

**A CABLE FRANCHISE AGREEMENT
BETWEEN ST. MARY'S COUNTY, MARYLAND,
GANS MULTIMEDIA PARTNERSHIP,
AND GANS COMMUNICATIONS, L.P.**



February 18, 2003

CABLE FRANCHISE AGREEMENT
ST. MARY’S COUNTY, MARYLAND

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**CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN ST. MARY’S COUNTY, MARYLAND,
GANS MULTIMEDIA PARTNERSHIP,
AND GANS COMMUNICATIONS, L.P.**

THIS CABLE FRANCHISE AGREEMENT (the “Franchise Agreement”) is entered into by and between the County Commissioners for St. Mary’s County (“County”), a body corporate and politic; Gans Multimedia Partnership, a Pennsylvania limited partnership, doing business as Western Shore Cable (“WSC”); and Gans Communications, L.P., a Delaware limited partnership (“GCLP”).

WHEREAS, WSC has asked the County to renew WSC's nonexclusive franchise (the “Prior Franchise”) to establish, construct, erect, install, maintain, repair, replace and operate a Cable System in the County; and

WHEREAS, the construction, installation, maintenance and operation of such a System involves the occupation of and placement of private commercial facilities in the Public Rights-of-Way within the County; and

WHEREAS, the County has relied on WSC's representations and has considered the information that WSC has presented to it; and

WHEREAS, based on WSC's representations and information, and in response to its request for renewal, the Board of County Commissioners has determined that, subject to the provisions of the Cable Ordinance, and the terms and conditions set forth herein, the grant of a new nonexclusive franchise to supersede the Prior Franchise, on the terms and conditions herein and subject to applicable law, is consistent with the public interest; and

WHEREAS, the County and WSC have reached agreement on the terms and conditions set forth herein; and

WHEREAS, WSC has entered into a Securities Purchase and Asset Contribution Agreement dated August 8, 2002 (“Gans Agreement”), under which WSC’s new franchise will be transferred to GCLP (the “Proposed Transaction”); and

WHEREAS, WSC has filed a transfer application dated August 22, 2002, with the County (the “Transfer Application”), requesting the County’s consent to the Proposed Transaction; and

WHEREAS, the Board of County Commissioners has determined that the Proposed Transaction is consistent with the public interest;

NOW, THEREFORE, in consideration of the County's grant of a new franchise to WSC; WSC's promise to provide Cable Service to residents of the County pursuant to and consistent with the Cable Ordinance, its Franchise, and the terms and conditions set forth herein; and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged;

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS.

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

(a) *Basic Service*

: That Cable Service tier which includes all signals of domestic television broadcast stations provided to any Subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the

Cable System); any public, educational, and governmental programming required by the Franchise to be carried on the basic tier; and any additional video programming signals added to the basic tier by the cable operator.

(b) *Cable Ordinance:* Ordinance 03-____, as it may be amended from time to time.

(c) *Franchise:* The franchise granted pursuant to this Agreement.

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

(e) *Franchise Area:* The entire present territorial limits of the County and any area annexed thereto during the term of the Franchise.

(f) *Franchisee:* Gans Multimedia Partnership, a Pennsylvania general partnership, doing business as Western Shore Cable; and/or Gans Communications, L.P., a Delaware limited partnership, pursuant to the transfer specified in Section 2(k).

(g) *Institutional Network or I-Net:* A communication network constructed or operated by the Operator of a Cable Communications System that is available for the use of County and other local agencies.

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

(i) *Plant Mile:* The length in miles of strand-bearing or underground cable as measured on the street or easement from pole to pole or pedestal to pedestal.

(j) *Prior Franchise:* Franchise Agreement granting a franchise to Simmons Communications Company, L.P., its successors and assigns, to operate and maintain a cable television system in St. Mary's County, Maryland, and setting forth the terms and conditions accompanying the grant of said franchise, dated February 25, 1992, including any extensions thereof.

(k) *System:* For purposes of this Agreement, the Cable System or System shall include the Institutional Network.

(l) *System Upgrade:* A major improvement or enhancement in the technology or service capabilities made by the Franchisee to its Cable System, including construction of the Institutional Network, as more fully described in Section 6(c) herein.

(m) *Upgrade Option:* This term shall have the meaning given to it in Section 6(m)(2) herein.

2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

(a) *Grant of Authority:* Upon passage by the Board of County Commissioners of an ordinance granting a franchise to the Franchisee, the Franchisee will be granted a franchise subject to the terms and conditions of this Franchise Agreement, and subject to the Cable Ordinance and all other applicable law. This Franchise shall grant no authority for the Franchisee to use the County's Public Rights-of-Way for any purposes other than provision of Cable Service, except to the extent other services may be provided pursuant to Section 7(j) herein. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement. This Agreement does not confer any rights other than as expressly provided herein. The franchise will be for the period specified in Section 2(c) below, during which time the Franchisee will receive the right and obligation to construct, reconstruct, operate and maintain a cable television system within the public rights-of-way in those areas of the County specified in Section 2(b) for the sole purpose of providing Cable Service. If for any reason whatsoever the Board of County Commissioners does not pass such an ordinance, this Franchise Agreement will be of no further force and effect.

(b) *Area Served*

(1) The Franchise is for the Franchise Area, as that term is defined herein.

(2) The Franchisee shall build its System so that it is able to provide service as provided in Section 4 to all areas located within the County limits as they existed on the Effective Date of this Agreement. It must build the System so that it can extend service to the County and to persons in the County, including residents located in areas which may be annexed in the future, in accordance with the provisions of this Agreement, unless this requirement is waived in writing by the County Commissioners; *provided, however*, that notwithstanding anything to the contrary, Franchisee shall not be required to overbuild any other cable television system in the County.

(c) *Term of Franchise:* The Franchise and this Franchise Agreement shall extend for a term of fifteen years, commencing on the date first set forth immediately below the final section of this Agreement (such date to be deemed the “Effective Date” for purposes hereof, regardless of the date on which this Agreement shall actually be executed by the parties hereto), unless the Franchise is earlier revoked or its term shortened as provided herein or in the Cable Ordinance.

(d) *Grant Not Exclusive:* The Franchise and the right it grants to use and occupy the Public Rights-of-Way shall not be exclusive, and the County reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time, with or without a franchise.

(e) *Compliance With Applicable Law:* The Franchisee shall comply with the Cable Ordinance and all other applicable law.

(f) *Franchise Agreement Subject to Exercise of Police Powers:* All rights and privileges granted herein are subject to the police powers of the County and its rights under

applicable laws and regulations to exercise its governmental powers to their full extent and to regulate the Franchisee and the construction, operation and maintenance of the Franchisee's Cable System, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the County shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing right-of-way, telecommunications, utility and cable television consumer protection and service standards and rate regulation provisions consistent with federal law.

(g) *Effect of Acceptance*

: By accepting the Franchise and executing this Franchise Agreement, the Franchisee:

(1) accepts and agrees to comply with each provision of the Cable Ordinance and this Agreement, and all applicable federal, state, and local laws and regulations;

(2) acknowledges and accepts the County's legal right to grant the Franchise, to enter this Franchise Agreement, and to enact and enforce ordinances and regulations related to the Franchise;

(3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law; that no provision, condition or term of the Franchise, the Ordinance or this Franchise Agreement at the time of the acceptance of the Franchise was unlawful, unreasonable or arbitrary, void or unenforceable; and that it enters into this Franchise Agreement freely and voluntarily, without any duress or coercion, after free and full negotiations, after carefully reviewing all of the provisions, conditions and terms of this Franchise Agreement, and after consulting with counsel; and

(4) agrees that it will not oppose intervention by the County in any proceeding affecting the Franchisee's Cable System.

(h) Claims Related to Prior Franchise

(1) As of the Effective Date of the Franchise, the Prior Franchise shall be of no further force and effect, and as of that date, the Franchisee surrenders any rights it had thereunder. The Franchisee shall remain liable for payments of all franchise fees owed under the Prior Franchise, and the grant of the Franchise shall have no effect on the Franchisee's duty under the Prior Franchise to indemnify or insure the County against acts and omissions occurring during the period that the Prior Franchise was in effect which accrued prior to but were discovered after the termination of the Prior Franchise. This provision shall not affect the Franchisee's obligation to provide PEG access support on an interim basis under this Franchise Agreement according to the terms of the Prior Franchise, as specified in Section 7(c)(5).

(2) Except as required to carry out the intent of the previous paragraph, the County and the Franchisee mutually release each other from any claims each had against the other under the Prior Franchise, to the extent such claims were known or should have been known prior to the termination of the Prior Franchise.

(3) The parties agree that any costs to the Franchisee or any cash payments made by the Franchisee under this provision, or associated with the provision of support for PEG access (including the Institutional Network) pursuant to this Franchise Agreement, do not constitute franchise fees within the meaning of 47 U.S.C. § 542, and fall within one or more of the exceptions to 47 U.S.C. § 542.

(i) No Waiver

(1) The failure of the County on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or

any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the County, nor to excuse the Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

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

(j) *No Recourse:* The Franchisee shall have no recourse against the County for any loss, cost, expense, claim, liability or damage arising out of any action undertaken or not undertaken by the Franchisee pursuant to the Franchise, this Agreement or the Cable Ordinance, whether or not such action or non-action was required by the Franchise, the Agreement or the Ordinance, arising out of the enforcement or non-enforcement by the County of any provision or requirement of this Agreement or the Ordinance.

(k) *Transfer of Franchise*

(1) The County hereby consents to the Proposed Transaction as described in the Transfer Application and the Gans Agreement. The approval of this Agreement by resolution of the Board of County Commissioners constitutes the County's final decision on Transfer Application for purposes of 47 U.S.C. § 537.

(2) Upon the closing of the Proposed Transaction, GCLP shall be bound by all the commitments, duties, and obligations, present, continuing and future, of WSC embodied in this Agreement and the Cable Ordinance, and all acts and omissions of WSC occurring prior to this Agreement will continue to be deemed to be those of GCLP.

(3) Neither this Agreement, nor any other action or omission by the County at or before the execution of this Agreement, shall be construed to grant the County's consent to any future transfer of the Franchise and/or the System, and/or any future change in ownership and/or control of the Franchise and/or the System, or to mean that the County's consent to any future transaction is not required, except as otherwise provided in the subsections of this Section 2(k)(3). In the event the Proposed Transaction does not close by August 1, 2003, or closes on terms that are in any material respect different from the terms disclosed to the County in writing, then any County consent to the Proposed Transaction shall be void and of no force or effect, and the Proposed Transaction deemed to have been timely denied.

- (A) A change of control as among Joseph S. Gans III, Nautic Partners V., L.P., and Chisholm Partners IV, L.P., pursuant to Section 6.1(a) of the Operating Agreement of Gans Communications, L.L.C. (August 8, 2002), shall not require approval by the County unless it qualifies as a Transfer under § 2(b)(32)(A)(i), (iii), or (iv) of the Cable Ordinance, or unless it results in a change of direct or indirect control of the Franchisee or the System to a Person other than Joseph S. Gans III, or Nautic Partners V., L.P., or Chisholm Partners IV, L.P.
- (B) A future investment in the Franchisee by the Investors as specified in Section 2.3(b) of the Gans Agreement shall not require approval by the County unless it qualifies as a Transfer under § 2(b)(32)(A)(ii), (iii), or (iv) of the Cable Ordinance.

(4) The Companies represent and warrant that the Proposed Transaction will not adversely affect the System's rates, customer service, or financial resources.

3. TRANSFERS

The Franchisee shall comply with all requirements of the Ordinance and applicable law regarding transfers.

4. PROVISION OF CABLE SERVICE

(a) *Availability of Cable Service:* Subject to the provisions of subsection (b), the Franchisee shall make Cable Service available to all residences, businesses and other structures within the Franchise Area, including multiple dwelling unit buildings, whose owners or occupants request Cable Service.

(b) *Line Extension Requirements*

(1) The Franchisee shall extend its Cable System within a reasonable time (but not to exceed one hundred twenty (120) days) to provide service to any person or business upon request at no charge other than any applicable installation fees for the individual subscriber's drop, as long as the following conditions are satisfied:

- (A) the new subscriber requesting service is located three hundred (300) feet or less from the termination of the Cable System, and
- (B) the number of potential subscribers to be passed by the extension necessary to serve such subscriber is equal to or greater than twenty (20) homes per mile measured from any point on the System.

Any time required to obtain necessary permits for such work will not be counted toward this

120-day period.

(2) In the event that the requirement set forth in Section 4(b)(1)(A) is not met, the Franchisee shall provide the necessary drop to serve a Subscriber if the Subscriber pays in advance the Franchisee's actual direct costs for such drop, constructed at the lowest cost consistent with good engineering practice, less the average direct costs attributable to a standard drop. In the event that the requirement set forth in Section 4(b)(1)(B) is not met, the Franchisee shall extend its cable System to serve a Subscriber if the Subscriber (who may recruit other affected Subscribers to help bear the cost) is willing to share the cost of the extension, according to the following formula: The percentage by which the actual number of homes per mile on the extension falls short of the number of homes per mile specified in Section 4(b)(1)(B) is the percentage of the total construction costs that must be borne by the Subscriber. The "total

construction costs" are defined as the actual turnkey cost to construct the entire extension including electronics, pole make-ready charges, and labor, but not the cost of the house drop.

(B) Thus, for example: To reach a requesting Subscriber requires an extension of two miles. That extension contains sixteen homes. Because the proposed extension contains only 40% of the total number of homes specified in Section 4(b)(1)(B) for required service (20 homes per mile or 40 homes over two miles), the Subscriber, with any other affected Subscribers who wish to contribute, must pay the remaining 60% of the cost.

(c) *Conditions of Access*

(1) Except as federal or state law shall otherwise require, the County shall not permit any person who owns or controls a residential multiple unit dwelling, trailer park,

condominium, apartment complex, subdivision or other property to interfere with the right of any tenant, resident or lawful occupant thereof to request and receive cable installation, service or maintenance from a Franchisee. The owner or person in control of a residential multiple unit dwelling, trailer park, condominium, apartment complex, subdivision or other property shall be consulted and give final direction regarding the means and methods for installation consistent with customary practices in the industry.

(d) *Continuity of Service*

(1) It is the right of all Subscribers in the Franchise Area, subject to Section 4(b), to receive all cable services from the Franchisee as long as their financial and other obligations to the Franchisee are satisfied.

(2) At the County's reasonable request, if necessary, the Franchisee shall operate its System for a temporary period (the "Transition Period") following the termination or revocation of its Franchise to maintain continuous service to Subscribers and I-Net availability to the County, and shall cooperate with the County to allow an orderly transition from it to another Franchisee. The Transition Period shall be no longer than reasonably necessary to complete the transition, and shall not be longer than twenty-four (24) months, unless extended by the County for good cause. During the Transition Period, the Franchisee will continue to be obligated to comply with the terms and conditions of this Agreement and applicable laws and regulations.

(3) If the Franchisee abandons its System during the Franchise term, or fails to operate its System in accordance with the terms of this Agreement during any Transition Period, the County, at its option, may operate the System, designate another entity to operate the System temporarily until the Franchisee restores service under conditions acceptable to the County or until the Franchise is revoked and a new Franchisee selected by the County is providing service, or obtain an injunction requiring the Franchisee to continue operations. Such

abandonment shall also be cause for revocation of the Franchise. If the County is required to operate or designate another entity to operate the Cable System, the Franchisee shall reimburse the County or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the Cable System.

(4) The Franchisee shall be deemed to have abandoned its System if the Franchisee fails to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area for ninety-six (96) consecutive hours, unless the County authorizes a longer interruption of service or the failure is due to *force majeure* as characterized herein, or the Franchisee, for any period, willfully and without cause refuses to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area.

5. CONSTRUCTION AND MAINTENANCE

(a) System Tests and Inspections

(1) The Franchisee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise and other performance standards established by applicable law or regulation, and to ensure that the System components are operating as expected.

(2) The Franchisee 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 Franchisee's obligation;

(C) appropriate diagnostic tests when Subscriber or User complaints indicate such tests are warranted;

(3) The County may observe any tests performed on the System. The Franchisee shall provide the County with at least two business days' notice of any acceptance tests performed under section 5(a)(2)(A), any proof of performance tests performed under section 5(a)(2)(B), and, if the County has transmitted to the Franchisee or otherwise been directly involved in the relevant Subscriber or User complaint, any diagnostic tests performed under section 5(a)(2)(C). The County may also conduct inspections of construction areas and subscriber installations, including but not limited to inspections to assess compliance with the Franchisee's construction and installation requirements, this Agreement and applicable law generally. Inspection does not relieve the Franchisee of its obligation to build in compliance with all provisions of the franchise.

(4) A written report of the results of any tests specifically requested by the County pursuant to Section 5(a)(2)(C) shall be filed with the County within seven (7) business days of each test. In addition, the Franchisee shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the County upon the County's written request.

(5) If any test indicates that any part or component of the System fails to meet applicable requirements, the Franchisee, without requirement of additional notice or request from County, shall take corrective action, retest the locations and (if the County has requested the test or otherwise been directly involved) advise the County of the action taken and results achieved.

(6) The County reserves the right to conduct its own tests upon reasonable notice to the Franchisee. The Franchisee shall have the right to have its representatives present

at such tests, which shall be conducted so as to avoid damage to the System. If substantial noncompliance is found, the expense thereof shall be borne by the Franchisee. The County will endeavor to arrange any request for such tests so as to minimize hardship or inconvenience to the Franchisee or to subscribers and shall endeavor to ensure that testing procedures and test criteria are consistent with FCC and customary industry standards, including use of qualified personnel and proper calibration of test equipment.

(b) *Restoration:* In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Franchisee shall, once it becomes aware or is notified of such a disturbance, in a manner approved by the County, replace and restore all paving, sidewalk, driveway, landscaping, or surface of any street or alley disturbed, in substantially the same condition and in a good workmanlike, timely manner in accordance with any standards for such work set by the County. Such restoration shall be undertaken within no more than five business days after the damage is incurred, and subject to weather conditions shall be completed as soon as reasonably practicable thereafter.

(c) *Publicizing Proposed Construction Work:* The Franchisee shall notify the public prior to commencing any significant planned construction that Franchisee reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally. The Franchisee shall publicize such planned construction work at least one (1) week prior to commencement of that work by causing written notice of such construction work to be delivered to the County and by notifying those Persons most likely to be affected by the work in at least two (2) of the following ways: by telephone; in person; by mail; by notices shown on the System at times and on channels likely to afford actual notice in a large number of cases; by distribution of flyers or door hangers to residences; or by

publication in at least one local newspaper of general circulation. If the Franchisee must enter a subscriber's premises, it must schedule an appointment at the convenience of the owner or resident.

(d) *System Maintenance: Interruptions to be Minimized.* The Franchisee shall schedule maintenance on its System so that activities likely to result in an interruption of service are performed during periods of minimum Subscriber use of the System.

6. SYSTEM FACILITIES, EQUIPMENT AND SERVICES

(a) *System Characteristics:* The Franchisee's Cable System shall, at all times during the Franchise term, meet or exceed the following requirements:

(1) *Industry-accepted Equipment.* The System shall use equipment generally used in high-quality, reliable, modern systems of similar design, including but not limited to backup power supplies capable of providing power to the System for not less than two hours according to manufacturer's reasonable specifications, in view of local conditions, in the event of an electrical outage. The obligation to provide such backup power supplies shall apply to the Franchisee's headend and each fiber optic node. In addition, the design and construction of the System shall include modulators, antennae, amplifiers and other electronics that permit and are capable of passing through the signals received at the headend without substantial alteration or deterioration (thus, for example, the System shall include components so that a signal received at the headend in color may be received by a Subscriber in color and a stereo signal in stereo). The Franchisee shall comply with all applicable laws and regulations concerning System compatibility with Subscribers' television receivers and/or videocassette recorders.

(2) The Franchisee shall comply with all FCC regulations regarding scrambling or other encryption of signals.

(3) No Deterioration to Access Signals. The System shall be so constructed and operated that there is no significant deterioration in the quality of PEG access signals or leased access signals, either upstream or downstream, as compared with any other channel on the System. Deterioration refers to any signal problem, including but not limited to ghost images and other interference and distortions.

(4) Parental Control. The Franchisee shall ensure that means are available to enable Subscribers to block out audio and video on any undesired channels on the System.

(5) Program Security. The System shall include equipment so that any pay-per-view programming can only be activated by the positive action of a subscriber using, for example, a private identification number or other individual selection procedure.

(6) Service to Persons with Disabilities. All closed-caption programming retransmitted by the System shall include the closed-caption signal. For hearing impaired Subscribers, the Franchisee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired.

(b) Current System

(1) The Franchisee is authorized and required to operate its existing System, and to provide service substantially equivalent to its existing service, within the County as of the Effective Date of this Agreement, until such time as the System is upgraded as provided herein.

(2) The Franchisee shall implement a preventive maintenance plan to sweep and balance the trunk of the entire distribution system, including all trunk amplifiers from the headend to the last bridger amplifier, including any active return path. As picture quality problems unrelated to frequency response are discovered as the System is swept and balanced, that portion of plant will be inspected and any plant-related problems causing poor pictures will be corrected. The Franchisee shall carry out this maintenance plan pursuant to a reasonable

implementation plan which it establishes in consultation with the County. If in testing the System after sweeping and balancing it is found that portions of the distribution system nonetheless demonstrate poor quality related to frequency problems, then at a minimum the remaining part of those portions of the distribution system will also be swept and balanced.

(3) The Franchisee shall provide the County with a monthly report on its system's status with regard to the maintenance plan specified in Section 6(b)(2), to be delivered on or before the tenth of each month. Such report shall indicate the number of service calls in each of the following categories during the previous month: Analog video service, digital video service, and cable modem service.

(c) *System Upgrade:* The Franchisee shall complete a System Upgrade providing capabilities at least equal to those of the following model System:

(1) The upgraded System shall have a minimum bandwidth of 750 MHz on all active components and at least 1 GHz for all passive components.

(2) The upgraded System shall provide activated two-way capability and shall be capable of providing high-speed Internet access via cable modems wherever Cable Service is provided.

(3) The System shall utilize a fiber-optic wire trunk and distribution ("hybrid fiber-coaxial") design and at no place in the System shall more than one thousand (1,000) residences, businesses and other structures be served by any single fiber node.

(4) There shall be no more than eight active components in a cascade measured from the node.

(5) The Franchisee shall implement status monitoring throughout the System at all hubs and nodes. The status monitoring system must, among other things, monitor signal

level and distortion parameters and alert the Franchisee when and where back-up power supplies are being used.

(d) *System Design Review Process:* At least sixty (60) days prior to the date construction of the System Upgrade, or any similar major construction that would affect more than ten percent of the Subscribers, is scheduled to commence, the Franchisee shall submit to the County a detailed System design and construction plan which shall include at least the following elements:

- (1) Design type, trunk and feeder design, and number and location of hubs or nodes.
- (2) Distribution system equipment to be used.
- (3) Plans for standby power.
- (4) Longest amplifier cascade in System (number of amplifiers, number of miles, type of cable/fiber).
- (5) Design maps and trunk tree maps for the System.

The System design will be shown on maps of industry standard scale using standard symbology, and shall depict all electronic and physical features of the cable plant. The County may review the plan and, within thirty (30) days of the date the plan is made available for County review, submit comments to the Franchisee. The County may take any appropriate action it is entitled to take under this Agreement, the Cable Ordinance, or other applicable law if it believes the design plan fails to satisfy or is likely to fail to satisfy the Franchisee's obligations. The County's review does not excuse any non-performance under this Agreement, the Cable Ordinance or other applicable law.

(e) *System and Institutional Network Upgrade Schedule*

(1) The Franchisee shall begin construction of the System Upgrade and Institutional Network within three (3) months after the Effective Date of the Franchise, and shall complete construction within forty-two (42) months after the Effective Date of the Franchise, in order to minimize disruption of the Public Rights-of-Way. Thirty percent of the System Upgrade and Institutional Network construction shall be completed within twelve (12) months after the Effective Date, sixty percent shall be completed within twenty-four (24) months after the Effective Date, and ninety percent shall be completed within thirty-six (36) months after the Effective Date.

(2) The Franchisee's construction plan shall insure that service is extended to low income areas at least as quickly as it is extended to higher income areas.

(3) All construction shall be performed in accordance with applicable provisions of the Cable Ordinance and this Agreement, except where specifically waived in writing by the County.

(f) Periodic Progress Reporting: Following the commencement of construction of the System Upgrade or any similar major construction, including construction of the Institutional Network, every three (3) months until the construction is completed, the Franchisee shall meet with the County and provide an update on the progress of the upgrade according to the Franchisee's general plan, unless the County waives such meeting. Upon request, the Franchisee shall provide detailed written reports to the County on the Franchisee's progress in construction.

(1) Public Notification. Prior to the beginning of any System Upgrade construction or any similar major construction, and periodically during each phase, the Franchisee shall inform the public and its Subscribers about the progress of the upgrade, areas

where construction crews will be working and any expected temporary interruptions to existing services which may occur.

(2) Delays in the System Upgrade. The Franchisee shall not be excused from the timely performance of its obligation to begin and complete any System Upgrade, including construction of the Institutional Network, within the times specified herein, except for the following occurrences:

- (A) Any “*force majeure*” situation, as described herein;
- (B) Unreasonable failure or delay by the County to issue any permits or permission upon a timely request submitted by the Franchisee or its contractor representative and tender of any required permit fees;

(3) Consequences of Delays. Absent a showing of excusable delay pursuant to subsection 6(f)(2) above, should the Franchisee be unable to demonstrate the commencement or timely completion of the System Upgrade (including the Institutional Network) by the times specified herein, or be unable to reasonably justify any delays, then the Franchisee shall be in violation of a material provision of this Franchise Agreement and the County may, in its sole discretion, either grant the Franchisee an extension of time to complete such construction or implement any enforcement measures specified in this Agreement or the Cable Ordinance, including but not limited to revocation of the franchise.

(g) *Technical Standards:* The Cable System shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards.

(h) *Interconnection*

(1) The Franchisee shall design its System so that the Institutional Network, emergency alert system, and PEG channels may be interconnected with other cable systems, institutional networks, or similar communications systems as specified in section 6(h)(2). Such

interconnection of systems may be made by direct cable connection, microwave link, satellite or other appropriate methods approved by the County, such approval not to be unreasonably withheld.

(2) Upon receiving the directive of the County to interconnect with a system in the County or in a contiguous county, the Franchisee shall immediately initiate negotiations with the other affected system or systems and cooperate with such other affected system or systems to achieve the requested interconnection. The County may require the Franchisee to make such interconnection provided that: (a) such interconnection is technically and economically feasible; (b) any other affected system operator cooperates with the Franchisee to achieve the requested interconnection; and (c) the Franchisee and any other affected system operator can agree upon reasonable interconnection arrangements, including an allocation of the costs of interconnection between the Franchisee and such other operator that is reasonably acceptable to the Franchisee.

(3) The Franchisee shall cooperate with any interconnection corporation, regional interconnection authority, state or federal regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of communications systems in a region including the County, subject to the conditions (a)-(c) specified in Section 6(h)(2).

(i) *Emergency Alert System*

(1) The Franchisee shall install and maintain for use by the County an Emergency Alert System (“EAS”) meeting all applicable requirements of federal law.

(2) This EAS shall be remotely activated by telephone and shall allow a representative of the County to override the audio and video on all channels on the Franchisee's System, without the assistance of the Franchisee, for emergency broadcasts from two locations –

the County Emergency Communications Center and the County Back-up Emergency Communications Center – in the event of a civil emergency or for reasonable tests.

(3) The County will provide reasonable notice to the Franchisee prior to any test use of the EAS. Such tests shall not occur more than once a month. The Franchisee shall cooperate with the County in any such test.

(j) *Uses of System:* Franchisee shall advise the County of all active uses of the System, for both entertainment and other purposes, within thirty days after commercial deployment of such uses.

(k) *Home Wiring*

(1) Prior to a customer's termination of Cable Service, the Franchisee will not restrict the ability of a Subscriber to remove, replace, rearrange or maintain any cable wiring located within the interior space of the Subscriber's dwelling unit, so long as such actions do not interfere with the ability of the Franchisee to meet FCC technical standards or to provide services to, and collect associated revenues from, that customer or any neighboring customer in a multiple dwelling unit.

(2) The Franchisee will provide Subscribers with a notification upon commencement of service, and annually thereafter, advising them of their rights relating to home wiring.

(l) *Opinion Survey Report:* The Franchisee shall conduct a nonbinding opinion survey at least every three years which shall identify information on programming and services desired. The Franchisee shall submit the results of this survey to the County by March 1 of the year following such survey.

(m) *Mid-term Technical Review*

(1) The County may conduct a Mid-Term Technical Review of the Franchisee's Cable System, beginning during the ninth year of the Franchise. The Franchisee shall fully cooperate and assist the County in conducting such review.

(2) Purpose: The purpose of the Mid-Term Technical Review shall be to evaluate the technical performance and capabilities of the Franchisee's System to determine whether to require a System Upgrade to conform with technical improvements then commonly in use in the industry and available on systems in communities similar to the County. Subject to the provisions of this Section 6(1), the County may amend this Franchise Agreement to require the Franchisee to upgrade its System to incorporate technical improvements (the "Upgrade Option").

(3) County's Initial Review: To determine whether to invoke the Upgrade Option, the County shall first commence a review of the Cable System. Such review shall be conducted to enable the County to determine the following: (i) whether the Cable System should be upgraded or rebuilt; and (ii) whether the Cable System's technical standards should be revised or improved. Each determination under this paragraph shall be based upon the reasonable cable-related needs and interests of the community, considering the costs to the Franchisee of meeting those needs and interests.

(4) Franchisee's Report: To assist in the County's initial review, the Franchisee shall, at the end of the eighth (8) year and the end of the fifteenth (15) year of the Franchise term, submit a report to the County describing advances in cable technology nationwide, the potential benefits and disadvantages of those advances for consumers, and any plans or timetables the Franchisee may have for instituting such changes in technology..

(5) Public Hearings: If, after conducting its initial review, the County determines that a System Upgrade may be warranted, it shall hold at least two public hearings to enable the general public and the Franchisee to comment and to present additional information.

(6) Discussions With Franchisee: The County and the Franchisee may conduct discussions regarding the information developed during this process and any potential upgrade requirements. If the County and the Franchisee agree as to whether and how the Franchise Agreement should be amended in light of this information, they may proceed to amend this Franchise Agreement pursuant to Section 6(m)(9) without the need for an Order and Response pursuant to Sections 6(m)(7) and 6(m)(8).

(7) Upgrade Order: Following the public hearings specified in Section 6(m)(5), unless amendments to the Franchise Agreement are agreed to pursuant to Section 6(m)(6), the County shall determine whether the exercise of the Upgrade Option is warranted, based upon the reasonable cable-related needs and interests of the community, considering the costs to the Franchisee of meeting those needs and interests. The County shall then issue a written order (“Upgrade Order”) stating whether an upgrade is required, describing any upgrade to be implemented, and setting forth the basis for its decision. If an upgrade is required, the County shall set forth any relevant conditions.

(8) Franchisee's Response. Within sixty (60) days after the County issues the Upgrade Order, the Franchisee shall notify the County in writing whether it will comply with the Order. If the Franchisee does not so notify the County within sixty (60) days, the Franchisee will be deemed to have agreed to comply with the Upgrade Order.

(9) Amendment of the Franchise Agreement. If the Franchisee agrees to comply with the Upgrade Order, the parties shall amend this Franchise Agreement accordingly.

(10) Rejection of the Upgrade Option. If, however, the Franchisee does not agree to comply with the Upgrade Order, the Franchisee shall, as its sole remedy, notify the County in writing, pursuant to Section 626 of the Cable Act, that it wishes to commence proceedings to renew the Franchise. If, at the time of such notice, more than three (3) years remain in the term of the Franchise, such notice shall be deemed, by mutual agreement, to shorten the term of the Franchise and this Agreement so that the Franchise and this Agreement shall terminate thirty-one (31) months from the date of the notice.

7. CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

(a) Access Capacity

(1) Initial Capacity. The Franchisee shall initially make available to all Subscribers on the System at least two (2), and where the System Upgrade is complete at least four (4), standard 6 MHz analog NTSC Access Channels for public, educational and/or governmental use, which Channels shall be in addition to any capacity provided on the Institutional Network pursuant to Section 7(j). This initial capacity may be reduced pursuant to the conditions in this Section 7(a).

(2) Reduction of PEG Capacity. The fourth channel dedicated to public, educational and/or governmental use may be reclaimed by the Franchisee under the conditions specified in Section 7(a)(4), pursuant to the procedure specified in Section 7(a)(3). In addition, the County shall prescribe rules and procedures under which the Franchisee is permitted to use capacity on an access channel for the provision of other services if such channel capacity is not being used for the purposes designated, and rules and procedures under which such permitted use shall cease. Use by the Franchisee of capacity that has previously been dedicated to PEG

purposes shall be considered temporary and subject to later restoration of PEG use pursuant to the same procedures.

(3) Procedure for Adjustment of PEG Capacity. Requests for the Franchisee to make use of an underutilized fourth PEG channel, or for the restoration of that channel if it has been reclaimed by the Franchisee, may be made to the County Administrator. The County Administrator shall determine whether that channel should be reclaimed or restored, using the criterion set forth in Section 7(a)(4). The County Administrator shall render a written decision regarding such a request within sixty days of receiving the request.

(4) Criterion for Adjustment of PEG Capacity. The fourth access channel specified in Section 7(a)(1) shall be returned by the County for use by the Franchisee, or restored for PEG use by the Franchisee, based on the following criterion: The other educational access channel is programmed with qualified programming at least sixty percent (60%) of the time between 8:00 a.m. and 10:00 p.m., five (5) days per week, during any consecutive sixteen-week period.

- (A) All qualified programming shall count in this measurement for the actual running time shown.
- (B) “Qualified programming” includes any material carried on the access channels, except for "bulletin board" material where the same text (or video and text) screen is sent simultaneously to all system subscribers.
- (C) Repeat programs are qualified programming only to a maximum of twenty-five percent (25%) of total qualified programming. “Repeat program” means the running time of any program only to

the extent it is shown more than four (4) times during the test hours over the sixteen-week measurement period.

(D) Qualified programming includes non-locally produced programming only to a maximum of ten percent (10%) of total qualified programming. “Locally produced programming” means programming produced by educational institutions within the County.

(5) Time Periods for Changes in PEG Usage. The fourth PEG channel shall be reclaimed or restored as specified in this Section within ninety days after receiving the County Administrator’s decision.

(6) Time Limit on Frequency of Requests. No requests for reclaiming or restoration of the fourth PEG channel under Section 7(a)(3) shall be made within one year after a change under that Section has been made.

(7) Digital Carriage. The Franchisee shall carry all public, educational, and governmental access video programming in analog form unless and until (A) all other programming on the System is converted to digital, or (B) the Franchisee and the County agree that some or all Access Channels shall be converted to digital, whichever occurs first. If and when one of those conditions is met, the Franchisee shall also deliver any PEG channels in a digital format, and the following additional requirements shall apply:

(A) If any access channels are provided to the Franchisee in a high-definition television format, the Franchisee shall carry such access channels in a form that preserves such format, using any applicable

compression or other techniques at no lower level of quality than it applies to other channels on its System.

- (B) If capacity dedicated for PEG use pursuant to Section 7(a)(1) of this Agreement is subdivided or compressed resulting in multiple transmission paths, the Franchisee may reclaim for its own use 50% of the initial PEG capacity. For purposes of this subsection, the capacity dedicated to a PEG Channel prior to such subdivision or compression refers to a 6 MHz channel.

(b) Carriage of Access Channels

(1) The Franchisee will provide any Access Channels on the basic tier throughout the life of the Franchise, or if there is no basic tier, shall provide the Access Channels as part of the service provided to any Subscriber, at no additional charge, and so that the channels are viewable by the Subscriber without the need for additional equipment. If channels are selected through a menu system, the Access Channels shall be displayed as prominently as commercial programming choices offered by Franchisee.

(2) Access Channel assignments shall be the same throughout the System. Access Channel assignments should not be changed unless there is good cause and the Access Channel programmer consents to the change. Such consent to a channel assignment change shall not be unreasonably withheld. Any such reassignment must be to a channel of technical quality at least equivalent to that of other channels on the System. In the event of such a reassignment, Franchisee shall place a notice of the reassignment in a local paper for thirty (30) days prior to the change advising Subscribers of the channel reassignment, and pay the costs of all equipment required due to the reassignment. The Franchisee shall also run announcements of the reassignment on the System's alphanumeric channel or equivalent channel.

(3) If a PEG use is discontinued and later reinstated pursuant to Section 7(a)(3), such use shall if reasonably possible be returned to the same location or channel position it previously occupied.

(c) *Capital Support for Access Equipment and Facilities*

(1) The Franchisee shall deliver to the County Administrator the capital grants hereinafter specified to be used by the County, in its discretion, for PEG access equipment or facilities for governmental and educational access (including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment), as follows:

(A) Within ninety (90) days following the Effective Date, a capital grant of \$18,126 for use by the County to purchase meeting room access improvements; (B) upon certification for occupancy of the educational access studio and requisition of the access equipment at the Career Center, a capital grant of \$74,826 for the acquisition of such equipment; and (C) upon certification for occupancy of the governmental access studio and requisition of the access equipment at the Government Center, a capital grant of \$74,826 for the acquisition of such equipment, provided that the grant specified in (C) shall not be required of the Franchisee before July 1, 2005. In lieu of providing certification of occupancy and requisition of equipment, the County may elect to make the expenditures required by this Section 7(c) and present invoices to the Franchisee in amounts up to but not exceeding the amounts specified herein for such expenditures, in which case the Franchisee shall pay such invoices within thirty (30) days of receipt.

(2) The Franchisee shall provide appropriately qualified and adequate staffing at the public access studio co-located with the elementary and secondary school access studio during non-school hours in accordance with the February 18, 2003 letter from the Franchisee, attached hereto as Appendix 2.

(3) The Initial Capital Grant specified in Section 7(c)(1) is based on the assumption that the same studio facilities and equipment used for governmental and educational access purposes can also be used to meet the needs and interests of public access program production. If and when those facilities and equipment no longer meet the needs and interests of public access programming according to the criteria set in Section 7(c)(4), the Franchisee shall provide a supplemental studio at its offices which shall be shared with Public Access Users. Alternatively, the Franchisee may provide a dedicated studio for Public Access Users.

- (A) The Franchisee shall provide and maintain equipment in such a studio that will enable the production of public access programming which is of commercial quality and generally equivalent to the public access programming produced at the educational access studios, and shall provide staff to the extent necessary to (a) make the equipment available; (b) provide for the check-in and check-out of public access equipment; (c) maintain a record of studio use by persons producing public access programming in conformity with public access rules and regulations adopted by the County.
- (B) The supplemental studio shall be available at least thirty (30) hours per week, including at least 25% of that time on weeknights and/or weekends.
- (C) Individuals using public access equipment in the supplemental studio shall be required to complete training successfully at the educational access studios and to be certified by the County or the

educational access manager as qualified to use the public access equipment.

- (D) The Franchisee shall be required to make such facility available for an additional 10 hours per week if potential producers of public access programming are approved by the County as having presented a reasonable plan for additional regularly shown public access programming not then being produced in the existing public access facilities. Any such plan shall be consistent with any rules and regulations adopted by the County for public access use.

(4) It shall be deemed that the facilities and equipment described in Section 7(c)(1) no longer meet the needs and interests of public access programming if the following conditions are satisfied:

- (A) as measured over a three-month period, both the governmental and the educational access studios are in use at least 75% of the time during any of the following three time segments: (i) Monday through Friday 9 am through 6 pm, (ii) Monday through Friday 6 pm through 11 pm, and (iii) Saturday and Sunday 9 am through 6 pm; and
- (B) potential producers of public access programming provide the County with a reasonable plan for additional regularly shown public access programming not then being produced which would require the use of supplemental studio facilities or equipment comparable to those available in the governmental and educational

access studios for a cumulative total of at least five hours per week. Any such plan shall be consistent with any rules and regulations adopted by the County for public access use.

(5) The Franchisee shall continue to provide studio facilities, equipment and support for governmental access pursuant to the terms of the Prior Franchise until the governmental access studio specified in Section 7(c)(1) is ready to be used for full-time program production. The Franchisee shall continue to provide studio facilities, equipment and support for public and educational access pursuant to the terms of the Prior Franchise until the educational access studio specified in Section 7(c)(1) is ready to be used for full-time program production.

(d) Equipment Repair and Replacement: Throughout the Franchise term, the Franchisee shall collaborate with the County and its designated access manager to provide for the timely repair and replacement at the Franchisee's cost of the access equipment being used by the County, or any of the County's designated providers, in producing or providing PEG programming, including equipment provided under or used during the Prior Franchise. The Franchisee shall be responsible for the costs of repair and replacement of such equipment due to normal wear, but shall not be responsible for such costs to the extent that equipment is negligently or intentionally damaged. Any equipment failure that prevents a Programmer from transmitting its programming shall be cured as soon as possible and addressed within twenty-four (24) hours after the Franchisee becomes aware of such failure. Any other failure of equipment shall be cured within thirty (30) days after the Franchisee becomes aware of such failure, except to the extent that circumstances beyond the Franchisee's control, such as availability of parts, may require a longer delay.

(e) *Equipment Upgrade:* At any time after the end of the sixth (6) year of the Franchise term and upon at least one hundred eighty (180) days notice, the Franchisee shall provide an additional capital grant to upgrade the facilities and equipment provided for under Section 7(c)(1)-(2) in the amount of \$80,000 in 2002 dollars (adjusted for Inflation).

(f) *Return Feed From Facilities*

(1) The Franchisee shall provide dedicated, bidirectional fiber optic links between the headend and the access production facilities specified in Section 7(c). These links shall be completed upon completion of each such facility.

(2) The Franchisee shall provide and install all equipment for amplification, conversion, receiving, transmitting, and headend processing of signals to be used for public, educational, and governmental purposes on the System.

(3) The dedicated connections required by Section 7(f)(1) shall be designed and built to include all equipment, including but not limited to laser transmitters, modulators, and processors, drops and wiring, so that each such center can send signals to the headend on at least two channels initially and up to two additional channels if additional downstream channels are activated for PEG use, all such signals meeting the EIA-250C Electrical Performance Standards for Television Transmission short-haul standards for television signal transmissions; and so that the facilities can each remotely and without assistance from the Franchisee or access to its headend receive signals from distant locations. Franchisee shall bear the cost of acquiring all equipment necessary to meet this requirement.

(g) *Management of Channels:* The County may, from time to time, designate or redesignate one (1) or more entities, including, but not limited to, a non-profit access management corporation, to perform any or all of the following functions:

- (1) to manage any necessary scheduling or allocation of capacity on the Institutional Network; and/or
- (2) to program any Public, Educational, or Government Access Channel, including scheduling program placement and use of production facilities, and including the establishment of reasonable rules regarding use of access channels.

Until such an entity has been designated, the County shall be responsible for these functions.

(h) *Editorial Control:* Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on the designated Public, Educational and Governmental Access Channels (except for such programming as the Franchisee may produce and cablecast on such Channels).

(i) *Cable Service to Public Facilities*

(1) Upon the request of the County, the Franchisee shall without charge install one activated connection at each St. Mary's County Public School, Father Andrew White School, Holy Angel-Sacred Heart School, Lexington Park Christian School (a.k.a. King's Christian Academy), Little Flower School, Mother Catherine Spalding School, St. John's School, St. Michael's School, Leonard Hall Junior Naval Academy, St. Mary's Ryken High School and County office and agency (whether the County owns or leases space for such office or agency) within the County that is within five hundred (500) feet of its cable plant. There shall be no restriction upon the County as to the number of television receivers which the County may operate from any such connection, provided that the expense of installing and maintaining any internal distribution system within any such School building shall be that of the County of its school board and provided further that any such internal distribution system installed by the County or the school board shall conform to all applicable rules, regulations and ordinances and

shall be operated in such a way as not to interfere with Franchisee's System. The Franchisee shall relocate any such location within 45 days after the County's written request, for a charge not to exceed Franchisee's costs for effecting such relocation.

(2) The Franchisee shall provide Basic Service, and any equipment necessary to receive such service, free of charge to those facilities specified in subsection 7(i)(1) herein. At its sole discretion, the Franchisee may also provide higher levels of service to such facilities free of charge. The Franchisee shall also provide to any School for which it must provide a connection pursuant to subsection 7(i)(1) one residential cable modem, and Internet access over such modem of the same type provided to residential Subscribers, until such time as the I-Net becomes operational.

(j) *Institutional Network*

(1) **Definitions.** For purposes of this Section 7(j):

- (A) "Actual Cost" shall include all reasonable direct costs reasonably allocable to a task, but no indirect costs.
- (B) "Dark Fiber" means fiber optic strands that are capable of carrying voice, video, and data transmissions but that have not yet been activated.
- (C) "Institutional Network" or "I-Net" means a fiber-optic network related to the Franchisee's Cable System; such network is to be designed and constructed by the Franchisee and is not generally available to subscribers of the Franchisee's Cable System; together with any data-over-cable services that may be supplied to certain sites, as provided in Section 7(j)(3), allowing seamless interconnection with the fiber-optic sites.

(D) "Work" means whatever is required of the Franchisee to perform and complete its duties under this Section. The term does not refer to activities of the Franchisee required to perform and complete its duties under other Sections of this Franchise Agreement, including but not limited to construction of subscriber network facilities.

(2) **Fiber Construction**

(A) The Franchisee will construct the I-Net at no cost to the County or Authorized Users, linking public, educational and governmental facilities in the County, in accordance with the conditions set forth in this Franchise Agreement.

(B) The I-Net shall be a bidirectional, fully fiber-optic network designed and constructed with single-mode fiber, in a design so that each of the designated service locations can originate and receive fully interactive video, data and voice signals.

(C) The Franchisee shall install I-Net fiber from the County Government Center to specified sites as designated and described in Appendix 1.

(D) The Franchisee shall collocate I-Net fiber with subscriber network fiber whenever reasonably feasible based on cable industry practices. The I-Net fibers shall be separate from any fibers utilized for the subscriber network, and the County shall have only such rights in the I-Net fibers as are set forth in Section 7(j)(6).

- (E) At the County Government Center, I-Net fibers shall be terminated and labeled using industry standard connectors.
- (F) At each aggregation site for I-Net traffic ("Aggregation Site"), I-Net fibers shall be terminated and labeled using industry standard connectors in an area within the Aggregation Site (an "Aggregation Site I-Net Service Area").
- (G) If the Franchisee and the County conclude that sites other than the Aggregation I-Net Service Areas would be preferable for termination of I-Net fibers, they may establish such sites by mutual agreement.
- (H) Single-mode fibers each will be built to each I-Net site as designated in Appendix 1. At each I-Net site, fibers shall be terminated using industry standard connectors at a demarcation point to be agreed upon by the Franchisee and the Authorized User (the "Demarcation Point"). Any I-Net fiber starting at the Demarcation Point and extending outward from the building shall be deemed to be on the Franchisee's side of the Demarcation Point, and any I-Net fiber starting at the Demarcation Point and extending further inside the building shall be deemed to be on the Authorized User's side of the Demarcation Point.
- (I) The fiber-optic plant shall be installed to industry standards. Maximum signal loss for any link shall not exceed the manufacturer's passive cable attenuation specifications, adjusted

for cable lengths, splice loss and connector loss. The Franchisee shall provide documentation of acceptance testing.

(J) Franchisee shall maintain the INet fiber plant at a high level of reliability and will ensure that such I-Net fiber plant does not have an unreasonable number of outages as compared with other fiber-based institutional networks provided by cable operators pursuant to cable franchises.

(i) The fiber I-net shall be considered as experiencing an “outage” for an Authorized User when that User cannot, because of a problem resulting from the failure of any Franchisee-provided fiber optic network component or Franchisee-provided interconnect, transmit video, voice and/or data communications to from and/or on the I-net.

(ii) ”Outage” conditions shall not include (A) infrequent scheduled preventive maintenance as long as fiber optic I-net Authorized Users are notified at least five business days in advance; or (B) *force majeure*.

(K) Aerial cable for the I-Net may be installed free-standing or overlashed to existing strand. New underground fiber optic cable shall be buried in conduit composed of concrete or in PVC pipe or polyethylene pipe.

(L) All I-Net wiring on the Authorized User’s side of the Demarcation Point and all INet Aggregation Site electronics and I-Net site

electronics, and I-Net wiring inside building Demarcation Points are the sole responsibility and property of the Authorized User. All costs associated with locating or repairing any failure which is reported to the Franchisee but which subsequently is determined to have occurred on the Authorized User's side of the Demarcation Point shall be paid for by the Authorized User.

(M) The Franchisee shall cooperate with Comcast to the extent necessary to interconnect each system's I-Net to allow a seamless connection to be made between I-Net sites in the Franchisee's service area and those in Comcast's service area. In particular, and without limitation, the Franchisee shall install fiber to All Faith Church Road, or such other location as may be mutually agreed by the County, the Franchisee, and Comcast, and terminate such fiber in such a way that the County can most readily and inexpensively connect it with the I-Net fiber provided by Comcast.

(3) **Cable Modem Service**

(A) The Franchisee shall provide data-over-cable services through its business-oriented cable modem service to the locations so designated in Appendix 1.

(B) The Franchisee shall provide a minimum downstream transfer rate of 768 Kbps and an upstream transfer rate of 768 Kbps to each location connected to the cable modem service.

- (C) The cable modem service shall meet the following parameters at each site connected:
- (i) Noise, Distortion and Other Performance Parameters (Downstream) – Under worst-case channel loading (including both analog and digital signals) the performance for the downstream connections shall always meet or exceed FCC performance specifications as contained in 47 CFR, Part 76, for noise, distortion and other applicable parameters.
 - (ii) Noise, Distortion and Other Performance Parameters (Upstream) – Under worst-case channel loading (including both analog and digital signals) the performance of the upstream connections shall always meet or be better than manufacturer’s recommended specifications for cable modems, cable modem termination systems and other equipment employed by the Franchisee and the County to successfully provide data-over-cable services for the County’s use.
 - (iii) Signal Levels (Downstream) – The minimum signal level received at any institution shall always meet or exceed FCC requirements for downstream Cable System operation.
 - (iv) Signal Levels (Upstream) – The input signal level received upstream at the Franchisee hub or headend shall never fall

below, nor the maximum level exceed, manufacturer's recommended specifications for any equipment required by the County to successfully transmit data communications as envisioned in the Franchise.

- (D) The Franchisee shall offer to provide the data-over-cable services described herein in a virtual private network (VPN) environment between each location and an interconnect point at the County Government Center where data communications from each site shall be securely interconnected with the fiber I-Net.
- (E) Service response, and other data-over-cable service characteristics not specified in this Agreement shall be controlled by the terms and conditions of a Service Level Agreement negotiated between the County and the Franchisee.
- (F) The Franchisee shall impose no charges on the County or any other Authorized User for the provision of cable modem connectivity as described herein to a single cable modem at each specified location.

(4) **Coordination of Design and Construction of I-Net**

- (A) The Franchisee shall activate I-Net segments in phases as construction is completed.
- (B) The Franchisee shall submit detailed site plans for design and construction of each I-Net segment consistent with Appendix 1 at least forty-five days prior to the anticipated start of construction on

that segment in hardcopy and electronically submitted CAD files. The County shall review and approve such detailed site plans before the Franchisee begins construction of the segment.

- (C) The Franchisee shall cooperate with the County so that, in addition to the notice provided to the County pursuant to the System design submission process generally, the County shall have as much notice as reasonably possible so that it can plan for activation and use of the I-Net as the Franchisee builds out the I-Net fiber.

(5) **Acceptance.** Construction standards shall be as specified in the Ordinance. The acceptance procedure for each I-Net site is as follows: ten (10) days in advance of testing, the Franchisee shall inform the County of an activation test. The County shall have the option to be present at the test. The Franchisee shall perform the test after terminating the fibers on both ends and will conduct the test from the connector output at both 1310 nm and 1550 nm using an optical time-domain reflectometer (OTDR) from both ends of the fiber (at the user site and at the County Government Center or aggregation site). The Franchisee shall submit the test results to the County; the County may require re-testing of the segment if the test results are not within the specifications of Section 7(j)(2)(I); if the County does not object to the performance of a segment within thirty days from the date the Franchisee submits its test results to the County, the County shall be deemed to have accepted that segment.

(6) **Indefeasible Right of Use**

- (A) The County shall possess the indefeasible right to use fiber optic plant dedicated to the I-Net and any extensions or replacements thereof installed by the Franchisee (the "Indefeasible Rights of

Use"). The Indefeasible Rights of Use shall be perpetual and shall survive any termination of the franchise agreement.

- (B) In order to protect the County's right to continue using the Institutional Network pursuant to this Franchise Agreement, the Franchisee shall cooperate with the County in recording its indefeasible right of use interest in the fibers with the State Department of Assessments and Taxation, the County Clerk, or such other office as may be appropriate.

(7) **Maintenance.** The Franchisee shall maintain, repair and, as necessary, replace I-Net plant on the Franchisee's side of the Demarcation Point in accordance with the following procedures and conditions:

- (A) *Preventive and Routine Maintenance.* The Franchisee shall perform routine and preventive maintenance on I-Net plant in the same time and in the same fashion as routine and preventive maintenance are performed for the subscriber network, without charge to the County or other Authorized Users. In the course of performing routine and preventive maintenance, the Franchisee shall use its best efforts to identify potential trouble conditions warranting repair or replacement of I-Net plant not bundled together with subscriber network plant. The Franchisee shall as promptly as practicable report potential trouble conditions to the County.

- (B) *Service Outages.* For purposes of this Section 7(j), the term "Service Outage" shall mean any condition or damage affecting the I-Net plant on the Franchisee's side of the Demarcation Point that precludes or substantially impairs the transmission of information on the I-Net or a portion thereof.
- (C) *Response to Outages.* The Franchisee shall commence efforts to restore service for all Service Outages, whether reported to the Franchisee by the Authorized User or independently identified by the Franchisee, within twenty-four (24) hours. Upon identification of a Service Outage, the Franchisee shall, within such response time, have qualified personnel on site to investigate the outage, assess the cause and commence necessary repairs. To the extent that necessary repairs resulting in restoration of connectivity on the I-Net can be immediately accomplished, the Franchisee shall effect such repairs in connection with its investigation of the cause of the Service Outage. To the extent that repairs cannot be immediately effected, the Franchisee shall, within the response time, inform the County and any other affected Authorized User of the apparent cause of the Service Outage and the anticipated time for restoration of connectivity.
- (D) *Restoration of Service.*
- (i) The Franchisee shall, to the maximum extent practicable, effect restoration of connectivity of any category of service

involving I-Net plant at the same time as restoration of co-located subscriber network plant.

(ii) In all cases the Franchisee shall complete the restoration of service in the shortest time possible.

(E) For purposes of this Section 7(j), the term “Maintenance” shall mean any action required to restore physical fiber optic connectivity on the Franchisee's side of the Demarcation Point to the performance standards specified in Section 7(j)(2).

(F) If any fiber optic cable in which the County has an Indefeasible Right of Use should be cut or damaged, and the responsible party is identified, then the County shall support the Franchisee’s claims for damages against the responsible party.

(8) Use

(A) The parties authorized to use the I-Net (“Authorized Users”) shall be, to the extent approved by the County:

(i) those public, educational, and governmental entities for which I-Net sites will be constructed pursuant to Appendix

1;

(ii) public, educational, and governmental entities in the County of the same sorts as those specified in Section

7(j)(8)(A)(i); and

- (iii) all political subdivisions of the State located within the external boundaries of the County, and their agencies and subdivisions.
- (B) The County shall not use, or permit any third party to use, the I-Net for resale or for the transmission of third party traffic.
- (C) For purposes of this subsection 7(j)(8), “third party traffic” shall mean communications not involving at least one Authorized User.
- (D) The Franchisee shall have no control, responsibility or liability for the signals distributed over the fiber optic components of the I-Net by the County or other Authorized Users or for their benefit.
- (E) The I-Net obligations included in this Agreement do not create any rights in or enforceable by any Authorized Users, or other Users, other than the County.

(9) Liability. The Franchisee shall not be liable for special, consequential, exemplary, or punitive damages, or damages claimed by third parties, based on failure of performance of the I-Net, provided, however, that the Franchisee shall indemnify the County against any third-party action against the County arising out of the Franchisee’s negligence, up to the maximum potential liability provided by the Limited Waiver of Governmental Immunity, Local Government Tort Claims Act, provided that the County defends against such claims. The County shall provide the Franchisee with written notice of such claims within ten (10) days of their receipt. The Franchisee shall have the right to participate at an appropriate level (as determined by the Franchisee) in defending such claims. This provision shall not be construed to

grant a right of action to any third party, nor to require any indemnification of the Franchisee by the County.

(10) Security. The Franchisee shall not in any way compromise the physical, optical, electronic, or signal transmission security of Authorized User communications transmitted over the I-net.

(11) Subcontractors

(A) A subcontractor is an entity which has a direct contract with the Franchisee to perform a portion of the Work.

(B) The Franchisee shall not enter into a subcontract with a proposed subcontractor with reference to whom the County has made timely and reasonable objection. The Franchisee shall not be required to subcontract with any party to whom the Franchisee has objection.

(C) All subcontracts shall afford the Franchisee rights against the subcontractor which correspond to those rights afforded to the County against the Franchisee herein.

(12) Other Provisions

(A) If the Franchisee performs any of the Work knowing it involves a recognized and material error, inconsistency or omission in this Section without notice to and approval of the County, the Franchisee shall bear the cost of correction. If the County permits the Franchisee to perform any of the Work knowing it involves a recognized and material error, inconsistency or omission in this Section without notice to and approval of the Franchisee, the

County shall bear the cost of correction. The Franchisee's provision of its plans to the County shall not be construed to render the County responsible for the Franchisee's planning or execution of the Work or for detecting any errors, inconsistencies, or omissions therein, except to the extent specifically set forth herein.

- (B) The Franchisee shall obtain an annual Master Utility Permit from the Department of Public Works, for which no permit fees shall be charged, covering all work in the Public Rights-of-Way pursuant to its Franchise, including the I-Net Work specified in Section 7(j). To the extent required by the master utility permit, the Franchisee shall submit particular project locations to the County at or before the time work at a particular site is commenced.
- (C) The Franchisee shall supervise and direct the Work, using the Franchisee's skill and attention in accordance with accepted construction industry practices. The Franchisee shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Section, unless this Section provides for other specific instructions concerning these matters.
- (D) The Franchisee shall keep the work areas related to the Work reasonably clean of debris generated by the Franchisee during performance of the Work. Upon final completion of Work, the

Franchisee shall clean its work areas and remove all waste generated by the Franchisee therefrom.

(E) The County shall have access to the Work at all times from commencement of the Work through its completion pursuant to applicable law. The Franchisee shall take all reasonable steps to provide access when requested, provided, however, that such access shall not unreasonably impede efforts of the Franchisee, its subcontractors or others engaged in the Work.

(F) The indemnification, insurance, and other right-of-way management provisions of the Ordinance and this Franchise Agreement shall apply to the Work carried out by the Franchisee under this Section (as distinct from the performance of the I-Net).

(13) The Franchisee shall notify the County of the installation of any fiber optic capacity not contemplated by the initial design of the System with reasonable advance notice so that the County can determine whether it wishes to have additional fiber installed on an incremental cost basis for Institutional Network use. If the County provides sufficient advance notice to permit the Franchisee to include the additional count during construction and agrees to pay the incremental cost, then the Franchisee shall install such additional fiber as part of the Institutional Network. For purposes of this paragraph, “incremental cost” shall mean the direct costs of labor and materials that the Franchisee actually incurs in the construction of the additional fiber that would not have been incurred but for the construction of the additional fiber.

(k) *Costs and Payments Not Franchise Fees:* The parties agree that any costs to the Franchisee associated with the provision of support for PEG access pursuant to this Agreement,

and any payments made to the County pursuant to Sections 6 and 7 of this Agreement, do not constitute and are not part of a franchise fee, and fall within one or more of the exceptions to 47 U.S.C. § 542.

8. FRANCHISE FEE

(a) *Payment to County:* Each year during the Franchise term, as compensation for use of Public Rights-of-Way, the Franchisee shall pay to the County, on a quarterly basis, a Franchise fee of five percent (5%) of Gross Revenues. Such payments shall be made no later than thirty days following the end of each calendar quarter. If the Franchisee makes any adjustments to a payment based on recalculations or on new information, it shall make any necessary additional payments as soon as possible.

(b) *Increase in Franchise Fee:* If federal law is amended or interpreted to permit a higher franchise fee amount, either through a change in percentage or through a redefinition of Gross Revenues, the County may, in its sole discretion, increase the amount of the Franchise fee up to the maximum amount permitted under state and federal law at that time. However, the County shall provide the Franchisee with sixty days' advance notice of such an increase.

(c) *Supporting Information:* Each Franchise fee payment shall be submitted with supporting detail and a statement certified by the Franchisee's chief financial officer or an independent certified public accountant, reflecting the total amount of monthly Gross Revenues for the payment period and a breakdown by major revenue categories (such as basic service, cable programming service, premium service, etc.). The County shall have the right to require reasonable further supporting information.

(d) *Late Payments:* In the event any Franchise fee payment or recomputation amount is not made on or before the required date, the Franchisee shall pay interest charges computed

from such due date, at an annual rate equal to the commercial prime interest rate of the County's primary depository bank during the period such unpaid amount is owed.

(e) Audit

(1) The County shall have the right to inspect and copy records and the rights to audit and to recompute any amounts determined to be payable under this Agreement, whether the records are held by the Franchisee, an Affiliate, or any other entity that collects or receives funds related to the Franchisee's operation in the County, including, by way of illustration and not limitation, any entity that sells advertising on the Franchisee's behalf.

(2) The Franchisee shall be responsible for providing to the County all records necessary to confirm the accurate payment of Franchise fees, without regard to by whom they are held. Such records shall be made available pursuant to the requirements of the Cable Ordinance. The Franchisee shall maintain such records for the term of its Franchise Agreement, and any renewals or extensions thereof.

(3) The County's audit expenses shall be borne by the County unless the audit discloses an underpayment of more than five percent (5%), in which case the costs of the audit shall be borne by the Franchisee as a cost incidental to the enforcement of the Franchise. Any additional amounts due to the County as a result of the audit shall be paid within thirty (30) days following written notice to the Franchisee by the County of the underpayment, which notice shall include a copy of the audit report, subject to Franchisee's right to review and dispute the proposed audit results. If recomputation results in additional revenue to be paid to the County, such amount shall be subject to interest as specified in Section 8(d).

(f) No Limitation on Taxing Authority

(1) Nothing in this Agreement shall be construed to limit any authority of the County to impose any tax, fee, or assessment of general applicability. By way of illustration and

not limitation, to the extent permitted by applicable law, the County may impose a tax, fee, or other assessment on any Person (other than a cable operator) with respect to Cable Service or other communications service provided by such Person over a Cable System for which charges are assessed to subscribers but not received by the cable operator.

(2) The Franchise fee payments required by this section shall be in addition to any and all taxes, fees or charges which the Franchisee shall be required to pay to the County or to any state or federal agency or authority, except to the extent that such taxes, fees or charges must be considered franchise fees pursuant to 47 U.S.C. § 542(g).

9. PERFORMANCE GUARANTEES AND REMEDIES

(a) Performance Bond

(1) Franchisee shall obtain and maintain during the entire term of the Franchise an irrevocable performance bond in the County's favor in the amount of \$1,000,000, to ensure the Franchisee's faithful performance of its obligations.

(2) The performance bond shall provide the following condition: There shall be recoverable by the County from the principal and surety, any and all fines and penalties due to the County and any and all damages, losses, costs, and expenses suffered or incurred by the County resulting from the failure of the Franchisee to faithfully comply with the material provisions of this Agreement, the Cable Ordinance, and other applicable law; comply with all orders, permits and directives of any Municipal agency or body having jurisdiction over its acts or defaults; pay fees due to the County; or pay any claims or liens due the County. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

(3) The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition.

(4) When (i) the System Upgrade has been completed pursuant to Sections 6(c) and 6(e), and (ii) the County has accepted all INet sites as specified in Section 7(j)(5) herein, the bond specified in Section 9(a)(1) shall no longer be required and shall be released upon application by the Franchisee.

(b) Letter of Credit

(1) The Franchisee shall file and maintain with the County an irrevocable letter of credit from a financial institution licensed to do business in Maryland in the amount of \$50,000 to serve the purposes set forth in Section 9(a). The form and content of the letter of credit shall be approved by the County.

(2) The letter of credit shall provide for thirty (30) days' prior written notice to the County of any intention on the part of the Franchisee to cancel, fail to renew, or otherwise materially alter its terms.

(3) The letter of credit shall be released only upon expiration of the Franchise or upon the replacement of the letter of credit within the time specified herein.

(c) Rights Cumulative: The rights reserved to the County herein are in addition to all other rights of the County, whether reserved herein or authorized by applicable law, and no action, proceeding, or exercise of a right with respect to such Security Fund or letter of credit will affect any other right the County may have. Neither the filing of a letter of credit with the County, nor the receipt of any damages recovered by the County thereunder, shall be construed to excuse faithful performance by the Franchisee or limit the liability of the Franchisee under the terms of its Franchise for damages, either to the full amount of the letter of credit or otherwise.

(d) *Security Fund Procedures:* The following procedures shall apply to drawing on the Security Fund:

(1) If the Franchisee fails to make timely payment to the County of any amount due under this Agreement or applicable law, or fails to compensate the County within ten (10) days of written notification that such compensation is due, for any damages, costs, or expenses the County suffers or incurs by reason of any act or omission of the Franchisee in connection with this Agreement or its enforcement, or fails, after ten (10) days' written notice, to comply with any provision of this Agreement or the Cable Ordinance that the County determines can be remedied by an expenditure of the security, the County may withdraw the amount thereof, with interest and any penalties, from the Security Fund.

(2) Within three (3) days of a withdrawal from the Security Fund, the County shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Franchisee.

(3) If at the time of a withdrawal from the Security Fund by the County, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Franchisee to the County until it is paid.

(4) No later than thirty (30) days after mailing of notification to the Franchisee by certified mail, return receipt requested, of a withdrawal under the Security Fund, the Franchisee shall restore the Security Fund to the total amount specified herein.

(5) Upon termination of the Franchise under conditions other than those stipulating forfeiture of the Security Fund, the balance then remaining in the Security Fund shall

be returned to the Franchisee within sixty (60) days of such termination, provided that there is then no outstanding default on the part of the Franchisee.

(e) *Failure Constitutes Material Violation:* Failure to maintain or restore the Security Fund shall constitute a material violation of this Agreement.

(f) *Remedies:* In addition to any other remedies available at law or equity, the County may apply any one or a combination of the following remedies in the event the Franchisee violates the Cable Ordinance, this Franchise Agreement, or applicable state or federal law:

(1) Apply any remedy provided for in this Agreement.

(2) Revoke the Franchise pursuant to the procedures specified in this Agreement.

(3) Impose penalties available under the Cable Ordinance or other applicable state and local laws for violation of County ordinances.

(4) In addition to or instead of any other remedy, seek legal or equitable relief from any court of competent jurisdiction.

(5) Any action, proceeding or exercise of a right by the County under this Section does not constitute an election of remedies or a waiver of any other right the County may have, including the right to seek specific performance of a franchise obligation, provided, however, that the County shall not obtain both actual and liquidated damages for the same violation.

(g) *Liquidated Damages*

(1) The County and the Franchisee agree to the amounts of liquidated damages listed in Section 11(b) of the Cable Ordinance.

(h) *Revocation or Termination of Franchise*

(1) Upon completion of the term of any Franchise granted under this Ordinance, if a new, extended, or renewed Franchise is not granted to the Franchisee by the County, the Franchisee's right to occupy the Public Rights-of-Way shall terminate, subject to applicable federal law.

(2) The County shall have the right to revoke the Franchise for the Franchisee's material failure to construct, operate, or maintain the Cable System as required by this Ordinance or a Franchise Agreement, or for any other material breach of this Agreement or material violation of the Cable Ordinance.

(3) To revoke the Franchise, the County shall give the Franchisee written notice of the default in its performance. If within thirty (30) calendar days following such written notice from the County to the Franchisee, or such other period as the Franchise Agreement shall require or the Franchisee and the County shall agree, the Franchisee has not taken corrective action to the satisfaction of the County, the County may give written notice to the Franchisee of its intent to revoke the Franchise, stating its reasons; provided that no opportunity to cure shall be provided where the Franchisee is shown to have defrauded or attempted to defraud the County or its Subscribers.

(4) Prior to revoking the Franchise, the County shall hold a public hearing, on thirty (30) calendar days' notice to the Franchisee, specifying its reasons for proposing revocation, at which time the Franchisee and the public shall be given an opportunity to be heard. Following the public hearing, the County may determine whether to revoke the Franchise based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to the Franchisee to effect any cure. If the County determines to

revoke the Franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Franchisee.

(5) If the County revokes the Franchise, or if for any other reason the Franchisee abandons, terminates, or fails to operate or maintain service to its Subscribers, the following procedures and rights are effective:

- (A) The County may require the former Franchisee to remove its facilities and equipment at the former Franchisee's expense and restore affected sites as required in Section 5(b), or permit the former Franchisee to abandon such facilities in place. If the former Franchisee fails to do so within a reasonable period of time, the County may have the removal done at the former Franchisee's and/or surety's expense.
- (B) The County may require the former Franchisee to continue operating the Cable System as specified in Section 4(d).
- (C) In the event of revocation, the County, by resolution, may acquire ownership of the Cable System at its then-fair market value.
- (D) If a Cable System is abandoned by the Franchisee or the Franchisee fails to operate or maintain service to its Subscribers or otherwise terminates the Franchise, the ownership of all portions of the Cable System in Public Rights-of-Way shall revert to the County and the County may sell, assign, or Transfer all or part of the assets of the System.

10. MISCELLANEOUS PROVISIONS

(a) *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, and trustees.

(b) *Severability*

(1) If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the County and shall thereafter be binding on the Franchisee and the County.

(2) If the terms of this Agreement are materially altered due to changes in governing law, then the parties shall negotiate in good faith to reconstitute this Agreement in a way consistent with then-applicable law in a form that, to the maximum extent possible, is consistent with the original intent of the parties and preserves the benefits bargained for by each party.

(c) *Franchisee Bears Its Own Costs:* Unless otherwise expressly provided in this Agreement, all acts that the Franchisee is required to perform must be performed at the Franchisee's own expense. This provision shall not affect any rights the Franchisee may have to itemize costs on Subscriber bills or to pass through certain costs in regulated rates.

(d) *County Bears Its Own Costs:* Unless otherwise expressly provided in this Agreement, all acts that the County is required to perform must be performed at the County's own expense.

(e) *Force Majeure:* Notwithstanding any other provision of this Agreement, the Franchisee shall not be deemed in default of provisions of this Agreement or the Cable

Ordinance where such default was caused by severe and unusual weather conditions, war or riots, labor strikes or civil disturbances, unreasonable action or inaction by utilities whose cooperation is necessary for compliance, fire, floods, other acts of God, unavailability of materials and/or qualified labor despite the Franchisee's reasonable best efforts, sabotage, or other causes beyond the Franchisee's reasonable control. In the event that any such default affects only part of the Franchisee's ability to perform, the Franchisee shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

(f) *Governing Law:* This Franchise Agreement shall be governed in all respects by the law of the State of Maryland.

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

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

Terrence J. Herron, Executive Vice President
Gans MultiMedia Partnership
1059 East Tenth Street
Hazleton, PA 18201

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

County Administrator

23115 Leonard Hall Drive
P.O. Box 653
Leonardtown, MD 20650

with a copy to:
County Attorney
23115 Leonard Hall Drive
P.O. Box 653
Leonardtown, MD 20650

(3) The Franchisee shall at all times keep the County advised as to which individual(s) are authorized to act on behalf of the Franchisee and whose acts will be considered to bind the Franchisee.

(h) Captions and References

(1) The captions and headings of sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

(2) When any provision of the Cable Ordinance is expressly mentioned herein, such reference shall not be construed to limit the applicability of any other provision of the Cable Ordinance or County law that may also govern the particular matter in question.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of this 18th day of February, 2003 (such date being the “Effective Date” referred to in Section 2(a) of this Agreement).

ATTEST:

Board of County Commissioners
for St. Mary’s County, Maryland,

Alfred A. Lacer, County Administrator

By: _____
Thomas F. McKay, President

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

County Attorney

GANS MULTIMEDIA PARTNERSHIP
a Pennsylvania general partnership

By: _____
Terrence J. Herron, Executive Vice President

GANS COMMUNICATIONS, L.P.
a Delaware limited partnership

By: _____
Joseph F. Gans, III, President,
Gans Communications, LLC, General Partner

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APPENDIX 1

**INSTITUTIONAL NETWORK
SITES**

APPENDIX 2

PEG SUPPORT LETTER