

Stan Joyner
Mayor

Maureen Fraser, Alderman
Jimmy Lott, Alderman
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TRA DOCKET ROOM

James H. Lewellen
Town Administrator

Lynn Carmack
Town Clerk

The Town of Collierville

April 9, 2013

Tennessee Regulatory Authority
Attn: Docket Room (08-00115)
460 James Robertson Parkway
Nashville, TN 37243

Re: Notice of TRA Receipt of Application for or Amendment to Certificate of Franchise

To Whom It May Concern:

On April 8th, 2013, the Town of Collierville ("Town") received notice from the TRA that Comcast Cable Communications Management has filed an amendment to expand its state-issued franchise service area.

At this time, the Town has a franchise agreement with Comcast which requires them to provide the Town with Public, Educational and Governmental channels and support payments. This twenty (20) year agreement was originally entered into by the Town and Time Warner in 1996. It was taken over by Comcast following their merger with Time Warner in 2006. I have attached a copy of this contract for your convenience. In addition, AT&T operates in Collierville under a State Issued Certificate of Franchise Authority.

To answer the questions contained in your letter:

- 1) The number of PEG Channels that have been activated by the incumbent: ***The Town has activated two (2) PEG Channels at this time.***
- 2) The number of PEG channels that are authorized to be activated under the incumbent franchise: ***The Town is designated up to three (3) channels for PEG access.***
- 3) The amount of any fee or other payment for PEG access support required under the incumbent franchise: ***The contract calls for up to \$.35 per subscriber per month for capital support for PEG access equipment and facilities. As of December 2012, there were 7,138 Comcast subscribers in Collierville. In addition, AT&T also provides PEG support at the same rate as Comcast. There were 2,800 AT&T subscribers in Collierville as of December 2012.***

If the TRA should need any other information please contact me at (901) 457-2200 or via email at jsuddath@ci.collierville.tn.us

Sincerely,

Josh Suddath
Assistant to the Town Administrator



TENNESSEE REGULATORY AUTHORITY
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

April 4, 2013

City of Collierville
ATTN: Town Administrator James Lewellen
500 Poplar View Parkway
Collierville, TN 38017

RE: **NOTICE** of TRA Receipt of Application for or Amendment to Certificate of Franchise Authority
and **OFFICIAL REQUEST** for Information

Dear Mr. Lewellen:

On March 28, 2013, Comcast Cable Communications Management, LLC ("Comcast"), on behalf of its affiliates operating in Tennessee, filed with the Tennessee Regulatory Authority ("TRA" or "Department") an amendment, which includes your municipality, to expand its state-issued franchise service area. By this time, you should have already received notice from Comcast of its intention to serve your area. You may access this and other related filings on the TRA's website at <http://www.tn.gov/tra/dockets/0900137.htm>. The Department is required to send this notice so that you may act to preserve your Public, Educational and Governmental ("PEG") channels and PEG access support payments under Tenn. Code Ann. § 7-59-309.¹

If an incumbent cable TV provider currently serves your municipality,² and that provider's franchise requires that it provide PEG channels or access payments, then you may be able to receive the same number of PEG channels and equivalent support payments from Comcast. But, in order to claim these benefits, you must provide the TRA with information about the PEG channels negotiated under your incumbent provider's franchise *within ten (10) days* from the date you received notice from Comcast that it intended to provide cable or video service to your municipality, specifically:

- (1) The number of PEG channels that have been activated by the incumbent;
- (2) The number of PEG channels that are authorized to be activated under the incumbent franchise; and,
- (3) The amount of any fee or other payment for PEG access support required under the incumbent franchise.³

Please send the above information to: **Tennessee Regulatory Authority**
ATTN: Docket Room (09-00137)
460 James Robertson Parkway
Nashville, TN 37243

If you have already forwarded this information to the TRA upon receipt of the notice from the applicant or state-issued franchise service provider in accordance with Tenn. Code Ann. § 7-59-309(a), please disregard this request. Should you have any questions or concerns regarding this matter, please feel free to contact me at (615) 741-2904 x153 or at the address listed above. Thank you for your cooperation and prompt attention in this matter.

Sincerest Regards,

Jerry Kettles,
Chief, Economic Analysis & Policy Division

¹ See Tenn. Code Ann. § 7-59-314(b)(1).

² This means the franchised cable service provider with the most subscribers in your municipality on January 1, 2008, whether or not the local franchise agreement had expired on July 1, 2008 (Tenn. Code Ann. § 7-59-309(a)(1)).

³ See Tenn. Code Ann. § 7-59-309(a)(1).

CABLE TELEVISION FRANCHISE AGREEMENT

This Cable Television Franchise Agreement is entered into this 18th day of DECEMBER, 1996 by and between the Town of Collierville, Tennessee ("Town") and Time Warner Communications - Mid-South Division, a division of Time Warner Cable, a division of Time Warner Entertainment Company, L.P., ("Company").

WHEREAS, the Town adopted a Cable Television Ordinance on NOVEMBER 25, 1996 ("Ordinance"), which authorizes the Town to issue or renew franchises to operate a Cable System in the Town; and

WHEREAS the Company holds an existing franchise, and the Company has requested renewal of said franchise under the procedures established by federal statute; and

WHEREAS, the Town has held a public hearing, ascertained its future cable-related needs and interests, and discussed methods for meeting these needs with the Company.

NOW, THEREFORE, in consideration of the faithful performance and strict observance by the Company of all the terms hereinafter set forth or provided for, and also provided for in the Ordinance pursuant to which this Franchise Agreement is executed, and in consideration of the grant to the Company by the Town of the rights hereinafter delineated, the parties agree as follows:

SECTION 1. GRANT OF FRANCHISE

A. The Town hereby grants to the Company a non-exclusive Franchise (as defined in the Ordinance) to construct, operate, and maintain a Cable System within the public ways of the Town in accordance with the terms and conditions of this Agreement and the Ordinance. The Franchise shall become effective on the date of acceptance by the Company in compliance with this Agreement and with the Ordinance, for the period of twenty (20) years, expiring on May 12, 2016.

B. The Company hereby accepts the Franchise and agrees to abide by all the provisions of this Franchise Agreement, the Ordinance, and other relevant regulations ordinances of the Town which are hereby incorporated by reference as though set forth herein.

C. The Company hereby agrees that it has negotiated this Franchise in good faith and with due knowledge of its rights and responsibilities under relevant local, state, and federal laws.

SECTION 2. SYSTEM-UPGRADE

The Company hereby agrees to complete an upgrade of its Cable System within twenty-four (24) months from its acceptance of the Franchise as more fully outlined herein:

A. The Company agrees that within 24 months of the approval and grant of its Franchise, it will complete the upgrade of the current System in the Town to a bi-directional interactive, hybrid fiber coax (HFC) telecommunications network. The resulting network will be constructed using fiber to-the-node architecture and provide a minimum bandwidth capacity of 750 MHz (115 channels). This network will be constructed to support a "full service network" (FSN) with 550 MHz initially activated with the remaining 200 MHz reserved for additional services as they are introduced.

B. The entire System upgrade project will be coordinated with the Town and quarterly progress reports will be provided to the Town.

C. The timetable for the project is outlined from the point after the Franchise has been granted to the Company:

- | | | |
|-----|-------------|--|
| (1) | 1-6 Months | <u>Field Preparation</u>
Work teams will walk every foot of the current system and provide detailed as-built maps of the current plant and projected growth. |
| (2) | 6-12 Months | <u>Design and Construction Preparation</u>
Using a sophisticated CAD system, the full network design will be provided by the Company's design specialists in Shelby County. RFPs will be issued for materials and services. |
| (3) | 12 Months | <u>Fiber Network Construction Begins</u>
The distribution fiber rings will be completed first. The residential construction will immediately follow. |
| (4) | 16 Months | <u>Communications Center Completed</u>
The new communications center and control facility that will provide the additional services will be upgraded and completed. |
| (5) | 18 Months | <u>Residential Certification and Activation</u>
The activation of the new network will begin on a neighborhood-by-neighborhood basis after quality assurance certification and compliance is completed. |

(6) 24 Months

Project Completed

All construction and upgrade phases will be completed. All the Subscribers in the Town will have access to the new network.

D. The Town reserves the right to have an independent engineer or equivalent audit the system to verify completion.

SECTION 3. SYSTEM CONSTRUCTION

A. Within two (2) years from the date of the approval and execution of this Franchise Agreement, the Company must make available Cable Service, as defined in Section 8-2 of the Ordinance, to every dwelling unit within an Initial Service Area of the Town, such area defined as one having at least fifty (50) dwelling units per street mile. Further, the Company must make available Cable Service to at least twenty (20) percent of the Initial Service Area within six (6) months from the date of the approval and execution of this Franchise Agreement and at least fifty (50) percent of the Initial Service Area within one (1) year from the approval and execution of this Franchise Agreement. Any delay beyond the terms of the foregoing construction timetable, unless specifically approved by the Town, will be considered a breach of this Franchise Agreement and a violation of Section 8-20 of the Ordinance. However, in special circumstances, the Town can waive the requirement be made available to all dwelling units within the Initial Service Area within the two (2) year time frame outlined herein if Cable Service is made available to not less than ninety-five (95) percent of dwelling units in such Area and if, in the sole judgment of the Town, there are extenuating circumstances which justify such a waiver.

B. In areas of the Town not included in the Initial Service Area or not served by the Company at the time of the execution and approval of this Franchise Agreement, the Company must extend its Cable System pursuant to the following requirements:

1. No subscriber shall be refused Cable Service arbitrarily.

2. Cable Service must be extended to new subdivisions no later than the time that sixty (60) percent of the dwelling units of a new subdivision are completed. To expedite the process of extending Cable Service into a new subdivision, the Town will forward to the Company an approved engineering plan of each new subdivision. Notwithstanding the foregoing, the Company and Town may agree on a construction timetable into new subdivisions which are built in phases on a timetable different than that outlined herein.

3. The Company must extend and make available Cable Service to every dwelling unit in all unserved areas having at least twenty (20) dwelling units per street mile no later than four (4) years from the execution and approval of this Franchise Agreement.

4. The Company must extend and make available Cable Service to any isolated resident outside the Initial Service Area requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard one hundred and fifty (150) foot aerial drop line.

C. In areas not meeting the requirements for mandatory extension of Cable Service, the Company shall provide, upon the request of a potential subscriber desiring Cable Service, an estimate of the costs required to extend Cable Service to such potential subscriber. The Company shall then extend Cable Service upon request of the potential subscriber and agreement to pay such costs. The Company may require advance payment or assurance of payment satisfactory to the Company. The amount paid by such persons for early extensions shall be nonrefundable.

D. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Company reasonable notice of such construction or development, and of the particular date on which open trenching will be available for the Company's installation of conduit, pedestals and/or vaults, and laterals to be provided at the Company's expense. The Company shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring Cable Service to the development shall be borne by the developer or property owner; except that if the Company fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenches is to be borne by the Company. Except for the notice of the particular date on which trenching will be available to the Company, any notice provided to the Company by the Town of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of the Company prior to approval of the preliminary plat request.

E. Nothing in this Section shall be construed to prevent the Company from serving areas not covered under this Section upon agreement with developers, property owners, or residents. Further, nothing in this Section prohibits the Company from making Cable Service available to areas sooner than required as set out above.

SECTION 4. SERVICE TO SCHOOLS AND MUNICIPAL BUILDINGS

The Company shall offer free of charge one (1) outlet of Basic Service and Standard Tier Service to all public and private (Grade K-12) schools located within two hundred (200) feet of the System and one (1) such outlet to each municipal building located within two hundred (200) feet of the System. Should the Town request cable service to schools or municipal buildings located beyond two hundred (200) feet of the System, the Town shall pay the reasonable costs necessary to extend the service from the point two hundred (200) feet from the System to the building or school. For initial connections to schools, the free outlet must be scheduled and installed simultaneously. Service will be made free of charge and as promptly as possible to all such schools and municipal buildings requesting connections. If any internal wiring installation is requested to serve additional outlets in such schools and municipal buildings, it shall be paid for by the Town and provided by the Company at its cost of materials and labor at the applicable hourly service charge at Town's request; provided, however, that such internal wiring will be provided without charge if the Company is able to coordinate with other comparable electrical wiring installation in cases of new construction or substantial rehabilitation of existing schools or municipal buildings. Basic and standard services will be provided to each outlet in such schools and municipal buildings free of any charge.

SECTION 5. INTERNET SERVICE TO SCHOOLS

Upon successful development by the Company of an on-line service for personal computers, the Company will provide all schools served by the Company with a local connection to this on-line service to the extent that it is available on the Company's Cable System, including one free modem and free access to the Time Warner Communications/Time, Inc. on-line service. Access to such on-line service does not include access to any non-Time Warner commercial services available through Time Warner's on-line service.

SECTION 6. PUBLIC EDUCATIONAL AND GOVERNMENTAL ACCESS

A. The Company hereby agrees to designate three (3) channels, one channel each for public, educational and governmental cablecasting pursuant to Ordinance Section 8-34(c). These uses may be combined on one or more channels until such time as the additional designated channels become necessary in the opinion of the Board of Mayor and Aldermen of the Town. Each channel shall be at least 6 MHz NTSC analog or digital equivalent, be carried on the basic service, and be available to all subscribers in the Town.

SECTION 7. FRANCHISE FEE

The Company shall pay to the Town an amount equal to five (5%) percent of the Company's Gross Revenue as a Franchise Fee, as such Terms are defined in the Ordinance. Such Franchise Fee shall be paid in equal quarterly amounts by the end of the months of January, April, July and October based upon the Gross Revenues for the three months preceding such payment month. As example, a January payment shall be based upon the Gross Revenues from the immediately preceding months of October, November and December.

SECTION 8. CAPITAL CONTRIBUTION

A. The Company agrees to provide the Town with capital support for public, educational and governmental access equipment and facilities pursuant to the following schedule:

1. The Company shall pay Seventy Five Thousand Dollars (\$75,000) to the Town on or before December 31, 1996;
2. The Company shall pay Seventy Five Thousand Dollars (\$75,000) to the Town on or before January 31, 1997;
3. The Company shall pay Twenty Thousand Dollars (\$20,000) to the Town on or before January 31, 1998;
4. The Company shall pay Ten Thousand Dollars (\$10,000) to the Town on or before January 31, 1999;
5. The Company shall pay Ten Thousand Dollars (\$10,000) to the Town on or before January 31, 2000;
6. The Company shall pay Ten Thousand Dollars (\$10,000) to the Town on or before January 31, 2001.

B. In addition to the foregoing schedule of payments of Capital Contributions, the Company shall provide further capital support for public, educational and governmental access equipment and facilities by paying to the Town each and every year of the Franchise an amount per subscriber per month, such amount to be determined in the Town's sole discretion, but in no event shall the payment be more than thirty-five cents (\$.35) per subscriber per month. Such payments shall be made quarterly by the end of the months of January, April, July and October based upon the number of the Company's subscribers at the end of the preceding month. As example, a January payment shall be made for the preceding months of October, November and December and be based upon the number of subscribers at the end of the month of the preceding December. In the Town's sole discretion, the amount paid by the Company per subscriber may be reduced if it is determined, in the Town's sole discretion, that the capital costs for support of public, educational and governmental access equipment and facilities in the

Town requires less than a payment of thirty five cents (\$.35) per subscriber per month. Such determination is to be made by the Town on an annual basis.

C. The Town agrees that all Capital Contributions may be added to the price of basic cable service and collected from the Company's subscribers. In addition, all amounts paid as Capital Contributions may, at the Company's discretion, be separately stated on subscriber's bills.

D. The Capital Contribution is in addition to the Franchise Fee required to be paid by the Company to the Town as provided for in the Ordinance at Section 8-27 and as provided for in Section 7 hereof.

E. On a not more than annual basis, the Town Administrator shall provide, when requested by the Company, verification that all Capital Contributions provided by the Company for a particular year has been used or has been reserved to be used exclusively for the capital support of public, educational and governmental access and facilities. Should the Town Administrator not be able to so verify the foregoing, that portion of the Capital Contribution provided by the Company for the year in question not used or reserved as capital support of public, educational and governmental access and facilities shall be refunded to the Company.

SECTION 9. COSTS

Notwithstanding anything to the contrary in Section 8-11 of the Ordinance, the Company shall bear such costs, including but not necessarily limited to, payment for bonds, security funds, letters of credit, indemnification, penalties and liquidated damages, as may be necessary for it to comply with its obligations under the Ordinance and this Franchise Agreement. All such costs and expenses so incurred by the Company in fulfilling its obligations under the Franchise may be passed through to the Company's subscribers if permitted by applicable law, including the rules and regulations of the Federal Communications Commission. The Company shall have no responsibility for reimbursing the Town for any costs or expenses incurred by the Town except as expressly provided in the Ordinance or this Franchise Agreement.

SECTION 10. INSTITUTIONAL NETWORK

A. The Company will provide fiber optic connectivity to an internal point of demarcation for up to ten (10) municipal facilities. The sites must be designated by the Town Administrator prior to the "design" phase of the construction of the fiber network. Any additional municipal locations requested by the Town after the initial construction is completed can be constructed for the cost of labor charges only.

B. This institutional network ("I-NET") will include bi-directional bandwidth for the private, non-commercial, closed circuit use by the Town. Town allocated bandwidth shall be sufficient to transport up to 4 each DS-1's with each DS-1 operating at 1.544 megabits per second. There will be no monthly charge to the Town for the use of the bandwidth. The Town will be responsible for all premise equipment required to utilize the I-NET. The Company will provide any maintenance services beyond the point of demarcation at cost. The Town shall not extend the network to any site without the prior approval of the Company nor shall the Town interconnect the network with any other switched or non-switched network.

C. The Company will maintain and operate the I-NET connectivity in compliance with FCC and other operating standards and/or technical specifications.

SECTION 11. PERFORMANCE BOND

Upon execution of this Franchise Agreement, the Company will be deemed to have applied properly for the waiver of the performance bond pursuant to Section 8-14(d) the Ordinance, and the Town Administrator will be deemed to have granted such waiver. The result of the foregoing will be that the Company is not required to provide the performance bond provided in Section 8-14 of the Ordinance during the two-year period of System-Upgrade as outlined in Section 2 herein.

SECTION 12. LETTER OF CREDIT

Notwithstanding Section 8-13 of the Ordinance, the Company shall not be required to deposit a letter of credit or a security deposit unless and until the Company is given notice of any alleged violation pursuant to Section 8-47 of the Ordinance. Within ten (10) days of the mailing of such notice by the Town, the Company shall deliver to the Town a letter of credit or security deposit in immediately available funds in the amount of Fifty Thousand Dollars (\$50,000). Such letter of credit or security deposit must be provided regardless of whether the Company notifies the Town, pursuant to Section 8-47 of the Ordinance, that it disputes the alleged violation. The letter of credit shall be issued by a financial institution reasonably satisfactory to the Town. The only condition of the letter of credit shall be the receipt by the issuer of a writing from the Town that the Company is in default under the Town of Collierville's Cable Television Ordinance and/or the Cable Television Franchise Agreement between the Town and the Company. At such time, the sum of Fifty Thousand Dollars (\$50,000.00) shall be immediately paid to the Town. This letter of credit or security deposit shall remain in place until the resolution of the alleged violation by litigation or mutual agreement. The rights reserved to the Town with respect to the letter of credit or security deposit are in addition to all other

rights of the Town, and no action, proceeding or exercise of a right with respect to such letter of credit or security deposit shall affect any other right the Town may have.

SECTION 13. CUSTOMER SERVICE CENTER

Notwithstanding Sections 8-23(h) and 8-25(b) of the Ordinance, the requirement for the Company to provide a customer service center in the Town is currently being satisfied by the Company's providing a customer service center in Germantown, Tennessee. However, if the needs and growth of the Town demand that a separate customer service center be established in the Town, such will be provided within one (1) year from the time a request by the Town is made for such a customer service center. In no event, may such request be made prior to January 1, 1998. Without the need for a request, however, the Company must provide a customer service center in the Town by January 1, 2002.

SECTION 14. SEVERABILITY

If any portion of this Franchise Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Franchise Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

SECTION 15. ENTIRE AGREEMENT

This Franchise Agreement constitutes the entire understanding and agreement between the parties and supersedes any and all previous Agreements between the parties with respect to the subject matter. This Franchise Agreement shall not be changed, amended or supplemented except by an agreement in writing signed by both parties. In the event of a conflict between this Franchise Agreement and the Ordinance or any other ordinance, law or regulation in effect at the time of this Agreement or thereafter, the terms and conditions of this Franchise Agreement shall be controlling. If the Franchise Agreement is silent, the Ordinance and any applicable federal and state statutes shall govern. The Town may, from time to time, amend the Ordinance; provided, however, such amendments shall not serve to impair the rights nor increase the obligations of the Company pursuant to this Franchise.

SECTION 16. NO RECOURSE

A. Except for action seeking equitable relief, the Company shall have no recourse whatsoever against the Town for any loss, cost, expense, or damage arising out of any provisions or requirements of this Franchise Agreement or because of the enforcement thereof by the Town, or the failure of the Town to have authority to grant all or part of the Franchise.

B. The Company expressly acknowledges that in accepting a Franchise it does so relying on its own investigation and understanding of the power and authority of the Town to grant the Franchise.

C. By accepting a Franchise, the Company acknowledges that it has not been induced to enter into the Franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Town or by any other third person concerning any term or condition of the Franchise not expressed herein.

SECTION 17. NOTICE

Unless expressly or otherwise agreed between the parties, every notice or response to be served by the Town or Company shall be made pursuant to Section 8-12 of the Ordinance and further made in writing and shall be deemed to have been duly given, if mailed to the required party, three (3) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service or, if otherwise delivered to the required party, on the date of delivery.

The notices or responses to the Town shall be addressed as follows:

Office of Town Administrator
Town of Collierville
101 Walnut
Collierville, Tennessee 38017

The notices or responses to the Company shall be addressed as follows:

Time Warner Communications
Attn: Manager
6555 Quince Suite 400
Memphis, Tennessee 38119

Either party may from time to time change its address for notice in accordance with the foregoing.

SECTION 18. EQUAL TREATMENT

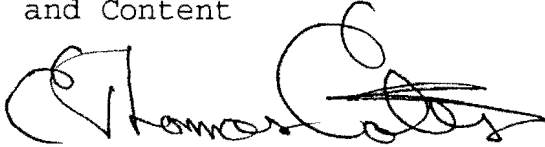
The Town agrees that in the event the Town enters into a franchise, permit, license, authorization, or other Agreement of any kind with any other person or entity other than the Company to enter into the Town's streets and public ways for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the service area, the provisions of such new

Franchise when considered as an entire agreement shall not be on more favorable or less burdensome terms or conditions in comparison to the Company's franchise as a whole, in order that one Company not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.


IN WITNESS THEREOF, this Agreement has been duly executed and delivered by authorized officers of the parties.

Approved as to Form
and Content

Town OF COLLIERVILLE, TENNESSEE



C. Thomas Cates
Attorney for Town
of Collierville

BY: 
Mayor

TIME WARNER COMMUNICATIONS-
MID-SOUTH DIVISION

BY: 

TITLE: 
President

sjc\collierville\franchise.agr