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**ORDINANCE NO. 2016-001**

**TO AMEND THE MILTON TOWN CODE WITH THE CURRENT CABLE  
FRANCHISE AGREEMENT**

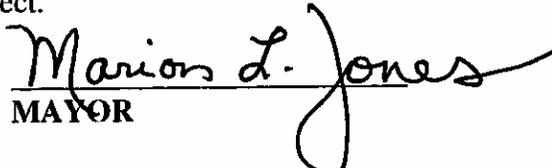
**WHEREAS**, the Town Charter of the Town of Milton authorizes the Town Council to provide for and preserve the health, cleanliness, ornament, good order and public welfare of the Town, its inhabitants and affairs; and

**WHEREAS**, the Town Charter of the Town of Milton authorizes the Town Council to grant franchise or licenses to any responsible person, firm, association, or corporation for such period of time, upon such terms restrictions, stipulations and conditions and for such considerations as the Town Council shall deem in the best interest of the municipality, but only after providing information at a Town Meeting, and the opportunity for public comment, as to the use of present and future streets, highways, lanes, alleys, water courses, parks, lakes, strands, sidewalks, crosswalks, wharfs, docks and other public places of the Town for purpose of furnishing heat, light, power, gas, water, sewer, drainage, electric current, telephone, telegraph, television, railroad, excepting railroads or railways engaged in Interstate Commerce, bus, taxi or other transportation, carrier or public service to the Town, unto the persons, firms or corporations residing or located therein and for the purpose of transmitting the same from or through the Town to points outside the limits thereof, and for the purpose of erecting wharfs and piers and for the purpose of vending any article or merchandise or service upon or from any vehicle upon any present and future street, highway, lane, alley, etc.; provided that no exclusive franchise or license shall be granted for any such purpose to any purpose, firm association or corporation whomsoever; and

**WHEREAS**, the Town of Milton finalized negotiations and approved revisions to the Comcast Cable Franchise Agreement on November 16, 2015;

**NOW THEREFORE, BE IT ENACTED AND ORDAINED**, by the Town Council of the Town of Milton, a majority thereof concurring, that §§ A223-1 through A223-12 of Chapter A223, entitled "Cable Television Franchise", are hereby repealed and replaced with the attached Cable Franchise Agreement between the Town of Milton and Comcast of Delmarva, LLC.

**I, MARION L. JONES**, Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the Town Council of the Town of Milton at its meeting held on the **21st day of March, 2016**, at which a quorum was present and voting throughout and that the same is still in full force and effect.

  
MAYOR

Version: FINAL

CABLE FRANCHISE AGREEMENT  
BETWEEN  
TOWN OF MILTON  
AND  
COMCAST OF DELMARVA, LLC

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## **FRANCHISE AGREEMENT**

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the Town of Milton, Delaware (hereinafter, "Town" or "Franchising Authority") and Comcast of Delmarva, LLC. (hereinafter, "Grantee").

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

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

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Act of 1934, as amended from time to time, 47 U.S.C. §§ 521 - 631 (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, and words in the plural number include the singular 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. "Basic Service" shall mean the lowest price tier of service that includes the retransmission of local broadcast television signals.

1.2. "Cable Act" means Title VI of the Cable Communications Act of 1934, as amended from time to time, 47 U.S.C. Sections 521 et seq.

1.3. "Cable Service" or "Service" means 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.

1.4. "Cable System" means 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 602 (7) of the Cable Act. Such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Customers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except

that such facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in the transmission of video programming directly to Customers, unless the extent of such use is solely to provide interactive on-demand service; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.5. "Customer" or "Subscriber" means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee's express permission.

1.6. "Effective Date" means December 31 2015.

1.7. "FCC" means the Federal Communications Commission, or successor governmental entity thereto.

1.8. "Franchise" means the initial authorization, or renewal thereof, issued by the Franchising 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.

1.9. "Franchise Agreement" or "Agreement" shall mean this Agreement and any amendments or modifications hereto.

1.10. "Franchise Area" means the present legal boundaries of the Town of Milton, as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.11. "Franchising Authority" means the Town of Milton, Delaware or the lawful successor, transferee, designee, or assignee thereof.

1.12. "Grantee" shall mean Comcast of Delmarva, LLC or its lawful assignee, as provided in Section 8 of this Agreement.

1.13. "Gross Revenue" means revenue derived by the Grantee 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 monthly basic cable, premium and pay-per-view video fees, revenue from advertising and home shopping, installation fees and subscriber equipment rental 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.

1.14. "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.

1.15. "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 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 Franchising Authority in the Franchise Area, which shall entitle the Grantee 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 Franchising 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 Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

1.16. "Standard Installation" shall mean the standard one hundred fifty foot (150') aerial Drop connection to the existing distribution system.

1.17. "Town" shall mean the Town of Milton, Delaware 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 Franchising Authority hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed. Grantee's exercise of the privileges herein granted shall not interfere with the uses undertaken by the Town or other entities who may own poles located within the Franchise Area.

2.2. **Police Powers.** Except as may be otherwise provided in this Agreement, Grantee acknowledges that its rights hereunder are subject to the police power of the Town to adopt and enforce generally applicable and lawful ordinances necessary for the safety and welfare of the public, and Grantee agrees to comply with all generally applicable laws and ordinances enacted by the Town pursuant to such powers.

2.3. **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. This Franchise shall be automatically extended for two (2) additional terms of five (5) years each unless either party notifies the other in writing of its desire to enter renewal negotiations under the Cable Act at least one (1) year before the expiration date of the then-current Franchise Agreement, whether it be the initial term or a subsequent extended term.

2.4. **Renewal.** Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act [47 U.S.C. §546], as amended, and nothing herein shall limit Grantee's rights thereunder.

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

3.1. **Permits and General Obligations.** The Grantee 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 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 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. Notwithstanding the

requirements herein, Grantee 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 Grantee 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 Grantee shall, upon reasonable advance written notice from the Franchising 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 the Franchising Authority makes available any options to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall make the same options available to the Grantee.

3.2.2. Relocation at Request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i.) the Grantee 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 Grantee 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 Grantee disturbs, alters, or damages any Public Way, the Grantee 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.

3.2.4. Safety Requirements. The Grantee shall undertake all necessary and appropriate 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 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 Grantee 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 Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any collateral, real property damage caused by such trimming. The Grantee shall provide ten (10) days advance notice to the Franchising Authority prior to commencing routine trimming, except that notice shall not be required in cases of emergency.

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 Grantee shall place its Cable System transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee'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 Grantee 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 Grantee 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. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee 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. In the event that public and/or private funds are not available, Grantee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

3.3. Antennas. Any antenna structure used in the Cable System shall comply with construction, marking, and lighting of antenna structure standards as required by the United States Department of Transportation.

3.4. Use of Existing Facilities. Grantee shall make every reasonable effort to utilize existing poles, conduits, and other facilities whenever possible in deploying and maintaining its Cable System.

3.5. Non-Interference. Grantee shall make its best efforts to not allow its cable or other operations to interfere with communication reception of persons not served by Grantee, nor shall the Cable System interfere with, obstruct, or hinder in any manner, the operation of the various utilities serving the residents within the Franchise Area.

#### **SECTION 4 - Service Obligations**

4.1. General Service Obligation. The Grantee shall make Cable Service available to every occupied residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) occupied dwelling units per mile and is within one (1) mile as measured in strand footage from the nearest point on the Cable System trunk or feeder line from which a usable cable signal can be obtained. For purposes of this section, a home shall be counted as a "dwelling unit" if, and only if, such home is within three hundred (300) feet of the public right of way. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within one hundred and fifty (150) feet of the Grantee's distribution cable at the standard installation rate. Should, through new construction, an area within the Franchise Area meet the density requirements, Grantee shall provide Cable Service to such area within one year after it confirms that the density requirements have been met following notice from the Franchising Authority that one or more residents has requested service.

4.1.1. The Grantee shall make Cable Service available to areas in the Franchise area that do not meet the requirements of Section 4.1 above upon the written request of the occupied residential dwelling unit owners in such areas and based upon the following cost calculation: The cost of extending the Grantees plant to such areas shall be calculated by taking the capital cost of extending such service divided by the number of occupied residential dwelling units requesting Cable Service in such area, minus the costs of extending Cable Service to occupied residential dwelling units in an area that meets the density requirement specified in Section 4.1. above. The resulting costs shall equal the per-occupied residential dwelling unit contribution relating to line extension of the Cable Service in that particular area of the Town, or:

$$\frac{C}{LE} - \frac{CA}{P} = SC$$

- C equals the cost of construction of new plant from the nearest technically feasible point on the Cable System trunk or feeder line;
- LE equals the number of occupied residential dwelling units requesting Cable Service in the line extension area, who subsequently pay a contribution in aid of construction;

- CA equals the average cost of construction per mile in the primary service area;
- P equals the thirty (30) residential dwelling units per mile density specified in Section 4.1.; and
- SC equals the per occupied residential dwelling unit contribution in aid of construction in the line extension area.

Upon the request of any potential subscriber desiring service, Grantee shall prepare, at its cost, a feasibility study to determine the cost of any plant extension under Section 4.1.1. Grantee shall be entitled to charge a nonrefundable \$100 fee for each subscriber to cover the costs of preparing the same. Grantee shall not be required to prepare a feasibility study under this Section for a specific area more than once every 5 years.

4.1.2. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in excess of one hundred and twenty-five (125) foot standard in Section 4.1. Any such additional charge shall be calculated on that portion of the installation which exceeds the one hundred twenty-five (125) foot standard.

4.2. Programming. The Grantee shall offer to all Customers a diversity of Video Programming services in accordance with federal law.

4.3. No Unfair Discrimination. Neither the Grantee 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, Grantee 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 Grantee'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 Grantee are satisfied. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.4. New Developments. The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least thirty (30) business days written notice of the date of availability of open trenches.

4.5. Prohibition Against Reselling Service. No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

4.6. Disconnection of Service.

4.6.1. There will be no charge to Subscribers for complete disconnection from Cable Service. However, Grantee may require full payment of any delinquent fees, late fees, and any fees related to unreturned equipment upon disconnection.

4.6.2. Disconnection of a Subscriber for delinquency shall not occur until at least thirty (30) days after the due date of said monthly fee or charge. The thirty (30) day period shall include written notice to the delinquent subscriber of the intent to disconnect.

4.6.3. Subject to Section 4.3, after disconnection for delinquency, upon payment in full of all delinquent fees or charges, the payment of a reconnection charge, and the payment of any required deposit, Grantee shall promptly reinstate the subscriber's cable service as scheduling permits.

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

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee 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 Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law. Grantee shall provide copies of the rates charged to Grantee's customers in the Town upon request.

5.2. Refunds. The Cable System shall be designed for operation 24 hours per day. The Grantee, upon request, shall issue a pro-rata credit to affected subscribers of an outage of more than twelve (12) continuous hours in duration, for outages caused by defective equipment supplied by the Grantee. No refund shall be required where the outage is a result of the misuse of equipment by the subscriber, defective equipment not provided by Grantee, Force Majeure, or where the Grantee has not been notified within a reasonable time of the outage, or where Grantee is denied or unable to gain access to the subscriber's premises to confirm and repair the outage.

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

6.1. Customer Service Standards. The Franchising Authority hereby adopts the customer service standards set forth in Part 76, §76.309 and the notice standards set forth in Part 76, §76.1602 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

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

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

6.3.1. Upon written request from a Subscriber, Grantee shall make available for inspection all personal Subscriber information that Grantee maintains regarding said Subscriber. Grantee shall promptly correct any errors upon discovery and confirmation.

6.3.2. Grantee shall provide Subscribers a copy of its Privacy Policy upon installation of Cable Service and annually thereafter.

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

7.1. Franchise Fees. The Grantee shall pay to the Franchising Authority a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee 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 forty-five (45) days after the close of each first, second and third calendar quarter (i.e., May 15, August 15, November 15) and sixty (60) days after the close of the calendar year (last day of February). Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period. Notwithstanding the renewal negotiations provisions under Section 2.3 of this Agreement, in the event that the 5% limitation on franchise fees under Section 622 of the Cable Act is increased, the Franchising Authority may immediately reopen negotiations and

any resulting amendments to this Agreement shall be applicable for the remainder of the term and any renewal term or terms.

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

7.2.1. Upon notice pursuant to Section 14.2 herein, during Normal Business Hours at Grantee's principal business office, the Franchising Authority shall have the right to inspect the Grantee'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 Grantee 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 Grantee 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 agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Grantee 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 "Finally Settled Amount(s)" due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, 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 Grantee's books and records.

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

7.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76.601

et seq. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising 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.

#### 7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Throughout the term of this Franchise Agreement, the Grantee agrees that the Franchising Authority may review the Grantee's books and records regarding customer service performance levels in the Franchise Area to monitor Grantee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Grantee pursuant to the provisions of section 14.2 herein, at the Grantee's business office, during Normal Business Hours, and without unreasonably interfering with Grantee's business operations. All such documents that may be the subject of an inspection by the Franchising Authority shall be retained by the Grantee for a minimum period of twenty-four (24) months.

7.5.2. File for Public Inspection. Throughout the term of this Franchise Agreement, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

7.5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Franchising 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 Grantee shall not be required to provide Customer 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, customer 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 Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection, but not copying or removal of information by the Franchising Authority's representative. In the event that the Franchising Authority has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the Grantee has designated as

confidential, trade secret or proprietary, the Franchising Authority shall notify Grantee of such request and cooperate with Grantee in opposing such request.

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

8.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without prior written consent of the Franchising Authority. No consent shall be required, however, for: (i.) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee 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 (iii) the sale, conveyance, transfer, exchange or release of fifty percent (50%) or less of its equitable ownership. Within thirty (30) days of receiving a notice of transfer, the Franchising Authority may, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires regarding the legal, financial, and technical qualifications of the transferee or new controlling party.

8.2. In the event of a change of cable operator under this Agreement, Grantee shall cooperate with the Town, new contractor, or operator in maintaining continuity of service to all subscribers to the extent reasonably practicable for a reasonable time, not to exceed 60 days from such event. During such event, Grantee shall be entitled to the revenues from any period during which it operates the system.

### **SECTION 9 - Insurance and Indemnity**

9.1. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Franchising Authority certificates of insurance designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Franchising Authority. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Franchising Authority from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.

9.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees, and agents acting in their official capacities from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance, or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify and defend the Franchising Authority within twenty (20) business days of receipt of a claim or action pursuant to this Section. The Franchising Authority agrees that it will take all necessary action to avoid a default judgment and not prejudice the Grantee's ability to defend the claim or action. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

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

9.3. Assumption of Responsibility. Grantee agrees to be responsible and liable for all damages of or injury to, persons or property caused by the negligent or intentional acts or omissions of Grantee or of its agents or employees while engaged in the construction, installation, maintenance, or operation of the Cable System.

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

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

10.2. Cable Service to Governmental and Institutional Facilities. Upon request, the Grantee shall provide, at no cost to the Franchising Authority, Basic Cable Service and Standard Installation at one (1) outlet to each Public Building within the Franchise Area within 150 feet of its trunk or feeder lines. The Basic Cable Service, without convertors, will be provided free of charge. All attachments to public buildings will be at Grantee's expense, but distribution of the system within those buildings shall be at the expense of the Town or the responsible public or non-profit agency; however, such distribution shall not in any way interfere with the Cable System's operation. Public Buildings are those

buildings owned or leased by the Franchising Authority for municipal government administrative purposes, and shall not include buildings owned by Franchising Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed. In addition to other buildings that may be classified as Public Buildings, the following buildings shall be Public Buildings:

- A. The Milton branch of the Sussex County Library
- B. The Town of Milton Town Hall
- C. The Town of Milton Police Department
- D. The Town of Milton Volunteer Fire Company
- E. The Town of Milton Public Works Department buildings
- F. Public schools located within the Town of Milton

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

10.4. Interruptions. Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Except in emergency situations, such interruptions shall occur during periods of minimum system use.

10.5. Emergency Alert System. Grantee shall comply with the Emergency Alert System requirements of the FCC in order that emergency information may be distributed over the Cable System.

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

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

11.1.1. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the Franchising Authority's written notice: (A) to respond to the Franchising Authority, contesting the assertion of non-compliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured

within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Franchising 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 Grantee fails to respond to the Franchising 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 Grantee, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

11.1.3. Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any material provision of the Franchise, the Franchising 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 Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Grantee, 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 Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Grantee 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 Franchising Authority shall cause to be served upon the Grantee, 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 Franchising Authority shall give the Grantee 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 Delaware, after which the Franchising Authority 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 Grantee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as justice may require.

11.2. Technical Violation. The Franchising Authority agrees that it is not its intention to subject the Grantee 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 Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

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

11.3. No Removal of System. Grantee 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 Grantee 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. §621 (b)].

## **SECTION 12 - Competitive Equity**

12.1. The Franchising Authority agrees that if the Franchising Authority should grant any other Video Service Provider a right to operate inside the Town limits, and any terms or conditions contained in that agreement are, individually or in the aggregate, more favorable or less burdensome to such Video Service Provider than those applied to Grantee in this Agreement, then Grantee may request that the terms and/or conditions of this Agreement be modified to substantially conform to those terms and/or conditions, and the Franchising

Authority shall not unreasonably deny such modifications to this Agreement. If the Town shall hereafter authorize or permit any other Video Service Provider to construct, own, operate or maintain any other system to provide multiple Video Programming services to subscribers within any area of the Town then served by Grantee's system, then the Town shall expressly require such Video Service Provider to indemnify and hold harmless Grantee from and against any and all inspection, make-ready, construction, rearrangement, relocating underground facilities, etc. in connection with such other Video Service Provider's construction, ownership, operation or maintenance of such other system in the Town.

### **SECTION 13 - Performance Bond**

13.1. Performance Bond. Within thirty (30) days of the Effective Date of this Agreement, Grantee shall post a performance bond in the amount of \$15,000 as surety for the faithful performance and discharge by Grantee 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 Grantee fails to timely pay franchise fees, the Franchising Authority shall give Grantee twenty (20) 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 Grantee to challenge the amount owed.

### **SECTION 14 - Miscellaneous Provisions**

14.1. Force Majeure. The Grantee 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, or other catastrophic act of nature; riot, war, labor disputes, environmental restrictions, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee'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 Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

14.2. 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 Franchising Authority:

Town of Milton  
115 Federal Street  
Milton, Delaware 19968  
Attention: Mayor

To the Grantee:

Comcast of Delmarva, LLC  
8098 Sandpiper Circle  
Nottingham, Maryland 21236  
Attention: Government Affairs Department

with copies to:

Comcast Cable  
7850 Walker Drive, 2<sup>nd</sup> Floor  
Greenbelt, Maryland 21236  
Attention: Government Affairs Department

And to:

Comcast Cable Northeast Division  
676 Island Pond Road  
Manchester, New Hampshire 03109  
Attention: Government Affairs Department

14.3. Entire Agreement. This Franchise Agreement and any exhibits or addendums hereto constitute the entire agreement between the Franchising Authority and the Grantee 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, 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.

14.4. 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.

14.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State where the Franchise Area is located, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of such State, as applicable to contracts entered into and performed entirely within the State.

14.6. 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 Franchising Authority and the Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.

14.7. 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.

14.8. 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.

14.9. No Waiver of Rights. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Agreement by reason of any failure of the Town to enforce prompt compliance, nor does the Town waive or limit any of its rights under this Agreement by reasons of such failure or neglect. The Town shall not be relieved of its obligations to comply with any of the provisions of this Agreement by reason of any failure of the Grantee to enforce prompt compliance, nor does the Grantee waive or limit any of its rights under this Agreement by reasons of such failure or neglect. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, which Grantee may have under federal or state law unless such waiver is expressly stated herein.

14.10. Incorporation by Reference

(a) All presently and hereafter applicable conditions and requirements of federal, State and local laws, including but not limited to the rules and regulations of the FCC and the State where the Franchise Area is located, as they may be amended from time to time, are incorporated herein by reference to the extent not enumerated herein. All such general laws, rules and regulations, as amended, shall control the interpretation and performance of this

Renewal Franchise to the extent that any provision of this Renewal Franchise conflicts with or is inconsistent with such laws, rules or regulations.

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

14.11. 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 during 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.

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:

Attest:

  
Kristy Rogers  
Town Clerk

Town of Milton (Franchising Authority):

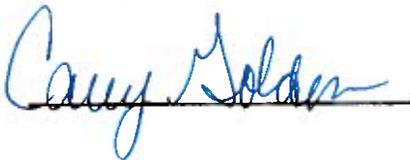
By: Marion L. Jones

Print Name: Marion L. Jones

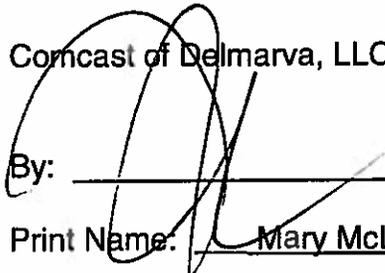
Title: Mayor

Date: 18 November 2015

Attest:

  
Cary Goldan

Comcast of Delmarva, LLC (Grantee):

By: 

Print Name: Mary McLaughlin

Title: Senior Vice President -- Beltway Region

Date: 12/15/15