausted by the honoring of the draw down. The intent of this Subsection is to make available to the County at all times a Letter of Credit in the amount of \$25,000.

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

9.3. Defense and Indemnification.

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

9.4 Litigation Expenses.

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

10. Rates.

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

11. Liquidated Damages.

11.1 The Grantee understands and agrees that failure to comply with any time and performance requirements as stipulated in this Franchise Agreement, the OVS Ordinance, or applicable provisions of the Cable Ordinance, will result in damage to the County, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the parties hereby agree that the County may impose the liquidated damages specified below. In the case of the following classes of violations, no such assessment shall be made for liquidated damages without prior written notice to Grantee of the failure to comply allowing Grantee a 90-day period to cure following notice, and provided that the non-compliance is not the result of circumstances beyond Grantee's control.

- (1) Failure to submit plans indicating the expected dates of installation of the various parts of the System---one hundred dollars (\$100.00) per day or part thereof;
- (2) Failure to supply documents, reports or data requested by the County pursuant to the OVS Ordinance or this Franchise Agreement, regarding, for example, installation, construction, rebuild, customers, finances, financial reports, or rate review---fifty dollars (\$50.00) per day or part thereof ;
- (3) Failure to maintain any required bond---one hundred dollars (\$100.00) per day or part thereof;
- (4) Failure to indemnify the County under the Cable Ordinance or this Franchise Agreement---one thousand dollars (\$1,000.00) per day or part thereof ;
- (5) Failure to restore letters of credit as required in the Cable Ordinance---one thousand dollars (\$1,000) per day, or part thereof;

- (6) Failure to test, analyze and report on the performance of the system, as required herein; the Grantee shall pay one hundred dollars (\$100.00) per day for each day, or part thereof, that such noncompliance continues;
- (7) For breach of any customer service standard, the Grantee shall pay one hundred dollars (\$100.00) per day for each day or part thereof, that such noncompliance continues. A breach shall be interpreted to mean that the County has evidence of repetitive failure to comply with the service standards.

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

- (8) Failure to comply with the Cable Ordinance and this Franchise Agreement concerning subscriber complaints---one hundred dollars (\$100) per day, or part thereof, per complaint;
- (9) Failure to initiate repair and restoration of damaged private property in accordance with the Cable Ordinance and this Franchise Agreement---one hundred dollars (\$100.00) per day for each incident;
- (10) Failure to respond to a Subscriber request for repair or adjustment---fifty dollars (\$50) per day, or part thereof, per occurrence;
- (11) Failure to activate Subscriber service upon request---fifty dollars (\$50) per day or part thereof, per occurrence;
- (12) Failure to otherwise provide service to a Subscriber in accordance with this Franchise Agreement---seventy-five dollars (\$75) per day or part thereof, with no cap on the aggregate amount;
- (13) Failure to pay any fee pursuant to Section 809.06 of the OVS Ordinance, taxes, liens, or other fees---one hundred dollars (\$100.00) per day each day or part thereof, that each violation occurs or continues.
- (14) Failure of the Grantee to pay the County any amounts due and owing to the County by reason of the indemnity provision of Section 805.06 of the Cable Ordinance; failure of Grantee to pay to the County any liquidated damages due and owing to the County; or failure to make any payment required by this Agreement within the time fixed herein; ---five hundred dollars (\$500.00) per day for each day, or part thereof, such noncompliance occurs.
- (15) Failure to pay to the County any damages, claims, costs or expenses which the County has been compelled to pay or incur by the reason of any material act or default by the Grantee; ---five hundred (\$500.00) dollars per day for each day, or part thereof, that such noncompliance occurs.
- (16) Failure to comply with any material provisions of this Franchise Agreement or Cable Ordinance which the County Administrator or his designee reasonably determines can be remedied by an expenditure of an amount from the Letter of Credit or other instrument---five hundred (\$500.00) dollars per day for each day, or part thereof, that such noncompliance occurs.

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

12. Termination, Revocation, Cancellation.

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

13. Renewal

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

14. Performance Evaluation Sessions

14.1 The County and the Grantee may hold scheduled performance evaluation sessions once every two (2) years during the term of the Franchise. All such performance evaluation sessions shall be publicized in advance and be open to the public.

14.2 Should the County decide to hold a scheduled performance evaluation session, the County shall notify the Grantee in writing of the date of the session. At least ninety days prior to the date of the session, the Grantee shall submit to the County a written report, in reasonable detail, covering the significant events related to the Grantee's performance or nonperformance of the terms and conditions of its Franchise Agreement and the OVS Ordinance during the period from the submission of the last report. Such reports shall cover significant events including, but not limited to, those events related to the following topics:

- (1) a summary of compliance with, and any modification necessary with respect to, the financial commitments required under the Franchise Agreement;
- (2) a summary of compliance with requirements regarding System characteristics and technical performance and testing requirements;.
- (3) a summary of compliance with construction terms, standards, and schedules;
- (4) a summary description of the changes made or contemplated to the mix and quality of programming in the broad categories of video programming or other services on the system. Nothing in this paragraph, however, shall imply

the County or other regulatory authority has the power of censorship over the content of programming on the Grantee's channels;

- (5) a summary of the status of new communications technologies and the Grantee's efforts to implement such technologies;
- (6) a summary of compliance with, and any modification necessary with respect to the Grantee's privacy protection policies;
- (7) a summary of all service interruptions;
- (8) a summary of all significant and representative Subscriber and user complaints and the action taken by the Grantee in response thereto;
- (9) a summary of relevant developments in the legal and regulatory arenas; and
- (10) other events which, the County, or the Grantee may find significant in the evaluation of Grantee's performance.

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

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

14.5 All performance evaluation sessions shall be open to the public. The Grantee shall notify its Subscribers of all evaluation sessions at least (10) days in advance of each session using direct mail, billing insert, or email. The County may waive notice requirements in its discretion.

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

14.7 Within sixty (60) days after the conclusion of any evaluation session, including the clarification period described in Subsection 14.3, the County may prepare a report with respect to the adequacy of system performance and quality of service. If inadequacies are found which result in the violation of any of the material provisions of the OVS Ordinance or this Franchise Agreement, the Grantee shall have a minimum of thirty (30) days to respond and propose a plan for implementing any improvement or correction. Notwithstanding this section, the County may pursue any other remedy it may have under applicable law.

15. Reservation of County's Rights.

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

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

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

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

16. Miscellaneous

16.1 No Waiver.

16.1.1 No Waiver by the County.

The failure of the County on one or more occasions to exercise a right or to require compliance or performance under this Agreement, the OVS Ordinance, 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 the County, nor to excuse the Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

16.1.2 No Waiver by the Grantee.

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

16.2 Controlling Authorities

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

16.3 Further Amendments

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

16.4 Interpretation and Administration

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

16.5 Representations and Warranties.

16.5.1 Grantee hereby warrants, represents, acknowledges, and agrees that within thirty (30) days after the approval of this Franchise by the Board of Supervisors, the Grantee shall

submit to the County Attorney, with a copy to the County Administrator, an appropriate document evidencing its warranties that, as of the Effective Date:

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

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

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

16.5.4 The rights and remedies of the parties pursuant to this Agreement are cumulative, except as otherwise provided in this Agreement, and shall be in addition to and not in derogation of any other rights or remedies which the parties may have with respect to the subject matter of this Agreement.

16.6 Filing Requirements.

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

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

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

16.8 Requirements Pertaining to Parties Giving Notice.

All notices which the County may give to the Grantee or which the Grantee may give to County shall be given in writing and may be given by first class mail, postage prepaid. Notice sent to the Grantee shall be addressed to Grantee at 22461 Shaw Road, Dulles, Virginia 20166. Notice sent to the County shall be addressed to the County at its Government Center, One Harrison Street, S.E., P.O. Box 7000, Leesburg, VA 20177-7000, Attention: County Administrator, Fifth Floor. Such notices, when sent by mail, shall be deemed given one day after deposit in the U.S. Mail. The parties may use overnight delivery services, such as Federal Express, to deliver notices, in lieu of first class mail. Notices sent by electronic mail shall not be deemed valid.

16.9 Headings to Facilitate Reference Only

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

16.10 Force Majeure

The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure, provided that the Grantee furnishes the County with prior written notice of the noncompliance, when possible, and takes immediate and diligent steps to bring itself back into compliance and to comply as soon as reasonably possible, under the circumstances, with the Agreement without unduly endangering the health, safety, and integrity of the Grantee's employees or property, or the health, safety, and integrity of the public, the Public Rights-of-Way, public property, or private property. For purposes of this provision, "Force Majeure" means an event or events reasonably beyond the ability of the Grantee to control.

16.11 Time is of the Essence.

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

16.12 Acceptance and Effective Date of Franchise

This Franchise shall not become effective until all provisions required in this Section are completed, provided that when all such requirements had been met, the Effective Date defined in Section 3.1 shall control. All such provisions are hereby declared to be conditions precedent to the effectiveness of the Franchise granted hereunder. In the event any of such provisions are not completed in the time and manner required, this Franchise shall be null and void. The Grantee shall file with the County Administrator, its written acceptance of this Franchise; the warrant document required in Section 16.5 above; together with the Letter of Credit, construction bond and insurance policies required. Written acceptance of the terms of this Franchise Agreement signed by an officer of the Grantee with sufficient power to bind the Grantee to this Franchise Agreement shall be acknowledged by the Grantee before a Notary Public prior to approval by the County. The form and content of the Grantee's acceptance statement shall be satisfactory to and approved by the County Attorney.

16.13 Severability

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

16.14 Counterparts

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

16.15 Governing Law.

This Agreement is governed by the laws of the Commonwealth of Virginia, without reference to conflict of law principles. All actions or suits brought hereunder or arising out of this Agreement shall be brought in the General District or Circuit Court of Loudoun County, or in the United States District Court for the Eastern District of Virginia, Alexandria Division, and in no other courts.

PASSED AND APPROVED THIS _____ day of _____, 2011.

LOUDOUN COUNTY, VIRGINIA

By _____, Chairman, Board of Supervisors

ATTEST:

_____, County Administrator

APPROVED AS TO FORM:

_____, County Attorney

ACCEPTED BY:

OPENBAND MULTIMEDIA, L.L.C.

_____, Chief Executive Officer

ATTEST:

_____, Secretary

EXHIBIT A

MAP OF SERVICE AREA