

# City of Johnson City Tennessee

601 East Main Street • P.O. Box 2150 • Johnson City, TN 37605 • 423/434-6003

ASSISTANT CITY MANAGER

13 April 2011

Tennessee Regulatory Authority  
ATTN: Docket Room (09-00137)  
460 James Robertson Parkway  
Nashville, TN 37243

09-00137

RE: NOTICE OF TRA RECEIPT OF APPLICATION for or amendment to Certificate of Franchise Authority  
Comcast Cable Communications Management LLC

Ladies and Gentlemen:

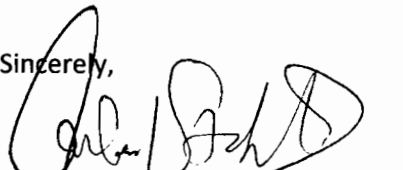
Per your NOTICE of 7 April to the Mayor of Johnson City, regarding Comcast Cable Communications Management, please find enclosed herein a copy of the current franchise between the City of Johnson City and Comcast .

Specifically, per TRA's request, is the information specifically requested from the City of Johnson City to preserve the PEG channel and the access support payment:

- (1) One governmental access (PEG) channel has been activated by the incumbent;
- (2) One governmental access (PEG) channel is authorized to be activated under the incumbent franchise;
- (3) The franchise provides for a Government Access Channel Capital Grant in the amount of thirty thousand dollars ( \$ 30,000) to upgrade existing Government Access Channel production equipment. Fifteen thousand dollars has been paid in accordance with the terms of the current franchise. Fifteen thousand dollars remains to be paid no later than the fifth anniversary of the date of the current franchise.

Please see Section 13 of the enclosed franchise agreement.

Sincerely,

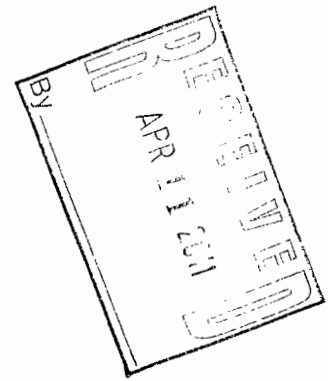


Charles J. Stahl, IV



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

April 7, 2011



Johnson City  
Mayor Jane Myron  
601 East Main Street  
P. O. Box 2150  
Johnson City, TN 37605

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

Dear Mayor Myron:

On March 29, 2011, Comcast Cable Communications Management, LLC ("Comcast"), on behalf of its affiliates operating in Tennessee<sup>1</sup>, 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.<sup>2</sup>

If an incumbent cable TV provider currently serves your municipality,<sup>3</sup> 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.<sup>4</sup>

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 x207 or at the address listed above. Thank you for your cooperation and prompt attention in this matter.

Sincerest Regards.

Arnold Reed,  
Consultant, Policy & Economic Analysis Division

<sup>1</sup> The affiliates of Comcast Cable Management, LLC operating in Tennessee include Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc., Comcast of Indiana/Kentucky/Utah, Comcast of Kentucky/Tennessee/Virginia, LLC, Comcast of Michigan/Mississippi/Tennessee, Inc., Comcast of Nashville I, LLC, Comcast of Nashville II, LLC, Comcast of Tennessee, LP, Comcast of the South and Comcast of Southern Tennessee, LLC.

<sup>2</sup> See Tenn. Code Ann. § 7-59-314(b)(1).

<sup>3</sup> 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)).

<sup>4</sup> See Tenn. Code Ann. § 7-59-309(a)(1).

## **FRANCHISE AGREEMENT**

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the City of Johnson City, Tennessee (hereinafter, "City") and Comcast of the South (hereinafter, "Grantee").

The City, having determined that the financial, legal, and technical ability of the Grantee 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 Grantee 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 et seq. (the "Cable Act"), unless otherwise defined herein.

1.1. "Customer" means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee's express permission.

1.2. "Effective Date" means the date on which all Persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term" section herein.

1.3. "FCC" means the Federal Communications Commission, or successor governmental entity thereto.

1.4. "Franchise" means the initial authorization, or renewal thereof, issued by the Franchising 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.

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

1.6. "Franchise Area" means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.7. "Franchising Authority" means the City of Johnson City or the lawful successor, transferee, designee or assignee thereof.

1.8. "Grantee" shall mean Comcast of the South.

1.9. "Gross Revenue" means the Cable Service revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view video fees, user fees, franchise fees, late fees, net advertising and home shopping revenue, installation fees and equipment rental fees. Gross Revenue shall not include government channel capital support fees, refundable deposits, bad debt, investment income, programming launch support payments, advertising sales commissions, nor any taxes, fees or assessments imposed or assessed by any governmental authority, except for franchise fees.

1.10. "Person" means 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 Franchising Authority.

1.11. "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 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 Franchising Authority in the Franchise Area, which shall entitle the Franchising Authority and the Grantee 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 Franchising 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 Franchising Authority and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee'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.

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

2.1. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary 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 September 6, 2007 (the "Effective Date") and ending on September 7, 2017, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.4. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority, or (C) be construed as a waiver or release of the rights of the Franchising Authority in and to the Public Ways.

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

3.1. Permits and General Obligations. The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. 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 transmission and distribution structures, poles, other lines, and equipment installed by the Grantee 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 Grantee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than ten (10) 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 Franchising Authority shall notify Grantee of such funding and make available such funds to the Grantee.

3.2.2. Relocation at request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee 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 Grantee is given not less than ten (10) 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 Grantee disturbs, alters or damages any Public Way, the Grantee 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.

3.2.4. Safety Requirements. The Grantee shall, at its own cost and expense, undertake all necessary and appropriate 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 Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any 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 Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee'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 Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee 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, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee 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.

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

4.1. General Service Obligation. The Grantee shall provide Cable Service to every residential dwelling unit within the Franchise Area reaching the minimum density of at least twenty five (25) dwelling units per mile measured from the nearest point of connection to Grantee's existing distribution cable provided, however, Grantee shall have the option, in its sole discretion, to extend service to areas already served by another multi-channel video provider. Grantee shall offer Cable Service to all new homes or previously unserved homes located within one hundred twenty five (125) feet of the Franchisee's existing distribution cable.

The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

4.2. Programming. The Grantee shall offer to all Customers a diversity of video programming services.

4.3. No Discrimination. The Grantee shall not discriminate or permit discrimination between or among any Persons in the availability of Cable Services or other services provided in connection with the Cable System in the Franchise Area. 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 Grantee are satisfied. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts or other such pricing strategies as part of its business practice.

4.4. New Developments. The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches.

4.5. Local Office. Grantee shall maintain, at a convenient location, a business office or agent with normal operating hours. This office will accept customer payments, customer applications for installations and disconnection of service and reporting of service complaints.

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

5.1. All rates, fees, charges, deposits, and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee or charge is imposed, the Grantee 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 Franchising Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC. Failure to comply can result in liquidated damages set forth in Section 9.4

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 (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee 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 Grantee 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 Franchising Authority**

7.1. Franchise Fees. The Grantee shall pay to the Franchising 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 Grantee shall not be compelled to pay any higher percentage of Gross Revenue as franchise fees than any other video service provider 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 calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee 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 reasonable prior written notice, during normal business hours at Grantee's principal business office, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within three (3) years from the date the Franchising 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 Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising 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 "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit, plus interest. If the franchise fee is not actually received by the Franchising Authority on or before applicable due date set forth above, interest shall accrue on the outstanding amount at rates published by the Internal Revenue Service for tax refunds and additional tax payment for the period of delinquency. If the parties cannot agree on a "Finally 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 "Finally Settled Amount(s)" due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Grantee's books and records.

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

7.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising Authority shall

have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

#### 7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Throughout the term of this Franchise Agreement, the Grantee agrees that the Franchising Authority may review the Grantee's books and records regarding customer service performance levels in the Franchise Area to monitor Grantee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Grantee, at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. All such documents that may be the subject of an inspection by the Franchising Authority shall be retained by the Grantee for a minimum period of three (3) years.

7.5.2. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Franchising Authority that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. The Grantee 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 Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the Franchising Authority has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Franchising Authority shall notify Grantee of such request and cooperate with Grantee in opposing such request.

### **SECTION 8 – Transfer of Cable System or Franchise or Control of Grantee**

8.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest of the Grantee in the Franchise or in the Cable System in order to secure

indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the Franchising Authority has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

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

9.1. **Insurance.** Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Franchising Authority certificates of insurance designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Franchising Authority. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Franchising Authority from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement

9.2. **Indemnification.** The Grantee shall indemnify, defend, and hold harmless the Franchising Authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

### **9.3 Performance Bond.**

9.3.1 At the time of acceptance of this Franchise, Grantee shall deliver to City a performance bond, in form and substance acceptable to City, in the amount of five thousand and No/100 Dollars (\$5,000).

9.3.2 The performance bond shall provide that funds will be paid to City, upon written demand of City and after completion of procedures set forth below, and in

an amount determined in accordance with this Section in payment for penalties charged pursuant to this Section.

#### 9.4 Liquidated Damage

9.4.1 Because it may be difficult to calculate the harm to the Franchising Authority in the event of a breach of this Franchise Agreement by Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages.

9.4.2 To the extent that the Franchising Authority elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the Franchising Authority's sole and exclusive remedy. Nothing in this Section is intended to preclude the Franchising Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchising Authority stops assessing liquidated damages for such breach.

9.4.3 Prior to assessing any liquidated damages, the Franchising Authority shall mail to the Grantee a written notice by certified or registered mail of the alleged violation and the proposed liquidated damage, specifying the violation at issue. The Grantee shall have forty-five (45) days from the date of receipt of the written notice to cure or commence to cure, as is appropriate depending on the nature of the alleged violation, or to file a written response refuting the alleged violation or explaining why additional time for cure is necessary. In the case of breaches of requirements measured on a monthly, quarterly or longer period (such as customer service standards), Grantee's cure period shall be no less than one such period.

9.4.4 The Franchising Authority may not assess any liquidated damage if the Grantee has reasonably responded to the complaint or cured or commenced to cure, as may be appropriate, the violation within a reasonable time frame not to exceed forty-five (45) days following receipt of written notice from the Franchising Authority, unless some other cure period is approved by the Franchising Authority. In the event Grantee fails to cure or commence to cure, or fails to refute the alleged breach, the Franchising Authority may assess liquidated damages and shall inform Grantee in writing of the assessment. Grantee shall have thirty (30) days to pay the damages.

9.4.5 The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the Franchising Authority.

9.4.6 Grantee may appeal (by pursuing judicial relief or other relief afforded by the Franchising Authority) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. Grantee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal.

9.4.7 In no event may liquidated damages be assessed for a time period exceeding one hundred twenty (120) days. If after that amount of time Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the Franchising Authority, the Franchising Authority may pursue all other remedies.

9.4.8 Subject to the provisions of this Section, for failure of Grantee to correct or to commence to correct an alleged violation within forty-five (45) days of written notice by the Franchising Authority, liquidated damages in the amount of fifty dollars (\$50) shall be assessed. The total amount of liquidated damages assessed by the Franchising Authority pursuant to this Section in any individual calendar quarter shall not in aggregate exceed two thousand dollars (\$2000).

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

10.1. System Capacity. During the term of this Agreement, the Grantee's Cable System shall be capable of providing a minimum of eighty (80) channels of video programming with satisfactory reception available to its customers in the Franchise Area.

10.2. Service to School Buildings. The Grantee shall provide free "Basic" Cable Service and free installation of one (1) outlet to each government and private school, not including "home schools," located in the Franchise Area within one hundred twenty five (125) feet of the Grantee's distribution cable.

10.3. Service to Governmental and Institutional Facilities. The Grantee shall provide free "Basic" Cable Service and free installation of one (1) outlet to each municipal building located in the Franchise Area within one hundred twenty five (125) feet of the Grantee's distribution cable. "Municipal buildings" are those non-residential buildings owned or leased by the Franchising Authority for government administrative purposes, and shall not include buildings owned by Franchising Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed. Service to municipal buildings outside the Franchise Area shall be addressed on a case by case basis to determine if financially feasible.

### **SECTION 11 - Enforcement and Termination of Franchise**

11.1. Notice of Violation or Default. In the event the Franchising Authority believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

11.2. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the Franchising Authority's written notice: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such

default and notify the Franchising Authority of the steps being taken and the projected date that the cure will be completed.

11.3. Public Hearings. In the event the Grantee fails to respond to the Franchising 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 Grantee, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

11.4. Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any material provision of the Franchise, the Franchising Authority may:

11.4.1. seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or

11.4.2. in the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

(i) The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including two or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, 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 Grantee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as justice may require.

11.5. Technical Violation. The Franchising Authority agrees that it is not its intention to subject the Grantee 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:

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

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

## **SECTION 12 – Competitive Equity**

12.1. Purposes. The Grantee and the Franchising 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 City residents; 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 City residents; promote local communications infrastructure investments and economic opportunities in the City; and provide flexibility in the event of subsequent changes in the law, the Grantee and the Franchising Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

### **12.2. New Video Service Provider.**

12.2.1. 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 Franchising Authority to provide video services to subscribers in the City, or (ii) otherwise begins to provide video services to subscribers in the City (with or without entering into an agreement with the Franchising Authority), the Franchising Authority, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the City under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Franchising 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 Grantee submits a written request to the Franchising Authority.



12.2.2. If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Grantee and the Franchising 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 Grantee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the City.

12.3 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 City, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP providing video services to subscribers in the City, the Franchising Authority agrees that, notwithstanding any other provision of law, upon Grantee's written request the Franchising Authority shall: (i) permit the Grantee to provide video services to subscribers in the City 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 between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to subscribers in the City. The Franchising Authority and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the Franchising Authority. Notwithstanding any provision of law that imposes a time or other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

12.4 Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the City under Sections 12.2 or 12.3 shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

12.5 The term "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, multichannel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

### **SECTION 13 – Governmental Access**

13.1 Use of a Channel Position for governmental access shall continue to be provided on the most basic tier of service offered by Grantee in accordance with the Cable Act, Section 611, and as further set forth below. "Channel Position" means a number designation on the Grantee's channel lineup regardless of the transmission format



(analog or digital). Grantee does not relinquish its ownership of or ultimate right of control over a Channel Position by designating it for governmental access use. Governmental access users acquire no property or other interest by virtue of the use of a channel position so designated. Grantee shall not exercise editorial control over any governmental use of a Channel Position. The Franchising Authority shall be responsible for developing, implementing, interpreting and enforcing rules for Governmental Access Channel use.

13.2 A "Governmental Access Channel" is a Channel Position designated for noncommercial use by the Franchising Authority for the purpose of showing local government at work. Grantee shall designate a Channel Position for government video programming provided by the Franchising Authority. Unused time on the Channel Position may be utilized by Grantee subject to the provisions for "fallow time" below.

13.3. Grantee Use of Fallow Time. Because a blank or under utilized Channel is not in the public interest, in the event the Franchising Authority or other government access user elects not to fully program the Government Access Channel, the Grantee may program unused time on such channel subject to reclamation by the Franchising Authority upon no less than sixty (60) days prior written notice.

13.4. Indemnification. The Franchising Authority shall indemnify Grantee 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 the Governmental Access Channel and from claims arising out of the Franchising Authority's rules for or administration of access.

13.5. Government Access Channel Capital Grant

13.5.1. Subject to Section 12, herein, the Grantee shall provide a Government Access Channel capital grant in the amount of thirty thousand dollars (\$30,000) to the Franchising Authority to be used exclusively to upgrade existing Government Access Channel production equipment (hereinafter, "Capital Grant"). The Capital Grant shall be paid by the Grantee to the Franchising Authority as follows:

- A. Fifteen thousand dollars (\$15,000.00) shall be paid within ninety (90) days of the Effective Date of this Franchise Agreement.
- B. Fifteen thousand dollars (\$15,000.00) shall be paid no later than the fifth (5<sup>th</sup>) anniversary of the Effective Date of this Franchise Agreement.

13.5.2 Grantee reserves all rights, in accordance with applicable law, to pass through or otherwise recover the total amount of the Capital Grant, including applicable interest, in a manner whose amount and timing is at Grantee's sole discretion.

13.6 Capital Grant Audit. Within forty five (45) days of the end of each calendar year throughout the term of this Franchise Agreement, the Franchising Authority shall provide Grantee with a detailed report documenting the use of Capital Grant funds to upgrade Government Access Channel production equipment during the previous twelve (12) month period. Such report shall be subject to audit by the Grantee. In the event the report indicates Capital Grant funds were spent but the Franchising Authority cannot clearly demonstrate that such funds were used to upgrade Government Access Channel production equipment, such amount shall be refunded to the Grantee. Any unused Capital Grant funds remaining upon the expiration of this Franchise Agreement shall be refunded to Grantee within thirty (30) days of the expiration of this Franchise Agreement's term.

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

14.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee'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 Grantee'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 Franchising Authority:	City of Johnson City Office of the City Manager 601 E. Main St. P.O. Box 2150 Johnson City, TN 37605-2150
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To the Grantee:	Comcast of the South Attn: General Manager 1794 Old Gray Station Rd. Johnson City, TN 37615
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with a copy to:

Comcast Cable Communications, Inc.  
Attn: Vice President, Government Affairs  
600 Galleria Parkway, Suite 1100  
Atlanta, GA 30339

And to:

Comcast Cable Communications, Inc.  
Attn.: Legal Department  
1500 Market Street  
Philadelphia, PA 19102

14.3. Entire Agreement. This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances 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 of Tennessee, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Tennessee, 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 Franchising Authority and the Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.

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

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

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

**For Franchising Authority:**

By: David P. Roe  
Mayor

Date: September 6, 2007

Attest: James H. Epps, III, City Attorney

**Comcast of the South**

By: Comcast of the South, L.P., its general partner

By: COM South, LLC, its general partner

By: Comcast of the South, Inc. its sole member

By: John H. Ridall, Jr.  
John H. Ridall, Jr.  
President, Southern Division

Date: 11/19/07

Attest: Rachel Jones  
Rachel Jones  
Notary Public  
Cobb County, GEORGIA  
My Commission Expires June 21, 2009