

NOTICE OF PUBLIC HEARING

TOWN OF DEERPARK  
COUNTY OF ORANGE  
STATE OF NEW YORK

PUBLIC NOTICE is hereby given that there has been presented to the Town Board of the Town of Deerpark, Orange County, New York, a proposed Agreement entitled "Cable Franchise Agreement". The proposed Agreement is between the Town of Deerpark and Frontier Communications.

The full text is on file for public review at the Office of the Town Clerk, Deerpark Town Hall, 420 Route 209, Huguenot, New York, during regular business hours.

THEREFORE, pursuant to Law, the Town Board of the Town of Deerpark will hold a public hearing on the aforesaid proposed Franchise Agreement in the Town Hall, 420 Route 209, Huguenot, New York, at 7:30 p.m. on the 6th day of September, 2016, at which time all interested persons will be heard.

DATED: August 1, 2016

BY ORDER OF THE TOWN BOARD

FLORENCE T. SANTINI, Town Clerk

## **CABLE FRANCHISE AGREEMENT**

This nonexclusive Cable Franchise Agreement (hereinafter the "Franchise") is made and entered into effective on the 15<sup>th</sup> day of August 2016, by and between the Town of Deerpark, New York, ("Town") and Citizens Telecommunications of New York, Inc. d/b/a Frontier Communications of New York ("Frontier") a New York corporation.

### **RECITALS**

WHEREAS, pursuant to 16 CRR-NY 895.1, Frontier's technical ability, financial condition, and character were considered and approved at a public proceeding affording due process and in accordance with the Town's applicable code on August \_\_\_\_, 2016;

WHEREAS, the Town is authorized to grant and renew cable franchises for the installation, operation, and maintenance of cable television systems and otherwise regulate cable communications services within the Town boundaries by virtue of federal and state statutes, by the Town's police powers, by its authority over its public rights-of-way, and by other Town powers and authority;

WHEREAS, the Town and Frontier ("Parties") recognize that Frontier is the second cable provider to apply for a Franchise in the Town, and will be competing with a long standing incumbent, therefore, this franchise is specifically designed to promote such competition. Therefore, the parties agree that Frontier's plans for constructing and operating the cable television system were found adequate and feasible in accordance with the Town's applicable code, the rules and regulations of the NYSPSC, and the FCC;

WHEREAS, by resolution of the Town dated the \_\_\_\_day of August 2016 ("Effective Date"), the Town has granted a non-exclusive cable television franchise to Frontier, and authorized the \_\_\_\_\_ to execute this Franchise Agreement with Frontier upon the terms hereinafter set forth;

WHEREAS, this Franchise Agreement complies with the franchise standards required by the New York State Public Service Commission (hereinafter "NYSPSC") and the Cable Consumer Protection Act of 1992 and are subject to the review and approval of the NYSPSC.

WHEREAS, Frontier desires to provide cable communications services and to construct, operate and maintain a cable television system within the Town; and,

WHEREAS, the Town, after due consideration hereby finds that it would serve the public interest of the citizens of the Town to approve granting Frontier this Franchise to construct, operate and maintain a cable television system within the Town subject to the terms and conditions hereinafter set forth.

## AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions contained herein, Frontier and the Town hereby mutually agree as follows:

### **1. Definitions.**

For the purpose of this Franchise, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

A. "Act" shall mean the Communications Act of 1934, including the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996.

B. "Cable Television System" shall have the same meaning as in Section 602 of the Act.

C. "Cable Service" shall have the same meaning as in Section 602 of the Act.

D. "Gross Revenues" shall mean all revenue of any kind or nature, less related bad debts up to a maximum of two percent (2 %) annually of such cash, credits and property received directly or indirectly by Frontier, its affiliates, subsidiaries, parent and any person, firm or corporation in which Frontier has a financial interest or which has a financial interest in Frontier, arising from or attributable to Frontier's operation of its Cable System to provide Cable Services (as defined from time to time by applicable federal law) within the Town, including, but not limited to:

- a. Revenue from all charges for services provided to Subscribers
- b. Revenue directly derived and attributable to the sale of commercial advertising upon the Cable System;
- c. Revenue from all charges for the leased use of studios;
- d. Revenue from all charges for the use of or lease of leased access channels.
- e. Monthly recurring Revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a Subscriber to receive Cable Services;
- f. Revenue from the sale, exchange, use or cablecast of any programming developed for community use or institutional Users.

"Gross Revenues" shall not include taxes or fees (except the Franchise Fee) collected by Frontier on behalf of any governmental authority; any increase in the value of stock, security or asset; any surcharges for underground conversion of cable plant costs; any increase in the value of any stock, security or asset; the value of complimentary service provided to Frontier's employees and as required by the Town Code or any Franchise; and dividends or other

distributions made in respect of any stock or securities; or value received by a Frontier or any of its affiliates through cooperative advertising.

"Gross Revenues" shall not include cash, credit, property of any kind or nature, or other consideration received by Frontier's affiliates or any person, firm or corporation ("Related Person") in which Frontier has a financial interest or which has financial interest in a Franchisee for any sales of advertising on the Cable System, services to provide programming on the Cable System, production services, and other services which are Cable Services when such services are provided by a Related Person, which has all the following characteristics: the Related Person is a separate legal entity, with separate employees, with separate financial records (which may be part of consolidated financial reporting records), and a separate mission; it makes payments to Frontier which meet market standards for the services and industries involved, even if it does not offer and provide its services to persons other than Frontier in the same industry as Frontier; and it was established for valid business purposes and not with the intent and purpose of circumventing payment of Franchise Fees on Gross Revenues. Nothing contained in this exclusion from Gross Revenues shall be interpreted to exclude from Gross Revenues such cash, credit, property of any kind or nature or other consideration which would be considered Frontier's Gross Revenues derived from the operation of the Cable System to provide Cable Services under the Cable Act. Except for Gross Revenue from such sale of advertising on the Cable System, services to provide programming on the Cable System, production services, or telecommunication services which are Cable Services received by such Related Person, this paragraph shall not exclude from Gross Revenues any source of Gross Revenues, which an existing Franchisee itself is receiving at the time it is granted a Franchise under this provision.

E. "Person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind other than the Town.

F. "Service Area(s)" shall mean those areas where Frontier intends to provide Cable Service within the Town as specifically designated from time-to-time by Frontier in accordance with Section 3(B) below.

G. "Street and Public Right-of-Way" shall have the meaning set forth in applicable Town Code or rules, as defined below.

H. "Subscriber" shall mean an authorized recipient lawfully receiving Cable Television Service.

I. "Town Code" shall mean the code, rules and regulations adopted by the Town, from time-to-time.

J. "Reasonable Notice" shall mean the following: Unless otherwise defined herein, reasonable notice means the delivery of written notice to the other party at least thirty (30) days prior to the action proposed of the alleged defect, situation or default. In the event of any emergency that poses an immediate risk of harm to the health, safety, welfare or property of the residents of the Town, reasonable notice shall be construed to mean written or verbal notice of the action, condition or defect or situation as soon as practicable under the circumstances.

K. "Qualified Living Unit" means a living unit which meets the minimum technical qualifications defined by Frontier for the provision of Cable Service and is located within 4,000 cable feet of an activated RT. A living unit receiving a minimum of 25Mbps downstream generally will be capable of receiving Cable Service subject to Frontier performing certain network grooming and conditioning. For purposes of this definition of Qualified Living Unit, "network grooming and conditioning" means evaluating existing infrastructure and making improvements to allow greater data throughput.

L. "Standard Drop" includes the installation of one cable box and video service on up to four TV sets. A standard drop shall exclude custom installation work, which shall include but not be limited to extensive asphalt construction, concrete jacking and specific customer requested work that requires non-standard inventory or cable routing.

M. "Multiple Dwelling Unit" or "M.D.U." means any adjacent building(s) such as apartments under common ownership containing more than four dwelling units used as living quarters.

N. "Remote DSLAM or RT" means a Digital Subscriber Line Access Multiplexer installed by Frontier and is capable of providing Cable Service to Subscribers.

## **Section 2. Grant of Franchise**

The nonexclusive Franchise is hereby granted to Frontier for the Term of ten (10) years ("Term"), and subject to the terms, conditions, and limitations hereinafter stated, to use the streets or public rights of way of the Town now or hereafter laid out or dedicated, and all extensions thereof, and additions thereto, to construct, erect, operate and maintain in, upon, along across, above, over, and under the aforementioned streets and/or public rights-of-way in the Town, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the Town of a Cable Television System for the reception, sale, and distribution of Cable Service and for any and all other lawful purposes.

## **Section 3. Area of Operation**

A. Subject to the lawful exercise of the police power heretofore or hereafter granted to the Town, Frontier shall have the right to construct, operate, and maintain, in, on, along and under the Streets and Public Rights of Way of the Service Area of the Town, wires, cables, remote terminal cabinets, underground conduits, manholes, and other conductors and figures res necessary for the maintenance and operation in the Town of a Cable System at such locations designated by Frontier. Frontier shall construct and maintain its cable system using material of good and durable quality and that all the work involved in the construction, installation, maintenance and repair of the cable system shall be performed in a safe, thorough and reliable manner.

B. Frontier shall comply with the requirements contained in Section 895.5 of the rules of the NYSPSC. Frontier will extend its Cable Service as described on Exhibit A attached hereto. Frontier shall not deny service to any resident of the Town based upon age, race creed, color, sex, national origin or income level of the residences in their local area.

Except where Frontier is unable to obtain required easements. Frontier may extend cable service to any Qualified Living Unit within the Service Area that Frontier chooses to construct to, upon the request of a potential subscriber at its then-prevailing installation charge for such service. An activated service area is a geographical location or subdivision in which Frontier is already providing cable services to Qualified Living Units.

C. In cases of new construction or property development where utilities are to be placed underground, the developer/property owner shall give Frontier reasonable notice of such construction or development, and of the particular date on which open trenching will be available for grantee's installation of conduit and/or cable. Frontier shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring Cable Service to the development shall be borne by the developer/property owner, unless agreed to otherwise between Frontier and developer.

D. Frontier's use of Town rights-of-way shall be subject to all rules and policies adopted by the Town from time to time.

#### **Section 4. Acceptance; Effective Date**

A. After the Town has taken final action to approve the granting of this Franchise, Frontier will file its acceptance with Town by countersigning this Franchise. Such acceptance will acknowledge that Frontier agrees to be bound by and to comply with the provisions contained herein.

B. The Franchise granted herein will take effect and be in full force from and after final passage by the Town, subject to the acceptance provided in paragraph A above and shall continue in full force and effect throughout the Term.

#### **Section 5. Conditions on use of Streets and Roads**

A. Trimming/Cutting Trees. Frontier, upon consultation with the Town, shall have the right to trim and keep clear of its poles, wires, cables, underground conduits, manholes and other conductors and fixtures, the trees in and along the Streets. In the exercise of such right, Frontier shall not cut or otherwise injure any trees to any greater extent than is reasonably necessary.

B. Restoring Streets. Frontier shall restore, reconstruct, or repair any Street and Public Right-of-Way, and any sewer, gas, effluent, water main, pipe, or fire alarm: disturbed, or destroyed by the exercise of any right granted to Frontier by this Franchise in accordance with applicable Town Code as amended. In the event that the Town determines that Frontier has not made such restoration, reconstruction or repair in a reasonably satisfactory manner, the Town, after giving Frontier notice and opportunity to correct such failure, shall have the right to carry out such restoration, reconstruction or repair) and Frontier shall reimburse the Town in full for all reasonable expenses incurred by the Town in carrying out all or part of such restoration, reconstruction or repair.

C. Safety. Frontier shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failure and accidents which are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Streets, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair. Frontier shall construct its Cable System using materials of good and durable quality, and all work involved in construction, installation, maintenance and repair shall be performed in a safe, thorough and reliable manner.

D. Compliance with Applicable Laws. Frontier shall install and maintain its wire, cables, fixtures, and other equipment in accordance with applicable Town Code, as amended, any building codes, or other construction standards imposed by the Town, and the applicable sections of the National Electric Safety Code as revised during the Term and in such manner as shall not interfere with any installations of the Town or of any public utility serving the Town.

E. Temporary Moving of Wires. Frontier shall, on the request of any Person holding a building-moving permit issued by the Town, temporarily relocate Facilities to permit the moving of buildings, water, effluent or sewer lines, or Streets and/or Public Rights of Way. The expense of such relocation shall be paid by the Person requesting the same, and Frontier shall have the authority to require such payment. Frontier shall be given not less than five (5) business days' notice to arrange for such relocation.

F. Inspection. The Town shall have the right to inspect all construction or installation work performed in, over, under and upon the Streets, subject to the provisions of this Franchise and make such inspections as it shall find necessary to insure compliance with the terms of this Franchise.

G. Location of Distribution Lines-Poles/Underground Cable. No poles or structures shall be erected by Frontier without prior approval of the Town, through its established permit procedure pursuant applicable Town Code, as amended. Location of any pole, or structure shall be removed or modified by Frontier whenever the Town determines that the public health, safety and welfare would be negatively affected. If the Town requires the removal or relocation of part of the Cable Television System, such removal or relocation shall be solely at Frontier's expense.

H. Moving of Frontier Property. Frontier will, upon reasonable notice from the Town, protect, support, temporarily disconnect or relocate its property in the Street or Public Right-of Way when required by the Town or State by reason of traffic conditions, public safety, street closing or abandonment, highway or street construction, change or establishment of street grade, or any other types of structures or improvements. The Town shall bear the cost to the extent such request for relocation or disconnection is for aesthetic purposes.

## **Section 6. Construction and Operation**

A. All working facilities, conditions, and procedures, used or occurring during construction and maintenance of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.

C. Construction, installation and maintenance of the Cable Television System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the Town following accepted construction procedures and practices and working through existing committees and organizations.

D. Any antenna structure used in the Cable Television System shall comply with construction, marking and lighting of antenna structures required by the United States Department of Transportation. Frontier shall obtain a special use permit from the Town prior to the installation of any such antenna structure.

E. Frontier will not intentionally interfere with television reception of person not served by Frontier, nor will the Cable Television System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the Town. Specifically, Frontier shall not interfere, obstruct or hinder in any manner, the Town's communications systems, water system, sewer system, fire department system, police department system, public works systems or court system.

F. Frontier shall not be required to make cable service available to residents of an M.D.U. project until a mutually acceptable agreement granting Frontier access to the M.D.U. has been executed and delivered by Frontier and the property owner.

G. Frontier will at all times fully comply with all Town requests regarding work within the Town rights-of-way.

H. Once Frontier activates any Qualified Living Units within the Service Area, Frontier shall not be allowed to deactivate Cable Service availability without the consent of the Town, which shall not be unreasonably withheld, provided however, Frontier may discontinue service at the requests of a Subscriber, or upon non-payment of a bill for cable services by Subscriber after proper notice.

## **Section 7. Customer Service**

Frontier shall obtain and maintain sufficient telephone lines and staffing so as not to delay unreasonably the answering of any telephone call for the purpose of receiving and responding to cable television subscriber complaints, and shall adjust its staffing, as necessary, with respect to special events which may reasonably be expected to increase call volume. In any event, Frontier shall comply at all times with the customer service provisions set forth in 47 Code of Federal Regulations Part 76.309, as well as Parts 890 & 896 of the rules and regulations of the NYSPSC.

## **Section 8. Channel Capability**

Frontier shall use reasonable effort to provide a minimum of two hundred (200) channels. Frontier shall provide broad categories of services. Suggested broad categories of video programming are:

1. Educational programming;
2. News and information;
3. Sports programming;
4. General entertainment (including movies);
5. Children's programming;
6. Family programming;
7. Culture and performing arts;
8. Science/documentary;
9. Weather information;
10. Ethnic programming; and,
11. Governmental affairs.

Frontier shall carry the signals of local broadcast stations in the New York City Metropolitan area that have indicated to Frontier their "must carry" designation as well as broadcast stations that have executed "retransmission consent" agreements with Frontier in accordance with FCC regulations and federal law.

## **Section 9. Conduct of Operations**

A. Frontier will render efficient Cable Service, make repairs promptly, and interrupt Cable Service only for good cause and for the shortest time possible. Frontier will use reasonable efforts to assure that such interruptions will occur during periods of minimum system use.

B. Frontier shall comply with all Federal Communications Commission rules and regulations, both present and future.

C. Frontier will not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or terms, conditions or privileges of employment because of age, race, creed, color, national origin or gender.

D. Frontier shall not deny access to cable service to any group of subscribers because of the income, age, race, creed, marital status, national origin, or gender of the subscriber in the Service Area.

**Section 10. Insurance**

Frontier shall at all times during the term of this Franchise, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having an A.M. Best rating of A- VII. Frontier shall not commence any work hereunder until Frontier has fulfilled all insurance requirements herein. Frontier shall require its subcontractors to maintain policies of insurance that are appropriate for the type and level of services being provided.

1. Workers' Compensation Insurance with statutory limits as required in the state(s) of operation. Employer's Liability insurance with limits of not less than \$1,000,000 each accident for Bodily Injury by Accident, \$1,000,000 each employee for Bodily Injury by Disease, and \$1,000,000 policy limit for Bodily Injury by Disease.

2. Commercial General Liability Insurance covering claims for bodily injury (including death), personal injury or property damage occurring or arising out of the performance of this Agreement, and including coverage for premises-operations, products/completed operations, and contractual liability. The limits of insurance shall not be less than:

Each Occurrence:	\$1,000,000
General Aggregate Limit:	\$2,000,000
Products-Completed Operations Aggregate Limit:	\$1,000,000
Personal and Advertising Injury Aggregate Limit:	\$1,000,000

3. Business Automobile Liability Insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles used in connection with the performance of this Franchise, with limits of at least \$1,000,000 combined single per accident.

4. The insurance limits required herein may be obtained through any combination of primary and excess or umbrella liability insurance. Frontier shall forward to the Village certificate(s) of insurance upon execution of this Franchise and upon any renewal of such insurance during the term of this Franchise. The certificate(s) shall indicate that (1) the Village, its officers and employees are named as additional insured(s) as their interest may appear with respects to the general liability insurance policy; (2) thirty (30) days' prior written notice of cancellation of the policy(ies) shall be provided to the Village; and (3) coverage is primary and non-contributory to any other valid and collectible insurance maintained by the Village.

**Section 11. Unauthorized Connections or Modifications**

A. It is unlawful for any person to make any connection, extension, or division whether physically, acoustically, inductively, electronically, or otherwise with or to any segment of the Cable Television System for any purpose whatsoever, without the express consent of Frontier.

B. It is unlawful for any person to willfully interfere, tamper, remove, obstruct, or damage any part, segment or content of the Cable Television System for any purpose whatsoever.

C. Any person convicted of a violation of this section will be subject to the maximum penalty allowed by Federal, State and local law. The Town agrees to cooperate with Frontier in the prosecution of any such violations.

## **Section 12. Franchise Fees and Taxes**

A. Frontier will pay to the Town quarterly, within sixty (60) days following the end of each quarter, an amount equal to five percent (5%) of Frontier's quarterly Gross Revenues ("Franchise Fee"). The Franchise Fee will be deemed to reimburse the Town for the rights granted herein and/or all costs of regulation and administration of the Franchise.

B. In the event the five percent (5%) limitation on Franchise fees imposed by the terms of the Act is raised by Congress or the FCC, the Town shall have the right to raise the percentage charged under this section, at its discretion, up to the amount of the limit, upon giving Frontier ninety (90) days' notice prior to the effective date of the increased Franchise Fee.

C. Notwithstanding any provision to the contrary, Frontier shall, in addition to the Franchise Fee described above, pay the required charges, taxes and fees lawfully established in a code or ordinance properly adopted by the Town. Frontier shall be entitled to pass such fees, taxes and charges directly to its subscribers in the Town.

D. In the event the Town constructs or establishes Town owned and occupied facilities in the Frontier Service Area, including but not limited to police, fire, government offices, or recreation facilities, Frontier shall install and provide Frontier Cable System services to said facilities at no cost to the Town.

E. Each franchise fee payment will be accompanied by a report setting out in detail the basis for the computation of the payment. At the sole discretion of the Town, the accuracy of the report may be independently audited by an entity appointed by the Town at the Town's expense. However, in the event the audit concludes that Frontier's payments hereunder were underpaid by an amount greater than 5% of the proper payment, then Frontier shall reimburse the Town for the cost of the audit up to \$7,500. Any amounts underpaid shall be paid annually on or before the 31st day of March each year.

## **Section 13. Rates.**

All of Frontier's rates and charges shall be published (in the form of a publicly-available rate card) in accordance with applicable State and Federal law, and shall be nondiscriminatory as to all persons and organizations of similar classes, under similar circumstances and conditions. Frontier shall apply its rates in accordance with governing law, with similar rates and charges for all subscribers receiving similar cable service, without regard to race, color, familial, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability, or geographic location in the Franchise area. Nothing herein shall be construed to prohibit Frontier from:

- (1) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns of one (1) year or less;

- (2) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;
- (3) The establishment of different and nondiscriminatory rates and charges and classes of service for commercial customers, as well as different nondiscriminatory monthly rates for classes of commercial customers as allowable by federal law and regulations; or
- (4) The establishment of different and nondiscriminatory rates and charges for residential Subscribers as allowable by federal law and regulations.

#### **Section 14. Public, Education, and Government Changes**

Frontier will comply with all aspects of 16CRR-NYVIII B 895.4 of the rules and regulations of the NYSPSC, including provision of one public education and government channel within 120 days of a request from the Town.

#### **Section 15. Records and Reports**

A. Copies of all petitions, applications and communications submitted by Frontier and directly related to Frontier's Franchise to the Federal Communications Commission, Securities and Exchange Commission, the NYSPSC or any other agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to this Franchise, shall be submitted to the Town upon written request.

B. The Town shall have the right, at its own expense, no more than one (1) time during any calendar year, and upon at least ten (10) working days prior written notice) to inspect at Frontier's offices during normal business hours, all books and records directly related to Frontier's Franchise Fee and Frontier's applicable tests provided to the FCC. To the extent such information is protected by State or Federal law, the Town will not disclose to the public or to competitors of Frontier any commercial or financial information reviewed by the Town pursuant to this Franchise Agreement.

#### **Section 16. Franchise Renewal**

Any renewal of this Franchise shall be in accordance with the renewal provisions of the Cable Act and the rules of the NYSPSC as may be codified at the time of the renewal and any relevant provisions of the Town Code, as amended.

#### **Section 17. Transfer of Franchise**

Frontier shall not transfer this Franchise to another party, person, or entity, except to a company controlling, controlled by or under common control with Frontier, without complying with the provisions of in the Cable Act and the rules and regulations of the NYSPSC.

#### **Section 18. Termination; Cancellation**

A. In addition to all other rights and powers pertaining to the Town by virtue of this Franchise or otherwise, the Town reserves the right, after reasonable notice to Frontier and after

reasonable opportunity of Frontier to cure any alleged Franchise Violation, to terminate and cancel this Franchise and all rights and privileges of Frontier hereunder in the event that Frontier:

(i) Willfully fails to reasonably carry out any provision of this Franchise or any rule, order, or determination of the Town pursuant to this Franchise.

(ii) Becomes insolvent, unable or unwilling to pay its debts, or is adjudicated bankrupt.

B. Such termination and cancellation shall be by resolution duly adopted after sixty (60) days' notice to Frontier and shall in no way affect any of the Town's rights under this Franchise or any provision of law.

### **Section 19. Force Majeure**

With respect to any provision of this Franchise, the violation or noncompliance with any provision of this Franchise, which could result in the imposition of financial penalty, forfeiture or other sanction upon such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbance, strike, or other events, the occurrence of which was not reasonably foreseeable by Frontier and is beyond Frontier's reasonable control.

### **Section 20. Miscellaneous**

A. The right is hereby reserved by the Town to adopt, in addition to the provisions contained herein and in existing applicable resolutions, such additional regulations, as it shall find to be in the best interests of the Town.

B. If any section, subsection, sentence, clause, phrase or portion of the Franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

C. Frontier its successors and assigns shall at all times save and keep harmless and fully indemnify the Town, its officers, agents, servants, and employees from and against any and all loss, liability, suits, damages, costs, charges, legal fees and expenses in any manner arising from the construction, repair extension, maintenance or operation of their equipment of any kind or character and from any negligence, fault, or misconduct on the part of Frontier, its officers, agents, servants and employees or by reason of any act done or omitted to be done in the premises of said Town.

D. Town acknowledges that acceptance of the terms and conditions of this Franchise will not constitute, or be deemed to constitute, a waiver, either expressed or implied, by Frontier of any constitutional or legal right which Frontier may have or may be subsequently determined to have, either by current or subsequent legislation or court decisions. The Town acknowledges that Frontier hereby reserves its rights under applicable Federal and State constructions and law.

E. This Franchise shall be governed by the laws of the State of New York.

F. Any controversy or claim arising out of or relating to this Cable Franchise Agreement, or the breach thereof: shall be settled by arbitration before a single arbitrator in accordance with the New York Uniform Arbitration Act, 78-31a-101, et. seq., with the arbitration proceeding being administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

G. All notices or correspondence to be served upon the Town or Frontier by the other Party shall be in writing and delivered by first class mail, postage prepaid or by facsimile or by a national express mail service.

H. The terms of this Franchise are subject to the approval of the NYSPSC. Frontier shall make all necessary applications to the Federal Communications Commission and the NYSPSC within sixty (60) days from the date the Town approves this Franchise.

Notices or correspondence to the Town shall be addressed as follows:

Town of Deerpark

With a copy to:

\_\_\_\_\_, Town Attorney

Notices or correspondence to Frontier shall be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Town or Frontier may designate such other address or addresses from time to time by giving written notice to the other as set forth above.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf as of the date first above written.

TOWN OF DEERPARK, NEW YORK

CITIZENS TELECOMMUNICATIONS OF NEW  
YORK, INC. D/B/A FRONTIER COMMUNICATIONS  
OF NEW YORK

Dated: \_\_\_\_\_, 2016

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

Its: \_\_\_\_\_

STATE OF )  
 ) SS  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of 2016, by \_\_\_\_\_, the \_\_\_\_\_ of Citizens Telecommunications of New York, Inc. d/b/a Frontier Communications of New York, a New York corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public  
Commission Expires \_\_\_\_\_

TOWN OF DEERPARK, NEW YORK

By: \_\_\_\_\_  
Its: Mayor

ATTEST:

\_\_\_\_\_  
Its: Town Clerk

EXHIBIT \_\_\_\_\_

SERVICE AVAILABILITY

(1) Initial Build out. No later than the second anniversary of the Effective Date of this Franchise, Frontier shall be capable of serving a minimum of thirty-five percent (35%) of the Town's households with Cable Service, provided, however, Frontier will make its best efforts to complete such deployment within a shorter period of time. This initial minimum build-out commitment shall include a significant number of households below the median income in the Town. Town shall provide detailed maps of such areas. Nothing in this Franchise shall restrict Frontier from serving additional households in the Town with Cable Service.

(2) Periodic Meetings. In order to permit the Town to monitor and enforce the provisions of this section and other provisions of this Franchise, Frontier shall, upon demand, promptly make available to the Town maps and other documentation showing exactly where within the Town Frontier is currently providing Cable Service. Frontier shall meet with the Town at least annually to demonstrate Frontier's compliance with the provisions of this section concerning the deployment of Cable Services in the Town including, by way of example, the provision of this section in which Frontier commits that a significant portion of its initial investment will be targeted to areas below the median income within the Town, and the provisions of this section that prohibit discrimination in the deployment of Cable Services. In order to permit the Town to monitor and enforce the provisions of this section and other provisions of this Franchise Ordinance, Frontier shall, commencing October 2016, and continuing throughout the term of this Franchise, meet at least annually with the Town and make available the Town the following information:

(a) The total number of Qualified Living Units throughout the Town;

(b) A list of the public buildings and educational institutions capable of receiving Cable Service from Frontier.

(3) Additional Build-Out Based on Market Success. If, at any annual meeting, including any interim meeting prior to the second anniversary of the Effective Date of this Franchise, Frontier is actually serving thirty (30.0%) of the Qualified Living Units, then Frontier agrees the minimum build-out commitment shall increase to include all of the households then capable of receiving Cable Service plus an additional fifteen (15%) of the total households in the Town if less than seventy-five percent (75%) of households are capable of receiving Cable Service or an additional five percent (5%) if seventy-five (75%) or more households are capable of receiving Cable Service, which Frontier agrees to serve within two (2) years from the quarterly meeting; provided, however, Frontier shall make its best efforts to complete such deployment within a shorter period of time. For example, if, at a meeting with the Town, Frontier shows that it is capable of serving sixty percent (60%) of the households in the Town with Cable Service and is actually serving thirty percent (30%) of those households with Cable Service, then Frontier will agree to serve an additional fifteen percent (15%) of the total households in the Town no later than

two (2) years after that meeting (a total of 75% of the total households). This additional build-out based on market success shall continue until substantially every Qualified Living Unit in the Town is served.

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