

## RESOLUTION NO. 1-24

### Resolution Approving Cable Franchise Agreement between the Town of Leonardtown and Comcast of Maryland, LLC

WHEREAS, pursuant to Md. Code Ann., Local Gov't § 1-708(c), the governing body of a county or municipality may: 1) grant a franchise for a cable television system that uses a public right-of-way; 2) impose franchise fees; 3) establish rates applicable to a franchise; and 4) adopt rules and regulations for the operation of a franchise; and

WHEREAS, in accordance with the foregoing statutory authority, the Council of the Town of Leonardtown (the "Council") has adopted rules and regulations for the operation of a cable television franchise in the Town of Leonardtown (the "Town"), which are codified as Chapter A165 (Cable Television Franchise) of the Code of the Town of Leonardtown (the "Town Code"); and

WHEREAS, on January 12, 2024, Comcast of Maryland, LLC ("Comcast") submitted an application to operate a cable television franchise within the Town (the "Application"); and

WHEREAS, on February 12, 2024, the Council held a public hearing on the Application as required pursuant to § A165-8(D); and

WHEREAS, following the public hearing on February 12, 2024, the Council, having considered Comcast's character, technical, financial, and legal qualifications to construct and operate the proposed cable system within the Town, the nature of the proposed facilities, equipment, and service of Comcast's record in other communities, and whether the proposed franchise will meet anticipated community needs and serve the public interest, as well as the economic feasibility of multiple cable television franchises in the Town and whether any adverse consequences to the public interest will result of the Application is granted, voted to grant a cable television franchise to Comcast; and

WHEREAS, the Town and Comcast have agreed on the terms of a franchise agreement, entitled "Cable Franchise Agreement between Town of Leonardtown and Comcast of Maryland, LLC" (the "Franchise Agreement"), which Franchise Agreement is attached hereto as Exhibit A and incorporated herein by reference as if fully set forth; and

WHEREAS, on April 8, 2024, the Council held a public hearing on the Franchise Agreement, having first provided public notice thereof in The County Times, a newspaper of general circulation in the Town, and having first made the Franchise Agreement available to the public; and

WHEREAS, the Council deems it in the interest of the public health, welfare, and safety of the citizens of the Town, and for the good government of the Town, to adopt this Resolution for the purpose of approving the Franchise Agreement.

NOW THEREFORE BE IT RESOLVED, by the Council of the Town of Leonardtown:

1. Subject to the provisions of Chapter A165 of the Town Code, the Council hereby approves the Franchise Agreement attached hereto as Exhibit A and grants to Comcast a non-

exclusive franchise to construct and operate a cable system as more fully set forth therein for a term of ten (10) years.


2. The Mayor and the Town Administrator are hereby authorized to execute the Franchise Agreement.


3. This Resolution shall be effective immediately upon adoption.

READ AND ADOPTED THIS 8<sup>th</sup> day of April, 2024.

  
Laschelle E. McKay  
Town Administrator

Councilpersons of Leonardtown:

  
J. Maguire Mattingly, IV  
Vice President

  
Nick Colvin  
Council Member

  
Heather Earhart  
Council Member

absent  
Christy Hollander  
Council Member

  
Mary Slade  
Council Member

Seal:

Exhibit A  
Franchise Agreement

Exhibit A

CABLE FRANCHISE AGREEMENT  
BETWEEN  
COMMISSIONERS OF LEONARDTOWN  
AND  
COMCAST OF MARYLAND, LLC

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## **FRANCHISE AGREEMENT**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the Commissioners of Leonardtown, a Maryland municipal corporation (hereinafter, “Town” or “Franchise Authority”), and Comcast of Maryland, LLC (hereinafter, “Franchisee”).

The Town, having determined that the financial, legal, and technical ability of the Franchisee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Franchisee for the construction, operation, and maintenance of a Cable System on the terms and conditions set forth herein.

### **SECTION 1 - Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in Chapter A165 (Cable Television Franchise) of the Code of the Town of Leonardtown (“Chapter A165”), and if not defined therein the meanings ascribed to them in the Cable Act, unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words used to refer to the masculine include the feminine, words in the plural number include the singular number, and likewise, words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined in the Cable Act or herein shall be given their common and ordinary meaning.

1.1 “Cable Act” shall mean the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§521 – 573.

1.2 “Cable Service” or “Service” shall mean the one-way transmission of any Video Programming or Other Programming Service to Subscribers together with any Subscriber interaction provided in connection with such service.

1.3 “Cable System” shall mean 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 Town. Such term does not include: (i) a facility that serves only to retransmit the television signals of one or more local (i.e., Baltimore/Washington Area) television broadcast stations; (ii) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility uses or crosses (whether above, on or below ground) any public street, road, way, easement or Public Way; (iii) a facility of common carrier that is subject, in whole or in part, to the provision of Title II of the Communications Act of 1934, 47 U.S.C §201 et seq., except that such facility will be considered a Cable System to the extent it is used in the transmission of Video Programming directly to Subscribers; or (iv) any facility of any electric utility used solely for operating its electric utility system.

1.4 “Effective Date” shall mean \_\_\_\_\_ 2024.

1.5 “FCC” shall mean the Federal Communications Commission.

1.6. "Franchise" shall mean the right granted by the Town to Franchisee to construct, maintain and operate a Cable System over or under all streets, roads and other Public Ways, easements and rights-of-ways within all areas of the Town. The term does not include any license or permit that may be required by the Town Code or other laws, ordinances, or regulations of the Town for the privilege of transacting and carrying on a business within the Town or for disturbing the surface of any street or public thoroughfare.

1.7. "Franchise Agreement" of "Agreement" shall mean this contract entered into in accordance with the provisions of the Town Code between the Town and Franchisee that sets forth the terms and conditions under which the Franchise will be exercised.

1.8. "Franchise Area" shall mean the present legal boundaries of the Town of Leonardtown, as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means during the term of the Franchise, as per the requirements set forth herein.

1.9. "Franchise Authority" shall mean the Commissioners of Leonardtown, a Maryland municipal corporation, or the lawful successor, transferee, designee, or assignee thereof.

1.10. "Franchisee" shall mean Comcast of Maryland, LLC.

1.11. "Gross Revenue" shall mean revenue derived by the Franchisee from the operation of the Cable System in the Franchise Area to provide Cable Service, calculated in accordance with generally accepted accounting principles ("GAAP"). Gross Revenue includes all revenues derived from Cable Service, including, but not limited to, monthly basic cable, premium and pay-per-view video fees, installation fees and subscriber equipment rental fees, advertising revenues attributable to the local Cable System and Cable Services, commissions received from locally-derived home shopping channels, and commercial leased access fees. Gross Revenue shall not include program launch support payments, refundable deposits, late fees, investment income, nor any taxes, franchise fees, or other fees or assessments imposed or assessed by any governmental authority. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with generally accepted accounting principles, provided however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in the Gross Annual Revenues in the period so collected.

1.12. "Person" shall mean any individual, corporation, partnership, association, joint venture, or organization of any kind and the lawful trustee, successor, assignee, transferee, or personal representative thereof.

1.13. "Public Buildings" shall mean those buildings owned or leased by the Franchise Authority for government administrative purposes, and shall not include buildings owned by Franchise Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

1.14. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, park, bridge, waterway, dock, bulkhead, wharf, pier, other public

ground or water subject to the jurisdiction and control of the Franchise Authority, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the Franchise Area, which shall entitle the Franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchise Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchisee to the use thereof for the purposes of installing, operating, and maintaining the Franchisee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and appurtenant to the Cable System.

1.15. "Standard Installation" shall mean the standard one hundred twenty-five foot (125') aerial Drop connection to the existing distribution system.

1.16. "Subscriber" shall mean any Person who legally receives Cable Service provided by the Cable System.

1.17. "Town" shall mean The Commissioners of Leonardtown, a Maryland municipal corporation, or the lawful successor, transferee, designee, or assignee thereof.

1.18. "Video Programming" or "Programming" shall mean the programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1.19. "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple Video Programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multi-channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

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

2.1. Franchise Grant. The Franchise Authority hereby grants to the Franchisee a non-exclusive Franchise authorizing the Franchisee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to use, erect, install, construct, repair, alter, inspect, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, underground conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and, including but not limited to, above ground enclosures, markers, and concrete pads, and other related property, equipment, or fixtures as may be necessary, useful, or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is



renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act.

2.3. Renewal. Any renewal of this Franchise Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Act [47 U.S.C. §546], as amended, and Chapter A165-20 of the Town Code.

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

3.1. Permits and General Obligations. The Franchisee shall be responsible for obtaining all generally applicable permits, licenses, or other forms of approval or authorization prior to the commencement of any activity that materially disturbs the surface of any street, curb, sidewalk, or other public improvement in the Public Way, or impedes vehicular traffic. The issuance of such permits shall not be unreasonably withheld, conditioned, or delayed. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. All work shall be done by the Franchisee in accordance with FCC regulations. Notwithstanding the requirements herein, Franchisee shall not be required to obtain a permit for individual drop connections to Subscribers, servicing or installing pedestals or other similar facilities, or other instances of routine maintenance or repair to its Cable System. All transmission and distribution structures, poles, other lines, and equipment installed by the Franchisee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

#### 3.2. Conditions of Street Occupancy.

3.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Franchisee shall, upon reasonable advance written notice from the Franchise Authority (which shall not be less than thirty (30) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchise Authority shall notify Franchisee of such funding and make available such funds to the Franchisee within a reasonable timeframe. If funds are not available, Franchisee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

3.2.2. Relocation at Request of Third Party. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchise Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than thirty (30) business days advance written notice to arrange for such temporary relocation.

3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace

and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance as is practical.

3.2.4. Safety Requirements. The Franchisee shall undertake all necessary and appropriate commercial efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries, or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

3.2.5. Trimming of Trees and Shrubbery. The Franchisee shall have the authority to trim trees or other natural vegetative growth encroaching or overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. The Franchisee shall be responsible for any direct or indirect real property damage caused by such trimming.

3.2.6. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System transmission and distribution facilities underground, provided that such underground locations are capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Agreement shall be construed to require the Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.2.7. Undergrounding and Beautification Projects. If all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the Franchise Authority or private parties. Franchisee shall be given reasonable notice and access to the public utilities' facilities at the time that such facilities are placed underground and shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. If public and/or private funds are not available or do not cover the entire direct and actual cost of the relocation, Franchisee reserves the right to pass its costs, or in the case of partial reimbursement from public and/or private funds its incremental cost, through to its Subscribers in accordance with applicable law.

3.3. Interconnection. The Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection shall be at the discretion of Franchisee, and may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

## **SECTION 4 - Service Obligations**

4.1. **General Service Obligation.** Subject to the receipt of all necessary easements, permits, pole licenses, and required authorizations, Franchisee shall use commercially reasonable efforts to construct the Cable System and make Cable Service available to occupied residential dwelling units within its Initial Build Area within three (3) years of the Effective Date of this Agreement. In the event that construction is delayed by factors outside of Franchisee's control, including weather, make-ready delays by other companies, or other factors identified as Force Majeure, Franchisee shall provide a written request for an extension of time to complete the Initial Build Area, which request shall not be unreasonably denied. The provision of Cable Service may require, in certain situations, a capital contribution in aid of construction from Subscribers, including but not limited to if a Subscriber request to locate their cable drop underground or the existence of more than one hundred fifty (150) feet drop distance from Franchisee's distribution cable to a dwelling unit.

Nothing herein shall preclude Franchisee from constructing additional Cable System facilities or making Cable Service available to additional residential dwelling units at its discretion. Franchisee shall, however, not be obligated to construct additional Cable System facilities and/or make Cable Service available beyond the Initial Build Area.

4.2. **Programming.** The Franchisee shall offer to Subscribers a diversity of Video Programming in accordance with applicable federal law.

4.2.1. The Town does not produce, and Franchisee is not required to carry, public, educational, or governmental programming, or local origination programming, or require any funding therefor.

4.3. **No Discrimination.** Neither the Franchisee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area; provided, however, Franchisee reserves the right to deny service for good cause, including but not limited to non-payment or theft of service, vandalism of equipment, or documented or founded harassment or abuse of Franchisee's employees or agents. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Franchisee are satisfied. Nothing contained herein shall prohibit the Franchisee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its customary business practice.

4.4. **New Developments.** The Franchise Authority shall provide the Franchisee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchise Authority agrees to require the developer, as a condition of issuing the permit, to give the Franchisee access to open trenches for deployment of cable facilities and at least fifteen (15) business days written notice of the date of availability of open trenches.

4.5. **Prohibition Against Reselling Service.** No Person shall sell, offer for sale, or resell, without the express prior written consent of the Franchisee, any Cable Service, program or signal transmitted over the Cable System by the Franchisee.

4.6. Emergency Alert System (“EAS”). Franchisee shall comply with the EAS requirement of the FCC and Maryland State EAS plan so that emergency messages may be distributed over the Cable System. The Franchise Authority shall have the ability to participate in the EAS in accordance with FCC rules and the Maryland State EAS plan.

4.7. Parental Control Device. Upon request by a Subscriber, Franchisee shall make available parental control capabilities to enable a Subscriber to control access to Cable Service Channels. Franchisee may charge Subscribers for such service at a rate, if any, in compliance with applicable law. Grantee shall incur no liability for any Subscriber’s, renter’s, or viewer’s exercise or failure to exercise such controls.

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

5.1. All rates, fees, charges, deposits, and associated terms and conditions to be imposed by the Franchisee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations. Before any new or modified rate, fee, or charge is imposed, the Franchisee shall follow the applicable FCC notice requirements and rules and notify affected Subscribers, which notice may be by any means permitted under applicable law.

### **SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection**

6.1. Customer Service Standards. The Franchise Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC’s rules and regulations, as amended. The Franchisee shall comply in all respects with the customer service requirements established by the FCC.

6.1.1. Franchisee shall maintain a conveniently located business office and bill payment locations open at least during Normal Business Hours. Locations may be outside of the Franchise Area.

6.1.2. Franchisee shall maintain a toll-free telephone access line which will be available to its Subscribers 24 hours a day, seven days a week.

6.1.3. Franchisee shall provide to each Subscriber, at the time cable service is installed:

- (a). Products and services offered;
- (b). Prices and options for programming services and conditions of subscription to programming and other services;
- (c). Installation and service maintenance policies;
- (d). Instructions on how to use the Cable Service;
- (e). Channel positions of programming carried on the system; and
- (f). Billing and complaint procedures.

The notice herein shall satisfy Chapter A165, Section 14(D) of the Town Code.

6.2. Customer Bills. Subscriber bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Subscribers, and in a way that (i) is not misleading and (ii) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Franchisee may, in its sole discretion, consolidate costs on Subscriber bills as may otherwise be permitted by Section 622 (c) of the Cable Act [47 U.S.C. §542 (c)].

6.3. Privacy Protection. The Franchisee shall comply with all applicable federal and State privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

6.4. Service Interruption. Franchisee may interrupt service on the Cable System only for good cause and for the shortest time as is commercially practical. Franchisee shall provide reasonable prior notice to the Town, when feasible, before interruption service for planned maintenance or construction, except in emergency situations, where such interruption is expected to be four (4) hours or less in duration, or where such interruption occurs between the hours of 12:00 midnight and 7:00 AM.

## **SECTION 7 - Oversight and Regulation by Franchise Authority**

7.1. Franchise Fees. The Franchisee shall pay to the Franchising Authority a franchise fee in an amount equal to three percent (3%) of annual Gross Revenues received 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 cable operator providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due sixty (60) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Franchisee showing the basis for the computation of the Franchise Fees paid during that period. The monthly franchise fee payment reports shall satisfy the annual reporting requirement under Chapter A165, Section 12(D) of the Town Code.

### **7.2. Franchise Fees Subject to Audit.**

7.2.1 Upon notice pursuant to Section 13.2 herein, during Normal Business Hours at Franchisee's principal business office, the Franchising Authority shall have the right to inspect the Franchisee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Franchisee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Franchisee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall discuss a "Final Settlement Amount." For purposes of this Section, the term "Final Settlement Amount(s)" shall mean the agreed upon underpayment,

if any, to the Franchising Authority by the Franchisee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.2.3. Any "Final Settlement Amount(s)" due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Franchisee within thirty (30) days from the date the parties agree upon the "Final Settlement Amount." Once the parties agree upon a Final Settlement Amount and such amount is paid by the Franchisee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Franchisee's books and records.

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

7.4. Technical Standards. The Franchisee shall comply with all applicable technical standards of the FCC. 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 commercially reasonable period after such standards become effective.

7.4.1. The Franchisee shall perform all applicable tests necessary to demonstrate compliance with the requirements of this Agreement, and to ensure that the Cable System components are operating as required. All tests shall be conducted in accordance with applicable FCC rules, and any accepted industry procedures.

7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Upon reasonable prior written notice to the Franchisee, the Franchise Authority may review the Franchisee's books and records as are reasonably necessary to monitor Franchisee's compliance with the provisions of this Franchise Agreement, at the Franchisee's business office, during Normal Business Hours, and without unreasonably interfering with Franchisee's business operations. All such documents that may be the subject of an inspection by the Franchise Authority shall be retained by the Franchisee for a minimum period of twenty-four (24) months.

7.5.2. File for Public Inspection. Throughout the term of this Franchise Agreement, the Franchisee shall maintain for public inspection those documents required pursuant to the FCC's Public Inspection File rules and regulations.

7.5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchise Authority agrees to treat any information disclosed by the Franchisee as confidential and only to disclose it to those employees, representatives, and agents of the Franchise Authority that have a need to

know in order to enforce this Franchise Agreement and who agree, through the execution of a non-disclosure agreement, to maintain the confidentiality of all such information. The Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act or any other applicable federal or State privacy law. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, Subscriber lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Franchisee to be competitively sensitive. Franchisee may make proprietary or confidential information available for inspection, but not copying or removal of information by the Franchise Authority’s representative. If the Franchise Authority has in its possession and receives a request under a state “sunshine,” public records, or similar law for the disclosure of information the Franchisee has designated as confidential, trade secret or proprietary, the Franchise Authority shall notify Franchisee of such request and cooperate with Franchisee in opposing such request.

7.6. Performance Evaluation Sessions. The Town may, no more often than once every three (3) years, hold a performance evaluation session (“Evaluation Session”) to determine Franchisee’s compliance with the material terms of this Agreement. The Town shall provide Franchisee ninety (90) days’ prior written notice of an Evaluation Session. Such notice shall specifically reference the section(s) or subsection(s) of the Agreement that is (are) under review. The period for any such review shall be for not more than thirty-six (36) months immediately previous to the notice. During review and evaluation by the Town, the Franchisee shall cooperate with the Town and/or its designee(s), and subject to the confidentiality provisions of this Agreement, produce such documents or other materials relevant to such evaluation as are reasonably requested by the Town. If the Town desires to implement a survey of Subscribers in connection with an Evaluation Session, the Town may do so by distributing a questionnaire to its residents at its cost.

### **SECTION 8 - Transfer of Cable System or Franchise**

8.1. Neither the Franchisee nor any other Person may transfer the Cable System or the Franchise without prior written notice to the Franchise Authority. No prior notice shall be required, however, for: (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or in the Cable System in order to secure indebtedness, (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation or an affiliate, or (iii) the sale, conveyance, transfer, exchange or release of fifty percent (50%) or less of its equitable ownership.

### **SECTION 9 – Insurance, Indemnity, and Performance Bond**

9.1. Insurance. Throughout the term of this Franchise Agreement, the Franchisee shall, at its own cost and expense, maintain Commercial General Liability Insurance and, upon written request, provide the Franchise Authority certificates of insurance designating the Franchise Authority and its officers, boards, commissions, councils, elected officials, and employees as additional insureds and demonstrating that the Franchisee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury or property damage. The Franchisee shall provide workers’ compensation coverage in accordance with applicable law.

9.2. **Indemnification.** The Franchisee shall indemnify, defend and hold harmless the Franchise Authority, its officers and employees acting in their official capacities from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that directly arise out of the Franchisee's construction, operation, maintenance, or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchise Authority shall give the Franchisee timely written notice of its obligation to indemnify and defend the Franchise Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. The Franchise Authority agrees that it will take all necessary action to avoid a default judgment and not prejudice the Franchisee's ability to defend the claim or action. If the Franchise Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchise Authority.

9.2.1. Franchisee shall not be required to indemnify the Franchise Authority for negligence or misconduct on the part of the Franchise Authority or its officials, boards, commissions, agents, or employees, including any loss or claims related to PEG access Channels in which the Franchise Authority or its designee participates, subject to applicable law.

9.3 **Performance Bond.** Within sixty (60) days of the Effective Date of this Agreement, Franchisee shall post a performance bond in the amount of Ten Thousand Dollars (\$10,000) as surety for the faithful performance and discharge by Franchisee of all obligations imposed by this Franchise Agreement. The performance bond shall remain in force and effect throughout the Term of this Franchise Agreement. If Franchisee fails to timely pay franchise fees, following notice and opportunity to cure, in accordance with Section 11.1.1, the Franchising Authority shall give Franchisee thirty (30) business days' notice of its intent to draw the amount owed from the performance bond. The Franchising Authority may not draw from the performance bond while any action, appeal or other process has been instituted by Franchisee to challenge the amount owed.

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

10.1. **System Capacity.** During the term of this Agreement, the Franchisee's Cable System shall be capable of providing Video Programming with reception available to its Subscribers in the Franchise Area in accordance with the Cable Act.

## **SECTION 11 - Enforcement and Revocation Proceedings**

11.1. **Notice of Violation or Default and Opportunity to Cure.** In the event the Franchise Authority believes that the Franchisee has not complied with the material terms of the Franchise, it shall notify the Franchisee in writing with specific details regarding the exact nature of the alleged non-compliance or default.

11.1.1. **Franchisee's Right to Cure or Respond.** The Franchisee shall have forty-five (45) days from the receipt of the Franchise Authority's written notice: (i) to respond to the Franchise Authority, contesting the assertion of non-compliance or default; or (ii) to cure such default; or (iii) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate commercially reasonable steps to diligently



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

11.1.2. Public Hearings. In the event the Franchisee fails to respond to the Franchise Authority's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Franchisee, the Franchise Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchise Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchise Authority shall notify the Franchisee in advance, in writing of the time and place of such meeting and provide the Franchisee with a reasonable opportunity to be heard.

11.1.3. Enforcement. Subject to applicable federal and state law, in the event the Franchise Authority, after such public hearing, determines that the Franchisee is in default of any material provision of the Franchise, the Franchise Authority may: (i) seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or (ii) in the case of a substantial default of a material provision of the Franchise, initiate revocation proceedings in accordance with the following:

(a) The Franchise Authority shall give written notice to the Franchisee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Franchisee, including two or more instances of substantial non-compliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the non-compliance. The Franchisee shall have ninety (90) business days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchise Authority 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, it may then seek revocation of the Franchise at a public hearing. The Franchise Authority 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.

(b) At the designated public hearing, the Franchise Authority shall give the Franchisee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the State of Maryland, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Franchisee within ten (10) business days. The decision of the Franchise Authority shall be in writing and shall be delivered to the Franchisee by certified mail. The Franchisee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchise Authority "de novo" and to modify or reverse such decision as justice may require.

11.2. Technical Violation. The Franchise Authority agrees that it is not its intention to subject the Franchisee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

11.2.1. 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

11.2.2. 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.

11.3. No Removal of System. Franchisee shall not be required to remove its 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 Franchisee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act, or any portion thereof [47 U.S.C. §541(b)].

## **SECTION 12 - Competitive Equity**

12.1. Purposes. The Franchisee and the Franchise Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers, and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchise Area; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, State, and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to residents of the Franchise Area; promote local communications infrastructure investments and economic opportunities in the Franchise Area; and provide flexibility in the event of subsequent changes in the law, the Franchisee and the Franchise Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

### 12.2. Video Service Providers.

12.2.1. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider (“VSP”) (i) enters into any agreement with the Franchise Authority to provide video services to subscribers in the Franchise Area, or (ii) otherwise begins to provide video services to subscribers in the Franchise Area (with or without entering into an agreement with the Franchise Authority), the Franchise Authority, upon written request of the Franchisee, shall permit the Franchisee to construct and operate its Cable System and to provide video services to subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the VSP. The Franchisee and the Franchise Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Franchisee submits a written request to the Franchise Authority.

12.2.2. If there is no written agreement or other authorization between the VSP and the Franchise Authority, the Franchisee and the Franchise Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure

competitive equity between the Franchisee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the Franchise Area.

12.3. Subsequent Change in Law. If there is a change in federal, State, or local law that provides for a new or alternative form of authorization for a VSP to provide video services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchise Authority may request from or impose on a VSP providing video services to subscribers in the Franchise Area, the Franchise Authority agrees that, notwithstanding any other provision of law, upon Franchisee's written request the Franchise Authority shall: (i) permit the Franchisee to provide video services to subscribers in the Franchise Area on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity and parity between the Franchisee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the Franchise Area. The Franchise Authority and the Franchisee shall implement the provisions of this Section within sixty (60) business days after the Franchisee submits a written request to the Franchise Authority. Notwithstanding any provision of law that imposes a time or other limitation on the Franchisee's ability to take advantage of the changed law's provisions, the Franchisee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

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

### **SECTION 13 - Miscellaneous Provisions**

13.1. Force Majeure. The Franchisee shall not be held in default under, or in non-compliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such non-compliance or alleged defaults occurred or were caused by lightning strike, earthquake, flood, tidal wave, unusually severe rain, ice or snow storm, hurricane, tornado, pandemic, epidemic, public health emergency, or other catastrophic act of nature; riot, war, labor disputes, environmental restrictions, failure of utility service or the failure of equipment or facilities not belonging to Franchisee, denial of access to facilities or rights-of-way essential to serving the Franchise Area necessary to operate the Cable System, governmental, administrative, or judicial order or regulation or other event that is reasonably beyond the Franchisee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Franchisee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

13.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchise Authority:

Town of Leonardtown  
22670 Washington Street  
P.O. Box 1  
Leonardtown, MD 20650  
Attention: Town Administrator

To the Franchisee:

Comcast of Maryland, LLC  
1215 East Fort Avenue, Suite 103  
Baltimore, MD 21230  
Attention: Government Affairs Department

With copies to:

Comcast Cable Northeast Division  
676 Island Pond Rd.  
Manchester, NH 03109  
Attention: Government Affairs Department

13.3. Entire Agreement. This Franchise Agreement and any exhibits or addendums hereto constitute the entire agreement between the Franchise Authority and the Franchisee and supersedes all prior or contemporaneous agreements, ordinances, representations, or understandings, whether written or oral, of the parties regarding the subject matter hereof. Any agreements, ordinances, representations, promises or understandings or parts of such measures that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

13.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

13.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Maryland and shall be governed in all respects, including validity, interpretation, and effect, and construed in accordance with, the laws of Maryland, as applicable to contracts entered into and performed entirely within the State, and subject to any applicable provisions of substantive law under the Cable Act, as amended.

13.6. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchise Authority and the Franchisee, which amendment shall be authorized on behalf of the Franchise Authority through the adoption of an appropriate resolution or order by the Franchise Authority, as required by applicable law.

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

13.8. Captions. Captions to sections throughout this Franchise Agreement are solely to facilitate the reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

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

13.10. Incorporation by Reference

13.10.1. All presently and hereafter applicable conditions and requirements of federal and State laws, including but not limited to the rules and regulations of the FCC and the State of Maryland as they may be amended from time to time, are incorporated herein by reference to the extent not enumerated herein.

13.10.2. Should the State, the federal government, or the FCC require Franchisee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Franchise Authority and Franchisee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

13.11. Calculation of Time. Where the performance or doing of any act, duty, matter, payment, or operation is required hereunder and the period of time or duration for the performance or doing thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first day and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

13.12. Annexation. Upon ninety (90) days written notice, any additions of territory to the Franchise Authority, by annexation or other legal means, contiguous to the Franchise Area, shall thereafter be subject to all the terms of this Agreement as though it were an extension made hereunder related to the Cable System located or operated within said territory.

13.13. Authority to Execute. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

13.14. Interest on Payments. In the event a payment required under this Franchise Agreement is not received on or before the due date, interest and a late charge shall accrue from the date due at the current bank prime rate of interest as published in *The Wall Street Journal*.

REMAINDER OF PAGE LEFT BLANK UNTIL SIGNATURE PAGE.

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

The Commissioners of Leonardtown:

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Comcast of Maryland, LLC:

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

Print Name: Ray Roundtree

Title: Regional Senior Vice President

Date: \_\_\_\_\_