



## TOWN OF JONESBOROUGH

123 BOONE STREET  
JONESBOROUGH, TN 37659  
TELEPHONE (423) 753-1030  
FAX (423) 753-1074

February 27, 2019

Tennessee Public Utility Commission  
ATTN: Docket Room (19-0014)  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243

RE: Response to Notice from Tennessee Public Utility Commission  
Received February 26, 2019

Dear Commission:

In response to your notice of an application for Amendment to Certificate of Franchise Authority, the Town of Jonesborough would like to provide the following information:

1. Franchise Fees: We have a non-exclusive Franchise Agreement with Comcast in which Comcast is required to pay the Town of Jonesborough 5% of annual gross revenues collected within the Town limits.
2. Under the Comcast Agreement, the Town is provided one (1) Government Access Channel through a channel position to be determined by Comcast.
3. In Section 10 of the Comcast Agreement, Comcast is required to provide free Basic Cable service and free installation of one outlet to each government and private school, not "home schools", located in the Town limits within 125 feet of Comcast's distribution cable. In addition, Comcast is required to provide free Basic Cable service and free installation of one (1) outlet to each Town building located in the Town limits within 125 feet of Comcast's distribution cable, with the eligible Town buildings being those non-residential buildings owned or leased for government administrative purposes that are not leased to a third party, used primarily for storage, or in which Town employees are not regularly stationed.

Note: Jonesborough is concerned about any restriction of terms that might be placed on an additional franchise agreement with the Town that might reduce obligations of the franchise holder because in Section 12 of the Town's

Franchise Agreement with Comcast, Comcast has the right to have their agreement with the Town amended to match any reduced requirements that might be afforded any additional Video Service Provider authorized to provide video services to residents through an agreement with the Town.

I am providing the applicable pages in Jonesborough's Franchise Agreement with Comcast associated with the above information.

Please let us know if additional information is needed.

Sincerely,



Bob Browning  
Town Administrator

cc: Jim Wheeler, Town Attorney  
Senator Rusty Crowe



**TENNESSEE PUBLIC UTILITY COMMISSION**  
**Andrew Jackson Building**  
**502 Deaderick Street 4<sup>th</sup> Floor**  
**Nashville, Tennessee 37243-0505**

January 31, 2019

Town of Jonesborough  
ATTN: Mayor Chuck Vest  
123 Boone St.  
Jonesborough, TN 37659

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

Dear Mayor Vest:

On January 24, 2019, Johnson City Energy Authority filed with the Tennessee Public Utility Commission ("TPUC" or "Department") an application for a State-Issued Certificate of Franchise Authority to provide cable and/or broadband service in an area that includes your city. By this time, you should have already received notice from Johnson City of its intention to serve your area. You may access this and other related filings on the TPUC's website at <http://www.tn.gov/tra/dockets/1900014.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>1</sup>

If an incumbent cable TV provider currently serves your municipality,<sup>2</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 HC. But, in order to claim these benefits, you must provide the TPUC with information about the PEG channels negotiated under your incumbent provider's franchise *within ten (10) days* from the date you received notice from HC 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>3</sup>

Please send the above information to:

**Tennessee Public Utility Commission**  
**ATTN: Docket Room (19-00014)**  
**502 Deaderick Street 4<sup>th</sup> Floor**  
**Nashville, TN 37243**

If you have already forwarded this information to the TPUC 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) 770-6889 or at the address listed above. Thank you for your cooperation and prompt attention in this matter.

Sincerest Regards,

John Hutton  
Telecommunications Consultant

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

<sup>2</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>3</sup> See Tenn. Code Ann. § 7-59-309(a)(1).

ORDINANCE NO. \_\_\_\_\_

***AN ORDINANCE GRANTING A RENEWAL NON-EXCLUSIVE FRANCHISE TO COMCAST OF THE SOUTH, ITS SUCESSORS OR ASSIGNS, TO OWN, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWN OF JONESBOROUGH, TENNESSEE; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDNG FOR THE USE AND REGULATION OF SAID SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.***

WHEREAS, The Town of Jonesborough, Tennessee, hereafter referred to as either "the Town" or "Jonesborough", having determined that the financial, legal, and technical ability of Comcast of the South, hereafter referred to as "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; and

WHEREAS, It is the intent of the Board of Mayor and Aldermen and Comcast to enter into a non-exclusive franchise agreement,

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF JONESBOROUGH, TENNESSEE, THAT THE FOLLOWING IS ADOPTED:

**FRANCHISE AGREEMENT**

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the **Town of Jonesborough, Tennessee** (hereinafter, "Town") and **Comcast of the South** (hereinafter, "Comcast").

The Town, 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.

- 4.4 Local Office. Comcast 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 Comcast 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, 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 Town 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 Town**

- 7.1. Franchise Fees. Comcast shall pay to the Town 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 Town shall have the right to inspect Comcast's financial records used to calculate the Town's franchise fees; provided, however, that any such inspection shall take place within three (3) years from the date the Town 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 Town, the Town shall provide to Comcast a final report setting forth the Town's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, Comcast shall have thirty (30) days from the receipt of the report to provide the Town 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 Town by Comcast as a result of any such audit, plus interest. If the franchise fee is not actually received by the Town 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 Settled 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 Town as a result of such audit shall be paid to the Town by Comcast within thirty (30) days from the date the parties agree upon the Finally Settled Amount. Once the parties agree upon a Finally

certificates of insurance designating the Town and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that Comcast 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 Town. Comcast shall provide workers' compensation coverage in accordance with applicable law. Comcast shall indemnify and hold harmless the Town from any workers compensation claims to which Comcast may become subject during the term of this Franchise Agreement

- 9.2. Indemnification. Comcast shall indemnify, defend, and hold harmless the Town, 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 Comcast's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Town shall give Comcast written notice of its obligation to indemnify and defend the Town within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Town determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Town.

#### **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 Town building located in the Franchise Area within

one hundred twenty five (125) feet of Comcast's distribution cable. "Town buildings" are those non-residential buildings owned or leased by the Town for government administrative purposes, and shall not include buildings owned by Town but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed. All connections, or modifications to existing connections, to Town Buildings must be approved in advance by the Town Manager or Mayor.

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

- 11.1. Notice of Violation or Default. In the event the Town 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 Town's written notice: (A) to respond to the Town, 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 Town 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 Town'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 Town shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Town that is scheduled at a time that is no less than ten (10) business days therefrom. The Town shall notify Comcast in writing of the time and place of such meeting and provide Comcast with a reasonable opportunity to be heard.
- 11.4. Enforcement. Subject to applicable federal and state law, in the event the Town, after such public hearing, determines that Comcast is in default of any material provision of the Franchise, the Town 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



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

## **SECTION 12 – Competitive Equity**

- 12.1. Purposes. Comcast and the Town 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 Town 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 Town residents; promote local communications infrastructure investments and economic opportunities in the Town; and provide flexibility in the event of subsequent changes in the law, Comcast and the Town 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 Town to provide video services to subscribers in the Town, or (ii) otherwise begins to provide video services to subscribers in the Town (with or without entering into an agreement with the Town ), the Town, upon written request of Comcast, shall permit Comcast to construct and operate its Cable System and to provide video services to subscribers in the Town under the same agreement and/or under the same terms and conditions as apply to the new VSP. Comcast and the Town 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 Comcast submits a written request to the Town.

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 the Town of Jonesborough and Washington County 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 Town of Jonesborough and Washington County, jointly, 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 Town for the purpose of showing local government at work. Comcast shall designate a Channel Position for government video programming provided by the Town. 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 Town 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 Town upon no less than sixty (60) days prior written notice.
- 13.4. Indemnification. The Town 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 Town's rules for or administration of access.