

**CABLE FRANCHISE AGREEMENT**

**BETWEEN**

**CITY OF GREENSBURG  
(A MEMBER OF THE CENTRAL WESTMORELAND COG)**

**AND**

**COMCAST OF PENNSYLVANIA**

**With assistance from:**

**The Cohen Law Group  
1000 Gamma Drive, Suite 305  
Pittsburgh, PA 15238  
Phone: (412) 447-0130  
[www.cohenlawgroup.org](http://www.cohenlawgroup.org)**

TABLE OF CONTENTS

	<b>Page</b>
SECTION 1 GRANT OF FRANCHISE.....	2
1.1 GRANT OF AUTHORITY.....	2
1.2 TERM OF FRANCHISE.....	2
1.3 NON-EXCLUSIVITY.....	3
1.4 POLICE POWERS.....	3
1.5 NO WAIVER OF RIGHTS.....	3
1.6 COMPETITIVE EQUITY.....	3
SECTION 2 COMPENSATION TO THE MUNICIPALITY.....	4
2.1 FRANCHISE FEES.....	4
2.2 QUARTERLY PAYMENTS.....	4
2.3 QUARTERLY REPORTS.....	5
2.4 AUDITS.....	5
SECTION 3 SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE.....	5
3.1 TECHNICAL REQUIREMENT.....	5
3.2 AREA TO BE SERVED.....	6
3.3 PERMITS.....	7
3.4 REPAIRS AND RESTORATION.....	7
3.5 SYSTEM MONITORING.....	8
3.6 SERVICE AREA MAPS.....	8
3.7 BUILDING MOVES.....	8
3.8 DISCONNECTION AND RELOCATION.....	9
3.9 EMERGENCY REMOVAL OF EQUIPMENT.....	9
3.10 TREE TRIMMING.....	9
SECTION 4 CABLE SYSTEM AND STATE-OF-THE-ART.....	10
4.1 CABLE SYSTEM.....	10
4.2 STATE-OF-THE-ART.....	10
SECTION 5 CUSTOMER SERVICE STANDARDS.....	11
5.1 OFFICE HOURS AND TELEPHONE AVAILABILITY.....	11

5.2	INSTALLATIONS AND SERVICE CALLS .....	12
5.3	NOTICES .....	13
5.4	BILLING .....	13
5.5	CUSTOMER COMPLAINT PROCEDURES .....	14
5.6	DISCONNECTION .....	15
5.7	CREDIT FOR SERVICE INTERRUPTIONS .....	15
5.8	PRIVACY .....	15
SECTION 6	SERVICES TO THE COMMUNITY .....	16
6.1	SERVICES TO COMMUNITY FACILITIES .....	16
6.2	EDUCATIONAL AND GOVERNMENTAL CHANNELS .....	17
6.3	EG SUPPORT GRANT .....	19
SECTION 7	REGULATION BY THE MUNICIPALITY .....	20
7.1	RIGHT TO INSPECT .....	20
7.2	RIGHT TO CONDUCT COMPLIANCE REVIEW .....	21
7.3	RESERVED AUTHORITY .....	21
SECTION 8	REPORTING REQUIREMENTS .....	21
8.1	QUARTERLY FRANCHISE FEE REPORT .....	21
8.2	ANNUAL FINANCIAL REPORT .....	21
8.3	CUSTOMER COMPLAINT REPORT .....	22
8.4	GOVERNMENT REPORTS .....	22
SECTION 9	FRANCHISE VIOLATIONS, DAMAGES AND REVOCATION .....	22
9.1	VIOLATIONS AND OPPORTUNITY TO CURE .....	22
9.2	LIQUIDATED DAMAGES .....	23
9.3	PERFORMANCE BOND .....	24
9.4	REVOCATION .....	25
SECTION 10	PROGRAMMING .....	26
10.1	CHANNEL CAPACITY .....	26
10.2	BROADCAST CHANNELS .....	26
10.3	SIGNAL SCRAMBLING .....	26
10.4	CONTINUITY OF SERVICE .....	26
10.5	PARENTAL CONTROL CAPABILITY .....	27

	10.6 TIER BUY THROUGH PROHIBITION.....	27
SECTION 11	LIABILITY AND INDEMNIFICATION.....	27
	11.1 INDEMNIFICATION.....	27
	11.2 INSURANCE.....	28
SECTION 12	FRANCHISE TRANSFER AND RENEWAL.....	29
	12.1 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL.....	29
	12.2 RENEWAL.....	29
SECTION 13	MISCELLANEOUS.....	29
	13.1 FORCE MAJEURE.....	29
	13.2 REMOVAL OF SYSTEM.....	29
	13.3 NOTICES.....	31
	13.4 EQUAL EMPLOYMENT OPPORTUNITY.....	32
	13.5 CAPTIONS.....	32
	13.6 GOVERNING LAW.....	32
	13.7 ENTIRE AGREEMENT.....	32
	13.8 SEVERABILITY.....	32
	13.9 CHANGE OF LAW.....	32
	13.10 NO THIRD PARTY BENEFICIARIES.....	33
	13.11 APPLICABILITY OF AGREEMENT.....	33
SECTION 14	DEFINITIONS.....	33

## CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement (hereinafter referred to as the "Agreement") is executed as of the 12<sup>th</sup> day of July, 2010 (hereinafter referred to as the "Effective Date") by and between the City of Greensburg, a municipality located in Westmoreland County, Pennsylvania (hereinafter referred to as the "Municipality") and Comcast of Pennsylvania (hereinafter referred to as "Comcast").

**WHEREAS**, pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 (hereinafter collectively referred to as the "Cable Act"), the regulations of the Federal Communications Commission (hereinafter referred to as the "FCC") and Pennsylvania law, the Municipality is authorized to grant and renew franchises to construct, operate and maintain a Cable System utilizing public rights-of-way and properties within the Municipality's jurisdiction; and

**WHEREAS**, Comcast currently holds a cable franchise from the Municipality by virtue of a cable franchise agreement/ordinance originally granting a cable franchise to TCI of Greensburg; and

**WHEREAS**, Comcast has requested that the Municipality renew Comcast's franchise to maintain, construct, operate, and upgrade its Cable System over, under and along the aforesaid rights-of-ways for use by the Municipality's residents; and

**WHEREAS**, the aforesaid rights-of-way used by Comcast are public properties acquired and maintained by the Municipality and held in trust on behalf of citizens of the Municipality, and the right to use said rights-of-way is a valuable property right; and

**WHEREAS**, the Municipality desires to protect and manage the aforesaid rights-of-way, require high standards of customer service, encourage future technical improvements to maintain a technologically-advanced Cable System, establish certain reporting requirements, obtain certain complimentary services, obtain and maintain the use of educational and governmental channels, receive franchise fees for Comcast's use of the Municipality's rights-of-ways as provided by federal law, and provide for the current and future cable-related needs of its residents; and

**WHEREAS**, the Municipality held a public hearing on the subject of cable franchise renewal, including reviewing the cable operator's past performance and identifying the Municipality's future cable-related community needs; and

**WHEREAS**, the Municipality has determined that Comcast has the financial, legal and technical ability to provide Cable Services to Subscribers located in the Municipality; and

**WHEREAS**, the Municipality, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing Comcast's franchise according to the terms and conditions contained herein;

**NOW THEREFORE**, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Municipality and Comcast agree as follows:

## **SECTION 1** **GRANT OF FRANCHISE**

### **1.1 GRANT OF AUTHORITY**

Pursuant to the Cable Act, the regulations of the FCC and Pennsylvania law, the Municipality hereby grants a non-exclusive and revocable franchise to Comcast, authorizing and permitting Comcast to construct, operate, and maintain a Cable System in the Municipality's public rights-of-way.

Subject to the terms and conditions contained herein, the Municipality hereby grants to Comcast the right to construct, extend, install, operate, maintain, upgrade and rebuild a Cable System, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other property and equipment as are necessary and appropriate to the operation of the Cable System in, under, over, along, across and upon the streets, lanes, avenues, alleys, sidewalks, bridges, highways and other public places and rights-of-way under the jurisdiction of the Municipality, including property over which the Municipality has a sufficient easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video and audio signals to provide Cable Services as permitted by applicable law.

### **1.2 TERM OF FRANCHISE**

The term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date and expiring on July 11, 2020, unless the franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement. This Agreement will be automatically extended for one (1) additional term of five (5) years provided Comcast references this section in writing to the Municipality no sooner than twelve (12) months and no later than six

(6) months before the expiration date, unless the Municipality notifies Comcast in writing during the same time period of its desire to enter into renewal negotiations as provided under the Cable Act, in which case there shall be no such automatic extension.

### **1.3 NON-EXCLUSIVITY**

This franchise granted to Comcast shall be non-exclusive. Nothing in this Agreement shall affect the right of the Municipality to grant another franchise to construct, operate or maintain a Cable System within the Municipality or for any other purpose.

### **1.4 POLICE POWERS**

Comcast's rights under this Agreement are subject to the police powers of the Municipality to adopt and enforce general laws and regulations necessary for the safety and welfare of the public. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement.

### **1.5 NO WAIVER OF RIGHTS**

(a) No course of dealing between the Municipality and Comcast, nor any delay on the part of the Municipality in exercising any rights hereunder, shall operate as a waiver of any such rights of the Municipality or acquiescence in the actions of Comcast in contravention of such rights, except to the extent expressly waived by the Municipality.

(b) No course of dealing between the Municipality and Comcast, nor any delay on the part of Comcast in exercising any rights hereunder, shall operate as a waiver of any such rights of Comcast or acquiescence in the actions of the municipality in contravention of such rights, except to the extent expressly waived by Comcast.

### **1.6 COMPETITIVE EQUITY**

(a) Comcast acknowledges and agrees that the Municipality reserves the right to grant one or more additional franchises to construct, operate, and maintain a Cable System within the Municipality.

(b) The franchise granted to Comcast is non-exclusive; however, if the Municipality grants a subsequent franchise that, when taken as a whole upon consideration of all of its material obligations, is more favorable or less burdensome to the subsequent franchisee than this Agreement is to Comcast, then Comcast may

City of Greensburg (Westmoreland County) PA

request an amendment to this Agreement to provide Comcast with competitive equity. If the Municipality agrees with Comcast that, when taken as a whole upon consideration of all of its material obligations, the subsequent franchise is more favorable or less burdensome, then the Municipality and Comcast shall enter into discussions in order to modify this Agreement to the mutual satisfaction of both parties to provide Comcast with such competitive equity.

(c) In the event an application for a new franchise for Cable Service is submitted to the Municipality proposing to serve Subscribers within the Municipality, then the Municipality shall notify Comcast in writing of the submission of the application.

## **SECTION 2**

### **COMPENSATION TO THE MUNICIPALITY**

#### **2.1 FRANCHISE FEES**

Comcast shall pay to the Municipality an amount equal to five percent (5%) of the Gross Revenues derived from the operation of its Cable System to provide Cable Service in the Municipality. The term "Gross Revenues" is defined in Section 14 "Definitions" below. Comcast shall not deduct or otherwise credit against the franchise fee any tax, fee or assessment of general applicability. Any change in Comcast's franchise fee obligation contained herein shall commence sixty (60) days from the Effective Date. The Municipality may amend the franchise fee upon sixty (60) days written notice to Comcast provided that the franchise fee may not exceed the maximum percentage permitted by law. A copy of the Resolution or Ordinance authorizing the franchise fee rate adjustment shall accompany such written notice.

#### **2.2 QUARTERLY PAYMENTS**

Franchise fee payments to the Municipality under this provision shall be computed at the end of each calendar quarter. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 (for the fourth quarter). Upon request and if mutually agreeable, Comcast shall deposit the franchise fee payments electronically into an account as designated by the Municipality. In the event that any franchise fee payment is not made on or before the date by which it is due, then interest shall be added at the annual rate of six percent (6%) of the amount of franchise fee revenue due to the Municipality. The interest rate shall be applied as described from the date such franchise fee payment was originally due. No acceptance of any payment shall be

construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the Municipality may have for additional sums payable under this Agreement.

### **2.3 QUARTERLY REPORTS**

Each franchise fee payment shall be accompanied by a written report containing an accurate statement of Comcast's Gross Revenues received for Cable Services for each calendar quarter in connection with the operation of Comcast's Cable System and a brief description showing the basis for computation of fees. Specifically, the report shall contain line items of sources of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of Comcast.

### **2.4 AUDITS**

No more than once every three (3) years during the term of the Agreement, upon thirty (30) days prior written notice, the Municipality shall have the right to conduct an independent audit or franchise fee review of Comcast's records reasonably related to the sources, amounts and computation of Gross Revenues in accordance with generally accepted accounting principles. Any such franchise fee audit or review shall occur within five (5) years from the date the Municipality receives such payment, after which period any such payment shall be considered final. Upon request, Comcast shall provide the Municipality with copies of financial records related to the franchise fee audit or review. Such records shall also be kept or made available to the Municipality at the notice location for Comcast specified in Section 13.3 below. If the audit or franchise fee review shows that franchise fees have been underpaid, then Comcast shall pay the underpaid amount and monetary fines of ten percent (10%) of the underpayment. If franchise fees have been underpaid by five percent (5%) or more, then Comcast shall also pay the total cost of the audit or franchise fee review.

## **SECTION 3** **SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE**

### **3.1 TECHNICAL REQUIREMENT**

(a) Comcast shall operate, maintain, construct and extend the Cable System so as to offer high quality signals and reliable delivery of one-way and two-way Cable Services for all programming services throughout all parts of the Municipality where the density requirements of Section 3.2 herein below are met. The video signals provided by the Cable System shall be delivered in high quality

City of Greensburg (Westmoreland County) PA

resolution in accordance with FCC standards. The Cable System shall meet or exceed any and all generally applicable technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and the laws, ordinances and construction standards of the Commonwealth of Pennsylvania and the Municipality.

(b) Stand-by power at the headend(s) and at the node(s) shall be provided in the event of a service interruption. Stand-by power must activate automatically upon the failure of commercial utility power.

### **3.2 AREA TO BE SERVED**

(a) Cable Service shall be made available to every dwelling occupied by a person requesting Cable Service provided that Comcast is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act. Comcast shall extend the Cable System into all areas within the Municipality where there is a minimum of twenty-five (25) dwelling units per linear plant mile of aerial cable and fifty (50) dwelling units per underground mile of cable, calculated from the end of the nearest trunk line. Comcast shall complete said extensions within three (3) months of written notification to Comcast by the Municipality that an area has met the minimum density standard set forth herein (weather permitting). Comcast's obligation hereunder shall be subject to the timely performance of walk-out, make ready and location of all underground utilities.

(b) Any dwelling unit within one hundred twenty-five feet (125 ft.) aerial distance of the cable plant shall be entitled to a standard installation rate. For any dwelling unit in excess of one hundred twenty-five feet (125 ft.) aerial distance or that requires an underground installation, Comcast shall extend Cable Service at a rate not to exceed Comcast's actual cost of installation from its main distribution system.

(c) The Municipality has the right to require that Comcast install its wires and/or equipment underground, provided that the Municipality imposes such requirement on all similarly situated entities. All installations of wires and/or equipment by Comcast shall be underground in those areas of the Municipality where the wires and/or equipment of telephone and electric utilities are underground provided, however, that such underground locations are capable of accommodating Comcast's facilities without technical degradation of the Cable System's signal quality. Comcast shall not be required to construct, operate, or maintain *underground* any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, or pedestals.

### **3.3 PERMITS**

Comcast shall apply to the Municipality for all generally-applicable required permits and shall not undertake any activities in the public rights-of-way subject to a permit without receipt of such permit. Comcast shall not be required to obtain permits for Cable Service drops for individual Subscribers, servicing or installation of a single pedestal, or other routine maintenance and/or repair. Comcast shall pay any required permit fees.

### **3.4 REPAIRS AND RESTORATION**

(a) Whenever Comcast or any agent, including any subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private way or place, the same shall be replaced and the surface restored in as good condition as before the disturbance within ten (10) business days, weather permitting, of the completion of the disturbance. Upon failure of Comcast to comply within the time specified and the Municipality having notified Comcast in writing of the restoration and repairs required, the Municipality may cause proper restoration and repairs to be made and the expense of such work shall be paid by Comcast upon demand by the Municipality along with any liquidated damages applied by the Municipality in accordance with Section 9 "Franchise Violations, Damages and Revocation" below.

(b) Whenever Comcast or any agent, including any subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and injury to property, including structures, improvements and trees in and along the routes authorized by the Municipality if required for the proper installation, operation and maintenance of such equipment, cable, or wires. Comcast shall promptly repair and restore any private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days.

(c) Comcast's operation, construction, repair and maintenance personnel, including all agents and subcontractors, shall be thoroughly trained in the use of all equipment and the safe operation of vehicles. Comcast's operation, construction, repair and maintenance personnel shall follow all safety procedures required by all applicable federal, state and local laws and regulations. All areas of the Cable System shall be inspected in accordance with applicable federal and state laws and regulations so as to prevent hazardous conditions or risks to safety for the public and/or operating and maintenance personnel. Comcast shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the Municipality or any public utility serving the Municipality.

(d) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by Comcast personnel, including all agents and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1).

(e) Whenever Comcast or any agent, including any subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the Pennsylvania One Call System prior to any such disturbance. Comcast shall adhere to all requirements of the Pennsylvania Underground Utility Line Protection Act. Comcast also shall adhere to any additional requirements which the Commonwealth may establish in the future.

(f) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the Municipality, wherever situated or located, shall at all times be kept and maintained in a safe, non-hazardous and suitable condition and in good order and repair in accordance with customary industry standards and practices.

### **3.5 SYSTEM MONITORING**

Upon completion of any construction, Comcast shall conduct periodic signal monitoring in accordance with the requirements of the FCC. Such capability shall enable Comcast to monitor the signal quality of all channels delivered on the Cable System, including any Educational and/or Governmental Channels.

### **3.6 SERVICE AREA MAPS**

Upon request, Comcast shall provide to the Municipality for its exclusive use and shall maintain at its local offices a complete set of Comcast service area maps of the Municipality, on which will be shown those areas in which its facilities exist and the location of all streets. The maps shall be provided to the Municipality in hardcopy and also, if requested and available, in an electronic GIS format which is compatible with the Municipality's GIS format. The maps shall also designate where the cable wires and other equipment are aerial and where they are underground. Comcast shall provide the Municipality with updated maps within thirty (30) days after any request by the Municipality.

### **3.7 BUILDING MOVES**

In accordance with applicable laws, Comcast shall, upon the request of any person holding a building moving permit issued by the Municipality, temporarily raise or lower its wires to permit the moving of the building. Comcast shall be given at least thirty (30) days advance notice to arrange for such temporary wire changes. If

the building to be moved is owned or operated by the Municipality, Comcast shall raise or lower its wires at no cost to the Municipality.

### **3.8 DISCONNECTION AND RELOCATION**

(a) Comcast shall, at no cost to the Municipality, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the Municipality or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, site distance visibility, or the construction of any public improvement or structure.

(b) In requiring Comcast to protect, support, temporarily disconnect, relocate or remove any portion of its property, the Municipality shall treat Comcast the same as, and require no more of Comcast than, any similarly situated entity.

### **3.9 EMERGENCY REMOVAL OF EQUIPMENT**

(a) If, at any time, in case of fire or other disaster in the Municipality, it shall be necessary, in the reasonable judgment of the Municipality or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the Municipality shall have the right to do so without cost or liability, provided that, wherever possible, the Municipality shall give Comcast notice and the ability to relocate wires, cable or other equipment.

(b) In cutting or moving any of the wires, cable or equipment of the Cable System in the event of fire or other disaster, the Municipality shall treat Comcast the same as, and require no more of Comcast than, any other similarly situated entity.

### **3.10 TREE TRIMMING**

(a) Comcast, or its agents, including subcontractors, shall have the authority to trim trees upon and overhanging public streets, alleys, sidewalks and the public rights-of-way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of Comcast. Any such tree trimming shall only be performed in accordance with applicable laws and regulations. If Comcast or its agents, including subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and maintenance of its equipment, Comcast shall notify adjacent property owners and the Municipality and shall perform such cutting and removal in accordance with the regulations of the Municipality.

**SECTION 4**  
**CABLE SYSTEM AND STATE-OF-THE-ART**

**4.1 CABLE SYSTEM**

(a) The parties understand and agree that upon execution of this Agreement, Comcast has designed, constructed and shall maintain a Cable System covering the Municipality that utilizes fiber optic backbone connections from headend to hubs, hubs to hubs, and hubs to nodes. This Cable System has been built for analog and digital television standards with a bandwidth no less than 750 MHz with addressable technology with no less than one hundred fifty (150) video programming choices received for digital and/or analog transmission and shall allocate sufficient portion of said bandwidth to deliver reliable two-way Cable Services. The Cable System shall be capable of providing high definition television signals and Internet access service via cable modem.

(b) Comcast reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Agreement, in accordance with the provisions of the Agreement. Notwithstanding the above, Comcast agrees that no alteration, adjustment, modification, rebuild, upgrade, redesign, or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System from those that exist on the Effective Date.

**4.2 STATE-OF-THE-ART**

(a) Comcast and the Municipality acknowledge that the technology of Cable Systems is an evolving field. Comcast's Cable System in the Municipality shall be capable of offering Cable Services that are comparable to other Cable Systems owned and managed by Comcast or its Affiliated Entities in the County of Westmoreland in the Commonwealth of Pennsylvania ("Comparable Systems") pursuant to the terms of this section. The Municipality may send a written notice to Comcast, not to exceed one request every two (2) years, requesting information on Cable Services offered by such Comparable Systems.

(b) If the identified Cable Services are being offered by Comcast and/or its Affiliated Entities to at least forty percent (40%) of the total Subscribers in the Comparable Systems, then the Municipality may require that Comcast make such Cable Services available in the Municipality. Should the Municipality determine that Comcast shall provide comparable Cable Services, then the Municipality and Comcast shall enter into good faith discussions to negotiate a schedule for deployment of such Cable Services. The discussions shall take into consideration the benefits from the provision of such Cable Services, the cost of implementing

City of Greensburg (Westmoreland County) PA

them in the Municipality, the technical and economic feasibility of implementing such improvements, and the impact, if any, on Subscriber rates. The Municipality and Comcast acknowledge and agree that, if three (3) years or less are remaining in the Franchise term, then an extension of the Franchise term may be required as a condition to implementing any such improvements to the Cable System in order to provide Comcast with an ample opportunity to recoup its investment in any necessary improvements.

(c) The Municipality shall not initiate the procedures set forth under the preceding State-of-the-Art provisions or issue any related order if Comcast is subject to Effective Competition in the Municipality as expressly ordered in writing by the FCC and Comcast presents such written order to the Municipality.

## **SECTION 5**

### **CUSTOMER SERVICE STANDARDS**

#### **5.1 OFFICE HOURS AND TELEPHONE AVAILABILITY**

(a) Comcast shall maintain a business office that is conveniently located and shall be open during Normal Business Hours. Comcast shall provide and maintain a local or toll free telephone access line that will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall respond to customer telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service or an automated response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(b) Under Normal Operating Conditions and during Normal Business Hours, telephone answering time by a customer representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. The term "Normal Operating Conditions" is defined in Section 14 "Definitions" below.

(c) Under Normal Operating Conditions, the customer shall receive a busy signal less than three (3) percent of the time.

(d) Comcast shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering requirements above unless a historical record of complaints indicates a clear failure to comply. If the Municipality determines, after receiving complaints itself and/or receiving a record of complaints made to Comcast in accordance with Section 8 below, that there is a clear failure to

comply with the telephone answering requirements above, the Municipality shall notify Comcast in writing that it must measure its compliance with these requirements for the next ninety (90) days and report to the Municipality with its results.

## **5.2 INSTALLATIONS AND SERVICE CALLS**

(a) Comcast shall maintain a competent staff of well-trained employees sufficient to provide adequate and prompt service to its Subscribers. Comcast shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling, shall display a photo identification badge. Any vehicle used for installation, operation or maintenance activities by any Comcast employee or agent, including any subcontractor, shall prominently display the Comcast logo.

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

(c) Excluding conditions beyond its control, Comcast shall begin working on a Service Interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known and shall diligently pursue to completion. Notice of a Service Interruption of a single Subscriber shall give rise to this obligation on behalf of Comcast. The term "Service Interruption" is defined in Section 14 "Definitions" below. All other service calls not affecting public health, safety or welfare shall occur within a maximum of forty-eight (48) hours after notice to Comcast or scheduled at the convenience of the customer.

(d) Upon scheduling of appointments with the customer for installations, service calls and other activities, Comcast shall provide the customer with either a specific time or an "appointment window" of a maximum of four (4) hours during Normal Business Hours. Comcast may schedule service calls and installation activities outside of Normal Business Hours at a time that is convenient for the customer.

(e) Comcast may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the customer must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the customer.

### **5.3 NOTICES**

(a) Comcast shall provide written notice to each Subscriber upon initial subscription, and once per calendar year thereafter to each Subscriber, and at any time upon request, regarding each of the following areas:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Channel positions of programming carried on the Cable System;
- (4) Installation and service maintenance policies;
- (5) Instructions on how to use the Cable Service and any converters;
- (6) Billing and customer complaint procedures;
- (7) Comcast's address, telephone number and office hours; and
- (8) A notice of Subscriber privacy rights as required by federal law.

(b) Comcast shall notify Subscribers and the Municipality in writing of any changes in rates, programming services or channel positions a minimum of thirty (30) days in advance of such changes, provided that such change is within the control of Comcast. Comcast shall not be required to provide prior notice to Subscribers 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, the Commonwealth of Pennsylvania or the Municipality on the transaction between Comcast and the Subscriber.

(c) In accordance with federal law, Comcast shall maintain a file available to the public containing all written notices provided to Subscribers pursuant to the requirements contained herein by Comcast during the previous twelve (12) months.

### **5.4 BILLING**

(a) Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including, all applicable service tiers, equipment charges and any installation or repair charges. Bills shall state the billing period, including an

effective due date, the amount of current billing and any relevant credits or past due balances.

(b) Comcast shall not assess late fees for non-payment of a current bill until at least thirty (30) days have elapsed since the mailing of the bill by Comcast.

## **5.5 CUSTOMER COMPLAINT PROCEDURES**

Comcast shall establish clear written procedures for resolving all customer complaints, which shall include at least the following:

(a) Comcast shall provide the customer with a written response to a written complaint within thirty (30) days of its receipt at the local business office. Such response shall include the results of its inquiry into the subject matter of the complaint, its conclusions based on the inquiry, and its decision in response to the complaint.

(b) If the Municipality is contacted directly about a customer complaint, it shall notify Comcast promptly and in writing. When Comcast receives such notification, the time period for Comcast to respond as required by Section 5.5(a) above shall commence. If the Municipality notifies Comcast in writing, then Comcast shall respond in writing within the time period specified in Section 5.5(a) above.

(c) Any Subscriber who, in good faith, disputes all or part of any bill sent by Comcast has the option of withholding the disputed amount, without a late fee or disconnection, until Comcast has investigated the dispute in good faith and has made a determination that the amount is owed provided that:

- (1) The Subscriber provides a written complaint to Comcast in a timely fashion and includes identifying information;
- (2) The Subscriber pays all undisputed charges; and
- (3) The Subscriber cooperates in determining the appropriateness of the charges in dispute.

(d) Comcast shall maintain customer complaint records for inspection by the affected Subscriber, which shall contain the date each complaint is received, the

name and address of the affected Subscriber, a description of the complaint, the date of resolution of the complaint, and a description of the resolution.

## **5.6 DISCONNECTION**

Comcast may disconnect or terminate a Subscriber's service for cause:

- (a) If at least sixty (60) days have elapsed from the due date of the bill that Subscriber has failed to pay; and
- (b) If Comcast has provided at least ten (10) days written notice to the affected Subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection; and
- (c) If there is no pending written dispute with Comcast regarding the bill; or
- (d) If at any time and without notice, Comcast determines in good faith that Subscriber has tampered with or abused Comcast's equipment or service, or is engaged in theft of Cable Service.

## **5.7 CREDIT FOR SERVICE INTERRUPTIONS**

In the event that there is a Service Interruption to any Subscriber for six (6) or more consecutive hours, upon receipt of written or credible oral request, it shall grant such Subscriber a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle, or, at its option, apply such credit to any outstanding balance that is currently due.

## **5.8 PRIVACY**

(a) Comcast shall respect the rights of privacy of every Subscriber and shall not violate such rights through the use of any device or signal associated with the Cable System. Comcast shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and state privacy laws and regulations. All references to privacy in this Section are further subject to the provisions of Public Law 107-56 (October 26, 2001), Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, known as the "USA PATRIOT ACT."

(b) Comcast shall be responsible for complying with such privacy policy and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personally-identifiable Subscriber information is

handled and protected strictly in accordance with this policy and all applicable laws and regulations.

(c) Absent a court order or requirement of federal law, neither Comcast nor its designee shall tap, monitor, arrange for the tapping or monitoring, or permit any person to tap or monitor, any cable, line, signal, input device, or Subscriber outlet or receiver for any purpose, without the prior written authorization of the affected Subscriber or user, provided, however, that Comcast may conduct system-wide or individually addressed "sweeps" solely for the purpose of verifying system integrity, checking for illegal taps, controlling return-path transmission, billing for pay services or monitoring channel usage in a manner not inconsistent with the federal law. Comcast shall report to the affected parties any instances of monitoring or tapping of the Cable System, or any part thereof, of which it has knowledge, whether or not such activity has been authorized by Comcast. Comcast shall not record or retain any information transmitted between a Subscriber and any third party, except as required for lawful business purposes.

(d) Except as permitted by Section 631 of the Cable Act as amended, neither Comcast nor its designee nor its employees shall make available to any third party, including the Municipality, information concerning the viewing habits or subscription package decisions of any individual Subscriber. If a court authorizes or orders such disclosure, Comcast shall notify the Subscriber prior to disclosure in conformance with the Section 631 of the Cable Act, unless such notification is otherwise prohibited by applicable law or the court.

(e) Upon a request by a Subscriber, Comcast shall make available for inspection at a reasonable time and place all personal Subscriber information that Comcast maintains regarding said Subscriber. Comcast shall ensure that all information related to billing and service requests is accurate and up-to-date and shall promptly correct any errors upon discovery.

(f) Comcast shall not make its Subscriber list or lists, or any portion thereof, available to any other person or entity, with or without remuneration, in conformance with the Section 631 of the Cable Act.

## **SECTION 6** **SERVICES TO THE COMMUNITY**

### **6.1 SERVICES TO COMMUNITY FACILITIES**

Comcast shall, at no charge to the Municipality, provide complimentary services as described herein below to all present and future public facilities including, but not

City of Greensburg (Westmoreland County) PA

limited to, the following: the Municipality Administration Building, police stations, fire companies, public works buildings, water and sewer authorities, all public and private school buildings and public libraries ("Permitted Free Locations"). No charge shall be made for installation or service, except that Comcast may charge for installation or service for more than one (1) drop in Permitted Free Location.

(a) Within three (3) months of the Effective Date, to the extent that such Service doesn't already exist at a given Permitted Free Location and upon request, Comcast shall provide or maintain one (1) cable Drop, outlet, converter box (or other required end user equipment) and standard cable level Services (or equivalent) package to each Permitted Free Location. No charge shall be made for installation, equipment, or service, except that Comcast may charge for installation and materials beyond one hundred twenty-five (125) feet aerial/underground distance from the cable plant and/or installation and service for more than one drop in each Permitted Free Location.

(b) Within three (3) months of the Effective Date and upon request, Comcast shall provide or maintain one (1) cable modem internet access service (Residential standard level equivalent) to the following Permitted Free Locations: (i) one (1) municipal facility in the Municipality; (ii) all public and private schools (K-12); and (iii) each public library. The cable modem internet access service may be networked by the Municipality though Comcast assumes no responsibility for any service degradation caused by such networking. No charge shall be made for installation or service except that Comcast may charge for: (i) installation beyond one hundred twenty-five (125) feet aerial/underground distance from the cable plant; (ii) service for more than one (1) drop in each Permitted Free Location and/or (iii) service problems caused by the Municipality's networking.

(c) For the purposes of this section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, and does not include "home schools" or "cyber schools," or any other educational situation that does not meet specific criterion set forth herein. During the term of this Agreement, new public facilities shall be eligible to receive such complimentary service to the extent that they meet the qualifications as set forth herein above as Permitted Free Locations.

## **6.2 EDUCATIONAL AND GOVERNMENTAL (EG) CHANNELS**

(a) Comcast shall provide to the Municipality, as set forth herein, the use of one (1) dedicated educational and governmental ("EG") access channel in accordance with Section 611 of the Cable Act for use by the Municipality and/or its designee. Comcast shall provide the use of a second EG access channel as set

City of Greensburg (Westmoreland County) PA

forth in Section 6.2(b). Such EG channel(s) shall be used for community programming related to educational and/or governmental activities. Their purpose is to contribute to an informed citizenry by, among other things, showing local government at work, responding to local needs, telecasting community programs, and bringing local education into the home. The Municipality shall have complete control over the content, scheduling, administration and all other programming aspects of the EG channel(s) and may delegate such functions to an appropriate designee. If requested by any neighboring municipality served by Comcast from the same hub site as that providing service to the Municipality, then the Municipality agrees to cooperate with such municipality in the shared use of the EG channel(s), until such time as technology utilized by Comcast eliminates the need for the shared use. Comcast shall not exercise any editorial control over EG channel(s) programming. Whether operating on an analog or digital format, Comcast shall cablecast any activated EG channels so that they may be received by all Comcast Subscribers in the Municipality.

(b) Upon activation of the initial EG channel, the Municipality may request one (1) additional (EG) channel to be made available for use by the Municipality or its designee. Comcast shall activate such additional (EG) channel and programming shall occur as set forth herein within ninety (90) days of Comcast's receipt of the aforementioned notice in writing from the Municipality.

(c) In the event the Municipality or its designee does not fully program any EG channel, Comcast may request unused time on this channel subject to written approval by the Municipality. If the Municipality approves Comcast's use of all or part of an EG channel and, subsequent to such approval, the Municipality requests the full utilization of the EG channel being programmed by Comcast, in full or in part, Comcast shall relinquish such use no later than sixty (60) days after receipt of written notification from the from the Municipality that it requires such channel for educational and/or government use.

(d) To enable distribution of the EG channel(s), Comcast shall install the appropriate wiring and encoder if necessary, for an Internet-based or other type of capable technology enabling cablecast and distribution via the Cable System to Subscribers in the Municipality. No charge shall be made for the installation of the wiring and encoder if necessary; however all recurring monthly costs for the Internet-based or other type of capable technology and/or the recurring costs of a third party program support provider shall be at the expense of the Municipality.

(e) If the Municipality wishes to cablecast live programming, and such live programming cannot be accommodated through an Internet-based or other type of capable technology, then the Municipality shall select up to two (2) locations within the municipal boundaries and Comcast shall provide and install, within one hundred

eighty (180) days of a written notice from the Municipality, the cables, wires, lines, and other signal distribution equipment for an alternative technology such that live programming can originate from the selected location and be distributed via the Cable System to Subscribers in the Municipality. These cables, wires, lines and other signal distribution equipment shall be collectively known as the "Return Line".

(f) Any expenditures made in connection with construction and maintenance of Return Lines for live programming, not utilizing an Internet-based or other type of capable technology, shall be at the expense of the Municipality. The Municipality and Comcast further agree that any and all costs incurred by Comcast for providing the EG Channels and supporting such channels, including any and all equipment, capital grants, and maintenance and repair, may be designated as "costs of franchise requirements" or "external costs" as defined by the FCC, except that it is mutually agreed that such costs shall not be itemized on Subscribers' bills.

(g) Comcast shall be responsible for maintaining the wiring to the video origination points, provided that the Municipality provides Comcast with access to those locations and access to the EG equipment within these locations. Comcast shall provide, install and maintain in good working order the equipment and the fiber necessary for transmitting the signal to the channel aggregation site for further processing and distribution to Subscribers. Comcast shall deliver the EG channel signals at a level of technical quality that is comparable to the level of technical quality provided by Comcast for signals of commercial channels transmitted to Subscribers in the Municipality; provided, however, that Comcast shall have no responsibility to improve upon or modify the signal quality of any EG channel content provided to Comcast by any EG channel programmer.

(h) The Municipality or its designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising all of the trained/qualified personnel required to conduct the operation of the EG channel(s). The Municipality and Comcast agree to work cooperatively in implementing the EG channel(s) through such means and in such manner as shall be mutually satisfactory.

### **6.3 EG SUPPORT GRANT**

(a) Comcast shall provide a one-time monetary grant to the Municipality to be used in support of the production of local EG programming. The EG Grant provided by Comcast shall be in the amount twenty six thousand three hundred sixty five dollars of (\$26,365.00). Such grant is to be paid within six (6) months of the Effective Date and shall not be offset against franchise fees paid to the Municipality.

Comcast and the Municipality agree that the cost of such grant may be designated as a "cost of franchise requirements" or "external cost" as defined by the FCC,

except that it is mutually agreed that such costs shall not be itemized on Subscribers' bills.

(b) Other than the access support specifically agreed to in this Agreement, Comcast shall not be required to provide technical or production staff, additional funding, or obtain equipment or studio facilities for EG channel programming.

## **SECTION 7**

### **REGULATION BY THE MUNICIPALITY**

#### **7.1 RIGHT TO INSPECT**

(a) The Municipality shall have the option, upon twenty (20) business days written notice and during Normal Business Hours, to inspect at the notice location for Comcast specified in Section 13.3 below all documents, records and other pertinent information maintained by Comcast which relate to the terms of this Agreement.

(b) In addition, Comcast shall maintain for inspection by the public and the Municipality all records required by the FCC and as specified in 47 C.F.R. § 76.305 in the manner specified therein.

(c) Notwithstanding anything to the contrary set forth herein, all information specifically marked by Comcast as proprietary or confidential in nature and furnished to the Municipality or its designated representatives shall be treated as confidential so long as permitted to do so under applicable law. Information and documentation marked by Comcast as proprietary or confidential shall include a brief written explanation as to its proprietary nature or confidentiality subject to review by the Municipality. The Municipality and its officially designated representatives agree in advance to treat any such information or records which Comcast reasonably deems would provide an unfair advantage for Comcast's competitors (e.g., system design maps, engineering plans, programming contracts, etc.) as confidential so long as permitted to do so under applicable law and only to disclose it to Municipality employees, agents, or representatives who have a need to know or in order to enforce the provisions of this Agreement. In the event a request is made by an individual or entity not an employee, agent or representative of the Municipality acting in their official capacity for information related to the franchise and marked by Comcast as confidential and/or proprietary, the Municipality shall notify Comcast of such request. Comcast shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act, or information which is not relevant to regulation of the franchise (e.g., employee files, tax returns, etc.).

## **7.2 RIGHT TO CONDUCT COMPLIANCE REVIEW**

The Municipality or its representatives may conduct a full compliance review, including a possible public hearing, with respect to whether Comcast has complied with any given material term(s) and condition(s) of this Agreement so long as it provides Comcast with thirty (30) days written notice in advance of the commencement of any such reviews or public hearings. Such notice shall specifically reference the section(s) of the Agreement that is under review, so that Comcast may organize the necessary books and records for appropriate review by Municipality. Comcast shall not be required to disclose information in violation with Section 7.1, herein above.

## **7.3 RESERVED AUTHORITY**

The Municipality reserves the regulatory authority arising from the Cable Act, any amendments thereto, and any other federal or state laws or regulations.

# **SECTION 8** **REPORTING REQUIREMENTS**

## **8.1 QUARTERLY FRANCHISE FEE REPORT**

In accordance with Section 2.3 of this Agreement, Comcast shall accompany each quarterly franchise fee payment to the Municipality with a quarterly report containing an accurate statement of Comcast's Gross Revenues received for each calendar quarter in connection with the operation of Comcast's Cable System to provide Cable Service and a brief description showing the basis for computation of fees. Specifically, the report shall contain line items of sources of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of Comcast.

## **8.2 ANNUAL FINANCIAL REPORT**

Comcast shall submit to the Municipality, no later than thirty (30) days after a written request, a financial statement including a statement of income, balance sheet and a statement of sources and applications of funds which shall be certified by Comcast's Chief Financial Officer in accordance with Generally Accepted Accounting Principles. Submission of the most recent U.S. Securities and Exchange Commission Annual Report Form 10-K prepared by Comcast shall be deemed as a satisfactory compliance of this Section 8.2.

### **8.3 CUSTOMER COMPLAINT REPORT**

Upon written request, Comcast shall submit to the Municipality a report showing the number of Complaints, as defined in Section 14 of "Definitions" below that required a work order and/or service call, originating from the Municipality received during the previous twelve-month reporting period, the dates they were received, summary descriptions of the Complaints, the dates the Complaints were resolved and summary descriptions of the resolutions.

### **8.4 GOVERNMENT REPORTS**

Comcast shall provide to the Municipality, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which Comcast has submitted to any federal, state or local regulatory agencies if such documents relate to Comcast's Cable System within the Municipality. Comcast shall provide copies of such documents no later than thirty (30) days after their request. Comcast shall not claim confidential, privileged or proprietary rights to such documents unless such documents have been determined to be confidential, privileged or proprietary in accordance with the terms and conditions regarding confidentiality as set forth in Section 7.1 (c) of this Agreement.

## **SECTION 9 FRANCHISE VIOLATIONS, DAMAGES AND REVOCATION**

### **9.1 VIOLATIONS AND OPPORTUNITY TO CURE**

(a) If the Municipality has reason to believe that Comcast violated any provision of this Agreement, it shall notify Comcast in writing of the nature of such violation and the section of this Agreement that it believes has been violated. If the Municipality does not notify Comcast of any violation of this Agreement, it shall not operate as a waiver of any rights of the Municipality hereunder or pursuant to applicable law.

(b) Comcast shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that, in the Municipality's reasonable judgment, it cannot be fully cured within thirty (30) days due to circumstances outside of Comcast's control, the period of time in which Comcast must cure the violation may be extended by the Municipality in writing for such additional time necessary to complete the cure, provided that Comcast shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the Municipality.

(c) If the violation has not been cured within the time allowed under Section 9.1(b) above, then Comcast shall be liable for liquidated damages and the Municipality's costs in accordance with Section 9.2 below.

## **9.2 LIQUIDATED DAMAGES**

9.2.1 Because Comcast's failure to comply with provisions of this Agreement will result in harm to the Municipality and because it will be difficult to measure the extent of such harm, the Municipality may assess liquidated damages against Comcast in the following amounts provided Comcast has had an opportunity to cure in accordance with Section 9.1(b). Such damages shall not be a substitute for specific performance by Comcast or legal action by the Municipality, but shall be in addition to such performance or action.

9.2.2. The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the Municipality. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days, after which the Municipality may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction.

9.2.3. The Municipality may assess liquidated damages against Comcast in the following amounts provided Comcast has had an opportunity to cure in accordance with Section 9.1(b).

- (a) For failure to comply with the technical requirements specified in Section 3.1: \$150 per day for each day the violation continues;
- (b) For failure to provide and maintain Cable Service as specified in Section 3.2: \$150 per day for each day the violation continues;
- (c) For failure to obtain and maintain permits as specified in Section 3.3: \$100 per day for each day the violation continues;
- (d) For failure to make repairs and restorations as specified in Section 3.4: \$150 per day for each day the violation continues;
- (e) For failure to raise or lower, disconnect, relocate, or remove equipment as specified in Sections 3.7, 3.8, and 3.9: \$150 per day for each day the violation continues;

- (f) For failure to perform tree trimming, cutting, or removing as specified in Section 3.10: \$150 per tree;
- (g) For failure to comply with the Cable System specifications or the state-of-the-art requirements specified in Sections 4.1 and 4.2: \$150 per day for each day the violation continues;
- (h) For failure to comply with any customer service standard as specified in Section 5: \$100 per day for each day the violation continues;
- (i) For failure to provide complimentary services to the community as specified in Section 6.1: \$150 per day for each day the violation continues;
- (j) For failure to provide educational and governmental (EG) channels or an EG grant as specified in Sections 6.2 and 6.3: \$150 per day for each day the violation continues;
- (k) For failure to permit inspections or compliance reviews as specified in Section 7: \$150 per day for each day the violation continues;
- (l) For failure to submit reports in a timely fashion as specified in Section 8: \$100 per day for each day the violation continues;
- (m) For failure to provide a performance bond as specified in Section 9.3: \$150 per day for each day the violation continues;
- (n) For failure to comply with the indemnification requirements as specified in Section 11.1: \$150 per day for each day the violation continues;
- (o) For failure to carry all the insurance required in Section 11.2: \$150 per day for each day the violation continues;
- (p) For failure to comply with transfer or renewal provisions as specified in Section 12: \$150 per day for each day the violation continues;
- (q) For failure to comply with the removal of system requirements as specified in Section 13.2: \$250 per day for each day the violation continues.

### **9.3 PERFORMANCE BOND**

(a) Comcast shall obtain and maintain during the term of this Agreement, at its sole cost and expense, a performance bond running to the Municipality with a City of Greensburg (Westmoreland County) PA

surety company licensed to do business in the Commonwealth of Pennsylvania and satisfactory to the Municipality to ensure Comcast's faithful performance of its obligations. The performance bond shall provide that the Municipality may recover from the principal and surety any and all liquidated damages and/or compensatory damages incurred by the Municipality for Comcast's violations of this Agreement, after notice and opportunity to cure, in accordance with Sections 9.1 and 9.2 above.

(b) The performance bond shall be in the amount of Twenty-five Thousand Dollars (\$25,000). Comcast shall not reduce, cancel or materially change said bond from the requirement contained herein without the express prior written permission of the Municipality.

#### **9.4 REVOCATION**

(a) In addition to the other rights, powers and remedies retained by the Municipality under this Agreement, the Municipality reserves the separate and distinct right to revoke this franchise if:

(1) It is demonstrated that Comcast practiced any fraud or deceit upon the Municipality in its operation of its Cable System or any other activities pursuant to this Agreement;

(2) Comcast repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 3.1 of this Agreement;

(3) Comcast repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement.

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Comcast or occurs as a result of circumstances beyond its control or by reason Force Majeure as defined in Section 13.1. Comcast shall not be excused from the performance of any of its obligations under this franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the governing body after an appropriate public hearing that shall afford Comcast due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania. All notice requirements shall be met by providing Comcast at least thirty (30) days prior written

notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The Municipality, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Comcast of mitigating circumstances or good cause for the existence of such grounds. The Municipality shall issue such declaration and finding within thirty (30) days in a written decision which the Municipality shall send via certified or overnight mail to Comcast.

## **SECTION 10** **PROGRAMMING**

### **10.1 CHANNEL CAPACITY**

Comcast shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by federal and state law and regulations.

### **10.2 BROADCAST CHANNELS**

To the extent required by federal law, Comcast shall provide all Subscribers with the most basic tier of service including, but not limited to: 1) all broadcast television signals carried in fulfillment of the requirements of Section 614 of the Cable Act; 2) the signals of qualified non-commercial educational television signals carried in fulfillment of the requirements of Section 615 of the Cable Act; and 3) the Educational and Governmental channels. All such signals shall be delivered to Subscribers in high quality resolution.

### **10.3 SIGNAL SCRAMBLING**

Comcast shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

### **10.4 CONTINUITY OF SERVICE**

Subscribers shall continue to receive service from Comcast provided their financial and other obligations to Comcast are honored. Subject to the Force Majeure provisions in Section 13 of this Agreement, Comcast shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, Comcast shall use its best efforts to interrupt service only during periods of minimum use. When necessary service interruptions of more

City of Greensburg (Westmoreland County) PA

than twenty-four (24) hours can be anticipated, Comcast shall notify Subscribers in advance of such service interruption along with providing Subscribers with a pro-rata credit for the time of such service interruption.

### **10.5 PARENTAL CONTROL CAPABILITY**

Upon request, Comcast shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System providing sexually explicit adult programming pursuant to Section 641 of the Cable Act.

### **10.6 TIER BUY THROUGH PROHIBITION**

Comcast shall not require Subscribers in the Municipality to purchase a particular video service tier, other than the Basic Service tier, in order to obtain access to video programming on a per-channel or per-program basis, unless Comcast has been granted a written waiver by the FCC pursuant to Section 623(b)(8)(c) of the Cable Act.

## **SECTION 11 LIABILITY AND INDEMNIFICATION**

### **11.1 INDEMNIFICATION**

Comcast shall indemnify, defend, save and hold harmless the Municipality, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense arising in whole or in part from, caused by or connected with any act or omission of Comcast, its officers, agents, contractors, subcontractors or employees, arising out of but not limited to, the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities. The Municipality shall give Comcast timely written notice of its obligation to indemnify and defend the Municipality. The obligation to indemnify, defend, save and hold the Municipality harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, penalties, and reasonable attorneys' fees. If the Municipality determines that it is necessary for it to employ separate counsel, in addition to that provided by Comcast, the cost for such separate counsel shall be the responsibility of the Municipality. Comcast shall not indemnify the Municipality for any claims resulting solely from acts of willful misconduct, or negligence on the part of the Municipality.

## 11.2 INSURANCE

(a) Comcast shall maintain insurance throughout the term of this Agreement with the Municipality as an additional insured, with an insurance company which is authorized to conduct business in Pennsylvania and which has an A.M. Best rating (or equivalent) no less than "A-minus VII", indemnifying the Municipality from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable System by Comcast or any of its contractors, subcontractors, agents or employees in the following amounts:

(1) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one (1) occurrence.

(2) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.

(4) The amount of such insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability shall be One Million Dollars (\$1,000,000).

(b) All insurance coverage shall be maintained throughout the period of this Agreement. All insurance policies shall contain a provision that the Municipality will receive thirty (30) days written notice prior to any changes or cancellation of the policy. All expenses incurred for said insurance shall be at no cost to the Municipality.

(c) A certificate evidencing the insurance coverage required herein shall be provided by Comcast to the Municipality within thirty (30) days of the Effective Date and upon request and within thirty (30) days of obtaining new insurance coverage or renewal of such insurance coverage throughout the term of this Agreement.

**SECTION 12**  
**FRANCHISE TRANSFER AND RENEWAL**

**12.1 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL**

(a) Neither Comcast nor its parent nor any Affiliated Entity shall transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the Municipality provided that such consent shall not be unreasonably withheld.

(b) Neither Comcast nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the Municipality.

(c) Neither Comcast nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than twenty-five (25%) of its equitable ownership in the Cable System without the prior written consent of the Municipality.

(d) No such consent shall be required for (i.) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Comcast in the Franchise or in the Cable System in order to secure indebtedness; or (ii.) a transfer to an entity owned and/or controlled by Comcast.

(e) Comcast shall make written application to the Municipality of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. The Municipality shall have thirty (30) days from the receipt of FCC Form 394 to notify Comcast of any additional information it needs to make an informed decision on the transfer or assignment. The Municipality shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment.

(f) Any consent by the Municipality for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding agreement stating that it shall be bound by all the terms and conditions contained in this Agreement.

## **12.2 RENEWAL**

The Municipality and Comcast agree that any proceedings or activities that relate to the renewal of Comcast's franchise shall be governed by applicable federal and state law.

## **SECTION 13 MISCELLANEOUS**

### **13.1 FORCE MAJEURE**

If for any reason of force majeure, Comcast is unable in whole or in part to carry out its obligations hereunder, Comcast shall not be deemed in violation of this Agreement during the continuance of such inability. The term "force majeure" as used herein shall have the following meaning: acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or of the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; labor strikes; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; explosions; unavailability of materials or equipment, and partial or entire failure of utilities.

### **13.2 REMOVAL OF SYSTEM**

(a) Upon lawful denial of renewal or revocation of this Agreement or of any renewal hereof by passage of time or otherwise, Comcast shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within three (3) months of such lawful denial of renewal or revocation, the Municipality or property owner may deem any property not removed as having been abandoned and the Municipality may remove it at Comcast's cost.

(b) During the term of the Agreement, if Comcast decides to abandon or no longer use all or part of its Cable System, it shall give the Municipality written notice of its intent at least ninety (90) days prior to the announcement of such decision, which notice shall describe the property and its location. The Municipality shall have the right to either require Comcast to remove the property, remove the property itself and charge Comcast with the costs related thereto, or transfer ownership of the property to the Municipality's designee provided fair market value is paid to Comcast.

(c) Notwithstanding the above, Comcast shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Comcast from providing Cable Services, if the Cable System is actively being used to facilitate any other services not governed by Title VI of the Communications Act of 1934, as amended, or any portion thereof.

### 13.3 NOTICES

Every notice or payment to be served upon or made to the Municipality shall be sent to:

City Manager  
City of Greensburg  
416 South Main Street  
Greensburg, PA. 15601

The Municipality may specify any change of address in writing to Comcast.

Every notice to be served upon Comcast shall be sent to:

Comcast  
15 Summit Park Drive  
Pittsburgh, PA 15275  
Attention: Government Affairs Department

With a copy to:

One Comcast Center  
1701 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2838  
Attention: Government Affairs Department

Comcast may specify any changes of address in writing to the Municipality.

Each delivery to Comcast or the Municipality shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

#### **13.4 EQUAL EMPLOYMENT OPPORTUNITY**

Comcast is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment.

#### **13.5 CAPTIONS**

The captions for 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.

#### **13.6 GOVERNING LAW**

This Agreement shall be governed and construed by and in accordance with the laws of the Commonwealth of Pennsylvania. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Pennsylvania, County of Westmoreland, or in the United States District Court for the Western District of Pennsylvania.

#### **13.7 ENTIRE AGREEMENT**

This written instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the Municipality and Comcast. This Agreement supersedes all prior agreements or ordinances, or parts of agreements, or ordinances that are in conflict with the provisions herein.

#### **13.8 SEVERABILITY**

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be unlawful, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

#### **13.9 CHANGE OF LAW**

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the Municipality or Comcast may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The Municipality and Comcast may amend

City of Greensburg (Westmoreland County) PA

this Agreement to comply with such change in statute or regulation provided such amendment is approved by the Municipality and Comcast.

### **13.10 NO THIRD-PARTY BENEFICIARIES**

Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any other person to enforce the terms of this Agreement.

### **13.11 APPLICABILITY OF AGREEMENT**

All of the provisions in this Agreement shall bind Comcast, the Municipality and their respective successors and assigns. This Agreement is authorized by Ordinance No. 1994 dated July 12, 2010 of the Municipality.

## **SECTION 14** **DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

- (a) Affiliated Entity - Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with Comcast.
- (b) Basic Service - That service tier which shall include at least the retransmission of local broadcast television signals and any educational and/or governmental access channels.
- (c) Broadcast - Over-the-air transmission by a television or radio station.
- (d) Cable Service - The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (e) Cable System - A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Municipality, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that

City of Greensburg (Westmoreland County) PA

such facility shall be considered a Cable System (other than for purposes of Section 621 of the Cable Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

(f) Complaint - Any written (including electronic) or oral communication by a Subscriber expressing dissatisfaction with any aspect of Comcast's business or the operation of its Cable System.

(g) Drop - The coaxial or fiber optic or other cable that connects a home or building to the Cable System.

(h) FCC - Federal Communications Commission.

(i) Gross Revenues - All revenue received directly or indirectly by Comcast or its Affiliated Entities attributable to, or in any way derived from the operation of Comcast's Cable System in the Municipality to provide Cable Services calculated in accordance with Generally Accepted Accounting Principles ("GAAP"). Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for any service tier other than Basic Service;
- (3) fees charged for premium services;
- (4) fees charged to Subscribers for any optional, per-channel or per-program services;
- (5) revenue from the provision of any other Cable Services;
- (6) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming;
- (7) fees for downgrading any level of Cable Service programming;
- (8) fees for service calls;
- (9) fees for leased access channels;
- (10) charges based on the sale or lease of any portion of the Cable System for Cable Service;
- (11) rental or sales of any and all subscriber equipment, including converters and remote control devices;
- (12) studio rental, production equipment and personnel fees;
- (13) any and all locally-derived advertising revenues;
- (14) revenues or commissions from locally-derived home shopping channels;

- (15) revenue from interactive television services;
- (16) fees for any and all music services;
- (17) fees for video-on-demand;
- (18) sales of hard-copy program guides;
- (19) late payment fees;
- (20) NSF check charges; and
- (21) franchise fees.

Gross Revenues shall not include bad debts, investment income, refunded deposits, or any taxes on services furnished by Comcast and imposed directly upon any Subscriber or user by the Municipality, state, federal or other governmental unit.

(j) 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.

(k) Normal Operating Conditions - Business conditions within Comcast's service department which are within the control of Comcast. Those conditions that are not within the control of Comcast include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.

(l) Outlet - An interior receptacle that connects a television set to the Cable System.

(m) Programming - Any video or audio signal carried over the Cable System.

(n) Service Interruption - The loss of picture or sound on one (1) or more channels.

(o) Subscriber - A person or entity who contracts with Comcast for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.

WITNESS our hands and official seals to this Cable Franchise Agreement.

ATTEST

*Susan M. Thout*

CITY OF GREENSBURG

By: <sup>FOR</sup> *[Signature]*

Name (Print): KARL E. EISAMAN

Title: MAYOR

Date: 6-14 - 2010

ATTEST:

*Ralph L. McCullough*

COMCAST OF PENNSYLVANIA

By: *[Signature]*

Name: David R. Breidinger

Title: Senior Vice President

Date: SEPTEMBER 14, 2010