

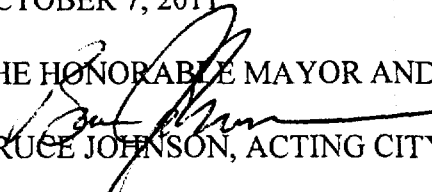
EXHIBIT NO. 1

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City of Alexandria, Virginia

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10-25-11

MEMORANDUM

DATE: OCTOBER 7, 2011
TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM:  BRUCE JOHNSON, ACTING CITY MANAGER
SUBJECT: CONSIDERATION OF RENEWAL OF THE CABLE TELEVISION FRANCHISE AND A FIBER USE AGREEMENT FOR COMCAST OF VIRGINIA, INC.

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

RECOMMENDATION: That City Council:

- (1) Receive this report and set the public hearing on the proposed five-year cable television franchise, and fiber use agreements for **Saturday, October 15;**
- (2) After the public hearing, approve the five-year cable television franchise (Attachment 1) and fiber use (Attachment 2) agreements and the letter of understanding and supporting documents (Attachment 3) for Comcast of Virginia, Inc. at the **October 25 legislative meeting;** and
- (3) Authorize the Acting City Manager to execute all necessary documents to ensure the five-year renewal of the cable television franchise with Comcast of Virginia, Inc. including the franchise agreement, the fiber use agreement, and the letter of understanding which specifies in greater detail the provisions for cable television service to governmental buildings and how the Public, Educational, Governmental (PEG) and I-Net grants will be used.

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

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

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

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

1. **Term** - The initial term of the franchise is five years, with provisions for up to two extensions of five years (total 15 years). Prior to each extension staff will perform a compliance review to determine whether or not the franchisee (Comcast) has complied with the requirements of the franchise. City Council will base its determination on whether or not to extend the agreement on the degree to which Comcast has complied with the requirements of the franchise.
2. **Public, Educational, Governmental (PEG) Access Capital Funding** - Comcast will provide an annual fee of three percent of gross revenues to fund PEG access capital needs and the Institutional Network (I-Net) in the form of a recurring PEG Capital Grant. In addition, there is a one-time Initial Capital Grant of \$150,000, due no later than 30 days after the effective date of franchise, for the purchase of PEG access equipment and for the renovation of facilities used in or related to PEG programming. This will allow the City to replace the aging analog equipment in City Hall with digital cameras and broadcast equipment.
3. **PEG Operating Support** - PEG operating costs will be covered, thus allowing the continuation of the cablecasting of the meetings of the City Council, School Board, Planning Commission, Board of Zoning Appeals (BZA), and both panels of the Board of Architectural Review. In addition, Comcast will provide a 12-month transition period during which the company will continue to staff the cablecasting of the aforementioned meetings and the 2012 T. C. Williams High School graduation to assist the City as it assumes the responsibility for the broadcasting of these meetings.

4. Institutional Network (I-Net) - The I-Net, which is owned by Comcast, will be governed by the Fiber Use Agreement that runs concurrent with the franchise agreement. The I-Net was initially used for data and limited video streaming by the City and Schools. The network now carries all of the City's telephone (Voice Over Internet Protocol/VOIP) operations and other major data systems (Financial, real estate, criminal justice, public safety CAD exchange, etc.) The three percent of gross revenues payment will also cover the City's monthly recurring charges under the Fiber Use agreement.
5. Local Office - The new franchise requires Comcast to maintain an office in the City to allow subscribers to request service, pay bills and conduct other business. After normal business hours, Comcast is required to have phone service available 24-hours per day, seven-days per week. (The Comcast office is currently located in the Trade Center Shopping Center on South Pickett Street near the Home Depot.)
6. Free Cable Service - Comcast will continue to provide basic cable television service to each Alexandria public school and other educational facility, and each facility occupied by a City office or agency except residential facilities (group homes) that are City-owned and/or City leased. The costs for the DTAs (boxes/adapters) needed to convert the digital signal to analog format for older television sets is addressed in the Fiber Use agreement.
7. PEG Access Channels - Comcast is required to continue to carry the PEG Access Channels on the Basic Service tier to ensure that all residents who have cable television can view governmental, educational, and community programming.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENTS:

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

STAFF:

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

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

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

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

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

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

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

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

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

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

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. Definitions.

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

- (a) *Cable Ordinance*: Chapter 3 of Title 9 of The Code of the City of Alexandria, 1981, as amended, and as it may be amended from time to time.
- (b) *Franchise Agreement or Agreement*: This contract and any amendments, exhibits or appendices hereto.
- (c) *Franchisee*: Comcast of Virginia, Inc., a Colorado corporation, and its lawful and permitted successors, assigns, and transferees.
- (d) *PEG*: Public, educational and governmental.
- (e) *Prior Franchise Agreement*: Nonexclusive Franchise Contract dated June 18, 1994, as amended, assigned to Franchisee by Ordinance No. 3728.

2. Grant of Authority; Limits and Reservations.

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

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

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

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

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

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

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

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

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

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

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

(i) *Term:*

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

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

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

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

(k) *No Waiver:*

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

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

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

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

3. Regulation and Oversight.

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

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

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

4. Provision of Cable Service.

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

5. System Facilities, Equipment and Services.

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

- (1) The System shall be designed with an initial analog and digital passband of 50-750 MHz.
- (2) The System shall be designed to be an active two-way plant providing for subscriber interaction as required for selection and use of Cable Service.
- (3) The System shall comply with regulations of the FCC regarding the compatibility between cable service and consumer receiving, recording and related equipment.
- (4) The Cable System shall be designed, built and operated in a manner such that it is in compliance with FCC standards and requirements with respect to interference. The Cable System shall be operated in such a manner as to minimize interference with the reception of off-the-air signals by a Subscriber. The Franchisee shall insure that signals carried by the Cable System, or originating outside the Cable System wires, cable, fibers, electronics and facilities, do not ingress or egress into or out of the Cable System in excess of FCC standards. In

particular, the Franchisee shall not operate the Cable System in such a manner as to pose unwarranted interference with emergency radio services, aeronautical navigational frequencies or any airborne navigational reception in normal flight patterns, or any other type of wireless communications, pursuant to FCC regulations.

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

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

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

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

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

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

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

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

(B) National Electrical Code;

(C) National Electrical Safety Code (NESC);

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

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

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

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

(d) *Proof of Performance Tests:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) *Access Channels:*

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

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

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

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

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

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

