MEMORANDUM OF UNDERSTANDING (MOU)

BY AND BETWEEN

THE BOARD OF SELECTMEN OF THE TOWN OF WESTFORD, MA

AND

WESTFORD COMMUNITY ACCESS TELEVISION, INC.
(“WESTFORD CAT”)

WHEREAS, the Board of Selectmen, as statutory Issuing Authority of the Town of Westford (the “Town”) has, pursuant to M.G.L. c. 166A, granted a Cable Television Renewal License (the “Comcast Renewal License”) to Comcast of Massachusetts III, Inc. (“Comcast”) effective August 31, 2015, through August 31, 2024, and

WHEREAS, the Board of Selectmen, as statutory Issuing Authority of the Town of Westford (the “Town”) has, pursuant to M.G.L. c. 166A, granted a Cable Television Initial License (the “Verizon Final License”) to Verizon New England, Inc. (“Verizon”) effective October 27, 2009, through October 26, 2024, and

WHEREAS, Comcast and Verizon have respectively assumed all responsibilities under the aforementioned Comcast Renewal License and Verizon Final License and, specifically, each agrees to operate and maintain their respective Cable Television System within the Town of Westford, and

WHEREAS, said Cable Television Systems shall each include three (3) downstream channels for public, educational, and/or governmental (“PEG”) access purposes, and suitable infrastructure which can be used for upstream origination (over a given System) from the current PEG access studio location and certain other Town Buildings, in accordance with the respective provisions in the Comcast Renewal License and the Verizon Final License, and

WHEREAS, the Comcast Renewal License provides that an Access Provider, as designated by the Board of Selectmen of the Town of Westford, shall be responsible for the provision of PEG access facilities and equipment to the residents of the Town, pursuant to the provisions of Article 6 of the Comcast Renewal License, and

WHEREAS, the Verizon Final License provides that an Access Corporation may be designated by the Board of Selectmen of the Town of Westford, to be responsible for the provision of PEG access...
facilities and equipment to the residents of the Town, pursuant to the provisions of Article 5 of the Verizon Final License, and

WHEREAS, Westford Community Access Television, Inc. ("Westford CAT"), a nonprofit corporation organized under M.G.L. c. 180, with a business address of 487 Groton Road, Unit B, Westford, MA 01886, was incorporated on July 12, 2005 for the purpose of providing and supporting local PEG access programming, and

WHEREAS, Westford CAT has proposed that it be designated by the Board of Selectmen as the aforementioned Access Provider and Access Corporation ("Access Provider/Corporation"), and

WHEREAS, the Board of Selectmen has determined that it is in the best interests of the Town of Westford to simultaneously designate Westford CAT as the Access Provider (per the Comcast Renewal License) as well as the Access Corporation (per the Verizon Final License) pursuant to the terms and conditions in this Memorandum of Understanding ("MOU"),

NOW THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound, the Board of Selectmen and Westford CAT agree as follows:

Section 1. Designation

Pursuant to Article 6 of the Comcast Renewal License, the Board of Selectmen hereby designates Westford CAT as the Town's Access Provider, authorizing said Access Provider to receive the equipment grant and franchise fees as described and provided for in the Comcast Renewal License so that the Access Provider may operate using the Comcast Cable System's PEG access channels and provide those services as generally described in Sec. 6.2 of the Comcast Renewal License.

Pursuant to Article 5 of the Verizon Final License, the Board of Selectmen hereby designates Westford CAT as the Town's Access Corporation, authorizing said Access Corporation to receive the equipment grant and franchise fees as described and provided for in the Verizon Final License so that the Access Corporation may operate using the Verizon Cable System's PEG access channels and provide those services as generally described in Article 5 of the Verizon Final License.

Section 2. Term of Designation

The term of this designation as Access Provider/Corporation shall commence as of the signature date of this MOU (the "Effective Date") and continue until December 30, 2024, unless sooner terminated as provided herein or surrendered. The Access Provider/Corporation shall provide all PEG Access services under both the Comcast Renewal License and the Verizon Final License commencing on the Effective Date.

Section 3. Access Provider/Corporation Services
The Access Provider/Corporation shall provide services to Comcast and/or Verizon cable television subscribers, citizens, businesses, government entities, and organizations within the Town as follows:

1. Schedule, operate and program the PEG access channels;

2. Produce and cablecast governmental programming, including the cablecast of all Board of Selectmen, Planning Board and School Committee meetings unless otherwise instructed, all sessions of Town Meeting, and additional programming as may be requested by the Board of Selectmen, the Town Manager or their designated representative, providing that such notice is given at least twenty-four (24) hours in advance and that sufficient staff and equipment resources exist to accommodate such requests;

3. Provide ancillary audio/visual services to facilitate the setup of governmental programming to be cablecast;

4. Manage annual funding, as described in Section 4 of this MOU;

5. Purchase and/or lease equipment, with the funds respectively allocated for such purposes in Sec. 6.5 of the Comcast Renewal License and Sec. 5.2 of the Verizon Final License, and as further described in Sec. 5 of this MOU;

6. Conduct training programs in the skills necessary to produce PEG access programming;

7. Provide technical assistance and production services to PEG Access Users;

8. Establish rules, procedures and guidelines for use of the PEG Access Channels;

9. Provide publicity, fundraising, outreach, referral, and other support services to PEG Access Users;

10. Produce or assist Users in the production of Programming of interest to Subscribers and focusing on Town issues, events and activities; and

11. Accomplish such other tasks relating to the operation, scheduling, and/or management of the PEG Access Channels, facilities and equipment as appropriate and necessary.

12. Archive any video recordings of local government meetings (including on the Westford CAT On-Demand online library) for at least two years. After two years such recordings will then be transferred to appropriate national archiving organizations for perpetual storage.
Section 4. Annual Support for PEG Access

Westford CAT, as the designated Access Provider/Corporation, shall receive quarterly payments from Comcast and Verizon, or any respective successor(s) thereto, equal to five percent (5%), less any fees, of Gross Annual Revenues, as defined by the Comcast Renewal License and the Verizon Final License. These quarterly payments will be used for, among other things, salary, operating, and other related expenses connected with PEG Access programming and operations, as more fully set forth in the two licenses. As of the Effective Date of this MOU, payments from Comcast and Verizon shall be made (or shall continue to be made) directly to Westford CAT as long as it remains the designated Access Provider/Corporation, as authorized by the Board of Selectmen, in accordance with the Comcast Renewal License and/or the Verizon Final License.

Section 5. Non-Recurring PEG Access Funding

Under its license, Comcast provides the Board of Selectmen an annual payment in the amount of ten thousand dollars ($10,000.00) for the effective duration of the agreement, to be used to purchase and/or lease PEG Access equipment and facilities. Comcast has also provided a thirty-five thousand dollar ($35,000) payment to the Board of Selectmen for the decommissioning of the iNet and establishing the connection to Westford CAT on the town’s fiber network to facilitate live IP streaming. The Board of Selectmen consequently agrees to transfer the annual amount of ten thousand dollars ($10,000) to Westford CAT, as the designated Access Provider/Corporation upon receipt or to instruct Comcast to send the annual payment directly to Westford CAT.

Verizon has completed its capital payments obligation for its current contract license, totaling One Hundred Fifty-Two Thousand Five Hundred Dollars ($152,500.00), used to purchase and/or lease PEG Access equipment and facilities.

Section 6. Equipment and License Funds Ownership

(a) Westford CAT, as the designated Access Provider/Corporation, shall own all PEG Access equipment purchased with funding as provided in Sec. 4 and Sec. 5 supra. In the event that the Board of Selectmen designates another entity as the Town’s Access Provider/Corporation or terminates this MOU, under Section 14, all of said equipment, and clear title thereto, shall be transferred by Westford CAT to the Town of Westford, or to such successor entity as may be directed by the Town of Westford, in a timely manner. All equipment that Westford CAT obtains other than with funding as provided in Sec. 4 and Sec. 5 shall remain the property of Westford CAT.

(b) On or about February 15th of each year during the term of this MOU, Westford CAT shall provide the Board of Selectmen with a detailed draft annual financial report of all Access Provider/Corporation income and expenses, and an inventory of all equipment and all other assets owned by Westford CAT including purchase cost, year of purchase, current condition, and depreciated value, to be followed by a final financial report by July 31st of each year.

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(c) In the event that the Board of Selectmen designates another entity as the Town’s Access Provider/Corporation or terminates this MOU, under Section 14, all remaining unspent funds Westford CAT has received with funding as provided in Sec. 4 and Sec. 5, shall be transferred in a timely manner by Westford CAT to the Town of Westford, or to such successor entity as may be directed by the Town of Westford.

Section 7. Insurance

Per paragraph (5)(a) infra, at all times during the course of its operations within the term of this MOU, including the time for removal of facilities provided for herein, Westford CAT shall obtain, pay all premiums for, and file with the Board of Selectmen, on an annual basis, copies of the certificates of insurance for the following policies:

1. A business owner’s property and liability policy, Director and Officer’s liability policy, Errors and Omissions Policy (for access media), and worker’s compensation policy, naming the Town, its officers, boards, commissions, agents, and employees including its designated members of the Westford CAT Board of Directors as provided in Section 13 herein, as additional insureds and save them harmless on all claims on account of injury to or death of a person or persons or property damage, real or personal occasioned or alleged to have been occasioned by the construction, installation, maintenance, or operation of all PEG Access equipment or facilities, with a minimum liability of One Million Dollars ($1,000,000.00) for injury or death to any one person in any one occurrence and Two Million Dollars ($2,000,000.00) for injury or death to two (2) or more persons in any one occurrence.

2. A commercial automobile liability insurance for owned automobiles, non-owned (leased) automobiles and/or rented automobiles in the amount of:
   
   (a) One Million Dollars ($1,000,000.00) for bodily injury and consequent death per occurrence;
   
   (b) One Million Dollars ($1,000,000.00) for bodily injury and consequent death to any one person; and
   
   (c) Five Hundred Thousand Dollars ($500,000.00) for property damage per occurrence.

3. The following conditions shall apply to the insurance policies required herein:
   
   (a) Such insurance shall commence no later than the Effective Date of this MOU (or remain in force through this date and during the entire Term of this MOU).
Such insurance shall be primary with respect to any insurance maintained by the Town and shall not call on the Town’s insurance for contributions.

(c) Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in the State of Massachusetts.

(d) Evidence of insurance shall be submitted to the Board of Selectmen prior to commencement or continuation of any operations under this MOU, i.e., no later than the Effective Date of this MOU.

(e) Westford CAT's failure to procure or maintain the required insurance shall constitute a material breach of this MOU, under which the Board of Selectmen may revoke the designation of Westford CAT as the Access Provider/Corporation, in accordance with Section 14 infra.

(4) Westford CAT shall submit to the Board of Selectmen, or its designee, on an annual basis, copies of all current certificates of insurance regarding all insurance policies as required herein.

(5) The insurance policies required herein shall each contain an explicit endorsement stating that such insurance policies are intended to cover the liability assumed by Westford CAT under the terms of this MOU and shall contain the following endorsement:

*It is hereby understood and agreed that this policy shall not be canceled, materially changed, or the amount of coverage thereof reduced until ten (10) days after receipt of one (1) copy of a written notice of such intent to cancel, materially change, or reduce the coverage required herein.*

Section 8. Indemnification

(a) Westford CAT shall, at its sole cost and expense, indemnify and hold harmless the Town, its officials, boards, commissions, agents, and/or employees as well as its designated members of the Westford CAT Board of Directors as provided in Section 13 herein, against all claims for damage due to the actions of the Access Provider/Corporation, its employees, officers, or agents arising out of the provision of PEG access services under this MOU, including without limitation, damage to persons or property, both real and personal, caused by its operations. Indemnified expenses shall include, without limitation, all out-of-pocket expenses, such as attorney's fees, including the reasonable value of any services rendered by the Town Counsel. In the event that the Town employs outside counsel for the purposes set forth herein, Westford CAT shall pay the costs of such outside counsel for such services.

(b) The Town of Westford shall, at its sole cost and expense, indemnify and hold harmless the Westford CAT Board of Directors, members, volunteers, agents, and/or employees against all
claims for damage due to the actions of the Town, its employees, officers, or agents arising out of Westford CAT’s video recording and cablecasting of municipal government meetings under Section 3(2) of this MOU, including without limitation, damage to persons or property, both real and personal, caused by its actions at such municipal government meetings. Such indemnification, however, shall not apply to (i) the actions and/or speech of third parties (who are not Town employees, officers or agents) at such municipal government meetings and/or (ii) any PEG access programming produced or cablecast by Westford CAT and/or third parties (who are not Town employees, officers or agents), which programming depicts or includes a municipal government meeting that has been edited or altered from the original, unedited recording. Indemnified expenses shall include, without limitation, all out-of-pocket expenses, such as attorney’s fees, including the reasonable value of any services rendered by the Town Counsel. In the event that Westford CAT employs outside counsel for the purposes set forth herein, the Town of Westford shall pay the costs of such outside counsel for such services.

Section 9. Nondiscrimination

Westford CAT shall not discriminate against any Person in its solicitation or Service on the basis of race, color, creed, religion, ancestry, national origin, geographical location within the Town, sex, sexual preference, disability, age, marital status, or status with regard to public assistance. The Access Provider/Corporation shall be subject to all other requirements of federal and State laws or regulations relating to nondiscrimination, through the term of this MOU.

Section 10. Corporate By-Laws

The Access Provider/Corporation shall operate pursuant to its established By-Laws and Articles of Organization, copies of which shall be filed with the Board of Selectmen. Copies of amendments to said documents shall be sent to the Board of Selectmen within fourteen (14) days of any such amendment(s).

Section 11. Access Provider/Corporation Recordkeeping

(a) Upon request by the Board of Selectmen, Westford CAT shall promptly submit to the Board of Selectmen any information regarding its business, operations, finances, and assets in such form and containing such detail as may be reasonably specified by the Board of Selectmen pertaining to the subject matter of this MOU, and which may be reasonably required to establish Westford CAT’s compliance with its obligations pursuant to this MOU.

(b) No later than sixty (60) days after the end of Westford CAT’s fiscal year, Westford CAT shall furnish the Board of Selectmen and/or its designee(s) with draft financial statements. By July 31 of each year Westford CAT shall submit final financial statements sworn to by their President or Treasurer.
(c) Westford CAT shall provide the Board of Selectmen with copies of all other reports required by State and/or federal law.

(d) Westford CAT shall provide the Board of Selectmen with copies of all material agreements entered into by said Access Provider/Corporation, including, but not limited to: any lease agreement(s) for studio space.

(e) Upon fourteen (14) days written notice, Westford CAT shall send one or more knowledgeable officers or directors to a Board of Selectmen meeting, to answer questions about any topic designated in writing by the Selectmen pertaining to this MOU or the operations of Westford CAT.

Section 12. Access Provider/Corporation Employees

The staff members of the Access Provider/Corporation shall not be employees of the Town of Westford and are therefore not subject to the Town of Westford Personnel Rules and Regulations. The Access Provider/Corporation shall itself hire, evaluate, compensate, and terminate its own staff.

Section 13. Access Provider/Corporation Board of Directors

(a) Westford CAT shall have a Board of Directors of no less than five (5) and no more than eleven (11) members, consisting of the following:

- One (1) Director may be appointed by the Board of Selectmen for a term that the appointing authority may determine, and serve as the liaison to the Issuing Authority;

- One (1) Director may be appointed by the Westford School Committee for a term that the appointing authority may determine, and serve as the liaison to said Committee.

(b) At its discretion, Westford CAT's By-Laws may allow the Nashoba Valley Technical School District School Committee to designate an additional Director in lieu of one of the nine (9) directors that otherwise would be chosen by the corporate membership as mentioned above.

Section 14. Termination

In the event that Westford CAT fails to comply with any material provision of this MOU and/or is not serving the needs of cable subscribers in a manner consistent with this agreement, as may be reasonably determined by the Selectmen, the Board of Selectmen may revoke the designation as Access Provider/Corporation granted herein by thirty (30) days written notice to Westford CAT. Upon receipt of said thirty (30) days’ written notice from the Board of Selectmen of their intention to terminate this Agreement, Westford CAT shall, upon written request to the Selectmen, be given the opportunity to appear before the Selectmen within said 30-day period and appeal the
termination decision prior to its effective date. The decision of the Selectmen following any such appeal shall be final.

In the event that Westford CAT's appeal of the Selectmen's termination decision is rejected, then all equipment, assets, funds and property acquired by Westford CAT from funding originating from this MOU, or any cable license granted by the Town of Westford shall become the property of the Town of Westford and/or a successor Access Provider and/or Access Corporation, as directed by the Board of Selectmen on that date which is thirty (30) days from the receipt of written notice of the Selectmen's rejection of the appeal by Westford CAT.

Section 15. Renewal

Sixty days prior to the expiration of this MOU, the Board of Selectmen shall give notice to Westford CAT on the intent of the Town to renew its designation as the Town's Access Provider/Corporation.

Section 16. Separability

If any section, sentence, paragraph, term, or provision of this MOU is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any State or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof, all of which shall remain in full force and effect for the term of the MOU.

Section 17. Cable Television Licenses

Unless otherwise provided by this MOU, the applicable sections of the Comcast Renewal License and the Verizon Final License shall jointly determine the operation of the PEG access operations. Therefore, the Comcast Renewal License and the Verizon Final License are herein incorporated by reference.

Section 18. Force Majeure

If by reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: Acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; strikes; and, unavailability of essential equipment, services, and/or materials beyond the control of the Access Provider/Corporation, the Board of Selectmen or the Town of Westford.
Section 19. Notices

(a) Every notice to be served upon the Board of Selectmen shall be delivered, or sent by certified mail (postage prepaid) to the Board of Selectmen, Town Hall, 55 Main St, Westford, Massachusetts 01886, or such other address that the Board of Selectmen may specify in writing to the Access Provider/Corporation. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of mailing.

(b) Every notice served upon the Access Provider/Corporation shall be delivered or sent by certified mail (postage prepaid) to Westford CAT, 487 Groton Road, Unit B, Westford, Massachusetts 01886, or such other address that the Access Provider/Corporation may specify in writing to the Board of Selectmen. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of mailing.

Section 20. Entire Agreement

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed orally but only by any instrument in writing executed by the parties.
This Memorandum of Understanding (MOU) is entered into on the 24th Day of October 2018, by:

BOARD OF SELECTMEN of the Town of Westford

BY: Scott Hazelton, Chair

BY: Andrea Peraner-Sweet, Vice Chair

BY: Mark Kost, Clerk

BY: G. Thomas Clay, Selectman

BY: Elizabeth Almeida, Selectman

Westford Community Access Television, Inc. (Westford CAT) Board of Directors

BY: Daniel Bush, President

BY: Nancy Burns, Director

BY: Tracey Tebrow, Director

BY: Christina Sacco, Director