



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of July 10, 2010**

DATE: July 1, 2010

SUBJECT: Adoption of a Resolution Granting the Consent of the County Board to the Transfer of Control of the Cable Television Franchisee, Starpower Communications, L.L.C., From RCN Corporation to Yankee Cable Acquisition, L.L.C.

C.M. RECOMMENDATIONS:

1. Adopt the attached Resolution Granting the Consent of the County Board to the Transfer of Control of the Cable Television Franchisee, Starpower Communications, L.L.C., From RCN Corporation to Yankee Cable Acquisition, L.L.C.
2. Authorize the County Manager to execute the Transfer Agreement and all other documents relating to the transfer, subject to approval of such documents as to form by the County Attorney.

ISSUES: County Board approval of the Resolution is needed to transfer control of the Cable Television Franchise and give authorization to the County Manager to execute the Transfer Agreement. No issues have been identified.

SUMMARY: Effective on September 1, 2000, the County Board issued to Starpower Communications, L.L.C. ("Starpower") an Arlington County, Virginia Certificate of Public Convenience and Necessity for Cable Television ("Certificate") for a fifteen (15) year term (through August 31, 2015). The Certificate was amended by the County Board, effective March 30, 2004. The Board amendment was prompted by the inability of Starpower to fulfill the requirements to build and complete a cable television system in accordance with the deadlines in the Certificate. A Settlement Agreement relieved Starpower of building out and operating a cable service until such time as the company was financially capable of setting up and successfully operating a cable service that would compete with others in the County. As consideration for the Certificate amendment, Starpower paid to the County \$250,000 for support of the County's Institutional Network.

DISCUSSION: On April 2, 2010, Arlington County received from Starpower an application for transfer of the Certificate from Starpower to Yankee Cable Acquisition, L.L.C. ("Yankee Cable").

County Manager: NB/AMT

County Attorney: SM

Staff: Rob Billingsley, Department of Technology Services

Under the County Code, a transfer of control requires the County Board's prior written consent. The County is authorized to inquire into all relevant qualifications of the proposed transferee, and such other matters as the Board may deem necessary and relevant. The County Code §41.2-15(b) further provides that:

In making a determination as to whether to grant, deny, or grant subject to conditions, an application for a transfer of a franchise, the county may consider, without limitation, 1. the legal, financial, and technical qualifications of the transferee to operate the cable system; 2. any potential effects of the transfer on subscriber rates or services; 3. whether a franchisee is in compliance with its franchise, and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; 4. whether the transferee owns or controls any other cable system in the county, and whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in the county; 5. and whether operation by the transferee or approval of the transfer would adversely affect subscribers, the public, or the county's interest under this chapter, a franchise, or other applicable law.

The County staff, telecommunications counsel and financial consultants, have reviewed the application and various documentation and information provided by Starpower. Each of the above Code considerations and the corresponding facts are as follows:

- Legal, financial, and technical qualifications of the transferee to operate the cable system.

Starpower is currently a wholly owned subsidiary of RCN Corporation. Under a plan of merger, dated March 5, 2010, RCN will assign its interest in Starpower to a company called RCN Telecom Services, LLC ("RCN Telecom"), and Yankee Cable will acquire 100% of the stock of RCN Telecom. If the transfer is approved, Starpower will therefore be controlled by Yankee Cable, through Yankee Cable's control of RCN Telecom. Yankee Cable itself is controlled by ABRY Partners VI, L.P. ("ABRY Partners"), through a series of subsidiaries, and Yankee Cable's purchase of Starpower will depend on financing from ABRY Partners. ABRY Partners also control several other cable franchises in the United States. The County staff and consultants have reviewed financial information regarding Yankee Cable and ABRY Partners. According to financial projections provided by the companies and evaluated by the County's financial consultants, the transfer is not likely to significantly affect the ability of Starpower to perform its obligations under the Certificate. If the proposed transfer is approved, the transaction will result in a change of control of Starpower, but Starpower will remain the Certificate Holder, and will continue to be bound by all of the terms of the current Certificate.

- Potential effects of the transfer on subscriber rates or services.

This consideration cannot be determined until Yankee Cable is ready to construct and operate a cable TV system in Arlington County.

- Compliance with the terms and conditions of the current Starpower franchise and the County Code.

The County staff has no knowledge that Starpower is not in compliance with the Certificate, as amended. Starpower will remain bound by all the terms of the Certificate. Yankee Cable and RCN Telecom have agreed to take no action that would interfere with Starpower's compliance with its obligations.

- Does the transferee own or control any other cable system in the county?

No

- Will operation by the transferee eliminate or reduce competition in the delivery of cable service in the county?

No effect on competition is anticipated. The continued existence of a third certificate holder is not expected to eliminate or reduce competition, but rather to enhance it.

- Will operation by the transferee or approval of the transfer adversely affect subscribers, the public, or the county's interest under this chapter, a franchise, or other applicable law?

County staff has negotiated the proposed terms of a Transfer request of the Certificate with representatives of Starpower and Yankee Cable. The interests of all the affected parties were considered, including County residents and businesses, cable subscribers, other franchises, the Arlington Public Schools ("APS"), various County agencies and organizations outside the government. As a result staff and consultants determined that the transfer is in the best interests of the County and its residents. While Starpower has no immediate requirement in the Certificate, as amended, to build out a cable TV system in Arlington County, the County's consent to the transfer will maintain the County's commitment to promoting competition in cable TV service for County residents when future market conditions enable Starpower to construct a new cable TV system.

Under federal law, the County Board has 120 days after receipt of a transfer request to act on the application (approve, deny, or take no action). If the County Board fails to act within such time period, then the application is "deemed approved" under federal law. The 120 day period ends on July 31, 2010. If the County decides to approve the application, then the attached Transfer Agreement will ensure that the current Starpower Certificate (franchise agreement) is honored until the end of the franchise period which will be August 1, 2015.

The Arlington Information Technology Advisory Commission (ITAC) has submitted comments to the County staff regarding the Transfer Agreement. The ITAC report is submitted under the attached Exhibit D.

The principal terms of the proposed Transfer Agreement are:

- Yankee Cable and RCN Telecom agree that they will not take an action inconsistent with the promises contained in the Certificate, and shall cause Starpower to fully comply with all of the terms and conditions set forth in the Certificate.
- Starpower will continue to be responsible for the obligations and liabilities, and continue to have responsibility for all acts and omissions, known and unknown, under the Certificate and the County Code, for all purposes, including renewal, unless waived by the County;
- Yankee Cable, RCN Telecom, and Starpower do not seek any changes to the terms or conditions of services and operations (as set forth in the Certificate) as a consequence of the Transfer, and they intend to comply fully with all Certificate provisions and to meet or exceed all applicable operational requirements;
- The proposed Transfer will result in no change to current management, technical, and operational personnel, and will not have an adverse effect on the future services to be provided by Starpower;
- The Certificate Holder will produce and deliver to the County a written report, consistent with the County-adopted Telecommunications Master Plan, recommending best practices and procedures for the County to operate and manage its own fiber infrastructure and communications services supporting an open network for government and non-government use;
- Yankee Cable and Starpower will reimburse the County for all out-of-pocket costs related to the transfer request.

FISCAL IMPACT: There is no fiscal impact.

CONCLUSION: The proposed transfer of the Certificate will maintain the opportunity for additional cable TV competition for County residents if future market conditions allow Yankee Cable to cause Starpower to construct a system. Despite Starpower's current construction status, staff believes that the proposed transfer along with the additional commitments benefits the community adequately to justify a finding by the Board that the requested transfer is in the best interest of the County, its residents, and cable subscribers. Staff recommends that the County Board adopt the attached Resolution.

Attachments

Exhibit A: Resolution Granting the Consent of the County Board to the Transfer of Control of the Cable Television Franchisee, Starpower Communications, L.L.C., From RCN Corporation to Yankee Cable Acquisition, L.L.C.

Exhibit B: Transfer Agreement between Yankee Cable and the County

Exhibit C: Settlement Agreement between Starpower and the County, 2004

Exhibit D: Report on the Proposed RCN Transfer Agreement

Exhibit A

Resolution Granting the Consent of the County Board to the Transfer of Control of the Cable Television Franchisee, Starpower Communications, L.L.C., From RCN Corporation to Yankee Cable Acquisition, L.L.C.

RESOLUTION NO. _____

A RESOLUTION GRANTING THE CONSENT OF THE COUNTY BOARD TO THE TRANSFER OF CONTROL OF THE CABLE TELEVISION FRANCHISEE, STARPOWER COMMUNICATIONS, LLC, FROM RCN CORPORATION TO YANKEE CABLE ACQUISITION, LLC

WHEREAS, the County Board of Arlington County, Virginia (“County”) has granted Starpower Communications, LLC (the “Certificate Holder”) a nonexclusive certificate of public convenience and necessity (the “Franchise”) for a term of fifteen (15) years pursuant to Chapter 41.2 of the Arlington County Code and an Agreement entitled “Arlington County, VA Certificate of Public Convenience and Necessity for Cable Television Starpower Communications, LLC” between the Certificate Holder and the County, dated September 1, 2000, and amended March 30, 2004, pursuant to a Settlement Agreement dated March 2004 (jointly, the “Certificate”);

WHEREAS, Certificate Holder is a wholly owned subsidiary of RCN Corporation;

WHEREAS, pursuant to a transaction (the “Proposed Transaction”) described in an Agreement and Plan of Merger dated as of March 5, 2010, Yankee Cable Acquisition, LLC (“Transferee”) will acquire control of RCN Telecom Services, LLC, (“RCN”) and the Certificate Holder;

WHEREAS, if the Proposed Transaction is consummated, the Certificate Holder will continue to hold the Franchise, but control of the Certificate Holder will be transferred to the Transferee (the “Transfer”);

WHEREAS, Section 41.2-15 of the County Code and Section 3.20 of the Certificate provide that the prior consent of the County is required for the Transfer;

WHEREAS, on or about April 2, 2010, the Certificate Holder filed a Petition with

the County requesting that the County approve the Proposed Transaction (the “Transfer Application”);

WHEREAS, the Transfer Application did not contain information sufficient for the County staff and consultants to complete a review of the Proposed Transaction;

WHEREAS, on April 19, 2010, April 27, 2010, and May 13, 2010, the County’s consultants requested additional information regarding the Proposed Transaction (collectively, the “Information Requests”);

WHEREAS, on April 27, 2010, May 7, 2010, and May 21, 2010, Certificate Holder and RCN responded to the Information Requests;

WHEREAS, pursuant to Section 3.20 of the Certificate, Section 41.2-15(b) of the County Code, and applicable state and federal law, the County Board has legal authority to approve or disapprove the Transfer;

WHEREAS, the County has reviewed the Transfer Application and the additional information provided, has considered various matters required or permitted by the County Code and by the Certificate, and has followed all required procedures to consider and act upon the Application;

WHEREAS, the County Board has decided to consent to the Transfer, subject to certain terms and conditions set forth below and in a transfer agreement as hereinafter defined; and,

WHEREAS, Transferee, RCN, and the Certificate Holder are willing to agree to such terms and conditions.

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. The County hereby consents to the Transfer in accordance with Section 41.2-15(a) of the County Code and Section 3.20(b) of the Certificate, subject to the following conditions:

- (a) that within ten (10) days after the adoption of this Resolution, the County, Certificate Holder, RCN, and Transferee enter into a transfer agreement, substantially in the form of Exhibit A, attached hereto (“Transfer Agreement”); and
- (b) that the Transfer is consummated on terms and conditions identical in all material respects to those described in the Transfer Application and the Transfer Agreement.

Section 2. If any of the conditions specified in Section 1 of this Resolution or in the Transfer Agreement are not satisfied by the dates provided therein, then the County's consent to, and approval of, the Transfer is hereby **DENIED** as of the date hereof.

Section 3. If any representation made to the County by the Certificate Holder, RCN Corporation, or the Transferee is or hereafter proves to be incomplete, untrue, or inaccurate in any material respect, then the same shall be deemed a material breach of the Franchise and the County shall have available to it all remedies provided under the County Code, the Certificate, and other franchise documents and applicable law including, without limitation, revocation or termination of the Franchise.

Section 4. The County Manager is hereby authorized, by and on behalf of the County, to execute a Transfer Agreement as specified in Section 1 of this Resolution, subject to approval of the Transfer Agreement as to form by the County Attorney.

Adopted this ___ day of July, 2010, by the County Board of Arlington County,
Virginia.

Chairman

Exhibit B

Transfer Agreement between Yankee Cable and the County

TRANSFER AGREEMENT

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TRANSFER AGREEMENT

THIS AGREEMENT is made this ___ day of _____, 2010, by and between:

1.1.1. The County Board of Arlington County, Virginia (the "County");

1.1.2. Starpower Communications, L.L.C. ("Certificate Holder");

1.1.3. Yankee Cable Acquisition, L.L.C. ("Yankee Cable"); and

1.1.4. RCN Telecom Services, L.L.C. ("RCN")

1.1.5. The entities in 1.1.2 through 1.1.4 may be referred to herein individually as "Company," and jointly as "Companies." All of the above may be referred to herein as "Parties."

RECITALS

WHEREAS, the County has granted the Certificate Holder a nonexclusive certificate of public convenience and necessity (the "Franchise") for a term of fifteen (15) years pursuant to Chapter 41.2 of the Arlington County Code and an agreement entitled "Arlington County, VA Certificate of Public Convenience and Necessity for Cable Television Starpower Communications, L.L.C." between the Certificate Holder and the County, dated September 1, 2000, and amended March 30, 2004, pursuant to a Settlement Agreement dated March 13, 2004 (jointly, the "Certificate");

WHEREAS, Certificate Holder is a wholly owned subsidiary of RCN Corporation;

WHEREAS, pursuant to a transaction (the "Proposed Transaction") described in an Agreement and Plan of Merger dated as of March 5, 2010 (the "Merger Agreement"), Yankee Cable will acquire control of the Certificate Holder;

WHEREAS, if the Proposed Transaction is consummated, the Certificate Holder will continue to hold the Franchise, but control of the Certificate Holder will be transferred to RCN, and RCN will be wholly owned and controlled by Yankee Cable;

WHEREAS, Section 41.2-15 of the County Code and Section 3.20 of the Certificate provide that the prior approval of the County is required for this transfer of control;

WHEREAS, on or about April 2, 2010, the Certificate Holder filed a Petition with the County requesting that the County approve the Proposed Transaction (the “Transfer Application”);

WHEREAS, on April 19, 2010, April 27, 2010, and May 13, 2010, the County requested additional information regarding the Proposed Transaction (the “Information Requests”);

WHEREAS, on April 27, 2010, May 7, 2010, and May 21, 2010 Certificate Holder and RCN responded to the Information Requests;

WHEREAS, pursuant to Section 3.20(b)(1) of the Certificate and Section 41.2-15(b) of the County Code, in reviewing the Proposed Transaction, the County may inquire into all relevant qualifications of the prospective transferee and such other matters as the Board may deem necessary and relevant; and may consider, without limitation, the legal, financial, and technical qualifications of the transferee to operate the cable system; any potential effects of the transfer on subscriber rates or services; whether the certificate holder is in compliance with the Certificate, and the Code and, if not, the proposed transferee’s commitment to cure such noncompliance; whether the transferee owns or controls any other cable system in the County, and whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in the County; and whether operation by the transferee or approval of the transfer would adversely affect subscribers, the public, or the County’s interest under this Certificate, the Code, or other applicable law;

WHEREAS, Yankee Cable and RCN have stated that they agree to abide by and accept all terms of the Certificate and the County Code, as they may be amended; and that Certificate

Holder will continue to be responsible for the obligations and liabilities, and continue to have responsibility for all acts and omissions, known and unknown, under the Certificate and the County Code, for all purposes, including renewal, unless waived, in whole or part, by the County;

WHEREAS, the Companies have stated that they do not seek any changes to the terms or conditions of services and operations (as set forth in the Certificate) as a consequence of the Proposed Transaction, and that they intend to comply fully with all Certificate provisions and to meet or exceed all applicable operational requirements;

WHEREAS, the Companies have represented to the County that the Proposed Transaction will result in no change to current management, technical, and operational personnel, and will not have an adverse effect on the future services to be provided by Certificate Holder;

WHEREAS, the County has reviewed the Application and followed all required procedures to consider and act upon the Application; and

WHEREAS, the County and the Companies have reached agreement on the terms and conditions set forth herein, and the Companies agree to be bound by those terms and conditions.

NOW, THEREFORE, in consideration for the County's consent to the Proposed Transaction, and subject to the terms and conditions of this Agreement and of the County's Resolution consenting to the Proposed Transaction ("Transfer Resolution"), THE PARTIES DO HEREBY AGREE as follows:

1. TRANSFER

1.1. The foregoing recitals are true and correct and are incorporated herein by reference.

1.2. The County has consented, through the adoption of the Transfer Resolution and execution of this Agreement, to the Proposed Transaction as described in the Transfer Application and responses to the Information Requests, in consideration for the promises and performances of the Companies as expressed in this Transfer Agreement.

2. ACCEPTANCE OF FRANCHISE OBLIGATIONS

2.1. Nothing in this Transfer Agreement amends or alters the Certificate or the County Code or any requirements therein in any way, and all provisions of the Certificate and the County Code remain in full force and effect and are enforceable in accordance with their terms and with applicable law.

2.2. The Companies agree that neither the Proposed Transaction nor the County's approval of the Proposed Transaction shall in any respect relieve the Certificate Holder or any of its successors in interest of their liability and responsibility for past acts or omissions, known or unknown. Certificate Holder hereby agrees that it shall continue to be liable for any such material acts and omissions, known and unknown, including liability for any and all previously accrued, but unfulfilled, obligations to the County under the Certificate and applicable law, for all purposes, including but not limited to review of past performance for purposes of determining whether the Franchise should be renewed. Certificate Holder agrees that all acts and omissions of Certificate Holder occurring prior to the Effective Date of this Agreement shall continue to be deemed to be those of Certificate Holder. The Proposed Transaction shall not restrict or expand the rights of the Certificate Holder under or related to the Certificate as compared to those that could have been exercised by the Certificate Holder prior to the Proposed Transaction.

2.3. The Companies shall ensure that all records pertaining to the Franchise, including financial records, shall continue to be available to the County after the Proposed Transaction in

the same way and to the same extent such information was available prior to the Proposed Transaction.

2.4. The Companies agree that, from and after the consummation of the Proposed Transaction, they will not take any action inconsistent with the promises contained in the Certificate, and shall comply and cause Certificate Holder to fully comply with all of the terms and conditions set forth in the Certificate and this Transfer Agreement after the Effective Date hereof.

2.5. The County reserves all rights not expressly granted in this Transfer Agreement, including without limitation those specified below.

2.6. The County waives none of its rights with respect to the Certificate Holder's compliance with the requirements set forth in the Certificate. At no time will the Companies contend, either directly or indirectly, that the County is barred, by reason of the Proposed Transaction, from considering, or raising claims based on, any defaults of Certificate Holder, any failure by Certificate Holder to provide reasonable service in light of the community's needs, or any failure by Certificate Holder to comply with the terms and conditions of the Certificate or with applicable law. The County's approval of the Proposed Transaction shall in no way be deemed a representation by the County that the Certificate Holder is in compliance with all of its obligations under the Certificate.

2.7. Neither this Transfer Agreement, nor any other action or omission by the County at or before the Effective Date of this Transfer Agreement, shall be construed to grant the County's consent to any future transfer of the Franchise, and/or any future change in ownership and/or control of the Franchise, or to mean that the County's consent to any future transaction is not required.

2.8. Any consent given by the County to the Proposed Transaction is made without prejudice to, or waiver of, the County's right to investigate, consider, and take into account any lawful matters during any future franchise renewal or transfer process.

2.9. This Transfer Agreement does not affect and shall not be construed to affect the rights and authority of the County to regulate or authorize, through its police powers, by ordinance, license or otherwise, use of the public rights-of-way for purposes other than for cable service.

To the extent that the Companies may seek to provide a service other than cable service pursuant to the Certificate, the County reserves the right to require any additional authorizations regarding such services that it may lawfully require. Consent to the Transfer shall not be deemed to be consent to the use of the public rights-of-way by any of the Companies or any of their Affiliates for any purpose other than the provision of cable service.

2.10. The County reserves all of its rights regarding the charging of a franchise fee or other compensation for the right to provide cable modem service, broadband service, information services, and any other service using the rights-of-way within the County. The County's consent to the Transfer shall not relieve the Certificate Holder of any obligation to pay such compensation, past, present, or future.

2.11. The County reserves all of its rights to regulate cable modem service, broadband service, information services, and any other service under applicable law, including, without limitation, the right to adopt rules related to subscriber privacy and customer service.

3. NO EFFECT ON RATES

3.1. The Companies represent and warrant that neither the Proposed Transaction nor this Transfer Agreement will result in any increase in subscriber rates.

4. REPRESENTATIONS AND WARRANTIES

4.1. Each of the Companies hereby represents and warrants that at the time of the execution of this Agreement by or on behalf of each such Company: (a) it is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; (b) the Certificate and, assuming due execution hereof by the other parties hereto, this Transfer Agreement constitute legal, valid, and binding obligations of such Company enforceable in accordance with their terms; (c) the execution and delivery of, and performance by such Company under, this Transfer Agreement and the Certificate, where applicable, are within such Company's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite corporate or

limited liability company action on the part of such Company and are not in contravention of such Company's limited liability company operating agreement, charter, bylaws, and/or other organizational documents; and (d) no representation made to the County by such Company is incomplete, untrue, or inaccurate in any material respect.

4.2. Certificate Holder represents and warrants that neither the Proposed Transaction nor this Transfer Agreement will adversely affect its ability to meet the requirements of the current Certificate.

4.3. The Companies represent and warrant that the Proposed Transaction will not have any adverse financial effect on ability of Certificate Holder to provide high-quality communications services pursuant to the Certificate.

4.4. Certificate Holder represents and warrants that the Proposed Transaction will not in any respect reduce the quality of customer service in the County.

4.5. Certificate Holder represents and warrants that the Proposed Transaction will not reduce the quality of existing system maintenance or repair.

5. COMMITMENTS BY THE CERTIFICATE HOLDER

5.1. In accordance with Section 41.2-5 of the County Code and Section 3.20(d) of the Certificate, the Companies agree to reimburse the County for all costs, including fees and expenses, actually and reasonably incurred (including, without limitation, for attorneys and financial consultants) in the County's review of the Transfer Application, including but not limited to the costs of negotiations, evaluating the past performance and qualifications of Certificate Holder and Yankee Cable, and preparing this Agreement and related documentation. The amount of the filing fee paid pursuant to Section 41.2-5 of the County Code shall not be offset or credited against such actual and reasonable costs. Payment to the County shall be delivered within thirty (30) days of receipt of invoices. Such payments are in addition to any franchise fee, and shall be deemed subject to the exception specified in 47 U.S.C. § 542(g)(2)(D). Failure to make timely payment of these costs and expenses, except to the extent that they are the subject of legitimate dispute, shall constitute a material violation of this

Agreement. No consideration provided pursuant to this Agreement can be construed to constitute a franchise fee, nor are any payments made under the terms of this Agreement subject to any limitations on franchise fees under applicable law or in the Certificate. The Companies hereby waive any current or future claim to the contrary.

5.2. Report on County System.

5.2.1. Certificate Holder will produce and deliver to the County a written report (the "Report"), consistent with the County-adopted Telecommunications Master Plan, recommending best practices and procedures for the County to operate and manage its own fiber infrastructure and communications services ("County System") supporting an open network for government and non-government use. The County System will operate in geographic zones to be defined by the County. These zones may be, for example, areas defined by economic, government, transportation, educational, research, or public safety priorities.

5.2.2. The County shall identify the geographic zones and notify Certificate Holder of such zones, not later than ninety (90) days after the Effective Date.

5.2.3. The Report shall describe the personnel, equipment, financial, consulting, and other resources which may be needed for the County to operate and manage the County System on a continuing basis.

5.2.4. The Report shall identify and address, among other things, all known and reasonably anticipated operational and financial risks to the County of operating and managing its own open network system.

5.2.5. Prior to preparing the Report, Certificate Holder shall review the assumptions and goals of the Telecommunications Master Plan and other related documents as identified by the County Telecommunications Master Planner.

5.2.6. Certificate Holder shall deliver to the Telecommunications Master Planner for review and comment, a draft report not later than two hundred and seventy (270) days after the Effective Date.

5.2.7. The County shall deliver to Certificate Holder any comments not later than thirty (30) days after receipt of the draft report. Certificate Holder shall deliver to the

County a final Report, conforming to Arlington's standard report format requirements, not later than one year after the Effective Date.

6. INDEMNIFICATION

6.1. Each of the Companies agrees to indemnify and hold the County, its elected and appointed officers, officials, employees, agents, and contractors, harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) caused by any representation or warranty made by that Company herein which is determined by a court of competent jurisdiction or by the parties to be untrue or inaccurate in any material respect.

6.2. Certificate Holder shall indemnify and hold the County, its elected and appointed officers, officials, employees, agents, and contractors, harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) incurred by the County in connection with any action or proceeding commenced by a third party (not one of the parties to this Transfer Agreement) claiming or asserting any liability of the County relating to or arising from the Proposed Transaction or this Transfer Agreement.

7. ADDITIONAL CONDITIONS

7.1. In the event the Proposed Transaction does not close within 180 days after the date of the County's consent to the Proposed Transaction, or closes on terms that are in any material respect different from the terms disclosed to the County in writing, then any County consent to the Proposed Transaction shall be void and of no force or effect, and the Proposed Transaction deemed to have been timely denied, without any further action by any of the Parties to this Agreement.

7.2. The Companies hereby waive any and all claims that they may have that any denial of the Transfer Application that results from failure of the conditions in Section 7.1 fails to satisfy the deadlines established by applicable law including, without limitation, claims based on, arising out of, or relating to 47 U.S.C. § 537, as amended, and agree that the Companies shall

be deemed to have agreed to an extension of the time to act on the Transfer Application as required to make any such denial effective.

8. BREACHES

Any breach of this Transfer Agreement or any exhibit thereto shall be deemed a breach of the Certificate and shall be subject to all remedies available for a breach of the Certificate, in addition to any other remedies the Parties may have under this Transfer Agreement at law or equity.

9. MISCELLANEOUS PROVISIONS.

9.1. **Effective Date:** This Transfer Agreement shall be effective and binding upon the signatories once it has been signed by all signatories (“Effective Date”).

9.2. **Binding Acceptance:** This Transfer Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof. Any purported assignment of this Transfer Agreement is void without the express written consent of the signatories.

9.3. **Voluntary Agreement:** This Transfer Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Transfer Agreement. Neither any of the Companies, nor any of their affiliates, nor the County, will take any action to challenge any provision of this Transfer Agreement; nor will they participate with any other person or entity in any such challenge.

9.4. **Severability:** If any term, condition, or provision of this Transfer Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

9.5. **Counterparts:** This Transfer Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

9.6. **Conforming Amendments to Certificate:** Yankee Cable and Certificate Holder agree to accept Certificate amendments that may be adopted by the County to the extent necessary to conform the Certificate to the Proposed Transaction or the provisions of this Transfer Agreement.

9.7. **Governing Law:** This Transfer Agreement shall be governed in all respects by the law of the Commonwealth of Virginia.

9.8. **Consent to Jurisdiction:** All litigation that arises out of or is related to this Transfer Agreement shall be brought in the Circuit Court for Arlington County, Virginia, unless otherwise required by law to be filed in the federal courts. In instances where such a requirement exists, such litigation shall be brought in the U.S. District Court for the Eastern District of Virginia, Alexandria Division. The Parties consent to venue and jurisdiction in the aforementioned courts.

9.9. **Captions and References:** The captions and headings of sections throughout this Transfer Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Transfer Agreement. Such captions shall not affect the meaning or interpretation of this Transfer Agreement.

AGREED TO BY THE PARTIES:

**COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA**

_____ By: _____
Date

By: _____

APPROVED AS TO FORM:

STARPOWER COMMUNICATIONS, L.L.C.

_____ By: _____
Date Its: _____

YANKEE CABLE ACQUISITION, L.L.C.

_____ By: _____
Date Its: _____

RCN TELECOM SERVICES, L.L.C.

_____ By: _____
Date Its: _____

Exhibit C

Settlement Agreement between Starpower and the County, 2004

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** is entered into this ____ day of March, 2004, by and between Starpower Communications, L.L.C. ("Starpower" or the "Company"), a Delaware limited liability company, and the County Board of Arlington County, Virginia (the "County"). (Starpower and the County may be referred to jointly as "the parties.")

WHEREAS, the County has granted Starpower a franchise to construct and operate a cable television system in the County; and

WHEREAS, the terms of this franchise are specified in the Certificate of Public Convenience and Necessity for Cable Television between Arlington County and Starpower Communications, L.L.C., which became effective on September 1, 2000 (the "Certificate"), and in Chapter 41.2 of the Arlington County Code; and

WHEREAS, the Certificate requires Starpower to complete construction of a cable system in the County no later than three years after the effective date of the Certificate, or four years if certain conditions apply; and

WHEREAS, Starpower has informed the County that because of unanticipated changes in market conditions that have developed since the Certificate was issued, Starpower has not completed and will not be able to complete the system in accordance with the deadlines in the Certificate; and

WHEREAS, Starpower's failure to complete construction of the system as required raises potential claims under the Certificate; and

WHEREAS, on August 26, 2003, Starpower submitted to the County a request for modification of the Certificate pursuant to 47 U.S.C. § 545 (the "Modification Request") in which Starpower sought to modify the Certificate to eliminate the construction and certain other related obligations therein; and

WHEREAS, Starpower seeks to retain the opportunity to provide competition in the County in the event that market conditions and its financial circumstances permit; and

WHEREAS, the County is committed to promoting competition in cable television service for County residents, and is therefore prepared to amend the Certificate, without acting on the Modification Request; and

WHEREAS, the County and the Company wish to resolve amicably, for their mutual benefit, all matters regarding the Modification Request and Starpower's compliance with the Certificate;

NOW, THEREFORE, in exchange for the benefits and undertakings described herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as more fully described below, the parties agree as follows:

1. Starpower Commitments. In full and complete consideration of the County's agreement to amend the Certificate, and other consideration set forth in this Agreement, Starpower agrees as follows:

- (a) Starpower shall pay the County the sum of Two Hundred Fifty Thousand Dollars (\$250,000) (the "Capital Payment"), in a lump sum, on or before the effective date of the Amended Certificate, as defined below. The Capital Payment shall be used (i) to support the County's Institutional

Network and related public, educational and governmental access capital purposes, and (ii) as required by Section 3.25 of the Certificate, to reimburse the County for costs incurred in connection with the negotiation and preparation of the Amended Certificate and this Agreement.

Notwithstanding the foregoing, the Certificate Holder shall be entitled to repayment of up to one-half of the Capital Payment, or a maximum of \$125,000, if, within five (5) years of the effective date of the Amended Certificate (the "Eligibility Date"), Starpower demonstrates to the satisfaction of the County that Starpower's network is, as of the Eligibility Date, passing ten thousand (10,000) or more residents in the County by means of facilities constructed in the County since the date of this Agreement. Any such repayment shall take the form of a credit against any franchise fees that would otherwise be owed to the County under this Certificate; Starpower shall not be required to make a franchise fee payment until the amount of the credit is exhausted. The County shall not be required to make any such repayment in any form other than such a credit.

- (b) Starpower shall withdraw the Modification Request within two (2) business days of the approval of this Agreement by the County Board.

2. County Commitments. In full and complete consideration of the payment of the foregoing sum, and other consideration set forth in this Agreement, the County agrees as follows:

- (a) The Certificate shall be amended as set forth in the attached Amended Certificate of Public Convenience and Necessity for Cable Television (the "Amended Certificate"). The effective date of the Amended Certificate shall be March 30, 2004.

(b) Nothing in Section 3.24 of the Certificate shall be deemed to permit the County to impose any obligations on Starpower for the completion of a cable system serving all or any portion of Arlington County by a date certain, without the concurrence of Starpower in the form of a further amendment of the Amended Certificate.

3. Mutual Release. The parties hereby release each other of all claims they may have against each other arising out of or related to (i) the Certificate or (ii) the performance of their respective obligations under the Certificate, through the date of this Agreement.

4. Binding Effect. The Amended Certificate shall be binding on both parties as of the effective date thereof.

5. No Effect on County Code Requirements. Nothing in this Settlement Agreement amends or alters the County Code in any way, and all provisions of the County Code remain in full force and effect and are enforceable in accordance with their terms and with applicable law.

6. Breach. Any breach of this Settlement Agreement shall be deemed a breach of the Amended Certificate and shall be subject to all remedies available for a breach of the Amended Certificate, in addition to any other remedies the parties may have under this Settlement Agreement at law or in equity.

7. Notices. All notices and communications shall be given to the parties at the following addresses, or such other addresses as the parties shall provide to each other in writing:

If to the County:

Clerk to the County Board
Arlington County Board
2100 Clarendon Boulevard

Suite 300
Arlington, Virginia 22201

With copy to:

Cable Television Administrator
Arlington County, Virginia
2100 Clarendon Boulevard
Suite 314
Arlington, Virginia 22201

If to the Company:

General Manager
Starpower Communications, LLC
10000 Derekwood Lane
Lanham, MD 20706

With copy to:

General Counsel
Starpower Communications, LLC
10000 Derekwood Lane
Lanham, MD 20706

8. Authority. Each signatory to this Settlement Agreement represents that he or she has the authority to enter into this Settlement Agreement.

9. Voluntary Agreement. This Settlement Agreement is freely and voluntarily given by all of the parties, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Settlement Agreement.

10. Successors and Assigns. This Settlement Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their successors in interest, assigns, personal representatives and heirs.

11. Counterparts. This Settlement Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

12. Headings. The headings in this Settlement Agreement are for convenience of reference only and are not a material part of this Settlement Agreement. They shall not be used in determining the intent of the parties.

13. Governing Law. This Settlement Agreement shall be governed by and construed, and the legal relations between the parties determined, in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth above.

AGREED TO THIS ____ DAY OF MARCH, 2004.

County Board of Arlington County, Virginia

By: *Jayne L. Wilson*
Name:
Position: *Acting County Manager*

STARPOWER COMMUNICATIONS, LLC

By: *Richard Wadman*
Name: Richard Wadman
Position: General Manager

Exhibit D

ITAC Report on the Proposed RCN Transfer Agreement

The Information Technology Advisory Commission (ITAC)

Report on the Proposed RCN Transfer Agreement

June 24, 2010

The ITAC, at its June 2010 Meeting, unanimously concurred with the Arlington County Staff proposed RCN Transfer Agreement that would transfer control of the current franchise agreement to the Yankee Cable Company reflecting the merger of these two organizations. The ITAC felt that this would potentially serve to increase competition for the offering of Cable television and broad band information services in Arlington.

Further, the ITAC believes that the future of County-based information services via the County's Institutional Network (I-Net) are of key importance to the County in terms of educational, emergency and many other public services—all of which benefit the citizens of Arlington. With the free provision of I-Net services by Comcast under the current franchise agreement in question in 2013, there is a need to make alternative arrangements for providing broadband services that are of significant economic, operational and technical significance to the County and its citizens. Therefore, the ITAC sees a clear benefit in the offer by RCN-Yankee Cable, as a part of this transfer agreement, to undertake, at no cost to Arlington County, an operational and management study to examine how a publicly owned broadband IT network might be more effectively implemented in Arlington post 2013. (See attachment No. 1 to this report). In short, we see this study to be of significant value to the County, and thus we believe this study as outlined in section 5.2.1 of the proposed agreement to be an important reason to proceed as proposed by the County Manager and the Department of Technology Services staff.

Recommendation: The ITAC unanimously recommends Board Approval of the propose RCN Transfer Agreement.

Signed,

/s/

Joseph N. Pelton, Chairman, ITAC

Attachment No. 1: Section 5.2 of Proposed Transfer Agreement

Text of Section 5.2.1: “Certificate Holder will produce and deliver to the County a written report (the “Report”), consistent with the County-adopted Telecommunications Master Plan, recommending best practices and procedures for the County to operate and manage its own fiber infrastructure and communications services (“County System”) supporting an open network for government and non-government use. The County System will operate in geographic zones to be defined by the County. These zones may be, for example, areas defined by economic, government, transportation, educational, research, or public safety priorities.”