

OPEN VIDEO SYSTEM FRANCHISE AGREEMENT

between

The District of Columbia

and

Starpower Communications, LLC

June 28, 2005

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## SCHEDULE OF APPENDICES

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- B. Initial Cable Services and Rate Report
- C. Public, Educational and Governmental Access
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- E. Subscriber Services to Governmental Facilities
- F. Ownership Interests and Approved Mortgages, Pledges and Leases
- G. Required Information for Transfer Petitions
- H. Map of the District's Fire Zone

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

W I T N E S S E T H:

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

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

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

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

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

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

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WHEREAS, The Company filed an application for a franchise in the District of Columbia with the Office of Cable Television and Telecommunications on or about January 18, 2000;

WHEREAS, The District and the Company agreed to extend the term of the Interim OVS Agreement from June 10, 2000, until December 10, 2000, in accordance with the terms of the Open Video Systems Extension Agreement executed by the parties on June 10, 2000 (“Extension Agreement”);

WHEREAS, The Mayor further extended the term of the Extension Agreement by Executive Order for an additional six (6) months on a month-to-month basis after December 10, 2000, in accordance with the terms of the Extension Agreement;

WHEREAS, The District and the Company agreed to further extend the term of the Interim OVS Agreement from June 10, 2001, to June 10, 2002, in accordance with the terms of a Second Open Video Systems Extension Agreement (“Second Extension Agreement”); and

WHEREAS, The District and the Company agreed to further extend the term of the Interim OVS Agreement by six (6) additional months to December 10, 2002, by twelve (12) additional months to December 10, 2003, and then by six (6) additional months to June 10, 2004 to preserve the status quo with respect to the existing Interim OVS Agreement in order to permit the parties to complete the negotiation of a long-term agreement and any action by the Council of the District of Columbia (“Council”) to review and approve any proposed long-term agreement; and

WHEREAS, Pursuant to the D.C. Cable Act, a final franchise to operate an Open Video System shall be by act of the Council; and

WHEREAS, In response to a franchise application submitted by the Company, the District, pursuant to the terms of the Cable Act, reviewed the performance of the Company under its Interim OVS Agreement, and identified the future cable-related community needs and interests; and

WHEREAS, The Company offered to provide certain public, educational, and governmental facilities, services, and support and to perform certain additional undertakings, and the Company and the District subsequently engaged in arm’s-length negotiations regarding the terms and conditions of a proposed franchise; and

WHEREAS, The Council held a public hearing on the proposed franchise agreement memorializing the terms and conditions of the proposed franchise; and

WHEREAS, Said hearing was a full public proceeding affording due process at which the District reviewed the Company’s federal certification to operate an Open Video System, and its financial, legal and technical ability to carry out its obligations pursuant to this Agreement (as defined in SECTION 1 hereof); and

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

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

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

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

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

## SECTION 1 DEFINED TERMS

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

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

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being provided over the System to Subscribers or the District for seven (7) or more consecutive days, except if due to an event beyond the control of the Company as set forth in Section 14.4 hereof.

1.2 “Actual Cost” means the incremental cost to the Company or an Affiliated Person of (i) the equipment and (ii) the materials and labor of any construction, maintenance or other services provided by the Company or such Affiliated Person. Actual Cost shall not include any markup on such equipment, materials or labor.

1.3 “Affiliated Person” means each Person who falls into one (1) or more of the following categories: (i) each Person having, directly or indirectly, a Controlling Interest in the Company; (ii) each Person in which the Company has, directly or indirectly, a Controlling Interest; (iii) each officer, director, general partner, limited partner holding an interest of twenty percent (20%) or more, joint venturer or joint venture partner of the Company; and (iv) each, Person, directly or indirectly, controlling, controlled by or under common Control with the Company; provided that “Affiliated Person” shall in no event mean the District, any PEG Entity, any limited partner holding an interest of less than twenty percent (20%) of the Company or any creditor of the Company solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person by reason of falling within clause (iii) of this Section 1.3 or by reason of owning a Controlling Interest in; being owned by; or being under common ownership, common management or common Control with the Company.

1.4 “Agreement” means this Open Video System Franchise Agreement, together with the Appendix(ces) attached hereto and all amendments or modifications hereof.

1.5 “Analog Channel” means six (6) MHz of bandwidth provided in analog form, which shall include both the visual and aural carriers and corresponding sidebands which constitute the picture and sound of a National Television System Committee (NTSC) television program.

1.6 “Basic Service” means any Service tier which includes the retransmission of local television broadcast Signals.

1.7 “Business Day” means any day, which is not a Holiday.

1.8 “Cable Act” means the Cable Communications Policy Act of 1984, approved October 30, 1984 (98 Stat. 2779; 47 U.S.C. §§ 521-573) and any amendments thereto, including the Telecommunications Act of 1996 (110 Stat. 56, 47 U.S.C. §§ 151 et seq.).

1.9 “Cable Communications System” means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television Signals of one or

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more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, approved June 19, 1934 (48 Stat. 1070; 47 U.S.C. § 201 et seq.), as amended, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) of the Cable Act (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an Open Video System that complies with Section 653 of the Cable Act (47 U.S.C. § 573) (or any successor thereto) and the rules promulgated thereunder; or (E) any facilities of any electric utility used solely for operating its electric utility systems. The foregoing definition of “Cable Communications System” shall not be deemed to circumscribe the valid authority of any governmental body, including the District, to regulate the activities of any other communications system or provider of communications services.

1.10 “Cable Service” means, subject to Section 3.4 hereof: (A) the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

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

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

1.13 “Company” means Starpower Communications, LLC.

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

Franchise, in which case such other Person also shall have Control and a Controlling Interest.

1.15 “Attorney General ” means the Attorney General for the District of Columbia, the Attorney General ’s designee or any successor thereto.

1.16 “Council” means the Council of the District of Columbia, its designee or any successor to the legislative powers of the present Council.

1.17 “Current Technology,” as applicable, means that level of technical or service performance in terms of quality, reliability, capacity and capability (including, but not limited to, plant or other equipment; public, educational or governmental access and other production equipment or facilities; construction techniques; facilities, equipment, systems and operations; and performance standards) which has been developed and demonstrated in the cable industry or any other comparable industry that provides services to the public under similar conditions to be workable and Economically and Technically Feasible and Viable, as such level may develop from time to time throughout the term of the Franchise.

1.18 “D.C. Cable Act” means the D.C. Cable Television Communications Act of 1981, effective August 21, 1982 (D.C. Law 4-142; D.C. Official Code § 34-1201, et seq.), as amended by the Cable Television Reform Amendment Act of 2002, effective October 9, 2002 (D.C. Law 14-193; D.C. Official Code § 34-1251 et seq. (supp. 2003)), as amended (or any successor statute).

1.19 “D.C. Treasurer” means the Treasurer of the District, the Treasurer’s designee or any successor thereto.

1.20 “DDOT” means the Department of Transportation of the District, its designee or any successor thereto.

1.21 “Dial Location” means the position or assignment on a television receiver, tuner, converter, or other device which is selected to receive a specific Channel or Service.

1.22 “Digital Service” means a Service which is transmitted in a digital format.

1.23 “Digital Television Channel” means a Channel which is transmitted in a digital format; which utilizes digital compression and encryption technologies; and which occupies sufficient bandwidth to enable the transmission of a high-quality television program at the System’s standard compression level(s).

1.24 “District” means the government of the District of Columbia or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission or department of, or any other entity of or acting on behalf of, the District of Columbia government or any officer, official, employee or agent thereof, any designee of any of the foregoing, or any successor thereto.

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

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

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

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

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

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

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

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

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

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

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transactions conducted with Persons who are not Affiliated Persons; (ii) revenue received by the Company which represents or can be attributed to a Subscriber fee or a payment for the use of the System for the sale of merchandise through any Service distributed over the System; (iii) franchise fees received from Subscribers; (iv) to the extent provided in Section 3.4 of this Agreement, revenue generated from the provision of cable modem service; (v) any revenue generated by the Company or by any Affiliated Person through any means which has the effect of avoiding the payment of compensation that would otherwise be paid to the District for the Franchise granted herein; and (vi) any revenue from Subscriber equipment sold or leased by the Company or an Affiliated Person. Gross Revenue shall also include all advertising revenue which is derived, directly or indirectly, by the Company, any Affiliated Person or any other Person from or in connection with the sale of advertising on the System. Advertising revenues from an Affiliated Person shall be grossed up as if the Company had received the advertising revenue directly, if the advertising revenue received from the Affiliated Person is only net advertising revenue. Notwithstanding the preceding sentence, standard and reasonable commissions retained by a regional interconnect that is an Affiliated Person may be excluded from Gross Revenue.

Gross Revenue shall not include: (i) any compensation awarded to the Company based on the District's condemnation of property of the Company; (ii) the revenue of any Person, including, without limitation, a supplier of programming to the Company, to the extent that said revenue is also included in Gross Revenue of the Company; (iii) the revenue of the Company or any other Person which is generated directly from the sale of any merchandise through any Service distributed over the System (other than that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the System for the sale of such merchandise (such as, for example, the portion of such payment attributable to a commission for the Company or an Affiliated Person), which portion shall be included in Gross Revenue); (iv) taxes imposed by law on Subscribers which the Company is obligated to collect (it being acknowledged that franchise fees under this Agreement are not considered taxes); (v) amounts collected by the Company from Subscribers on behalf of PEG Channel programmers, other than Affiliated Persons, or UVPPs, to the extent that all of the amounts collected (in excess of the amounts deducted pursuant to Section 8.1.6 hereof and paid to the District) are passed on by the Company to said programmers; (vi) the revenue of any Affiliated Person which represents standard and reasonable amounts paid by the Company to said Affiliated Person for ordinary and necessary business expenses of the Company, including, without limitation, professional service fees and insurance or bond premiums; (vii) advertising commissions deducted by advertising agencies (other than an agency which is an Affiliated Person) before advertising revenues are paid over to the Company; (viii) to the extent consistent with generally accepted accounting principles, consistently applied, actual bad debt write-offs; and (ix) investment income.

1.35 "Holiday" means Saturday, Sunday, officially recognized Federal or District legal holidays and any other day on which the District's offices are closed and not reopened before 5:30 p.m.

1.36 “Inspector General” means the Inspector General of the District, the Inspector General’s designee or any successor thereto.

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

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

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

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

1.41 “Mayor” means the chief executive officer of the District, the Mayor’s designee or any successor to the executive powers of the present Mayor.

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

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

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

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

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

District, and which the FCC, in accordance with Section 653 of the Cable Act (47 U.S.C. § 573) (or any successor thereto), has certified as compliant with Title VI of the Cable Act and its rules.

1.47 “PEG Channel” mean the Channels supplied to the District and other PEG Entities pursuant to Sections 4.1.1 and 4.1.12(i) hereof.

1.48 “PEG Direct Connections” mean the direct connection links provided to PEG Entities by the Company pursuant to Section 4.1.4 of this Agreement.

1.49 “PEG Direct Connection Capacity” means the capacity provided over the PEG Direct Connections.

1.50 “PEG Entity” means the District, the Public Access Corporation, UDC, the Public Schools and such other entities as OCTT may designate from time to time pursuant to a PEG Operating Agreement.

1.51 “PEG Operating Agreement” means the agreement or agreements to be entered into among the PEG Entities (other than the Public Access Corporation) and OCTT that will govern the relationship among the PEG Entities (other than the Public Access Corporation) and the use and allocation of the PEG Channels and support provided in Sections 4.1 and 4.2 hereof.

1.52 “Person” shall mean any natural person or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the District.

1.53 “Physically Challenged” shall mean any individual with a physical disability or handicap.

1.54 “Public Access Corporation” means the Public Access Corporation established and operated pursuant to Title II, Section 302 of the D.C. Cable Act (D.C. Official Code § 34-1253.02) or any successor thereto.

1.55 “Public Channel” means a PEG Channel on the Subscriber Network which the Company shall make available to the Public Access Corporation, at no charge, for use as provided in Section 4.1.7 hereof.

1.56 “Public Rights-of-Way” or “PROW” means the surface of, and the space above and below, any and all streets, avenues, highways, boulevards, concourses, lanes, paths, alleys, sidewalks, drives, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, public grounds and public places or waters within and belonging to the District and any other property within the District of Columbia to the extent to which there exist public utility easements or public utility rights-of-way, and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the District which may be utilized for the purpose of installing and maintaining

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

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

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

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

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

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

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

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

1.64 “Signal” means any transmission of radio frequency energy or of optical information.

1.65 “Subscriber” means any Person lawfully receiving any Service provided by the Company by means of or in connection with the System, whether or not a fee is paid for such Service.

1.66 “Subscriber Network” means that portion of the System over which Services are provided primarily to Residential Subscribers.

1.67 “System” means, subject to Section 12.6 hereof, the Open Video System which is to be constructed, operated and maintained by the Company pursuant to this Agreement, to the extent present in the PROW, but shall not include any facilities or equipment in connection with the Open Video System that are under the exclusive ownership or control of a UVPP. In addition, the System shall include any facilities provided by the Company to the District or for the use of the District.

1.68 “Two-Way” means that the headend, cables, hubs, distribution plant, amplifiers and other technical components of the System have the requisite equipment in place to pass video, audio, voice and/or data Signals in both directions simultaneously.

1.69 “UDC” means the University of the District of Columbia, its designee and any successor thereto.

1.70 “Unaffiliated Video Programming Provider” or “UVPP” means a provider of Cable Service over the Company’s Open Video System that is not affiliated with the Company.

1.71 “Upstream” means the direction of Signals on the System from any location and going toward a headend, hub or other distribution facility of the System.

## SECTION 2 GRANT OF AUTHORITY

2.1 Effective Date. The Franchise (“Franchise”) granted to the Company pursuant to this Agreement, which as provided in Section 2.4.1 hereof is a nonexclusive franchise, shall commence upon completion of the Closing hereof (hereinafter referred to as the “Effective Date”) described in the following Section 2.2 hereof, provided that the Company meets each of the conditions precedent set forth in such Section.

### 2.2 Closing. Term and Termination of Agreement

2.2.1 Closing. This Agreement shall be executed and the obligations herein shall commence on the closing of this Agreement (herein referred to as the “Closing”). The Closing shall be held on a date and at a location to be specified by the Mayor, but in no event later than thirty (30) days after the end of the Congressional review period described in Section 2.2.1(i) below. At the Closing, the Mayor, the

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

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

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

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

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

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

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

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

(viii) Local Employment Plan. The Company shall have entered into a First Source Agreement with the Department of Employment Services, pursuant to Section 6.4 hereof, and such First Source Agreement shall have been transmitted to the Council in connection with its review of this Agreement;

(ix) Memorandum of Understanding/Local Businesses. The Company shall have entered into a Memorandum of Understanding with the District regarding the utilization of local, small and disadvantaged businesses, pursuant to Section 6.6 hereof, and such Memorandum of Understanding shall have been transmitted to the Council in connection with its review of this Agreement; and

(x) Clean Hands Certification. The Company shall have provided the certification required by D.C. Official Code Section 47-2863(b).

2.2.2 Submission of Closing Documents. The Company shall submit to OCTT at least five (5) copies of each document required to be submitted or approved prior to the Closing pursuant to Section 2.2 hereof. The documents shall be submitted to OCTT in labeled volumes. Any document requiring review or approval by a District agency other than or in addition to OCTT shall be forwarded by OCTT to the appropriate District agency or to the Council for such review and/or approval. If any document required to be submitted prior to the Closing pursuant to Section 2.2 hereof is modified after submission to OCTT and prior to the Closing, the Company shall submit to OCTT prior to the Closing an additional five (5) copies of such document as modified.

2.2.3 Term of Agreement. This Agreement shall remain in effect from the Effective Date of this Agreement to the termination of this Agreement, as provided in Section 2.2.4 hereof, which period of time is herein referred to as “the term of this Agreement.”

2.2.4 Termination. The termination of this Agreement shall occur upon the earliest to occur of: (i) the revocation of the Franchise granted pursuant to this Agreement as provided in Section 12.4 hereof; (ii) an Abandonment of the System; or (iii) subject to Section 2.3.6 hereof, the expiration of the term of the Franchise as set forth in Section 2.3.3 hereof, or otherwise.

2.2.5 Termination Not a Waiver. The termination of this Agreement (in any way specified in Section 2.2.4 hereof) shall not, for any reason, operate as a waiver or release of any obligation or Liability of the Company or any other Person, as applicable, incurred or accrued prior to the date of such termination. This Section 2.2.5 and Sections 8.1.7, 9.7.1, 9.7.2, 12.2, 12.5, 12.6, 14.14, 14.15, 14.17 and 14.20 shall survive the termination of this Agreement. If the Company continues to operate all or any part of the System after the expiration of the term of the Franchise, without renewal, then (i) this Section 2.2.5 shall not be construed to waive or release any obligation or Liability of the Company arising out of such continued operations and (ii) the Company shall comply with the terms and conditions of this Agreement, including but not limited to all compensation and other payment provisions of this Agreement. Any such continued operation shall in no way be construed as a renewal or other extension of this

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

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

### 2.3.1 Nature of Franchise.

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

### 2.3.2 Noncable Services.

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

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

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

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

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

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and the District has neither denied nor granted a renewal as of the expiration of the term of the Franchise, the term of the Franchise and the term of the Agreement shall be extended until (i) the District denies a renewal and during the pendency of any diligently prosecuted appeal(s) of such denial or (ii) the District grants a renewal and the renewal term commences, provided an extension under this section 2.3.6 shall not exceed six (6) months.

#### 2.4 Conditions and Limitations on Franchise

2.4.1 Not Exclusive. Nothing in this Agreement shall affect the right of the District to grant to itself or any Person a franchise, consent or right to occupy and use the PROW, or any part thereof, for the construction, operation or maintenance of all or any part of a Cable Communications System or an Open Video System or similar systems within the Franchise Area or elsewhere in the District or for any other purpose.

2.4.2 Public Works and Improvements. Nothing in this Agreement shall abrogate the right of the District (or any board, authority, commission, public benefit corporation or other public or quasi-public entity) to perform any public works or public improvements of any description, including, without limitation, all work authorized by the Washington Metropolitan Area Transit Authority (WMATA). In the event that the System interferes with the construction, operation, maintenance or repair of such public works or public improvements, the Company shall, at its own cost and expense, protect or promptly alter or relocate the System, or any part thereof, as directed by the District. In the event that the Company refuses or neglects to so protect, alter or relocate all or part of the System, the District shall, in its sole discretion, have the right to break through, remove, alter or relocate, without notice to the Company, all or any part of the System without any Liability to the Company, and the Company shall pay to the District the costs incurred in connection with such breaking through, removal, alteration or relocation. Nothing in this Section 2.4.2 shall be construed to limit the District's ability to act in emergencies pursuant to Section 34(g) of the D.C. Cable Act (D.C. Official Code § 34-1233(g)). In the event that the District or any public or quasi-public entity reimburses costs for other occupants of the PROW which this Section 2.4.2 imposes on the Company, it will not be a breach of this Agreement for the Company to request that the District or such public or quasi-public entity, as the case may be, bear some or all of the Company's costs.

2.4.3 No Waiver. Nothing in this Agreement shall be construed as a waiver of any laws, regulations or rules of the District or of the District's right to require the Company or any Person using the System to secure the appropriate permits or authorizations for such use, provided that the fees and charges imposed upon the Company for any such permit or authorization shall be the standard fees or charges generally applicable to all Persons for such permits or authorizations, and any such standard fee or charge: (i) shall not, for purposes of Section 653(c)(2)(B) of the Cable Act (47 U.S.C. § 573(c)(2)(B)), be considered a fee in lieu of the "franchise fee" permitted under Section 622(g)(1) of the Cable Act (47 U.S.C. § 542(g)(1)); (ii) shall fall within the exception to such term pursuant to Section 622(g)(2)(A) of the Cable Act (47

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

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

### SECTION 3 VOLUNTARY SERVICE OBLIGATIONS

#### 3.1 Provision of Service.

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

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

3.1.3 Future Construction. The Company agrees, that at time of Closing, it has constructed the System throughout 95% of the Franchise Area and is capable of providing Services throughout the Franchise Area except for that area of the District know as the “fire zone”. The “fire zone” shall constitute that specific area of the Franchise set forth in Appendix H. The Company further agrees that it will construct the System throughout 100% of the Franchise Area with the exception of the Fire Zone within five (5) years and shall complete construction of 50% of the unserved homes outside the fire zone within three (3) years, provided OCTT may extend either time period if it is determined after a public hearing that it is not financially feasible for Starpower to complete the required construction within the time period. Every three (3) months the Company shall submit to the OCTT quarterly written reports detailing the Company’s construction progress. Such reports shall explain what work has been done and how such work satisfied the requirements of this Agreement. The first such report shall be submitted within ninety (90) days after the Effective Date of this Agreement. The last such report shall be due with the certification to the District that such construction has been completed. Such reports shall explain what work has been done and shall include as-build maps in both paper and electronic forms. The Company further agrees that, upon request of the District, it will discuss with the District its financial situation and the feasibility of performing construction in the “fire zone”.

3.1.4 Non-Discrimination. In offering Services on the Subscriber Network, the Company shall not unlawfully discriminate in the availability of Services or in the rates, terms and conditions thereof. All fees, charges, deposits and other terms and conditions must be applied fairly and uniformly to all Subscribers in the Franchise Area. It shall be the right of all Subscribers to receive continuously all available Services insofar as their financial and other obligations to the Company are honored, provided, however, that the Company may refuse or condition service to any Person for good cause (based upon such Person’s actions, behavior or conduct). The obligations set forth in the preceding two (2) sentences shall include, without limitation, the obligation to ensure that (i) access to any Service is not denied to any group of potential Subscribers because of the income of the Residents of the area in which such group resides, geographic location or any other unlawfully discriminatory criteria; and (ii) hearing-impaired individuals have access to Services. The Company may enter into or maintain any “bulk rate” agreements permitted under applicable law. Nothing in this paragraph shall be construed to prevent the Company from charging a Non-Residential Subscriber the Company’s Actual Cost to connect such Non-Residential Subscriber to the Subscriber Network, provided that, in the event multiple Subscribers share the same connection to the Subscriber Network at the time of installation, the Company shall allocate its Actual Cost evenly among such Subscribers. Nothing contained in this paragraph shall prohibit the Company from offering, to the extent permitted by applicable law: (i) discounts to senior citizens or economically disadvantaged groups; (ii) different charges for Residential Subscribers than for Non-Residential Subscribers; (iii) sales promotions and other discounts or reduced charges for a reasonable period of time, which are offered to all Residential Subscribers or all Non-Residential Subscribers, as the case may be, for the same length of time although the start date of such promotions, discounts or reduced charges may be staggered such that the offer may begin for the last Subscriber to whom they are offered

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

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

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

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

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

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

3.2 Rate Publication. The initial Cable Services and Rate Report, which shall be attached as Appendix B to this Agreement, shall be delivered at the Closing and shall represent an accurate statement as of the Effective Date of the Services offered and the rates therefor. The Company shall provide OCTT with notice of changes to its rates or services no later than the time at which notice of such changes is provided to the Company's customers.

3.3 Access to Competitive Internet Service Providers. The Company shall comply with applicable law pertaining to competitive access to its System for the provision of Internet access Services.

3.4 Classification of Cable Modem Service. The parties acknowledge that, on March 15, 2002, the FCC released a declaratory ruling that cable modem service is not a cable service within the meaning of Section 602(6) of the Cable Act (47 U.S.C. § 522(6)), but is an information service within the meaning of Section 3(20) of the Communications Act of 1934, approved February 8, 1996 (110 Stat. 56, 59; 47 U.S.C. § 153(20)). On the same date, the FCC also issued a notice of proposed rulemaking seeking comment on the regulatory implications of the declaratory ruling. The parties further acknowledge that the declaratory ruling is being appealed in the federal courts and will be subject to additional proceedings. In addition, the FCC will issue rules pursuant to the notice of proposed rulemaking which may be subject to yet further proceedings.

Notwithstanding Section 9.2 hereof, the District and the Company each reserves to the fullest extent its respective rights arising from: the FCC March 15, 2002 declaratory ruling, any subsequent proceedings (including judicial, legislative and administrative proceedings) relating to such ruling, the notice of proposed rulemaking and any subsequent proceedings (including any rules and requirements and any judicial, legislative and administrative proceedings) relating to such rulemaking.

SECTION 4  
PUBLIC SERVICES

4.1 PEG Channels

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

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

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

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

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Channel shall be deemed not to change if the Dial Location as displayed on all customer premises equipment does not change.

(i) In the event the Company elects to change the frequency allocation, Channel assignment or Dial Location of any PEG Channel, the Company shall (a) provide each affected PEG Entity with notice at least ninety (90) days prior to such change and (b) in cooperation with, but without expense to, each affected PEG Entity, develop and implement the details of the Marketing Plan outlined in Section 4.1.2(ii) hereof, which shall be subject to OCTT review and comment, to inform Subscribers of such change.

(ii) Such Marketing Plan shall provide for the following components:

(a) The Company shall provide, at the Company's expense, at least thirty (30) days notice of such change, in monthly bills or another mailing sent to Subscribers (such mailing may cover all affected PEG Entities, provided that each is prominently featured).

(b) The Company, without charge, shall produce a five (5) minute program featuring either an officer, senior manager or authorized spokesperson of the Company to explain the changes. The Company, without charge, shall transmit such program on one (1) or more Local Ad Insertion Channels (e.g., CNN Headline News) and shall make such program available to all PEG Entities to transmit on the PEG Channels at such times as the PEG Entities may desire.

(c) The Company, without charge, shall produce a five (5) minute interview of one (1) or more spokespersons for each affected PEG Entity. The Company, without charge, shall make each such interview available to all PEG Entities to transmit on the PEG Channels at such times as the PEG Entities may desire.

(d) At the Company's expense (which expense shall include the cost of production of one (1) notice), the Company shall insert on one (1) or more Local Ad Insertion Channels, selected by the Company after consideration of the affected PEG Entities' requests and subject to availability, notices provided by the affected PEG Entities of up to thirty (30) seconds in duration. Such notices shall be run a total of ten (10) times per day (five (5) times between 6:00 a.m. and 6:59 p.m. and five (5) times between 7:00 p.m. and 11:00 p.m.) during the thirty (30) days preceding, thirty (30) days following and the day of the change (i.e., the Company shall provide the affected PEG Entities with a total of 610 spots per change).

(e) Without charge to the District, the Company shall insert an on-hold message concerning such change on the Company's telephone system; such message shall prominently feature all affected PEG Entities.

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(f) Without charge to the District, the Company shall feature prominently all affected PEG Entities in a quarter-page (1/4-page) advertisement. The Company shall run such advertisement in the Washington Post at least once two (2) weeks preceding and at least once two (2) weeks after such change and ten (10) times over the same time period in other print media published in the District of Columbia (of such ten (10) times, the advertisement shall be run in the Washington Afro-American two (2) times).

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

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

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

(iv) Notwithstanding Section 4.1.2(i) hereof, if the change in frequency allocation, Channel assignment or Dial Location does not result from the election of the Company, the affected PEG Entities, taken as a whole, and the Company shall each pay one half (1/2) of the costs incurred, pursuant to the Marketing Plan,

by the Company for contracted goods and services or by the PEG Entities. In such a circumstance, each affected PEG Entity may waive its right to take advantage of any of the minimum components of such Marketing Plan in exchange for not having to contribute towards the cost of such component.

4.1.3 Allocation of PEG Channels.

The PEG Channels shall be allocated as follows:

(i) Two (2) Downstream Analog Channels allocated to the District pursuant to Section 4.1.1 shall be Public Channels and shall be under the jurisdiction of the Public Access Corporation;

(ii) Two (2) Downstream Analog Channels allocated to the District pursuant to Section 4.1.1 shall be Educational Channels; the Public Schools and UDC shall each have jurisdiction over one (1) Educational Channel;

(iii) Two (2) Downstream Analog Channels allocated to the District pursuant to Section 4.1.1 shall be Governmental Channels; the Mayor and Council shall each have jurisdiction over one (1) Government Channel; and

(iv) All remaining PEG Channels allocated to the District pursuant to Section 4.1.1 shall be further allocated to the PEG Entities by OCTT, and such entities shall execute PEG Operating Agreements (except for channels allocated to the Mayor, the Council, or the Public Access Corporation, for which no PEG Operating Agreement shall be required) described in Appendix C to this Agreement and such rules or regulations as may be promulgated by OCTT.

4.1.4 Interconnection; Headend and Hub Equipment. To enable interconnection of the PEG Entities' production and distribution facilities with the Subscriber Network and other locations, the Company shall provide and maintain, at its own expense, operational direct connection links from certain locations to the headend or other locations, as specified in Appendix C to this Agreement. Such direct connection links shall consist of (i) sufficient fibers from the interconnecting hubs or the other endpoints into the buildings at such specified locations, and vice versa, to permit the addition of other PEG Channels, as provided elsewhere in this SECTION 4, to be produced or distributed from such locations as well as (ii) the allocation of sufficient fiber along the Company's ring as necessary to transport the traffic between the endpoints of each link. Not later than sixty (60) days after receiving from OCTT an approved PEG Operating Agreement or other notice for an additional Digital Television Channel pursuant to Section 4.1.1 or 4.1.12 of this Agreement, the Company shall provide an operational direct connection link between such Service's point of production or distribution, as specified by the PEG Entity programming such Service, and the headend or such other facility as needed to distribute such Service over the Subscriber Network; the PEG Entity programming such Service shall pay the Company the Actual Cost of the provision and installation of such direct connection link, but the Company shall provide maintenance for such direct connection link at its own expense. In the event that the

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

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

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

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

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not degrade the quality of or interfere with the Company's normal use, provided that the Company shall supply sufficient equipment to avoid any reasonably anticipated degradation or interference.

The Company's interconnection, headend and hub facilities and patching equipment shall directly, automatically and without any delay perceptible to the recipient transmit the Signals of any Service, including live and interactive transmissions, provided by any PEG Entity over PEG Channels on the Subscriber Network. This paragraph shall not be interpreted to require the Company to provide, at its own expense, equipment at PEG Entity production and distribution sites other than those sites specified in Appendix C to this Agreement.

As a general principle, the Company shall provide to the PEG Entities all equipment associated with the PEG Direct Connections and described in Section 4.1 of this Agreement either at the Company's own expense, if so required under this Agreement, or at its Actual Cost.

4.1.5 Signal Quality. The Company shall transmit the Signals of any PEG Entity's Service to Residential Subscribers over the Subscriber Network, to another PEG Entity without altering or degrading any such Signal or altering, failing to retransmit or removing any formatting or coding information or data associated with any such Signal, including information associated with stereo, closed captioned or digital transmissions, provided, in the case of digital transmissions, that the headend is engineered to accept such transmissions. Signal components covered by the preceding sentence include, but are not limited to, the analog and/or digital video information, the left and right audio channels, the secondary audio programming ("SAP") channel, subcarrier audio, audio encoding of touchtones for cueing and editing and any portion of the vertical interval. A PEG Entity shall notify the Company not later than thirty (30) days prior to initiating use of the SAP channel or any portion of the vertical interval. The Company reserves the right to insert vertical interval test Signals ("VITS"), provided that such insertion shall not interfere with the relevant PEG Entity's use of the vertical interval.

The Company shall use the same or better quality equipment and engineering practices to transport the PEG Signals along the PEG Direct Connections as it uses to transport the Signal for the top quarter (¼) of commercial broadcast Channels (measured in terms of signal quality on the Subscriber Network) by means of a fiber-optic link with digital transmission employing at least ten-bit (10-bit) encoding. The performance of such equipment shall equal or exceed the performance specifications of the equipment described in Appendix C (at ten-bit (10-bit) encoding). At any terminal on the Subscriber Network, measurements of any component of a PEG Signal's quality shall be at least as good as the average corresponding measurements for the ten (10) highest-quality programming Signals carried on the Subscriber Network. To facilitate such measurements, the Company shall supply and maintain, at its own expense, one (1) VITS generator for each PEG Direct Connection pursuant to Section 4.1.4 hereof, up to a limit of twelve (12) VITS generators.

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

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

In the event the Company upgrades the headend modulators or signal processing equipment for at least thirty percent (30%) of the combined basic and expanded basic tier Channels, or at an earlier time by mutual consent, then the Company, at its expense, shall upgrade such equipment for the PEG Direct Connections. Further, the Company shall upgrade, at its expense, the transport and terminal equipment for the PEG Direct Connections when it has upgraded the transport and terminal equipment for the top quarter (¼) of commercial broadcast Channels (measured in terms of signal quality on the Subscriber Network). An equipment change shall be viewed as an upgrade for purposes of this paragraph if a significant improvement in operational functionality, reliability or signal quality would result.

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

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

otherwise permitted by Section 611(e) of the Cable Act (47 U.S.C. § 531(e)) (or any successor thereto). In the event there is any fallow time on any Public Channel, OCTT may allocate such Public Channel(s) for governmental or educational use.

4.1.8 Use of Educational Channels. Subject to Section 4.2.4 hereof, the Educational Channels placed under the jurisdiction of the Public Schools, UDC or any other PEG Entity designated by OCTT shall be used for nonsectarian educational purposes. (It shall be understood that the nonsectarian educational purposes requirement shall not preclude a sectarian institution from producing, offering or otherwise participating in programming that would be deemed nonsectarian but for the production, offering or participation by the sectarian institution.) The Company shall not exercise editorial control over programming or distribution of Services over any Educational Channels used by any Person(s), except where the Company is utilizing any such Educational Channel pursuant to the fallow time rules described in Section 4.1.9 hereof or except as otherwise permitted by Section 611(e) of the Cable Act (47 U.S.C. § 531(e)) (or any successor thereto). In the event there is any fallow time on any Educational Channel, OCTT may allocate such Educational Channel(s) for governmental or public use. OCTT may designate one (1) or more additional PEG Entities to use Educational Channels.

4.1.9 Fallow Time. OCTT shall prescribe rules and regulations regarding the use of fallow time on PEG Channels by the Company consistent with applicable law.

4.1.10 Training Channel. The Company agrees to cooperate with the District to provide video training programming to the District's workforce. The District will provide all of the content and programming of the Training Channel. Specifically, as requested by OCTT, the Company shall provide to the District, at the Company's expense, digital cable converters encoded to receive a special training Digital Television Channel (the "Training Channel"), provided that the Company shall not be obligated to provide more than seventy-five (75) such digital cable converters unless the District pays the Company's Actual Cost for the additional digital cable converters. Only the digital cable converters provided to the District under this Section 4.1.10, and no other digital cable converter issued by the Company, shall be authorized to receive the Training Channel. The Training Channel shall be one (1) of the PEG Digital Television Channels provided by the Company pursuant to Sections 4.1.1 or 4.1.12(i) hereof and shall be transmitted from OCTT's studio facilities to the headend via one (1) of the PEG Direct Connections described in Section 4.1.4 hereof. Such PEG Direct Connection, the Training Channel and its Signals shall be treated like any other PEG Direct Connection, PEG Channel and PEG Signal (respectively) for purposes of Sections 4.1.4-4.1.5 hereof.

4.1.11 Subscriber Reception of PEG Digital Television Channels. The Company shall make available a digital cable converter, which permits the Subscriber to receive all PEG Digital Television Channels (except the Training Channel) but no other Digital Service, to each Subscriber who would not otherwise receive PEG Digital Television Channels because the Subscriber does not subscribe to the Company's

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

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

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

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

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

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

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one (1) or more PEG Entities to discuss the potential for the PEG Entities to use such advanced Service functionality. Should the Company agree to provide such advanced Service functionality, the Company shall provide any necessary equipment if requested by the PEG Entities, and the PEG Entities shall reimburse the Company for its Actual Cost for any such equipment.

#### 4.2 PEG Channels: Resources, Rules and Regulations

4.2.1 Capital Funding. The Company shall pay to the District an amount equal to one percent (1%) of Gross Revenue as capital support for the PEG Entities. The District shall allocate such amount among the PEG Entities in accordance with Appendix C. All such payments shall be made quarterly, at the same time as the Company pays the franchise fee to the District pursuant to Section 8.1 hereof, provided that, at the Closing, the Company shall make an advance payment of the first twelve (12) quarterly payments (i.e., all such payments that are due during the first three (3) years after the Effective Date). Such advance payment shall be based on the Company's Gross Revenue for the last quarter ended before the Effective Date. On the date the Company would have made its twelfth quarterly payment, it shall report to OCTT the amount that each quarterly payment would have been if it had been calculated based on the Company's actual Gross Revenue for each such quarter; the sum of such amounts shall be referred to as the "True-Up Amount." If the True-Up Amount exceeds the amount of the advance payment the Company made at the Closing, the Company shall transmit a payment of the difference with its report. If the amount of the advance payment exceeds the True-Up Amount, the Company may deduct one quarter (1/4) of the difference from each of the next four (4) quarterly payments. In the event that the difference exceeds the sum of those four (4) quarterly payments, the Company may continue to withhold quarterly payments to the PEG Entities until it has recovered the difference in full; if withholding only part of such a payment is necessary to recover the difference in full, the Company shall not withhold the other part. (As an illustration, if the overpayment were One Million Five Hundred Thousand Dollars (\$1,500,000.00) and the quarterly payments after the true-up were to be Two Hundred Thousand Dollars (\$200,000.00) each, the Company could withhold the first seven (7) quarterly payments following the true-up and one half (1/2) of the eighth such payment but would have to pay the other half (1/2) of the eighth such payment.) In performing such true-ups under this Section 4.2.1, no account shall be made for interest rates, inflation, the time value of money or other such factors.

4.2.2 Other Support. In addition to the payments required pursuant to Section 4.2.1 hereof, the Company shall pay to the Public Access Corporation ongoing support of one percent (1%) of Gross Revenue. Said payments shall be made quarterly, directly to the Public Access Corporation, at the same time as the Company pays the franchise fee to the District pursuant to Section 8.1 hereof.

4.2.3 PEG Resources and Other Contributions Not Franchise Fees. All facilities, equipment and ongoing annual support payments in connection with PEG Channels shall be for the benefit of the District and its residents. The Company acknowledges that all contributions, services, equipment, facilities, support, resources

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

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

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

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

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

program or (b) remuneration in the form of a PEG Entity's standard membership fee.

4.2.5 Rules and Regulations. Rules and regulations adopted by the Public Access Corporation shall govern the use of all Public Channels, including all matters related to governance, management, time, equipment, facilities and other services. Such rules and regulations shall ensure that: (i) the Public Channels shall be available for the purposes set forth in Section 4.1.7 hereof; (ii) at least a portion of the programming time on the Public Channels shall be available for use by the general public on a first-come, first-served, nondiscriminatory basis, subject to appropriate time, place and manner requirements, and no charges shall be imposed for Public Channel time or playback of prerecorded programming on such Public Channels; and (iii) charges, if any, for production costs shall be set at the lowest reasonable level necessary to cover the Public Access Corporation's costs for the provision of such services. Such rules and regulations may be modified by the Public Access Corporation during the term of this Agreement.

4.2.6 Ratings. The Company shall promptly provide copies of any ratings information it obtains on a regular basis from a third party concerning viewership of PEG Channels to OCTT (for Cable Services provided on any Governmental or Educational Channel) and to the Public Access Corporation (for Cable Services provided on any Public Channel), provided, however, that with respect to any such ratings, the Company shall redact any personally identifiable information prior to providing such information to OCTT and/or the Public Access Corporation, as applicable. The preceding sentence shall not apply to any information the Company receives from an ascertainment it has commissioned in connection with the renewal of the Franchise or to any information the Company generates on its own in connection with such renewal.

4.3 Provision of Certain In-Kind Contributions. The Company agrees that it shall make certain in-kind contributions to the District, as set forth on Appendices D and E to this Agreement, and advertising as set forth in Section 4.4.3 hereof.

#### 4.4 Other Public Services

4.4.1 Services for Physically Challenged Persons. The Company shall comply with applicable law regarding access to Services by Physically Challenged persons.

4.4.2 Emergency Override. In the event of an emergency, as determined by the Mayor, the Mayor may order that Signals being distributed over the System shall be interrupted for the delivery of appropriate Signals necessitated by such emergency. The procedures for, and the equipment and facilities necessary to accomplish, such emergency override shall be determined as set forth in applicable law and in Appendix C to this Agreement.

4.4.3 Advertising. The Company shall provide, on an annual basis over the course of each year of the term of the Franchise, Four Thousand Seven Hundred

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

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

## SECTION 5 CONSTRUCTION AND TECHNICAL REQUIREMENTS

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

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

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quality. The Company shall comply with the specifications set forth in the most recently published edition of DDOT's Standard Specifications for Highways and Structures (currently, this is the 1996 edition, which was published by the District of Columbia Department of Public Works); DDOT's administrative issuances; the National Electrical Code (as it may be amended from time to time); and the National Electrical Safety Code (as it may be amended from time to time). If, at any time, it is determined by the District or any other agency or authority of competent jurisdiction that, consistent with applicable law, any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the health or safety of any person, then the Company shall, at its own cost and expense, promptly, or within a reasonable time period specified by the District or such agency or authority, correct all such conditions. The Company shall notify OCTT and the Directors of the District of Columbia Emergency Management Agency (or any successor thereto) and of the District of Columbia Department of Health (or any successor thereto) promptly, but in no event longer than twenty-four (24) hours, of any determination or finding by an agency or authority of competent jurisdiction that any part of the System is harmful to the health or safety of any person.

5.3 Licenses and Permits. The Company shall have the sole responsibility for obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain, repair, upgrade, rebuild, enhance or remove the System, or any part thereof, prior to commencement of any such activity. Such costs and expenses shall be of general applicability and shall not be unduly discriminatory against cable operators or subscribers. In the event of an emergency which poses a serious risk to life or public safety, the Company may carry out any necessary work to the extent consistent with applicable law.

5.4 New Grades or Lines. If the grades or lines of any PROW within the Franchise Area are changed at any time during the term of this Agreement, then the Company shall, at its own cost and expense and within ten (10) days from actual or constructive notice from the District, or such longer time period as may be specified by the District, protect, alter or relocate the System, or any part thereof, so as to conform with such new grades or lines. In the event that the Company refuses or neglects to so protect, alter or relocate all or part of the System within the time period specified by or pursuant to this Section 5.4, the District shall have the right to break through, remove, alter or relocate all or any part of the System without any Liability of the District to the Company, and the Company shall pay to the District the costs incurred in connection with such breaking through, removal, alteration or relocation. In the event that the District reimburses costs for other occupants of the PROW which this Section 5.4 imposes on the Company, it will not be a breach of this Agreement for the Company to request that the District bear some or all of the Company's costs.

5.5 Protect Public Property and Landmarks. In connection with the construction, operation, maintenance, repair, upgrade, enhancement, rebuild or removal of the System, the Company shall, at no cost or expense to the District or other appropriate authorities, protect any and all existing structures belonging to the District,

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

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

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

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

and suitable and sufficient lighting. The Company shall comply with the Occupational Safety and Health Act of 1970, approved December 29, 1970 (84 Stat. 1590; 29 U.S.C. §§ 651-78), as amended, (or any successor thereto), and any other applicable law pertaining to occupational safety and health.

5.9 No Interference with Facilities or Equipment. In the construction, operation, maintenance, repair, upgrade, rebuild, enhancement or removal of the System, the Company shall not interfere with or damage the cables, wires and equipment of the District or any Person, including but not limited to utilities, other Cable Communications Systems, Open Video Systems, master antenna systems, satellite master antenna systems and similar systems. In the event the Company interferes with or damages such cables, wires or equipment, and the Company and the Person whose property has been interfered with or damaged cannot resolve the matter by agreement, the Company agrees to mediation by OCTT. In the event of a final court decision not subject to further appeal, which decision concludes that the Company interfered with or damaged the cable, wires or equipment of the District or any Person, the District may consider whether such finding constitutes a material breach of this Agreement under Section 12.4 hereof should the District find that (i) the Company willfully interfered in a grossly material fashion with the operations of a competitor or (ii) such finding, together with other interference, establishes a pattern of interference by the Company. This Section 5.9 is intended to address the normal installation, repair and maintenance practices of the Company. This Section 5.9 is not intended to prohibit the Company from taking any action that is consistent with applicable law to remove, use or dispose of the facilities of another provider.

#### 5.10 Performance Bond

5.10.1 Establishment. To guarantee the restoration of any portion of the PROW disturbed by any construction, upgrade, rebuild or enhancement of the System undertaken during the term of this Agreement, and for the other purposes specified in Section 5.10.3 hereof, the Company shall arrange for, and shall maintain throughout the term of this Agreement, at its sole cost and expense, a performance bond solely for the protection of the District, with a corporate surety and trust company that: (i) is listed as a certified company in the most recent version, as of the Effective Date, of the Department of the Treasury's Listing of Approved Sureties (Department Circular 570), or any successor thereto; (ii) has a per-bond underwriting limitation, as set forth in such Listing, of not less than Twenty Million Dollars (\$20,000,000.00); and (iii) is otherwise acceptable to the Attorney General , as provided in Sections 5.10.2 through 5.10.6 hereof.

Before any change in the performance bond (including, but not limited to, its issuer, amount or terms and conditions, whether or not such change is explicitly contemplated by this Section 5.10) takes effect, (i) the Attorney General shall have approved the form of the new bond if the form is being changed and (ii) the Company shall furnish the new bond to the Attorney General , with a copy to OCTT.

5.10.2 Amount. The amount of the performance bond shall be in a face amount of not less than One Million Dollars (\$1,000,000). Such bond shall remain

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

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

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

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

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

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

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SECTION 6  
COMMITMENTS REGARDING EMPLOYMENT AND PURCHASING

6.1 Statement of Intent. The Company and the District acknowledge and agree that the Company, as an Open Video Systems operator, is bound by federal equal employment opportunity law, and the Company agrees to comply fully with such federal law, as set forth in Section 634 of the Communications Act, approved October 30, 1984 (98 Stat. 2806, 47 U.S.C. 554), and any implementing rules and regulations of the FCC, as set forth in Section 6.8 hereof.

6.2 Right to Bargain Collectively. The Company shall recognize the right of its employees to elect to bargain collectively through representatives of their own choosing in accordance with applicable law.

6.3 No Discrimination. In accordance with the District of Columbia Human Rights Act, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*) (or any successor thereto) and other applicable law, the Company shall not, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, disability, matriculation or political affiliation: (i) fail or refuse to hire or discharge any individual; (ii) otherwise discriminate against any individual with respect to his or her compensation, terms, conditions or privileges of employment, including promotion; (iii) limit, segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee; or (iv) discriminate against any individual in admission to or employment in any program established to provide apprenticeship or other training or retraining, including an on-the-job training program. During the term of this Agreement, the Company agrees to comply in all respects with all applicable law pertaining to employment nondiscrimination.

6.4 First Source Requirements. Prior to Closing, the Company shall have entered into a First Source Agreement with the District of Columbia Department of Employment Services (or any successor agency) (“DOES”), and shall have submitted a copy of such First Source Agreement to OCTT. The Company shall keep such First Source Agreement current throughout the term of the Agreement.

6.5 Local Employment. The Company shall use reasonable best efforts to employ District Residents consistent with the percentage hiring goal as set forth in the terms of its First Source Agreement with DOES.

6.6 Management Hiring. The Company shall endeavor to promote internal candidates, including the District Residents hired pursuant to Section 6.4 of this Agreement, to management and supervisory level positions with the Company.

6.7 Local Businesses. Prior to the transmission of this Agreement to the Council, and prior to the Closing, the Company shall have entered into a Memorandum of Understanding regarding the utilization of local, small and disadvantaged businesses with

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

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

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

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

SECTION 7  
ADDITIONAL SUBSCRIBER RIGHTS

7.1 Consumer Protection Standards. The Company shall comply in all respects with all applicable customer service and other consumer protection requirements set forth in applicable law.

7.2 Privacy Protection. The Company shall comply with Section 631 of the Cable Act (47 U.S.C. § 551) (or any successor thereto), Section 46 of the D.C. Cable Act (D.C. Official Code § 34-1245), and any other applicable law pertaining to privacy.

7.3 No Interference with Consumer Equipment. The Company and any Affiliated Person shall comply with applicable law regarding a Subscriber's ability to utilize consumer equipment of the Subscriber's choosing, provided such consumer equipment does not cause interference with or otherwise degrade the Company's System.

7.4 Prevention of Reception of Undesired Services. The Company agrees to comply with Section 640 of the Cable Act (47 U.S.C. § 560) (or any successor thereto).

7.5 Service Centers. The Company shall maintain at least one (1) customer service center ("Service Center") in the District of Columbia. At a minimum, such Service Center shall allow Subscribers, on a walk-in basis, to file complaints; ask questions and get information regarding bills or service; pay bills; request, upgrade or terminate Services; and pick up or drop off equipment. Subject to Section 9.2 hereof, the required Service Center shall be open for not less than six (6) hours on Saturday, in addition to any other periods required by applicable law. In addition, the Company shall make operational by September 30, 2005 not less than one (1) location in each ward of the District of Columbia where Subscribers may pay their bills (receiving credit for doing so as if the payment had been made at the Service Center), provided that the Company shall not have to do so for a ward containing a Service Center. The Company shall use best efforts to maintain such locations at places other than a liquor store.

7.6 Customer Service Representative. The Company shall maintain at least one (1) customer service representative who will provide customer service assistance to District residents who want to file complaints; ask questions and get information regarding bills or service; pay bills; request upgrade or terminate service; request a service call; and resolve escalated customer complaints including those forwarded to the Company by OCTT.

SECTION 8  
COMPENSATION AND OTHER PAYMENTS

8.1 Compensation

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

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

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

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

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

accordingly, from deducting such payments from gross income in any District, state or federal income tax return.

8.1.6 Payments to Be Made to the District. If the Company collects from Subscribers any amounts to be paid to any Person, including a UVPP, for the provision of Services, excluding (unless otherwise agreed by the Company and OCTT) Internet access and similar online Services, on the System or in connection with the System, the Company shall deduct five percent (5%) from such amounts and include such deducted amounts in its payment to the District pursuant to Section 8.1.1 hereof and include such payments in its report pursuant to Section 8.1.2 hereof. If any Person other than the Company, including a UVPP, directly collects such amounts from Subscribers, excluding (unless otherwise agreed by the Company and OCTT) revenues received for Internet access and similar online Services, that would constitute Gross Revenue if received directly by the Company, the Company shall include in its contract, or other arrangement with such Person, a provision which provides that the Company will collect on behalf of the District from such Person and shall remit to the District on a quarterly basis an amount equal to five percent (5%) of such amounts collected from Subscribers, together with a quarterly report similar in form and content to the report referred to in Section 8.1.2 hereof, and that the District may enforce such provision directly against such Person.

8.1.7 Franchise Fee Audits. At any time during the term of the Franchise or for six (6) years after the receipt of a payment pursuant to Section 8.1.1 hereof, whichever is later, the District, at its expense, may conduct an audit or review, pursuant to Section 9.6 hereof, of the payments by the Company or any other Affiliated Person (to the extent its revenues constitute Gross Revenue hereunder) required by this Section 8.1. At the District's request, the Company shall provide the source documents that support the franchise fee calculation for the time period(s) being audited and a reconciliation between the Gross Revenue on which the franchise fee is based and the financial statements for the Company, prepared in accordance with generally accepted accounting principles. Within thirty (30) days after notice from the District of any underpayment by the Company, the Company (i) shall pay such underpayment to the District, with interest calculated at the rate specified in Section 8.4 hereof, and shall pay to the PEG Entities any corresponding underpayment in support required by Sections 4.2.1 and 4.2.2 hereof, with interest calculated at the rate specified in Section 8.4 hereof, or (ii) shall notify the District in writing that it does not agree with the results of the audit and the reasons therefor. To the extent the parties disagree about the results of the audit pursuant to the preceding sentence, each party reserves the right to exercise all its rights and remedies under this Agreement and applicable law. If the audit or review permitted by this Section 8.1.7 results in any underpayment to the District or to the PEG Entities which exceeds four percent (4%) of the total amount due to the District or the PEG Entities from the Company over the time period audited or reviewed, the Company shall pay the District's costs of such audit or review. The District shall have a reasonable period of time to complete the audit or review and to accept the audit or review as accurate and final; at the end of such period, it shall issue an audit closure notice to the Company. Notwithstanding the issuance of such notice, the District shall have the right

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

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

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

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

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

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

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contributions, services, equipment, facilities, support, resources or other activities to be paid or supplied by the Company pursuant to this Agreement; and

(iv) The compensation and other payments to be made pursuant to this SECTION 8 of this Agreement shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which the Company or any Affiliated Person shall be required to pay to the District or to any state or federal agency or authority. Unless the District agrees otherwise, neither the Company nor any Affiliated Person shall have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made pursuant to this Agreement from or against any District or other governmental taxes of general applicability (including (a) any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers or (b) income taxes) or other fees or charges which the Company or any Affiliated Person is required to pay to the District or other governmental agency. Each of the compensation, other payments, taxes and other fees and charges shall be deemed to be separate and distinct obligations of the Company and Affiliated Persons; and

(v) Neither the Company nor any Affiliated Person shall apply or seek to apply all or any part of the amount of any District or other governmental taxes or other fees or charges of general applicability (including any such tax, fee or assessment imposed on both utilities and cable or OVS operators or their services but not including a tax, fee or assessment which is unduly discriminatory against OVS operators or OVS subscribers) as a deduction or other credit from or against any of the compensation or other payments to be made pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of the Company and Affiliated Persons.

Nothing in this Agreement is intended to preclude the Company from exercising any right it may have to challenge the lawfulness of any tax imposed by the District or any state or federal agency or authority.

**8.4 Interest on Late Payments.** In the event that any payment required by this Agreement is not actually received by the District or any PEG Entity on or before the applicable date fixed in this Agreement, interest thereon shall accrue from such date at a rate equal to the then-prevailing prime rate of interest charged by the Industrial Bank, N.A. (or such other bank as may be selected by agreement of the D.C. Treasurer and the Company) for commercial loans, such rate to be compounded daily, except as provided in Sections 12.2.4 and 12.3 hereof with respect to a withdrawal from the Security Fund.

**8.5 Method of Payment.** All payments by the Company to the District pursuant to this Agreement shall be made payable to the D.C. Treasurer and shall be delivered to OCTT.

## SECTION 9 OVERSIGHT AND REGULATION

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

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

### 9.3 Meetings or Hearings

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

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9.3.2 OCTT Meetings. At the request of the Executive Director, the Company's General Manager (or the person holding the equivalent position if there is no General Manager) and other personnel of the Company with relevant expertise in the designated subjects shall, absent extraordinary circumstances, attend and participate in any meeting held by the Executive Director regarding the System, this Agreement or the Franchise. Company personnel shall bring to such meeting any documents requested by OCTT, including any documents reasonably known by the Company to be responsive to OCTT's request even if such documents are not specifically identified by such request, which are relevant to determining compliance with this Agreement or applicable law. Any confidential or proprietary information or documents requested for or provided at such meeting pursuant to this Section 9.3.2 shall be subject to Section 9.7.2(iv) of this Agreement.

#### 9.4 General Provisions Regarding Reports

9.4.1 Additional Information. Within a reasonable period of time, as determined by OCTT, after a request of the Council, Attorney General or OCTT, the Company shall, subject to the provisions of Section 9.7.2(iv) hereof with respect to the processing of confidential and proprietary information, submit to the requesting party any information reasonably required to demonstrate compliance with the terms and conditions of this Agreement or applicable law.

9.4.2 Format. The Company shall transmit to OCTT, by means of such method and in such format as OCTT may specify, after consultation with the Company, all information OCTT requests consistent with this Agreement, including, without limitation, the information required to be submitted by applicable law. In the event that OCTT's staff and the Company's personnel disagree regarding such specification of the format of a report, the issue shall be referred to the Executive Director and the Company's General Manager (or a person in an equivalent or higher position) for resolution. The Company shall inform OCTT, at the beginning of any report submitted, of all changes in calculations, methodology, time periods used and any other changes that may adversely affect OCTT's ability to compare previous reports to the report in question.

9.4.3 Deadline for Submission. Unless otherwise specified, any report or other provision of information required under any provision of this Agreement shall be due to OCTT within thirty (30) days of the event that triggers the reporting requirement.

9.4.4 Supplemental Information Requests. If OCTT, in its reasonable discretion, determines that it needs additional information to clarify the data contained in a report submitted by the Company or any Affiliated Person that submitted the report, OCTT must submit such supplemental information request within ninety (90) days of receipt of the Company's or Affiliated Person's original report. Notwithstanding the preceding sentence, extenuating circumstances may warrant a longer time within which OCTT may submit such supplemental information request (such extenuating circumstances shall include, but not be limited to, discrepancies among reports in a

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

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

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

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

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

## 9.6 Other Required Reports.

9.6.1 Monthly Reports. The Company shall provide monthly reports, for the previous month's reporting period, due on the 21<sup>st</sup> day of the first month following the effective date of this Agreement and thereafter, regarding all video consumer telephone calls received, and any action taken thereon. The reports shall provide detailed information relating to the number of calls from subscribers throughout the Company's service area, including total number of calls received, total number of calls answered, the percentage of calls answered, the percentage of calls answered within 30 seconds, total number of calls abandoned, and the percentage of calls abandoned (the reporting period shall be Monday – Friday, 8:00am-6:00pm). The report shall also include a log of all scheduled and unscheduled Service outages, to the extent they lasted more than two (2) hours, during the preceding calendar month. The report shall also contain copies of all communications, public reports, petitions, complaints or other filings that pertain to the System received from or submitted to any District, municipal, state, county or federal legislative body, agency or official during the previous month.

9.6.2 Quarterly Reports. The Company shall provide quarterly reports, not later than forty-five (45) days after the last day of each quarter, regarding its District of Columbia video operations, including the total number of active video subscribers, the total number of completed disconnects, the total number of completed installations, the net number of installations, the total number of service calls, and the total number of service changes.

## 9.7 Books and Records/Audit

9.7.1 Books and Records. Subject to Section 631 of the Cable Act (47 U.S.C. § 551) (or any successor thereto), for any period as may be required by the last sentence in Section 9.1 or by Section 9.7.2(iii) hereof), the Company shall maintain complete and accurate books of account and records of the business, ownership and operations of the Company with respect to the System and reflected in the calculation of Gross Revenue. Such books of account and records shall include, without limitation, books of account and records adequate to enable the Company to demonstrate that it is, and has been, in compliance with each term and condition of this Agreement and applicable law.

9.7.2 Right of Inspection. Subject to Section 631 of the Cable Act (47 U.S.C. § 551) (or any successor thereto), OCTT, the Attorney General, the Inspector General or their designated representative(s) shall have the right to inspect, examine or audit, during normal business hours and upon twenty-four (24) hours' notice to the Company (five (5) Business Days' notice in the case of audits), which shall include at least one (1) Business Day, unless extenuating circumstances warrant a longer period of time, all those documents, records and other information which are reasonably necessary or appropriate to determine compliance with this Agreement or applicable law or are reasonably related to the terms and conditions of this Franchise.

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

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

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

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

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

maximum extent permitted by applicable law, that disclosure of (a) financial information of the Company or an Affiliated Person in detail not otherwise available to the general public, (b) System construction maps which are not otherwise available to the general public or (c) the number of Subscribers to a particular Service or tier of Service (but not the total number of Subscribers) if such number is not otherwise available to the general public, may result in substantial harm to the competitive position of the Company within the meaning of title 2 of the District of Columbia Administrative Procedure Act. Nothing in Sections 9.7.2(iv)-9.7.2(v) hereof shall pertain to any documents, records or other information submitted by the Company to a public body pursuant to any legal obligation other than this Agreement. Further, nothing in Sections 9.7.2(iv)-9.7.2(v) hereof shall prohibit use of information in System construction maps for the District's record-keeping and PROW management purposes.

For purposes of Sections 9.7.2(iv)-9.7.2(v) hereof, an unauthorized Person is a Person other than a public body, which public body has agreed to protect such documents, records or other information in the manner described in Section 9.7.2(v) hereof, and such public body's officials, employees and contractors who have use for such documents, records or other information in the exercise of the District's rights under this Agreement; and a public body shall be a "public body" as that term is defined in Section 3(18A) of the District of Columbia Administrative Procedure Act, effective April 27, 2001 (D.C. Law 13-283; D.C. Official Code § 2-502(18A)), as amended, (or any successor thereto).

(v) Upon the assertion by the Company of a right under title 2 of the District of Columbia Administrative Procedure Act or other applicable law that confidential or proprietary information contained in documents, records or other information received by a public body under this Agreement should not be disclosed to unauthorized Persons, such public body shall

(a) protect such documents, records or other information from disclosure to unauthorized Persons pursuant to such public body's procedures for handling confidential and proprietary information obtained from outside the government unless otherwise ordered by a court of competent jurisdiction;

(b) provide notice to the Company not less than two (2) Business Days after receiving any request from an unauthorized Person for such documents, records or other information;

(c) determine, in consultation with the Attorney General, whether such documents, records or other information is protected under applicable law from disclosure to unauthorized Persons; and

(d) if such public body determines that such documents, records or other information is not so protected, provide the Company with not less than four (4) Business Days' notice before disclosing such documents,

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

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

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

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

## SECTION 10 RESTRICTIONS AGAINST ASSIGNMENT AND OTHER TRANSFERS

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

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

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Company, by act of any Person holding Control, directly or indirectly, of the Company, the System or the Franchise granted herein, by operation of law or otherwise without the prior written approval of the Council. The approval of the Council of any action described in this Section 10.2 shall not be unreasonably withheld, nor shall the Council require the revision of any material term of this Agreement as a condition of approval of a transfer. The requirements of this Section 10.2 to obtain prior written approval of the Council shall also apply to any other Person seeking to obtain Control, directly or indirectly, of the Company, the System, the assets of the System or the Franchise granted herein. After the consummation of any transfer approved under this Section 10.2, the Company shall remain responsible for any past breaches of this Agreement or applicable law for purposes of the remedies under this Agreement and for purposes of the District's right to consider past breaches and other past performance problems in future renewal or other proceedings.

The requirements of Sections 10.3-10.7 hereof shall apply whenever any change is proposed with respect to (i) twenty percent (20%) or more (for voting interests) or fifty percent (50%) or more (for non-voting interests) of the ownership of or (ii) Control of the Company, the System, the assets of the System or the Franchise granted herein or any Person holding Control, directly or indirectly, of the Company, the System, the assets of the System or the Franchise granted herein (but nothing herein shall be construed as suggesting that a proposed change of less than twenty percent (20%) (for voting interests) or fifty percent (50%) (for non-voting interests) does not require the approval of the Council if it would in fact result in a change in Control of the Company, the System, the assets of the System or the Franchise granted herein), regardless of the manner in which such Control is evidenced (e.g., stock, bonds, debt instruments or other indicia of ownership or Control).

Notwithstanding the foregoing, the approval of the Council shall not be required with respect to solely intracorporate reorganizations between or among entities wholly owned and wholly controlled by the Company's ultimate parents, which as of the Effective Date are RCN Corporation and Pepco Holdings, Inc., to the extent such transaction does not involve a change in the management, day-to-day operations or financial condition of the Company; provided the Company shall provide OCTT with thirty (30) days advance written notice of such intracorporate reorganization.

10.3 Petition. The Company shall promptly notify the District of any proposed action requiring the approval of the Council pursuant to Sections 10.1 or 10.2 hereof by submitting to OCTT, with a copy to the Attorney General, a petition requesting the approval of the Council. The petition shall identify the entity or entities that will own or control the System after the proposed action, shall certify the commitment of such entity(ies) to accept and fully comply with all terms of this Agreement, and shall include a copy of the order of the FCC certifying such entity(ies) to operate an Open Video System within the Franchise Area. The petition also shall contain the information from FCC Form 394 set forth in Appendix G to this Agreement. If OCTT has determined that approval of the Council is required and a petition requesting approval has not been submitted by the Company, OCTT may request the Company to submit the information

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

#### 10.4 Transfer Review Period

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

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

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

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

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

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this Agreement; and (ii) such entity or entities agrees that approval of the pending transfer petition does not waive the District's right to consider past breaches and other past performance problems in future renewal or other proceedings. If a transfer involves a change in Control of the Company described under Section 10.2 hereof, the District may require the Person to whom Control is being transferred to sign an agreement reaffirming the obligations of the Company under this Agreement.

10.8 Permitted Encumbrances. Nothing in this SECTION 10 shall be deemed to prohibit any assignment, pledge, lease, sublease, mortgage or other transfer of all or any part of the System, or any right or interest therein, for purposes of financing the construction, rebuild, enhancement, upgrade, maintenance, repair or operation of the System, provided that: (i) each such assignment, pledge, lease, sublease, mortgage or other transfer shall be subject to and subordinate to the rights of the District pursuant to this Agreement and applicable law and (ii) the terms of such financing do not require any Person other than the Company to perform the obligations of the Company under this Agreement to provide Service over the System or to use the System in any other way. (If the terms of any financing obligate any Person other than the Company to perform the obligations of the Company under this Agreement, the terms of such financing shall be a transfer subject to Sections 10.1 and 10.2 hereof.) The approval of the Council shall not be required with respect to any transfer to, or taking of possession by, any banking or lending institution which is a secured creditor of the Company of all or any part of the System pursuant to the rights of such secured creditor under Article 9 of the Uniform Commercial Code (Sections 28:9-101 through 28:9-709 of the D.C. Official Code) as may be amended from time to time, and, to the extent that the collateral consists of real property, under District of Columbia real property law; provided further that, the District's rights are in no way adversely affected or diminished. Nothing herein shall be interpreted to require the Company to obtain the Council's approval before providing capacity on the System to a UVPP as required by Section 653 of the Cable Act (47 U.S.C. § 573) (or any successor thereto).

10.9 Effect of Unauthorized Sale/Transfer. The completion of any action described in Sections 10.1 and 10.2 hereof without the prior written approval of the Council, as provided herein, shall be deemed to be a material breach of this Agreement.

10.10 Consent Not a Waiver. The grant or waiver of any one (1) or more of such consents shall not render unnecessary any subsequent consent, nor shall the grant of any such consent constitute a waiver or release of any other rights of the District.

10.11 Additional Information. In addition to the information required by Section 10.6 and Appendix G, the District shall have the right to request during the transfer review period set forth in Section 10.4.1 of this Agreement such additional qualifications to assume the Company's obligations under the Agreement and/or to determine how the transferee intends to address any outstanding compliance issues under this Agreement, and the Company shall respond to such information and document request within the time period specified by the District. Assuming that the Company has submitted all of the information required by Section 10.3 and Appendix G, any additional information and

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

## SECTION 11 LIABILITY AND INSURANCE

### 11.1 Liability and Indemnity

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

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

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

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parts of the System. All costs to repair or replace such wires, cables, amplifiers, appliances or other parts of the System shall be borne by the Company.

11.1.4 No Liability for Public Work, Etc. Neither the District nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any Liability to the Company or any Affiliated Person for any Liability as a result of or in connection with the protection, breaking through, movement, removal, alteration or relocation of any part of the System, by or on behalf of the Company or the District, in connection with any emergency or in connection with any public work; public improvement; alteration of any municipal structure; any change in the grade or line of any PROW; or the elimination, discontinuation and closing of any PROW, as provided in Sections 2.4.2 [Public Works and Improvements], 2.4.4 [Closing of PROW], 5.4 [New Grades or Lines], 5.5 [Protect Public Property and Landmarks] or 11.1.3 [Moving Wires, Etc.] hereof. (The parties understand that, pursuant to such sections, the District will be performing such work only in an emergency or in such circumstances where the Company fails to perform such work as required by such sections.)

11.1.5 No Liability for Damages. The District, its officers, employees, agents, attorneys, consultants and independent contractors shall have no Liability to (i) the Company, (ii) any Affiliated Person or (iii) any other Person, to the extent there is privity between such other Person and either the Company or an Affiliated Person, for any money damages as a result of the lawful exercise of the rights of the District to approve or disapprove the grant, amendment, renewal or transfer of the Agreement or the Franchise.

11.1.6 Indemnification of the District. The Company and each Affiliated Person shall: (i) defend, indemnify and hold harmless the District, its officers, employees, agents, attorneys, consultants and independent contractors from and against all Liabilities, special, incidental, consequential, punitive and all other damages, costs and expenses (including, but not limited to, reasonable attorneys' fees and witness fees) arising out of or in connection with: (a) the construction, operation, maintenance, repair, upgrade, enhancement, rebuild or removal of, or any other action or event with respect to, the System or any Service Related Activity or (b) the distribution of any Service over the System, except as provided in Section 11.1.7 hereof and (ii) cooperate with the District, by providing, at no charge to the District, such nonfinancial assistance as may be requested by the District, in connection with any claim arising out of or in connection with the selection of the franchisee for, or the negotiation or award of, this Agreement. In any action in which the Company defends the District, the Company shall consult with the District prior to proposing, accepting or rejecting a settlement and prior to filing any pleading which might estop the District with respect to any question of fact or law. The District shall have the right, at its option, with regard to Liabilities subject to indemnification under this Section 11.1.6, to participate in its own defense by engaging, at its own expense, its own attorneys, experts and consultants. In the event the District and the Company disagree about whether to settle a case for which the Company must indemnify the District under this Section 11.1.6, the issue shall be referred to the Executive Director, the Attorney General and the Company's General Manager (or a

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

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

## 11.2 Insurance

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

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

modification or discontinuation of coverage under any such policy (together with a plan to correct such modification or discontinuation) within two (2) Business Days of its occurrence.

11.2.2 Period of Coverage. The liability insurance policy or policies required by Section 11.2.1 hereof shall be maintained by the Company throughout the term of this Agreement and such other period of time during which the Company operates or is engaged in the removal of the System, whichever period is longer, and for one hundred twenty (120) days thereafter. Each such liability insurance policy shall contain the following endorsement: “It is hereby understood and agreed that this policy may not be cancelled or not renewed nor the intention not to renew be stated until thirty (30) days after receipt by the District, by registered mail, of a written notice of such intent to cancel or not to renew.” Not later than thirty (30) days prior to said cancellation, the Company shall obtain one (1) or more replacement insurance policies in a form acceptable to the Attorney General and shall furnish copies of the certificate of insurance to the Attorney General and to OCTT.

11.2.3 Increased Insurance Coverage. The District may, after consulting with the Company, alter the minimum limitation of the liability insurance policy or policies required in Section 11.2.1 hereof to account for inflation.

11.2.4 Liability Not Limited. The legal Liability of the Company or any Affiliated Person to the District or any Person for any of the matters which are the subject of the liability insurance policy or policies required by this Section 11.2, including, without limitation, the Company’s indemnification obligation set forth in Section 11.1.6 hereof, shall not be limited by such insurance policy or policies nor by the recovery of any amounts thereunder, except to the extent necessary to avoid duplicative recovery from or payment by the Company.

## SECTION 12 SPECIFIC RIGHTS AND REMEDIES

12.1 Not Exclusive. The Company agrees that the District shall have the specific rights and remedies set forth in this SECTION 12. These rights and remedies are in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the District at law or in equity in order to enforce the provisions of this Agreement, except that nothing herein shall be interpreted to permit the District to exercise such rights and remedies in a manner that permits duplicative recovery from or payments by the Company. Such rights and remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the District, provided that, to the extent the District may obtain a remedy by recourse to both the Security Fund pursuant to Section 12.2 hereof and the Performance Bond pursuant to Section 5.10 hereof, the District shall seek such remedy from the Security Fund before seeking such remedy from the Performance Bond. Except as provided in Section 12.3 hereof, the exercise of one (1) or more rights or

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

## 12.2 Security Fund

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

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

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

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the Company's failure to perform its obligations pursuant to this Agreement during the period of time between the Company's unexcused or uncured failure to perform and the date on which the District takes over, or authorizes any other Person to take over, the construction, operation or maintenance of the System; and (v) any costs, losses or damages incurred by the District as a result of termination for cause due to a material breach pursuant to Section 12.4. The withdrawal of amounts from the Security Fund shall constitute a credit against the amount of the applicable Liability of the Company to the District but only to the extent of said withdrawal.

#### 12.2.4 Withdrawals from Security Fund

(i) After receipt of notice from OCTT that the Company has failed (a) to make any payment required by this Agreement within the time fixed herein; (b) to pay to the District any Liability payable to the District and relating to the System that is due and unpaid; (c) to pay to the District any costs, losses, damages, claims or expenditures (excluding any outside attorneys' fees for enforcement of this Agreement) which the District has been compelled to pay or incur by reason of any act or default of the Company, or (d) to comply with any provision of this Agreement which OCTT reasonably determines can be remedied by an expenditure of an amount in the Security Fund, the Company shall take one (1) of the steps specified in Subsection (ii) of this Section 12.2.4.

(ii) Not later than five (5) Business Days after receipt of the notice described in Subsection (i)(a) of this Section 12.2.4 or twenty (20) Business Days after receipt of the notice described in Subsection (i)(b)-(d) of this Section 12.2.4, the Company shall (a) cure such alleged failure and provide to OCTT a written explanation and evidence of such cure; (b) in a written response to OCTT, present facts and arguments in refutation or excuse of such alleged failure; or (c) promptly begin to cure such breach, default or other noncompliance and provide to OCTT a written explanation of why such cure cannot be completed within five (5) or twenty (20) Business Days, as applicable, and a schedule for completing such cure, both of which shall be satisfactory to OCTT.

(iii) After the lapse of five (5) or twenty (20) Business Days, as applicable, after OCTT's provision of notice pursuant to Subsection (i) of this Section 12.2.4, if the Company has failed to take any of the steps specified in Subsection (ii) of this Section 12.2.4 to the satisfaction of OCTT, then OCTT may withdraw the amount specified in such notice from the Security Fund and pay it to the District.

(iv) For breaches subject to liquidated damages pursuant to Section 12.3.1 hereof, OCTT may withdraw liquidated damages from the Security Fund, and the procedures set forth in Section 12.3.1 hereof shall apply to such withdrawals instead of the procedures set forth in Subsections (i)-(iii) of this Section 12.2.4.

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

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

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

### 12.3 Liquidated Damages

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

For the liquidated damages set forth in Sections 12.3.1(ii) and Section 12.3.1(iii) hereof, the first day for which damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the twentieth (20<sup>th</sup>) Business Day after receipt by the Company of the notice required in the preceding paragraph even if OCTT has specified an applicable cure period longer than the default period of twenty (20) Business Days. For the liquidated damages set forth in Sections 12.3.1(ii) hereof, the first day for which damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any time specified by OCTT beyond the default period of twenty (20) Business Days.

For the liquidated damages set forth in this Section 12.3.1, the maximum period for assessing liquidated damages for each single occurrence of non-compliance shall be one hundred thirty (130) days.

For the following breaches, the liquidated damages shall be the following amounts:

(i) Failure to provide data, documents, records, reports or information to the District, pursuant to the terms of this Agreement: Five Hundred Dollars (\$500.00) per day, for each day that such failure continues;

(ii) Failure to provide any of the capital grants, equipment and other support for the PEG Channels pursuant to SECTION 4 hereof, including, but not limited to, compliance with the Marketing Plan provisions of Section 4.1.2 hereof: Five Hundred Dollars (\$500.00) per day per affected PEG Entity, payable to the affected PEG Entity as directed by OCTT, for each day that such failure occurs or continues; and

(iii) Failure to furnish or maintain the performance bond as required by Section 5.10 hereof or failure to furnish or replenish the Security Fund as required by Section 12.2 hereof: One Hundred Dollars (\$100.00) per day for each day that such failure occurs or continues.

The Company agrees that each of the foregoing failures set forth in this Section 12.3.1 shall result in injuries to the District and its residents, businesses and institutions, the compensation for which will be difficult to ascertain and to prove. Accordingly, the Company and the District agree that the liquidated damages in the amounts set forth above are fair and reasonable compensation for such injuries. The Company agrees that the foregoing amounts are liquidated damages, not a penalty or forfeiture, and are within one (1) or more exclusions to the term "franchise fee" provided by Section 622(g)(2)(A)-(D) of the Cable Act (47 U.S.C. § 542(g)(2)(A)-(D)). Further, the payment of such liquidated damages shall not be deemed to be: (i) "Payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the District by the Company pursuant to Section 8.1 hereof or chargeable against the payments to any PEG Entity by the Company pursuant to Section 4.2 hereof; or (ii) part of the compensation to be paid to the District by the Company pursuant to Section 8.1

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

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

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

#### 12.4 Material Breach

##### 12.4.1 Remedies for Material Breach.

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

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

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

(c) Revoke the Franchise granted pursuant to this Agreement by termination of this Agreement pursuant to Section 12.5 hereof, provided that, such revocation and termination shall not take effect for a period of one (1) year after notice thereof is given to the Company if the Company notifies the District in writing (within thirty (30) days of receipt of the notice of termination and revocation) that (A) the Company shall use its best efforts, during such period, to find a purchaser for the System, which purchaser shall be subject to the approval of the District pursuant to SECTION 10 hereof, and (B) the Company shall provide evidence on a monthly basis to OCTT of its attempts to find such a purchaser.

(ii) In addition to all other remedies granted or available to the District, the District may seek, to the extent appropriate under law, (a) the restraint by injunction of the violation, or attempted or threatened violation, by the Company of any terms or provisions of this Agreement or (b) a decree or order compelling performance by the Company of any term or provision herein.

(iii) This Section 12.4 shall apply instead of the remedy set forth in Title II, Section 1303 of the D.C. Cable Act (D.C. Official Code § 34-1263.03).

**12.4.2 No Independent Failure to Comply.** If, as a result of a failure or alleged failure to comply with a Material Provision of this Agreement as delineated in the foregoing Sections 12.4.2, the Company is unable to comply with any other material provision(s) which necessarily and directly arise(s) out of said failure or alleged failure as delineated in said subsections, such inability to comply with such other provision(s) shall not be deemed to be an independent failure to comply with a Material Provision of this Agreement.

**12.4.3 Material Breach Procedures.** The District shall exercise the rights provided in Section 12.4.1 hereof in accordance with the procedures set forth below, which procedures shall not be applicable to other remedies in this Agreement:

(i) OCTT shall notify the Company, in writing, of an alleged failure to comply with a Material Provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The Company shall, within twenty (20) Business Days after receipt of such notice or such longer period of time as OCTT may specify in such notice, either: (a) cure such alleged failure and provide to OCTT a written explanation and evidence of such cure; (b) in a written response to OCTT, present facts and arguments in refutation or excuse of such alleged failure; or (c) in a written response to OCTT, state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

(ii) OCTT shall determine (a) whether a failure to comply with a Material Provision has occurred; (b) whether such failure is excusable; and (c) whether such failure has been cured or will be cured by the Company in a manner and in accordance with a schedule acceptable to OCTT. In connection

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

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

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

12.5 Obligations upon Termination. In the event of any termination of this Agreement, the District may order the Company to cease all construction and operational activities in the PROW in a prompt, workmanlike and safe manner by a date to be specified by the District. In the event of such a termination, the Company shall maintain in full force and effect the performance bond required by Section 5.10 hereof and coverage under the liability insurance policies required by Section 11.2 hereof for a reasonable period following the date of termination, but in no event less than three (3) years following such date.

12.6 District's Right to Order Removal. In addition to its rights under Section 12.5 hereof, upon any termination, the District may, in its sole discretion in the event the System is not transferred pursuant to Section 10.3 hereof, but shall not be obligated to, direct the Company to remove, at the Company's sole cost and expense, all or any portion of the System from all PROW and other public property within the District, subject to the following:

(i) this provision shall not apply to buried cable which the District determines should not be removed;

(ii) in removing the System, or part thereof, the Company shall refill and compact, at its own expense, any excavation that shall be made by it and shall leave all PROW and other property in as good condition as that prevailing prior to the Company's removal of the System and without affecting, altering or disturbing in any way any electric, telephone or other utility cables, wires or attachments (except to the extent such affecting, altering or disturbing is permitted by an agreement between the Company and the applicable owner of the cable, wires or attachments), provided that, consistent with Section 34(f) of the D.C. Cable Act (D.C. Official Code § 34-1233(f)), the District shall perform any permanent restorations of the PROW at the Company's expense;

(iii) the District shall have the right to inspect and approve the condition of such PROW and public property after removal;

(iv) notwithstanding any other provisions of this Agreement, the performance bond, the Security Fund, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal and associated repair of all PROW and other public property (or during such longer period as may be required by any other provision of this Agreement);

(v) removal shall be commenced within thirty (30) days of the removal order by the District and shall be completed within twelve (12) months thereafter including all associated repair of all PROW and other public property; and

(vi) if, in the reasonable judgment of OCTT, the Company fails to substantially complete such removal, including all associated repair of PROW and other public property, within twelve (12) months thereafter; then, to the extent not

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

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

### SECTION 13 SUBSEQUENT ACTION

13.1 Procedure for Subsequent Action. In the event that, after the Effective Date, any court, agency, commission, legislative body or other authority of competent jurisdiction: (i) declares this Agreement invalid, in whole or in part, or (ii) requires the Company either to: (a) perform any act which is inconsistent with any provision of this Agreement or (b) cease performing any act required by any provision of this Agreement, including any obligations with respect to compensation or other financial obligations pursuant to this Agreement, then the Company shall promptly notify OCTT of such fact. Upon receipt of such notification, the District, acting in good faith, shall determine whether such declaration or requirement has a material and adverse effect on this Agreement. If the District, acting in good faith, determines that such declaration or requirement does not have a material and adverse effect on this Agreement, then the Company shall comply with such declaration or requirement. If the District, acting in good faith, determines that such declaration or requirement would materially frustrate or impede the ability of the Company to carry out its obligations pursuant to, and the purposes of, this Agreement, then the Company and the District shall enter into good faith negotiations to enable the Company to perform obligations and provide Services for the benefit of the District and others equivalent to those immediately prior to such declaration or requirement, to the maximum extent consistent with said declaration or

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requirement. In connection with such negotiations, the District and the Company shall consider whether the circumstances existing at that time are such that the Company, as a direct result of such declaration or requirement, should not or cannot perform obligations and provide Services for the benefit of the District and others which are equivalent to those performed and provided immediately prior to such declaration or requirement.

13.2 Reservation of Rights. To the extent that any statute, rule, regulation, or any other law is enacted, adopted, repealed, amended, modified, changed or interpreted in any way during the term of this Agreement so as to enhance the District's authority with regard to Open Video System-related matters, or the District's authority with respect to Open Video Systems, then, upon either party's request, the Company and the District shall enter into good faith negotiations regarding how, if at all, this Agreement should be modified to reflect such change in law.

### 13.3 Other Open Video System Franchise Granted on More Favorable Terms

13.3.1 Basis for Request. The Company enters into this Agreement with the understanding and on the representation that the District shall act fairly and reasonably in the event that, pursuant to the Cable Act, the District, subsequent to the Effective Date of this Agreement, grants, renews or renegotiates one (1) or more other franchises for the operation of an Open Video System in the Franchise Area ("Other OVS Franchise").

To the extent the District does not have lawful authority over the relevant benefits and burdens described in the following paragraph, the term "Other OVS Franchise" as used in this Section 13 shall not include municipally owned Open Video Systems, video dialtone systems or similar systems.

If the Company believes the agreement pursuant to which such Other OVS Franchise may be granted (hereinafter the "Other OVS Franchise Agreement") bestows benefits and imposes burdens on the franchisee which, as an economic or operational matter, on balance, are materially more advantageous to such third party than the benefits bestowed and burdens imposed on the Company by this Agreement are to the Company, then, at any one (1) time but not sooner than the effective date of the Other OVS Franchise or later than eighteen (18) months after the effective date of the Other OVS Franchise, the Company may request that OCTT make a determination to such effect; in the event of such a determination, the Company may request renegotiation of the terms and conditions of this Agreement as provided below. The discharge in bankruptcy of any obligations of the Other OVS Franchise Agreement shall not be a basis for the Company to request such a determination.

#### 13.3.2 Procedure

(i) In the event of such a request, OCTT shall determine within sixty (60) days whether the Other OVS Franchise Agreement bestows benefits and imposes burdens on the third party which, as an economic or operational matter, on balance, are materially more advantageous to the third party than the benefits

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

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

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

#### SECTION 14 MISCELLANEOUS

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

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

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

14.4 Delays and Failures Beyond Control of Company. Notwithstanding any other provision of this Agreement, the Company shall not be liable for delay in the performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, manufacturing delays or delays in delivery due to conditions that would otherwise relieve the Company from liability under this Section 14.4, loss of utility service or facilities; any act, order or decree of any governmental agency or judicial body; any moratoria on construction projects imposed by the District; sabotage or other such events, provided the Company and Affiliated Persons have exercised all due care in the prevention thereof, to the extent that such causes or other events are beyond the control of the Company. In the event that any such delay in performance or failure to perform affects only part of the Company's capacity to perform, the Company shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause(s) as rapidly as possible. The Company agrees that in correcting such cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible. The Company shall notify OCTT in writing of the occurrence of an event covered by this Section 14.4 within five (5) Business Days of the time at which the Company learns of its occurrence, provided that a failure to send such notice shall not negate an otherwise excusable delay.

14.5 Notices. Every notice, order, petition, document or other direction or communication to be served upon the District or the Company shall be in writing and shall be sufficiently given if sent by U.S. mail (with a copy via facsimile), or by personal delivery with written evidence of receipt. Every such communication to the Company shall be sent to its office at the location most recently specified pursuant to this Section 14.5 hereof, or to such other location in the District as the Company may designate from time to time. Every communication from the Company shall be sent to the individual, agency or department designated in the applicable section of this Agreement, unless it is to "the District," in which case such communication shall be sent to the Executive Director of OCTT at 2217 Fourteenth Street, N.W., Washington, D.C. 20009, or such other address as may be specified by OCTT. Any documents that are required by this Agreement to be sent to the Attorney General shall be sent to the Attorney General, 1350 Pennsylvania Avenue, N.W., Fourth Floor, Washington, D.C. 20004, or such other address as may be specified by the Attorney General. Notwithstanding any other provision of this Section 14.5, any notice OCTT is required to give to the Company pursuant to Section 12.2 hereof for which a cure period is ten (10) days or less must be served by personal delivery, overnight mail service or facsimile transmission.

14.6 Additional Representations and Warranties. In addition to the representations, warranties and covenants of the Company to the District set forth elsewhere herein, the Company represents and warrants to the District and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the District) that, as of the Closing:

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

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

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

(ii) result in the creation of, or give any party the right to create, any material lien, charge, encumbrance or security interest upon the property and assets of the Company that would have a material adverse effect on the operation of the System or the financial condition of the Company or the System; or

(iii) terminate, modify or accelerate, or give any third party the right to terminate, modify or accelerate, any provision or term of any contract, arrangement, agreement, license agreement or commitments, except for any event which individually or in the aggregate would not have a material adverse effect on the business, properties or financial condition of the Company or the System.

14.6.3 Consent. No consent, approval or authorization of, or declaration or filing with, any public, governmental or other authority (including, without limitation, the FCC or any other federal agency or any District, state, county or municipal agency, authority, commission or council, and, if applicable, public service commissions and other entities) on the part of the Company is required for the valid execution and delivery of this Agreement or any other agreement or instrument executed or delivered in connection herewith.

14.6.4 Compliance with Law. The Company is in material compliance with all applicable law and the Company has obtained all government licenses, permits and authorizations necessary for the operation and maintenance of the System.

14.6.5 Litigation; Investigations. There is no civil, criminal, administrative, arbitration or other proceeding, investigation or claim (including, without limitation, proceedings with respect to unfair labor practice matters or labor organization activity matters or involving the granting of a temporary or permanent injunction) pending or threatened against the Company (i) at law or in equity or (ii) before any foreign, federal, District, state, county, municipal or other governmental department, commission, board, bureau, court, agency or instrumentality or any arbitrator(s), that, if decided adversely to the Company would (a) have a material adverse effect on the business, operation, properties, assets or financial condition of the Company or the System, or (b) question the validity or prospective validity of this Agreement, of any essential element upon which this Agreement depends or of any action to be taken by the Company. The Company is not subject to any outstanding order, writ, injunction or decree which materially and adversely affects or will affect the business, operation, properties, assets or financial condition of the Company.

14.6.6 Full Disclosure. Without limiting the specific language of any other representation and warranty herein, all information furnished by the Company which is contained in (i) this Agreement or its Appendix(ces); and (ii) any other document executed on the Effective Date is, as of the Effective Date, accurate and complete in all material respects and does not contain any untrue statement of a material fact or omit any material fact necessary to make the statements therein not misleading.

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

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

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

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

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

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

14.7.3 Condition of System. All of the material properties, assets and equipment of the System are, and all such items added in connection with any construction, upgrade, rebuild or enhancement, will be maintained in good repair and proper working order and condition, consistent with the technical specifications set forth in Appendix A to this Agreement, throughout the term of the Agreement and for any time period in which the Company continues to operate the System.

14.7.4 Inconsistent Contracts. The Company shall not enter into any agreement or contract, compliance with which would prevent the Company from performing its obligations under this Agreement.

14.8 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement apply to the Company, its successors and assigns.

14.9 No Waiver; Cumulative Remedies. Subject to the conditions and limitations established in this Agreement, no failure on the part of the District to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor, except as otherwise provided in this Agreement, shall any single or partial exercise of any such right preclude any other right. Except as otherwise provided in this Agreement, the rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity, and nothing contained in this Agreement shall impair any of the rights of the District under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by either party at any one (1) time shall not affect the exercise of such right or remedy or any other right or other remedy by such party at any other time. In order for any waiver to be effective, it must be in writing and it must be explicit, not implied. The failure of the District to take any action in the event of a material breach by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the District to take any action permitted by this Agreement at any other time in the event that such material breach has not been cured, or with respect to any other material breach by the Company, provided that this sentence is not intended to change or affect the application of the last sentence of Section 626(d) of the Cable Act (47 U.S.C. § 546(d)) (or any successor to such sentence).

14.10 No Opposition. By execution of this Agreement the Company accepts the validity of the terms and conditions of this Agreement (including all Appendices) in their entirety and hereby waives and relinquishes, to the maximum extent permitted by applicable law, any and all rights it (or they) has (or have) as of the Effective Date, or may have had prior to the Effective Date, in law or in equity, to assert in any manner, at any time or in any forum that this Agreement, the Franchise granted pursuant to this Agreement or the processes and procedures pursuant to which this Agreement was entered into and the Franchise was granted are not consistent with applicable law as of the Effective Date.

14.11 Partial Invalidity. If any section, subsection, sentence, clause, phrase or other portion of this Agreement is, for any reason, declared invalid, in whole or in part,

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

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

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

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

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

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

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deemed an amendment to this Agreement or require any consent of the Company. Nothing in this Section 14.16 shall be construed to prevent the Council from delegating any fact-finding function, including, but not limited to, the hearing of evidence, in support of a decision that must be made by the Council under this Agreement, provided that the Council is the entity that shall adopt the final findings of fact and conclusions of law for the District (subject to any subsequent judicial process under applicable law).

14.17 Claims under Agreement. The District and the Company agree that any and all claims asserted by or against the District arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in the District of Columbia (“Federal Court”) or in a court of the District of Columbia (“D.C. Court”). To effectuate this agreement and intent, the Company agrees that if the District initiates any action against the Company in Federal Court or in D.C. Court, service of process may be made on the Company either in person, wherever such Company may be found, or by registered mail addressed to the Company at its office in the Franchise Area, which is specified for receipt of notices pursuant to Section 14.5 of this Agreement, or to such other address as the Company may provide to the District in writing.

14.18 Modification. Except where this Agreement (including the Appendix(es)) specifies that an Appendix to this Agreement may be modified without the approval of both parties, no provision of this Agreement nor any Appendix to this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument in writing, duly authorized and executed by the District and the Company.

14.19 Computation of Time. Unless otherwise provided, the first day to be counted under this Agreement when a period of time begins with the occurrence of an act, event or default is the day after the day on which the act, event or default occurs. When computing a period of time, the last day of such period is included in the computation, and any required action must be taken on or before that day. It is immaterial whether the first day of a time period is a Holiday.

14.20 Applicable Law; Priority of District Laws. As used in this Agreement, “applicable law” shall include the Constitution of the United States; federal and District statutes, rules and regulations; the administrative and judicial decisions interpreting the preceding sources of law and federal and District common law.

(i) To the extent, the D.C. Cable Act, the rules and regulations promulgated by the Council and OCTT thereunder and the administrative and judicial decisions interpreting the D.C. Cable Act and such rules and regulations answer a question left to “applicable law” under this Agreement, such statute, rules and regulations and decisions shall take precedence over any other source of District law.

14.21 Currency. It is understood and agreed that all references to amounts, prices, dollars, etc., set forth in this agreement shall mean United States currency.

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

*– end of page –  
[signatures appear on the following page]*

IN WITNESS WHEREOF, the party of the first part, by its Mayor and Chairman of the Council of the District of Columbia, thereunto duly authorized, has caused the corporate name of said District to be hereunto signed and the corporate seal of said District to be hereunto affixed and the party of the second part, by its officers thereunto duly authorized, has caused its name to be hereunto signed and its seal to be hereunto affixed as of the date and year first above written.

THE CITY OF WASHINGTON,  
DISTRICT OF COLUMBIA

By \_\_\_\_\_  
Mayor

Approved as to form:

By \_\_\_\_\_  
Chairman of the Council of the District  
of Columbia

\_\_\_\_\_  
Attorney General for the District of Columbia

STARPOWER COMMUNICATIONS, LLC

By \_\_\_\_\_  
Name:  
Title:

(Seal)

Witness:

\_\_\_\_\_  
Name:  
Title:

APPENDICES

APPENDIX A

SYSTEM SPECIFICATIONS AND TESTING

## APPENDIX A

### **System Specifications**

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

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

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

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

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

meets all applicable specifications over an outdoor temperature range of 0 degrees to 100 degrees Fahrenheit and over variation in supply voltages from 105 to 130 volts AC.

Company provides standby power generating capacity at the headend and at all hubs. Company maintains motorized standby power generators capable of at least twenty-four (24) hours duration at the headend, and battery back-up power capability of at least four (4) hours duration for all system hubs with automatic dialer response systems to alert the system headend when commercial power is interrupted. The power suppliers serving the nodes and distribution are capable of providing power to the system for not less than two (2) hours according to manufacturer specification in the event of an electrical outage. Company maintains sufficient portable motorized generators to be deployed to a hub site in the event that the duration of a power disruption is expected to exceed four (4) hours.

A status monitoring system shall be provided that communicates with transponders in each standby power supply. This system shall alert technical operations at the network operations center to utility power outages and allow a generator truck to supply power before the standby power supply exhausts its batteries. In addition, the status monitoring system shall be connected to each of the optical receivers and optical transmitters located in the hubs. The optical receivers shall detect a loss of power to a node or a fiber cut and alert technical personnel at the network operations center. The network operations center shall monitor the status monitoring system twenty-four (24) hours a day, seven (7) days a week.

Approximately eight (8) technical performance monitoring units shall be widely deployed throughout the System to measure various System performance parameters. These units allow for frequent, automated performance measurements, as well as data gathering at specific locations with intermittent problems.

The power and HVAC systems of each headend and hub shall be monitored to alert technical operations to malfunctions. The power generators shall automatically self-test once per week.

The Company shall comply with the Emergency Alert System (EAS) requirements set forth in 47 C.F.R. Part 11 (or any successor thereto).

All maintenance performed on the System by the Company shall be in accordance with the FCC rules and regulations governing the technical performance and operating standards for such System.

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

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

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

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

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

### **System Testing**

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

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or regulation, and to ensure that the System components are operating as expected. All tests shall be conducted in accordance with applicable federal law and rules.

The Company shall conduct tests as follows:

- (A) acceptance tests on each newly constructed or rebuilt segment prior to subscriber connection or activation;
- (B) proof of performance tests on the System at least once every six months or as required by FCC rules, whichever is more often, except as federal law otherwise limits the Company's obligation;
- (C) special tests when Subscriber complaints indicate tests are warranted;
- (D) special tests at OCTT's request.

Tests shall be supervised by the Company's chief technical authority, who shall sign records of tests provided to OCTT.

The Company shall provide OCTT with at least two business days' notice of, and opportunity to observe, any tests performed on the System pursuant to this Appendix A. The District may also conduct inspections of construction areas and subscriber installations, including but not limited to inspections to assess compliance with the Company's construction and installation requirements. Inspection does not relieve the Company of its obligation to build in compliance with all provisions of the Franchise.

A written report of test results shall be filed with OCTT within fourteen (14) days of each test. In addition, the Company shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to OCTT.

If any test indicates that any part or component of the System fails to meet applicable requirements, the Company, without requirement of additional notice or request from the District, shall take corrective action, retest the locations and advise OCTT of the action taken and results achieved.



APPENDIX B

INITIAL CABLE SERVICES AND RATE REPORT

APPENDIX B

**Initial Cable Services and Rate Report**

**[NOTE: Current information to be inserted at closing]**

APPENDIX C

PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

## APPENDIX C

### **Public, Educational and Governmental Access**

#### I. PAYMENT OF CAPITAL FUNDS

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

##### A. Initial Allocation

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

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

##### B. Changes to Allocation

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

#### II. PEG OPERATING AGREEMENTS; DESIGNATION OF ADDITIONAL PEG ENTITIES

##### A. Description of PEG Operating Agreements

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

2. Each PEG Operating Agreement shall address, at a minimum, the following issues:
  - a. the terms and conditions under which the PEG Entity is designated and the process by which the District may withdraw the designation and terminate the PEG Operating Agreement if the PEG Entity fails to meet specified terms and conditions;
  - b. the PEG Channels available to the PEG Entity and the requirements for use of such PEG Channels, including any requirements or limitations on use set forth in Section 4 of this Agreement;
  - c. requirements with respect to the use of the capital funds and other support made available to the PEG Entity under Section 4 of this Agreement;
  - d. periodic reporting obligations with respect to the use of the PEG Channels; the capital funds and other support made available to the PEG Entity pursuant to Section 4 of this Agreement; the management and organizational structure of the PEG Entity; and a description of other sources of support received by the PEG Entity that are not required by or pursuant to Section 4.2 of this Agreement; and
  - e. an annual financial report showing sources and uses of funds.
3. The PEG Operating Agreement may contain such other terms and conditions or address such other issues as OCTT deems appropriate.

B. Designation of Additional PEG Entities

1. OCTT may designate additional PEG Entities that are eligible to request allocation of a portion of Educational and Governmental Channels not otherwise allocated.
  2. The District has established rules and regulations setting forth the procedure for requesting designation as a PEG Entity and for requesting allocation of Educational and Governmental Channels. Such rules and regulations allow an existing PEG Entity to apply for additional Educational and Governmental Channels if its existing PEG Channels are or will be fully utilized and it has acceptable plans for the use of such additional Educational and Governmental Channels.
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III. INITIAL ALLOCATIONS

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

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

IV. MODIFICATIONS AND AMENDMENTS

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

APPENDIX D

CONTRIBUTION OF IN-KIND BENEFITS

## APPENDIX D

### **Contribution of In-Kind Benefits**

The Company shall provide the following:

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

APPENDIX E

SUBSCRIBER SERVICES TO GOVERNMENTAL FACILITIES

APPENDIX E

**Subscriber Services to Governmental Facilities**

**I. FREE CABLE SERVICE AND ASSOCIATED INSTALLATION AND EQUIPMENT**

14.23           A.     Free Cable Service and Installation

14.24 1.       Upon the written request of OCTT, the Company shall, at no charge and according to the priority code set forth in Exhibit 1 to this Appendix E, provide one (1) high-amplitude building drop (of at least +19 dB/mV as measured at the tap port closest to the drop location) from the external distribution plant of the Subscriber Network to each facility listed in Exhibit 1 to this Appendix E.<sup>1</sup> Each such building drop shall terminate inside the building at a demarcation point reasonably close to where the cable for such building drop enters the facility. Service to such building drops, which shall be provided at no charge by the Company, shall consist of Basic Service.

14.25 2.       Without charge to the District, as of October 1, 2004, the Company shall provide one high-amplitude building drop (of at least +19dB/mV as measured at the tap port closest to the drop

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

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

Further, in individual circumstances where, despite the Company's best efforts to gain access to existing conduit, the Actual Cost to provide service to the specified location exceeds the Company's standard and reasonable cost to provide service to comparable commercial buildings in the Franchise Area, the District, at its option, shall (i) reimburse the Company for the excess of such Actual Cost over such standard and reasonable cost or (ii) delete the specified location from Exhibit 1 to this Appendix E and add an alternate location in its place.

location) from the external distribution plant of the Subscriber Network to OCTT's new headquarters at 3007 Tilden Street, NW, Washington, D.C. The Company shall provide approximately the same number of additional outlets as it provides at OCTT's 2217 14<sup>th</sup> Street, NW headquarters as of June 1, 2004, and shall distribute the Company's Services from the demarcation point to such additional outlet at locations requested by OCTT. The Company shall not charge the District for any Services (or for any additional Services provided pursuant to the last sentence of Section I.A.4) received by any such additional outlet. The drops at OCTT's office shall include converters for analog, digital, HDTV, and other advanced services as developed.

14.25.1

14.25.2 3. The District shall be responsible for distributing the Company's Services described in Section I.A.1 of this Appendix E from the demarcation point, as described in such Section I.A.1, to additional outlets throughout the facilities listed in Exhibit 1 to this Appendix E. The Company shall not charge the District for Basic Service (or for any additional Services provided pursuant to the last sentence of Section I.A.4) received by any such additional outlet.

14.25.3 4. Each drop installed pursuant to Section I.A.1 of this Appendix E shall be capable of receiving all Services, including cable modem service, so that the District or its employees may purchase, at a rate not to exceed the Company's standard rates, any Service that the Company is not providing for free pursuant to this Appendix.

14.25.4 5. The Company upon request by OCTT shall, at no charge, provide service pursuant to Section I.A.1 to any new governmental facilities opened and operating during the period of the Agreement as long as the facility located within the Company's network.

14.26 B. Free Cable Modem Service

14.26.1 1. The Company shall provide, at no cost to the District, Two-Way cable modem service to each location listed in Exhibit 1 to this Appendix E. Such Two-Way cable modem service shall include five (5) service connections for each such facility. Such five (5) service connections shall consist of one (1) cable modem, one (1) hub and five (5) network interface cards. The Company shall not charge the District for installation<sup>2</sup> or service. If the Company offers various tiers of cable modem service and the District requests that a higher tier of service be provided to some or all of such facilities, the District may purchase such higher tier of service at the lowest price extended to a public facility in any other franchise area served by the Company, provided that the District meets any volume requirements associated with the upgrade price in such other franchise area.

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

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

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

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

boards and institutions which no longer intend to use equipment provided by the Company shall return said equipment to the Company in serviceable condition, reasonable wear and tear excepted.

- 14.26.3 3. Except as otherwise provided by this Agreement, all Services provided by the Company pursuant to this Appendix E shall be subject to the standard terms and conditions and any applicable use policy pertinent to such Services. Notwithstanding the preceding sentence, the Company agrees that the District shall not assume liability for misuse of such Services or the System by others, including, but not limited to, District employees acting outside the scope of their duties.

14.27  
Institutions

C. Relocation of District Departments, Agencies and

- 14.27.1 1. In the event any District department, agency, board or institution relocates from a facility listed in Exhibit 1 to this Appendix E to a facility not listed in such Exhibit 1, the District may add such new facility to such Exhibit 1, and the Company shall provide service to such new location as provided in this Appendix at no additional cost to the District, provided that the new location is within two hundred and fifty (250) feet of the System.

- 14.27.2 2. The Company shall satisfy the obligations set forth in Section I.A of this Appendix E with respect to facilities added to such Exhibit 1 pursuant to Section I.C.1 of this Appendix E within thirty (30) days after receiving written notice from OCTT that a new facility has been added.

II. MODIFICATIONS AND AMENDMENTS

This Appendix E shall not be modified or amended except upon prior approval of the District, provided that additions to Exhibit 1 as provided in Section I.C.1 or Footnote 1 of this Appendix E shall not be considered to be modifications or amendments of this Appendix E.

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

campus buildings TBD)	Ave. NW				
22. ROC Central	1500 Eckington Pl NE	MPD		X	3
23. Training Academy	4600 Sheppard Pkwy. SW	FEMS		X	1
24. ROC East	3244 Pennsylvania Ave. SE	MPD		X	3
25. Residential Housing Academy	6 D.C. Village Lane SE	MPD		X	3
26. Office of the Chief Technology Office	441 4 <sup>th</sup> Street, NW	OCTO		X	3
27. ROC North	8 <sup>th</sup> & Shepherd St NW	MPD		X	3
(a) DC CLINICS					
28. Anacostia Community Neighborhood Health Center	1328 W Street S.E	DOH		X	3
29. Hunt Place Neighborhood Health Center	4130 Hunt Place NE	DOH		X	3
30. So Others May Eat Medical Clinic	60 O Street, NW	DOH		X	3
31. Walker-Jones Neighborhood Health Center	1100 1 <sup>st</sup> Street NW	DOH		X	3
32. Greater Southeast Community Hospital	1310 Southern Ave. SE	DOH		X	1
33. Southwest Community Health Center	850 Delaware Ave. SW	DOH		X	3
34. DC Health Center	820 First Street NE	DOH		X	1
35. Congress Heights Neighborhood Health Center	2720 M.L. King Jr. Ave. SE	DOH		X	1
36. Woodbridge Community health Center	2146 24 <sup>th</sup> Place, NE	DOH		X	3
(b) RECREATION CENTERS					
37. Arboretum Recreation Center	2012 Rand Pl., NE	DCPR		X	3
38. Anacostia Fitness Recreation Center	1800 Anacostia Dr. SE	DCPR		X	3
39. Bruce Monroe Recreation Center	725 Columbia Rd. NW	DCPR		X	3
40. Joseph H. Cole Recreation Center	1200 Morse Street NE	DCPR		X	3
41. Macomb Recreation Center	3409 Macomb	DCPR		X	1

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

Center					
65. Friendship Recreation Center	4500 Van Ness St. NW	DCPR		X	1
66. Hamilton Recreation Center	1340 Hamilton Street NW	DCPR		X	1
67. Hardy Recreation Center	4470 Q Street NW	DCPR		X	1
68. Hearst Recreation Center	3955 37 <sup>th</sup> Street NW	DCPR		X	1
69. Hillcrest Recreation Center	3100 Denver St. SE	DCPR		X	3
70. Kalorama Recreation Center	1875 Columbia Rd. NW	DCPR		X	3
71. Kennedy Recreation Center	7 <sup>th</sup> & P Street NW	DCPR		X	3
72. Lafayette Recreation Center	5900 33 <sup>rd</sup> Street NW	DCPR		X	1
73. LeDroit Senior Recreation Program	2145 Fourth St. NW	DCPR		X	3
74. Palisades Recreation Center	5200 ½ Sherrier Pl. NW	DCPR		X	2
75. Parkview Community Center	Warder St. and Otis Place NW	DCPR		X	3
76. Raymond Recreation Center	3701 10 <sup>th</sup> St. NW	DCPR		X	3
77. Upshur Recreation Center	14 <sup>th</sup> Street & Arkansas Ave. NW	DCPR		X	2
78. Randall Recreation Center	1 I Street SW	DCPR		X	3
79. Sharpe Health Therapeutic Recreation Center	4300 13 <sup>th</sup> Street NW	DCPR		X	1
80. Stead Recreation Center	1625 P Street, NW	DCPR		X	3
81. Takoma Recreation Center	300 Van Buren St. NW	DCPR		X	1
82. Harry L. Thomas Community Center	1801 Lincoln Rd. NE	DCPR		X	1
83. Turkey Thicket Recreation Center	10 <sup>th</sup> Street & Michigan Ave. NE	DCPR		X	2
84. Twin Oaks Garden Recreation Center	14 <sup>th</sup> St. & Taylor St. NE	DCPR		X	2
85. Watkins Recreation Center	12 <sup>th</sup> St. & E Street SE	DCPR		X	3
86. Theodore Hagens Cultural Center	3201 Ft. Lincoln Dr. NE	DCPR		X	3
87. Evans Recreation Center	5600 E. Capitol Street, NE	DCPR		X	3
88. Emery Recreation Center	Georgia Ave. & Madison Streets, NW	DCPR		X	3
89. Ferebee Hope Community	8 <sup>th</sup> & Yuma Street,	DCPR		X	1

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

(ii) Legend for Priority Codes

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

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

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

APPENDIX F

OWNERSHIP INTERESTS AND APPROVED MORTGAGES, PLEDGES AND  
LEASES

## APPENDIX F

### **Ownership Interests and Approved Mortgages, Pledges and Leases**

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

APPENDIX G

REQUIRED INFORMATION FOR TRANSFER PETITIONS

## APPENDIX G

### **Required Information for Transfer Petitions**

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

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

7. The address where the system's records will be maintained after the transfer.
8. For an assignment of the franchise, a copy of the transferee's FCC certification to operate an Open Video System.
9. A statement that the transferee has a current copy of, and agrees to abide by, the terms of this Agreement, the FCC's rules governing Open Video Systems, and any applicable District laws or regulations, and that the transferee will use its best efforts to comply with the terms of this Agreement and applicable law.
10. Certification by the transferee that no elected official of the District holds an interest in the transferee.
11. A description of the transferee's prior experience in Cable Communications System ownership, construction, maintenance, repair and operation, and identification of communities in which the transferee or any of its principals have, or have had, a cable or OVS franchise or license or any interest therein.
12. Current financial statements showing the financial condition of the System as of the date of the petition or other written request.

APPENDIX H

“Map of the District’s Fire Zone”