



May 9, 2018

Mr. Alan Davis  
County Administrator  
Berkeley County  
400 West Stephen Street, Suite 201  
Martinsburg, WV 25401

Received  
MAY 10 2018  
Berkeley County  
Council

Mr. Davis,

Please find attached the executed franchise agreement between Berkeley County and Comcast. Feel free to reach out to me, or to Paul Comes at (540) 974-5123, with any questions or concerns.

Regards,

A handwritten signature in black ink, appearing to read "Matt Shiffermiller", written in a cursive style.

Matt Shiffermiller  
Director, Government Affairs  
(301) 836-9361

CABLE FRANCHISE AGREEMENT

BETWEEN

BERKELEY COUNTY, WEST VIRGINIA

AND

COMCAST OF CALIFORNIA/MARYLAND/PENNSYLVANIA/VIRGINIA/WEST  
VIRGINIA, LLC

## TABLE OF CONTENTS

Section 1.	Definition of Terms .....	2
Section 2.	Grant of Authority .....	4
Section 3.	Construction and Maintenance of the Cable System .....	5
Section 4.	Service Obligations.....	6
Section 5.	Fees and Charges to Customers.....	7
Section 6.	Customer Service Standards; Customer Bills; and Privacy Protection .....	8
Section 7.	Oversight and Regulation by Franchise Authority .....	8
Section 8.	Transfer of Cable System or Franchise .....	10
Section 9.	Insurance and Indemnity.....	10
Section 10.	System Description and Service .....	11
Section 11.	PEG Access Channel .....	11
Section 12.	Enforcement and Revocation Proceedings .....	12
Section 13.	Competitive Equity.....	14
Section 14.	Miscellaneous Provisions .....	15

Exhibit A: Courtesy Service Locations

## FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between Berkeley County, West Virginia (hereinafter, "County" or "Franchise Authority") and Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC (hereinafter, "Franchisee").

The County having determined that the financial, legal, and technical ability of the Franchisee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Franchisee for the construction, operation, and maintenance of a Cable System on the terms and conditions set forth herein.

### SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§521 - 631 (the "Cable Act"), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words used to refer to the masculine include the feminine, words in the plural number include the singular number, and likewise, words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in the Cable Act or herein shall be given their common and ordinary meaning.

1.1. "Cable Service" or "Service" shall mean the one-way transmission to Subscribers of Video Programming or other Programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other Programming service.

1.2. "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, and as further defined under Section 602 (7) of the Cable Act.

1.3. "County" shall mean Berkeley County, West Virginia or the lawful successor, transferee, designee, or assignee thereof.

1.4. "Customer" or "Subscriber" shall mean a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee's express permission.

1.5. "Effective Date" shall mean April 5 2018.

1.6. "FCC" shall mean the Federal Communications Commission, or successor governmental entity thereto.

1.7. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the Franchise Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.8. "Franchise Agreement" or "Agreement" shall mean this Agreement and any amendments or modifications hereto.

1.9. "Franchise Area" shall mean the present legal boundaries of Berkeley County, West Virginia, as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means during the term of the Franchise, as per the requirements set forth herein.

1.10. "Franchise Authority" shall mean Berkeley County, West Virginia or the lawful successor, transferee, designee, or assignee thereof.

1.11. "Franchisee" shall mean Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC.

1.12. "Gross Revenue" shall mean revenue derived by the Franchisee from the operation of the Cable System in the Franchise Area to provide Cable Service, calculated in accordance with generally accepted accounting principles ("GAAP"). Gross Revenue includes monthly basic cable, premium and pay-per-view video fees, installation fees and subscriber equipment rental fees, and commercial leased access fees. Gross Revenue shall not include program launch support payments, revenue from advertising and home shopping, refundable deposits, late fees, investment income, nor any taxes, franchise fees, or other fees or assessments imposed or assessed by any governmental authority. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with generally accepted accounting principles, provided however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in the Gross Annual Revenues in the period so collected.

1.13. "Person" shall mean any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchise Authority.

1.14. "Public Buildings" shall mean those buildings owned or leased by the Franchise Authority for government administrative purposes, and shall not include buildings owned by Franchise Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

1.15. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, park, bridge, waterway, dock, bulkhead, wharf, pier, other public ground or water subject to the jurisdiction and control of the Franchise Authority, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility

strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the Franchise Area, which shall entitle the Franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchise Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchisee to the use thereof for the purposes of installing, operating, and maintaining the Franchisee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and appurtenant to the Cable System.

1.16. "Standard Installation" shall mean the standard one hundred twenty-five foot (125') aerial Drop connection to the existing distribution system.

1.17. "Video Programming" or "Programming" shall mean the programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1.18. "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple Video Programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multi-channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

## **SECTION 2 - Grant of Authority**

2.1. **Franchise Grant.** The Franchise Authority hereby grants to the Franchisee a non-exclusive Franchise authorizing the Franchisee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to use, erect, install, construct, repair, alter, add to, inspect, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, underground conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and, including but not limited to, above ground enclosures, markers, and concrete pads, or other related property, equipment, or fixtures as may be necessary, useful, or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. **Term of Franchise.** The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act. This Franchise shall be automatically extended for one (1) additional term of five (5) years unless either party notifies the other in writing of its desire to enter renewal negotiations under the Cable Act at least three (3) years before the expiration date of the then-current Franchise Agreement.

2.3. **Renewal.** Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act [47 U.S.C. §546], as amended.

### **SECTION 3 - Construction and Maintenance of the Cable System**

3.1. Permits and General Obligations. The Franchisee shall be responsible for obtaining all generally applicable permits, licenses, or other forms of approval or authorization prior to the commencement of any activity that materially disturbs the surface of any street, curb, sidewalk or other public improvement in the Public Way, or impedes vehicular traffic. The issuance of such permits shall not be unreasonably withheld, conditioned, or delayed. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All work shall be done by the Franchisee in accordance with FCC regulations. Notwithstanding the requirements herein, Franchisee shall not be required to obtain a permit for individual drop connections to Subscribers, servicing or installing pedestals or other similar facilities, or other instances of routine maintenance or repair to its Cable System. All transmission and distribution structures, poles, other lines, and equipment installed by the Franchisee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

#### 3.2. Conditions of Street Occupancy.

3.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Franchisee shall, upon reasonable advance written notice from the Franchise Authority (which shall not be less than thirty (30) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchise Authority shall notify Franchisee of such funding and make available such funds to the Franchisee within a reasonable timeframe. In the event that funds are not available, Franchisee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

3.2.2. Relocation at Request of Third Party. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchise Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than thirty (30) business days advance written notice to arrange for such temporary relocation.

3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance as is practical.

3.2.4. Safety Requirements. The Franchisee shall undertake all necessary and appropriate commercial efforts to maintain its work sites in a safe manner in order to prevent

failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

3.2.5. Trimming of Trees and Shrubbery. The Franchisee shall have the authority to trim trees or other natural vegetative growth encroaching or overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. The Franchisee shall be responsible for any collateral, direct real property damage caused by such trimming.

3.2.6. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aurally or underground. Nothing in this Agreement shall be construed to require the Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the Franchise Authority or private parties. Franchisee shall be given reasonable notice and access to the public utilities' facilities at the time that such are placed underground and shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. In the event that public and/or private funds are not available or do not cover the entire direct and actual cost of the relocation, Franchisee reserves the right to pass its costs, or in the case of partial reimbursement from public and/or private funds its incremental cost, through to its Subscribers in accordance with applicable law.

#### **SECTION 4 - Service Obligations**

4.1. General Service Obligation. The Franchisee shall make Cable Service available to every occupied residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) occupied residential dwelling units per mile (excluding homes subscribing to direct satellite or being served by a cable television system operator other than the Franchisee or its affiliates) and is within one (1) mile as measured in strand footage from the nearest point on the Cable System trunk or feeder line from which a usable cable signal can be obtained. For purposes of this section, a home shall only be counted as a

“dwelling unit” if such home is within two hundred seventy-five (275) feet of the public right of way. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes located within one hundred and fifty (150) feet of the Franchisee’s distribution cable at the standard installation rate. Should, through new construction, an area within the Franchise Area meet the density requirements, Franchisee shall provide Cable Service to such area within one (1) year after it confirms that the density requirements have been met following notice from the Franchise Authority that one (1) or more residents has requested Service.

The Franchisee may elect to extend Cable Service to areas that do not otherwise qualify to receive Cable Service under this section if any resident or group of residents agree in writing to pay to Franchisee the cost of construction, including materials, labor, and the total cost of any easement(s) necessary to accomplish the proposed line extension. One half of the cost of construction shall be paid to the Franchisee prior to engineering and the balance shall be paid prior to commencement of construction.

4.2. Programming. The Franchisee shall offer to all Customers a diversity of Video Programming services in accordance with federal law.

4.3. No Unfair Discrimination. Neither the Franchisee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area; provided, however, Franchisee reserves the right to deny service for good cause, including but not limited to non-payment or theft of service, vandalism of equipment, or documented or founded harassment or abuse of Franchisee’s employees or agents. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person’s financial or other obligations to the Franchisee are satisfied. Nothing contained herein shall prohibit the Franchisee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its customary business practice.

4.4. New Developments. The Franchise Authority shall provide the Franchisee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchise Authority agrees to require the developer, as a condition of issuing the permit, to give the Franchisee access to open trenches for deployment of cable facilities and at least fifteen (15) business days written notice of the date of availability of open trenches.

4.5. Prohibition Against Reselling Service. No Person shall sell, offer for sale, or resell, without the express prior written consent of the Franchisee, any Cable Service, program or signal transmitted over the Cable System by the Franchisee.

## **SECTION 5 - Fees and Charges to Customers**

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Franchisee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations. Before any new or modified rate, fee, or charge is imposed, the Franchisee shall follow the applicable FCC notice

requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

### **SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection**

6.1. Customer Service Standards. The Franchise Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Franchisee shall comply in all respects with the customer service requirements established by the FCC.

6.1.1. Franchisee shall maintain a conveniently located business office or designated agent that shall be open during Normal Business Hours and shall maintain a publicly listed toll-free telephone number.

6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (i) is not misleading and (ii) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Franchisee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622 (c) of the Cable Act [47 U.S.C. §542 (c)].

6.3. Privacy Protection. The Franchisee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

### **SECTION 7 - Oversight and Regulation by Franchise Authority**

7.1. Franchise Fees. The Franchisee shall pay to the Franchise Authority a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Franchisee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each first, second and third calendar quarter (i.e., May 15, August 15, November 15) and sixty (60) days after the close of the calendar year (last day of February). Each franchise fee payment shall be accompanied by a report prepared by a representative of the Franchisee showing the basis for the computation of the Franchise Fees paid during that period.

7.2. Franchise Fees Subject to Audit.

7.2.1 Upon notice pursuant to Section 13.2 herein, during Normal Business Hours at Franchisee's principal business office, the Franchise Authority shall have the right to inspect the Franchisee's financial records used to calculate the Franchise Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from

the date the Franchise Authority receives such payment, after which period any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by the Franchise Authority, the Franchise Authority shall provide to the Franchisee a final report setting forth the Franchise Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Franchisee shall have thirty (30) days from the receipt of the report to provide the Franchise Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Final Settlement Amount." For purposes of this Section, the term "Final Settlement Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchise Authority by the Franchisee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.2.3. Any "Final Settlement Amount(s)" due to the Franchise Authority as a result of such audit shall be paid to the Franchise Authority by the Franchisee within thirty (30) days from the date the parties agree upon the "Final Settlement Amount." Once the parties agree upon a Final Settlement Amount and such amount is paid by the Franchisee, the Franchise Authority shall have no further rights to audit or challenge the payment for that period. The Franchise Authority shall bear the expense of its audit of the Franchisee's books and records.

7.3. Oversight of Franchise. In accordance with applicable law, the Franchise Authority shall have the right to, at its sole cost and expense and upon reasonable prior written notice and in the presence of Franchisee's employee, periodically inspect the construction and maintenance of the Cable System in the Franchise Area as necessary to monitor Franchisee's compliance with the provisions of this Franchise Agreement.

7.4. Technical Standards. The Franchisee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76.601 et seq. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Franchisee shall comply with such altered, modified or amended standards within a commercially reasonable period after such standards become effective. The Franchise Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC rules.

7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Throughout the term of this Franchise Agreement, the Franchisee agrees that the Franchise Authority may review the Franchisee's books and records in the Franchise Area as are reasonably necessary to monitor Franchisee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Franchisee pursuant to this Agreement, at the Franchisee's business office, during Normal Business Hours, and without unreasonably interfering with Franchisee's business operations. All such documents that may be the subject of an inspection by the Franchise Authority shall be retained by the Franchisee for a minimum period of twenty-four (24) months.

7.5.2. File for Public Inspection. Throughout the term of this Franchise Agreement, the Franchisee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's Public Inspection File rules and regulations.

7.5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchise Authority agrees to treat any information disclosed by the Franchisee as confidential and only to disclose it to those employees, representatives, and agents of the Franchise Authority that have a need to know in order to enforce this Franchise Agreement and who agree, through the execution of a non-disclosure agreement, to maintain the confidentiality of all such information. The Franchisee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Franchisee to be competitively sensitive. Franchisee may make proprietary or confidential information available for inspection, but not copying or removal of information by the Franchise Authority's representative. In the event that the Franchise Authority has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the Franchisee has designated as confidential, trade secret or proprietary, the Franchise Authority shall notify Franchisee of such request and cooperate with Franchisee in opposing such request.

## **SECTION 8 - Transfer of Cable System or Franchise**

8.1. Neither the Franchisee nor any other Person may transfer the Cable System or the Franchise without prior written notice to the Franchise Authority. No prior notice shall be required, however, for: (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or in the Cable System in order to secure indebtedness, (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation, or (iii) the sale, conveyance, transfer, exchange or release of fifty percent (50%) or less of its equitable ownership. Within thirty (30) days of receiving a notice of transfer, the Franchise Authority may, in accordance with FCC rules and regulations, notify the Franchisee in writing of the additional information, if any, it requires regarding the legal, financial, and technical qualifications of the transferee or new controlling party.

## **SECTION 9 - Insurance and Indemnity**

9.1. Insurance. Throughout the term of this Franchise Agreement, the Franchisee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the Franchise Authority certificates of insurance designating the Franchise Authority and its officers, boards, commissions, councils, elected officials, and employees as additional insureds and demonstrating that the Franchisee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of five hundred thousand

dollars (\$500,000.00) per occurrence for bodily injury or property damage. The Franchisee shall provide workers' compensation coverage in accordance with applicable law.

9.2. Indemnification. The Franchisee shall indemnify, defend and hold harmless the Franchise Authority, its officers and employees acting in their official capacities from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that directly arise out of the Franchisee's construction, operation, maintenance, or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchise Authority shall give the Franchisee timely written notice of its obligation to indemnify and defend the Franchise Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. The Franchise Authority agrees that it will take all necessary action to avoid a default judgment and not prejudice the Franchisee's ability to defend the claim or action. If the Franchise Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchise Authority.

9.2.1 Franchisee shall not be required to indemnify the Franchise Authority for negligence or misconduct on the part of the Franchise Authority or its officials, boards, commissions, agents, or employees, including any loss or claims related to PEG access Channels in which the Franchise Authority or its designee participates, subject to Applicable Law.

#### **SECTION 10 - System Description and Service**

10.1. System Capacity. During the term of this Agreement, the Franchisee's Cable System shall be capable of providing Video Programming with reception available to its customers in the Franchise Area in accordance with the Cable Act.

10.2. Cable Service to School and County Facilities. Franchisee shall continue to provide, at no cost to the Franchise Authority, Basic Cable Service and Standard Installation at one (1) outlet to each public grade school (K-12) building, library, and County administration facility receiving such service as of the Effective Date as listed in Exhibit A. Upon written request, the Franchisee shall provide, at no cost to the Franchise Authority, Basic Cable Service and Standard Installation at one (1) outlet to each public grade school (K-12) building, library, and County administration facility located in the Franchise Area within one hundred fifty (150) feet of the Franchisee's distribution cable. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred fifty (150) feet distance of the cable plant and service for more than one (1) drop in each building. For the purposes of this section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, and does not include "home schools."

#### **SECTION 11 – PEG Access Channel**

11.1. Franchisee shall continue to make available one (1) channel for public, educational and governmental access video programming provided by the Franchise Authority or its designee, such as a public access organization or educational institution. Use of a channel

position for public, educational and governmental ("PEG") access shall be provided on the most basic tier of service offered by Franchisee in accordance with the Cable Act, Section 611, and as further set forth below. "Channel position" means a number designation on the Franchisee's channel lineup regardless of the transmission format (analog or digital). Franchisee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. A PEG Access User – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated. Franchisee shall not exercise editorial control over any public, educational, or governmental programming, except Franchisee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity pursuant to Section 611 of the Cable Act.

11.2. Noncommercial use of PEG. The Franchise Authority, or its designee, agrees that it will not use its designated PEG Access channel, equipment, or other facilities to provide for-profit commercial services which have the effect of competing with Franchisee's business.

11.3. Franchisee Use of Fallow Time. Because blank or under-utilized PEG channels are not in the public interest, in the event the Franchise Authority or other PEG access user elects not to fully program its channel, a Franchisee may program unused time on the channel upon thirty (30) days' notice. Franchisee's use of any channel under this provision is subject to reclamation by the Franchise Authority upon no less than sixty (60) days' notice.

11.4. PEG Return Feeds. Franchisee shall maintain an activated direct return feed from the PEG Access origination location at 401 South Queen Street, Martinsville, WV to the Franchisee's head end. In the event that a PEG Operator moves its PEG origination location from its current location to a new location, the Franchise Authority shall identify the facility for the new PEG origination location, and Franchisee shall, at the expense of the Franchise Authority, construct the necessary PEG Access video return feed to the new location within one hundred eighty days (180) of payment.

11.5. Recovery of Costs. To the extent permitted by federal law, the Franchisee shall be allowed to recover its costs arising from the provision of PEG services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill.

11.6. Indemnification. The Franchise Authority shall indemnify Franchisee for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties or arising out of the content of programming shown on any PEG channel and from claims arising out of the Franchise Authority's rules for or administration of access.

## **SECTION 12 - Enforcement and Revocation Proceedings**

12.1. Notice of Violation or Default and Opportunity to Cure. In the event the Franchise Authority believes that the Franchisee has not complied with the material terms of the Franchise, it shall notify the Franchisee in writing with specific details regarding the exact nature of the alleged non-compliance or default.

12.1.1. Franchisee's Right to Cure or Respond. The Franchisee shall have forty-five (45) days from the receipt of the Franchise Authority's written notice: (i) to respond

to the Franchise Authority, contesting the assertion of non-compliance or default; or (ii) to cure such default; or (iii) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate commercially reasonable steps to diligently remedy such default and notify the Franchise Authority of the steps being taken and the projected date that the cure will be completed.

12.1.2. Public Hearings. In the event the Franchisee fails to respond to the Franchise Authority's notice or in the event that the alleged default is not remedied within forty five (45) days or the date projected by the Franchisee, the Franchise Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchise Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchise Authority shall notify the Franchisee in advance, in writing of the time and place of such meeting and provide the Franchisee with a reasonable opportunity to be heard.

12.1.3. Enforcement. Subject to applicable federal and state law, in the event the Franchise Authority, after such public hearing, determines that the Franchisee is in default of any material provision of the Franchise, the Franchise Authority may: (i) seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or (ii) in the case of a substantial default of a material provision of the Franchise, initiate revocation proceedings in accordance with the following:

(a) The Franchise Authority shall give written notice to the Franchisee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Franchisee, including two or more instances of substantial non-compliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the non-compliance. The Franchisee shall have ninety (90) business days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchise Authority has not received a response from the Franchisee or upon receipt of the response does not agree that the allegations of non-compliance have been or will be resolved, it may then seek revocation of the Franchise at a public hearing. The Franchise Authority shall cause to be served upon the Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request revocation of the Franchise.

(b) At the designated public hearing, the Franchise Authority shall give the Franchisee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the State of West Virginia, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Franchisee within ten (10) business days. The decision of the Franchise Authority shall be in writing and shall be delivered to the Franchisee by certified mail. The Franchisee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchise Authority "de novo" and to modify or reverse such decision as justice may require.

12.2. Technical Violation. The Franchise Authority agrees that it is not its intention to subject the Franchisee to penalties, fines, forfeitures or revocation of the Franchise for so-called “technical” breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

12.2.1. in instances or for matters where a violation or a breach of the Franchise by the Franchisee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

12.2.2. where there existed circumstances reasonably beyond the control of the Franchisee and which precipitated a violation by the Franchisee of the Franchise, or which were deemed to have prevented the Franchisee from complying with a term or condition of the Franchise.

12.3. No Removal of System. Franchisee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Franchisee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act, or any portion thereof [47 U.S.C. §541(b)].

### **SECTION 13 - Competitive Equity**

13.1. Purposes. The Franchisee and the Franchise Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchise Area; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to residents of the Franchise Area; promote local communications infrastructure investments and economic opportunities in the Franchise Area; and provide flexibility in the event of subsequent changes in the law, the Franchisee and the Franchise Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

13.2. New Video Service Provider.

13.2.1. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider (“VSP”) (i) enters into any agreement with the Franchise Authority to provide video services to subscribers in the Franchise Area, or (ii) otherwise begins to provide video services to subscribers in the Franchise Area (with or without entering into an agreement with the Franchise Authority), the Franchise Authority, upon written request of the Franchisee, shall permit the Franchisee to construct and operate its Cable System and to provide video services to subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Franchisee and the Franchise Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the

VSP within sixty (60) days after the Franchisee submits a written request to the Franchise Authority.

13.2.2. If there is no written agreement or other authorization between the new VSP and the Franchise Authority, the Franchisee and the Franchise Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Franchisee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the Franchise Area.

13.3. Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchise Authority may request from or impose on a VSP providing video services to subscribers in the Franchise Area, the Franchise Authority agrees that, notwithstanding any other provision of law, upon Franchisee's written request the Franchise Authority shall: (i) permit the Franchisee to provide video services to subscribers in the Franchise Area on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity and parity between the Franchisee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the Franchise Area. The Franchise Authority and the Franchisee shall implement the provisions of this Section within sixty (60) business days after the Franchisee submits a written request to the Franchise Authority. Notwithstanding any provision of law that imposes a time or other limitation on the Franchisee's ability to take advantage of the changed law's provisions, the Franchisee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

13.4. Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the Franchise Area under Sections 13.2 or 13.3 shall supersede this Agreement, and the Franchisee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchise Authority, without penalty or damages.

#### **SECTION 14 - Miscellaneous Provisions**

14.1. Force Majeure. The Franchisee shall not be held in default under, or in non-compliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to non-compliance or default (including termination, cancellation or revocation of the Franchise), where such non-compliance or alleged defaults occurred or were caused by lightning strike, earthquake, flood, tidal wave, unusually severe rain, ice or snow storm, hurricane, tornado, or other catastrophic act of nature; riot, war, labor disputes, environmental restrictions, failure of utility service or the failure of equipment or facilities not belonging to Franchisee, denial of access to facilities or rights-of-way essential to serving the Franchise Area necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Franchisee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to

service or monitor their own utility poles on which the Franchisee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

14.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchise Authority:

Berkeley County  
400 West Stephen Street, Suite 201  
Martinsburg, WV 25401  
Attention: County Administrator

To the Franchisee:

Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC.  
2303 North Augusta Street- Suite B  
Staunton, VA 24401  
Attention: Government Affairs Department

With copies to:

Comcast Cable  
7850 Walker Drive, 2<sup>nd</sup> Floor  
Greenbelt, MD 20770  
Attention: Government Affairs Department

And to:

Comcast Cable Northeast Division  
676 Island Pond Rd.  
Manchester, NH 03109  
Attention: Government Affairs Department

14.3. Entire Agreement. This Franchise Agreement and any exhibits or addendums hereto constitute the entire agreement between the Franchise Authority and the Franchisee and supersedes all prior or contemporaneous agreements, ordinances, representations, or understandings, whether written or oral, of the parties regarding the subject matter hereof. Any agreements, ordinances, representations, promises or understandings or parts of such measures that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

14.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration

shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

14.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State where the Franchise Area is located, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of such State, as applicable to contracts entered into and performed entirely within the State.

14.6. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchise Authority and the Franchisee, which amendment shall be authorized on behalf of the Franchise Authority through the adoption of an appropriate resolution or order by the Franchise Authority, as required by applicable law.

14.7. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

14.8. Captions. Captions to sections throughout this Franchise Agreement are solely to facilitate the reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

14.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, which Franchisee may have under federal or state law unless such waiver is expressly stated herein.

14.10. Incorporation by Reference

14.10.1. All presently and hereafter applicable conditions and requirements of federal, State and generally applicable local laws, including but not limited to the rules and regulations of the FCC and the State where the Franchise Area is located, as they may be amended from time to time, are incorporated herein by reference to the extent not enumerated herein. However, no such general laws, rules, regulations and codes, as amended, may alter the obligations, interpretation and performance of this Renewal Franchise to the extent that any provision of this Renewal Franchise conflicts with or is inconsistent with such laws, rules or regulations.

14.10.2. Should the State, the federal government or the FCC require Franchisee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Franchise Authority and Franchisee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

14.11. Calculation of Time. Where the performance or doing of any act, duty, matter, payment, or operation is required hereunder and the period of time or duration for the performance or doing thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first day and include the last day of the prescribed or fixed period or duration of

time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

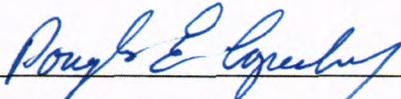
14.12. Annexation. Upon ninety (90) days written notice, any additions of territory to the Franchise Authority, by annexation or other legal means, contiguous to the Franchise Area, shall thereafter be subject to all the terms of this Agreement as though it were an extension made hereunder related to the Cable System located or operated within said territory.

14.13. Authority to Execute. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

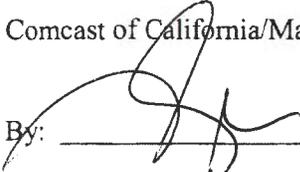
REMAINDER OF PAGE LEFT BLANK UNTIL SIGNATURE PAGE.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the last date set forth below:

Berkeley County, WV:

By:   
Print Name: DOUGLAS E. COPENHAVEN, JR  
Title: PRESIDENT  
Date: 4-5-18

Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC:

By:   
Print Name: Mary McLaughlin  
Title: Regional Senior Vice President  
Date: 5/7/18

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the last date set forth below:

Berkeley County, WV:

By: *Douglas E. Copenhagen*  
Print Name: *DOUGLAS E. COPENHAVEN, JR*  
Title: *PRESIDENT*  
Date: *4-5-18*

Comcast of California/Maryland/Pennsylvania/Virginia/West Virginia, LLC:

By: \_\_\_\_\_  
Print Name: Mary McLaughlin  
Title: Regional Senior Vice President  
Date: \_\_\_\_\_

Exhibit A  
Courtesy Service Locations

Berkeley County Board of Education	446 Eagle School Road, Martinsburg, WV 25404
Berkeley County Board of Education	1453 Winchester Avenue, Martinsburg, WV 25405
Opequon Elementary School	395 East Road, Martinsburg, WV 25404
WV Airguard Fire Department	222 Sabre Jet Boulevard, Martinsburg, WV 25405
Bedington Volunteer Fire Department, #49	1036 Mid Atlantic Parkway, Martinsburg, WV 25404
Bedington Volunteer Fire Department, #40	775 Bedington Road, Martinsburg, WV 25404
Berkeley Heights Elementary School	726 Hack Wilson Way, Martinsburg, WV 25401
Bakers Heights Volunteer Fire Department	2229 Charles Town Road, Martinsburg, WV 25405
Spring Mills Middle School	255 Campus Drive, Martinsburg, WV 25404
Eagles Intermediate School	730 Eagle School Road, Martinsburg, WV 25404
Valley View Elementary School	140 Nadenbousch Lane, Martinsburg, WV 25405
Berkeley County 911 Dispatch	802 Emmett Rousch Drive, Martinsburg, WV 25401
Berkeley County Judicial Center	380 West South Street Courts, Martinsburg, WV 25401
Berkeley County Council	400 West Stephen Street, Martinsburg, WV 25401
Berkeley County Courthouse	100 West King Street, Martinsburg, WV 25401
Berkeley County Board of Education	401 South Queen Street, Martinsburg, WV 25401
Rosemont Elementary School	301 South Alabama Avenue, Martinsburg, WV 25401
Berkeley County Sheriff	802 South Queen Street, Martinsburg, WV 25401
Berkeley Voter Registration	110 West King Street, Martinsburg, WV 25401



# Berkeley County Council

400 W. STEPHEN STREET, SUITE 201  
MARTINSBURG, WV 25401  
PHONE: (304) 264-1923



#### THE COUNCIL

DOUGLAS E. COPENHAVER, JR.  
JIM WHITACRE  
ELAINE C. MAUCK, M.A.  
JAMES R. BARNHART  
DAN DULYEA

[www.berkeleywv.org](http://www.berkeleywv.org)

ALAN J. DAVIS  
COUNTY ADMINISTRATOR

DATE: April 3, 2018

TO: County Council

FROM: Alan J. Davis – County Administrator *AJD*

RE: Comcast Franchise Agreement

The current Cable Franchise Agreement with Comcast, which has been in force since May 1, 2003, is due to expire at 12:01 AM on Tuesday, May 1, 2018.

As you are aware, the 5% franchise fee paid to Berkeley County is controlled by the West Virginia Public Service Commission (WVPSC) so there is very little to negotiate.

Attached is the new Cable Franchise Agreement between Berkeley County and Comcast. Mr. Norwood Bentley, Legal Director, has reviewed the contract. Mr. Bentley agrees that the contract is “boiler plate” and that there is nothing unusual in the document. Mr. Bentley has also researched WV Code and has indicated that no public hearing is necessary for the renewal of the contract with Comcast. The proposed contract would be effective May 1, 2018 and stay in effect for ten (10) years. It would then automatically be extended for one (1) additional term of five (5) years unless any party notifies the other in writing of its desire to enter renewal negotiations under the Cable Act at least three (3) years before the expiration date of the then-current Franchise Agreement.

It is recommended that the Council approve the new Cable Franchise Agreement as presented.

Thank you for your consideration of this matter. If there are any questions, please feel free to contact me.

Attachment