

**EXHIBIT "A" TO ORDINANCE NO. \_\_\_\_\_**

**Cable Franchise Agreement**

**by and between**

**City of Sachse, Texas**

**and**

**GTE Southwest, Inc. d/b/a/ Verizon Southwest**

**Dated: \_\_\_\_\_, 2004**

## TABLE OF CONTENTS

1.	DEFINITIONS .....	2
2.	GRANT OF AUTHORITY; LIMITS AND RESERVATIONS.....	6
3.	PROVISION OF CABLE SERVICE.....	8
4.	SYSTEM OPERATION .....	9
5.	SYSTEM FACILITIES.....	9
6.	EG SERVICES.....	10
7.	FRANCHISE FEES .....	11
8.	CUSTOMER SERVICE .....	11
9.	REPORTS AND RECORDS .....	11
10.	INSURANCE AND INDEMNIFICATION .....	12
11.	TRANSFER OF FRANCHISE .....	14
12.	RENEWAL OF FRANCHISE.....	14
13.	ENFORCEMENT AND TERMINATION OF FRANCHISE.....	16
14.	MISCELLANEOUS PROVISIONS .....	17

### EXHIBITS

Exhibit A: Service Area

Exhibit B: Municipal Buildings to be Provided Free Cable Service

Exhibit C: EG Channels

Exhibit D: Customer Service Standards

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the City of Sachse, a duly organized City under the applicable laws of the State of Texas (the Local Franchising Authority or “LFA”) and GTE Southwest, Inc. d/b/a Verizon Southwest, a corporation duly organized under the applicable laws of the State of Texas (the “Franchisee”).

WHEREAS, LFA wishes to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, LFA is a “franchising authority” in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises;

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network (“FTTP Network”) in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by Franchisee;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within LFA, and Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, LFA has identified the future cable-related needs and interests of LFA and its citizens, has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee’s plans for its Cable System are adequate, in a full public proceeding affording due process to all parties;

WHEREAS, LFA has found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, LFA has determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, LFA and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of LFA’s grant of a franchise to Franchisee, Franchisee’s promise to provide Cable Service to residents of the Franchise/Service Area of LFA 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 and incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1. *Access Channel*: A video Channel, which Franchisee shall make available to LFA without charge for public, educational, or governmental use for the transmission of video programming as directed by LFA.

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

1.3. *Basic Service*: Any service tier, which includes the retransmission of local television cablecast signals as well as the EG Channels required by this Franchise.

1.4. *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).

1.5. *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), meaning Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area. The Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of video programming directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

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

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

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

1.9. *Educational Access Channel*: An Access Channel available for the use solely of the local public schools in the Franchise Area.

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

1.11. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by

waiting for utility providers to service or monitor utility poles to which Franchisee's Cable System is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

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

1.13. *Franchisee*: GTE Southwest, Inc. d/b/a. Verizon Southwest, and its lawful and permitted successors, assigns and transferees.

1.14. *Government Access Channel*: An Access Channel available for the use solely of LFA.

1.15. *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee from the operation of the Cable System to provide Cable Service in the Service Area. Gross Revenue includes, but is not limited to, all Subscriber and customer service revenues earned or accrued net of bad debts, including revenues for (i) basic Cable Services; additional tiers of Cable Service; (iii) premium tiers of Cable Service; (iv) pay-per-view programs; (v) the installation or disconnection of Cable Service; (vi) service calls for Cable Service; (vii) the provision, sale, rental or lease of converters, remote controls, additional outlets, and set top boxes, used by Subscribers for the provision of Cable Service; and (viii) revenues paid to Franchisee from the use of lease access channels. Gross Revenue shall not include:

1.15.1. Revenues received by an Affiliate or other Person in exchange for supplying goods and services used by Franchisee to provide Cable Service over the Cable System.

1.15.2. 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;

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

1.15.4. 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; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders;

1.15.5. Any revenue of Franchisee or any other Person which 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;

1.15.6. 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;

1.15.7. The sale of Cable Services to customers, 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;

1.15.8. Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, 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);

1.15.9. Any foregone revenue which 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 the Franchise; provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue;

1.15.10. Sales of capital assets or sales of surplus equipment;

1.15.11. Program launch fees;

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

1.15.13. Any fees or charges collected from Subscribers or other third parties for the EG Capital Fee (defined below).

1.16. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20).

1.17. *Interactive On-demand Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(12).

1.18. *Internet Access*: Dial-up or broadband access service provided by Franchisee over the Cable System that enables Subscribers to access the Internet.

1.19. *Local Franchise Authority (LFA)*: The City of Sachse or the lawful successor, transferee, or assignee thereof.

1.20. *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, Interactive On-demand Services and Telecommunications Services.

1.21. *Normal Business Hours:* Those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

1.22. *Normal Operating Conditions:* Those service conditions which are within the control of Franchisee. Those conditions which 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 which 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. § 309(c)(4)(ii).

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

1.24. *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 thereafter 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 nonwire communications or cablecast services. The term “Public Rights-of-Way” does not include LFA property or facilities that are not generally used for public roadways, highways, streets, sidewalks, alleys, or utility easement purposes.

1.25. *Service Area:* All portions of the Franchise Area where Cable Service is to be made available by Franchisee in the geographic area as depicted in the map set forth in Exhibit A and made a part hereof, as well as any additional service areas as may be added by Franchisee from time to time.

1.26. *Service Interruption:* The loss of picture or sound on one or more cable channels or channel equivalents.

1.27. *Subscriber:* A Person who lawfully receives Cable Service of the Cable System with Franchisee’s express permission.

1.28. *Telecommunications Facilities:* Franchisee’s existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

1.29. *Telecommunication Services:* Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

1.30. *Title II:* Title II of the Communications Act.

1.31. *Title VI:* Title VI of the Communications Act.

1.32. *Transfer of the Franchise:*

1.32.1. Any transaction in which:

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

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

1.32.2. However, notwithstanding Subsections 1.32.1.1 and 1.32.1.2 above, 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 the Franchise or the rights held by Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of Franchisee; or any action which is the result of a merger of another Affiliate of Franchisee.

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

**2. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority:* Subject to the terms and conditions of this Agreement, LFA hereby grants 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 by this grant; nor is such a privilege or power bestowed by this Agreement.

2.2. *LFA Does Not Regulate Telecommunications:* 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 Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services.

2.3. *Term:* This Franchise Agreement shall become effective on the date that Franchisee first provides Cable Service on a commercial basis directly to multiple Subscribers in the Franchise Area (the "Effective Date"), following its approval by LFA's governing authority authorized to grant franchises and its acceptance by Franchisee. The term of this Franchise Agreement shall be fifteen (15) years from the Effective Date unless the Franchise is earlier revoked as provided herein. Franchisee shall memorialize the Effective Date by notifying LFA in writing of the same, which notification shall become a part of this Franchise Agreement.

2.4. *Grant Not Exclusive:* The Franchise and the right it grants 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 themselves, at any time during the term of this Franchise Agreement. Any such rights which are granted shall not

adversely impact the authority as granted under this Franchise Agreement and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Level Playing Field:* In the event LFA enters into a franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than Franchisee for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Service Area, the provisions thereof shall not be less burdensome or more favorable than those contained herein, in order that one Franchisee not be granted an unfair competitive advantage over another. To the extent that such provisions are less burdensome or more favorable than the terms herein, LFA shall, upon the request of Franchisee, enter into good faith negotiations with Franchisee and modify the terms of this Agreement in a manner and to the extent necessary to ensure that the additional agreement does not provide a competitive advantage over this Franchisee.

2.6. *Franchise Agreement Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise Agreement 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.

2.7. *No Waiver:*

2.7.1. The failure of LFA on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement or any other applicable 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.

2.7.2. The failure of Franchisee on one or more occasions to exercise a right under this Franchise Agreement or applicable law, or to require performance under this Franchise Agreement, 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.

2.8. *Construction of Franchise Agreement:*

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

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

2.8.3 Should any change to state law have the lawful effect of materially altering the terms and conditions of this Franchise, then the parties shall modify this Franchise Agreement to the mutual satisfaction of both parties to ameliorate the negative effects on Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise Agreement, 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.

2.9. *Police Powers:* Nothing in the Franchise Agreement shall be construed to prohibit the reasonable, necessary and lawful exercise of LFA's police powers. However, if the reasonable, necessary and lawful exercise of LFA's police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise Agreement to the mutual satisfaction of both parties to ameliorate the negative effects on Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise Agreement, then Franchisee may terminate this Agreement without further obligation to LFA.

### **3. PROVISION OF CABLE SERVICE**

#### *3.1. Service Area:*

3.1.1. *Service Area:* Franchisee shall provide Cable Service to all residential areas of the Service Area within twelve (12) months of the Effective Date of this Franchise Agreement, except: (A) for periods of Force Majeure; (B) for periods of delay caused by LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; and (F) in developments or buildings that 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.

3.1.2. *Additional Service Areas:* Franchisee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise Agreement or any Renewals thereof. If Franchisee desires to add additional service areas within the Franchise Area, Franchisee shall notify LFA in writing of such additional service area at least ten (10) days prior to providing Cable Services in such areas.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units within the Service Area and may make Cable Service available to businesses in conformance with Section 3.1 and Franchisee shall not discriminate between or among 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, all residential dwelling units that are within one hundred fifty (150) 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, actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings:* Franchisee shall provide, without charge within the Service Area, one service outlet activated for the most subscribed service tier

level to each fire station, school, police station, public library, as may be designated by LFA as provided in Exhibit B; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred fifty (150) 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 in excess of one hundred fifty (150) feet, or of releasing Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover, from any public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than one hundred fifty (150) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of the most subscribed service tier level to the additional service outlets once installed.

#### **4. SYSTEM OPERATION**

The parties recognize that Franchisee's FTTP Network is being constructed and will 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 assert jurisdiction over Franchisee's FTTP Network in contravention of those limitations.

#### **5. SYSTEM FACILITIES**

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

5.1.1 The System shall be designed with an initial analog passband of 860 MHz.

5.1.2 The System shall be designed to be an active two-way plant utilizing the return bandwidth to permit such services as impulse pay-per-view and other interactive services.

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

5.3. *Emergency Alert System:*

5.3.1. Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

5.3.2. LFA shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, LFA shall hold Franchisee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

## **6. EG SERVICES**

### *6.1. EG Set Aside*

6.1.1. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide on the Basic Service Tier one (1) dedicated Educational Access Channel, and reserve for LFA's future use during the term of this Franchise one (1) dedicated Government Access Channel, together with the Educational Access Channels, the "EG Channels."

6.1.2. Within ten (10) days after the Effective Date of this Agreement, LFA shall notify Franchisee of the programming to be carried on the Educational Access Channel set aside by Franchisee, as listed in Exhibit C. Thereafter, Franchisee shall assign the Education Channels on its channel line-up as set forth in such notice, to the extent such channel assignments do not interfere with any pre-existing channels. LFA shall provide Franchisee with sixty (60) days written notice prior to requiring Franchisee to activate the reserved Government Access Channel.

6.1.3. Franchisee shall use reasonable efforts to interconnect its Cable System with the existing cable operator. Franchisee shall initiate interconnection negotiations with the existing cable operator(s) to cablecast, on a live basis, educational and governmental access programming consistent with this Franchise. Interconnection may be accomplished by direct cable, microwave link, satellite or other appropriate method of connection. Franchisee shall negotiate in good faith with existing cable operators respecting reasonable, mutually convenient, cost-effective, and technically viable interconnection points, methods, terms and conditions. LFA shall require the existing cable operator(s) to provide such interconnection to Franchisee on reasonable terms and conditions. The construction costs and ongoing expenses of interconnection shall be fairly shared between Franchisee and existing cable operator(s). Franchisee and the existing cable operator(s) shall negotiate the precise terms and conditions of an interconnection agreement; LFA shall use its best efforts to facilitate negotiations thereto. If Franchisee is unable to reach such an agreement within thirty (30) days after requesting in writing to interconnect with other local cable operator(s), LFA shall assist in mediating such dispute. If no agreement is reached within an additional thirty (30) days, Franchisee agrees that LFA shall designate the point of interconnection. With respect to any cable operator, if the cost of interconnection would be unreasonable, interconnection is not technically feasible or would cause an unacceptable increase in Subscriber rates, or if such cable operator will not agree to reasonable terms and conditions of interconnection, Franchisee shall be under no obligation to carry EG programming originating on the cable system of the existing cable operator or to interconnect the Cable System.

6.2. All local producers and users of any of the EG facilities or Channels shall agree in writing to hold harmless Franchisee, LFA, from any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the

producer or user; and for any other injury or damage in law or equity, which result from the use of a EG facility or Channel.

6.3. To the extent permitted by federal law, Franchisee shall be allowed to recover the costs of an Annual EG Grant or any other costs arising from the provision of EG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill.

6.4. Unless otherwise agreed by LFA during the term of this Agreement, Franchisee shall interconnect with all other cable franchisees for the purpose of exchanging EG programming to be carried over the Access Channels. Franchisee shall initiate negotiations with the other affected system or systems and shall pay its own costs for both construction and operation of the interconnection link. LFA shall work with Franchisee and Franchisees of such other systems to designate a reasonable and mutually acceptable place and manner for the EG interconnection. Interconnection shall preserve the quality of the EG signals. If any cable franchisee refuses to interconnect or otherwise obstructs interconnection, LFA shall use its best efforts to require any such franchisee to cooperate with Franchisee and to agree to reasonable terms for interconnection. Without limiting the forgoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection costs to Subscribers.

6.5. *EG Support.* Beginning with the Effective Date of this Franchise, Franchisee shall pay to LFA twelve cents (\$.12) per month, per residential Subscriber, as capital support for EG Programming ("EG Capital Fee") so long as EG Programming is provided by LFA. Franchisee shall not be responsible for collecting or paying the EG Capital Fee on *gratis* accounts or for Subscribers covered by bulk agreements. Each payment shall be due and payable no later than forty five (45) days following the end of each calendar quarter from when the EG Capital Fee takes effect.

## **7. FRANCHISE FEES**

7.1. *Payment to LFA:* Franchisee shall pay to LFA a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within 90 days following the close of the calendar year for which such payments were applicable.

7.2. *Supporting Information:* Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation.

7.3. *Limitation on Franchise Fee Actions:* The period of limitation for recovery of any Franchise fee payable hereunder shall be three (3) years from the date on which payment by Franchisee is due.

7.4. *Bundled Services*: If Cable Services subject to the Franchise fee required under this Article 7 are provided to Subscribers in conjunction with Non-Cable Services, the Franchise fee shall be applied only to the value of the Cable Services, as reflected on the books and records of Franchisee in accordance with FCC or state public utility regulatory commission rules, regulations, standards or orders.

## **8. CUSTOMER SERVICE**

Franchisee and LFA agree to and hereby incorporated the customer service standards set forth in Exhibit D, which shall be binding unless amended by written consent of the parties.

## **9. REPORTS AND RECORDS**

9.1. *Open Books and Records*: Upon reasonable written notice to Franchisee and with 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 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 the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by LFA. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. 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 the provision of Cable Service in the Service Area. LFA agrees to treat any information disclosed by Franchisee as confidential and only to disclose it to employees, representatives, and agents thereof 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.

9.2 *Records Required*: Franchisee shall at all times maintain:

9.2.1. Records of all written complaints for a period of three (3) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.2.2. Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.2.3. Records of service calls for repair and maintenance for a period of three years 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), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.2.4. Records of installation/reconnection and requests for service extension for a period of three (3) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.2.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

## **10. INSURANCE AND INDEMNIFICATION**

### 10.1. *Insurance:*

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

10.1.1.1. Commercial General Liability Insurance in the amount of three million dollars (\$3,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in LFA .

10.1.1.2. Automobile Liability Insurance in the amount of three million dollars (\$3,000,000) combined single limit for bodily injury and property damage coverage.

10.1.1.3 Workers' Compensation Insurance meeting all legal requirements of the State of Texas.

10.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$500,000 policy limit.

10.1.2. LFA shall be designated as an additional insured under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance.

10.1.3. Each of the required insurance policies shall be noncancellable except upon thirty (30) days prior written notice to LFA. Franchisee shall not cancel any required insurance policy without submitting documentation to LFA verifying that Franchisee has obtained alternative insurance in conformance with this Agreement.

10.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of Texas, with an A+ or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

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

## 10.2. *Indemnification:*

10.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend LFA, its officers, agents, boards and employees, from and against any liability for damages and for any liability 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 the LFA shall give Franchisee written notice of its obligation to indemnify LFA within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify LFA, for any damages, liability or claims resulting from the willful misconduct or negligence of LFA, its 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 EG Access or EAS, or the distribution any Cable Service over the Cable System.

10.2.2. With respect to Franchisee's indemnification obligations set forth in Subsection 10.2.1, 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 does not include the release of LFA and LFA does not consent to the terms of any 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.

10.2.3. LFA shall hold Franchisee harmless and shall be responsible for damages, liability or claims resulting from willful misconduct or negligence of LFA. LFA shall not be required to indemnify Franchisee for willful misconduct or negligence on the part of Franchisee's officers, employees, agents, attorneys, consultants, independent contractors or third parties.

10.2.4. LFA shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by LFA for which LFA is legally responsible, 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 which constitute willful misconduct or negligence, on the part of LFA, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

10.2.5. In any administrative or judicial proceeding involving a third party claim against LFA arising from LFA's grant of this Franchise or the operation hereof, Franchisee at its option and own cost and expense may intervene in such proceeding and LFA consents to such intervention. In any such proceeding, LFA agrees to assert its limitation from liability to the full extent permitted by Section 635A of the Communications Act, 47 U.S.C. §555(a), or similar applicable law.

## **11. TRANSFER OF FRANCHISE**

Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no Transfer of the Franchise shall occur without the prior 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 the Franchise or Cable System in order to secure indebtedness, or otherwise excluded under Section 1.32 above.

## **12. RENEWAL OF FRANCHISE**

12.1. LFA and Franchisee agree that any proceedings undertaken by LFA 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.

12.2. In addition to the procedures set forth in said Section 626 of the Communications Act, LFA agrees to 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 then current Franchise term. LFA further agrees that such assessments shall be provided to Franchisee promptly so that Franchisee has adequate time to submit a proposal under Section 626 and complete renewal of the Franchise prior to expiration of its term.

12.3. Notwithstanding anything to the contrary set forth herein, Franchisee and LFA agree that at any time during the term of the then current 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 the then current Franchise and LFA may grant a renewal thereof.

12.4. Franchisee and LFA consider the terms set forth in this Article 12 to be consistent with the express provisions of Section 626.

## **13. ENFORCEMENT AND TERMINATION OF FRANCHISE**

13.1. *Notice of Violation:* In the event that LFA believes that Franchisee has not complied with the terms of the Franchise, LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, LFA shall notify Franchisee in writing of the exact nature of the alleged noncompliance.

13.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the written notice described in section 13.1 to: (i) respond to LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such default; or (iii) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify LFA of the steps being taken and the projected date that they will be completed.

13.3. *Public Hearing:* In the event that Franchisee fails to respond to the written notice described in section 13.1 pursuant to the procedures set forth in section 13.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected

pursuant to section 13.2(iii) above, if it intends to continue its investigation into the default, then LFA shall schedule a public hearing. LFA shall provide Franchisee at least thirty (30) business days prior written notice of such hearing, which will specify the time, place and purpose of such hearing, and provide Franchisee the opportunity to be heard.

13.4. *Enforcement:* Subject to applicable federal and state law, in the event LFA, after the hearing set forth in section 13.3, determines that Franchisee is in default of any provision of the Franchise, LFA may:

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

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

13.4.3. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with section 13.5.

13.5. *Revocation:* Should LFA seek to revoke the Franchise after following the procedures set forth in sections 13.1 through 13.4 above, LFA shall give written notice to Franchisee of its intent. The notice shall set forth the exact nature of the noncompliance. Franchisee shall have ninety (90) days from 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 termination of the Franchise at a public hearing. LFA shall cause to be served upon Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.5.1. At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right 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.

13.5.2. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter LFA shall determine (i) whether an Event of Default has occurred; (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 to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Franchisee to effect any cure. If LFA determines that the Franchise shall be revoked, LFA shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of LFA to an appropriate court, which shall have the power to review the decision of LFA *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the franchising authority.

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

Franchise.

13.6. *Franchisee Termination:* Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of three (3) years from the Effective Date of this Franchise, if at the end of such three (3) year period Franchisee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration within LFA. Franchisee may consider Subscriber penetration levels outside Franchise Area in making this determination. Notice to terminate under this Section 13.6 shall be given to LFA in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. Franchisee shall also be required to give its then current Subscribers not less than ninety (90) days prior written notice of its termination of Cable Service within LFA.

#### **14. MISCELLANEOUS PROVISIONS**

14.1. *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.

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

14.3. *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.

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

14.4.1. Furthermore, 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 the Franchise 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 which outweigh the benefit to be derived by LFA and/or Subscribers.

14.5. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be transmitted via certified mail to the address below. Certified mailed notices are assumed received three (3) business days after such mailing. The address below is for receipt of such notice unless a party hereto changes its contact information by providing written notice to the other party.

14.5.1. Notices to Franchisee shall be mailed via certified mail to:

Steve Banta  
Verizon – Group President, NW and SW  
600 Hidden Ridge  
HQE04G0  
Irving, TX 75038

With a copy to:

Randal Milch  
Senior VP and Deputy General Counsel  
1095 Avenue of Americas  
New York, NY 92223

14.5.3. Notices to LFA shall be mailed via certified mail to:

Bill Atkinson, City Manager  
City of Sachse  
5660 Hwy 78  
Sachse, TX 75048

14.6. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and LFA. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.7. *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.

14.8. *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 the Franchise.

14.9. *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.

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

14.11. *FTTP Network Transfer Prohibition.* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the 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, any spectrum capacity used for cable service or otherwise, to the LFA or any third party. Franchisee shall not be required to remove the FTTP Network(s) or to relocate the FTTP Network(s) 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 or EG requirements set out in this Agreement.

## **15. PUC WAIVER**

This Agreement shall be void and Verizon shall not be obligated to provide Cable Service in the City of Sachse pursuant to the terms hereunder in the event that (i) a court reverses the effect of Verizon's June 22, 2004 Petition for Waiver of Separate Video Programming Affiliate Requirement ("Waiver") (Docket No. 29879), as subsequently amended and filed with the Public Utility Commission of Texas or (ii) a statute requiring provisions similar to Public Utilities Regulatory Act §62.072 becomes effective in Texas.

**SIGNATURE PAGE FOLLOWS**

AGREED TO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2004.

**CITY OF SACHSE, TEXAS**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
PETER G. SMITH, CITY ATTORNEY

**GTE SOUTHWEST, INC. d/b/a VERIZON  
SOUTHWEST**

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

**ACKNOWLEDGMENTS**

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF DALLAS**   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2004 by \_\_\_\_\_, \_\_\_\_\_ of the **CITY OF SACHSE**, a home-rule municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

**ACKNOWLEDGMENTS**

**STATE OF TEXAS           §**  
**§**  
**COUNTY OF DALLAS       §**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2004 by \_\_\_\_\_, \_\_\_\_\_ of **GTE SOUTHWEST, INC.**  
**d/b/a VERIZON SOUTHWEST**, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

**EXHIBIT A**  
**SERVICE AREA**

## **EXHIBIT B**

### **MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE**

Sachse City Hall  
5560 Highway 78  
Sachse, Texas 75048

Sachse Public Works Department  
6420 Sachse Road  
Sachse, Texas 75048

Sachse Police Department  
3815 Sachse Road  
Sachse, Texas 75048

Sachse Public Library  
3815 Sachse Road, Suite C  
Sachse, Texas 75048

Sachse Senior Center  
3815 Sachse Road, Suite B  
Sachse, Texas 75048

Sachse Fire Station #1  
6223 Highway 78  
Sachse, Texas 75048

Sachse Fire Station #2  
3012 Ranch Road  
Sachse, Texas 75048

### **PUBLIC SCHOOLS TO BE PROVIDED FREE CABLE SERVICE**

Armstrong Elementary (Garland ISD)  
4750 Ben Davis Road  
Sachse, Texas 75048

Hudson Middle School (Garland ISD)  
4400 Hudson Drive  
Sachse, Texas 75048

Cox Elementary (Wylie ISD)  
7009 Woodbridge Parkway  
Sachse, Texas 75048

Sachse High School (Garland ISD)  
3901 Miles Road  
Sachse, Texas 75048

Sewell Elementary (Garland ISD)  
4405 Hudson Drive  
Sachse, Texas 75048

## **EXHIBIT C**

### **EG CHANNELS**

One (1) Education Channel:

Point of origination:

Garland Independent School District  
Lakeview Centennial High School  
3505 Hayman Drive  
Garland, Texas

One (1) Government Channel (Reserved for future use)

Point of origination:

City Hall  
5560 Highway 78  
Sachse, Texas

## **EXHIBIT D**

### **CUSTOMER SERVICE STANDARDS**

These standards shall, starting six (6) months after the Effective Date, apply to Franchisee to the extent it is providing Cable Services over the Cable System in the Franchise area.

#### **1. DEFINITIONS**

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

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 fifty (150) feet of trunk or feeder lines.

#### **2. TELEPHONE AVAILABILITY**

A. Franchisee shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Franchisee representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions twenty-four (24) hours a day, seven (7) days a week, and other inquiries at least forty-five (45) hours per week. Franchisee representatives shall identify themselves by name when answering this number.

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 use an Automated Response Unit ("ARU") or a Voice Response Unit ("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 times, if customers 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 customers 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 30 seconds of call waiting. If the Grantee does not meet the 90% standard described in this paragraph D, during any calendar quarter following the first six months of operations, liquidated damages may be assessed by the City against the Grantee as follows:

- (1) Any quarter where the Grantee performs equal to or greater than eighty five percent (85%) and less than ninety percent (90%), the Grantee shall pay the Grantor one hundred dollars (\$100).
- (2) Any quarter where the Grantee performs equal to or greater than seventy five percent (75%) and less than eighty five percent (85%), the Grantee shall pay the Grantor three hundred dollars (\$300).
- (3) Any quarter where the Grantee performs equal to or greater than sixty five percent (65%) and less than seventy five percent (75%), the Grantee shall pay the Grantor one thousand dollars (\$1,000).
- (4) Any quarter where the Grantee performs less than sixty five percent (65%), the Grantee shall pay the Grantor two thousand dollars (\$2,000).

If the Grantee fails to meet the standards for consecutive quarters, the payment will be the total of the any previous quarter(s) damage payment, plus the current quarter payment. For example, if the Grantee performs at eight seven percent (87%) for one quarter and pays liquidated damages of one hundred dollars (\$100) and for the next quarter performs at eighty percent (80%), the second quarter payment would be four hundred (\$400) [one hundred (\$100) for the first quarter plus three hundred (\$300) for the second quarter]. If the Franchisee continues to have a eighty percent (80%) performance in the third quarter, the payment shall be seven hundred dollars (\$700) [\$300 for the most recent quarter and \$400 for the prior quarter].

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

F. At Franchisee's option, the measurements and reporting 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.

### **3. INSTALLATIONS AND SERVICE APPOINTMENTS**

A. All installations will be in accordance with FCC rules, 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) days after the placement of the Optical Network Terminal (“ONT”) on the customer’s premises. Franchisee shall meet this standard for ninety percent (90%) of the Standard Installations it performs, as measured on a calendar quarter basis, excluding customer requests for connection later than seven (7) days after ONT placement. If the Grantee does not meet the 90% standard described in this paragraph B, during any calendar quarter following the first six months of operations, liquidated damages may be assessed by the City against the Grantee as follows:

- (1) Any quarter where the Grantee performs equal to or greater than eighty five percent (85%) and less than ninety percent (90%), the Grantee shall pay the Grantor one hundred dollars (\$100).
- (2) Any quarter where the Grantee performs equal to or greater than seventy five percent (75%) and less than eighty five percent (85%), the Grantee shall pay the Grantor three hundred dollars (\$300).
- (3) Any quarter where the Grantee performs equal to or greater than sixty five percent (65%) and less than seventy five percent (75%), the Grantee shall pay the Grantor one thousand dollars (\$1,000).
- (4) Any quarter where the Grantee performs less than sixty five percent (65%), the Grantee shall pay the Grantor two thousand dollars (\$2,000).

If the Grantee fails to meet the standards for consecutive quarters, the payment will be the total of the any previous quarter(s) damage payment, plus the current quarter payment. For example, if the Grantee performs at eight seven percent (87%) for one quarter and pays liquidated damages of one hundred dollars (\$100) and for the next quarter performs at eighty percent (80%), the second quarter payment would be four hundred (\$400) [one hundred (\$100) for the first quarter plus three hundred (\$300) for the second quarter]. If the Franchisee continues to have a eighty percent (80%) performance in the third quarter, the payment shall be seven hundred dollars (\$700) [\$300 for the most recent quarter and \$400 for the prior quarter].

C. Franchisee will offer Subscribers “appointment window” alternatives for arrival to perform installations, Service Calls and other activities of a maximum four (4) hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 AM unless it is deemed appropriate to begin earlier by location exception. 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.

#### **4. SERVICE INTERRUPTIONS AND OUTAGES**

A. Franchisee shall promptly notify LFA of any Significant Outage of the Cable Service.

B. Franchisee shall exercise commercially reasonable efforts to limit any Service Interruption 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 Service Interruption.

C. Franchisee representatives who are capable of responding to Service Interruptions must be available to Respond twenty-four (24) hours a day, seven (7) days a week.

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

(1) Within twenty-four (24) hours, including weekends, of receiving subscriber calls respecting Service Interruptions in the Service Area;

(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.

E. 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.

F. Franchisee shall meet the standard in Subsection E. of this Section for ninety percent (90%) of the Service Calls it completes, as measured on a quarterly basis. If the Grantee does not meet the 90% standard described in this paragraph F, during any calendar quarter following the first six months of operations, liquidated damages may be assessed by the City against the Grantee as follows:

(1) Any quarter where the Grantee performs equal to or greater than eighty five percent (85%) and less than ninety percent (90%), the Grantee shall pay the Grantor one hundred dollars (\$100).

(2) Any quarter where the Grantee performs equal to or greater than seventy five percent (75%) and less than eighty five percent (85%), the Grantee shall pay the Grantor three hundred dollars (\$300).

- (3) Any quarter where the Grantee performs equal to or greater than sixty five percent (65%) and less than seventy five percent (75%), the Grantee shall pay the Grantor one thousand dollars (\$1,000).
- (4) Any quarter where the Grantee performs less than sixty five percent (65%), the Grantee shall pay the Grantor two thousand dollars (\$2,000).

If the Grantee fails to meet the standards for consecutive quarters, the payment will be the total of the any previous quarter(s) damage payment, plus the current quarter payment. For example, if the Grantee performs at eighty seven percent (87%) for one quarter and pays liquidated damages of one hundred dollars (\$100) and for the next quarter performs at eight percent (80%), the second quarter payment would be four hundred (\$400) [one hundred (\$100) for the first quarter plus three hundred (\$300) for the second quarter]. If the Franchisee continues to have a eighty percent (80%) performance in the third quarter, the payment shall be seven hundred dollars (\$700) [\$300 for the most recent quarter and \$400 for the prior quarter].

G. 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.

H. Under Normal Operating Conditions, if a Significant Outage affects all Video Programming Cable Services for more than twenty-four (24) consecutive hours, Franchisee shall issue an automatic credit to the affected Subscribers in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out, or a credit to the affected subscribers in the 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 Subscriber billing statements within the next available billing cycle following the outage.

I. With respect to service issues concerning cable services provided to LFA facilities, Franchisee shall Respond to all inquiries from LFA within four (4) hours and shall commence necessary repairs within twenty-four (24) hours under Normal Operating Conditions. 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.

## **5. CUSTOMER COMPLAINTS**

Under Normal Operating Conditions, Franchisee shall investigate Subscriber complaints referred by LFA within seventy-two (72) hours. 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, “resolve” means that Franchisee shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer’s complaint and advise the Customer of the results of that investigation. If the Grantee fails to resolve a complaint within the required seventy two (72) hours (or extended period), the Franchisee shall pay to the LFA one hundred (\$100) dollars per day for each day the complaint is not resolved within the specified time frame.

For purposes of this subsection, “resolve” means that the Grantee shall perform those actions that, in the normal course of business, are necessary to respond to the Subscriber’s problem.

## **6. BILLING**

A. Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Franchisee shall, without limitation as to additional line items, be allowed to itemize as separate line items, Franchise fees, taxes and/or other governmentally imposed fees. Franchisee shall maintain records of the date and place of mailing of bills.

B. Every Subscriber with a current account balance sending payment directly to Franchisee shall be given at least twenty (20) days from the date statements are mailed to the Subscriber until the payment due date.

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

D. 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 within five (5) days prior to the due date; and
- (3) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

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

E. 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.

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

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

H. Franchisee shall provide all Subscribers with the option of paying for Cable Service by check or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. Franchisee may in the future, at its discretion, permit payment by using a major credit card on a preauthorized basis. Based on credit history, at the option of Franchisee, the payment alternative may be limited.

## **7. DEPOSITS, REFUNDS AND CREDITS**

A. Franchisee may require refundable deposits from Subscribers with (1) a poor credit or poor payment history, 2) who refuse to provide credit history information to Franchisee, or 3) who rent Subscriber equipment from Franchisee, so long as such deposits are applied on a non-discriminatory basis. The deposit Franchisee may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by six (6). The maximum deposit Franchisee may charge for Subscriber equipment is the cost of the equipment which Franchisee would need to purchase to replace the equipment rented to the Subscriber.

B. Franchisee shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. Franchisee shall pay interest on other deposits if required law.

C. Under Normal Operating Conditions, refund checks will be issued within next available billing cycle following the resolution of the event giving rise to the refund, (e.g. equipment return and final bill payment).

D. Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

E. Bills shall be considered paid when appropriate payment is received by Franchisee or its' authorized agent. Appropriate time considerations shall be included in Franchisee's collection procedures to assure that payments due have been received before late notices or termination notices are sent.

## **8. RATES, FEES AND CHARGES**

A. Franchisee shall not, except to the extent expressly 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 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 equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect Franchisee's equipment (for example, a dog chew).

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

## **9. 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 at least ten (10) days prior to service suspension and twenty days prior to the proposed final termination. The notice shall be mailed 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 Service Interruption 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, or refusal to provide credit history information or refusal to allow Franchisee to validate the identity, credit history and credit worthiness via an external credit agency.

D. Charges for cable service will be discontinued at the time of the requested termination of service by the subscriber, except equipment charges may be applied until equipment has been returned. No period of notice prior to requested termination of service can be required of Subscribers by Franchisee. No charge shall be imposed upon the Subscriber for or related to total disconnection of Cable Service or for any Cable Service delivered after the effective date of the disconnect request, unless there is a delay in returning Franchisee equipment or early termination charges apply pursuant to the Subscriber's service contract. If the Subscriber fails to specify an effective date for disconnection, the Subscriber shall not be responsible for Cable Services received after the day following the date the disconnect request is received by Franchisee. For purposes of this subsection, the term "disconnect" shall include Subscribers who elect to cease receiving Cable Service from Franchisee and to receive Cable Service or other multi-channel video service from another Person or entity.

## **10. COMMUNICATIONS WITH SUBSCRIBERS**

A. All Franchisee personnel, contractors and subcontractors contacting Subscribers or potential Subscribers outside the office of Franchisee shall wear a clearly visible identification card bearing their name and photograph. Franchisee shall make reasonable effort to account for all identification cards at all times. In addition, all Franchisee representatives shall wear appropriate clothing while working at a 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. Franchisee shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by Franchisee may be referred to LFA.

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

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

(2) A separate electronic notification

E. Franchisee shall provide reasonable notice to Subscribers of any pricing changes (excluding sales discounts, new products or offers) and, subject to the forgoing, 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.

F. 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 10.E., at least thirty (30) days prior to making significant changes in the information required by this Section if within the control of Franchisee:

(1) Products and Cable Service 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.

A copy of notices required in this Subsection 10.F., will be given to LFA at least fifteen (15) days prior to distribution to subscribers if the reason for notice is due to a change that is within the control of Franchisee and as soon as possible if not with the control of Franchisee.

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

H. Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, the specific channel location, and the hours of operation of the Cable Service if the Cable Service is only offered on a part-time basis. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

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

- (1) The name and address of the Subscriber whose account is delinquent
- (2) The amount of the delinquency
- (3) The date by which payment is required in order to avoid termination of Cable Service
- (4) The telephone number for Franchisee where the Subscriber can receive additional information about their account and discuss the pending termination.