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**MAYOR AND COMMISSIONERS OF THE TOWN OF PERRYVILLE**  
**Ordinance No. 2024-05**

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**Introduced By: Mayor Roath**

**Date Introduced: April 2, 2024**

**Amendments Adopted:**

**Date Adopted: May 7, 2024**

**Date Effective: May 27, 2024**

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**AN ORDINANCE** concerning

**COMCAST CABLE FRANCHISE AGREEMENT**

**FOR** the purpose of approving a certain cable television franchise agreement with Comcast of Elkton, LLC; providing that the provisions of this Ordinance are severable; and generally relating to cable television services in the Town of Perryville.

**EXPLANATORY STATEMENT:** Pursuant to §5-201, *et seq.*, of the Local Government Article, Annotated Code of Maryland, the Town of Perryville has the power to pass such ordinances as it deems necessary to protect the health, safety and welfare of the citizens of the municipality. The Mayor and Commissioners have the power under §5-204(d) and §1-708 of the Local Government Article, Annotated Code of Maryland, to grant non-exclusive cable franchises. The Mayor and Commissioners have determined that it is in the public interest to grant a cable franchise to Comcast of Elkton, LLC, within the corporate limits of the Town, on condition that Comcast of Elkton, LLC, enter into a franchise agreement in substantially the form as attached to this Ordinance. Now, therefore,

**SECTION 1. BE IT ENACTED BY THE MAYOR AND COMMISSIONERS OF THE TOWN OF PERRYVILLE** that the grant of a non-exclusive right to construct and operate a cable television system along the public rights of way in the Town of Perryville is hereby granted to Comcast of Elkton, LLC, subject to the terms and conditions of a franchise agreement between the Town and Comcast of Elkton, LLC, in a form substantially similar to

40 that attached to this Ordinance. The Town Administrator is authorized to endorse the franchise  
41 agreement on behalf of the Town.


42  
43 **SECTION 2. AND BE IT FURTHER ENACTED** that if any section, subsection,  
44 provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal  
45 or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable,  
46 and shall not affect or impair any remaining section, subsection, provision, sentence, clause,  
47 phrase or word included within this Ordinance, it being the intent of the Mayor and  
48 Commissioners that the remainder of the Ordinance shall be and shall remain in full force and  
49 effect, valid and enforceable.

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51 **SECTION 3. AND BE IT FURTHER ENACTED** that this Ordinance shall take  
52 effect twenty (20) days following approval by the Mayor and Commissioners.

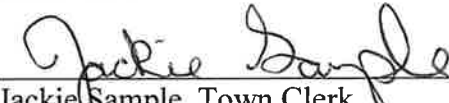
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54 **ADOPTED** this 7<sup>th</sup> day of May, 2024, by a vote of 4 yeas, 0 nays, and 0  
55 abstentions.

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58 **SEAL:**

**MAYOR AND COMMISSIONERS OF  
THE TOWN OF PERRYVILLE**

By:   
Matt Roath, Mayor

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64 **ATTEST:**

  
Jackie Sample, Town Clerk

Date: 5/7/2024

**Comcast of Elkton, LLC**  
**Cable Franchise Agreement**  
**with the**  
**Town of Perryville (Cecil County, Maryland)**

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## **Cable Franchise Agreement**

**THIS CABLE FRANCHISE AGREEMENT** (“Franchise Agreement” or “Agreement”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by the Town of Perryville (“Issuing Authority”) and Comcast of Elkton, LLC, a limited liability company with the authority to provide service in Maryland (“Franchisee”).

### **Recitals**

**A. Authority to Grant Franchise.** The Issuing Authority, pursuant to Section 621 of the Cable Communications Policy Act of 1984 as now in effect (“Federal Cable Act”), is authorized to grant one or more nonexclusive franchises to construct, operate and maintain a cable television system within the municipal boundaries of the Issuing Authority (“Franchise Area”).

**B. Investigation of Franchisee.** The Issuing Authority has analyzed and considered the technical ability, financial condition and legal qualifications of Franchisee.

**C. Determination of Franchisee’s Qualifications.** The Issuing Authority, after such consideration, analysis and deliberation as are required by applicable law, has approved and found sufficient the technical, financial and legal qualifications of Franchisee to provide cable television service within the municipality.

**THEREFORE**, the parties agree as follows:

### **1. Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Federal 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 Federal Cable Act or herein shall be given their common and ordinary meaning.

**a.** “Cable Service” shall mean 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.

**b.** “Cable System” or “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 Franchise Area, and as further defined under Section 47 U.S.C. §522 (7) of the Federal Cable Act.

**c.** “Customer” shall mean a person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee’s express permission.

d. “Effective Date” shall mean \_\_\_\_\_, 2023.

e. “FCC” shall mean the Federal Communications Commission, or successor governmental entity thereto.

f. “Franchise” shall mean the initial authorization, or renewal thereof, issued by the Issuing Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

g. “Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

h. “Franchise Area” shall mean the present legal boundaries of the Town of Perryville, 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.

i. “Franchisee” shall mean Comcast of Elkton, LLC.

j. “Gross Revenue” shall mean, unless preempted by applicable Federal and state law, as all compensation received by Franchisee from Subscribers for the provision of Cable Service in the Franchise Area, calculated in accordance with generally accepted accounting principles (GAAP), including monthly fees charged for any basic, optional tiers, premiums, per-channel, per-program service or other Cable Service to Subscribers over the Cable System including any future “Cable Service” provided it is defined as a “Cable Service” under applicable federal law. This term shall also include installation, disconnection, reconnection, change of services fees, advertising, home shopping, wire maintenance, late fees, administrative fees, rental or sales of converters or equipment, other Subscriber Cable Service revenues and net of bad debt. This term does not include any sales, excise, franchise fees or other taxes collected by Franchisee, or other governmental authority, on behalf of any state, city or governmental unit, refunds to Subscriber, program launch support payments, investment income, or refundable deposits.

k. “Initial Build Area” shall mean the area identified in Exhibit 3.

l. “Issuing Authority” shall mean the Town of Perryville or the lawful successor, transferee, designee, or assignee thereof.

m. “Right-of-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 Issuing 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 Issuing 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. Right-of-Way shall also mean any easement now or hereafter held by the Issuing 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.

n. "Service Area" shall mean the geographic area served by Franchisee in the Town of Perryville.

o. "Subscriber" shall mean a person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee's express permission.

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

## 2. Grant of Franchise

a. **Grant and Term.** The Issuing Authority grants to Franchisee for the term ("Term") of ten (10) years commencing on the Effective Date (as defined below) the nonexclusive right and Franchise to construct, use, operate, own and maintain a Cable System subject to all applicable local, state and federal laws and regulations. For purposes of this Agreement, the term "Effective Date" is \_\_\_\_\_, 2024.

b. **Easements and Rights-of-Way.** Without reducing its police powers to adopt and enforce ordinances of general applicability necessary to the health, safety and welfare of the public, the Issuing Authority grants to Franchisee the authority to use the Issuing Authority's streets, sidewalks, easements and Rights-of-Way for the purposes of this Agreement, and the Franchise shall be construed to authorize the construction of a Cable System over such Rights-of-Way and through compatible-use easements in accordance with Section 621(a)(2) of the Federal Cable Act, and to grant access to such easements whether or not such easements specifically contemplate or designate "Cable TV" and to include this grant in future easements and Rights-of-Way as they are created. The parties acknowledge and agree that the purpose of the Franchise is to authorize Franchisee to construct, maintain and operate a Cable System and offer Cable Service, or other service as may be lawfully allowed, in, along, among, upon, across, above, over or under the public Rights-of-Way within the Issuing Authority's boundaries as they may now exist, or as they may be extended through annexation, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any public Right-of-Way or bridges such poles, wires, cables, conductors, ducts, conduits, manholes, amplifiers, attachments and equipment as may be necessary or pertinent to the Cable System.

c. **Authority Not Exclusive.** The Franchise and the grant of authority for use of streets, sidewalks, easements and Rights-of-Way as conferred in this Section 1 are nonexclusive. Franchisee shall respect the rights and property of the Issuing Authority and other authorized users

of streets, sidewalks, easements and Rights-of-Way, and property owners. Except as otherwise required by applicable law, disputes between Franchisee and parties other than the Issuing Authority over the use, pursuant to this Agreement, of the street, sidewalks, easements and other Rights-of-Way shall be submitted to the Issuing Authority for resolution.

### **3. Franchise Fees**

**a.** From and after the Effective Date of this Agreement and throughout the full Term of the Franchise, Franchisee shall pay to the Issuing Authority a franchise fee equal to five percent (5%) of annual Gross Revenues from the provision of Cable Service ("Franchise Fee"). Franchisee shall pay the Franchise Fee to the Issuing Authority on a quarterly basis, with such Franchise Fee payable forty-five (45) days following the preceding quarter.

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

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

(1) Upon the completion of any such audit by the Issuing Authority, the Issuing Authority shall provide to the Franchisee a final report setting forth the Issuing 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 Issuing 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 agree upon 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 Issuing 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.

(2) Any "Final Settlement Amount(s)" due to the Issuing Authority as a result of such audit shall be paid to the Issuing 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 Issuing Authority shall have no further rights to audit or challenge the payment for that



period. The Issuing Authority shall bear the expense of its audit of the Franchisee's books and records.

#### **4. Construction and Maintenance of Cable System**

**a. Service Area.** Subject to the receipt of all necessary easements, permits, pole licenses, make ready, and required authorizations, Franchisee shall construct the Cable System and make Cable Service available to occupied residential dwelling units within the Initial Build Area, as identified in Exhibit 3. Franchisee shall use commercially reasonable efforts to complete such 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, upon written request of the Franchisee, an extension of time to complete the Initial Build Area shall be granted.

(1) Nothing herein shall preclude Franchisee from constructing additional Cable System facilities or making Cable Service available to additional residential dwelling units beyond the Initial Build Area, 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.

**b. Maintenance.** Franchisee shall maintain all wires, conduits, cables and other real and personal property and facilities owned by Franchisee and used in the operation of the Cable System in good condition, order and repair.

**c. Compliance with Law.** Franchisee shall comply with all applicable federal, state and generally applicable local laws and regulations governing the construction, installation, operation and maintenance of a Cable System. Such laws and regulations shall include, without limitation, the requirements of Section 621(a)(2)(A) of the Federal Cable Act.

#### **d. Standard Installation and Service Calls**

(1) **Drops Exceeding 125 Feet.** Where the drop to the Subscriber's premise is more than 125 feet in length, in addition to the prevailing standard installation or activation charge, Franchisee may charge the Subscriber the actual difference between Franchisee's cost of installing a 125-foot-drop and the cost of installing the longer drop required by the Subscriber.

(2) The Franchisee shall maintain a staff of employees sufficient to provide adequate and prompt service to its Subscribers. The Franchisee 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 Franchisee employee shall prominently display the Franchisee logo.

(3) Standard installations will be performed within seven (7) business days after an order has been placed or at a later date as requested by a Subscriber. "Standard"

installations are those aerial installations that are located up to one hundred twenty-five (125) feet from the existing distribution system.

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

**e. Ownership of Installed Cable.** Subject to applicable law, Franchisee shall own all cable installed by Franchisee within the Service Area.

**f. Municipal Facilities.** Franchisee shall provide a Cable Service drop and Basic & Expanded Cable Service with any necessary cable box to one outlet at each Public Building listed in Exhibit 2. To the extent so provided by applicable law, the marginal cost of such service constitutes a Franchise Fee assessed upon the Franchisee and shall be deducted from franchise fees paid to the Franchise Authority, with the marginal cost of the services being disclosed to the Franchise Authority in advance. Franchisee shall notify the Issuing Authority in writing regarding the amount of the monthly service fee for each account based on marginal cost. The Issuing Authority shall then notify Franchisee, within thirty (30) days of receiving the notice from Franchisee, whether it wishes the amount due each month to be deducted from the next franchise fee payment, to have service terminated, or to pay for service at the current rate card prices. The Issuing Authority may upgrade the level of Cable Service received at then current rate card prices for the higher level of service. The Issuing Authority may also elect in writing not to receive the service, in which case it will not be invoiced and no deduction will be taken from the franchise fee. Grantee may charge for installation beyond one hundred twenty-five (125) feet aerial distance of the cable plant and service for more than one (1) drop in each building.

**g. Required Permits.** Franchisee shall apply to the Issuing Authority for all generally applicable required permits and shall not undertake any activities in the Rights-of-Way subject to a permit without receipt of such permit, the issuance of which shall not be unreasonably withheld by the Issuing Authority. Franchisee shall not be required to obtain permits for Cable Service drops for individual Subscribers or for servicing or installation of pedestals or routine maintenance that does not disturb surface grade or impact vehicular traffic. Franchisee shall pay any and all required permit fees.

**h. Customer Service Obligations.** Exhibit 1, Customer Service Obligations, is a material part of this Agreement and incorporated by reference. Terms in Exhibit 1 shall have the meanings ascribed to them in the Federal Cable Act.

**i. Programming.** The Franchisee shall offer to all Subscribers a diversity of Video Programming services in accordance with federal law. Franchisee shall make commercially reasonable efforts to offer to Subscribers a variety of Video Programming services consistent with programming available to its Subscribers under franchise agreements with other jurisdictions in Cecil County.

**j. 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 Cable 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.

**k. 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 street, sidewalk, alley, paved area, or 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.

**l. 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.

**m. 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 actually 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, aurally 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.

**n. 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. The Issuing Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC rules.

**o. Right to Inspect and Protection of Proprietary Information.** The Issuing Authority shall have the option, upon thirty (30) business days' written notice and during Normal Business Hours, and without unreasonably interfering with Franchisee's business operations, to inspect at the notice location for Franchisee specified in Section 16, all documents, records and other pertinent information maintained by Franchisee which are reasonably necessary to verify compliance with terms and conditions of this Agreement and applicable law.

In addition, Franchisee shall maintain for inspection by the public and/or the Issuing Authority all applicable records required by the FCC and as specified in 47 C.F.R. § 76.1700 for the party, and in the manner, specified therein.

Notwithstanding anything to the contrary set forth herein, all information specifically marked by Franchisee as proprietary or confidential in nature and furnished to the Issuing Authority or its designated representatives shall be treated as confidential by the Issuing Authority so long as it is permitted to do so under applicable law. Representatives and/or agents of the Issuing Authority may be requested to execute a non-disclosure agreement prior to the provision by Franchisee of certain confidential information, provided such representatives and/or agents are permitted to do so under applicable law. Such documentation and related information shall not be removed from Franchisee's office, and the Issuing Authority shall not make copies of such documents. The Issuing Authority and its officially designated representatives agree in advance to treat any such information or records which Franchisee reasonably deems would provide an unfair advantage for Franchisee'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 Issuing Authority 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 Issuing Authority acting in their official capacity for information related to the franchise and marked by Franchisee as confidential and/or proprietary, the Issuing Authority shall timely notify Franchisee of such request and shall cooperate with Franchisee in protecting its proprietary and confidential information to the extent permitted by applicable law. Franchisee 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 Agreement (e.g. employee files, tax returns, etc.).

## **5. Indemnification; Insurance; Performance and Completion Security**

### **a. Indemnification**

(1) **General Duty.** Except with respect to the negligent or intentional act or omission of the Issuing Authority, its agents, employees or representatives, Franchisee agrees to defend, indemnify and save harmless the Issuing Authority and its employees, agents, servants, officers, directors, shareholders, elected officials, contractors, subcontractors and representatives (collectively, "Indemnified Party") against all damages, losses and expenses (including, without limitation, reasonable attorneys' fees and costs of suit or defense) arising from any claims, demands and suits for personal injury (fatal or nonfatal), property damage or claims of any other nature, to the extent such damages, losses

or expenses arise out of or are caused by the negligent or other wrongful acts or failures to act of Franchisee or its employees, agents, servants, officers, directors, shareholders, officials, contractors, subcontractors or representatives in the construction, operation and maintenance of the Cable System. Notwithstanding the foregoing, this Subsection shall not apply to any liability which may accrue to the Issuing Authority with regard to the Issuing Authority's use of any channel provided for the Issuing Authority's use, arising out of the use of the emergency override capability required pursuant to this agreement or other local ordinance or regulation, or arising out of any act of commission or omission, or any negligence of the Issuing Authority, or its officers, elected or appointed officials, servants, agents, employees or contractors. If the Indemnified Party determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Indemnified Party.

(2) **Notice and Defense.** The Indemnified Party shall give Franchisee reasonably prompt written notice of any claim, demand, action or proceeding for which indemnification will be sought under this provision of the Agreement. The Indemnified Party agrees that it will take all necessary action to avoid a default judgment and not prejudice the Franchisee's ability to defend the claim, demand, action, or proceeding. If such claim, demand, action or proceeding is a third-party claim, demand, action or proceeding, Franchisee will have the right at its expense to assume the defense of such claim, demand, action or proceeding. Franchisee and the Indemnified Party shall cooperate with each other and provide each other with access to relevant books and records in their possession. No such third-party claim, demand, action or proceeding shall be settled without the prior written consent of the Indemnified Party, which consent the Indemnified Party shall not unreasonably withhold or delay.

**b. Liability Insurance.** On or before the Effective Date, at any time of any material and adverse policy change that would cause Franchisee to no longer comply with the insurance requirements set forth hereunder during the term of this Agreement, or upon Issuing Authority request, certificates of insurance evidencing each insurance policy required to be obtained by Franchisee in compliance with this Agreement shall be filed and maintained with the Issuing Authority. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Term of this Agreement:

(1) Commercial General Liability insurance in the combined single limit amount of \$1,000,000 per occurrence; \$3,000,000 aggregate and

(2) Automobile Liability insurance in the combined single limit to the extent of \$2,000,000 per accident.

Throughout the term of the Franchise Agreement, Franchisee shall include the Town of Perryville as an additional insured under the Commercial General Liability and Automobile Liability insurance policies for losses for which Franchisee is responsible under this Agreement. Provision of any insurance required herein does not relieve Franchisee of, or otherwise alter, any of the responsibilities or obligations assumed by the Franchisee in the franchise, or for which the Franchisee may be liable by law or otherwise. Provision of such insurance is not intended in any way

to waive, or otherwise alter, the Issuing Authority's immunities or any damage limits applicable to municipal government as provided by law.

**c. Workers' Compensation Insurance.** Franchisee shall maintain in force, during the Term of this Agreement and any renewal or extension thereof, Workers' Compensation Insurance, covering its obligations under the Worker's Compensation statute, and shall show the Issuing Authority, upon request, that such insurance is in effect at all times.

## **6. Privacy**

**a. Invasion of Privacy Prohibited.** In the conduct of providing its Cable Services, Franchisee shall take all action necessary to prevent an invasion of a Subscriber's right to privacy as such right is defined by applicable law.

**b. Sale of Personalized Data Restricted.** Franchisee shall not sell or otherwise make available to unaffiliated third parties (including the Issuing Authority) lists of names and addresses of Subscribers, or any list which identifies, by name, Subscriber viewing habits, or personalized data pertaining to a Subscriber's use of any of Franchisee's Cable Services without the express written consent of the Subscriber to which the personalized data pertains unless permitted by applicable law. For purposes of this Section, "personalized data" shall mean the name and/or address of an individual Subscriber directly associated with data obtained on his or her use of specific Cable Services provided by or through Franchisee. Nothing in this Agreement shall be construed to prevent, as a normal incident of commercial enterprise, the sale or availability of "non-personalized" or "aggregate data" which is not personalized data as defined in this Agreement.

**c. Landlord/Tenant.** Franchisee shall be required, in accordance with this Agreement and applicable law, to provide Cable Service to individual units of a multiple housing facility.

## **7. Reporting**

In addition to the other reporting requirements contained in this Agreement, The Franchisee shall provide the following reports to the Issuing Authority:

**(a) Subscriber Complaint Reports.** Within thirty (30) days of a written request, the Franchisee shall submit to the Issuing Authority a report showing the number of complaints, that required a work order and/or service call, originating from the Issuing Authority and received during the previous 12-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, subject to the Franchisee's right to exclude any personally identifiable Subscriber information.

**(b) Government Reports.** The Franchisee shall provide to the Issuing Authority, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which Franchisee has submitted to any federal, state or local regulatory

agencies if such documents relate specifically to Franchisee's Cable System within the Issuing Authority. The Franchisee shall provide copies of such documents no later than thirty (30) days after their request. The Franchisee shall have the right to claim confidential, privileged or proprietary rights to such documents if such documents have been determined to be confidential, privileged or proprietary in accordance with the terms and conditions regarding confidentiality as set forth in applicable law or this Agreement.

## **8. Taxes, Rates and Charges**

Franchisee shall pay any taxes required by applicable law to be paid by Franchisee, and Franchisee shall have the right to pass through to Subscribers any applicable taxes and fees, including Franchise Fees. With respect to rates and charges, the parties agree that they will abide by federal law and Federal Communications Commission ("FCC") Regulations.

## **9. Assignment, Transfer or Sale of Franchise**

**a. General.** There shall be no sale or transfer of Franchisee's Franchise, in whole or in part, by Franchisee without the written notification of the Issuing Authority. As used in this Agreement, the terms "sale" and "transfer" shall mean any transaction which involves a sale or transfer of ownership in a cable system, within the meaning of 47 C.F.R. Section 76.502, as implemented by 47 U.S.C. 537. The Franchisee shall make written application to the Issuing Authority 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 Issuing Authority shall have thirty (30) days from the receipt of FCC Form 394 to notify Franchisee of any additional information it needs to make an informed decision on the transfer or assignment. The Issuing Authority shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment. Any consent by the Issuing Authority for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement unless such one hundred twenty (120) day period shall have elapsed.

**b. Exception.** This Section shall not apply to any (i) sale, assignment or transfer to one or more purchasers, assignees or transferees directly or indirectly controlled by, controlling, or under common control with, Franchisee, (ii) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise Agreement or in the Cable System in order to secure indebtedness, (iii) the sale, conveyance, transfer, exchange or release of fifty percent (50%) or less of its equitable ownership, and Franchisee shall be permitted to effect any such sale, assignment or transfer covered in this subsection without prior notification to the Issuing Authority.

## **10. Renewal of Franchise**

The Issuing Authority and Franchisee agree that any proceedings undertaken by the Issuing Authority that relate to the renewal of Franchisee's Franchise shall be governed by and comply with applicable federal law, including the renewal provisions in Section 626 of the Federal Cable

act as then in effect. The Issuing Authority acknowledges that Franchisee will make a substantial investment in providing facilities and services pursuant to this Franchise Agreement and that renewal of the Franchise, provided it meets the criteria specified in applicable law, is a significant factor in Franchisee's willingness to assume its obligations hereunder.

### **11. Franchise Requirements for Other Franchise Holders**

In the event that the Issuing Authority hereafter grants one (1) or more franchise(s) or similar authorization(s), for the construction, operation and maintenance of any communication facility which shall offer services substantially equivalent to services offered by the Franchisee, it shall not make the grant on more favorable or less burdensome terms. If Franchisee finds that the Agreement(s) granting said other franchise(s) contain provisions imposing increased rights and/or lesser obligations on the company(s) thereof than are imposed by the provisions of this Franchise, the parties agree that this Franchise shall be automatically amended to reflect such increased rights and/or lesser obligations.

### **12. Force Majeure**

Any delay, preemption, or other failure to perform, including but not limited to system construction, caused by factors beyond the parties' reasonable control, such as an act of God, war, riot, 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, labor disputes, environmental restrictions, failure of equipment or facilities not belonging to Franchisee, denial of access to facilities or rights-of-way essential to serving the Franchise Area, any government, administrative or judicial order or regulation ("each an event of "Force Majeure"), shall not result in any enforcement or penalty relating to noncompliance, or default, of this Agreement. Each party shall exercise its reasonable efforts to cure any such delays and the cause thereof, and performance under the terms of this Agreement shall be excused for the period of time necessary to recover from such Force Majeure event. Force Majeure also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which Franchisee's cable and/or equipment is attached.

### **13. Revocation of Franchise**

**a. Major Breach of Franchise.** When any event, act or omission on the part of Franchisee occurs which represents a substantial or repeated violation of a material provision of this Agreement, then such event, act or omission may be considered a major breach of this Agreement. Under such circumstances, the Issuing Authority shall notify Franchisee in writing by certified mail, of the specific breach, and direct Franchisee to comply with all provisions of this Agreement for which the Franchisee is in violation.

**b. Events of Defaults.** The events, acts and omissions referred to in this Section are the following: (1) bankruptcy; (2) insolvency; or (3) a major breach of this Franchise (as noted in Subsection 12.a above) that remains uncured for the 60-day cure period described in Subsection 12.c below. They do not include events in the nature of force majeure.



**c. Opportunity to Cure.** Issuing Authority shall provide Franchisee with written notice of the violation alleged to have occurred and the Franchisee shall have sixty (60) days in which to: (1) cure such violation; (2) in the case of any alleged violation which cannot reasonably be cured within such 60-day period, commence and diligently pursue a cure; or (3) notify the Issuing Authority in writing that it disputes the Issuing Authority's claim of an alleged violation. In the event that Franchisee disputes the Issuing Authority's claim, the Issuing Authority shall, upon reasonable prior written notice, set a hearing before the Council at which the Issuing Authority, Franchisee and any interested party may present evidence relating to the alleged violation, and where the Franchisee shall be provided a reasonable opportunity to be heard. Following the hearing, the Issuing Authority shall make a determination as to whether a violation has occurred. In the event that the Authority reasonably determines that a violation has occurred, the Issuing Authority shall notify Franchisee in writing of its finding, and shall provide Franchisee thirty (30) days in which to cure such violation, or in the case of a violation which cannot reasonably be cured with such 30-day period, such reasonable amount of time to allow Franchisee commence and diligently pursue a cure.

**d. Public Hearing**

(1) **Scheduling and Procedures.** No sooner than 45 days after such written notice is sent by certified mail to Franchisee, the Issuing Authority may set a date for a public hearing on the matter. The hearing shall afford full due process to Franchisee and shall be held on the record. Both Franchisee and the Issuing Authority shall be permitted to compel the attendance of witnesses and the production of documents, to present evidence and to cross-examine witnesses. The public hearing may be cancelled at any time, if the Issuing Authority is satisfied that Franchisee has corrected and/or cured the violation.

(2) **Notice.** The Issuing Authority shall provide written notice, by certified mail, to Franchisee of the time and place of said hearing in a manner consistent with state law.

(3) **Evidence Regarding Status of Alleged Violation.** At the time of the hearing, Franchisee may present information on the current status of the alleged breach of the Franchise. If the situation has been resolved, or steps are being taken to resolve the situation, then Franchisee should present such information at the hearing.

(4) **Alternatives if Violation is Found.** The Issuing Authority may (once it has held the public hearing) direct the Franchisee to take corrective action within a specified period of time, or may declare the Franchisee in default of this Agreement, and afterwards, revoke, terminate or cancel the Franchise.

(5) **Notice to Franchisee.** If the Issuing Authority directs corrective action to take place within a specified time or declares Franchisee in default of this Agreement, then that declaration shall be reduced to writing, and the notice of corrective action or default shall be mailed, by certified mail, or in the alternative may be hand-delivered, to Franchisee within 15 days of the Issuing Authority's action.

#### **14. Continuity of Service**

As to continuity of Cable Service, subject to Franchisee's federal and state constitutional and statutory rights which the parties are deemed not to have waived under this Agreement, the parties agree as follows:

**a. Service After Revocation, Termination, Nonrenewal, Abandonment or Withdrawal.** Subject to applicable federal and state law, Franchisee shall provide Cable Service for an interim period of up to six (6) months following:

- (1) The expiration of any then-existing Term of this Franchise Agreement or any renewal of the Term;
- (2) 45 days' notice from Franchisee to the Issuing Authority of Franchisee's proposed abandonment, withdrawal or cessation of Cable Service; and
- (3) The effective date of any revocation, termination or nonrenewal/expiration (absent renewal) of this Agreement.

**b. Issuing Authority Assistance.** During such interim period, the Issuing Authority will assist and otherwise use its best efforts to assist Franchisee in providing a satisfactory basis for Franchisee to continue providing Cable Service under this Agreement.

**c. Revenues.** During any such interim period in which Franchisee continues to provide Cable Service, Franchisee is entitled to all revenues collected, less any Franchise Fees or other moneys owed to the Issuing Authority; *provided, however*, that Franchisee is not required during any such interim period to provide Cable Service if the revenues collected are less than the operating costs incurred.

#### **15. Severability**

If any provision of this Agreement is held by any court or by any federal, state or county agency of competent jurisdiction to be invalid as conflicting with any federal, state or county law, rule or regulation now or later on in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, that provision shall be considered as a separate, distinct and independent part of this Agreement, and such holding shall not affect the validity and enforceability of all other provisions of this Agreement. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the affected provision of this Agreement which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, that provision shall immediately return to full force and effect and shall afterwards be binding on the parties to this Agreement, *provided* that the Issuing Authority shall give Franchisee 60 days' written notice of such change before requiring compliance with that provision.

#### **16. Compliance with Laws**

**a.** Notwithstanding any other provisions of this Agreement to the contrary the Franchisee shall at all times comply with all applicable laws and regulations of the Federal, state, county and generally applicable laws and regulations of the Issuing Authority and all administrative agencies thereof, including but not limited to judicial orders; provided, however, that if any such Federal, state, generally applicable town, or county law or other applicable regulation shall require the Franchisee to perform any action, or shall permit the Franchisee to perform any action, or shall prohibit the Franchisee from performing any action, in conflict with the terms of this Agreement or of any law or regulation of the Issuing Authority, then as soon as possible following knowledge thereof the Franchisee shall notify the Issuing Authority of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Issuing Authority of this Agreement, and the Franchisee shall be excused from performance hereunder, provided that it acts in good faith reliance thereon, pending resolution of such conflict; provided, further, that, from the date of this Agreement through and until the expiration of the Term of the Franchise granted under this Agreement, no change made by the Issuing Authority in its ordinances or regulations shall amend, or impose obligations different from, the Franchise or this Agreement without the Franchisee's written consent. In the event of a conflict between this Agreement and any local law, rule or regulation (including, without limitation, any ordinance authorizing the grant of a cable television franchise), the terms of this Agreement shall prevail.

**b.** If the Issuing Authority or Franchisee determines that a material provision of this Agreement is effected by such action of a court or of the Federal, state or county government, the Issuing Authority and Franchisee shall modify any of the provisions hereof to reflect such action.

## **17. Miscellaneous**

**a. Entire Agreement; Amendment.** This Agreement, the documents that are referred to in this Agreement and the documents that are to be delivered pursuant to this Agreement constitute the entire agreement among the parties pertaining to the subject matter of this Agreement, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are not representations or other agreements among the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound by such amendment, supplement, modification, waiver or termination. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing by the waiving party.

### **b. Notice**

**1. To Issuing Authority.** All notices require or permitted to be given to the Issuing Authority under any provisions of this Agreement shall be in writing and shall be deemed served:

(a) When delivered by hand or by U.S. Mail, Federal Express, UPS or similar service to the Issuing Authority's offices during normal business hours; or

(b) When mailed to any other person designated in writing in this Agreement to receive such notice, via certified mail, return receipt requested.

2. **To Franchisee.** All notices required to be given to Franchisee under any provision of this Agreement shall be in writing and shall be deemed served when delivered by one of the methods described above.

3. **Addresses.** Notice shall be given to the following addresses:

**If to Issuing Authority:      Town of Perryville  
515 Broad Street  
Perryville, MD 21903**

**If to Franchisee:              Comcast Cable  
1215 East Fort Avenue, Suite 103  
Baltimore, MD 21230  
Attn: Government Affairs**

With copies to:

**Comcast Cable Northeast Division  
676 Island Pond Road  
Manchester, NH 03109  
Attention: Government Affairs**

Either party may change its address for notice purposes at any time by giving notice of such address change on accordance with the foregoing.

c. **Successors.** Subject to Section 9 of this Agreement, this Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and assigns.

d. **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 State of Maryland without regard to conflicts of law principles, 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.

e. **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.

**f. Dispute Resolution.** Any dispute between the parties arising under or relating to this Agreement shall be resolved by judicial proceedings in a State court having jurisdiction and venue in Cecil County or in the United States District Court for the District of Maryland. Before initiating judicial proceedings the parties may attempt to resolve the dispute through mediation conducted in Cecil County under the auspices of the American Arbitration Association, JAMS, or a similar mediation service. The parties shall agree upon the mediator and shall divide equally the costs of the mediation service and the mediator, but the parties each shall be responsible for its own attorney's fees and costs of mediation.

**g. 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.

**h. 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.

**i. 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.

**j. 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.

(Signature Page to Follow)

**IN WITNESS OF THIS AGREEMENT**, the parties have signed below by their duly authorized representatives.

**WITNESSED:**

\_\_\_\_\_

**Town of Perryville**

By \_\_\_\_\_

Its \_\_\_\_\_

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

**WITNESSED:**

\_\_\_\_\_

**Comcast of Elkton, LLC**

By \_\_\_\_\_

Printed Ray Roundtree

Its Regional Senior Vice President

Date \_\_\_\_\_

**EXHIBIT 1**  
**CUSTOMER SERVICE OBLIGATIONS**

**1. OFFICE HOURS AND TELEPHONE AVAILABILITY**

- a. Franchisee will maintain a local, toll-free, or collect call telephone access line, which will be available to its Customers 24 hours a day, seven days a week.
  - i. Trained representatives will be available to respond to Customer telephone inquiries during Normal Business Hours.
  - ii. After Normal Business Hours, the access line may be answered by a service or any automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained representative on the next business day.
- b. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met not less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
- c. Franchisee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates clear failure to comply.
- d. Under Normal Operating Conditions, the Customer will receive a busy signal less than three percent (3%) of the time.
- e. Bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

**2. INSTALLATIONS, OUTAGES AND SERVICE CALLS:** Under Normal Operating Conditions, each of the following four standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

- a. Standard installations will be performed within seven (7) business days after an order has been placed or at a later date as requested by the customer. “Standard” installations are those that are located up to 125 feet from the existing distribution system.
- b. Excluding conditions beyond its control, Franchisee will begin working on “service interruptions” promptly and in no event later than 24 hours after the interruption becomes known. Franchisee must begin actions to correct other service problems the next business day after notification of the service problem.

- c. The “appointment window” alternatives for installations, service calls, and other installation activities will be either a specific time or, at a maximum, a four-hour time block during normal business hours. (Franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the Customer.)
- d. Franchisee may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment.
- e. If a representative is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Customer.

### **3. COMMUNICATIONS BETWEEN FRANCHISEE AND CABLE SUBSCRIBERS**

#### **a. Notifications to Subscribers**

- i. Franchisee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:
  - 1. Products and services offered;
  - 2. Prices and options for programming services and conditions of subscription to programming and other services;
  - 3. Installation and service maintenance policies;
  - 4. Instructions on how to use the Cable Service;
  - 5. Channel positions of programming carried on the System;
  - 6. Billing and complaint procedures, including where to locate the address and telephone number of Franchisee’s cable office.
- b. Customers will be notified of any changes in rates, programming services or channel positions. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of Franchisee. In addition, Franchisee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by paragraph 3.a.i of this Section. Advance notice is not required for the launch of new channels when offered on a subscription basis or added to an existing service tier at no additional cost to the Subscriber. Notwithstanding any other provision of Part 76, Franchisee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax assessment, or charge of any kind imposed by



any Federal agency, State, or Issuing Authority on the transaction between the operator and the subscriber. The notices required by this section may be provided electronically and by any other reasonable means through which notifications are provided to Subscribers.

c. Billing

- i. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including option charges, rebates and credits.
- ii. In case of a billing dispute, Franchisee must respond to a written complaint from a Customer within thirty (30) days.

d. Refunds. Refund checks will be issued promptly, but no later than either:

- i. The Customer's next available billing cycle following resolution of the request or thirty (30) days, whichever is later, or
- ii. The return of the equipment supplied by Franchisee if service is terminated.

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

#### 4. DEFINITIONS

- a. **Normal Business Hours.** The term "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.
- b. **Normal Operating Conditions.** The term "Normal Operating Conditions" means those service conditions, which are within the control of Franchisee. Those conditions which are not within the control of Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, severe or unusual weather conditions, and other Force Majeure conditions. Those conditions, which are ordinarily within the control of Franchisee, include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.
- c. **Service Interruption.** The term "Service Interruption" means the loss of picture or sound on one or more cable channels.

**Exhibit 2**

**Municipal Facilities  
Courtesy Video Service**

Perryville Town Hall  
515 Broad Street

Perryville Middle School  
850 Aiken Avenue

**Exhibit 3**  
**Initial Build Area**

