

Verizon New England, Inc. (“Verizon”)

Amended Application for Cable Television License

Town of Grafton, Massachusetts (the “Town”)

### Introduction

This amended application has been organized to follow the format set forth in the Town’s Issuing Authority Report (“IAR”) dated March 4, 2008. Some of the questions in the IAR have been answered by reference to Verizon’s proposed cable television license (“Proposed License”), which is attached hereto as Exhibit A. Verizon’s responses are set forth in **bold** type.

Verizon's response to the Town's IAR does not represent agreement with any conclusory statements or interpretation of federal or state law as set forth in the IAR or as may be set forth on behalf of the Town by its consultant. To the extent that any statements or demands in this IAR are in conflict with federal or state law, Verizon reserves the right to raise all arguments and defenses and utilize any necessary recourse to protect its interests with regard to these issues

#### 1. Instructions

**No issues or concerns were raised in this portion of the IAR.**

#### 2. Overview of Cable-Related Needs

Based on ascertainment of Grafton-specific needs, the Town finds that mere equivalency of license commitments called for in the "Level Playing Field" clause in the seven-years old Charter License (attached) will not adequately meet Town cable-related needs, as explained below. The Town is in the process of license renewal negotiations with Charter, and the Town has ascertained that it needs PEG Access and cable technology payments from Charter greater than those in the current Charter License (e.g., the Town has ascertained need for payments of 5% of Gross Annual Revenues for PEG access, plus cable technology capital payments), as reflected in supplemental specifications herein. Accordingly, Verizon’s amended proposal should reflect said supplemental specifications, in addition to matching other terms in the Existing License.

Verizon’s amended proposal will be evaluated based on overall commitments with respect to satisfying the Town’s cable-related needs and interests, and providing reasonable proposals regarding the facility and service issues as set forth in the attached license, and, particularly with respect to among other things: Public Educational and Government access funding, facilities, channels, equipment and other PEG Access cable services; multiple remote video origination sites; municipal and school interconnections and benefits as specified; customer service terms and conditions as were negotiated in the Existing License; service area including the entire Town; license administration and enforcement provisions (procedures for provision of itemized financial statements showing gross annual revenues, definition of gross annual revenues, indemnification of the Town, performance

bond, insurance provisions, reporting requirements, etc.) and the overall financial commitment to the Town of Grafton cable-related needs. Further clarification of specifications is set forth below.

**Verizon is aware of the Level Playing Field clause in the Town's existing cable license. Verizon notes that its level playing field obligations, if any, are in relation to the Town's existing license with Charter, which does not expire until September 2010. It is important to recognize that such a provision does not require that Verizon's license terms be identical to those in the Charter license, but rather that the two agreements be comparable when taken as a whole and in light of the totality of the circumstances. Moreover, The FCC's Report and Order on the Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 stated: "Based on the record before us, we thus find that an LFAs refusal to award an additional competitive franchise unless the competitive applicant meets substantially all the terms and conditions imposed on the incumbent cable operator may be unreasonable, and inconsistent with the "unreasonable refusal" prohibition of Section 621(a)(1). Accordingly, to the extent a locally-mandated level-playing-field requirement is inconsistent with the rules, guidance, and findings adopted in this Order, such requirement is deemed preempted. However, in the interest of facilitating license negotiations, and without waiving any of its legal rights, Verizon is willing to negotiate an agreement with the Town that is comparable to the Town's license with Charter on the totality of the agreement considering all relevant circumstances.**

**As an initial matter, the two companies operate primarily under different legal and regulatory regimes. Verizon is a common carrier subject to Title II of the Communications Act and Chapter 166 of the MGL, and has the requisite authority to upgrade its telecommunications network in Grafton pursuant to these federal and state laws (subject to customary time, place and manner permitting requirements). In addition, upon entering into a license with the Town, Verizon will have no cable subscribers in Grafton, and thus is in a different competitive position than the incumbent cable operators. As a result of these circumstances, there will be some differences between Verizon's license and Charter's Existing License with the Town. While there will be necessary differences between the two agreements, Verizon's Proposed License addresses the substantive issues raised by the Town in its IAR (e.g., provisions dealing with PEG funding and channels, I-Net related support, customer service provisions, service area, license administration and enforcement, definition of gross revenues, indemnification, performance bond, insurance, reporting requirements, etc.).**

### 3. Further Specifications

The Town has determined that the following specifications and clauses are appropriate for further guidance, supplemental specification and clarification (to be read in conjunction with the Existing License) and Applicant's proposal should respond to the Existing License and specifications below. Where there is a difference between the Existing License and the further specifications herein, the further specifications should take precedence as they are more tailored to meet current Town needs. For example, in the area of PEG Access support, paragraph 3.4 below should take precedence over Existing License sections to the extent they address monetary support for PEG Access.

### **3.1 Cable Television System Subscriber Network**

(a) Construction, installation, operation and maintenance of a cable television system Subscriber Network in the Town shall have channel capacity and other cable service capabilities not less than that provided by the incumbent cable operator and not less than that provided by Verizon in similarly situated Towns.

**Verizon will provide the Town with the same channel offerings and cable services that it provides to surrounding communities.**

**The completed network will provide up to 860 MHz of capacity dedicated to providing cable services to the Town. Verizon's final video product will be competitive with the product currently offered by the incumbent provider and the unprecedented capacity of the FTTP network will allow the company to continue to upgrade and expand its product offerings in the future.**

(b) Service to be available to all residents in the Town within eighteen (18) months from the execution date of a Final License, and all residents served by aerial plant to have service within twelve (12) months of the License effective date. (Town is open to consider some modification of timetable as may be reasonable). As provided in Section 4 of Article I of the Existing License, the service area shall be the entire Town of Grafton. As provided in Section 2(k) of Article I of the Existing License, any dwelling unit within two hundred (250) aerial feet of Applicant's distribution plant should be deemed a standard installation.

**Verizon proposes to make its cable service available to a significant number of residents in Grafton within twenty-four (24) months of the execution of a final license, and to all residents in Grafton within five (5) years of the execution of a final license, in both cases subject to negotiations and certain limitations – e.g., force majeure, technical impracticability, etc. (see Proposed License, § 3.1.1).**

**Verizon proposes a standard installation of two hundred fifty (250) feet for aerial and underground installations.**

(c) The applicant shall provide a *detailed* explanation of its Subscriber Network in the Town, including plans to maintain the Subscriber Network as a state-of-the-art system over the term of the license.

**A detailed explanation of Verizon's FTTP network, including an overview of the services, system architecture and equipment, is set forth in Verizon's Form 100 (Question 23, Exhibit F).**

**Verizon will keep the Town apprised of any new technologies that it plans to deploy as the information becomes available.**

(d) Describe in detail how the system is constructed in Grafton, including a map of the construction route, and identify, if applicable, any new grants of location needed from the Town as required under Mass. Gen. Laws c. 166, s. 21 and 22. Please describe precisely how Town officials can gain access to detailed maps showing the location of cable plant as built, for possible future access to as-built plans by local police, fire, public works/highway departments for emergency management purposes and lawful right-of-way management purposes.

**This is not applicable to Verizon's cable license. Verizon's construction of the FTTP network is being performed pursuant to its authority under Title II of the Communications Act and Chapter 166 of the MGL, and is not subject to federal or state cable laws or the cable license that may be granted by the Town. Verizon will construct its facilities in the Town consistent with applicable federal and state Title II laws and regulations, and subject to any customary time, place and manner permits issued by the Town. Verizon has worked, and will continue to work, closely with the Town and its Board of Selectmen in a professional manner with respect to the permitting process and the Town's right-of-way management. Verizon will include a map of the service area (in its final license with the Town (see Proposed License, Exhibit A).**

(e) The Subscriber Network shall have an activated emergency alert override capability, over all or almost all downstream channels, to be controlled remotely by the Issuing Authority or by designated local emergency public safety officials (e.g., police and/or fire chief). The intent hereof is to enable local emergency officials, in the event of a life-threatening emergency, to directly send emergency communications (either live voice and/or text) into the cable system via an override of channels, with the foregoing enabling immediate response through locally-originated emergency communications, and without delay that may result from sending such emergency communication through a third party. Describe the actual emergency communications technology and how it can be accessed and utilized by local police and fire officials (equipment models and/or generic description, discussing how it works in plain terms). To facilitate Police Department ability to use the emergency alert override capabilities, please discuss what Verizon will do to make such EAS capability similar to and inter-operable with existing override technology in the Town of Grafton, and describe in detail what efforts Verizon will make to ensure that emergency alert capabilities are responsive to the needs and interests of Grafton.

**Verizon will comply with the Emergency Alert System requirements of the FCC in order that emergency messages may be distributed over Verizon's cable system. See Proposed License, § 4.2.**

(f) Please explain in detail what will constitute a standard aerial and standard underground installation. Please explain to what point Licensee shall bring its fiber inside a home or other building. Please explain whether Verizon's fiber will be brought all the way to the television set and to what extent Licensee will be responsible for internal wiring.

**Verizon is willing to discuss these issues with the Town in detail during negotiations.**

(g) Please explicitly address how the implementation of digital cablecasting will or will not impact the ability of the PEG access channels to be cablecast. Please specifically address whether the cable system digital technology will be compatible with cablecasting of access programs produced in an

analog format over the digital cable system. Will the Town or its access designee have to modify any equipment or facilities to be compatible with the new digital standards, or to otherwise transmit PEG Access programming? Or will the Licensee handle all matters necessary to make the cable system able to transmit and carry the PEG access channels and programming, including analog access programming?

**Verizon has always transmitted PEG access channels in a digital format over the FiOS TV network, regardless of the format in which the programs were originally produced. Verizon's upcoming conversion to 100% digital transmission will simply eliminate the previous practice of simulcasting all channels in FiOS TV Local tier in an analog format, including both broadcast and PEG channels. Following the conversion, the PEG programming will continue to be delivered digitally to homes as it has always been delivered. The removal of analog simulcasting in Verizon's network does not require any modification by the Town or its designee to the PEG signal sent to Verizon, or the equipment used to send those signals.**

(h) Please describe how the access channels will or will not be able to be transmitted in digital or high definition standards.

**Currently, all access channels are encoded into a digital format at Verizon's Video Hub Office and distributed digitally to all customers. This practice will continue after the removal of the analog simulcasting in Verizon's network.**

(i) Please also describe in detail how the use of digital cable system technology will be implemented, and please describe resulting benefits to subscribers, as well as any known negative impacts that might result from such use of digital technology.

**As set forth above, Verizon has always made 100% of the FiOSTV content available in a digital form. Verizon has designed and developed a "digital cable system" from the outset of the FiOS TV product. As such, PEG channels have always been transmitted in digital form to each FiOS TV subscriber.**

(j) For informational purposes, please provide detailed information on the following:

Whether subscribers will be required to buy or lease consumer premises equipment in addition to paying monthly fees for cable programming services and whether the system and Applicant's policies allow for Subscriber use of third-party "universal" remote control devices;

Will a set top device be needed and will Applicant's system be compatible with new television technology wherein computer chips or computer cards within a television are used, instead of converters/boxes, for signal conversion and/or signal carriage capabilities;

What service tiers will be unscrambled; describe different set top boxes and other equipment and their features and costs; Will Applicant's equipment be compatible with digital video recorders or TIVO-like capability;

For informational purposes, please describe Applicant's proposed program tiering and packaging, including how it will identify specific channels and categories of programming of interest to subscribers. For informational purposes please describe foreign language programming and other broad categories of programming and channels that will be available.

The Town is also concerned about the Applicant's plans, and technical ability to ensure the compatibility of cable-ready television sets and videocassette recorders (VCRs), Digital Video Players (DVDs) or other digital recording devices with subscriber service. Given the popularity of such equipment, Applicant should discuss various options it can offer its subscribers in order to maximize consumer choice and their ability to enjoy compatible use of such equipment. Particularly address, among other things, subscriber ability to view one channel while recording another channel without the necessity of a second converter or second set-top box. To this end, Applicant is requested to provide explicit details regarding how this will be accomplished.

**For residential customers, Verizon will initially offer broadcast television, high definition television (HDTV), digital video recorders (DVR), IPG, and on demand movies and events. The Basic channel lineup will consist of broadcast channels, PEG channels, and select cable channels. The digital channel line-up will include additional cable channels, premium cable channels, digital music channels, an IPG, HDTV programming and on demand programming. For digital tiers, an STB will be required for receipt of service. Monthly recurring fees will be charged for STBs provisioned to the customer. The customer will be offered the option to upgrade STBs to include support for HDTV, a DVR, or both, for an additional monthly fee. Subscribers will be able to utilize "universal remotes."**

**Additional information on the available equipment and services is described in Verizon's Form 100 (question 23, Exhibit F). Verizon will provide subscribers with a "welcome kit" which will contain information on equipment and services. Verizon will be happy to discuss these issues in greater detail during negotiations.**

(k) The Applicant should specify the commitment to carriage of diverse, broad categories of programming, and FM service radio.

**Please see Verizon's response to Item 3.1(a) above.**

(l) The Applicant should explain to what extent channels will be able to carry or pass-through closed-captioned signals, and Applicant should explain functioning of its system with respect to closed-captioning.

**All channels on Verizon's network will be capable of passing through to subscribers all available stereo and closed-captioned signals.**

### **3.2 Free Monthly Service, Drops and Outlets to Public Buildings and Schools**

(a) The Applicant shall provide monthly service, drops and outlets to all municipal buildings, schools, the Town's senior center and the Town's PEG Access studio, without charge(s) to the Town

(to the extent that the foregoing may be required by state law). All such municipal locations shall have access to activated, regular residential service at no charge. See Exhibit 1, Municipal/School Sites. Explain details of Applicant's municipal building and school cable service connections policy. Will Applicant interconnect to School internal video distribution system upon request and what are its policies concerning same? Applicant should also clarify that any site with a remote-origination feed will have a service drop to enable monitoring of the originations from that site.

(b) The Applicant shall identify the level of regular cable service(s) to be provided to public buildings and schools and describe what other cable services and support will be available to the Town and its departments.

**The following statement is responsive to Items 3.2(a) and (b) above. Pursuant to Chapter 166A, § 5(e) of the MGL, Verizon will provide, without charge, one service outlet activated for Basic Service to each public school, police and fire station, public library and other public buildings along Verizon's network route in the Town of Grafton, which buildings will be identified on an exhibit to the final license (see Proposed License, § 3.3). Verizon will discuss these issues in greater detail during negotiations.**

(c) The Applicant is directed to provide detailed information on the extent to which it will provide free or discounted Internet service to public schools, library and/or municipal buildings and disclose any other Internet service benefits or technical assistance provided to municipal buildings. (The Town recognizes it may not be able to require the foregoing as a condition of licensing, however, the question is for informational and related planning purposes.)

**Verizon's provision of Internet services are not subject to the cable license. Schools may purchase enhanced telecommunications services and high-speed internet services from Verizon.**

### **3.3 Institutional Network**

(a) A priority of the Town is construction, installation, operation and maintenance of a fiber optic Institutional Network ("I-Net"), or dedication of fiber, for exclusive use by the Town of Grafton for high speed data, video and voice transmission. The existing cable system Institutional Network is already very old without adequate components for optimal reliability or transmission of data, and is in need of replacement. A Verizon-constructed Institutional Network, or dedication of appropriate fiber or capability, could help meet these important needs. Further to the foregoing, the Town notes that both the Town and the schools have substantial data transmission needs, so the need for replacement and/or upgrades is substantial. The School Department reports that it is particularly in need of such new I-Net construction.

(b) The I-Net shall have a capability of providing a minimum of thirty-five (35) 6 MHz channels in the downstream direction and thirty-five (35) 6 MHz channels in the upstream direction; or the I-Net shall have capabilities equivalent to the foregoing.

- (c) The I-Net shall connect the Municipal buildings and all public schools("I-Net Buildings") with a commitment to provide additional drops and/or outlets to such I-Net Buildings throughout the license term as established.
- (d) Service to be available to all specified I-Net locations in the Town within six (6) months of the execution of a Final License, including new municipal buildings along the system's routes and as designated by the Issuing Authority.
- (e) The Applicant shall commit to explicit and satisfactory response times in the event of an I-Net outage.
- (f) The Applicant shall commit to an explicit and satisfactory maintenance schedule for the I-Net.
- (g) There shall be no charges and/or other costs to the Town and/or I-Net users for the use of the I-Net.
- (h) The Applicant shall provide a *detailed* explanation of its proposed I-Net in the Town.
- (i) The Applicant shall provide a *detailed* explanation of proposed assistance to the Town regarding the Town's use and development of the I-Net.
- (j) The Town's use of access, and use of the existing I-Net for access have expanded over the years since the I-Net was built in 1983, and the Town finds that the existing I-Net no longer provides adequate facilities to meet current needs or provide adequately for future growth over the term of a new license. The I-Net lacks the flexibility and reliability our expanding remote origination efforts require and it is also outmoded. In order to deliver the best cable access program going forward the Town needs a system that returns all remote originations to the studio reliably, at high quality with flexibility for changing origination locations and delivering remote content from multiple locations at the same time for use on any of the access channels. It also needs to readily support the possibility of changes in the studio location. The intent is to be able to build all the complete access channel feeds at the studio and deliver them from there to all cable providers. In order to accommodate potential changes over the life of the license, solutions should support digital video and be able to support High Definition. Based on the foregoing needs, the applicant should analyze this need and propose solutions. Possibilities should include, but are not limited to dedicated fiber, and video over IP or other techniques on the FiOS network. The ability of proposed solutions to also support effective, affordable data networking for town and school needs would be preferred.
- (k) The Town needs an I-Net architecture with flexibility to add additional origination sites over time. For example, over the term of the existing license there has been considerable growth in the Town, and new facilities open from time to time, such as the Community Barn, which needs to be integrated into existing I-Net capabilities. Applicant should explain how it will address the Town's need to originate from new locations in general, and how it can assist with tying in the Community Barn in particular.
- (l) The Board of Selectmen have indicated a strong interest in obtaining new I-Net/fiber strands, however, they will also consider provision of funds to supplement and upgrade I-Net capabilities on

either a new I-Net, existing I-Net or other network. The amended application therefore should specifically address I-Net funding and funding for related technology. Because of the substantiality of the Town's I-Net needs, the Town would consider negotiation of cable license funds for I-Net needs. In light of the high cost of new I-Net construction and upgrades, I-Net funding should be sufficient to allow build-out of at least ten miles of new I-Net plant. In the absence of sufficient I-Net funding, the Town reserves the right to utilize PEG Access and other license funds toward I-Net needs.

**The following statement is responsive to Item 3.3. Verizon is willing to discuss these issues in detail during negotiations.**

**3.4 PEG Access Programming; Capital and Operating Support for PEG and other local cable technology; Leased Access Programming.**

The Applicant shall support public, educational, and governmental ("PEG") Access programming in the Town for the entire term of a Final License, including the following:

(a)(i) The Applicant shall make explicit that it will provide a minimum of three (3) PEG Access downstream and upstream channels to be programmed by the Town of Grafton, a non-profit Access Corporation, or other Access Designee (the "Town and/or Access Corporation") with additional channels made available upon demonstrated need, and to carry all PEG Access Programming or local origination programming carried on the existing cable system. The Applicant shall explain in detail how it will interconnect its three access channels such that they can carry programming live from the three community television (local origination and access) channels already provided by the incumbent Licensee, and from **all** of the locations originating PEG Access and/or local origination community programming. Given the extensive testimony about the importance of community programming in Grafton, it is important that Licensee provide specific information about the techniques for interconnection for carriage of all existing and future PEG Access and/or local origination programming. The Town is particularly interested in a system technology that will route all originations back to the central PEG access studio, as discussed in further detail in Section 3.3(j) above. Please explain in detail whether the requisite access channels will be cablecast in analog or digital standard format. In the event access channels are carried in digital standard, will they be carried at high definition levels. Please also explain in detail whether Applicant will make additional channel capacity available for PEG Access transmission over digital bandwidth, above and beyond the three channels required above.

**Verizon will provide capacity on its basic service tier for two (2) PEG Access channels. Verizon is willing to discuss additional channels and other PEG related issues during negotiations.**

**Verizon's proposed method of accessing and transmitting PEG programming in Grafton is consistent with customary practice elsewhere in Massachusetts where there are competitive cable providers: by interconnection with the incumbent cable provider(s) (See Proposed License §5.1.3). Verizon is willing to further discuss interconnection during negotiations.**

(a)(ii) Please specify whether Applicant will make a commitment to carry the existing channels on the same channel numbers assigned over the existing cable system in Grafton. Such a commitment to continuity of channel number would be a great convenience to subscribers and the public as it would avoid confusion growing out of use of different channel numbers on each system.

**Verizon will not commit to carry the Town's PEG Access Channels on the same channel numbers as the existing cable operator.**

(b) Payments for PEG Access capital in the amount of three hundred seventy-five thousand dollars (\$375,000.00) for a ten year license term, payable within 120 days of the License effective date, or in the amount of five hundred sixty-two thousand five hundred dollars (\$562,500.00) for a fifteen year license. The Town has prepared a detailed ascertainment report showing compelling need for major PEG facility and equipment needs. It should be noted that the Town is very interested in possible relocation of the studio to a larger space capable of meeting growing town local programming needs, and the Town needs to reserve flexibility to allocate capital funds to implement studio relocation as needed. Further, the Town notes that it needs to acquire new digital format equipment to replace already obsolete analog equipment, adding to local capital needs.

**Verizon proposes to provide the Town and/or the Access Corporation, as directed by the Town, with an annual grant for PEG Access equipment and facilities, the exact amount of such grant to be negotiated with the Town. As a new cable provider in the Town (with no current subscribers in Grafton), Verizon proposes that the grant be made on a per-subscriber basis (see Proposed License §5.2.1).**

(c) Payments for PEG access operating funds and other local cable services such as I-Net or related technology shall be in the amount of five percent (5%) of its Gross Annual Revenues. Gross Annual Revenues should include, but not be limited to consideration from:

Fees charged to subscribers for any and all cable service provided by the Licensee, including for Basic Service, Expanded Basic Service, Premium Service, Pay Cable, Pay-Per-View, digital cable service, interactive on-demand cable service and other cable services;

Cable Service fees and charges including but not limited to fees and/or charges received from Subscribers for installation, reconnection, downgrade, upgrade, equipment rentals/fees/sales, converter charges, remote control charges, additional outlet charges and any similar fees and charges;

Fees from home shopping revenues allocable to Applicant and fees from third party unaffiliated programmers for leased access programming;

Fees paid on Subscriber fees;

Interest collected on Subscriber fees and/or charges;

Commercial cable service subscriber revenues;

Fees paid for channels designated for commercial use;

Advertising revenues;

Compensation received by Licensee or its Affiliates that is derived from the operation of Licensee's Cable System to provide cable service with respect to commissions that are paid to Licensee as compensation for promotion or exhibition of any products or services on the Cable System, such as a home shopping or a similar channel; and

Revenue of an Affiliate derived from the Affiliate's provision of Cable Service shall be Gross Revenue to the extent the treatment of such revenue as revenue of the Affiliate and not of Licensee has the effect (whether intentional or unintentional) of evading the payment of franchise fees which would otherwise be paid to the Town. In no event shall revenue of an Affiliate be Gross Revenue to the Licensee if such revenue is otherwise subject to franchise fees to be paid to the Town.

Such funding (above) will be for PEG Access operations and may be for equipment and facilities, I-Net development, I-Net equivalent functionality and Town cable-related purposes to be determined by the Issuing Authority or its Access Designee. Said funding shall be paid quarterly and the Issuing Authority requires the option of having said funds payable to a non-profit access corporation assigned to carry out cable-related purposes on behalf of the general public and Town.

**Verizon agrees to provide annual PEG Access funding to the Access Corporation, the exact amount of such funding to be negotiated with the Town. Verizon agrees to provide said funding on a quarterly basis. See Proposed License §§5.2.2 and 5.2.3. See Proposed License §1.16 for Verizon's proposed definition of Gross Revenues.**

(d) The Applicant shall provide the technical capability and equipment to cablecast PEG Access and local origination programming from remote locations using upstream capacity on the Subscriber Network or other adequate, reliable origination capability. Further to the foregoing it is important that Verizon's proposal provide detailed information on how the existing access studio and other origination points will be interconnected to the Verizon system, and the Applicant shall explain, in technical detail, how it will interconnect with all of the access and local origination channels to ensure that all of the existing access and local origination programming is received by Applicant's Subscribers (including live cablecasting of access and local origination programs and any character generator or other access channel content). In order to ensure a reliable interconnection of the existing access/local origination studio and all other origination points to the Verizon system, the proposal should also provide for reasonable Verizon technical assistance during the license term to ensure appropriate carriage of all of the access and local origination channels and all of the access and local origination programming.

**Verizon's proposed method of accessing and transmitting PEG programming in Grafton is consistent with customary practice elsewhere in Massachusetts where there are competitive cable providers: by interconnection with the incumbent cable provider(s) (See Proposed License §5.1.3). Verizon is willing to further discuss interconnection during negotiations.**

(e) It is important that applicant explain, by way of examples, how Verizon communities (where it is licensed elsewhere in the United States) have integrated Verizon support for PEG access or for other cable technology with existing cable operator L-O or access operations with respect to carriage of all existing channels and programming.

(f) PEG Access support (and other license benefits) to be provided by Verizon should also reflect value of miscellaneous benefits provided by Charter which are included in the attached license notwithstanding they may not be specifically referenced in this cover letter.

(g) The Town has need for occasional access channel interconnection to adjacent Towns for purposes of carriage of programs of regional importance, and directs that the Verizon proposal explain how such access channel interconnection be implemented.

**The following statement is responsive to Items 3.4 (e)-(g) above. Verizon is willing to discuss these issues in detail during negotiations.**

(h) Please provide a detailed explanation of Applicant's policies and planned practices concerning making channel capacity available for commercial leasing as required under 47 U.S.C. 532.

**In order to promote competition in video programming and assure diversity in the sources of programming provided, federal law requires that certain channel capacity be designated by cable operators for commercial use by unaffiliated third parties. To meet this requirement, FiOS TV makes available for lease, on reasonable terms and conditions consistent with federal regulations, certain channel capacity to unaffiliated third parties.**

**FiOS TV prohibits the transmission of any leased access programming if, in its reasonable belief, such programming or portion thereof contains obscenity, indecency or nudity. For this purpose, "nudity" means nudity that is obscene or indecent. FiOS TV further prohibits the transmission of leased access programming or portion thereof containing material that FiOS TV reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.**

**FiOS TV may, at its discretion, address otherwise prohibited programming on a case-by-case basis and, in lieu of prohibiting all transmission of such programming, may permit transmission subject to specified conditions.**

**Any leased access program provider which violates these is subject to having its programming rejected or interrupted.**

**This policy is subject to change at the sole discretion of Verizon.**

(i) Applicant shall specify that it will provide a technical assistance contact person and phone number, which information shall only be available to authorized Town access designees, for use in event of access channel outages and other technical problems requiring prompt assistance.

**Verizon will have technical personnel available 24 hours per day/7 days per week to deal with channel outages and other urgent technical concerns of the town. Verizon is willing to provide more details on this matter during negotiations.**

(j) Applicant shall specify that if after six months from the activation of its Grafton cable system it is unable to complete interconnection of its own access channels to the incumbent's access or local origination channels, it shall provide local programming comparable to that provided by the incumbent until such time as it completes interconnection to the incumbent's cable system. With respect to the foregoing, and with respect to support for local programming in general, applicant shall more fully reply to Form 100 Question 15, as specified below.

**Verizon's proposed method of accessing and transmitting PEG programming in Grafton is consistent with customary practice elsewhere in Massachusetts where there are competitive cable providers: by interconnection with the incumbent cable provider(s) (See Proposed License §5.1.3). Verizon is willing to further discuss interconnection, including the length of time necessary for Verizon to negotiate an interconnection agreement with the incumbent operator, during negotiations.**

### **3.5 Services to Grafton Public Schools**

The Applicant shall work with the Grafton Public Schools to provide new cable technologies and educational cable services, including, but not limited to, educational programming, technical assistance to the schools, access to the Internet. Please advise what educational services Verizon has made available to other Massachusetts communities.

Of particular importance to School Department, Applicant should provide cable system playback and origination facilities, as well as funding and equipment to allow playback and origination of video productions from the High School. Applicant should specify that it will provide capabilities and facilities to enable Educational Access programming to be available on an archived "video on demand" basis.

Does Applicant currently have a program for providing assistance and/or information to schools? If the answer to the foregoing question is yes, please provide details concerning same, including name and phone number for school assistance resource(s).

The Town of Grafton has numerous school and educational cable access and related technology needs requiring support and future development, e.g., funding for cable services. Growth in demand for school cable and related technology has been significant over recent years. Accordingly, Verizon's proposal with respect to educational cable access and educational cable technology is relevant to assessment of the proposal. The Town wants reasonable assurance that Grafton public schools will receive at least the same level of benefits and service provided by Applicant to other Massachusetts Towns, and requests that Applicant address how it will ensure Grafton schools receive such benefits and services through appropriate license language, such as a

“most favored nation” clause, i.e. some language to maintain benefits to Grafton schools not less than benefits provided to schools in other Massachusetts towns.

**Verizon is willing to discuss the cable related needs of the Grafton public schools during negotiations. However, Verizon will not include a “most favored nations” clause in its license with the Town.**

### **3.6 Senior Discount**

(a) The Applicant is requested to provide a Senior Citizen discount not less than the discount provided by the incumbent cable operator (ten percent of basic and expanded basic service tiers) to Grafton residents, as set forth in Charter License Article I, Section 33.(attached hereto).

(b) The Applicant shall explain its proposed discount, the level of service(s) available and eligibility criteria for such discount.

### **3.7 Persons with Disabilities Discount**

(a) It is requested that the Applicant provide a discount for persons with disabilities. The Applicant shall explain such discount, the level of service(s) available and eligibility criteria for such discount.

**The following statement is responsive to Sections 3.6 (a)-(b) and 3.7 (a). As a competitive provider of cable services, Verizon’s cable rates are not subject to regulation by the Town. As such, Verizon has not included a senior citizen discount provision or a persons with disabilities discount provision in its proposed license. Verizon recognizes that as a new entrant into the Grafton cable market, it will need to offer competitive pricing in order to attract subscribers.**

### **3.8 Business/Customer Service Office**

(a) The Town currently has the benefit of a Charter customer service and business office located within the Town. The Town values the important customer service benefits that result from a nearby service office. The Town specifies that Verizon should provide a local office, as provided by Charter. In addition, Applicant should specify how the Applicant plans to accommodate customer service in the Town.

(b) Describe in detail how said customer service will be maintained and operated. Please also describe where Applicant houses customer service staff and facilities for repairs, truck rolls and other operational service.

**The following statement is responsive to Section 3.8 (a)-(b). Verizon will maintain a toll free customer service hotline which will be staffed by trained personnel twenty four (24) hours a day, seven (7) days a week. Verizon’s proposed customer service obligations are described in detail in Exhibit C of the Proposed License.**

### **3.9 Consumer Protection**

(a) The Applicant shall comply with FCC's Customer Service Obligations, at 47 C.F.R. 76.309, and the draft license to be provided shall reflect that 47 C.F.R. 76.309 shall be incorporated as part of the license. The Applicant shall specify that it will negotiate customer service standards in excess of FCC Customer Service Obligations to reflect Town-identified customer service needs including but not limited to: telephone answer time; time to complete repairs; time for scheduling service visits; appointment time windows; standards for being on schedule for appointments; and time for resolving problem calls.

(b) The Applicant shall ensure that its customer service office, telephone facilities and other services are fully available to Town residents with disabilities.

(c) The Applicant shall explain its customer service procedures and policies, including, but not limited to, installation visits, business practice standards, complaint resolution procedures, loss of service, protection of subscriber privacy, etc.

(d) The Applicant shall confirm availability of key customer service operations on a 24 hour, 7 day/week basis, for telephone customer service representatives and service calls for outages and emergency issues.

**The following statement is responsive to Section 3.9 (a)-(d). Verizon's customer service offices and telephone facilities will be available to persons with disabilities. Verizon's proposed customer service obligations are described in Exhibit C of the Proposed License.**

### **3.10 Rates**

(a) For informational purposes, provide the Applicant's proposed rates for service(s).

(b) Explain how the Applicant bills its subscribers.

**As a competitive provider of cable services, Verizon's cable rates are not subject to regulation by the Town. However, for informational purposes only, Verizon will provide a copy of its current channel lineup and rates for other Massachusetts Communities during negotiations. Please note that Verizon's channel lineup and rates are subject to change.**

### **3.11. Regulatory Provisions**

(a) The Applicant shall obtain and maintain appropriate insurance against all claims for injury to persons or property for the entire license term, with the Town as a named insured on all such policies, and with such other benefits to the Town as set forth in Existing License Section 8.2, including the following: The amount of insurance against liability for damage to property shall be no less than One Million Dollars. The amount of such insurance for excess liability shall be not less than Five Million Dollars under an umbrella form; Licensee shall provide Issuing Authority with certificates of insurance for all policies required on an annual basis. Automobile liability insurance shall include coverage for not less than One Million Dollars for personal injuries. All policies shall be maintained

for the term of the license. See Existing License Section 8.2 for further specifications concerning insurance.

(b) The Applicant shall specify the exact insurance coverage that it proposes for its Grafton operations.

**The following statement is responsive to Section 3.11 (a)-(b). Verizon will maintain appropriate insurance for the term of the license and the Town will be named as additional insured under each such policy (except for Worker's Compensation insurance and Excess/Umbrella insurance). The exact insurance coverage amounts are set forth in the Proposed License (Proposed License §9.1).**

(c) The Applicant shall obtain and maintain a performance bond in the amount of one hundred thousand dollars (\$100,000.00) during construction of the residential and municipal systems and to be maintained at an amount of fifty thousand dollars (\$50,000.00) after completion of said construction for the entire term of a Final License. Said performance bond shall be subject to the terms and conditions as set forth in Existing License Section 8.3, including that said performance bond shall be conditioned that the Licensee shall well and truly observe, fulfill and perform each material term and condition of its license and that in any case of any failure to comply with any term and/or condition contained therein, the amount thereof shall be recoverable from said performance bond by the Town. Said remedy shall not be exclusive of any other remedies available at law or equity.

(d) The Applicant shall obtain and maintain a letter of credit in the amount of seventy-five thousand dollars (\$75,000.00) for the entire term of a Final License.

**The following statement is responsive to Section 3.11 (c)-(d). Licensee shall provide the Town with security for the performance of Licensee's obligations under the License. The form of this security may, at Licensee's option, be a performance bond, letter of credit, cash deposit, cashier's check or other security reasonably acceptable to the Issuing Authority (See Preliminary License §9.3).**

(e) The Applicant shall participate in an annual Performance Evaluation Hearing at the request of the Issuing Authority.

**Verizon will agree to participate in an annual performance evaluation hearing at the Town's request.**

(f) Any Final License shall contain a Determination of Breach section and a Liquidated Damages section.

**Verizon has proposed a determination of breach and license revocation article (see Proposed License, Article 11). Verizon is willing to discuss with the Town whether a liquidated damages provision in the license is appropriate.**

(g) The Applicant shall provide reports, on a periodic basis (to be specified in the Final License), to the Issuing Authority, including, but not limited to, the following:

- \*Construction Reports
- \*Financial Reports
- \*In-House Telephone Reports
- \*Subscriber Complaint Reports
- \*Service Interruption Reports
- \*Individual Complaint Reports
- \*Initial Performance Tests
- \*Annual Performance Tests

**Upon request, Verizon will provide the Town with copies of specified reports that are filed with the DTC that are relevant to the provision of cable services in Grafton.**

(h) Applicant shall reimburse reasonable Town licensing costs to the Town if directed by the Issuing Authority, including costs incurred by the Issuing Authority in connection with the review of a license transfer application and conduct of license transfer proceedings. See Existing License Section 2.2(c).

**Verizon will discuss the appropriateness of such a request with the Town.**

(i) Applicant shall specify that its employees, including repair and sales personnel, entering private property must have visible employee photo-identification cards.

**Verizon will comply with all applicable state and federal laws and regulations regarding employee identification and uniforms. However, such matters are not appropriate subjects for a cable license**

(j) Applicant shall specify that any transfer or assignment of its license shall be subject to the condition that transferee be expressly subject to all of the terms and conditions of the transferred license, as required by law and as further detailed in Existing License Section 2.4.

**Verizon's Proposed License contains provisions addressing license transfers. These provisions will be discussed during negotiations with the Town. See Proposed License, §2.9.**

(k) Applicant shall specify that Licensee shall, in accordance with federal law, restrict grounds for License modification to those set forth in the commercial impracticability sections of the Cable Act, and that Licensee shall not reserve any unilateral right to surrender its License.

**Verizon's proposed termination provisions are included in Section 11 of the Proposed License.**

### **3.12 Final License Term**

(a) The Town anticipates granting a Final License for a term of approximately ten years, however, this is negotiable. In any event, level playing field clause compliance will be assessed relative to duration of term (e.g., capital payment necessary to meet Town's needs is impacted by

duration of license). Please discuss proposed process for transition from Mass Cable Division-required change from Provisional License term to Final License term, as applicable.

(b) The Applicant shall specify the term requested and provide documentation supporting such request.

**The following statement is responsive to Items 3.12 (a) and (b) above. Verizon is seeking a fifteen (15) year term (see Proposed License §2.3).**

(c) In light of published reports that telephone companies are seeking federal and other legislative relief from local franchising, please address how the Town can ensure Verizon's commitment to its proposals herein, and for a specific term (as such legislation could preempt franchise commitments made by Verizon to Grafton). Please specifically address whether Verizon will stand by and be bound by its proposed local franchise notwithstanding possible future federal deregulation applicable to cable franchises, e.g., will Verizon expressly agree only to apply such deregulation to future, not existing, licenses, subject to its being legally able to do so.

**Verizon is willing to discuss this issue during negotiations.**

### **3.13 Indemnification Clause**

The amended application should recite that the Licensee will agree to an indemnity clause substantially as follows:

(a) Licensee shall indemnify, defend and hold the Town, and its agents, harmless at all times during the term of this License from any and all claims alleged to be caused by or arising under or as a result of Licensee's construction, installation, operation, maintenance or administration of its Cable System, or arising from structures, equipment, wire or cable installed or to be installed by Licensee, or arising from or resulting from the exercise of any of its rights under this License or arising or resulting from the grant of, or proceedings of any kind resulting from the grant of, or operation under, this License by the Town and legal proceedings including level playing field clause proceedings, if any, arising therefrom. Upon receipt of notice in writing from the Town, the Licensee shall at its own expense defend any such actions or proceedings. Indemnified expenses shall include without limitation, all reasonable out-of-pocket expenses, such as attorney's fees.

(b) In order for the Town to assert its rights to be indemnified, defended, or held harmless, the Town must:

(1) notify Licensee of any claim or legal proceeding which gives rise to such right;

(2) the Town shall afford the Licensee the opportunity to participate in any compromise, settlement or other resolution or disposition of such claim or proceeding, unless, however, the Town, in its sole reasonable discretion, determines that its interests cannot be represented in good faith by the Licensee and further acceptance of any non-monetary settlement or term involving injunctive relief or orders affecting the Town shall be subject to Town's consent; and,

(3) the Town shall fully cooperate with the reasonable requests of the Licensee in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (2) above.

**The following statement is responsive to Section 3.13. Verizon has proposed an indemnification provision under which Verizon will indemnify the Town from claims caused by the “installation, operation or maintenance of any structure, equipment, wire or cable” installed pursuant to the License. See Proposed License §9.2.1. This is consistent with MGL 166A, Section 5 (and Charter’s indemnification obligations under its Existing License with the Town). Verizon’s proposed procedures for such indemnification obligations are set forth in Section 9.2 of the Proposed License.**

**Verizon is not willing to indemnify the Town for claims “arising or resulting from the grant of, or proceedings of any kind resulting from the grant of, or operation under, this License by the Town and legal proceedings including level playing field clause proceedings, if any, arising therefrom.” Verizon is prepared to negotiate an agreement with the Town that satisfies the “level-playing-field” requirement, but the company cannot insure the Town against the risk of litigation by third parties. We note that Section 635A of the Communications Act (47 U.S.C. §555a) protects the Town from monetary damages in connection with any court proceeding relating to the grant of a cable license.**

### **3.14 Requested Level Playing Field Clause Language**

To the extent permitted by applicable law, the Town requests that Applicant specify (in its Amended Application) that it is the intent of Licensee and Issuing Authority that under the License applied for that Licensee provide license terms and benefits equivalent to those provided by any existing Licensee. Further, if any court or agency lawfully finds that the Licensee's [Verizon’s] burdens are not equivalent to the License franchise burdens of the Licensee already serving the Town, the applicant will equitably adjust its License benefits to the Town in a manner that will result in such equivalency. Further, the parties agree that any such Level Playing Field Clause issue shall in the first instance be mediated by a mutually acceptable mediator in lieu of legal recourse to the courts.

**As discussed in response to item 2 above, the level-playing-field provision in Charter’s license does not require that Verizon’s license terms be identical to those in the Charter license, but rather that the two agreements be comparable when taken as a whole and in light of all relevant circumstances. Moreover, Verizon does not believe that such level playing field provisions are valid under current federal law. In light of the different legal, regulatory and business models between Verizon and Charter, there will be some necessary differences between the two license agreements. Thus, Verizon cannot agree to amend its negotiated license to match specific provisions in the Charter license.**

### **3.15 Verizon Commitment to Operate Under Applied for Local Franchise**

The Town has been advised that Verizon, other telephone companies and their trade association(s) were in recent years seeking federal and state legislation to eliminate, reduce or by-pass

the local franchising process that Verizon has asked the Town to initiate. The Town cannot adequately assess how best to undertake the franchising process if the rules of the franchising process may be changed during the franchising process or during the franchise, as a result of reported federal and state legislative activity. Please advise the Town whether Verizon will agree to be bound by a local franchise, if any, signed by Verizon and the Town notwithstanding possible subsequent implementation of a national or state (as opposed to local) authorization process and please explain Verizon's ability and willingness to provide an enforceable commitment to be bound by a local franchise notwithstanding the above contingencies.

**Verizon is willing to discuss these issues in detail during negotiations.**

#### **4. Severability**

Should applicant demonstrate any of the terms herein are inconsistent with any applicable law, it is the intent hereof that upon applicant reasonably demonstrating and Town finding same, the remainder of the document shall remain in force, with severance of unlawful terms, if any, subject to substitution, where possible, of alternative comparable lawful proposal terms.

**Verizon proposes the following language with regards to the severability of License terms: "If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of this License." See Proposed License §12.10.**

#### **Points of Clarification Concerning Verizon's Initial Application**

Please clarify the following with respect to Verizon's previously filed Initial Application. Clarification is material to Town's evaluation of Licensee's proposal.

Form 100, Question 9. Please explain the basis for Verizon's statement that a cable license bond is not required in light of MGL c. 166A, s. 5(k) as the Town is of the view that Verizon is operating facilities under both Title II (common carrier) and Title VI (cable system), and as a Title VI cable system the cable system is subject to bonding requirements under c. 166A, s.5(k).

**Verizon is upgrading its telecommunications network pursuant to its existing authority under federal and state law: the construction of Verizon's network in the Town is not subject to Title VI of the Communications Act or Chapter 166A of the MGL. Thus, a bond relating to Verizon's network construction is not required. However, Verizon is willing to provide a bond to the Town in the amount of \$50,000 securing Verizon's performance under the cable license. See response to items 3.12(c)-(d) above and Proposed License §9.3.**

Form 100, Question 11. Verizon's response does not describe applicant's proposed procedures for handling customer complaints and service inquiries. Please describe Verizon's proposed procedures as required by the Cable Division application form.

**Please see Exhibit C of the Proposed License for Verizon's proposed customer provisions, including handling customer complaints and service inquiries. In addition, Verizon will provide subscribers with a "welcome kit" which will contain information on complaint and service inquiry procedures. Once Verizon has developed and finalized this kit and related sales literature, we will be able to share copies of these materials with the Town.**

Form 100, Question 15. Please answer all parts of the following Question 15 as prescribed by Massachusetts Cable Division Form 100: "State whether applicant plans to offer public, educational and governmental access channel(s). If yes, provide the amount and type of financial support, the location of the facilities, the facilities and equipment available, the hours of operation, and whether there will be technical assistance available." With respect to the foregoing, the Town specifically requests that Verizon explain whether it will offer PEG Access facilities, equipment and production facilities in the event there is any substantial period during which it may be unable to interconnect to PEG Access programming already carried over the existing system. Information about the type and amount of PEG support is requested with respect to the term of the proposed license.

**Please see Verizon's responses to Items 3.4 (a)-(d) and (j) above.**

Form 100, Question 18, for informational purposes. What Internet services will Verizon provide to schools and what if any savings or benefits are provided to such school users.

**Verizon's provision of Internet services are not subject to the cable license. Schools may purchase enhanced telecommunications services and high-speed internet services from Verizon.**

The Town notes for the record that Verizon's initial application is not complete inasmuch as it does not contain specific monetary proposals regarding PEG Access support.

**Verizon disagrees with the Town's assertion that its initial application was incomplete with regards to information on PEG Access support. Verizon maintains that it has provided complete and accurate information in its Initial Application for Grafton and the more than 50 Massachusetts communities where Verizon currently holds a cable license.**