ORDINANCE 26-09-04

Introduced: Sept. 14, 2026
Approved:

AN ORDINANCE TO AMEND CHAPTER A191: CABLE TELEVISION FRANCHISE, IN THE TOWN OF MIDDLETOWN CODE OF ORDINANCES

BE IT ENACTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MIDDLETOWN (a majority of the members elected thereto concurring therein): That the Town of Middletown, Delaware, Code of Ordinances, Chapter A191: Cable Television Franchise, is hereby amended by deleting Article II in its entirety and placing therein the following:

Section 1.
"ARTICLE II Verizon Delaware LLC (attached franchise agreement renewal)

Section 2. This Ordinance shall become effective immediately upon passage.

ADOPTED THIS _______ DAY OF _____________, 2026.

(SEAL)

____
Kenneth L. Branner, Jr., MAYOR

ATTESTED TO BY:

____
WITNESS, TOWN OF MIDDLETOWN

CABLE FRANCHISE RENEWAL AGREEMENT

BETWEEN

TOWN OF MIDDLETOWN, DELAWARE

AND

VERIZON DELAWARE LLC

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THIS CABLE FRANCHISE RENEWAL AGREEMENT (the "Franchise" or "Agreement") is entered into on ____________________ (the "Effective Date" as set forth in Section 2.3) by and between the TOWN OF MIDDLETOWN, New Castle County, a validly organized and existing political subdivision of the State of Delaware (the "Local Franchising Authority" or "LFA") and VERIZON DELAWARE LLC, a limited liability company duly organized under the applicable laws of the State of Delaware (the "Franchisee").

WHEREAS, Franchisee is a "cable operator" and LFA is a "franchising authority" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. § 522(5), 522(10)) and LFA is authorized to grant one (1) or more nonexclusive cable franchises to operate a Cable System within the Franchise Area pursuant to Title VI of the Communications Act;

WHEREAS, LFA granted to Franchisee, effective as of October 4, 2021, a nonexclusive renewal franchise to install, maintain, extend, and operate a Cable System in the Franchise Area for a term of five (5) years (the "Current Franchise");

WHEREAS, Franchisee has operated a Cable System in accordance with the Current Franchise as of the Effective Date on its existing Telecommunications Facilities consisting of a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area which also transmits Non-Cable Services pursuant to authority granted by applicable state law and Title II of the Communications Act, and which Non-Cable Services are not subject to Title VI of the Communications Act or this Agreement;

WHEREAS, Franchisee has requested that LFA renew Franchisee's Current Franchise to provide Cable Service to residents of the Franchise Area;

WHEREAS, pursuant to and in accordance with applicable federal and state law, LFA undertook a process to determine whether it should renew the Current Franchise and the terms for such a renewal;

WHEREAS, LFA has examined the past performance of Franchisee, has determined that Franchisee is and has been in material compliance with the Current Franchise, and has identified LFA's future cable-related needs and interests in accordance with applicable law;

WHEREAS, following good faith negotiations between the parties, LFA and Franchisee have agreed on the terms for a franchise renewal agreement under which Franchisee will continue to operate its Cable System in the Franchise Area; and

WHEREAS, LFA has determined that this Agreement and the process for consideration of this Agreement complies with all applicable federal, state and local laws and regulations.

NOW, THEREFORE, in consideration of LFA's grant of a renewal franchise to Franchisee, Franchisee's promise to continue to provide Cable Service to residents of the Franchise Area pursuant to and consistent with the Communications Act (as hereinafter defined), pursuant to 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 are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

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

1.1 *Affiliate:* Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Franchisee.

1.2 *Basic Service:* Any service tier that includes the retransmission of local television broadcast signals as required by this Franchise.

1.3 *Cable Service* or *Cable Services:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), as amended.

1.4 *Cable System* or *System:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), as amended.

1.5 *Channel:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), as amended.

1.6 *Communications Act:* The Communications Act of 1934, as amended.

1.7 *Complaint:* Any written communication, including electronic mail, by a Subscriber expressing dissatisfaction with any aspect of Franchisee's Cable System or Cable Service operations in the Franchise Area including, without limitation, Complaints regarding employee courtesy.

1.8 *Control:* The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of Franchisee's affairs.

1.9 *FCC:* The United States Federal Communications Commission, or successor governmental entity thereto.

1.10 *Force Majeure:* An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions; labor strikes, disturbances and lockouts; war or act of war (whether an actual declaration of war is made or not); insurrection, riots or act of public enemy (including terrorist attacks); orders of the United States or the State of Delaware; actions or inactions of any government instrumentality or public utility other than Franchisee (including condemnation); accidents for which Franchisee is not primarily responsible; fire, flood, pandemics, epidemics, public health emergencies or other acts of God; or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, and the unavailability of materials and/or qualified labor to perform the work necessary.

1.11 *Franchise Area:* The incorporated area (entire existing territorial limits) of the Town of Middletown and such additional areas as may be included in the corporate (territorial) limits of the Town of Middletown during the term of this Franchise.

1.12 *Franchisee:* Verizon Delaware LLC, and its lawful and permitted successors, assigns, and transferees.

1.13 *Gross Revenue:* All revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee or its Affiliates, from the operation of the Cable System to provide Cable Service in the Service Area including, but not limited to:

(1) Basic Service fees;

(2) fees charged to Subscribers for any service tier other than Basic Service;

(3) fees charged to Subscribers for premium Cable Services;

(4) fees charged to Subscribers for video-on-demand and pay-per-view Cable Services;

(5) fees charged to Subscribers for any optional, per-channel, or per-program Cable Services;

(6) revenues from the provision of any other Cable Services;

(7) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for Video Programming;

(8) fees for changing any level of Cable Service programming;

(9) fees for service calls;

(10) early termination fees (solely to the extent such early termination fee can be proportionately attributable to Cable Service);

(11) fees for leasing of Channels;

(12) rental of any and all Subscriber equipment, including digital video recorders, converters and remote control devices;

(13) advertising revenues (on a pro rata basis) as set forth herein;

(14) revenues from the sale or rental of Subscriber lists;

(15) revenues or commissions received from the carriage of home shopping channels (on a pro rata basis as set forth herein) subject to Subsection 1.13.5 below;

(16) fees for music services that are Cable Services over the Cable System;

(17) fees for DVR Cable Service;

(18) regional sports programming fees;

(19) broadcast retransmission fees;

(20) late payment fees;

(21) NSF check charges;

(22) franchise fees collected from Subscribers for the provision of Cable Services over the Cable System in the Service Area; and

(23) forgone revenue that Franchisee chooses not to receive in exchange for trades, barters, services, or other items of value consistent with Subsection 1.13.9 below.

For the avoidance of doubt, advertising revenues shall include the amount of Franchisee's gross advertising revenue calculated in accordance with generally accepted accounting principles (i.e., without deducting commissions paid to independent third parties). Advertising and home shopping revenue, as described in Sections 1.13(13) and 1.13(15) above, is based upon the ratio of the number of Franchisee's Subscribers in the Service Area as of the last day of the period for which Gross Revenue is being calculated to the number of Franchisee's Subscribers within all areas covered by the particular revenue source as of the last day of such period. By way of illustrative example, Franchisee sells two ads: Ad "A" is broadcast nationwide; Ad "B" is broadcast only within Delaware. Franchisee has 100 Subscribers in the Service Area, 500 Subscribers in Delaware, and 1,000 Subscribers nationwide. Gross Revenue as to LFA from Ad "A" is ten percent (10%) of Franchisee's revenue therefrom. Gross Revenue as to LFA from Ad "B" is twenty percent (20%) of Franchisee's revenue therefrom.

Gross Revenue shall not include:

1.13.1 Revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System;

1.13.2 Bad debts written off by Franchisee in the normal course of its business; provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.13.3 Refunds, rebates, or discounts made to Subscribers or other third parties;

1.13.4 Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way communication that is classified as Non-Cable Services; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with applicable laws, rules, regulations, standards, or orders;

1.13.5 Any revenue of Franchisee or any other Person that is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, notwithstanding that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise, which portion shall be included in Gross Revenue;

1.13.6 The sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable franchise fees from purchaser's customer;

1.13.7 The sale of Cable Services to Subscribers, which are exempt, as required or allowed by LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein;

1.13.8 Any tax of general applicability imposed upon Franchisee or upon Subscribers by a local, state, federal, or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes, and non-cable franchise fees);

1.13.9 Any forgone revenue that Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person including, without limitation, employees of Franchisee and public institutions or other institutions designated in this Franchise; provided, however, that such forgone revenue that Franchisee chooses not to receive in exchange for trades, barters, services, or other items of value shall be included in Gross Revenue;

1.13.10 Sales of capital assets or sales of surplus equipment that are not deemed to be a Cable Service;

1.13.11 Program launch fees; and

1.13.12 Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing.

1.14 *Information Services:* Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(24), as amended.

1.15 *Internet Access:* Dial-up or broadband access service that enables Subscribers to access the Internet.

1.16 *Local Franchising Authority* or *LFA:* The Town of Middletown, Delaware, or the lawful successor, transferee, or assignee thereof.

1.17 *Non-Cable Services:* Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services and Telecommunications Services.

1.18 *Normal Operating Conditions:* Those service conditions that are within the control of Franchisee. Those conditions that are not within the control of Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are within the control of Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. *See* 47 C.F.R. § 76.309(c)(4)(ii).

1.19 *Person:* An individual, partnership, association, joint stock company, trust, corporation, limited liability company, or governmental entity.

1.20 *Public Rights-of-Way:* The surface and the area across, in, over, along, upon, and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may hereafter exist, which are under the jurisdiction or control of LFA. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other wireless communications or broadcast services.

1.21 *Service Area:* All portions of the Franchise Area where Cable Service is being offered.

1.22 *Service Interruption:* The loss of picture or sound on one (1) or more cable Channels.

1.23 *Subscriber:* A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.24 *Telecommunications Facilities:* Franchisee's existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

1.25 *Telecommunications Services:* Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(53), as amended.

1.26 *Title II:* Title II of the Communications Act, Common Carriers, as amended, which governs the provision of Telecommunications Services.

1.27 *Title VI:* Title VI of the Communications Act, Cable Communications, as amended, which governs the provision of Cable Services by Franchisee.

1.28 *Transfer of the Franchise:*

1.28.1 Any transaction in which:

1.28.1.1 an ownership or other interest in Franchisee is transferred, directly or indirectly, from one (1) Person or group of Persons to another Person or group of Persons, so that control of Franchisee is transferred; or

1.28.1.2 the rights held by Franchisee under this Franchise are transferred or assigned to another Person or group of Persons.

1.28.2 Notwithstanding Subsection 1.28.1, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in this Franchise or the rights held by Franchisee under this Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action that is the result of a merger of the parent of Franchisee; or any action that is the result of a merger of another Affiliate of Franchisee.

1.29 *Video Programming:* Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20), as amended.

1.30 *Video Service Provider* or *VSP:* Any entity using wired facilities occupying a substantial portion of the Public Rights-of-Way as the primary means of delivery to provide Video Programming services to multiple subscribers within the territorial boundaries of LFA, for purchase, barter, or free of charge, regardless of the transmission method, facilities, or technologies used. A VSP shall include, but is not limited to, any entity that provides Cable Services, Video Programming services or internet-protocol based services within the territorial boundaries of LFA.

2. <u>GRANT OF AUTHORITY; LIMITS AND RESERVATIONS</u>

2.1 *Grant of Authority:* Subject to the terms and conditions of this Agreement and applicable laws and regulations, LFA hereby grants to Franchisee the right to own, construct, operate, and maintain a Cable System along the Public Rights-of-Way within the Franchise Area in order to provide Cable Service. No privilege or power of eminent domain is bestowed or waived by this grant; nor is such a privilege or power bestowed or waived by this Agreement.

2.2 *LFA Does Not Regulate Telecommunications:* The parties recognize that Franchisee's FTTP Network has been constructed and will continue to be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The jurisdiction of LFA over such Telecommunications Facilities is restricted by federal and state law, and LFA does not and will not assert jurisdiction over Franchisee's FTTP Network in contravention of those limitations. Therefore, as provided in Section 621 of the Communications Act, 47 U.S.C. § 541, LFA's regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance, or operation of Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained, or operated for the purpose of upgrading and/or extending Franchisee's existing Telecommunications Facilities for the provision of Non-Cable Services.

2.3 *Term:* This Franchise shall become effective on _______________, 2026 (the "Effective Date"). The term of this Franchise shall be five (5) years from the Effective Date until _______________, unless the Franchise is earlier terminated by Franchisee pursuant to Section 2.4 of this Agreement or is revoked by LFA pursuant to Section 10.5 of this Agreement.

2.4 *Termination Generally:* Notwithstanding any provision herein to the contrary, Franchisee may terminate this Franchise and all obligations hereunder at any time during the term of this Franchise for any reason, in Franchisee's sole discretion, upon six (6) months' written notice to LFA.

2.5 *Modification Based on VSP Requirements; Competitive Equity:*

2.5.1 If there is a change in federal, state, or local law that reduces any material financial and/or operational obligation that LFA has required from or imposed upon a VSP, or if LFA enters into any franchise, agreement, license, or grant of authorization with a VSP to provide Video Programming services to residential subscribers in the Franchise Area with terms or conditions, taken as a whole upon consideration of all of its material obligations, that are materially less burdensome than those imposed by this Franchise, Franchisee and LFA shall, within sixty (60) days of LFA's receipt of Franchisee's written notice, commence negotiations to modify this Franchise to create reasonable competitive equity between Franchisee and such other VSP(s).

2.5.2 Franchisee's notice pursuant to Subsection 2.5.1 shall specify either the change in law or the lesser burden in an authorization to a competitive VSP and the resulting change in obligations. Franchisee shall respond to reasonable information requests from LFA, as may be necessary to review the change in obligations resulting from the cited law or the alleged lesser burden.

2.5.3 In the event the parties do not reach mutually acceptable agreement on a modification requested by Franchisee, Franchisee shall, at any time and in its sole discretion, have the option of exercising either of the following actions:

2.5.3.1 if agreed by both parties, submitting the matter to binding commercial arbitration by a mutually-selected arbitrator in accordance with the rules of the American Arbitration Association; or

2.5.3.2 submitting the matter to mediation by a mutually acceptable mediator.

2.6 *Grant Not Exclusive:* This Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and LFA 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 during the term of this Franchise. Any such rights that are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.7 *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal law, as it may be amended including, but not limited to, the Communications Act.

2.8 *No Waiver:*

2.8.1 The failure of LFA on one (1) or more occasions to exercise a right or to require compliance or performance under this Franchise or any other applicable state or federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by LFA, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.8.2 The failure of Franchisee on one (1) or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse LFA from performance, unless such right or performance has been specifically waived in writing.

2.9 *Construction of Agreement:*

2.9.1 The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.9.2 Nothing herein shall be construed to limit the scope or applicability of Section 625 of the Communications Act, 47 U.S.C. § 545.

2.9.3 Should any change to federal or state law have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on Franchisee and LFA of the material alteration. Any modification to this Franchise shall be in writing and signed by both parties. If the parties cannot reach agreement on the above-referenced modification to this Franchise, then Franchisee may terminate this Agreement without further obligation to LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.10 *Police Powers:* Nothing in this Franchise shall be construed to prohibit the reasonable, necessary, and lawful exercise of the police powers of LFA. However, if the reasonable, necessary, and lawful exercise of the police powers results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on Franchisee of the material alteration. Any modification to this Franchise shall be in writing and signed by both parties. If the parties cannot reach agreement on the above-referenced modification to this Franchise, then Franchisee may terminate this Agreement without further obligation to LFA or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.11 *Compliance with Federal and State Privacy Laws:* Franchisee shall comply with the privacy provisions of Section 631 of the Communications Act, 47 U.S.C. § 551, and all other applicable federal and state privacy laws and regulations. The parties agree that, during the term hereof, Franchisee shall not be subject to any local laws or ordinances which, directly or indirectly, conflict with or exceed the scope of such applicable federal and/or state privacy laws.

3. PROVISION OF CABLE SERVICE

3.1 *Service Area:* Subject to the issuance of all necessary permits by LFA, Franchisee shall offer Cable Service to all residential households in the Service Area, and may make Cable Service available to businesses in the Service Area, except: (i) for periods of Force Majeure; (ii) for periods of unreasonable delay caused by LFA; (iii) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (iv) in areas where developments, buildings or other residential dwelling units are subject to claimed exclusive arrangements with other providers; (v) in areas, developments, buildings or other residential dwelling units where Franchisee cannot gain access under reasonable terms and conditions after good faith negotiation, as reasonably determined by Franchisee; (vi) in areas, developments, buildings or other residential dwelling units where Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis including, but not limited to, circumstances where Franchisee cannot access the areas, developments, buildings or other residential dwelling units by using Franchisee's existing network pathways and which would thus require the construction of new trunk, feeder, or distribution lines; (vii) in areas where the occupied residential household density does not meet the density requirements set forth in Subsection 3.1.1 below; and (viii) in areas, developments, buildings or other residential dwelling units that are not habitable or have not been constructed as of the Effective Date.

3.1.1 Subject to Section 3.1 above, Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than thirty-five (35) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line.

3.2 *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred twenty-five (125) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for that portion of residential dwelling unit connections that exceed one hundred twenty-five (125) feet and the actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3 *Cable Service to Public Buildings:*

3.3.1 Subject to Section 3.1, Franchisee shall provide, without charge within the Service Area, one (1) service outlet activated for Basic Service to each municipal building, fire station, public school, police station, and public library as may be designated by LFA in Exhibit A; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred twenty-five (125) feet solely to provide service to any such school or public building, LFA shall have the option either of paying Franchisee's direct costs for such extension for that portion of the connection in excess of one hundred twenty-five (125) feet, or of releasing Franchisee from the obligation to provide service to such school or other public building. Furthermore, Franchisee shall be permitted to recover, from any school or other public building owner entitled to service under this Subsection 3.3.1, the direct cost of installing, when requested to do so, more than one (1) outlet, or concealed inside wiring, or a service outlet requiring more than one hundred twenty-five (125) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed except in accordance with Subsection 3.3.2 below.

3.3.2 In accordance with the applicable provisions of the FCC's 2019 Third Report and Order In the Matter of Implementation of Section 621 of the Cable Act (the "621 Order") and the decision on appeal by the Sixth Circuit Court of Appeals, Franchisee may charge for the services described in Subsection 3.3.1 above in accordance with applicable law, which as of the Effective Date is Franchisee's marginal cost of providing such service. Prior to charging for such services, Franchisee shall provide written notice to LFA of its intent to charge for such services and shall provide reasonable detail sufficient to substantiate the marginal cost and the amount due.

4. SYSTEM FACILITIES

4.1 *Technical Requirements:* Franchisee shall operate, maintain, construct and extend the Cable System so as to provide high quality signals and reliable delivery of Cable Services throughout the Franchise Area. The Cable System shall meet or exceed any and all applicable technical performance standards of the FCC, the National Electrical Safety Code, the National Electrical Code, and any other applicable federal laws and the laws of the State of Delaware, to the extent not in conflict with federal law and regulations.

4.2 *System Characteristics:* Franchisee's Cable System shall meet or exceed the following requirements:

4.2.1 The System shall be operated with a digital carrier passband between 57 and 861 MHz.

4.2.2 The System shall be operated as an active two-way system for Subscriber interaction, if any, required for the selection or use of Cable Services that allocates sufficient portion of said bandwidth to deliver reliable two-way Cable Services.

4.3 *Interconnection:* Franchisee shall operate its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

4.4 *Emergency Alert System:* Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and applicable state and local EAS plans in order that emergency messages may be distributed over the Cable System.

5. CUSTOMER SERVICE

Customer Service Standards are set forth in Exhibit B, which shall be binding unless amended by written consent of the parties.

6. REPORTS AND RECORDS

6.1 *Open Books and Records:* Upon no less than thirty (30) business days' written notice to Franchisee, LFA shall have the right to inspect Franchisee's books and records pertaining to this Agreement or Franchisee's provision of Cable Service in the Franchise Area, at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of this Franchise that is under review, so that Franchisee may organize the necessary books and records for appropriate access by LFA. All records requested by LFA shall be provided by Franchisee for inspection at a mutually agreed upon location or, if agreed by the parties, through secure electronic communication. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than twenty-four (24) months. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to this Agreement or the provision of Cable Service in the Franchise Area. If Franchisee claims any information to be proprietary or confidential, it shall identify the information and provide a written explanation as to the reason it is claimed to be confidential or proprietary. LFA shall treat any information disclosed by Franchisee as confidential so long as it is permitted to do so under applicable law, and shall only disclose it to employees, representatives, and agents of LFA that have a need to know, or in order to enforce the provisions hereof. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. § 551.

6.2 *Records Required:* Franchisee shall at all times maintain the following, which may be inspected pursuant to Section 6.1 above:

6.2.1 Records of all written Complaints for a period of twenty-four (24) months after receipt by Franchisee. Complaints recorded will not be limited to Complaints requiring an employee service call;

6.2.2 Records of Significant Outages for a period of twenty-four (24) months after occurrence, indicating date, duration, area, the number of Subscribers affected, type of outage, and cause;

6.2.3 Records of Service Calls for repair and maintenance for a period of twenty-four (24) months after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), the date and time service was provided, and (if different) the date and time the problem was resolved; and

6.2.4 Records of installation/reconnection and requests for service extension for a period of twenty-four (24) months after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended.

7. INSURANCE AND INDEMNIFICATION

7.1 *Insurance:*

7.1.1 Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise term, the following insurance coverage:

7.1.1.1 Commercial General Liability Insurance with limits of three million dollars ($3,000,000) per occurrence for property damage and bodily injury and three million dollars ($3,000,000) general aggregate, including premises-operations, contractual liability, personal and advertising injury and products/completed operations covering the construction, operation, and maintenance of the Cable System, and the conduct of Franchisee’s Cable Service business in the Franchise Area.

7.1.1.2 Automobile Liability Insurance in the amount of one million dollars ($1,000,000) combined single limit each accident for bodily injury and property damage coverage covering all owned, non-owned, and hired vehicles.

7.1.1.3 Workers’ Compensation Insurance in compliance with the statutory requirements of the State of Delaware and Employers’ Liability Insurance in the following amounts: (i) Bodily Injury by Accident: one hundred thousand dollars ($100,000), and (ii) Bodily Injury by Disease: one hundred thousand dollars ($100,000) each employee; five hundred thousand dollars ($500,000) disease policy limit.

7.1.2 LFA shall be included as an additional insured as its interest may appear under this Franchise on Commercial General Liability and Automobile Liability insurance policies.

7.1.3 Upon receipt of notice from its insurer(s), Franchisee shall provide LFA with thirty (30) days’ prior written notice of cancellation of any required insurance.

7.1.4 Each of the required insurance policies shall be with insurers qualified to do business in the State of Delaware, with an A-VII or better rating for financial condition and financial performance by Best’s Key Rating Guide, Property/Casualty Edition.

7.1.5 Upon written request, Franchisee shall deliver to LFA Certificates of Insurance showing evidence of the required coverage.

7.2 *Indemnification:*

7.2.1 Franchisee agrees to indemnify, save and hold harmless, and defend LFA, its elected and appointed officials, officers, agents, boards, and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System, provided that LFA shall give Franchisee written notice of LFA's request for indemnification within ten (10) days of receipt of a claim or action pursuant to this subsection. LFA agrees that it will take all necessary action to avoid a default judgment. Notwithstanding the foregoing, Franchisee shall not indemnify LFA for any damages, liability, or claims resulting from the willful misconduct or negligence of LFA, its elected and appointed officials, officers, agents, employees, attorneys, consultants, independent contractors, or third parties or for any activity or function conducted by any Person other than Franchisee in connection with EAS or the distribution of any Cable Service over the Cable System.

7.2.2 With respect to Franchisee's indemnity obligations set forth in Subsection 7.2.1, Franchisee shall provide the defense of any claims brought against LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of LFA, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent LFA from cooperating with Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense; provided, however, that after consultation with LFA, Franchisee shall have the right to defend, settle, or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such settlement include the release of LFA, and LFA does not consent to the terms of such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify LFA shall in no event exceed the amount of such settlement.

7.2.3 LFA shall hold harmless and defend Franchisee from and against, and shall be responsible for damages, liability, or claims resulting from or arising out of, the willful misconduct or negligence of LFA.

7.2.4 LFA shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation, subject to any and all defenses and limitations of liability provided by law. Franchisee shall not be required to indemnify LFA for acts of LFA that constitute willful misconduct or negligence on the part of LFA, its elected and appointed officials, officers, employees, agents, attorneys, consultants, independent contractors, or third parties.

8. <u>TRANSFER OF FRANCHISE</u>

Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, and applicable regulations, no Transfer of the Franchise shall occur without the prior written consent of LFA, provided that such consent shall not be unreasonably withheld, delayed, or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Franchisee in this Franchise or the Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.28 above.

9. RENEWAL OF FRANCHISE

9.1 *Governing Law:* LFA and Franchisee agree that any proceedings undertaken that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

9.2 *Needs Assessments:* In addition to the procedures set forth in Section 626, LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the current Franchise term. Such assessments shall be provided to Franchisee by LFA promptly so that Franchisee has adequate time to submit a proposal under Section 626 and complete renewal of this Franchise prior to expiration of its term.

9.3 *Informal Negotiations:* Notwithstanding anything to the contrary set forth herein, Franchisee and LFA agree that at any time during the term of this Franchise, while affording the public appropriate notice and opportunity to comment, LFA and Franchisee may agree to undertake and finalize informal negotiations regarding renewal of this Franchise, and LFA may grant a renewal thereof.

9.4 *Consistent Terms:* Franchisee and LFA consider the terms set forth in this Article 9 to be consistent with the express provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

10. ENFORCEMENT AND TERMINATION OF FRANCHISE

10.1 *Notice of Noncompliance:* If at any time LFA believes that Franchisee has not complied with the terms of this Franchise, LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem in a reasonable time, LFA shall then notify Franchisee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article 10, the "Noncompliance Notice"). If LFA does not notify Franchisee of any alleged noncompliance, it shall not operate as a waiver of any rights of LFA hereunder or pursuant to applicable law.

10.2 *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the Noncompliance Notice to: (i) respond to LFA in writing, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such thirty (30) day period, initiate reasonable steps to remedy such noncompliance and notify LFA of the steps being taken and the date by which cure is projected to be completed. Upon cure of any noncompliance, LFA shall provide written confirmation that such cure has been effected.

10.3 *Public Hearing:* In the event that Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article 10, or in the event that the alleged noncompliance is not remedied within thirty (30) days or the date projected pursuant to Section 10.2(iii) above, if LFA seeks to continue its investigation into the alleged noncompliance, then LFA shall schedule a public hearing. LFA shall provide Franchisee at least thirty (30) business days' prior written notice of such public hearing, which will specify the time, place, and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

10.4 *Enforcement:* Subject to applicable federal and state law, in the event LFA, after the public hearing set forth in Section 10.3, determines that Franchisee is in default of any provision of this Franchise, LFA may:

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

10.4.2 Commence an action at law for monetary damages or seek other equitable relief; or

10.4.3 In the case of a substantial noncompliance with a material provision of this Agreement, seek to revoke the Franchise in accordance with Section 10.5 below.

10.5 *Revocation:*

10.5.1 Should LFA seek to revoke this Franchise after following the procedures set forth above in this Article 10, including the public hearing described in Section 10.3, LFA shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event LFA has not received a satisfactory response from Franchisee, it may then seek revocation of this Franchise at a second public hearing. LFA shall cause to be served upon Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke this Franchise.

10.5.2 At the designated public hearing, Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees, or consultants of LFA, to compel the testimony of other persons as permitted by law, and to question and/or cross-examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

10.5.3 Following the second public hearing, Franchisee shall be provided up to ninety (90) days to submit its proposed findings and conclusions to LFA in writing, and thereafter LFA shall determine (i) whether an event of default has occurred under this Franchise; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Franchisee. LFA shall also determine whether it will revoke this Franchise based on the information presented or, where applicable, grant additional time to Franchisee to effect any cure. If LFA determines that it will revoke this Franchise, LFA shall promptly provide Franchisee with a written determination setting forth LFA's reasoning for such revocation. Franchisee may appeal such written determination of LFA to an appropriate court of competent jurisdiction, which shall have the power to review the decision of LFA consistent with applicable law. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within the time frame permitted by law.

10.5.4 LFA may, at its sole discretion, take any lawful action that it deems appropriate to enforce LFA's rights under this Agreement in lieu of revocation of the Franchise.

11. MISCELLANEOUS PROVISIONS

11.1 *Actions of Parties:* In any action by LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed, or conditioned.

11.2 *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective receivers, trustees, successors, and assigns, and the promises and obligations herein shall survive the expiration date hereof.

11.3 *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, 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 LFA.

11.4 *Force Majeure:* Franchisee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure event.

11.5 *Good Faith Error:* The parties hereby agree that it is not LFA's intention to subject Franchisee to penalties, fines, forfeitures, or revocation of the Franchise for violations of this Agreement where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee that outweigh the benefit to be derived by LFA and/or Subscribers.

11.6 *Delivery of Payments:* Franchisee may use electronic funds transfer to make any payments to LFA required under this Agreement.

11.7 *Notices:* Unless otherwise expressly stated herein, notices required under this Franchise 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.

11.7.1 Notices to Franchisee shall be mailed to:

Verizon Delaware LLC
901 Tatnall Street, 2nd Floor
Wilmington, DE 19801

11.7.2 With a copy to:

Verizon
One Verizon Way
Basking Ridge, NJ 07920
Attention: Sarah E. Lyzak
Vice President and Deputy General Counsel

11.7.3 Notices to LFA shall be mailed to:

Mayor
Town of Middletown
19 West Green Street
Middletown, DE 19709

11.7.4 With a copy to:

Town Manager
Town of Middletown
19 West Green Street
Middletown, DE 19709

11.8 *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and LFA and supersedes all prior or contemporaneous agreements, representations, or understanding (written or oral) of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

11.9 *No Third Party Beneficiaries:* Except as expressly provided herein, this Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

11.10 *Amendments:* Amendments to this Franchise shall be mutually agreed to in writing by the parties.

11.11 *Captions:* The captions and headings of articles and 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.

11.12 *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of this Franchise.

11.13 *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

11.14 *Modification:* This Franchise shall not be modified except by written instrument executed by both parties.

11.15 *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of this Franchise, or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use, or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to LFA or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal, or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI of the Communications Act.

11.16 *Independent Review:* LFA and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of this Agreement.

11.17 *Counterparts:* This Agreement may be executed in two (2) counterparts, each of which shall be deemed an original, and the parties may become a party hereto by executing a counterpart hereof. Further, this Agreement may be executed by facsimile, email, electronic signature or other electronic means, and so executed shall have the full force and legal effect as an executed original of this Agreement. This Agreement and any counterpart so executed shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterparts.

[SIGNATURE PAGE FOLLOWS]

TOWN OF MIDDLETOWN, DELAWARE

By: ______________________________________

Print: ______________________________________

Title: ______________________________________

Date: ______________________________________

VERIZON DELAWARE LLC

By: ______________________________________

Print: ______________________________________

Title: ______________________________________

Date: ______________________________________

<u>EXHIBITS</u>

Exhibit A – Cable Service to Public Buildings

Exhibit B – Customer Service Standards

EXHIBIT A

CABLE SERVICE TO PUBLIC BUILDINGS

Town Hall
Town of Middletown
19 West Green Street
Middletown, DE 19709

Middletown Public Works Building
431 Haveg Road
Middletown, DE 19709

Middletown Police Department
130 Hampden Road
Middletown, DE 19709

Volunteer Hose Company
27 West Green Street
Middletown, DE 19709

NCC Police South Patrol
605 North Broad Street
Middletown, DE 19709

EXHIBIT B

CUSTOMER SERVICE STANDARDS

These standards shall apply to Franchisee to the extent it is providing Cable Services over the Cable System in the Service Area.

SECTION 1: DEFINITIONS

A. Respond: Franchisee's investigation of a Service Interruption after receiving a Subscriber call by opening a trouble ticket, if required, and responding to the call.

B. Significant Outage: A Significant Outage of the Cable Service shall mean any Service Interruption lasting at least four (4) continuous hours that affects at least ten percent (10%) of the Subscribers in the Service Area.

C. Service Call: The action taken by Franchisee to correct a Service Interruption the effect of which is limited to an individual Subscriber.

D. Standard Installation: Installations where the Subscriber is within one hundred twenty-five (125) feet of trunk or feeder lines.

SECTION 2: OFFICE HOURS AND TELEPHONE AVAILABILITY

A. Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers and/or residents in the Service Area regarding Cable Service. Franchisee representatives trained and qualified to answer questions related to Cable Service must be available to respond to Subscriber telephone inquiries during Normal Business Hours. Franchisee representatives shall identify themselves by name when answering this number. After Normal Business Hours, the toll-free number may be answered by an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU"), including an answering machine. Inquiries received after Normal Business Hours shall be responded to by a trained Franchisee representative on the next business day.

B. Franchisee's telephone numbers shall be listed, with appropriate description (e.g., administration, customer service, billing, repair, etc.), in the directory published by the local telephone company or companies serving the Service Area, beginning with the next publication cycle after acceptance of this Franchise by Franchisee.

C. Franchisee may, at any time, use an ARU or a VRU to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first tier menu of English options.

After the first tier menu (not including a foreign language rollout) has run through three (3) times, if Subscribers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. Franchisee may reasonably substitute this requirement with another method of handling calls from Subscribers who do not have touch-tone telephones.

D. Under Normal Operating Conditions, calls received by Franchisee shall be answered within thirty (30) seconds. Franchisee shall meet this standard for ninety percent (90%) of the calls it receives at all call centers receiving calls from Subscribers, as measured on a cumulative quarterly calendar basis. Measurement of this standard shall include all calls received by Franchisee at all call centers receiving calls from Subscribers, whether they are answered by a live representative, by an automated attendant, or abandoned after thirty (30) seconds of call waiting.

E. Under Normal Operating Conditions, callers to Franchisee shall receive a busy signal no more than three percent (3%) of the time during any calendar quarter.

F. At Franchisee's option, the measurements above may be changed from calendar quarters to billing or accounting quarters. Franchisee shall notify LFA of such a change at least thirty (30) days in advance of any implementation. Franchisee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of Complaints indicates a clear failure to comply.

SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS

A. All installations will be in accordance with the rules of the FCC, the National Electrical Code, and the National Electrical Safety Code including, but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of Franchisee-supplied equipment and Cable Service.

B. The Standard Installation shall be performed within seven (7) business days after the placement of the Optical Network Terminal ("ONT") on the Subscriber's premises or within seven (7) business days after an order is placed if the ONT is already installed on the Subscriber's premises.

Franchisee shall meet this standard for ninety-five percent (95%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding Subscriber requests for connection later than seven (7) days after ONT placement or later than seven (7) days after an order is placed if the ONT is already installed on the Subscriber's premises.

C. At Franchisee's option, the measurements above may be changed from calendar quarters to billing or accounting quarters. Franchisee shall notify LFA of such a change at least thirty (30) days in advance of any implementation.

D. Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls, and other activities of a maximum four (4) hour time block scheduled during Normal Business Hours. At Franchisee's discretion, Franchisee may offer Subscribers appointment arrival times other than these four (4) hour time blocks, if agreeable to the Subscriber. These hour restrictions do not apply to weekends. Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment. If a technician is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES

A. Franchisee shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, Franchisee may schedule a Significant Outage for a period of more than four (4) hours during any twenty-four (24) hour period only after LFA and each affected Subscriber in the Service Area have been given fifteen (15) days' prior notice of the proposed Significant Outage. Notwithstanding the foregoing, Franchisee may perform modifications, repairs, and upgrades to the Cable System between 12:01 a.m. and 6:00 a.m. which may interrupt Cable Service.

B. Under Normal Operating Conditions, Franchisee must Respond to a call from a Subscriber regarding a Service Interruption or other service problem within the following time frames:

(1) Within twenty-four (24) hours, including weekends, of receiving Subscriber calls respecting Service Interruptions in the Service Area and shall diligently pursue to completion.

(2) Franchisee must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or LFA of a Cable Service problem and shall diligently pursue to completion.

C. Under Normal Operating Conditions, Franchisee shall complete Service Calls within seventy-two (72) hours of the time Franchisee commences to Respond to the Service Interruption, not including weekends and situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the seventy-two (72) hour period.

D. Franchisee shall meet the standard in Subsection 4.C. for ninety percent (90%) of the Service Calls it completes, as measured on a calendar quarterly basis.

E. At Franchisee's option, the measurements above may be changed from calendar quarters to billing or accounting quarters. Franchisee shall notify LFA of such a change not less than thirty (30) days in advance of any implementation.

F. Under Normal Operating Conditions, Franchisee shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of four (4) consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber's current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow Franchisee to verify the problem if requested by Franchisee. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

G. Under Normal Operating Conditions, if a Significant Outage affects all Cable Services for more than twenty-four (24) consecutive hours, Franchisee shall issue an automatic credit to the affected Subscribers in an amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected Subscribers in an amount equal to the charge for the basic plus enhanced basic level of service for the proportionate time the Cable Service was out, whichever is technically feasible or, if both are technically feasible, as determined by Franchisee provided such determination is non-discriminatory. Such credit shall be reflected on a subsequent Subscriber billing statement.

H. With respect to service issues concerning Cable Services provided to LFA facilities, Franchisee shall Respond to all inquiries from LFA within four (4) hours, shall commence necessary repairs within twenty-four (24) hours under Normal Operating Conditions, and shall diligently pursue to completion. If such repairs cannot be completed within twenty-four (24) hours, Franchisee shall notify LFA in writing as to the reason(s) for the delay and provide an estimated time of repair.

I. Franchisee may provide all notices identified in this Section 4 electronically or on-screen.

SECTION 5: SUBSCRIBER COMPLAINTS

Under Normal Operating Conditions, Franchisee shall investigate Subscriber Complaints referred by LFA within seventy-two (72) hours of receipt. Franchisee shall notify LFA of those matters that necessitate an excess of seventy-two (72) hours to resolve, but those matters must be resolved within fifteen (15) days of the initial Complaint. LFA may require reasonable documentation to be provided by Franchisee to substantiate the request for additional time to resolve the problem. For purposes of this Section 5, “resolve” means that Franchisee shall perform those actions which, in the normal course of business, are necessary to investigate the Subscriber’s Complaint and advise the Subscriber of the results of that investigation.

SECTION 6: BILLING

A. Subscriber bills shall be clear, concise, and understandable. Bills shall be fully itemized to include all applicable service tiers and, if applicable, all related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall maintain records of the date and place of delivery of bills.

B. A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill that lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due.

C. Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

(1) The Subscriber pays all undisputed charges;

(2) The Subscriber provides notification of the dispute to Franchisee at least five (5) days prior to the due date;

(3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute; and

(4) It shall be within Franchisee's sole discretion to determine when the dispute has been resolved.

D. Under Normal Operating Conditions, Franchisee shall initiate investigation and resolution of all billing Complaints received from Subscribers within five (5) business days of receipt of the Complaint. Final resolution shall not be unreasonably delayed.

E. Franchisee shall provide a telephone number and address on the bill for Subscribers to contact Franchisee.

F. Franchisee shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to LFA upon written request.

G. LFA hereby requests that Franchisee omit LFA's name, address, and telephone number from Subscriber bills as permitted by 47 C.F.R. § 76.952.

SECTION 7: RATES, FEES, AND CHARGES

A. Franchisee shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Franchisee's equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to, a situation in which the Subscriber reconnects Franchisee's equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect Franchisee's equipment.

B. Franchisee shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

SECTION 8: DISCONNECTION/DENIAL OF SERVICE

A. Franchisee shall not terminate Cable Service for nonpayment of a delinquent account unless Franchisee provides a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be provided to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement.

B. Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber if the Cable Service termination was reported by the Subscriber.

C. Nothing in these standards shall limit the right of Franchisee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Franchisee's equipment, abusive and/or threatening behavior toward Franchisee's employees or representatives, refusal to provide credit history information, or refusal to allow Franchisee to validate the identity, credit history, and credit worthiness of the Subscriber via an external credit agency.

SECTION 9: COMMUNICATIONS WITH SUBSCRIBERS

A. All Franchisee personnel, contractors, and subcontractors contacting Subscribers or potential Subscribers at the homes of such Subscribers or potential Subscribers shall wear a clearly visible identification card bearing their name and photograph. Franchisee shall make reasonable efforts to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a Subscriber's or potential Subscriber's premises. Every service vehicle of Franchisee and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Franchisee vehicles shall have Franchisee's logo plainly visible. The vehicles of those contractors and subcontractors working for Franchisee shall have the contractor's/subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to Franchisee.

B. All contact with a Subscriber or potential Subscriber by a Person representing Franchisee shall be conducted in a courteous manner.

C. All notices identified in this Section 9 shall be by either:

(1) A separate document included with a billing statement or a message included on the portion of the monthly bill that is to be retained by the Subscriber;

(2) A separate electronic notification;

(3) A separate on-screen notification; or

(4) Any other reasonable written means.

D. Franchisee shall provide reasonable notice to Subscribers of any pricing changes or additional changes (excluding sales discounts, new products, or offers) and, subject to the foregoing, any changes in Cable Services, including Channel line-ups. Such notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if within the control of Franchisee, and Franchisee shall provide a copy of the notice to LFA including how and where the notice was given to Subscribers.

E. Franchisee shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 9.D., at least thirty (30) days prior to making significant changes in the information required by this Subsection 9.E. if within the control of Franchisee:

(1) Products and Cable Services offered;

(2) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees, and other fees charged by Franchisee related to Cable Service;

(3) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided;

(4) Channel positions of Cable Services offered on the Cable System;

(5) Complaint procedures, including the name, address, and telephone number of LFA, but with a notice advising the Subscriber to initially contact Franchisee about all complaints and questions;

(6) Procedures for requesting Cable Service credit;

(7) The availability of a parental control device;

(8) Franchisee practices and procedures for protecting against invasion of privacy; and

(9) The address and telephone number of Franchisee's office to which complaints may be reported.

F. Notices of changes in rates shall indicate the Cable Service new rates and old rates, if applicable.

G. Every notice of termination of Cable Service shall include the following information:

(1) The name and address of the Subscriber whose account is delinquent;

(2) The amount of the delinquency for all services billed;

(3) The date by which payment is required in order to avoid termination of Cable Service; and

(4) The telephone number for Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.