

CABLE SYSTEM FRANCHISE AGREEMENT

BETWEEN THE CITY OF CALABASAS  
AND CENTURY-TCI CALIFORNIA, L.P.

EFFECTIVE: December 1, 2003

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### EXHIBITS

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B SERVICE AREA

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D GRANTEE COMMITMENT TO EG ACCESS FACILITIES AND EQUIPMENT

## **AGREEMENT**

This Agreement, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2003, at Calabasas, California, by and between the City of Calabasas, a municipal corporation of the State of California, and Century-TCI California, L.P. doing business as Adelphia Cable Communications ("Adelphia), a Delaware Limited Partnership.

## **RECITALS**

1. The City of Calabasas, pursuant to Chapter 5.12 of the Calabasas Municipal Code, is authorized to grant and renew one or more non-exclusive revocable franchises to operate, construct, maintain and reconstruct a Cable System within the City; and
2. The City, after due evaluation of Adelphia, and after public hearings, has determined that it is in the best interests of the City and its residents to renew its Franchise with Adelphia.
3. NOW, THEREFORE, the City of Calabasas (hereinafter the "Grantor") hereby grants to Adelphia (hereinafter the "Grantee") a renewal of its Cable System Franchise in accordance with the provisions of Chapter 5.12 of the Calabasas Municipal Code and this Agreement.

## **SECTION 1 RENEWAL OF FRANCHISE**

### **1.1 Grant**

The Cable System Franchise currently held by Century-TCI California, L.P., doing business as Adelphia Cable Communications, a Delaware Limited Partnership, whose current ownership is indicated in Exhibit "A," is hereby renewed, subject to the terms and conditions of this Agreement. The renewal extends the franchise, authority, right and privilege, to construct, reconstruct, operate and maintain a Cable System within the streets and public ways in the City of Calabasas identified in Exhibit "B" herein, and also provides the authority to offer to subscribers any Cable Service that legally may be offered, utilizing the facilities of Grantee's Cable System.

### **1.2 Right of Grantor to Issue and Renew Franchise**

Grantee acknowledges and accepts the present right of Grantor to issue and/or renew a Franchise and Grantee agrees it shall not now or at any time hereafter challenge any lawful exercise of this right in any local, State or Federal court. This is not, however, a waiver of any constitutional or legal right or privilege on the part of the Grantee.

### **1.3 Effective Date of Renewal**

The renewal shall be effective on December 1, 2003 (the "Effective Date"), contingent upon prior City Council approval and the filing by Grantee with the City Clerk, of the executed Franchise Agreement and the required security fund and insurance certificates by not later than sixty (60) days after the Effective Date. If the filing of the executed Franchise Agreement, security fund or any such insurance certificates does not occur within sixty (60) days of the Effective Date of this Agreement, the Grantor may declare this Agreement null and void.

#### **1.4 Duration**

The renewal shall expire on December 1, 2015, after which time the Franchise Agreement shall expire and be of no force and effect unless renewed. Renewal shall be in accordance with applicable law.

#### **1.5 Conflict with Municipal Code**

(a) The provisions of Chapter 5.12 of the Calabasas Municipal Code are hereby incorporated herein by reference as if set out in full, and form part of the terms and conditions of this Agreement.

(b) Should Chapter 5.12 of the Calabasas Municipal Code be amended, revised, superseded or otherwise changed after the Effective Date hereof in such way as would materially affect the terms and conditions of this Agreement, said amendment, revision or change shall not apply to this Agreement without Grantee's approval.

#### **1.6 Definitions**

The definitions contained in Chapter 5.12 of the Calabasas Municipal Code are incorporated herein as if fully set forth.

## **SECTION 2 GENERAL REQUIREMENTS**

### **2.1 Governing Requirements**

Grantee shall comply with all lawful requirements of this Agreement, Chapter 5.12 of the Calabasas Municipal Code and applicable State and Federal law.

### **2.2 Franchise Fee**

(a) The Grantee shall pay to the Grantor an annual Franchise Fee of five percent (5%) of Gross Annual Cable Service Revenues, or the maximum permitted by law or regulation should this percentage be increased, received by the Grantee and derived from the operations of the Cable System in the City of Calabasas to provide Cable Service.

(b) If Federal or State law permits the Grantee to provide non-video Telecommunications Services to subscribers (such as telephone communications) through the facilities of the Cable System, and the Grantor has the regulatory authority to collect either a Franchise Fee or an in-lieu-of-franchise-fee payment on such services, then the Grantee shall pay a fee for revenues derived by the Grantee from such services at the rate established in an Ordinance adopted by the Council and applied in a non-discriminatory manner to all providers of such services franchised by Grantor.

(c) For the purposes of this Agreement, revenues collected as Franchise Fees and revenues derived from the provision of Internet access services shall be included in Gross Annual Cable Service Revenues so long as the provision of Internet access services is considered to be a Cable Service under applicable law.

(d) For the purposes of this Agreement, revenues collected from Subscribers for the Educational and Governmental capital grant of Exhibit D, Paragraph 3, shall be excluded from the calculation of Gross Annual Cable Service Revenues.

(e) In the event that the Grantee shall, during the term of the Franchise, bundle, tie or combine Cable Services (which are subject to the Franchise Fee) with non-Cable Services (which are not subject to the Franchise Fee) and provide the bundled, tied or combined service at a discount from the sum of the rates for the individual services, then the discount shall be apportioned to the Cable Service in proportion to the ratio of the total bundled Cable Service and non-Cable Service price to the total unbundled Cable Service and non-Cable Service price.

(f) The Franchise Fee shall be payable quarterly, by no later than the first day of the third month following the quarter for which payment is due.

### **2.3 Payment to Grantor**

No acceptance of any payment shall be construed as an accord that the amount is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums payable under the provision of this Agreement. All amounts shall be subject to audit, as authorized by Section 5.12.250 of the Calabasas Municipal Code. Audits shall be limited to no more than one (1) for any three (3) year Franchise period.

### **2.4 Insurance**

(a) Grantee shall procure and maintain for the duration of the Franchise insurance against claims for injuries to persons or damages to

property which may arise from or in connection with the operation of the franchise by the Grantee, its agents, representatives, employees or subcontractors.

(b) Grantee shall maintain limits no less than:

(1) General Liability: Five Million Dollars (\$5,000,000) per occurrence for bodily personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Franchise or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

(3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(c) Any deductibles or self-insured retentions must be declared to and approved by Grantor. At the option of the Grantor, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Grantor, its officers, officials, employees and volunteers or the Grantee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(d) The general liability and automobile liability policies are to contain all the following provisions:

(1) Grantor, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects to any liability arising out of activities performed by or on behalf of Grantee; products and completed operations of Grantee; premises owned, occupied or used by Grantee; or automobiles owned, leased, hired or borrowed by Grantee. The coverage shall contain no special limitations on the scope of protection afforded



to Grantor, its officers, officials, employees, agents or volunteers, and shall name Grantor as additionally insured.

(2) For any claim related to this Agreement, Grantee's insurance coverage shall be primary insurance as respects Grantor, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by Grantor, its officers, officials, employees, agents or volunteers shall be excess of Grantee's insurance and shall not contribute with it.

(3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Grantor, its officers, officials, employees, agents or volunteers.

(4) Grantee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Grantor.

(6) Insurance shall be placed with insurers which are "admitted" in the State of California and have a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Grantor.

(7) Grantee shall furnish the Grantor with original endorsements effecting coverage required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by Grantor. All

endorsements are to be received and approved by Grantor before activity commences.

(e) Grantor reserves the right to adjust the limit coverage requirements no more often than every three (3) years. Any such adjustment by the Grantor will be no greater than the increase in the Los Angeles Metropolitan Area Consumer Price Index (all consumers) for such three (3) year period.

(f) Grantee shall submit to Grantor documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

(g) Grantee hereby indemnifies Grantor for any damage resulting to it from failure of either Grantee or any subcontractor to take out and maintain such insurance.

## **2.5 Indemnification**

(a) Grantee shall indemnify, hold harmless, release and defend Grantor, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person or entity, including Grantee, from any cause whatsoever arising from the activities of Grantee, its subcontractors, employees and agents hereunder. Grantee shall be solely responsible and hold Grantor harmless from all matters relative to payment of Grantee's employees including compliance with Social Security, withholding, etc.

(b) This indemnification obligation is not limited in any way by a limitation on the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts,

acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by Grantee.

(c) Grantor does not, and shall not, waive any rights against Grantee which it may have by reason of this indemnification, because of the acceptance by Grantor, or the deposit with Grantor by Grantee, of any of the insurance policies described in this Section.

(d) This indemnification by Grantee shall apply to all damages and claims for damages of any kind suffered by reason of any of the aforesaid operations referred to in this Section, regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(e) Grantee shall not be required to indemnify Grantor for negligence or misconduct on the part of Grantor or its officials, boards, commissions, agents, or employees (hereinafter "Such Acts"). Grantor shall hold Grantee harmless from any damage resulting from any Such Acts of the Grantor or its officials, boards, commissions, agents or employees in utilizing any government or educational access channels, emergency alert system facilities and for any such acts committed by Grantor in connection with work performed by Grantor and permitted by this Agreement, on or adjacent to the Cable System.

(f) Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity of this Section. In the event such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully therein.

## **2.6 Security Fund**

(a) In accordance with Section 5.12.260 of the Calabasas Municipal Code, Effective Date of this Agreement, Grantee shall establish and provide to Grantor a security fund, as security for the faithful performance by Grantee of all material provisions of this Agreement. The security fund shall be in the amount of at least Fifteen Thousand Dollars (\$15,000) and shall either be in the form of an irrevocable letter of credit, or a cash deposit established in a local bank in an interest-bearing account payable to the order of the Grantor as trustee for Grantee, with all interest distributed to the Grantee. The cash or letter of credit portion of the security fund shall be maintained at the Fifteen Thousand Dollar (\$15,000) level throughout the term of this Agreement, provided that at intervals no more often than each three (3) years, Grantor shall have the right to require that this amount be increased to reflect changes in the Los Angeles Metropolitan Area Consumer Price Index during the prior three (3) year period.

(b) The security fund may be assessed by Grantor for those purposes specified in Sections 5.12.260 and/or 5.12.390 of the Calabasas Municipal Code, in accordance with the procedures of Section 5.12.400 of said Municipal Code, provided that Grantee has received written notice to cure any material violations prior to any assessment, in accordance with Section 2.7 herein. As long as the Grantor follows the procedures specified herein and in Chapter 5.12 of the Calabasas Municipal Code for assessing and/or withdrawing funds from said security fund, Grantee shall not initiate litigation or non-City administrative action to prevent or impair Grantor from accessing those funds. Grantee's recourse, in the event Grantee believes any taking of security funds is improper, shall be through legal action after the security has been drawn upon. If the Grantor's action or taking is found to be improper by any court or agency of

competent jurisdiction, Grantee shall be entitled to a refund of the funds plus interest and/or any other award which such court or agency shall make.

(c) At some time during this Agreement, Grantee may elect, but is not required, to perform a Cable System rebuild or upgrade. Not less than thirty (30) days prior to Grantee's commencement of such future Cable System rebuild or upgrade, the Grantee shall establish a One Hundred Twenty Five Thousand Dollar (\$125,000) Construction Bond. Subsequent to the completion of the future rebuild or upgrade, as certified in writing by Grantee to Grantor, and approved and verified in writing by Grantor, Grantee may reduce said Construction Bond to Seventy Five Thousand Dollars (\$75,000) for a period of twelve (12) months, and shall be available for corrective work within the Public Right of Way resulting from Grantee's construction work. At the end of the twelve (12) month period, this bond shall be released if there are no outstanding compliance issues.

(d) Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's rights-of-way.

## **2.7 Procedure for Remediating Franchise Violations**

(a) The procedure for remediating Franchise violations or breaches shall be consistent with the procedures of Chapter 5.12 of the Calabasas Municipal Code. Grantor, by action of the City Manager or a delegate, shall first notify Grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than fifteen (15) days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Agreement or Chapter 5.12 of the Calabasas Municipal Code, and thirty (30) days in all other

cases. If Grantee fails to demonstrate that a violation has not occurred, or to correct the violation within the time prescribed, or if Grantee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, or if the violation is not correctable, the Grantee shall then be given written notice of not less than thirty (30) days of a hearing to be held before the Council. Said notice shall specify the violations alleged to have occurred.

(b) At the hearing, the Council shall hear and consider all relevant evidence, and thereafter render written findings and its written decision. The hearing shall provide Grantee with the full opportunity to participate and present evidence.

(c) In the event the Council finds that no material violation exists, or that Grantee has corrected the violations, or has diligently commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy such violation, the proceedings shall terminate and no penalty or other sanction shall be imposed. In determining whether a violation is material, Grantor shall take into consideration the reliability of the evidence of the violation, the nature of the violation and the damage (if any), caused to the Grantor thereby, whether the violation was chronic, and any justifying or mitigating circumstances and such other matters as the Grantor may deem appropriate.

(d) In the event the Council finds that a material violation exists and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the Council may impose liquidated damages, assessable from the security fund, of up to Five Hundred Dollars (\$500) per day or per incident, for unexcused violations of the system upgrade herein, and up to Two Hundred Dollars (\$200) per day or per incident for

all other violations, provided that all violations of a similar nature occurring at the same time shall be considered one (1) incident.

If the Grantor elects to assess liquidated damages, pursuant to the provisions of this Franchise Agreement, then such election shall constitute Grantor's exclusive remedy for a period of one hundred twenty (120) days. Thereafter, if the Grantee remains in non-compliance with the requirements of the Franchise Agreement, the Grantor may pursue any available remedy, provided, however, that Grantor may institute revocation proceedings against Grantee only after declaration of default on the grounds set forth in Section 5.12.410 of the Calabasas Municipal Code.

## **2.8 Reservation of Rights**

(a) Grantor and Grantee reserve all rights that they may possess under the law unless expressly waived herein. By entering into this Agreement, neither Grantee nor Grantor waives any rights which it now or may later enjoy under applicable law, and specifically Grantor and Grantee reserve their rights to take full advantage of any changes in law during the term of the franchise.

(b) In addition to the rights otherwise reserved, the Grantor reserves any rights it may have to impose conditions regarding access by third parties to Grantee's Cable System for the delivery of Internet access service, and Grantor's approval of this Agreement shall not be deemed to have waived any such rights it may have to impose such conditions at a later date, regardless of whether a transfer or renewal is pending. Grantee likewise does not waive any right it may have with respect to the imposition of such a condition. Prior to the enactment or enforcement of any such requirement, Grantee shall be provided with reasonable notice, an opportunity to be heard, and an opportunity to provide

evidence on any findings made or required to be made with respect to such a requirement. Grantor and Grantee acknowledge the Ninth Circuit Court Decision in ATT vs. City of Portland, Oregon (99-35609, January 2002) addresses the issue contained in this Section 2.8(b). This Section should not be construed as a waiver by the Grantee of any rights granted by applicable law.

(c) If Federal or State law permits the Grantee to provide non-video Telecommunications Services to Subscribers (such as telephone communications) or other non-Cable System services through the facilities of the Cable System, and the Grantor has the regulatory authority to collect either a Franchise Fee or an in-lieu-of-franchise-fee payment on such services, then the Grantee shall pay a fee for revenues derived by the Grantee from such services at the rate established in an Ordinance adopted by the City Council and applied in a non-discriminatory manner to all providers of such services franchised by Grantor.

## **2.9 State or Federal Preemption**

In the event that the State or Federal Government discontinues preemption in any area of Cable System regulation over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, Grantor may, if it so elects, adopt rules and regulations in these areas, to the extent permitted in the then applicable law. If such preemption has a material impact upon the term of this Agreement, Grantor and Grantee agree to negotiate in good faith to attempt to restore the mutual considerations provided in this Agreement.

## **2.10 Other Franchises**

Upon the initial award or renewal of any Cable System Franchise approved by Grantor pursuant to the provisions of Chapter 5.12 of the Calabasas



Municipal Code to other grantees, Grantor shall endeavor to grant such initial awards or renewals under terms and conditions which, when taken in their entirety (i.e., not on an item by item basis), are competitively neutral and non-discriminatory.

## **SECTION 3 SERVICE AREA AND LINE EXTENSION POLICY**

### **3.1 Franchise and Service Area**

The Grantee's Franchise and Service Areas shall be the entire City of Calabasas so designated in Exhibit "B" of this Agreement, including any and all territory immediately adjoining this area as it is annexed thereto, during the term of this Agreement. The Grantee shall offer the full range of residential Cable Services to all residents of the Franchise and Service Area, in accordance with the provisions of Section 3.2 below, provided, however, that Grantee is not required to extend its trunk and distribution system to an area that is already served by another Grantee.

### **3.2 Provision of Service**

The Grantee shall provide residential Cable Service at standard installation charges, provided that the residential unit is within one hundred twenty five (125) feet, for aerial installation, and one hundred (100) feet, for underground installation, from the nearest distribution cable of the Grantee's system. In the event a request is made for service by a resident in an area not meeting such criteria, the Grantee may charge an installation fee equal to Grantee's cost of time and materials plus customary overhead for the incremental portion of the installation beyond the footage limitations established above.

### **3.3 Line Extension Policy**

Within the boundaries of the Service Area, Grantee shall extend service upon request to any person or business for no charge other than the then prevailing normal installation charge unless the Grantee demonstrates to the Grantor's satisfaction that extraordinary circumstances justify a waiver of this requirement.

### **3.4 Commercial Areas**

For areas of the City that are primarily commercial, the Grantee shall install appropriate conduit at any time that open utility trenches are available and the Grantee has received at least thirty (30) working days advance notice of the availability of the trenches. Residences in primarily commercial areas shall be provided with Cable Service upon request, at an installation fee equal to Grantee's costs of time and materials plus customary overhead.

## **SECTION 4 CABLE SYSTEM**

### **4.1 Cable System**

The Cable System design and operational capabilities shall be as described in Exhibit "B" herein.

### **4.2 Emergency Alert Capability**

Upon the Effective Date of this Agreement, Grantee shall provide Emergency Alert System capability in full compliance with applicable Federal Communications Commission requirements. Grantee shall establish procedures for Grantor access and use of this system in case of an emergency.

### **4.3 Standby Power**

Upon the Effective Date of this Agreement, Grantee shall provide standby power generating capacity at the Cable System control center and at all hubs capable of providing at least forty eight (48) hours of emergency supply. Grantee shall maintain standby power system supplies throughout the major trunk cable networks capable of providing emergency power within the standard limits of commercially available power supply units.

### **4.4 Parental Control Lock**

Grantee shall provide, for sale or lease, to subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of premium channels.

### **4.5 Status Monitoring**

Grantee shall provide an automatic status monitoring system or a functional equivalent when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible to Grantee's satisfaction.

#### **4.6 Technical Standards**

The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as amended from time to time, shall apply, to the extent permitted by applicable law.

#### **4.7 Right of Inspection**

Grantor shall have the right to inspect all construction, reconstruction or installation work performed subject to the provisions of the franchise and other pertinent provisions of law, and as part of Grantor's obligation to protect the public health, safety and welfare of its citizens.

## **SECTION 5 SERVICES AND PROGRAMMING**

### **5.1 Services and Programming**

Grantee shall provide Grantor with a list of program services offered, which list shall be updated each time a change is made. Grantee shall not reduce the number of program services without thirty (30) days prior written notification to the Grantor and system subscribers unless caused by circumstances beyond Grantee's reasonable control.

### **5.2 Leased Channel Service**

Grantee shall offer leased channel service on reasonable terms and conditions and in accordance with applicable law.

## **SECTION 6 SUPPORT FOR LOCAL CABLE ACCESS**

### **6.1 Grantee Support for EG Access**

Grantee shall provide the following or equivalent support for EG Access within the Franchise Area:

- (a) Provision and use of the grant funds and channels designated in Exhibit "D" of this Agreement for local EG Access.
- (b) Maintenance of Grantee's EG Access facilities and channels, and support of EG programming to the extent specified in Exhibit "D" of this Agreement.
- (c) Provision of free public building installation and the highest tier of basic service to the public buildings listed in Exhibit "D."
- (d) Grantee shall provide, at no charge, one (1) installation and monthly service for high-speed Internet access service to the buildings designated in Exhibit "D" at such time Grantee offers such service to Subscribers.
- (e) Grantee shall provide, at no charge, upstream fiber optic links to permit the origination of video and audio programming from the buildings and locations designated in Exhibit "D."

### **6.2 Compliance with Federal Law**

In accepting this Franchise, the Grantee agrees that the commitments indicated in Section 6.1 above are voluntarily entered into and shall not be charged against any Franchise Fees due the Grantor during the term of the Franchise. The Grantee agrees to meet all of the commitments of Section 6.1 above, through the term of the Franchise.

### **6.3 Provision of Public Access**

At any time during the term of this Agreement, Grantor may determine that the provisions of Section 6.1 herein shall be expanded to include Public Access

so that the Grantee commitments would be considered for Public, Educational and Governmental (PEG) Access use. Any such extension to include Public Access shall not obligate Grantee to provide greater support than indicated in this Agreement, but will reflect a reallocation of resources provided for by the terms of this Agreement.



## **SECTION 7 REGULATION**

### **7.1 Franchise Regulation**

The Franchise renewed under this Agreement shall be subject to regulation by Grantor in accordance with all of the lawful provisions of Chapter 5.12 of the Calabasas Municipal Code.

### **7.2 Force Majeure**

The force majeure provisions of Section 5.12.430 of the Calabasas Municipal Code shall apply.

### **7.3 Rate Regulation**

(a) If Grantor is permitted under Federal and/or State law, to regulate the rates charged by Grantee, and if Grantor elects to so regulate, Grantor shall establish reasonable procedures consistent with due process and applicable laws and regulations and follow those procedures before so regulating. Such limitations of law and regulation shall not be construed to prohibit the Grantor and Grantee from agreeing to regulate rates within the framework of this Agreement including, but not limited to, the provisions of paragraph (b) of this Section.

(b) During the entire term of this Agreement, Grantee shall continue to maintain an interconnection of the Cable System operated pursuant to the terms of this Agreement with all other Cable Systems operated by Grantee, or an affiliate of Grantee, within the City. As of the Effective Date of this Agreement, said interconnection exists between the Service Area and “Calabasas Park” served by a Franchise held by Grantee’s affiliate, Adelphia California Cablevision, Inc.

The purpose of this interconnection is that the services offered in all franchise areas within the City served by Grantee or Grantee’s affiliate(s), along with the charges to Subscribers for the services, shall be identical.

In accordance with the provisions of City of Calabasas Resolution No. 99-595 as amended by City of Calabasas Resolution No. 2002-775, the identical rates and services in all said Franchise Areas shall be effectuated by not later than November 1, 2003.

#### **7.4 Service Standards**

A verified and continuing pattern of noncompliance with the service standards contained in Chapter 5.12 of the Calabasas Municipal Code and/or this Agreement shall constitute a material breach of this Agreement, entitling Grantor to utilize the provisions set forth in Article XIII in the Calabasas Municipal Code.

#### **7.5 Notices**

Notices transmitted by either party to this Agreement to the other party shall be addressed as follows:

Grantor:	City Manager City Hall 26135 Mureau Road Calabasas, CA 91302-3172
With a copy to:	Media Operations Director City Hall 26135 Mureau Road Calabasas, CA 91302-3172
Grantee:	Area Manager Adelphia Cable Communications 2323 Teller Road Newbury Park, CA 91320
With a copy to:	Government Affairs Adelphia Cable Communications 6320 Canoga Ave., Suite 1300 Woodland Hills, CA 91367

Either party may designate by written notice a different address to which notices shall be sent.

Notices shall be transmitted by United States Postal Service certified or registered mail, return receipt requested and postage prepaid, or by Federal Express (or other similar private commercial delivery or courier service) for next business day delivery with delivery and receipt signature required.

#### **7.6 Successors and Assigns**

All provisions of this Agreement shall apply to any lawful successors and assigns.

#### **7.7 Severability**

If any provision of this Agreement or the application of such provision to any circumstance is rendered unconstitutional or otherwise invalid any law, ordinance, regulation or court of competent jurisdiction, the remainder of this Agreement or the application of the provision to other circumstances, shall not be affected thereby.

#### **7.8 Choice of Law**

This Agreement shall be governed by and interpreted under the laws of the State of California.

#### **7.9 Venue**

The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated either in the State courts located in the County of Los Angeles, State of California or the U.S. District Court for the Central District of California. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature.

#### **7.10 No Waiver**

Grantee shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the Grantor upon any one (1) or more occasions to insist upon or to seek compliance with any such terms or conditions.

#### **7.11 Itemization of Expenses**

Grantee shall not pass-through to Subscribers, by way of line itemization, surcharge or addition to an otherwise permissible rate, or charge to Grantor, any amounts relating to any provision of this Franchise unless expressly authorized by applicable law. Any authorized itemization, surcharge or addition to an otherwise permissible rate shall be allocated and amortized over the entire remaining Franchise term unless specified otherwise in this Franchise.

#### **7.12 Possessory Interest**

By accepting this Franchise, Grantee acknowledges that notice is and was hereby given pursuant to California Revenue and Taxation Code Section 107.6 that use or occupancy of any public property pursuant to the authorization herein set forth may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Grantee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes levied against Grantee's right to possession, occupancy, or use created by this Franchise. Grantee shall not be barred from challenging any amounts assessed pursuant thereto.

#### **7.13 Binding Effect**

Each and all of the provisions hereof shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

#### **7.14 Amendment**

No amendment, modification, or supplement to this Agreement shall be binding on any of the parties unless it is in writing and signed by the parties in interest at the time of the modification.

#### **7.15 Entire Agreement**

This Agreement and Exhibits "A" through "D" hereto, as well as agreements and other documents referred to in this Agreement constitute the entire agreement between the parties with regard to the subject matter hereof and thereof. This Agreement supercedes all previous agreements between or among the parties. There are no agreements, representations, or warranties between or among the parties other than those set forth in this Agreement or the documents and agreements referred to in this Agreement.

#### **7.16 Construction**

The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in the favor of the party receiving a particular benefit under this Agreement. No rule or strict construction will be applied against any Person.

#### **7.17 Representation by Counsel**

Each party has been represented by counsel in the negotiation and execution of this Agreement. This Agreement was executed voluntarily without any duress or undue influence on the part of or on behalf of the parties hereto. The parties acknowledge that they have read and understood this Agreement and its legal effect. Each party acknowledges that it has had a reasonable opportunity to obtain independent legal counsel for advice and representation in

connection with this Agreement. Each party further acknowledges that it is not relying on, and has not for the purposes of the negotiation, execution, and delivery of this Agreement, a client of the legal counsel employed by any of the other parties to this Agreement.

#### **7.18 Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one (1) set of counterparts. The parties authorize each other to detach and combine original signatures pages and consolidate them into a single identical original. Any one (1) of such completely executed counterparts shall be sufficient proof of this Agreement.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement the date and year first above written.

APPROVED AS TO FORM:

CITY OF CALABASAS

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

Date: \_\_\_\_\_

(SEAL)

ATTEST:

\_\_\_\_\_

City Clerk

(CORPORATE SEAL)

\_\_\_\_\_

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

\_\_\_\_\_

Name, Title

Date: \_\_\_\_\_

**EXHIBIT A**  
**OWNERSHIP**



**OWNERSHIP**

[Insert Adelpia Organizational and Ownership Chart.]

**EXHIBIT B**  
**SERVICE AREA**

## **SERVICE AREA**

See the following page for a map outlining the Franchise Area. For Franchise boundary areas that are not the same as City of Calabasas boundaries, as such boundaries exist on the Effective Date of this Agreement, the Franchise Area shall be:

Las Virgenes Road south of the 101 Freeway, on both sides of the street to Agoura Hills Road

From the intersection of Las Virgenes Road west along the centerline of Agoura Hills Road to the western boundary of the City.

The northern portion of the Franchise Area, as indicated on the map, is the portion of the City north of the 101 Freeway to the City boundaries, as such boundaries exist on the Effective Date of this Agreement.

**EXHIBIT C**  
**SYSTEM DESCRIPTION**

## **DESCRIPTION OF CABLE SYSTEM**

Grantee shall operate a state-of-the-art Cable System designed to meet the needs of Calabasas residents for the foreseeable future.

Upon the Effective Date of this Agreement, Grantee's Cable System capacity is Eight Hundred Sixty Two Megahertz (862 MHz) hybrid fiber-coaxial (HFC) network with fiber optics lines from the headend to nodes throughout the Franchise Area. At each node the signals enters the coaxial network for transmission to the home.

The Eight Hundred Sixty Two Megahertz (862 MHz) Cable System is capable of providing hundreds of service using both analog and digital Channels. Each analog video Channel requires Six Megahertz (6 MHz), however through the use of digital Channels, Grantee has the ability using existing technology to provide eight (8) to ten (10) video Channels in the same Six Megahertz (6 MHz) spectrum.

The two-way capability of the Cable System allows for high-speed Internet service and "impulse" ordering of pay-per-view services, as well as accommodating telephony and video-on-demand services in the future. High-speed Internet services will use the Data Over Cable Service Interface Specification (DOCSIS) industry standard, enabling customers to purchase any DOCSIS cable modem and, should the customer move, use the same modem in their new location provided the Cable System uses the DOCSIS standard.

Grantees' Cable System standard uses a "node plus one" architecture, with a goal of no more than one (1) amplifier used between the fiber node and homes. This design takes the fiber deeper into the Cable System so fewer homes are sharing the same fiber, resulting in more capacity to meet the

individual needs of customers. Each node is designed to serve approximately One Hundred Twenty Five (125) to One Hundred Fifty (150) homes.

All nodes have standby power rated to provide a minimum of three (3) hours of operation in the event of a commercial power disruption. The headend will have standby power capable of providing Twenty Four (24) hours of power in the event of a commercial power interruption.

The Cable System forward (to Subscribers) bandwidth is a minimum of Fifty Four to Eight Hundred Sixty Two Megahertz (54-862 MHz). The reverse bandwidth (from Subscribers to Grantee) is a minimum of Five to Thirty Megahertz (5-30 MHz).

**EXHIBIT D**  
**GRANTEE COMMITMENT TO**  
**EG ACCESS FACILITIES AND EQUIPMENT**

**EXHIBIT D: GRANTEE COMMITMENT TO EG ACCESS FACILITIES AND EQUIPMENT**

**1. CONNECTION OF PUBLIC BUILDINGS**

Grantor shall connect, at no installation charge, the buildings listed in Figure 1, to the closest node of the Cable System, under the following conditions:

(a) For the term of this Agreement, Grantee shall provide upstream fiber optic links from the locations listed in Figure 1A to Grantee's local headend or hub, by not later than the Effective Date of this Agreement or the date any new facility is occupied. The purpose of these upstream communications links is to permit live cablecasting of video and audio programming from those locations on Grantee's Cable System. Grantee shall not charge Grantor for any of the costs associated with providing these links.

(b) An activated one-way (downstream) connection and the highest tier of basic Cable Service at no installation and monthly charge shall be provided to all the public buildings listed in Figure 1B, or any new facility occupied by the City or the Las Virgenes Unified School District, by not later than the Effective Date of this Agreement, or the date said new facility is occupied.

(c) Pursuant to the provisions of Section 6.1 of this Agreement, Grantee shall provide, at no charge, one (1) installation and monthly service for high-speed Internet access service to the buildings designated in Figure 1C by not later than the Effective Date of this Agreement or the date any new facility is occupied.

(d) A point of demarcation shall be established within each public building. Grantee shall be responsible for acquiring, installing, operating and maintaining all equipment and facilities on the Cable System side of the demarcation point. Each EG Access user shall be responsible for acquiring, installing, operating and



maintaining all equipment on its side of the point of demarcation necessary to interface with and utilize Grantee's Cable System.

(e) Grantor and Grantee agree that the parties may establish reasonable provisions regarding responsibility for signal security and privacy issues resulting from use of Cable System services at the public buildings and locations designated in this Agreement. It is the intent of this Agreement that, unless otherwise agreed to by the parties, that the user (i.e., not Grantee) shall be responsible for signal security (e.g., encryption).

## **2. EDUCATIONAL AND GOVERNMENT (EG) ACCESS CHANNELS**

(a) Upon the Effective Date of this Agreement, Grantee shall continue to make one (1) downstream analog Channel available exclusively for Educational and Governmental (EG) Access use. This Channel shall be dedicated for the term of the Franchise renewal. This Channel shall continue to be located on Channel 3 of the Cable System for the life of this Agreement.

(b) Grantor may request and Grantee shall provide up to a total of three (3) additional analog Channels, for a total of four (4) analog Channels, for EG Access use. Any request from Grantor shall be accompanied by a good faith representation that the existing Channel capacity provided for Access use is insufficient to meet community needs. Said request shall be made in writing not less than ninety (90) days prior to the date Grantee shall be required to provide such additional Channel(s).

(c) Grantor and Grantee acknowledge that Grantee may in the future use video compression technology in order to transmit PEG Access video programming in a digital format to Subscribers. Until such time as Grantee has converted all analog video programming to digital, consistent with Applicable

Law, Grantee shall make PEG Access Channels available to both its analog and digital Subscribers.

When Grantee has converted all video programming, both commercial and non-commercial, from analog to digital, then the parties will meet and confer concerning additional bandwidth that may be allocated for PEG Access use, taking into consideration the prior use of PEG Access Channel capacity, both analog and digital, and the extent of any excess demand that may then exist.

(d) All Channels designated for EG Access use shall be carried on the lowest price tier of Grantee's Cable Service, unless otherwise mutually agreed to by Grantor and Grantee.

(e) Within six (6) months of the Effective Date of this Agreement, Grantee shall negotiate in good faith with all other Grantees in the City to interconnect the EG Access Channels on Grantee's Cable System with any Public and EG Access Channels on the Cable Systems operated by any other Grantee within the City. Before the conclusion of said six (6) month period, the Grantee shall provide a written report to the Grantor detailing the status of said negotiations. If any other Grantee in the City agrees, through the Franchise renewal process or otherwise, to interconnect said EG Access Channels under reasonable terms and conditions, it is the intent of this Section to have both parties consummate such an interconnection. The Grantor reserves the right, during the term of this Agreement, to direct Grantee to enter into good faith negotiations with all other Grantees within the City and to report back to the Grantor in writing the status of the negotiations.

### **3. PROVISION OF EG ACCESS EQUIPMENT AND FACILITIES**

(a) The EG Access grant described in this Section shall be utilized by Grantor, or Grantor's designee, for EG Access equipment and facilities, which

are defined to include, but not be limited to, data communications terminal and interface equipment as well as video equipment used in conjunction with the Cable System facilities.

(b) Grantee shall provide a grant of up to three percent (3%) of Gross Annual Cable Service Revenues to Grantor to support Educational and Governmental Access. The grant shall be continued throughout the duration of the Franchise, unless otherwise directed by the Grantor. The grant funds may be used for equipment and facilities for both one-way video Access services and two-way interactive Access services, at Grantor's sole discretion. The grant funds shall be paid to the Grantor on a quarterly basis, concurrent with the Franchise Fee payment.

Upon the Effective Date of this Agreement, the grant shall be two percent (2%) of Gross Annual Cable Service Revenues. Grantor, by action of the City Council, shall provide Grantee not less than ninety (90) days prior written notice of any change in the grant amount, up to the limit indicated above.

(c) Grantor shall not oppose the inclusion on Subscribers' bills of the Access grant provided in 3(b) above, so long as said inclusion is done in a manner consistent with the provisions of Federal and State law and regulation. Any notice to Subscribers detailing information regarding this capital grant shall be subject to prior Grantor review and approval.

#### **4. COMPETITIVE VIDEO SERVICE PROVIDERS**

If any City-franchised or authorized multichannel video service providers serving the same Franchise Area within the City of Calabasas as served by Grantee shall achieve and maintain in the aggregate, at least thirty percent (30%) of the number of subscribers served by Grantee, and if, further, any such competitive providers achieving that percentage are not subject to providing EG

Access support, or are subject to providing a lower level of support than Grantee is required to provide under paragraph 3(b) above, then Grantee shall have the right to negotiate to reduce its level of support to that which is applicable to the competitive provider(s).

#### **5. EG ACCESS OPERATIONS**

Grantor may negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions, other or others to share operating expenses as appropriate. Grantor and Grantee may negotiate an agreement for management of EG Access facilities, if so desired by the parties.

#### **6. TITLE TO EG EQUIPMENT**

Grantor shall retain title to all EG Access equipment provided with funding made available in accordance with paragraph 3 above.

#### **7. RELOCATION OF EG CHANNELS**

If Grantee relocates any EG Access Channel to a different Channel number, Grantee shall reimburse Grantor for all reasonable out-of-pocket Grantor costs necessarily incurred as a result of the relocation. Grantee shall provide Grantor and all subscribers with at least thirty (30) days written notice of such relocation.

#### **8. PROMOTION OF EG ACCESS**

Grantee shall allow the Grantor to place bill stuffers in Grantee's subscriber statements at a cost to the Grantor not to exceed Grantee's cost, no more than twice per year upon the written request of the Grantor and at such times that the placement of such materials would not affect Grantee's cost for the production and mailing of such statements. The Grantor agrees to pay Grantee in advance for the actual cost of such bill stuffers. Grantee shall also make available access information provided by Grantor in subscriber packets at the

time of installation and at the counter in the Cable System's business office. Grantee shall also distribute, at no charge to Grantor, through advertising insertion equipment, promotional and awareness commercial spots produced at the Grantor's cost and submitted by the Grantor in a format compatible with such equipment once Grantee has acquired and activated such capability. Grantee shall also include a listing of the known programming to be cablecast on EG Access Channels in any Grantee printed or video program guide of services for the Cable System.

#### **9. LOCAL ADVERTISING AVAILABILITIES**

At such time as the Cable System has the capability for the insertion of local advertising, Grantee shall make available, at no cost to the Grantor, not fewer than ten (10) thirty (30) second local advertising availabilities per month on a variety of programming services carried on the Cable System. These availabilities shall be distributed throughout the programming day, with a preference given to availabilities during prime subscriber viewing hours. The Grantor will provide Grantee with videotapes or other materials, in a format acceptable to Grantee, of announcements of local issues of interest to be inserted during the local availabilities.

#### **10. USE OF MOBILE PRODUCTION EQUIPMENT AND PERSONNEL**

Upon not less than forty five (45) days written request from Grantor to Grantee, Grantee shall make available Grantee's mobile production vehicle, equipment and personnel for up to three (3) uses per calendar year by Grantor. Grantor shall not oppose the inclusion on Subscribers' bills of the reasonable Grantee costs incurred in providing said vehicle, equipment and personnel, so long as said inclusion is done in a manner consistent with the provisions of

Federal and State law and regulation. Grantee agrees that any included amount shall not be itemized separately on Subscriber bills.

**FIGURE 1**

**LIST OF PUBLIC BUILDINGS TO BE CONNECTED**

**A. PUBLIC BUILDINGS AND LOCATIONS TO RECEIVE UPSTREAM COMMUNICATIONS LINKS**

(1) City

City Hall (26135 Mureau Road)

Any new facility occupied by the City located within Grantee's Franchise Area and within one hundred twenty five (125) feet from the nearest distribution cable of Grantee's system.

(2) Locations

Intersection of Canwood and Lost Hills

Intersection of Las Virgenes and Thousand Oaks

For each intersection indicated above, Grantor shall deliver a fiber optic link to the nearest point (as described herein) of Grantee's Cable System.

Grantee shall be responsible for designating, within a reasonable response time, the nearest and/or most appropriate location of the Cable System to which Grantor must provide the fiber optic link. Grantee shall be responsible for splicing the fiber(s) and related actions necessary to interface the signal for return path distribution to City Hall. The "related actions" of Grantee shall not include the Grantor delivery of the fiber optic link to the Grantee designated location of the Cable System.

**B. PUBLIC BUILDINGS TO RECEIVE FREE CABLE SERVICE**

(1) City

City Hall (26135 Mureau Road)

(All outlets within building receiving Cable Service on the Effective Date of the Agreement shall continue to receive service for the term of this Agreement)

Any new facility occupied by the City located within Grantee's Franchise Area and within one hundred twenty five (125) feet from the nearest distribution cable of Grantee's system.

(2) School District

Lupin Hills Elementary School (All outlets within the school receiving Cable Service on the Effective Date of the Agreement shall continue to receive service for the term of this Agreement)

Any new facility occupied by the Las Virgenes Unified School District located within Grantee's Franchise Area and within one hundred twenty five (125) feet from the nearest distribution cable of Grantee's system.

**C. LOCATIONS TO RECEIVE FREE HIGH SPEED INTERNET ACCESS**

City Hall (All outlets within building receiving high-speed Internet access on the Effective Date of the Agreement shall continue to receive service for the term of this Agreement)

Lupin Hills Elementary School (All outlets within the school receiving high-speed Internet access on the Effective Date of the Agreement shall continue to receive service for the term of this Agreement)

Any new facility occupied by the Las Virgenes Unified School District located within Grantee's Franchise Area and within one hundred twenty five (125) feet from the nearest distribution cable of Grantee's system.