

AGREEMENT BETWEEN MONTGOMERY COUNTY, MARYLAND

AND

THE MAYOR AND COUNCIL OF ROCKVILLE

THIS AGREEMENT is entered into as of the ____ day of _____, 2008, by and between Montgomery County, Maryland, a body corporate and politic (hereinafter referred to as the "County"), and The Mayor and Council of Rockville, a municipal corporation organized pursuant to Article XI-E of the Maryland Constitution, (hereinafter referred to as the "Municipality").

WITNESSETH:

WHEREAS, the County enacted Chapter 8A of the Montgomery County Code (2004), as amended, entitled "Cable Communications" in order to provide for the grant of one or more franchises for the construction and operation of a cable communications system in the County, and to provide for the administration and regulation of the cable communications system by the County during the franchise term; and

WHEREAS, the County, pursuant to the provisions of Chapter 8A, has awarded a cable communications franchise within the County to Verizon Maryland, Inc. (hereinafter referred to as "Verizon"); and

WHEREAS, the Municipality has the express authority to grant one or more exclusive or nonexclusive franchises for a community

antenna system or other cable television system within its corporate boundaries, pursuant to Article 23A, Section 2(b)(13) of the Annotated Code of Maryland; and

WHEREAS, the Municipality finds that it is in the best interest of its citizens for cable communications systems to be constructed and operated within its corporate limits; and

WHEREAS, the Municipality finds that it is in the best interest of its citizens that the administration and regulation of the Verizon system, within the boundaries of the Municipality be undertaken by the County and to this end has enacted an Ordinance, which adopts, with certain amendments, Chapter 8A so that its provisions shall be effective within the Municipality, and

WHEREAS, the Municipality's Cable Communications Ordinance provides that the County is requested and authorized to administer and enforce said Ordinance within the Municipality; and

WHEREAS, by this Agreement, the parties desire to set forth the terms and conditions upon which the County will administer and enforce the Municipality's Cable Communications Ordinance.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the County and the Municipality agree as follows:

1. The Municipality, having previously adopted, by municipal ordinance, Chapter 8A of the Montgomery County Code, requests that the County administer and enforce such Ordinance within the corporate limits of the Municipality, and authorizes the County to act as agent of the Municipality in connection with the negotiation for the award of a cable communications franchise(s) to be effective within the corporate limits of the Municipality. The County agrees to administer such franchise within the Municipality's corporate boundaries as agent of the Municipality.

2. The County shall submit any proposed franchise agreement which is to be effective within the Municipality to the Municipality for its review and approval. The Municipality shall execute any franchise agreement which it has approved within thirty (30) days of the County's request.

3. The County agrees that it shall, to the full extent permitted by law and by the franchise agreement, impose upon any franchisee, either as a condition of the franchise agreement or as a duty resulting from appropriate amendments to Chapter 8A, or both, or to undertake as a County responsibility, the following obligations which shall be enforced by the County and enforceable by the Municipality:

(a) The Cable Communications System shall be completely constructed within the Municipality's boundaries as

soon as it is constructed in any adjacent area. The cable communications system shall be constructed to serve the entire Municipality.

(b) The Municipality shall not be discriminated against in the array of channels and services offered by the franchisee, or in the rates charged to customers in the Municipality. This provision applies only insofar as the County is authorized to regulate the franchisee's channels, services, and rates.

(c) The following minimum access channel capacity shall be available for programming by the Municipalities on the lowest-cost tier of service provided by the franchisee:

(i) Rockville and Takoma Park shall each have a system-wide analog access channel, pursuant to Section 6.1.1 of the franchise agreement. If the capacity set aside for PEG use is subdivided or compressed, Rockville and Takoma Park will each receive an additional channel, pursuant to Section 6.7.5 of the franchise agreement.

(ii) The other municipalities in Montgomery County, shall have at least one common system-wide analog access channel, pursuant to Section 6.1.1 of the franchise agreement. If the capacity set aside for PEG use is subdivided or compressed, the other municipalities will receive an additional channel, pursuant to Section 6.7.5 of the franchise agreement.

Allocation of use of the municipal channel(s) shall be determined by the Montgomery County Chapter of the Maryland Municipal League. The municipalities shall have the opportunity to utilize the public access channel.

(d) The County will require the franchisee to design, provide, and maintain, at no cost to the municipalities, a system with appropriate architecture, equipment and interconnections to the Comcast and RCN systems so that the municipal channels will suffer no noticeable signal degradation and that the municipal channel signals are transmitted to the subscriber at the same level of quality as they are transmitted over the Comcast and RCN systems.

(e) The County will promptly notify municipal PEG operators how and when their channels will be connected to Verizon, and the County will consider any comments from municipalities regarding the interconnection in the County's review of the interconnection design.

(f) The County shall require that if there are to be changes in the channel designation of any municipal channel, the franchisee shall give the access channel programmer ninety (90) days notice of such change (if commercially practicable) but in no event less than forty-five (45) days.

(g) If the franchisee changes the channel designations for any municipal channel, the County will divide the cost

reimbursement provided for in Section 6.1.2 of the franchise agreement equally among the affected PEG channels without any withholding by the County for administration or other reasons.

(h) All waivers and indemnifications obtained by the County from the franchisee shall inure to the benefit of the Municipality.

(i) The County shall require in the franchise agreement that the franchisee shall comply with all applicable construction permit requirements and fees of the Municipality and all facilities and equipment of the franchisee related to the system located within the Municipality shall be subject to all applicable ordinances and regulations of the Municipality.

4. Section 8A-30 of the Montgomery County Code provides that any cable advisory committee or board created by the County that is concerned with franchises or cable operations in which the below entities are participating municipalities, must include one voting representative designated by

(a) the Montgomery County Chapter of the Maryland Municipal League;

(b) the City of Rockville; and,

(c) the City of Takoma Park.

If the County deletes the foregoing representation requirement from the Montgomery County Code, the Municipality may terminate

this Agreement upon thirty (30) days written notice to the County.

5. The County agrees to indemnify, defend, and hold the Municipality harmless from the County's actions in connection with the County's award of the franchise(s), and the County's administration and enforcement of Chapter 8A of the County Code, the Municipality's Ordinance, and the franchise agreement. Any obligation or liability of the County arising in any way from this Agreement is subject to, limited by and contingent upon the appropriation and availability of funds, as well as the types of liabilities, damage caps and notice requirements stated in the Maryland Local Government Tort Claims Act, currently found at Maryland Code Annotated, Courts & Judicial Proceedings, Section 5-301, et seq., ("LGTCA"). Any indemnification given by the County in this Agreement is not intended to create any rights in any third parties. The County shall not be responsible, nor required to indemnify the Municipality, for the negligence of the Municipality, its employees, or agents in any matter covered by this Agreement.

6. Franchise fees thereon shall be distributed to the Municipality in accordance with Section 8A-29 of the Montgomery County Code. If, at any time, Section 8A-29 provides for the County to retain more than 30 percent of the Municipality's franchise fees as compensation for the administration of the

franchise within the Municipality, the Municipality may terminate this agreement upon thirty (30) days written notice. The distribution shall be made within thirty (30) days after receipt by the County of the franchise fees from the franchisee.

7. Effective with the first quarterly payment that the County receives after the County Executive executes this Agreement, the County shall distribute the total capital grant from the franchisee, upon the terms and conditions set forth in section 6.2 of the franchise agreement, as follows: one-seventh (1/7) to the City of Rockville; one-seventh (1/7) to the City of Takoma Park; and one-seventh (1/7) to the Montgomery County Chapter of the Maryland Municipal League or its successor(s) in interest, in a manner directed by the Montgomery County Chapter of the Maryland Municipal League. The County shall not withhold or otherwise collect any fee or charge with respect to the capital grant, it being the intention that each of the parties described above shall receive a net of 1/7 of the total grant paid by the franchisee. The distribution of each installment of the capital grant shall be made by the County within thirty (30) days after receipt of such installment by the County. If the franchisee provides any additional monetary compensation to the franchising authorities or increases the capital grant, the municipalities shall receive a proportionate share of such increases. The County's obligation to distribute the capital

grant as described above shall not be extinguished if any of the other participating municipalities terminate this Agreement in accordance with its terms.

8. Each participating municipality shall be entitled to a free "drop" on the terms set forth in Section 3.3 of the franchise agreement regarding cable service for public buildings, except that the Cities of Rockville and Takoma Park each shall be entitled to five (5) free drops and the Town of Kensington shall be entitled to two (2) free drops. Each Municipality shall make its request through the County, and the County shall make the request on behalf of the Municipality to the franchisee within five (5) days of receiving the request from the Municipality.

9. If requested by the Municipality, the County will notify the Municipality when it receives design, construction, "as-built" and other required drawings, reports and documents relating to construction and/or operation of the franchise in the Municipality and, upon request, require the franchisee to provide the Municipality with a copy of each requested drawing, report or other document within five (5) days of such request or the delivery to the County, whichever occurs last.

10. With respect to the statement described in Section 9.10.4 of the franchise agreement, the County will require that gross revenues be broken down by participating municipality (or as close as is practicable) and that this information be provided to the applicable participating municipality.

11. Because the franchisee's failure to comply with the provisions of the franchise agreement will result in injury to the Municipality, the extent of which will be difficult to determine, and because the franchise agreement provides for liquidated damages for certain breaches of the franchise agreement, the County will collect, on behalf of the affected Participating Municipality, liquidated damages in accordance with Section 13.7 of the franchise agreement and shall distribute the Municipality's proportionate share to the Municipality. The foregoing shall apply to liquidated damages payable pursuant to Section 13.7 if the breach directly affects the Municipality. Further, the Performance Bond described in Section 13.5 of the franchise agreement is for the protection of the Municipality as well as the County. Accordingly, as agent of the Municipality, the County will withdraw an appropriate amount, including interest and penalties, from the security deposit and pay the same to the Municipality if the franchisee is in default to the Municipality and fails to cure such default in accordance with the franchise agreement.

12. With the exception of paragraphs 5, 7, and 8 hereof, this Agreement shall expire and be of no further force and effect upon revocation of the franchise by the County or the Municipality, or expiration of the franchise effective within the Municipality; provided, however, that either party shall continue to have the right to assert any claims with respect to any

obligation or arising out of any breach of this Agreement occurring prior to the revocation or expiration hereof. The franchise within the Municipality shall not be renewed or extended by the County without the approval of the Municipality.

13. In the event of a material breach of this Agreement by either party, the party not in default shall give the defaulting party notice of such breach and an opportunity to cure the same for a period of thirty (30) days following the giving of such notice. In the event that the defaulting party does not cure the material breach within thirty (30) days of the date of such notice, this Agreement may be terminated by the non-defaulting party upon ten (10) days' written notice to the party committing a material breach hereof. Any notice pursuant to this paragraph of the Agreement shall be hand delivered, with receipt acknowledged, or mailed by certified mail, restricted delivery, addressed in the case of the County, to: Isiah Leggett, County Executive (or successor), Executive Office Building, 101 Monroe Street, Rockville, Maryland 20850, in the case of the Municipality, to: Scott Ullery, City Manager (or successor), The Mayor and Council of Rockville, 111 Maryland Avenue, Rockville, Maryland 20850

Termination of this Agreement under the provisions of this paragraph shall not result in the termination of the franchise agreement. In the event of termination of this Agreement (and any franchise agreement shall so provide), the Municipality shall

become responsible for the administration and enforcement of the franchise agreement within its corporate limits and shall be entitled to collect and retain the franchise fee on all revenues derived from subscribers within the Municipality.

IN WITNESS WHEREOF, the County and the Municipality have executed this Agreement as of the day and year first written above.

WITNESS:

MONTGOMERY COUNTY, MARYLAND

By: _____
Isiah Leggett
County Executive

Date: _____

WITNESS:

THE MAYOR AND COUNCIL OF
ROCKVILLE

Manager

By: Scott Ullery, City

Date: _____

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE COUNTY ATTORNEY

BY _____

DATE: _____

