

**Ectory R. Lawless**

19-00014

**From:** John Hutton  
**Sent:** Tuesday, February 12, 2019 8:18 AM  
**To:** Ectory R. Lawless  
**Subject:** FW: Information Related to TPUC Receipt of Application for or Amendment to Certification of Franchise Authority and Official Request for Information  
**Attachments:** Washington County Franchise Agreement with Comcast (Excerpts).pdf

Tory,

Please file this e-mail including attachment in 19-00014, "PEG info for Washington county" .

Thanks,  
John

**From:** Allyson Wilkinson [mailto:AWilkinson@washingtoncountyttn.org]  
**Sent:** Monday, February 11, 2019 2:43 PM  
**To:** John Hutton  
**Cc:** Teresa Stoots  
**Subject:** Information Related to TPUC Receipt of Application for or Amendment to Certification of Franchise Authority and Official Request for Information

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Mr. Hutton,

Further to your correspondence dated January 31, 2019, our conversation this afternoon, and Tenn. Code Ann. § 7-59-309, I attach pages one (1), six (6), eleven (11), fourteen (14), and fifteen (15) of the 2008 Franchise Agreement between Washington County, Tennessee and Comcast of the South. These pages reflect the capacity of a minimum of eighty (80) channels of video programming and a governmental access channel, and confirm the payment of a 5% franchise fee.

I have copied Teresa Stoots, (Paralegal); if you have any questions or require anything further, please do not hesitate to contact us.

Best regards,  
AW

**Allyson L. Wilkinson | Staff Attorney**  
**Washington County, Tennessee**  
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## FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between Washington County, Tennessee (hereinafter, "County") and Comcast of the South (hereinafter, "Comcast").

The County, having determined that the financial, legal, and technical ability of Comcast 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 Comcast 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 Comcast'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 County, 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 County as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.7. "County" means Washington County or the lawful successor, transferee, designee or assignee thereof.

Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee or charge is imposed, Comcast 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 County hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. Comcast 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, Comcast 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. Comcast 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 the County**

7.1. Franchise Fees. Comcast shall pay to the County 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 Comcast 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 Comcast 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 Comcast's principal business office, the County shall have the right to inspect Comcast's financial records used to calculate the County's franchise fees; provided, however, that any such inspection shall take place within three (3) years from the date the

## SECTION 10 - System Description and Service

10.1. System Capacity. During the term of this Agreement, Comcast'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. Comcast 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 Comcast's distribution cable.

10.3. Service to Governmental and Institutional Facilities. Comcast shall provide free "Basic" Cable Service and free installation of one (1) outlet to each County building located in the Franchise Area within one hundred twenty five (125) feet of Comcast's distribution cable. "County buildings" are those non-residential buildings owned or leased by the County for government administrative purposes, and shall not include buildings owned by County 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. Notwithstanding the provisions of Section 10.3, Comcast agrees to free installation of cable to a central location in the old Court House, 110 E. Main St., Jonesborough, TN and to a central location in the new Justice Center, if and when the Justice Center is completed at the same proposed site as of the Effective Date of this Agreement.

## SECTION 11 - Enforcement and Termination of Franchise

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

11.2. Comcast's Right to Cure or Respond. Comcast shall have forty-five (45) days from the receipt of the County's written notice: (A) to respond to the County, 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 County of the steps being taken and the projected date that the cure will be completed.

11.3. Public Hearings. In the event Comcast fails to respond to the County's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by Comcast, the County shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the County that is scheduled at a time that is no less than ten (10) business

services to subscribers in the County, the County agrees that, notwithstanding any other provision of law, upon Comcast's written request the County shall: (i) permit Comcast to provide video services to subscribers in the County 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 Comcast and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to subscribers in the County. The County and Comcast shall implement the provisions of this Section within sixty (60) days after Comcast submits a written request to the County. Notwithstanding any provision of law that imposes a time or other limitation on Comcast's ability to take advantage of the changed law's provisions, Comcast 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 County under Sections 12.2 or 12.3 shall supersede this Agreement, and Comcast, at its option, may terminate this Agreement or portions thereof, upon written notice to the County, 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 Channel

13.1 Use of a Channel Position combining governmental access programming from both Washington County and the Town of Jonesborough, shall be provided by Comcast in accordance with the Cable Act, Section 611, and as further set forth below. "Channel Position" means a number designation on Comcast's channel lineup regardless of the transmission format (analog or digital). Such number designation shall be at Comcast's sole discretion. Comcast 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. Comcast shall not exercise editorial control over any governmental use of a Channel Position. The County 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 County for the purpose of showing local government at work. Comcast shall designate a Channel Position for government video programming provided by the County. Unused time on the Channel Position may be utilized by Comcast subject to the provisions for "fallow time" below.

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

13.4. Indemnification. The County shall indemnify Comcast 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 County's rules for or administration of access.

#### SECTION 14 - Miscellaneous Provisions

14.1. Force Majeure. Comcast 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 Comcast'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 Comcast'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 County:

Washington County  
Office of the County Mayor  
PO Box 219  
Jonesborough, TN 37659

To Comcast:

Comcast of the South  
Attn: General Manager  
1794 Old Gray Station Rd.  
Johnson City, TN 37615

with a copy to:

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