

# County Council of Howard County, Maryland

2024 Legislative Session

Legislative Day No. 3

## Resolution No. 32 -2024

Introduced by: The Chairperson at the request of the County Executive

Short Title: Granting the renewal of a cable franchise agreement to Comcast of Howard County, LLC.

Title: A RESOLUTION pursuant to the Howard County Cable Televisions Systems Franchise Act, granting the renewal of a cable franchise agreement to Comcast of Howard County, LLC under certain terms and conditions.

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Introduced and read first time \_\_\_\_\_, 2024.

By order \_\_\_\_\_  
Michelle Harrod, Administrator

Read for a second time at a public hearing on \_\_\_\_\_, 2024.

By order \_\_\_\_\_  
Michelle Harrod, Administrator

This Resolution was read the third time and was Adopted\_\_\_, Adopted with amendments\_\_\_, Failed\_\_\_, Withdrawn\_\_\_, by the County Council on \_\_\_\_\_, 2024.

Certified By \_\_\_\_\_  
Michelle Harrod, Administrator

Approved by the County Executive \_\_\_\_\_, 2024

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Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1           **WHEREAS**, the Howard County Cable Television Systems Franchise Act at Title 14,  
2 Subtitle 4 of the Howard County Code (the “Act”), provides for the consideration and grant,  
3 renewal, modification or transfer of cable television franchises in Howard County; and  
4

5           **WHEREAS**, on or about December 6, 2023, Howard County received a cable franchise  
6 renewal application (the “Application”) from Comcast of Howard County, LLC (the  
7 “Applicant”) for a cable franchise in Howard County; and  
8

9           **WHEREAS**, the County Council held a public hearing on the Application on January 16,  
10 2024, at which time the Applicant and the public were given an opportunity to comment on the  
11 Application; and  
12

13           **WHEREAS**, by passage of Council Resolution No. 12-2024, the County Council granted  
14 the Application and authorized the County Executive and the Applicant to negotiate the terms of  
15 a cable franchise agreement within 90 days from the passage of Council Resolution No. 12-2024;  
16 and  
17

18           **WHEREAS**, the County Executive and the Applicant have agreed to the terms of a  
19 Cable Franchise Agreement (the “Agreement”), attached as Exhibit 1; and  
20

21           **WHEREAS**, Comcast did initiate a formal franchise renewal process in accordance with  
22 section 626 (a)-(g) of the Cable Act (47 U.S.C. section 546 (a)-(g)) by providing timely notice of  
23 its intent to seek renewal; and  
24

25           **WHEREAS**, the County engaged in a formal ascertainment process that has guided its  
26 determination that the Application meets the standards set out in section 14.420 (b) of the  
27 Howard County Code and the County and cable operator have completed all other requirements  
28 of section 14.420; and  
29

30           **WHEREAS**, pursuant to sections 14.420 (i) and 14.408(f) of the Act the cable  
31 administrator has advertised the Agreement once a week for 3 successive weeks in a newspaper of

1 general circulation within the County and has made the Agreement available for public inspection;  
2 and

3  
4 **WHEREAS**, the cable administrator has reviewed the Agreement and has found that the  
5 Agreement reasonably complies with the requirements set forth in the Act; and

6  
7 **WHEREAS**, pursuant to section 14.408(g) of the Act, the Council shall approve or  
8 disapprove the Agreement; and

9  
10 **WHEREAS**, the County Council has held a public hearing and has considered the  
11 Agreement, written and oral testimony, and other information relevant to Agreement; and

12  
13 **WHEREAS**, the County Council has considered provisions of the Agreement that are  
14 inconsistent or that conflict with the Act.

15  
16 **NOW THEREFORE, BE IT RESOLVED** by the County Council of Howard County,  
17 Maryland, this \_\_\_\_ day of \_\_\_\_\_, 2024 that it hereby approves the Cable Franchise  
18 Agreement between Howard County and Comcast of Howard County, LLC., which shall be in  
19 substantially the same form as Exhibit 1 attached to this Resolution.

20  
21 **AND BE IT FURTHER RESOLVED**, that, unless specifically stated in the Agreement  
22 and consistent with the intent and purpose of the Act, pursuant to section 14.406(a) of the Act, no  
23 provision of the Cable Franchise Agreement may be inconsistent or conflict with Title 14,  
24 Subtitle 4 of the Howard County Code.

25  
26 **AND BE IT FURTHER RESOLVED**, that the County Executive is hereby authorized  
27 to execute and deliver the Cable Franchise Agreement in the name of and on behalf of the  
28 County.

29  
30 **AND BE IT FURTHER RESOLVED**, that a non-exclusive cable franchise for the  
31 County is granted to Comcast of Howard Company, LLC for a period through December 31,

1 2034 commencing on the effective date of the executed Cable Franchise Agreement, conditioned  
2 upon the execution of the Cable Franchise Agreement between Howard County, Maryland and  
3 Comcast of Howard County, LLC.

**Cable Franchise Agreement  
by and between  
Howard County, Maryland  
and  
Comcast of Howard County, LLC.**

Approved on \_\_\_\_\_, 2024

## TABLE OF CONTENTS

	<b>Page</b>
SECTION 1 DEFINITIONS .....	1
SECTION 2 GRANT OF AUTHORITY; LIMITS AND RESERVATIONS.....	7
SECTION 3 PROVISION OF CABLE SERVICE.....	11
SECTION 4 SYSTEM OPERATION.....	13
SECTION 5 SYSTEM FACILITIES .....	13
SECTION 6 PEG SERVICES.....	16
SECTION 7 FRANCHISE FEES.....	21
SECTION 8 CUSTOMER SERVICE.....	22
SECTION 9 REPORTS AND RECORDS .....	22
SECTION 10 .....	24
SECTION 11 TRANSFER OF FRANCHISE.....	27
SECTION 12 RENEWAL OF FRANCHISE .....	28
SECTION 13 ENFORCEMENT AND TERMINATION OF FRANCHISE.....	28
SECTION 14 MISCELLANEOUS PROVISIONS .....	34
EXHIBIT A .....	41
EXHIBIT B .....	43
EXHIBIT C .....	44
EXHIBIT D .....	45
EXHIBIT E .....	46
EXHIBIT F .....	58
EXHIBIT G .....	61

THIS CABLE FRANCHISE AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between Howard County, a charter county, duly organized under the applicable laws of the State of Maryland (the “County”), and Comcast of Howard County, LLC, a corporation duly organized under the applicable laws of the State of Maryland and qualified to do business in Maryland (the “Franchisee”).

WHEREAS, the County is a “franchising authority” in accordance with Title VI of the Communications Act (see 47 U.S.C. §522(10)) and is authorized to grant one or more non-exclusive cable franchises pursuant to the Howard County Code, Title 14, Subtitle 4, as amended,

WHEREAS, Franchisee has asked the County to renew Franchisee's non-exclusive franchise which took effect on November 21, 1995, and under the terms of which the Franchisee has continued to operate after the franchise term expired on November 21, 2010 (the “Prior Franchise”) to construct, install, maintain and operate a cable communications system in the County;

WHEREAS, the County has relied on Franchisee's representations regarding its financial, technical and legal qualifications and its plans for constructing, operating and maintaining its Cable System, and has considered the information that Franchisee has presented to it;

WHEREAS, the County and Franchisee have reached agreement on the terms and conditions set forth herein, and have entered into a Settlement Agreement with respect to certain claims in regard to Franchisee’s Prior Franchise, and the Parties have agreed to be bound by those terms and conditions;

WHEREAS, the County has provided for public comment as required by applicable law; and

WHEREAS, the County made a finding that, subject to the terms and conditions set forth herein and in the Exhibits hereto and the provisions of Cable Law, the grant of a nonexclusive franchise to Franchisee will enhance the public welfare.

NOW, THEREFORE, in consideration of the County's renewal of a franchise to Franchisee, Franchisee's agreement to the terms and conditions set forth herein to provide Cable Service within the County pursuant to and consistent with the Howard County Code pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

## **SECTION 1 DEFINITIONS**

Except as otherwise provided herein, the definitions and word usages set forth in Title 47 of the United States Code, as amended, and, if not in conflict, the Cable Law, are incorporated herein and shall apply in this Agreement. The words “shall” and “will” are mandatory, and the word “should” expresses an expectation, but is not mandatory, and the word “may” is permissive. In addition, the following definitions shall apply:

1.1 Access Channel: Any channel on a Cable System set aside by Franchisee for public, educational, and or governmental access.

1.2 Advertising Revenues: Revenues derived from sales of advertising that are made available to Franchisee Cable Service Subscribers within the County and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Additionally, Franchisee agrees that Gross Revenues subject to franchise fees shall include all rep fees, Affiliate fees, or rebates paid to National Cable Communications (“NCC”) and Comcast Spotlight (“Spotlight”) or their successors associated with sales of advertising on the Cable System within the County allocated according to this paragraph using total Cable Service Subscribers reached by the advertising.

1.3 Affiliate: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, the Franchisee, but excluding entities not associated with the cable system business.

1.4 Applicable Law: Any or all federal, state or County statutes, ordinances, rules, regulations, standards, and other laws that are now existing or hereafter adopted or amended from time to time, as well as the Cable Code as it exists as of the Effective Date, and which apply to Franchisee’s Cable System, Cable Services, or other matters covered by this Agreement.

1.5 Basic Service: Any service tier which includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.

1.6 Cable Code: The Howard County Code, Title 14, Subtitle 4.

1.7 Cable Service or Cable Services: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6).

1.8 Cable System or System: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7).

1.9 Channel: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4).

1.10 Communications Act: The Communications Act of 1934, as amended.

1.11 Complaint: A written Subscriber contact with the Franchisee, to express a grievance or dissatisfaction concerning Franchisee’s provision of Cable Service. that is within Franchisee’s control and requires a corrective measure on the part of Franchisee, or correspondence from the County on behalf of Subscribers relaying some grievance or dissatisfaction concerning Franchisee’s provision of Cable Service. The Annual Report required in Section 9.2 must also include all Complaints made to the County and shared with Franchisee by the County.

1.12 County: The County of Howard, Maryland.

1.13 Educational Access Channel: Any Channel required by this Agreement to be designated by the Franchisee for use by the County on the Cable System for educational purposes.

1.14 Effective Date: The Effective Date of this Franchise shall be the date it is approved by resolution by the County Council.

1.15 Expanded Basic Service: The tier of optional video programming services, which is the level of Cable Service above Basic Service, and does not include premium and pay-per-view services.

1.16 FCC: The Federal Communications Commission (which is the federal agency as presently constituted by the Communications Act), its designee, or any successor agency.

1.17 Force Majeure: An event or events reasonably beyond the ability of Franchisee to control. This includes, but is not limited to, emergency orders, declarations or directives of the government of the United States, the State of Maryland, or any of their departments, agencies, political subdivisions, or officials, severe or unusual weather conditions, strike, labor disturbance, lockout, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, public health emergencies, pandemics, epidemics, fire, flood, or other act of God, and sabotage.

1.18 Franchise Area: The unincorporated area (entire existing territorial limits) of the County and any area added thereto during the term of the Franchise that the Franchisee agrees to serve.

1.19 Franchisee: Comcast of Howard County, LLC and its lawful and permitted successors, assigns and transferees.

1.20 Government Access Channel: Any Channel required by this Agreement to be designated by the Franchisee for use by the County on the Cable System for governmental purposes.

1.21 Gross Revenues: Any and all revenues, including cash, credits, property or other consideration of any kind or nature arising from, attributable to, or in any way derived directly or indirectly by the Franchisee, its Affiliates, or by any other entity that is a cable operator of the System, from the operation of the Franchisee's Cable System (including the studios and other facilities associated therewith) to provide Cable Services within the County. All Parties acknowledge that Franchisee maintains its books in accordance with generally accepted accounting principles (GAAP). Disputes regarding the classification of revenue and other accounting issues shall be resolved based on GAAP, provided that the Franchisor reserves its right to challenge Franchisee's interpretation of GAAP, and even if GAAP is properly applied that Franchisor reserves the right to challenge on the basis that such an interpretation is in conflict with 47 U.S.C. § 542.

1.21.1 Gross Revenues include, by way of illustration and not limitation:

1.21.1.1 Monthly fees charged to Subscribers for any basic, optional, premium, per-channel, per-program service, or other Cable Service;

1.21.1.2 Installation, disconnection, reconnection, and change-in-service fees;

1.21.1.3 Commercial leased access fees. All Parties agree if the fee is generated for service in an area greater than the Franchise Area, revenue shall be allocated on a pro rata basis using Cable Service Customers within the County verses the whole of the area served by the leased access channel;

1.21.1.4 Late fees and administrative fees arising from Cable Service, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Customer revenues within the County;

1.21.1.5 Fees, payments, or other consideration recognized as revenue and received from programmers for carriage of programming on the System

1.21.1.6 Revenues from rentals or sales of converter boxes, digital adapters, set-top boxes or other Cable Service equipment used for receiving Cable Service;

1.21.1.7 Advertising revenues as defined herein;

1.21.1.8 Barter;

1.21.1.9 Revenues from program guides;

1.21.1.10 Revenues from the sale or carriage of other Cable Services;  
and

1.21.1.11 Revenues from home shopping channels and other Cable Service revenue sharing arrangements, which shall be allocated on a pro rata basis using total Cable Service Subscribers within the County.

1.21.1.12 Gross Revenues shall include revenues received by an entity other than the Franchisee, an Affiliate, or another entity that operates the System where necessary to prevent evasion or avoidance of the obligation under this Agreement to pay the franchise fee. The County acknowledges that Franchisee maintains its books in accordance with generally accepted accounting principles.

1.21.2 However, Gross Revenues shall not include:

1.21.2.1 Revenues received by any Affiliate or other Person from Franchisee in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System;

1.21.2.2 Bad debts, associated with fees that would otherwise be included in Gross Revenue, that has been written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.21.2.3 Revenues later refunded or rebated to Subscribers;

1.21.2.4 Third-party revenues derived from the sale of merchandise over home shopping channels carried on the Cable System, regardless of whether the revenues are collected by the third party or collected by the Franchisee on behalf of, and remitted back to, the third party; and revenue of the Franchisee from its sale of merchandise over home shopping channels carried on the Cable System if the merchandise is unrelated to the operation of Franchisee's Cable System to provide Cable Service in the Franchise Area;

1.21.2.5 Revenues from the sale of Cable Services on the Cable System to a reseller, when the reseller pays the cable Franchise fees on the resale of the Cable Services;

1.21.2.6 Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and that Franchisee is required to collect and remit to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, and communication taxes). By way of example and not limitation, it is understood that the franchise fee payable under the Franchise is not a tax imposed on Subscribers and collected by Franchisee;

1.21.2.7 Revenues from sales of capital assets or sales of surplus equipment;

1.21.2.8 Program launch fees and marketing co-op fees not paid directly to Franchisee; and

1.21.2.9 Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing.

1.21.2.10 Agency commission fees for unaffiliated third-party advertising sales agencies.

1.22 Non-Cable Services: Any service that does not constitute a Cable Service.

1.23 Normal Business Hours: Those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.24 Normal Operating Conditions: Those service conditions which are within the control of the Franchisee. Those conditions that are not within the control of the Franchisee include, but are not limited to, Force Majeure events, power outages, telephone network outages, and civil disturbances. Those conditions that are within the control of the Franchisee

include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or rebuild of the Cable System. See 47 C.F.R. § 76.309(c)(4)(ii).

1.25 PEG: Public, Educational, and Governmental, used in conjunction with Access Channels, support and facilities.

1.26 PEG Channels: Refers collectively to all Public Access Channels, Educational Access Channels, and Government Access Channels that Franchisee is required to provide under this Agreement.

1.27 Person: An individual, partnership, association, joint-stock-company, trust, or corporation, but such term does not include the County.

1.28 Public Access Channel: Any Channel required by this Agreement to be designated by the Franchisee on the Cable System for use by the general public who are residents of the County, including groups and individuals, and which is available for such use on a nondiscriminatory basis for public access purposes.

1.29 Public Building: Any building owned or leased in whole or in part by the County located in the County, and used for governmental purposes. The term shall not include buildings owned by the County but leased to third parties solely for private use or buildings such as storage facilities at which government employees are not regularly stationed.

1.30 Public Rights-of-Way: The surface and the area across, in, over, along, upon above and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, parks, parkways, alleys, and boulevards controlled by the County, or as the same now or may hereafter exist within the County, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System.

1.31 Service Interruption: The loss of picture or sound on one or more cable Channels.

1.32 Subscriber: Any Person who is lawfully receiving, for any purpose or reason, any Cable Service whether or not a fee is paid for that service.

1.33 Telecommunication Services: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46).

1.34 Title VI: Title VI of the Communications Act.

1.35 User: Person or organization using a PEG Channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.

1.36 Video Programming: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20).

## SECTION 2 GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

### 2.1 Grant of Authority:

2.1.1 Subject to the terms and conditions of this Agreement and the Cable Law, the County hereby grants the Franchisee the right to install, construct, and maintain cables, wires, lines and other facilities to operate a Cable System over, on or under streets, roads and all other public ways, easements and Public Rights-of-Way within all or specified areas of the County, but does not expressly or implicitly authorize the Franchisee to provide service to, or install cables, wires, lines or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to 47 U.S.C. section 541(a)(2)), or to use publicly or privately owned utility poles or conduits without a separate agreement with the owners. The Franchise does not include any license or permit that may be required by Title 14, Subtitle 4 of the County Code or other laws, ordinances or regulations of the County for the privilege of transacting and carrying on a business within the County or for disturbing the surface of any street or public thoroughfare. Nothing in this Agreement shall be construed to prohibit Franchisee from offering any service over the Cable System that is not prohibited by Federal or State law.

2.2 County's Regulatory Authority: The Parties acknowledge that the Franchisee intends to provide Non-Cable Services by means of the Cable System. The Parties acknowledge that this Franchise does not encompass or reflect the full extent of the County's authority over the Franchisee and, notwithstanding any provision hereof, the Parties reserve all of their rights under state and federal law regarding the scope of such authority. The Franchisee also acknowledges that, subject to state and federal law, the County has the authority to regulate the placement, construction, repair, and maintenance of physical facilities located in the Public Rights-of-Way, including the Cable System. Finally, nothing in this Franchise shall be deemed a waiver of any right or authority the County may have now or in the future to regulate information services or telecommunications services, or the use of the Cable System to provide such services, *provided* nothing herein shall be deemed a concession by Franchisee that such right or authority exists or may be exercised consistent with state and Federal law.

2.3 Term: The term of this Franchise shall be from the Effective Date to December 31, 2034 unless the Franchise is earlier revoked as provided herein, or unless the Franchise is renewed or extended by mutual agreement.

2.4 Grant Not Exclusive: The Franchise and the right it grants to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the County reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise.

### 2.5 Competitive Equity:

2.5.1 The County Council has the authority to grant franchises, or similar authorizations, that allow entities to construct and operate facilities in the County Public Rights-

of-Way that may be used to provide video programming services to County residences that compete with Comcast's services. If the County Council grants or renews such a franchise, or similar authorization, to an entity that provides competitive video programming services to County residences that, contains material terms and conditions that are more favorable than Comcast's material obligations under this Franchise, upon the request by Comcast, the Parties agree that they will, pursuant to the processes set forth in this Section 2.5, either negotiate in good faith the terms of this Franchise to include any more favorable material terms or conditions that the County imposes upon the other provider, or negotiate amendments to the Franchise to insure that the regulatory and financial burdens imposed on the other provider are no more favorable than those imposed in this Franchise. "Material terms and conditions" include franchise provisions related to: Franchise fees and the definition of Gross Revenues; system design; the number of Public, Education and Government Access Channels and their funding; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches; liquidated damages; performance bond; and service to Public Buildings. The Parties agree that this provision shall not require an identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens in their entirety on each entity are materially equivalent.

2.5.2 The following are exempt from this Section 2.5:

2.5.2.1 video programming services delivered via means or over systems that are not subject to the County's franchising authority or upon which the County may not impose similar requirements, under state or federal law, including a system described in 47 U.S.C. Section 571(a)(1) or (2).

2.5.3 The Parties agree that:

2.5.3.1 Comcast may not withhold, delay or enjoin any performance or otherwise refuse to comply with its obligations whether or not it believes it is entitled to relief under this Section;

2.5.3.2 Any relief shall be prospective only, and limited to the relief agreed upon, or the modifications obtained through any renewal of this franchise;

2.5.3.3 The County will not be liable for any damages to Comcast for any breach of this provision;

2.5.4 The modification process provided for herein shall only be initiated by written notice provided by Comcast to the County regarding specified franchise obligations within one (1) year after the County's grant of the franchise or authorization to the new entrant takes effect. Comcast's notice must : (1) identify the specific terms or conditions in the competitive franchise which are materially different from Comcast's obligations under this Franchise; (2) identify the Franchise terms and conditions for which Comcast is seeking amendments; and (3) provide text for any proposed Franchise amendments to the County, with a written explanation of why the proposed amendments are necessary and consistent; and (4) whether Comcast is willing to consider additional modifications to achieve competitive equity.

2.5.5 Upon receipt of Comcast's written notice as provided in Section 2.5.3, the County and Comcast agree that they will use best efforts in good faith to negotiate the proposed Franchise modifications to achieve competitive equity of regulatory and financial burdens, and that such negotiation will proceed and conclude within a one hundred eighty (180) daytime period, unless that time period is reduced or extended by mutual agreement of the Parties. If the County and Comcast reach agreement on the Franchise modifications pursuant to such negotiations, then the County shall amend this Franchise to include the modifications insofar as permitted under County law. If no modification has been agreed to after one hundred eighty (180) days, Comcast may pursue arbitration or mediation or bring an action in federal or Maryland state court for a determination as to whether the Material terms and conditions, taken as a whole, are substantially more favorable to the competitive entity.

2.5.6 Comcast acknowledges that it is not entitled to any modification of this Franchise based on franchises that are in effect in the County, as of the effective date of this Franchise. The Parties agree and acknowledge that franchises that are renewed after the effective date of this Franchise, even if merely extended under identical terms or continue to operate in a hold-over status beyond two years after the Effective Date of this Franchise, are not franchises in effect as of the effective date of this Franchise for the purposes of this Section 2.5.6.

2.5.7 Notwithstanding anything contained herein to the contrary, the County shall not be obligated to amend this Franchise unless the other provider subject to this section 2.5 is actually providing service under a franchise granted by the County Council.

## 2.6 Franchise Subject to State and Federal Law:

2.6.1 Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of state and federal law, including but not limited to the Communications Act.

## 2.7 No Waiver:

2.7.1 The failure of the County on one or more occasions to exercise a right or to require compliance or performance under this Franchise, the Cable Law or any other Applicable Law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the County, nor to excuse Franchisee from complying or performing, unless the County has specifically waived, in writing, such right or such compliance or performance.

2.7.2 The failure of the Franchisee on one or more occasions to exercise a right under this Franchise or Applicable Law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse the County from performance, unless the Franchisee has specifically waived, in writing, such right or performance.

2.7.3 This Agreement shall not limit any authority of the County in accordance with Maryland law to condemn, in whole or in part, any property of the Franchisee,

provided that the Franchisee shall receive whatever condemnation award the Franchisee would normally be entitled to recover as a matter of Maryland law. Partial condemnation of the Franchisee's property shall not terminate this Agreement except in accordance with the terms of this Agreement.

## 2.8 Construction of Agreement:

2.8.1 Effect of Acceptance: By accepting the Franchise and executing this Agreement, Franchisee, relying upon its own investigation and understanding of the power and authority of the County to grant this Franchise, accepts and agrees to comply with this Agreement and the Cable Code, to the extent not contrary to federal or state law and subject to Section 2.10 (immediately below). Franchisee retains all rights to challenge the County's application of the Cable Code to Franchisee, but agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law; and agrees that the County retains the right to terminate this Agreement for any material violation by Franchisee pursuant to Section 13 of this Agreement.

2.8.2 Incorporation of Cable Code and Conflict. The Cable Code, in the form in existence as of the Effective Date, shall be and is incorporated herein by reference except that to the extent there is a conflict between the Cable Code and this Agreement, the Agreement shall control. The provisions of this Agreement shall be liberally construed to effectuate their objectives. Any amendments to the Cable Code after the Effective Date (other than amendments that constitute an exercise of police power covered by Section 2.11 below) shall be consistent with state and federal law, and shall not abrogate any contractual rights of Franchisee contained herein or otherwise alter any of Franchisee's material rights, benefits, obligations, or duties specified in this Franchise, or impose any new obligations or duties not negotiated for herein. Further, the Parties recognize that 47 U.S.C. §541(b)(3) prohibits the County from imposing any requirement that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a Telecommunications Service by Franchisee. Accordingly, the County shall not invoke any provision of the Cable Code against Franchisee in a manner that is inconsistent with federal law.

2.8.3 Nothing herein shall be construed to limit the scope or applicability of Section 625 of the Communications Act, 47 U.S.C. § 545.

## 2.9 Police Powers:

2.9.1 Nothing in the Agreement, nor any action by the County, shall be construed to prohibit the lawful exercise of the police powers of the County. If the exercise of the County's police power results in any material alteration of the terms and conditions of this Franchise, then the Parties shall modify the Franchise so as to ameliorate the adverse effects of the material alteration and preserve intact, to the greatest extent possible, the benefits and obligations that Franchisee has bargained for in entering into this Agreement. If the Parties cannot reach agreement on the above-referenced modification to the Franchise, then, at either Party's option, the Parties agree to submit the matter to mediation. In addition, if the Parties cannot reach agreement on such a modification, either on their own or through mediation, the

Parties may pursue whatever remedies are available at law or equity to enforce their rights under this Agreement.

### **SECTION 3 PROVISION OF CABLE SERVICE**

3.1 Franchise Area: Subject to the provisions of this Franchise, for the term of the Franchise, Franchisee shall make Cable Service available to all residences and businesses in the Franchise Area.

3.2 Timely Performance: The Franchisee shall not be excused from the timely performance of its obligation as set forth in Section 3.1, except for the following occurrences: (A) for periods of Force Majeure; (B) for periods of delay caused by the County ; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Franchise Area; (D) unlawful action or inaction of any government instrumentality including condemnation or the unlawful failure to issue any necessary permits; (E) action or inaction of any public utility; (F) accidents for which the Franchisee is not responsible; (G) work delays because utility providers denied or delayed the Franchisee access to utility poles to which Franchisee's Cable System is attached; and (H) unavailability of materials and/or qualified labor to perform the work necessary if such acquisition of qualified labor would be commercially impracticable as defined in 47 U.S.C. § 545(f).

3.2.1 The Franchisee may refuse to provide Cable Service (A) in developments or buildings that are subject to exclusive arrangements with other providers; (B) upon its documented inability when it is unable, pursuant to normal industry practice, to: obtain necessary real property or other physical access rights; (C) in developments or buildings that Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities, which are not available on a commercially reasonable basis, provided, however, that upon request Franchisee will provide the County with an explanation why the Franchisee is unable to serve a particular development or building; (D) when its prior service, payment or theft of service history with a Person has been unfavorable; and (E) in areas where the occupied residential household density does not meet the density requirement set forth in subsection 3.2.2.

3.2.2 Density Requirement: Upon request, Franchisee shall make Cable Services available to residential dwelling units, including occupied residential multiple dwelling units, in all areas of the Franchise Area where the average density is equal to or greater than twenty (20) occupied residential dwelling units per mile as measured in strand footage from the nearest point on the active Cable System trunk or feeder line from which a usable cable signal can be obtained, and where there is no other franchised provider already available. Where there is another franchised provider available, Franchisee shall make Cable Services available to residential dwelling units, including occupied residential multiple dwelling units, where the average density is equal to or greater than thirty (30) occupied residential dwelling units per mile as measured in strand footage from the nearest point on the active Cable System trunk or feeder line from which a usable cable signal can be obtained. Dwelling units shall count towards the twenty (20) or thirty (30) units per mile density requirement from where the dwelling unit's route of vehicular, or wireline utility, ingress or egress contacts the Public

Right-of-Way. For purposes of this section, a home shall only be counted as a dwelling unit if such home is not serviceable and within two hundred twenty five (225) foot drop distance of the proposed distribution plant path in the Public Right-of-Way as measured from the dwelling unit's route of vehicular or wireline utility ingress or egress contacts the Public Right-of-Way or other alternative drop starting point. Should, through new construction, an area within the Franchise Area meet the density requirement, Franchisee shall begin to provide Cable Service to such area within six (6) months of receiving notice and verification from the County that the density requirement has been met and receiving all necessary easements, permits, pole licenses, required authorizations, and pole make ready work.

3.2.3 Line Extension to Low Density Areas; Cost Sharing Formula: The Cable System shall be further extended to areas in the County that do not meet the density requirements of subsection 3.2.2 ("Low Density Area") upon the request from a residential dwelling unit owner in such Low Density Area and based upon the Line Extension Policy attached hereto as Exhibit A, which Exhibit A is incorporated herein by reference. Franchisee shall also extend service if the County, or any other governmental authority, agrees to pay the cost of the extension that a customer would be required to bear under the Line Extension Policy. The above cost sharing formula shall not apply in areas where Franchisee is the beneficiary of government funding in aid of broadband deployment.

3.2.4 The costs of the service drops to each of the residential dwelling units requesting service pursuant to Section 3.2.3 shall not be included in the cost calculation in Section 3.2.3 or Exhibit A. In addition to the cost sharing under Section 3.2.3 and Exhibit A, the Franchisee shall not assess a Subscriber any cost other than a standard installation charge for service drops that meet the definition of Standard Installation in Exhibit A. Where a drop exceeds the Standard Installation, the Franchisee may charge a Subscriber an additional charge, pursuant to the Franchisee's "long drop" policy. Upon written request, the Franchisee shall provide the technical specifications required to be met for the dwelling unit owner to dig the trench and/or install appropriate conduit, consistent with the technical specifications of the Franchisee. If the owner elects to conduct trenching and/or install appropriate conduit at the owner's expense, the Franchisee's cost estimate shall be modified to take into account any cost savings or increases that may result. Franchisee may require that the owner shall not install other facilities in the conduit, or permit any third party to do so, without first notifying Franchisee in writing, and ensuring at all times that the presence of such facilities in the conduit complies with all applicable safety and technical code requirements. This Franchise does not require Franchisee to be responsible for the maintenance, repair, or replacement of such conduit after installation of the drop. Subscriber shall retain ownership of such conduit.

### 3.3 Cable Service to Public Buildings:

3.3.1 Franchisee shall provide Expanded Basic Service to each Public Building identified in Exhibit B and any necessary converters. Franchisee must provide one hundred twenty (120) days' notice of any location where it intends to charge for service or equipment, so that the County may notify Comcast to suspend service and take such other steps as may be appropriate under Applicable Law. The foregoing applies only to the extent federal law and the FCC's 621 Orders classify courtesy service as franchise fees or otherwise prohibit

courtesy services. In the event that the Communications Act or subsequent FCC Orders provides that the County may require complimentary services, facilities or equipment at no charge, or at a lower charge, it may request the same in accordance with this paragraph and Exhibit B upon no less than one hundred twenty (120) days' notice to Franchisee.

3.3.2 The County shall be responsible for the cost of any "terminal equipment," such as TV monitors or computers.

3.3.3 The cost of inside wiring, additional drops or outlets and additional converters requested by the County within these specified Public Buildings, including those drops or outlets in excess of those currently installed are the responsibility of the County.

#### **SECTION 4 SYSTEM OPERATION**

##### 4.1 Cable System Tests and Inspections:

4.1.1 The Franchisee shall comply with all applicable technical standards and testing requirements established in federal or state law. To the extent those standards are altered, modified or amended during the term of this Franchise, the Franchisee shall comply with such altered, modified, or amended standards within a reasonable period after such standards become effective.

4.1.2 The County shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to federal and state law.

4.1.3 The County may, for good cause shown, waive or limit the system test and inspection provisions in this Section.

#### **SECTION 5 SYSTEM FACILITIES**

5.1 Cable System Characteristics: The Cable System shall have at least the following characteristics:

5.1.1 Designed with an initial digital carrier passband between 50 MHz and 750 MHz, and at least 1 GHz for all new or replaced passive components.

5.1.2 Modern design and architecture that will permit additional improvements necessary for high quality and reliable Service throughout the Franchise Term. The Cable System shall meet or exceed the applicable technical standards set forth in 47 C.F.R. § 76.601, and any other applicable FCC rules and regulations, industry standards, and manufacturers performance specifications.

5.1.3 Protection against outages due to power failures, so that back-up power is available at a minimum for at least 24 hours at each headend and at all hubs, and conforming to industry standards, but in no event rated for less than two hours consistent with manufacturer's specifications, at each power supply site other than headend and hubs. Franchisee will conduct ongoing monitoring of power supplies.

5.1.4 Facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design.

5.1.5 All facilities and equipment designed to be capable of continuous twenty-four (24) hour daily operation in accordance with applicable FCC standards except as caused by a Force Majeure event.

5.1.6 All facilities and equipment designed, built and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by a subscriber.

5.1.7 All facilities and equipment designed, built and operated in such a manner as to protect the safety of the Cable System workers and the public.

5.1.8 Sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable the Franchisee to substantially comply with applicable law, including applicable customer service standards and including requirements for responding to system outages.

5.1.9 All facilities and equipment required to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve system problems.

5.1.10 If applicable, antenna supporting structures (towers) designed in accordance with Title 3 (“Buildings”) of the Howard County Code as amended, painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration, the Federal Communications Commission, and all other applicable codes and regulations.

5.1.11 Facilities and equipment at the headend shall allow the Franchisee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all properly formatted closed-captioned programming retransmitted over the Cable System shall include the closed-captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning. Except as provided for in Section 6 herein, the delivery of programming in High-Definition (HD) and successor formats is at the discretion of the Franchisee regardless of the format received.

5.1.12 Shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Cable Services on the System. Such equipment will at a minimum offer as an option that a Person ordering programming must provide a personal identification number or other means provided by the Franchisee only to a Subscriber. Provided, however, that the Franchisee shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

5.1.13 The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, which the County is permitted by a change in law to enforce, and shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures:

5.1.13.1 Occupational Safety and Health Administration (OSHA) Safety and Health Standards;

5.1.13.2 National Electrical Code;

5.1.13.3 National Electrical Safety Code (NESC);

5.1.13.4 Obstruction Marking and Lighting, AC 7017460 i.e., Federal Aviation Administration;

5.1.13.5 Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and

5.1.13.6 Title 3(“Buildings”) of the Howard County Code, as amended.

5.2 Status Monitoring: Status monitoring capability shall be a feature of the electronics at the Subscriber premises in the Cable System and of the backup power in the Cable System set forth in Section 5.1.4 of this Agreement.

5.3 Interconnection:

5.3.1 The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area at suitable locations as determined by the Franchisee.

5.4 Emergency Alert System:

5.4.1 The Franchisee shall install and thereafter maintain for use by the County an Emergency Alert System (“EAS”).

5.4.2 This EAS shall at all times be operated in compliance with FCC requirements in order that emergency messages may be distributed over the System. In the event of a state or local civil emergency, the EAS shall be activated by equipment or other acceptable means as set forth in the Maryland State EAS Plan. Franchisee will override the audio and video on all channels, so long as it is consistent with Franchisee's contractual commitments, to transmit EAS alerts received from the designated Local Primary Sources, including LP-1, LP-2, and other stations, assigned by the Maryland State EAS Plan to serve the Howard County Operational Area.

5.5 Home Wiring: The Franchisee shall comply with all applicable FCC requirements, including any notice requirements, with respect to home wiring. Prior to a Subscriber's termination of Cable Service, the Franchisee will not restrict the ability of the Subscriber to remove, replace, rearrange or maintain any cable wiring located within the interior space of the Subscriber's dwelling unit, so long as such actions are consistent with FCC standards and meet any technical and compatibility requirements Franchisee may have. The Franchisee may require a reasonable indemnity and release of liability in favor of the Franchisee from a Subscriber for wiring that is installed by such Subscriber.

5.6 Contractors: Any contractor or subcontractor used by Franchisee to meet its obligations under the Franchise or the Cable Code must be properly licensed under laws of the State and all applicable local ordinances, and each such contractor or subcontractor shall have the same obligations with respect to its work as the Franchisee would have if the work were performed by the Franchisee. Franchisee shall be responsible for the omissions and negligent actions of persons contracting or subcontracting or representing the Franchisee in the course of providing Cable Service to any Subscriber. Franchisee is responsible for and shall address complaints made against its contractors, subcontractors, representatives or agents in the course of their duties on behalf of the Franchisee.

5.7 Services for the Disabled: Franchisee shall comply in all material respects with all applicable requirements of the Americans with Disabilities Act. Franchisee shall comply in all material respects with federal and state law regarding accessibility of video services, including but not limited to closed captioning for the hearing impaired. Comcast currently operates a specialized Accessibility Support Center for Customers with Disabilities providing information and options to support subscribers with a variety of disabilities to access and utilize Comcast's service, including specifically access assistance for hearing impaired Subscribers. The specific functions of the Accessibility Support Center may change over time, particularly as technology changes, but Comcast intends to continue to make its service accessible for disabled customers.

5.8 Uniform Capabilities: Franchisee's System shall have the same activated capabilities throughout the County; and in planning upgrades, Franchisee must take reasonable steps to ensure that the upgrade proceeds in a manner that does not effectively result in low-income, low-density or rural areas of the County being discriminated against in terms of the quality of the Services offered. The Parties acknowledge that it is physically impossible to deploy some system upgrades throughout the entire County at the same time, but that such recognition does not relieve Franchisee of their obligations to obtain uniform capabilities.

## **SECTION 6 PEG SERVICES**

### **6.1 PEG Set Aside:**

6.1.1 Subject to the other provisions of this Section, Franchisee will provide to each Subscriber in the County up to four (4) PEG Channels, of which up to four (4) will be high definition (HD) channels activated as provided in Section 6.7.5.

6.1.1.1 PEG Channels shall be provided as part of the basic tier of service so long as there is a basic tier to which each Subscriber must subscribe, and otherwise, shall be delivered to every Subscriber without any additional fee or charge in addition to the fee or charge the subscriber is paying for the Cable Services the Subscriber receives. PEG Channels shall require no equipment other than the equipment used by a Subscriber to receive Cable Services. Provided, that if a Subscriber does not have the equipment necessary to receive Cable Services in HD, Subscriber will not be able to view any PEG Channel in HD without buying or leasing the appropriate HD equipment and subscribing to HD service. Franchisee will carry signal-related information that is delivered to it as well as secondary audio and multi-lingual audio, closed captioning, video description and other program-related information subject to such information being provided in a format or manner compatible with the Cable System

6.1.1.2 The Franchisee shall continue to carry the PEG Channels on the existing channel assignments throughout the System as set forth in Exhibit C. If the Franchisee decides to change the PEG channel assignment, it must provide sixty (60) days prior written notice, if commercially reasonable, to the County and any PEG provider responsible for managing the affected PEG Channel. The Franchisee shall make reasonable efforts to continue to group PEG Channels together on any new channel assignment. The Franchisee shall also take efforts to make customers aware of any such changes before the changed assignment. The Franchisee shall not arbitrarily or capriciously change such PEG Channel assignments, and the Franchisee shall minimize the number of such changes. If Franchisee changes PEG Channel assignments, it shall reimburse the County up to seven thousand five hundred dollars (\$7,500) of reasonably documented expenses for each individual PEG Channel assignment changed to defray the costs incurred for making logo changes necessitated by the channel designation change and public awareness of the new channel numbers, including notice of the changes included in at least two monthly subscriber bills, one of which must be in advance of the change, and the second promptly after the change.

6.1.2 PEG Return Lines: Franchisee is responsible for providing and maintaining the connections, and providing the equipment so that it may receive PEG signals at origination points designated by the County, and simultaneously transmit those signals as received to an appropriate point for redistribution to subscribers on the appropriate PEG channels. Upon written request of the County, the Franchisee will estimate the costs of a requested new or relocated origination Return Line location for the PEG Channels. The County shall be responsible for any construction costs related to PEG origination points. The County shall provide Franchisee with the ability to interconnect its Cable System to receive PEG Channels at the County's PEG facilities.

6.1.2.1 PEG Return Lines as set forth in Exhibit C and as described in Section 6.1.4. will be provided, maintained and upgraded at no cost to the County or PEG providers designated by the County. except that, for so long as federal law requires maintenance costs associated with such lines to be treated as a franchise fee, Franchisee may invoice the County or designated PEG providers for its incremental actual cost of maintenance of the return line, not to exceed \$2,500 per return line per year.

6.1.3 Management of Channels: The County may designate one (1) or more entities, including a non-profit access management corporation, to perform any or all of the following functions:

6.1.3.1 manage any necessary scheduling or allocation of time on the PEG Channels; or

6.1.3.2 on the County's behalf, program any PEG Channel.

6.1.4 The County shall require all local producers and Users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee, and the County, from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or User; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel.

6.1.5 Onscreen Menus and Programming Guides. The Franchisee shall continue to make available to the County the ability to place PEG channel programming information on the interactive channel guides and menus by putting the County in contact with Franchisee's electronic program guide vendor ("EPG provider"). The County, or any entity responsible for programming or managing the PEG Channels, shall be responsible for providing the required programming description to the EPG provider. The County, or any other entity responsible for programming or managing the PEG Channels, shall be responsible for the cost of including PEG channel and program information on the guide.

## 6.2 PEG Capital Grants:

6.2.1 Franchisee shall provide grants to the County, for the benefit of the County, to be used for PEG capital expenses as determined by the County (the "PEG Grants"). This includes, but is not limited to, studio facilities, studio and portable production equipment, editing equipment and program playback equipment and other similar costs.

6.2.2 The PEG Grants shall be the sum of sixty-cents (\$0.60) per subscriber per month for a period of twelve (12) months. After the initial twelve (12) month period, Franchisee's PEG Grant shall match the lowest PEG Grant of any other franchised cable operator serving customers in the County up to sixty-six cents (\$0.66) per Subscriber per month. Franchisee shall have up to ninety (90) days from the Effective Date of this Agreement to implement the new PEG Grant. The initial 12 month period, for which the PEG Grant shall be sixty cents (\$0.60) per subscriber per month, shall commence upon Franchisee's implementation of the PEG Grant. Once implemented PEG Grant payments shall be made no later than thirty (30) days following the end of each calendar quarter. After the initial twelve

(12) month period, Franchisee shall have up to ninety (90) days to implement any change to the PEG fee in accordance with this Section 6.2.2.

6.2.3 The County shall ensure the use of the PEG capital grant is consistent with federal law and shall provide Franchisee, upon request, with a reasonable accounting annually of the distribution of PEG Grant funds pursuant to this Section 6.2.

6.3 Subscriber Recoveries: To the extent permitted by federal law, the Franchisee shall be allowed to recover from Subscribers the costs of the PEG Grants or any other costs arising from the provision of PEG services and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the forgoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection costs to Subscribers.

6.4 Changes to System: If the Franchisee makes changes to the Cable System that require modifications to access facilities and equipment, Franchisee shall make any necessary changes to the Franchisee's headend and distribution facilities or equipment within thirty (30) days so that PEG facilities and equipment may be used as intended in this Agreement.

6.5 Backup Facilities and Equipment: The Franchisee shall design, build, and maintain all PEG upstream feeds, interconnection, and distribution facilities so that such feeds function as reliably as Franchisee's Cable System as a whole within the County, and are no more likely to fail than is Franchisee's Cable System as a whole within the County.

6.6 Editorial Control: Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on the PEG Channels (except for such programming as the Franchisee may cablecast on such PEG Channels).

6.7 Use of PEG Channels, Facilities and Equipment:

6.7.1 The County, or the entity that manages a PEG Channel, may establish and enforce rules and procedures for use of the PEG Channels pursuant to Section 611(d) of the Communications Act, 47 U.S.C. § 531(d). The County shall resolve any disputes among Users regarding allocation of PEG Channels.

6.7.2 The Franchisee will provide downstream transmission of the PEG Channels on its Cable System at no charge to the County or other PEG Channel programmers. Franchisee shall provide transport of the programming from the point of origination to the Franchisee's headend and to the downstream channels at no charge to the County or other PEG access providers other than as specified herein.

6.7.3 The County or its licensees, assigns, or agents shall not transmit on the PEG Channels commercial programming or commercial advertisements to the extent that they would constitute competition with the Franchisee for such commercial programming or commercial advertisements, subject to the following: For purposes of this subsection, "Commercial Programming or Commercial Advertisements" shall mean programming or advertisements for which the County receives payment from a third party (a party other than

the County, or the Franchisee), but shall not include announcements indicating that programming is underwritten by a commercial entity, such as the underwriting announcements typically displayed by the public broadcasting system.

6.7.4 Costs and Payments Not Offset Against Franchise Fees: The support for PEG capital expenses, including specifically the PEG grant set forth in Section 6.2, does not constitute a franchise fee within the meaning of 47 U.S.C. § 542 and therefore is not subject to offset against the franchise fee payment made pursuant to Section 7 of the Franchise. In addition, in accordance with applicable federal law, Comcast agrees that it will not offset against franchise fees the value of the PEG channels provided pursuant to this Section 6, the value of the transmission of PEG programming from the origination points to Comcast's headend, or the support provided pursuant to Sections 6.1.2.4.

6.7.5 High Definition PEG Channels:

6.7.5.1 Subject to the aggregate four (4) PEG Channel limit, the Franchisee shall activate and make available two (2) HD PEG Channels within one hundred eighty (180) days of the Effective Date or the completion of any technical upgrades required to allow the transmission of the PEG Channel content in HD, whichever is later, not to exceed a maximum of two hundred seventy (270) days. An HD PEG Channel provided under this section may be a simulcast of a SD PEG channel; or may be original programming or a compilation of programming; in any case, the channel will count as one channel against the total number of PEG Channels Franchisee is obligated to provide.

6.7.5.1.1 Upon request of the County, but no sooner than the second anniversary of the Effective Date, the Parties agree to meet and establish a schedule for the conversion of the other two (2) SD PEG Channels to HD PEG Channels.

6.7.5.2 The HD PEG Channels will be assigned channel numbers near other local HD channels, and if that is not possible, channel numbers in the lowest available HD channel sequence or as otherwise agreed by the Parties. If an HD PEG Channel is a simulcast of the programming on an SD PEG Channel, the programming may be delivered to Franchisee in an HD format, and Franchisee will down convert the signal to SD for purposes of the simulcast.

6.7.6 Notwithstanding any other provisions in this Section:

6.7.6.1 All PEG Channels shall have at a minimum the same characteristics as applicable federal or state law may from time to time require for PEG channels, or the class of channels to which PEG channels belong.

6.7.6.2 Franchisee shall deliver each PEG signal to Subscribers so that it is viewable from the perspective of the viewer without material degradation so that each PEG Channel is as accessible, recordable, viewable and available in the same resolutions and at a quality equal to the quality of the primary signal of local broadcast stations carried on the System. Franchisee is not required to deliver a signal in a higher quality format than is delivered to the Franchisee, or to deliver an HD signal except as required to comply with Section 6.7.5.

Franchisee may implement carriage of the PEG Channels, including an HD PEG Channel, in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal as accessible, functional, useable and of a quality equivalent from the perspective of the viewer to other channels of the same resolution carried on the cable system.

## **SECTION 7 FRANCHISE FEES**

7.1 Payment to the County: The Franchisee shall pay to the County a Franchise fee of five (5%) percent of annual Gross Revenues derived from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Franchisee shall not be compelled to pay any higher percentage of franchise fees than any other Franchised Cable Operator providing service in the Franchise Area. If the Communications Act is amended to increase the five (5%) percent cap, any increase in the amount of the percentage shall be subject to the mutual agreement of the County and Franchisee in the form of an amendment to this Agreement. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be made on a calendar year basis. Such payments shall be made no later than thirty (30) days following the end of each calendar quarter. If the Franchisee is unable to compute the Franchise fee payment within the foregoing time frame, the Franchisee may make an estimated Franchise fee payment based on the payment for the previous quarter. Estimated payments must be trued up with the next quarterly payment. If any Franchise fee payment, including any estimated Franchise fee payment, due and owing is not made on or before the required date, the Franchisee shall pay any applicable penalties and interest charges computed from such due date, as provided for in the Cable Code, as it exists on the Effective Date.

7.2 Supporting Information: Subject to Section 9.3, each Franchise fee payment shall be submitted with supporting detail in a form similar to that included in Exhibit D and a statement certified by a representative of the Franchisee, reflecting the total amount of monthly Gross Revenues for the payment period. Franchisee shall also indicate the number of subscribers within the County for the payment period.

7.3 Bundled Services: If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that, to the extent allocations are discretionary or otherwise not addressed by GAAP, it will not intentionally or unlawfully allocate such revenue for the purpose of evading the Franchise fee payments under this Agreement. In the event that the Franchisee or any Affiliate shall bundle, tie, or combine Cable Services (which are subject to the franchise fee) with Non-Cable Services (which are not subject to the Franchise fee), so that Subscribers pay a single fee for more than one class of service or receive a discount on Cable Services, or where any multi-service fees are assessed and not directly attributable to a particular line of business, such as late fees, such revenues shall be allocated to Cable Service and Non-Cable Service in accordance with GAAP, so that a pro rata share of the revenue received for the bundled, tied, or combined services shall, to the extent reasonable, be allocated to Gross Revenues for purposes of computing the franchise fee. To the extent there are published charges and it is reasonable, the pro rata share shall be computed on the basis of the published charge

for each of the bundled, tied, or combined services and equipment charges, when purchased separately.

7.4 No Limitation on Taxing Authority: Nothing in this Agreement shall be construed to limit any authority of the County to impose any lawful tax, fee, or assessment of general applicability. Subject to applicable federal law, the Franchise fee payments required by this Section shall be in addition to any and all taxes of a general nature or other fees or charges which Franchisee shall be required to pay to the County or to any state or federal agency or authority, as required by law, all of which shall be separate and distinct obligations of Franchisee. Franchisee may designate the Franchise fee(s) as a separate item in any bill to a Subscriber of Franchisee's Cable System, but shall not designate or characterize it as a tax.

7.5 No Offset: Franchisee agrees that it will not offset or otherwise reduce the Franchise fee paid to the County by the value or cost of any grant, service or facility it provides pursuant to this Agreement, or any agreement with the County, provided that such grant, service or facility does not fall within the definition of franchise fees within the meaning of federal law.

## **SECTION 8 CUSTOMER SERVICE**

Customer service requirements are set forth in Exhibit E

## **SECTION 9 REPORTS AND RECORDS**

9.1 Open Books and Records: Subject to Applicable Law, upon reasonable written notice to the Franchisee, Franchisee will provide Prompt access to, and permit County or its designees to inspect and copy Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours as are reasonably necessary to ensure compliance with the franchise and Applicable Law. Where Comcast claims a book or record is confidential, County will afford the protections permitted under the Maryland Public Information Act.

9.2 Upon request, Franchisee shall provide the County or its designees with information in an electronic format that allows the County to copy, sort and search data, if such information is maintained by Franchisee in an electronic format that allows for copying, sorting, and searching data, in the ordinary course of business.

9.3 "Prompt," means within thirty (30) days of a request, or such shorter time as may be required in light of federal or state requirements governing the time for local actions, or where the request relates to matters where life or property may be endangered.

9.4 Inspections conducted under this Section 9 shall be conducted in a manner that will not disrupt the Franchisee's operations. The County's notice requesting inspection shall endeavor to specify the section or subsection of the Franchise under review, so that Franchisee may organize the necessary books and records for appropriate access by the County. Franchisee shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the County.

9.5 Voluminous Records: If any books, records, maps, plans, or other requested documents are too voluminous, not available locally in the County, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at a location mutually agreed to by the County and the Franchisee, provided that the Franchisee must make necessary arrangements for copying documents selected by the County after its review; and (ii) the Franchisee must pay reasonable additional expenses incurred by the County (above those that would have been incurred had the documents been produced in the County) in inspecting or copying those documents at such agreed upon location..

9.6 Proprietary Books and Records: County and franchisee agree that this subsection is subject to the Maryland Public Information Act and to the extent of any conflict of this subsection the Maryland Public Information Act, the Maryland Public Information Act controls. To the extent permitted by law, County shall only disclose information identified by Franchisee as proprietary or confidential to employees, representatives and agents thereof who have a need to know in order to enforce the provisions hereof and who agree, through the execution of a non-disclosure agreement, to maintain the confidentiality of all such information. The County shall treat as confidential any books, records and information disclosed hereunder that constitutes proprietary or confidential information under federal or state law, to the extent Franchisee makes the County aware of such confidentiality. Franchisee shall be responsible for clearly and conspicuously stamping the word “confidential” on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under federal or State law. If the County believes it must disclose any such confidential information in the course of enforcing this Franchise, or for any other reason, it shall advise the Franchisee in advance so that Franchisee can take appropriate steps to protect its interests. If the County receives a demand from any Person for disclosure of any information designated by Franchisee as confidential, the County shall, so far as consistent with Applicable Law, advise Franchisee and provide Franchisee with a copy of any written request by the party demanding access to such information within a reasonable time. Unless otherwise ordered by a court or agency of competent jurisdiction, the County agrees that, to the extent permitted by state and federal law, it shall deny access to any of Franchisee’s information marked as confidential as set forth above to any Person. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 USC 551.

9.7 Reasonable Steps to Provide: The Franchisee shall take all reasonable steps required to ensure that it is able to provide the County with all information that must be provided or may be requested under this Agreement or federal or state law, including the issuance of appropriate subscriber privacy notices. The Franchisee shall be responsible for redacting any data that Applicable Law prevents it from providing to the County. Nothing in this Section shall be read to require a Franchisee to violate federal or state law protecting subscriber privacy.

9.8 Complete and Accurate Records: The Franchisee shall keep complete and accurate books of account and records of its business and operations under and in connection with the Agreement.

9.9 Record Retention: Unless otherwise provided in this Section, all materials and information specified in this Section shall be maintained for a period of three (3) years, or to be maintained until any audit is completed.

9.10 Communication with Regulatory Agencies: Within fifteen (15) days, the Franchisee shall file with the County a copy of any document filed by the Franchisee with a regulatory agency or received by the Franchisee from a regulatory agency that pertains to and references the County with respect to the provision of Cable Service within the County.

9.11 Uses of System: The Franchisee will notify the County of all Cable Services offered over the Cable System as promptly as practicable, after each such product or Cable Service is instituted.

9.12 Annual Report: Franchisee shall submit a written report to the County by March 31 of each year, in a form consistent with Exhibit F.

9.13 Quarterly Report: Upon request from the County, the Franchisee shall submit a written report to the County no later than thirty (30) days after the end of each calendar quarter during the term of this Agreement, which report shall be in a form consistent with Exhibit G.

9.14 Waiver of Reporting Requirements: The County may, for good cause shown, waive the reporting provisions in this Section.

## **SECTION 10**

### **10.1 Insurance:**

10.1.1 Franchisee shall maintain in full force and effect, at its own cost and expense, throughout the entire Franchise Term, the following insurance coverage:

10.1.1.1 Commercial General Liability Insurance insuring the Franchisee with respect to the construction, operation and maintenance of the Cable System, and the conduct of the Cable Service business in the County in the minimum amounts of five million dollars (\$5,000,000), per occurrence; and in the aggregate. Such commercial general liability insurance must include coverage for all of the following: premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual liability, property damage, independent contractors and personal injury.

10.1.1.2 Automobile Liability Coverage, with a minimum limit of liability of two million dollars (\$2,000,000), per occurrence, combined single limit for bodily injury and property damage coverage. Policy must include coverage for owned automobiles, leased or hired automobiles and non-owned automobiles.

10.1.1.3 Workers' Compensation Coverage meeting statutory requirements of Maryland Law and Employers' Liability Coverage with the following minimum limits: Bodily Injury by Accident - \$500,000 each accident, Bodily Injury by Disease - \$500,000 policy limits and Bodily Injury Disease - \$100,000 each employee.

#### 10.1.1.4

10.1.2 Franchisee shall not cancel any required insurance policy without submitting documentation to the County verifying that Franchisee has obtained alternative insurance in conformance with this Agreement.

10.1.3 Each of the required insurance policies shall be with insurers qualified to do business in the State of Maryland, with an A- or better rating by Best's Key Rating Guide, Property/Casualty Edition.

10.1.4 The Franchisee shall provide the County with a certificate of insurance evidencing all coverage required of this Agreement upon execution of this Agreement, following a material change or any time the Franchisee obtains new insurance policies.

10.1.5 All Commercial General and Automobile Liability Insurance policies shall name the County, , their elected and appointed officials, officers, boards, commissions, commissioners, and employees as additional insureds with respect to losses for which Franchisee is responsible under this Agreement. Such additional insured requirement shall be noted on the certificate of insurance provided to the County.

10.1.6 Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

#### 10.2 Indemnification:

10.2.1 Subject to the provisions below, the Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the County and its elected and appointed officials, officers, boards, commissions, commissioners, and employees, against any and all claims, suits, causes of action, proceedings, and judgments, whether for damages or otherwise arising out of or alleged to arise out of the installation, construction, operation, or maintenance of the Cable System, including, but not limited to, any claims against the Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark, or patent, or of any other intellectual property right of any Person, firm, or corporation.

10.2.2 This indemnity does not apply to programming carried on any Channel set aside for PEG use, or Channels leased pursuant to 47 U.S.C. § 532, or to operations of the PEG Channels to the extent such operations are carried out by a person other than the Franchisee or its agents. Further, the Franchisee shall not be required to indemnify the County for acts of the County which constitute willful misconduct or negligence, on the part of the County, its officers, employees, agents, attorneys, consultants, independent contractors or third parties, or for any activity or function conducted by any Person, other than Franchisee, in connection with PEG Access, or EAS.

10.2.3 In no event shall Franchisee be responsible for indemnifying the County under this section 10.2 for any act or omission by Franchisee that has been specifically approved by the County, or for any act or omission by the County or its elected and appointed

officers, boards, commissions, commissioners, agents, or employees that results in personal injury or property damage.

10.2.4 The County shall give the Franchisee written notice of its obligation to indemnify the County under Section 10.2 within thirty (30) days of receipt of a claim, suit, cause of action, or proceeding for which the Franchisee is obligated to indemnify the County. The County shall take action necessary to avoid entry of a default judgment if such action is needed before the County provides the Franchisee notice; provided, however, that no such action shall in any way prejudice or harm the Franchisee.

10.2.5 With respect to Franchisee's indemnity obligations set forth in Section 10.2, Franchisee shall provide the defense of any claims, suits, causes of action, or proceedings brought against the County by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the County, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the County from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the County, Franchisee shall have the right to defend, settle or compromise any claim, suit, cause of action, or proceeding arising hereunder, so long as the settlement includes a full release of the County, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. If the County does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the County shall in no event exceed the amount of such settlement. If Franchisee fails, after notice pursuant to subsection 10.2.4, to undertake the County's defense of any claims encompassed within this Section 10.2, Franchisee's indemnification shall include, but is not limited to, the County's reasonable attorneys' fees, including fees for outside counsel hired to defend the County, incurred in defending against any such claim, suit, cause of action, or proceeding, any interest charges arising from any claim, suit, cause of action, or proceeding arising under this Agreement or the Cable Code, the County's reasonable out-of-pocket expenses, and the reasonable value of any services rendered by the County's Attorney or the County's staff or their employees.

10.2.6 Neither the provisions of this Section nor any damages recovered by the County shall be construed to limit the liability of the Franchisee or its subcontractors for damages under the Agreement or the Cable Law or to excuse the faithful performance of obligations required by the Agreement, except to the extent that any monetary damages suffered by the County have been satisfied by a financial recovery under this Section or other provisions of the Agreement or the Cable Law.

10.2.7 The County shall at no time be liable for any injury or damage occurring to any Person or property from any acts or omissions of Franchisee in the construction, maintenance, use, operation or condition of the Cable System. It is a condition of this Agreement that the County shall not and does not by reason of this Agreement assume any liability whatsoever of the Franchisee for injury to Persons or damage to property.

10.2.8 Nothing in this Agreement shall be construed to waive the County's governmental immunity.

## **SECTION 11            TRANSFER OF FRANCHISE**

11.1     The Franchise shall not be transferred without prior approval of the County. A transfer of the Franchise will be approved only if the County finds that the transfer is necessary and in the best interests of the County and its residents. For purposes of this Section 11, “transfer of the franchise” shall mean any transaction in which: (1) an ownership or other interest in the Franchisee is transferred from one person or group of persons to another person or group of persons so that control of the Franchisee is transferred; or (2) the rights held by the Franchisee under the Franchise are transferred or assigned to another person or group of persons. Notwithstanding the requirements set forth herein, no prior approval of the County shall be required for a transfer of the Franchise to an Affiliate of the Franchisee.

11.2     The proposed transferee shall submit to the Cable Administrator an application to transfer the Franchise. An application to transfer the Franchise shall include a transfer application fee as provided in the Cable Code, and consistent with Federal law, and provide complete information on the proposed transaction, including details on the legal, character, financial, technical and other pertinent qualifications of the transferee, and on the potential impact of the transfer on subscriber rates. At minimum, a transfer application shall include the following information:

11.2.1            Name and address of the proposed transferee and identification of the ownership and control of the proposed transferee, including: the names and addresses of the ten largest holders of an ownership interest in the proposed transferee and all persons with five percent or more ownership interest; the persons who control the proposed transferee; all officers and directors of the proposed transferee; and any other business affiliation and cable system ownership interest of each named person;

11.2.2            An indication of whether the proposed transferee, any person controlling the proposed transferee, or any officer or major stockholder of the proposed transferee has been adjudged bankrupt, had a cable franchise revoked, or been found guilty by any court or administrative agency of a violation of a security or antitrust law, a felony, or any crime involving moral turpitude; and, if so, identification of any such person or entity and a full explanation of the circumstances;

11.2.3            A demonstration of the proposed transferee’s technical, legal and financial ability to operate the cable system, including identification of key personnel;

11.2.4            A description of the proposed transferee’s prior experience in cable operations and identification of communities in which the proposed transferee or its principals have, or had, a cable franchise or an interest therein, including the identification of any disciplinary actions or litigation involving such franchisees and their franchising authorities.

11.3     Final action on an application for transfer of a franchise shall be taken by the Council and County Executive.

11.4     Approval by the County of a transfer of a franchise does not constitute a waiver or release of any of the rights of the County under the franchise agreement.

11.5 Transferee's Agreement: No application for a Transfer of the Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Agreement, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this Agreement and the Cable Law for all purposes, including renewal, unless the County, in its sole discretion, expressly waive this requirement in whole or in part.

## **SECTION 12 RENEWAL OF FRANCHISE**

12.1 The County and Franchisee agree that any proceedings that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, 47 U.S.C. §546.

## **SECTION 13 ENFORCEMENT AND TERMINATION OF FRANCHISE**

13.1 Audits Regarding Fee Payments; Limitations: Upon reasonable advance written notice, the County shall have the right to inspect books and records relating to the Cable System in order to audit and recompute any amounts determined to be payable under this Agreement, whether the records are held by Franchisee, an Affiliate, or any other agent of Franchisee.

13.1.1 Absent a tolling agreement by the parties, any such audit shall take place within three (3) years from the date the County receives the fee payment to be audited, after which three year period any such payment shall be considered final.

13.1.2 In the event of an alleged underpayment of fees paid to the County, the Franchisee shall have thirty (30) days from the receipt of the findings to provide the County with a written response agreeing to or disputing the results of the audit. If Franchisee disputes the amount of alleged underpayment, the Parties shall work together in good faith to resolve any such dispute. Both Parties shall maintain all rights and remedies available at law regarding any disputed amount while the parties are attempting to resolve the dispute. If the Parties cannot agree upon a resolution, either Party may 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.

13.1.3 The County's audit expenses shall be borne by the County unless the audit discloses an undisputed underpayment of more than five (5%) percent for the audit period, in which case the County's reasonable and verifiable out-of-pocket costs of the audit shall be borne by Franchisee as a cost incidental to the enforcement of the Franchise, provided, however that the Franchisee's obligation to pay or reimburse the County's verified audit expenses shall not exceed in the aggregate Twenty-Five Thousand Dollars (\$25,000) per audit, adjusted annually for inflation based on the annual average of the Consumer Price Index for all urban consumers for the Washington-Baltimore MSA, as published by the Bureau of Labor Statistics. Any additional undisputed amounts due to the County as a result of the audit shall be paid within thirty (30) days following written notice to Franchisee by the County of the underpayment, which notice shall include a copy of the audit report. If recomputation from an

undisputed amount results in additional revenue to be paid to the County, Franchisee shall also pay interest charges computed from such due date at the annual interest rate then chargeable for unpaid Federal income taxes (26 U.S.C. § 6621). Any audit fees paid by the County shall not be determined based on a percentage of audit findings basis.

### 13.2 Revocation for Material Violation:

13.2.1 The County may revoke the Franchise following the procedures set forth herein for a pattern of non-compliance by the Franchisee of this Franchise. If within thirty (30) calendar days following written notice from the County Executive to the Franchisee alleging material breach of this Agreement, the Franchisee has not taken reasonable corrective action or corrective action is not being actively and expeditiously pursued, the Council, acting on its own motion or upon the recommendation of the Executive, may give written notice to the Franchisee of its intent to consider revocation of the franchise, stating its reasons.

13.2.2 The Council may initiate an administrative proceeding to investigate facts and make recommendations on possible revocation. Such a proceeding shall be commenced, at a time that is no less than thirty (30) days therefrom, by the issuance of a hearing order which establishes the issues to be addressed in the hearing and the procedures to be followed, and the Council shall appoint a presiding officer for the hearing. Upon completion of the hearing, the presiding officer shall issue a recommended decision. The franchisee shall have ninety (90) days to respond in writing and state any reasons for objection to the recommended decision after its issuance. Within thirty (30) days after receipt of any such response, or such other period as the hearing order may specify, the Executive may submit recommendations to the Council.

13.2.3 In the event the Executive has not received a response from the Franchisee or upon receipt of the response does not agree that the allegations of non-compliance have been or will be resolved, the Council may then seek revocation of the Franchise at a public hearing. The County shall cause to be served upon the Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request revocation of the Franchise. At the public hearing the Franchisee shall be given a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce evidence, and to require the production of evidence. A complete verbatim record or a transcript shall be made of such hearing.

13.2.4 Following such public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the County shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Franchisee. The County shall also determine whether to revoke the Franchise based on the information present, or, where applicable, grant additional time to Franchisee. If the County determines that the Franchise shall be revoked, the County shall promptly provide Franchisee with a written decision setting forth its reasoning. To the extent permitted by law, Franchisee may challenge or appeal such determination of the County to an appropriate court, which shall have the power to review the decision of the County de novo if permitted by law. Franchisee

shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the County.

13.3 Technical Violations. Other than the penalties and fines outlined below in Section 13.7 (Liquidated Damages), the County agrees that it is not its intention to subject the Franchisee, to penalties and fines forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Agreement, which shall include, but not be limited to, the following:

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

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

13.4 Rights and Remedies:

13.4.1 The rights and remedies reserved to both parties herein are cumulative and shall be in addition to all other rights and remedies which either Party may have with respect to the subject matter of this Agreement, whether reserved herein or authorized by federal or state law.

13.4.2 The following violations by the Franchisee of this Agreement are material violations of this Agreement for purposes of this Section:

13.4.2.1 Transfer of the Franchise without approval pursuant to Section 11, or failure to notify pursuant to Cable Law;

13.4.2.2 Habitual or persistent failure to provide Cable Service as specified in Section 3;

13.4.2.3 Failure to make Cable Service available to the Franchise Area under the terms and conditions established in Section 3;

13.4.2.4 Habitual or persistent failure to meet FCC technical standards;

13.4.2.5 Failure to maintain the EAS pursuant to Section 5.4 in the event of an emergency;

13.4.2.6 Habitual or persistent failure to provide PEG Grants pursuant to Section 6.2;

13.4.2.7 Habitual or persistent failure to provide the PEG Channels pursuant to Section 6;

13.4.2.8 Habitual or persistent failure to provide Cable Service to public buildings pursuant to Section 3.3;

13.4.2.9 Habitual or persistent failure to pay Franchise fees pursuant to Section 7;

13.4.2.10 Habitual or persistent failure to meet reports and records requirements in a timely manner pursuant to Section 9;

13.4.2.11 Habitual or persistent failure to satisfy insurance requirements pursuant to Section 10.1;

13.4.2.12 Failure to comply with an audit request as required in Section 13.1

13.4.2.13 Habitual or persistent failure to maintain Performance Sureties pursuant to Sections 13.5;

13.4.2.14 Habitual or persistent violation of consumer protection requirements pursuant to Applicable Law;

13.4.2.15 Habitual or persistent violation of Subscriber privacy requirements pursuant to 47 U.S.C. § 551;

13.4.2.16 Habitual or persistent discrimination among Subscribers in violation of 47 U.S.C. § 541(a)(3); and

13.4.2.17 Habitual or persistent material customer service standard violations other than those for which liquidated damages have been assessed and paid.

### 13.5 Performance Surety:

13.5.1 Except as provided below, the Franchisee shall obtain and maintain during the entire Franchise Term, including any extensions thereof, a Performance Surety in the County's' favor in the amount of Fifty Thousand Dollars (\$50,000) as an unconditional letter of credit ("Letter of Credit") in order to ensure the Franchisee's faithful performance of its obligations under this Agreement. The Letter of Credit shall be in a form acceptable to the County. The Franchisee shall maintain such Letter of Credit at all times throughout the term of the Agreement and for a period of one (1) year following the expiration or termination of the Agreement.

13.5.2 If Franchisee fails to timely pay any sum required to be paid pursuant to this Agreement (including liquidated damages), or fails to perform any obligation or cure an

act or omission which the County believes can be remedied in whole or in part through the expenditure of funds, the County may draw upon the Letter of Credit thirty (30) days after providing Franchisee notice of its intent to do so, unless within that period, Franchisee pays the amount owed or performs or cures to the satisfaction of the County. The notice must state the sum the County believes is owed or performance or cure that County believes may be remedied in part by drawing on the bond. The County may not seek to recover from the Letter of Credit while any action, appeal or other process has been instituted by Franchisee to challenge the amount owed.

13.5.3 The total amount of the Letter of Credit required by this Agreement shall be forfeited in favor of the County if, the Franchisee abandons the Cable System at any time during the Franchise Term or any extension thereto

13.5.4 Franchisee shall not permit the Letter of Credit to expire or approach less than thirty (30) days prior to expiration without securing and delivering to the County substitute, renewal or replacement Letter of Credit in conformance with the provisions of this Agreement.

13.5.5 The following Letter of Credit Procedures shall apply:

13.5.5.1 If the County notifies the Franchisee of any amounts due to the County or pursuant to this Agreement or applicable law, and the Franchisee does not make such payment within thirty (30) days, the County may withdraw the amount in question, with any applicable interest and penalties, from the Letter of Credit by notice to the Franchisee and the Third Party Agent specifying the amount and purpose of such withdrawal. However, if within this thirty (30) day time frame, Franchisee gives written notice it disputes entitlement to payments from Franchisee, the Parties shall promptly meet to attempt to resolve the dispute in good faith amongst themselves.

13.5.5.2 If at the time of a withdrawal from the Letter of Credit by the County, the amount available with the Third Party Agent is insufficient to provide the total payment of the claim asserted in the County's notice of withdrawal, the balance of such claim shall not be discharged or waived, but the County may continue to assert the same as an obligation of the Franchisee to the County.

13.5.5.3 No later than thirty (30) days after mailing of notification to the Franchisee by certified mail, return receipt requested, of a withdrawal under the Letter of Credit, the Franchisee shall restore the amount of the Letter of Credit to \$50,000.

13.6 Liquidated Damages:

13.6.1 Because the Franchisee's failure to comply with provisions of this Agreement may result in injury to the County, and because it will be difficult to estimate the extent of such injury, the County and the Franchisee agree to the liquidated damages provided for in this Section, with such liquidated damages representing both Parties' best estimate of the damages resulting from the specified violations. Such damages shall not be a substitute for

actual performance by the Franchisee of a financial payment, but shall be in addition to any such actual performance.

13.6.2 The County, or its designee, shall have the authority to waive or reduce the liquidated damage amounts herein for good cause.

13.6.3 Franchisee shall have thirty (30) days from receipt of a written notice of violation provided by the County to: (1) respond to the County, if Franchisee contests (in whole or in part) the assertion of a violation; (2) cure the alleged violation; or (3) in the event that, by the nature of the alleged violation it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such violation and notify the County of the steps being taken and the date projected that they will be completed.

13.6.4 Should the County elect to receive liquidated damages for any of the violations enumerated herein, such liquidated damages shall be the County's sole remedy for the violations occurring during the period of time to which the liquidated damages apply.

13.6.5 On an annual basis from the Effective Date, the Franchisee shall be liable for liquidated damages up to Thirty Thousand Dollars (\$30,000) (the "Liquidated Damages Cap"). The liquidated damages may be assessed only by the County for the reasons and in the amounts set forth below:

13.6.6 For failure to substantially comply with requirements for PEG use of the Cable System pursuant to Sections 6.1, 6.4, 6.5 and 6.6 and subsections 6.7.2, and 6.7.5, One Thousand (\$1,000 per day for each day compliance is delayed beyond the thirty (30) day cure period, if the Franchisee has not undertaken substantial corrective action to cure the violation within that thirty (30) day cure period;

13.6.7 For failure to provide complete and accurate information, reports, or filings lawfully required under this Agreement: Two Hundred Dollars (\$200) per day for each day that each such filing is delayed beyond the thirty (30) day cure period;

13.6.8 For violation of customer service standards set forth in Exhibit E, except for those standards set forth in sub-subsections 13.6.9 below: Two Hundred Dollars (\$200), per day or per violation, if the violation continues after the thirty (30) day cure period;

13.6.9 For failure to meet customer service standards with regard to telephone answering time, time to transfer a call to a customer service representative, or excessive busy signals, if such standards are not met according to the terms in which such standards are established in Exhibit E, in the following amounts: Five Hundred Dollars \$500 for each quarter in which such standards were not met if the failure was by less than five (5%) percent; One Thousand Dollars (\$1,000 for each quarter in which such standards were not met if the failure was by five (5%) percent or more but less than fifteen (15%) percent; and Two Thousand Dollars (\$2,000) for each quarter in which such standards were not met if the failure was by fifteen (15%) percent or more. Because the metrics subject to this provision are measured in compliance by quarter, Franchisee shall be deemed to have cured such a violation if it meets the standards in the quarter immediately subsequent to the notice of violation.;

13.6.10 For failure to render payment for Audit Fees pursuant to Section 13.1, or failure to pay capital grants or expenditures: One Hundred Dollars (\$100), for each day each such payment is delayed, following a thirty (30) day cure period;

13.6.11 For failure to file, obtain or maintain the required Performance Sureties or other securities as specified in Section 13.5 in a timely fashion: Two Hundred Dollars (\$200) per day, following a thirty (30) day cure period;

13.6.12 For violation of applicable technical standards established by the FCC: One Hundred Dollars (\$100) per day for each day the violation continues after a thirty (30) day cure period;

13.6.13 For failure, unless such failure is beyond the Franchisee's control, of the Emergency Alert System to perform in the event of a public emergency or vital information situation: Two Hundred Fifty Dollars (\$250) per occurrence;

13.6.14 For a Transfer without approval: Two Thousand Dollars (\$2,000) per day for each day the violation continues;

13.6.15 For failure to restore damaged property: Fifty Dollars (\$50) per day in addition to the cost of restoration as required elsewhere herein after a thirty (30) day cure period; For failure to comply with service to Public Building as provided in Section 3.3: One Hundred Dollars (\$100) per day.

## **SECTION 14 MISCELLANEOUS PROVISIONS**

14.1 **Actions of Parties:** In any action by the County or Franchisee that is mandated or permitted under the terms hereof, such Party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where a Party is required to seek the approval or consent of the other Party under the terms hereof, any such approval or consent shall not be unreasonably withheld, delayed or conditioned.

14.2 **Binding Acceptance:** This Agreement shall bind and benefit the Parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

14.3 **Preemption:** In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall return to full force and effect, and shall thereafter be binding on the Parties hereto, without the requirement of further action on the part of the County.

14.3.1 If, subsequent to the Effective Date, there is a change in federal or state law that eliminates the authority of local governments to require and grant cable television

franchises for the provision of Cable Service, then to the extent permitted by such federal or state law, this Franchise shall survive such legislation and remain in effect for the term of this Franchise.

14.3.2 In the event that federal or state laws, rules or regulations preempt, or substantially preempt, the material provisions of this Franchise, the Franchisee agrees to enter into a new agreement governing Franchisee's provision of Cable Services in the Franchise Area to the extent such an agreement is not preempted by federal or state laws, rules or regulations and is consistent with this Franchise.

14.4 Force Majeure: Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement, liquidated damage, or penalty relating to noncompliance or default, where such noncompliance or alleged defaults were caused by a Force Majeure. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Franchisee's cable or equipment is attached, as well as unavailability of materials. In the event that any such delay in performance or failure to perform affects only part of the Franchisee's capacity to perform, the Franchisee shall perform to the maximum extent it is able to perform and shall take all reasonable steps within its power to correct such noncompliance or default in as expeditious a manner as possible.

14.5 Notices: Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, via recognized overnight courier or electronically as allowed by Applicable Law to the addressees below. Each Party may change its designee by providing written notice to the other Party.

14.5.1 Notices to Franchisee shall be mailed to:

Comcast

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: Government Affairs Department  
with a copy to:

Comcast Cable

\_\_\_\_\_  
\_\_\_\_\_

Attn: Government Affairs Department  
and to:

Comcast Cable Northeast Division

\_\_\_\_\_  
\_\_\_\_\_

Attn: Government Affairs Department

14.5.2 Notices to the County shall be mailed to:

County Executive

George Howard Building  
3430 Court House Drive  
Ellicott City, MD 21043

\_\_\_\_\_ with a copy to:

Cable Administrator  
Department of Technology &  
Communications  
3430 Court House Drive  
Ellicott City, MD 21043

\_\_\_\_\_  
\_\_\_\_\_

Office of Law  
Attn: Cable Franchise Administration  
3450 Court House Drive

14.6 Entire Agreement: This Agreement embodies the entire understanding and agreement of the County and the Franchisee with respect to the subject matter hereof and supersedes all prior representations, agreements, settlement agreements, transfer agreements and understandings, whether oral or written, between the County and the Franchisee.

14.7 Exhibits: The exhibits to this Agreement (the "Exhibits"), attached hereto, and all portions thereof, are, except as otherwise specified in such Exhibits, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Exhibits shall be the same as those applicable to any amendment or modification hereof, except as specified in such Exhibit or elsewhere in this Agreement.

14.8 Captions and Headings: The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.9 Severability: If any section, subsection, sentence, paragraph, term, or provision of this Agreement shall, to any extent, be held to be illegal, invalid, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

14.10 Recitals: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.11 No Oral Modifications: This Agreement shall not be modified except by written instrument executed by the County and the Franchisee.

14.12 Prohibition Against Discrimination: The Franchisee shall adhere to the Equal Employment Opportunity regulations of the FCC and to all federal, state and local laws, and executive orders pertaining to discrimination, equal employment opportunity and affirmative action that are applicable to the Franchisee.

14.13 Franchisee Bears Its Own Costs: Unless otherwise expressly provided in this Agreement, all acts that the Franchisee is required to perform must be performed at its own expense.

14.14 County Bears Its Own Costs: Unless otherwise expressly provided in this Agreement, all acts that the County is required to perform must be performed at their own expense.

14.15 Rights of Third Parties: Nothing herein is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

14.16 Governing Law: This Franchise Agreement shall be governed in all respects by the laws of the State of Maryland, the County, and applicable federal law.

14.17 Jurisdiction and Venue: Franchisee consents to venue and jurisdiction in the U.S. District Court for the District of Maryland or the Circuit Court for Howard County, Maryland.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Parties have set their hands and seals effective as of the date written above.

HOWARD COUNTY, MARYLAND

By \_\_\_\_\_  
Calvin Ball  
County Executive

By \_\_\_\_\_

Brandee Ganz

Chief Administrative Officer

By \_\_\_\_\_

Rafiu Ighile

Director of Finance

Approved as to Form and Legal Sufficiency

By: \_\_\_\_\_  
Gary W. Kuc  
County Solicitor

Reviewing Attorney:

By: \_\_\_\_\_  
Norman E. Parker, Jr.  
Assistant Deputy County Solicitor

COMCAST OF HOWARD COUNTY, LLC

By: \_\_\_\_\_

Senior Regional Vice-President

**EXHIBIT A**  
**Line Extension Policy**

Where potential Subscribers reside in an area of the Franchise Area with a dwelling density that does not meet the prescribed minimum density requirements set out in Section 3.2.2 of the Agreement (“Low Density Area”), Franchisee shall extend Cable Service to such potential Subscribers in the Low Density Area upon the request of one or more potential Subscriber under the following conditions:

The potential Subscribers agree to share in the cost of extension based upon the following cost calculation:

The cost of extending the Cable System to serve a Low Density Area shall be calculated by (i) dividing the total construction cost of extending the System to pass each of the requesting previously unpassed dwelling unit owners, as measured in strand footage from the nearest point on the active Cable System trunk or feeder line from which a usable cable service signal can be obtained, by the number of previously unpassed dwelling units requesting Cable Service in such area, and (ii) subtracting Franchisee's average construction costs per mile in the Franchise Area divided by the density requirement set out in Section 3.2.2. The resulting cost shall equal the per dwelling unit contribution to be paid by each previously unpassed dwelling unit owner requesting extension of Cable Service in that particular area of the County.

- The applicable formula shall be:
  - $\frac{C - CA}{LE \cdot P} = SC$
  - $\frac{C - CA}{LE \cdot P} = SC$
- Where:
  - C equals the total cost of construction as measured in strand footage from the nearest point on the active Cable System trunk or feeder line from which a usable signal can be obtained;
  - LE equals the number of previously unpassed dwelling units requesting Cable Service in the proposed line extension area, who subsequently pay a contribution in aid of construction;
  - CA equals the average cost of construction per mile in Howard County;
  - P equals the density requirement as applicable under Section 3.2.2 of the Agreement; and
  - SC equals the per dwelling unit contribution in aid of construction in the proposed line extension area, to be paid by the previously unpassed dwelling units requesting service.

More specifically:

If Franchisee receives a request for service, the Franchisee shall first determine the total construction costs of the extension. The "total construction costs" ("C") are defined as the actual turnkey cost to construct the entire extension required to serve the persons requesting services measuring from the starting point to the ending point, as specified in Section 3.2.2 of

the Agreement. The C includes, but is not limited to, all electronics, pole make-ready charges, labor and reasonable associated overhead, but not the cost of the house drop.

The Franchisee shall then determine its contribution toward the construction costs per participating dwelling unit by dividing the Franchisee's average construction costs ("CA") per mile in the Franchise Area by the applicable density under Section 3.2.2 of the Agreement. For illustration, if the applicable density is 20, and the average construction cost in the Franchise Area is \$70,000, the Franchisee contribution is \$3,500.00 per Participating Dwelling Unit.

"Participating Dwelling Unit" is a residential dwelling unit for which a person requesting service pays a contribution in aid of construction. The Franchisee may require that the payment be made prior to commencing final design, engineering, or construction of the project.

Persons requesting service shall bear the total construction costs on a pro rata basis less the Franchisee contribution. For illustration, a service extension with a C of \$90,000 and 10 Participating Dwelling Units would result in a contribution in aid of construction of (\$9,000 - \$3,500) \$5,500 per Participating Dwelling Unit.

The County may require Franchisee to provide it proof of the estimated and the actual cost of the extension.

Once payment is received related to the Line Extension Policy herein, other than Standard Installation costs, costs related to non-standard drop length, and/or customer requested services such as internal wiring or underground drops where not required by Code, and similar standard new customer fees, there will be no other charges to Subscribers or potential Subscribers related to the System extension.

**EXHIBIT B**  
**County Building**  
[to be added]

**EXHIBIT C**  
**Location of PEG Return Lines and Channel Assignment**

<b>Return Line Location</b>
<b>Howard Community College</b> 10901 Little Patuxent Parkway Columbia, MD 21044
<b>Howard County Public School System</b> Applications and Research Lab 10920 Clarksville Pike Ellicott City, MD 21042

**PEG CHANNEL LISTING**

<b>CHANNELS*</b>	<b>DESCRIPTION</b>
95/1072	Howard County Public School System
96/1073	Howard Community College
98/1070	Howard County Public Access Channel
99/1071	Howard County Government TV

\*Unless otherwise addressed in the Franchise, upon conversion to HD, the channel locations will only be available in the listed four-digit channel position.

**EXHIBIT D**  
**Franchise Fee Payment Form**

**EXHIBIT E**  
**Customer Service Standards**

This Exhibit sets forth the minimum customer service standards that the Franchisee must satisfy. Subject to Section 2.8.2 and 2.91., the Franchisee shall at all times satisfy the requirements of the Cable Code, Section 14.414, as the same may be amended from time to time, and any additional requirements established by applicable federal.

(a) *Definitions:*

(1) *Normal Business Hours* means:

- (i) Those hours during which most similar businesses in the community are open to serve customers; plus
- (ii) Weekday evening hours at least once a week and/or daytime weekend hours.

(2) *Normal Operating Conditions* means service conditions which are within the control of the Franchisee, including, but not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system. *Normal operating conditions* does not mean service conditions which are not within the control of the Franchisee, including, but not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather.

(3) *Service Interruption* means the loss of picture or sound on one or more channels.

(4) *Standard Installation* means an installation located up to 225 feet drop distance from the existing distribution system.

(b) *Business Office; Customer Service and Bill Payment Center.* Franchisee shall continue to maintain a conveniently located business office within the County for at least two years, after which time Franchisee shall continue to maintain a conveniently located business office within the County if Franchisee's total subscriber count in the County equals or exceeds 20,000 subscribers. Any such office shall be open during Normal Business Hours. Franchisee shall also provide a convenient alternative means for bill payment, and Franchisee shall provide for the pick-up or drop-off of equipment by any one or more of (i) having a Franchisee representative going to the Subscriber's premises, (ii) using a pre-paid mailer, or (iii) establishing a location(s) for the pick-up and drop-off of equipment. Current alternative means and locations for these functions are identified in Exhibit H below.

(c) *Telephone Service:*

(1) *Free telephone access line.* The franchisee shall maintain a local, toll-free or collect call telephone access line which will be available 24 hours a day, seven days a week.

(2) *During business hours.* Trained representatives of the franchisee shall be available to respond to telephone inquiries during Normal Business Hours.

(3) *After Normal Business Hours.* After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. However, on the next business day, a trained representative of the franchisee shall respond to all inquiries received after Normal Business Hours.

- (4) *Telephone service standards.* These service standards shall apply at least 90 percent of the time during Normal Operating Conditions:
  - (i) A trained customer representative shall be available to respond to customer telephone inquiries during Normal Business Hours.
  - (ii) Under Normal Operating Conditions, telephone answer time, including wait time, shall not exceed thirty (30) seconds when the connection is made.
  - (iii) Waiting time for a transfer shall not exceed 30 seconds.
  - (iv) The caller will receive a busy signal less than three percent of the time.
- (5) *Measuring telephone service standards.* The franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards unless an historical record of complaints indicates a clear failure to comply. When measurement of telephone answering standards is required, it shall be done on a quarterly basis.
- (d) *Installations and Service Calls.* These standards apply only during Normal Operating Conditions and shall be met at least 95 percent of the time.
  - (1) The Franchisee shall make a standard installation within seven business days after the customer places an installation order, or a later date as requested by the Subscriber.
  - (2) The Franchisee shall begin work on a service interruption promptly after it becomes known and, in no event, more than 24 hours after it becomes known.
  - (3) The Franchisee shall begin actions to correct other service problems by the next business day after notification of the service problem.
  - (4) The Franchisee shall make an appointment with the customer for installations or to perform service. The appointment may be either a specific time or during a four-hour time block during Normal Business Hours.
  - (5) The Franchisee may schedule installations and service calls outside of Normal Business Hours for the convenience of the customer.
  - (6) A Franchisee may not cancel an appointment with a customer after the close of business on the business day before the scheduled appointment.
  - (7) The Franchisee shall contact the customer if the Franchisee's representative is running late and will not be able to keep the appointment as scheduled. The appointment will be rescheduled, as necessary, at a time convenient for the customer.
  - (8) A Franchisee shall maintain a complete record of service complaints received and action taken. These records shall be open to the County for inspection during Normal Business Hours. Such records shall be retained for not less than three years.
- (e) *Outages.* Franchisee shall, when practicable, schedule and conduct maintenance on the Cable System so that interruption of service is minimized and occurs during periods of minimum Subscriber use of Franchisee's Cable System. Absent an emergency, Franchisee shall provide reasonable prior notice, which the Parties agree would be no less than 1 week in advance, to Subscribers and the County before interrupting service for planned maintenance or construction, except where such interruption is expected to be two (2) hours

or less in duration or between the hours of 12:00 a.m. and 6:00 a.m. (which is Franchisee's maintenance window). Such notice shall be provided by methods reasonably calculated to give Subscribers actual notice of the planned interruption.

(f) *Charges and billing; Information to Be Provided; Refunds and Credits:*

- (1) *General information.* At the time of installation of Cable Service, at least once annually, and at any time upon request, a Franchisee shall provide each Subscriber with written information on each of the following areas:
  - (i) Products and services offered;
  - (ii) Prices and options for the programming services and conditions of subscription to programming and other services;
  - (iii) Installation and service maintenance policies;
  - (iv) Instructions on how to use the Cable Service;
  - (v) Channel positions of programming carried on the System;
  - (vi) Billing and complaint procedures, including the mailing address and telephone number of the Howard County Cable Administrator.
- (2) *Information regarding changes in rates:*
  - (i) The Franchisee shall notify affected Subscribers of any changes in rates, programming services or channel positions. Such notification must be in writing.
  - (ii) If the change is within the control of the Franchisee, the Franchisee shall give notice of the change to Subscribers at least 30 days before the change takes place.
  - (iii) In addition, the Franchisee shall notify Subscribers 30 days in advance of any significant changes in the other information required by the preceding section.
  - (iv) Whenever a Subscriber requests a change in service level, Franchisee shall give the Subscriber, either verbally or in writing, a detail of the new monthly charge.
  - (v) Advance notice is not required for the launch of new channels when offered on a subscription basis or added to an existing service tier at no additional cost to the Subscriber. The written notices required by this section may be provided electronically as permitted by 47 C.F.R. § 76.1600.
- (3) *Bills.* Bills shall be clear, concise and understandable. Each bill shall itemize at least the following:
  - (i) Basic Service charges;
  - (ii) Premium Service charges;
  - (iii) Equipment charges; and
  - (iv) All activity during the billing period, including optional charges, rebates and credits.
- (4) *Billing disputes.* In case of a billing dispute, the Franchisee shall respond to a written complaint from a Subscriber within 30 days.

- (5) *Refunds.* The Franchisee shall issue refund checks promptly, but no later than:
    - (i) The Subscriber's next available billing cycle following resolution of the request; of
    - (ii) The return of the equipment supplied by the Franchisee if service is terminated.
  - (6) *Credits.* If the Franchisee determines that a credit is warranted, the credit will be issued no later than the Subscriber's next available billing cycle.
  - (7) *Late Fees.* Franchisee shall provide information to any new subscriber regarding the potential late payment fees, and shall make such information available to subscribers at any time upon request or in the subscriber's rate card.
- (g) *Identification:*
- (1) *Representatives.* Each representative of the Franchisee, whether a cable company employee or a contractor, shall have a form of identification, preferably photographic, indicating that he or she is a representative of the Franchisee. This identification shall be visible to members of the public or shall be made available upon request.
  - (2) *Vehicles.* All vehicles involved in Cable Service business shall have signs showing the Franchisee's or the Xfinity name.

FCC CUSTOMER SERVICE OBLIGATIONS  
TITLE 47--TELECOMMUNICATION  
CHAPTER I -- FEDERAL COMMUNICATIONS COMMISSION PART  
76-MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE  
Subpart H--General Operating Requirements

Section 76.309 Customer Service Obligations

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Cable operators are subject to the following customer service standards:

(1) Cable system office hours and telephone availability—

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers—

(i) Refunds—Refund checks will be issued promptly, but no later than either—

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits—Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions—

(i) Normal business hours—The term “normal business hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

(ii) Normal operating conditions—The term “normal operating conditions” means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) Service interruption—The term “service interruption” means the loss of picture or sound on one or more cable channels.

## Subpart T--Notices

### Section 76.1602 Customer Service-General Information

- (a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.
- (b) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:
  - (1) Products and services offered;
  - (2) Prices and options for programming services and conditions of subscription to programming and other services;
  - (3) Installation and service maintenance policies;
  - (4) Instructions on how to use the cable service;
  - (5) Channel positions of programming carried on the system; and
  - (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.
  - (7) Effective May 1, 2011, any assessed fees for rental of navigation devices and single and additional CableCARDS; and,
  - (8) Effective May 1, 2011, if such provider includes equipment in the price of a bundled offer of one or more services, the fees reasonably allocable to:
    - (i) The rental of single and additional CableCARDS; and
    - (ii) The rental of operator-supplied navigation devices.
- (c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

### Section 76.1603 Customer Service-Rate and Service Charges

- (a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must

provide affected cable operators 90 days written notice of its intent to enforce standards.

- (b) Cable operators shall provide written notice to subscribers of any changes in rates or services. Notice shall be provided to subscribers at least 30 days in advance of the change, unless the change results from circumstances outside of the cable operator's control (including failed retransmission consent or program carriage negotiations during the last 30 days of a contract), in which case notice shall be provided as soon as possible using any reasonable written means at the operator's sole discretion, including Channel Slates. Notice of rate changes shall include the precise amount of the rate change and explain the reason for the change in readily understandable terms. Notice of changes involving the addition or deletion of channels shall individually identify each channel affected.
- (c) A cable operator not subject to effective competition shall provide 30 days' advance notice to its local franchising authority of any increase proposed in the price to be charged for the basic service tier.
- (d) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.
- (e) [Reserved by 85 FR 71854]
- (f) [Redesignated as subsection (d) by 85 FR 71854]

#### Section 76.1619 Information on Subscriber Bills

- (a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days. The required response may be delivered by email, if the consumer used email to make the request or complaint directly to the cable operator, or if the consumer specifies email as the preferred delivery method in the request or complaint.
- (c) A cable franchise authority may enforce the customer service standards set forth in this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

47 U.S. Code § 551 - Protection of subscriber privacy

**(a) Notice to subscriber regarding personally identifiable information; definitions**

(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of--

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the cable operator;

(D) the times and place at which the subscriber may have access to such information in accordance with subsection (d); and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section, other than subsection (h)--

(A) the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons;

(B) the term "other service" includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

(C) the term "cable operator" includes, in addition to persons within the definition of cable operator in [section 522](#) of this title, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.

**(b) Collection of personally identifiable information using cable system**

(1) Except as provided in paragraph (2), a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(2) A cable operator may use the cable system to collect such information in order to--

(A) obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or

(B) detect unauthorized reception of cable communications.

**(c) Disclosure of personally identifiable information**

(1) Except as provided in paragraph (2), a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

(2) A cable operator may disclose such information if the disclosure is--

(A) necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator to the subscriber;

- (B) subject to subsection (h), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;
- (C) a disclosure of the names and addresses of subscribers to any cable service or other service, if--
- (i) the cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure, and
  - (ii) the disclosure does not reveal, directly or indirectly, the--
- (I) extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or
- (II) the nature of any transaction made by the subscriber over the cable system of the cable operator; or
- (D) to a government entity as authorized under chapters 119, 121, or [206 of Title 18](#), except that such disclosure shall not include records revealing cable subscriber selection of video programming from a cable operator.

**(d) Subscriber access to information**

A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

**(e) Destruction of information**

A cable operator shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) or pursuant to a court order.

**(f) Civil action in United States district court; damages; attorney's fees and costs; nonexclusive nature of remedy**

- (1) Any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in a United States district court.
- (2) The court may award--
- (A) actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;
  - (B) punitive damages; and
  - (C) reasonable attorneys' fees and other litigation costs reasonably incurred.
- (3) The remedy provided by this section shall be in addition to any other lawful remedy available to a cable subscriber.

**(g) Regulation by States or franchising authorities**

Nothing in this subchapter shall be construed to prohibit any State or any franchising authority from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

**(h) Disclosure of information to governmental entity pursuant to court order**

Except as provided in subsection (c)(2)(D), a governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order--

- (1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

(2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

**EXHIBIT F**  
**Annual Report**



1215 East Fort Avenue, Suite 103  
Baltimore, MD 21230

Date

XXXXXXXX XXXXXXXX  
XXXXXXXXXXXXX  
XXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXX

Dear XXXXXXXXXX:

I am pleased to submit to you the comprehensive annual report data highlighting Comcast’s performance for XXXX in Howard County, Maryland. As a reminder, everything that we provide to you is **proprietary and confidential company operating data**. Data provided herein is County-wide.

Please find herein and attached a:

1. Summary of the previous year’s activities in development of the Cable System.
2. Annual franchise fee statement.
3. 10-K Report.
4. List of current officers, directors, and ownership.
5. Franchisee rules and regulations, rates, fees, and charges.

**Comcast is hereby requesting that all information not readily ascertainable or publicly available by proper means by other persons from another source provided herein be treated by Howard County, Maryland as proprietary information in accordance with the Maryland Public Information Act and the Franchise Agreement.** This information is competitively sensitive and its disclosure would unfairly prejudice Comcast relative to its competitors, who would be reasonably likely to use such information to harm Comcast’s business interests. This information is also not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided herein and is intended to be proprietary confidential business information, and is treated by Comcast as such.

All of us at Comcast appreciate your team’s spirit of cooperation and dedication as we work together to provide quality cable service to Howard County. If you have any questions or concerns regarding this report, please feel free to me at \_\_\_\_\_.

Regards,

[insert name]

Senior Specialist, Government & Community Affairs

# 1. Summary of Activities in Development of the Cable System

## A. Programming Changes

Change	Program Name	Channel #	Completion Date
SD Channel Add			
HD Channel Add			
Transition SD to HD			
Channel Drop			

## B. Cable Service Subscribers:

\_\_\_\_\_ Number of Subscribers

## C. Cable System Footprint

\_\_\_\_\_ Total Homes Passed:

\_\_\_\_\_ Total Plant Miles:

Copy of update maps depicting location of cable plant including location of all trunk lines and feeder lines in the County

See attachment \_\_\_\_\_

# 2. Annual Franchise Fee Statement

See attachment \_\_\_\_\_ for quarterly franchise fee statements.

# 3. 10-K Report

See attachment \_\_\_\_\_ for 10-K Report.

Comcast's 10-K report can also be found at [http://\\_\\_\\_\\_\\_](http://_____).

# 4. List of Current Officers, Directors, and Ownership

See attachment \_\_\_\_\_ for 10-K Report

Information can be found in Comcast's 10-K report located at [http://\\_\\_\\_\\_\\_](http://_____).

# 5. Rates, Fees, and Charges

A copy of Comcast's Subscriber agreements related to the provision of Cable Services can be found at [http://\\_\\_\\_\\_\\_](http://_____).

See attachment \_\_\_\_\_ for a copy of Comcast's Rate Card for rates, fees, and charges.

**EXHIBIT G**  
**Quarterly Report**



Date

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXX  
XXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXX:

I am pleased to submit to you the comprehensive quarterly report data highlighting Comcast’s performance for XXXX in Howard County, Maryland. As a reminder, everything that we provide to you is **proprietary and confidential company operating data**. Data provided herein is County-wide.

Please find herein and attached a:

1. Cable Service Subscribers
2. Summary of center calls
3. Outages
4. Quarterly franchise fee statement

**Comcast is hereby requesting that all information not readily ascertainable or publicly available by proper means by other persons from another source provided herein be treated by Howard County, Maryland as proprietary information in accordance with the Maryland Public Information Act and the Franchise Agreement.** This information is competitively sensitive and its disclosure would unfairly prejudice Comcast relative to its competitors, who would be reasonably likely to use such information to harm Comcast’s business interests. This information is also not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided herein and is intended to be proprietary confidential business information, and is treated by Comcast as such.

**All of us at Comcast appreciate your team’s spirit of cooperation and dedication as we work together to provide quality cable service to Howard County. If you have any questions or concerns regarding this report, please feel free to me at\_\_\_\_\_.**

Regards,

[insert name]  
Senior Specialist, Government & Community Affairs

**Q\_ 202\_**

**1. Cable Service Subscribers**

[Month]: \_\_\_\_\_

[Month]: \_\_\_\_\_

[Month]: \_\_\_\_\_

**2. Summary of Call Center Calls**

**A. Response Times at Call Center**

	Q_ 202_
Total Calls	####
Percent Calls Answered in 30 Seconds	####
Percent Calls Transferred in 30 Seconds	####
Average Answer Time	####
Average Hold Time	####

**B. Calls by Type**

	Q_ 202_
<b>Billing</b>	
<b>Service</b>	
<b>Retention</b>	
<b>Sales</b>	

**C. Complaints\***

Complaint Topic	Q3	
	Resolved	Unresolved
Customer Service		
Customer Equipment		
Customer Education		
Comcast Customer Premises Equipment		
Billing		
Video Issues		
Installation		
Cable Service Repair		
Promotions/Discounts/Contract Expiration		
Programming		
Pedestal Repair/Cable Bury		
Add or Remove Produce or Service		
Sales		
Service Order Issues		
System Issues/Outage		

Unauthorized Changes		
Other		
<b>Total</b>		

\*Complaints included here are those complaints made to the County and shared with the Franchisee by the County.

## D. Other

Installations:	Q 202
Total Standard Installs	####
Standard Installs Within 7 Days*	####

\*Installs in 7 days refers to the number of Standard Installations of new services completed within seven calendar days of the request or at a time later at the request of the subscriber.

## 3. Outages\*

Number of Outages:

Number of outages resolved in 24 hours:

\*Outages in this report include those affecting over 10 Subscribers for over 30 minutes.

## 4. Quarterly Franchise Fee Statement

See attachment \_\_\_\_

## Exhibit H

### Current Bill Payment and Equipment Return Options

There are many convenient ways that customers may interact with Franchisee, 24 hours a day, 7 days a week. These include:

- Customers wishing to make a payment have numerous convenient options available to them including:
  - By mail
  - By telephone 1-800-XFINITY
  - Online at [www.Comcast.com/myccount](http://www.Comcast.com/myccount)
  - Through the Mobile App: Xfinity My Account App
  - Third-party, in-person locations throughout the County, which currently include:
    - *Walgreens at 7270 Montgomery Rd, near Elkridge (via Western Union)*
    - *Food Lion at 705 Lisbon Center Dr, near Woodbine (via Western Union)*
    - *Harris Teeter at 8184 Westside Blvd, near Fulton (via Western Union)*
    - *Giant Food at 6050 Daybreak Cir, in Clarksville (via Western Union)*
    - *Las Paisanas at 9101 Marshall Ave., near Laurel (via Western Union)*
    - *Safeway at 5485 Harpers Farm Rd, Ste A, in Columbia (via Western Union)*
    - *Rite Aid at 8601 Baltimore National Pk, in Ellicott City (via Western Union)*
  
- Customers have multiple options when it comes to receiving, installing or returning equipment, including:
  - Calling 1-800-XFINITY to order a self-install kit, making it convenient for customers to add, install and activate Comcast services on their own schedules.
  - UPS pre-paid mailers which are available to be sent to the home for customers to easily return equipment at no-charge.
  - Comcast offers early morning, evening and weekend in-home appointments, as well as two-hour appointment windows for professional installation.
  - Visiting a UPS Store. Comcast has teamed up with UPS to offer convenient and free equipment returns (9 locations in Howard County and 4,400 total locations across the US). Comcast customers can bring their equipment directly to The UPS Store, where it will be processed, packed and shipped back to Comcast, free of charge. All equipment can be returned as-is, without wrapping or a box and customers will receive a confirmation of receipt and tracking information from UPS, eliminating any questions about the status of their return. Currently, located at:
    - *6030 Daybreak Cir, Ste A150, Clarksville*
    - *7500 Montpelier Rd, Ste 105, Laurel*
    - *6030 Marshalee Dr, Ste M, Elkridge*
    - *11101 Resort Rd, Ellicott City*
    - *8480 Baltimore National Pike, Ellicott City*
    - *5305 Village Center Dr, Ste 101B, Columbia*
    - *6925 Oakland Mills Rd, Columbia*
    - *8775 Centre Park Dr, Columbia*
    - *8630-M Guilford Rd, Columbia*