

Chapter A188

CABLE FRANCHISE AGREEMENT

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Comcast Exhibit A
Complimentary Service
Locations

Comcast Exhibit B New
Services

Blue Ridge Exhibit A
Complimentary Service
Locations

Blue Ridge Exhibit B New
Services

[HISTORY: Adopted by the Board of Supervisors of the Township of West Earl as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Comcast Franchise Agreement
[Adopted 11-9-2009 by Ord. No. 208]

§ A188-1. Definitions; word usage.

For the purposes of this agreement, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Unless otherwise defined herein, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended.

AFFILIATE — When used in relation to Comcast, another person who or which owns or controls, is owned or controlled by, or is under common ownership or control with, Comcast. For the purpose of this definition the words "owns," "owned," and "common ownership" shall mean a direct or indirect stock, partnership, membership or other equity interest of 25% or more.

BASIC SERVICE — Any cable service tier which includes the retransmission of local broadcast television signals.

CABLE ACT — The Communications Act of 1934 (47 U.S.C. §§ 521 to 561), as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as now or hereafter further amended.

CABLE SERVICE — The one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

CABLE SYSTEM — A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include the following:

- A. A facility that serves only to retransmit the television signals of one or more television broadcast station(s);
- B. A facility that serves subscribers without using any public right-of-way;
- C. A facility of a common carrier which is subject, in whole or in part, to 47 U.S.C. § 201 to 276, except that such facility shall be considered a cable system [other than for purposes of 47 U.S.C. § 541(c)] to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- D. An open video system that complies with 47 U.S.C. § 573; or
- E. Any facilities of any electric utility used solely for operating its electric utility system.

COMCAST — Comcast of Southeast Pennsylvania, LLC.

FCC — The Federal Communications Commission or successor governmental entity thereto.

FRANCHISE — The initial authorization, or renewal thereof, issued by West Earl Township, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the cable system for the purpose of offering cable service to subscribers in the franchise area.

FRANCHISE AGREEMENT or AGREEMENT — This agreement and any amendments or modifications hereto.

FRANCHISE AREA — The present legal boundaries of the Township as of the effective date of this ordinance, and shall also include any additions thereto, by annexation or other legal means.

GROSS REVENUES — All cash, credits, in-kind contributions, property of any kind or nature, or other consideration whatsoever in any form arising from or attributable to the operation of the cable system in any way derived directly or indirectly from the operation of the cable system in the Township by the company and/or its affiliates including, but not limited to, subscription fees, equipment sales or rentals (including converters and remote controls), equipment replacements, premium services, fees from each cable programming tier, change-in-service fees, additional set and outlet fees, converter fees, remote fees, installation fees, service fees, disconnection fees, relocation fees, pay-per-view fees, fees for any and all music services (including DMX), reconnections, cancellations, leased access fees, video-on-demand, cable-related publications, locally-derived commissions from home shopping channels, any and all advertising revenues (including national, regional and local

advertising), late payment fees, NSF check charges, revenue received from the sale of time or programming on leased channels, the sale of commercial time or programs, the sale of program guides, revenue from interactive television services, transport service fees, fees for trouble calls, fees for downgrading any level of cable service programming, fees charged for any optional, per-channel or per-program services, bank-at-home services and other revenue-sharing arrangements provided through the cable system, franchise fees, and revenue received from provision of any lawful cable service in the Township.

PERSON — Any natural person or any association, firm, partnership, joint venture, limited liability company, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Township.

PUBLIC WAY — The surface of, and the space above and below, any public street, highway, turnpike, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Township in the franchise area, which shall entitle Comcast 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 Township 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 Township and Comcast to the use thereof for the purposes of installing, operating, and maintaining the 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.

SERVICE AREA — The present municipal boundaries of the Township and shall include any additions thereto by annexation or other legal means.

SUBSCRIBER — A person or user of the cable system who lawfully receives or has received cable services or other services therefrom with Comcast's express permission within the service area.

TOWNSHIP — The Township of West Earl, Lancaster County, Commonwealth of Pennsylvania.

TROUBLE CALL — Any oral or written communication to the grantee reporting a service interruption that generated a work order and/or necessitated a service response that was not caused by circumstances beyond Comcast's direct control.

§ A188-2. Grant of authority.

- A.** Grant of franchise. The Township hereby grants to Comcast under the Cable Act a nonexclusive franchise, which authorizes Comcast to construct and operate a cable system in, along, among, upon, across, above, over, under, or in any manner connected with public ways within the franchise area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any public way and all extensions thereof and additions thereto, 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. Nothing in this franchise agreement shall be construed to prohibit Comcast from offering any service over its cable system that is not prohibited by federal, state or local law.

- B. Term of franchise. Unless terminated earlier in accordance with applicable provisions of this agreement, the franchise granted pursuant to this agreement shall commence upon the later of May 8, 2008, or date of execution by all parties necessary to sign the document and shall expire 10 years after the date of execution.
- C. Renewal. Any renewal of this franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, 47 U.S.C. § 546.
- D. Reservation of authority. Nothing in this franchise agreement shall:
 - (1) Abrogate the right of the Township to perform any public works or public improvements of any description;
 - (2) Be construed as a waiver of any codes or ordinances of general applicability promulgated by the Township, or
 - (3) Be construed as a waiver or release of the rights of the Township in and to the public ways.

§ A188-3. Cable system.

- A. Permits and general obligations. Comcast shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the cable system, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the cable system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by Comcast 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. Comcast shall not be required to obtain prior approval or permits for routine repair and maintenance of its cable system, such as service drops to individual subscribers or work involving a single pedestal.
- B. Conditions on street occupancy.
 - (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 Comcast shall, upon reasonable advance written notice from the Township (which shall not be less than 20 business days) and at its own cost and expense, protect or promptly alter or relocate the cable system, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any person using such street or public right-of-way for the purpose of defraying the

cost of any of the foregoing, the Township shall upon written request of Comcast make application for such funds on behalf of Comcast.

- (2) Relocation at request of the Township.
 - (a) Upon receipt of reasonable advance notice (except under exigent circumstances) Comcast shall, in a timely manner and at its own expense, locate, protect, support, temporarily disconnect, relocate in the public way, or remove from the public way or other property owned by the Township, any property of Comcast when lawfully required by the Township by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Township.
 - (b) Upon the failure of Comcast to commence, pursue, or complete any work required by law (or by the provisions of Comcast's franchise, or any other applicable federal, state or local law, ordinance, rule or regulation) to be done in any public way or other public place within the time prescribed (or, if not prescribed, in a timely manner), and to the satisfaction of the Township, the Township, at its option, may cause such work to be done, and Comcast shall pay to the Township the cost thereof in the itemized amounts reported by the Township to Comcast within 30 days after receipt of such itemized report. However, Comcast, upon prior approval of the Township, may elect to abandon any or all of its underground property, which prior approval shall not be unreasonably withheld.
 - (c) In requiring Comcast to protect, support, temporarily disconnect, relocate or remove any portion of its property, the Township shall treat Comcast the same as, and require no more of Comcast than, any similarly situated entity.
- (3) Relocation at request of third party. Comcast shall, upon reasonable prior written request of any person holding a permit issued by the Township to move any structure, temporarily move its wires to permit the moving of such structure; provided:
 - (a) Comcast 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
 - (b) Comcast is given not less than 20 business days' advance written notice to arrange for such temporary relocation.
- (4) Restoration of public ways. If, in connection with the construction, operation, maintenance, or repair of the cable system, Comcast disturbs, alters, or damages any public way, Comcast 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.

- (5) Safety requirements. Comcast shall, at its own cost and expense, 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 substantial accordance with applicable FCC or other federal, state, and local regulations. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the franchise area.
- (6) Trimming of trees and shrubbery. Comcast shall have the authority to trim trees or other natural growth overhanging any of its cable system in the franchise area so as to prevent contact with Comcast's wires, cables, or other equipment. All such trimming shall be done at Comcast's sole cost and expense.
- (7) Use of Comcast's poles by the Township. Except as already set forth in this agreement and subject to any applicable state or federal regulations or tariffs, the Township shall have the right to make additional use of any poles controlled or maintained exclusively by or for Comcast in any public way; provided, however, that:
 - (a) Such use by the Township does not interfere with a current or future use by Comcast;
 - (b) The Township holds Comcast harmless against any and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles, including, but not limited to, reasonable attorneys' fees and costs except for claims and damages arising out of the willful or negligent acts caused by Comcast; and
 - (c) At Comcast's sole discretion, the Township may be required either to pay a reasonable rental fee or otherwise reasonably compensate Comcast for the use of such poles; provided, however, that Comcast agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the franchise area.
- (8) Emergency usage. Comcast shall comply with emergency or disaster notification requirements of the FCC and state emergency or disaster agencies.
- (9) Aerial and underground 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, Comcast shall place its cable systems' transmission and distribution facilities underground, provided that such facilities are actually capable of accommodating Comcast'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 (excluding facilities such as pedestals as well as customer premises equipment and drops) of the respective public or municipal utilities are both aerial and underground, Comcast 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 § A1 88-3B(9) shall be construed to require Comcast to construct, operate, or

maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

- C. Service area maps. Comcast shall provide to the Township for its exclusive use and shall maintain at Comcast's local office(s) a complete set of strand maps of the Township. The hard copy maps shall show the areas in which the Company's facilities exist in all of the streets of the Township. Updated maps shall be delivered to the Township within 60 days upon request.

§ A188-4. Service obligations.

A. General service obligation.

- (1) Comcast shall make cable service available to every residential dwelling unit within the franchise area where the minimum density is at least 25 dwelling units per mile. Subject to the density requirement, Comcast shall offer cable service to all new homes or previously unserved homes located within 125 feet of Comcast's distribution cable.
- (2) Comcast may elect to provide cable service to areas not meeting the above density standards. Comcast may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time-plus-materials basis to be calculated on that portion of the installation which exceeds the one-hundred-twenty-five-foot standard set forth above.
- (3) Upon written request for cable service from a developer or any of the residents in a low-density area, Comcast shall respond in writing within 60 days of such request with information regarding the potential for extending cable service, or of providing comparable service through alternative means, and all cost-sharing options available, according to the provisions herein.

B. Programming.

- (1) Diversity of programming. Comcast shall offer to all subscribers a diversity of video-programming services in broad categories. By way of example, the diversity of programming may include education programming, news and public affairs, local and regional news, sports, weather, music, family programming, children's programming, movies, home and garden programming, and business and financial programming.
- (2) Signal scrambling. Comcast shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.
- (3) Parental control capability. Upon request, Comcast shall provide subscribers with the capability to control the reception of any video and/or audio channel on the cable system providing sexually explicit adult programming in accordance with applicable law.

- C. No discrimination. Neither Comcast 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. 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 Comcast are satisfied.
- D. New developments. The Township shall provide Comcast with written notice of the issuance of building or development permits for planned developments within the franchise area requiring undergrounding of cable facilities. The Township agrees to require the developer, as a condition of issuing the permit, to give Comcast access to open trenches for deployment of cable facilities and at least 10 business days' written notice of the date of availability of open trenches. The developer shall be responsible for the digging and backfilling of all trenches. Comcast shall be responsible for engineering and deployment of labor applicable to its cable facilities.
- E. Prohibition against reselling service. No person shall resell, without the express prior written consent of Comcast, any cable service, program or signal transmitted over the cable system by Comcast.

§ A188-5. Rates, fees and charges to customers.

All rates, fees, charges, deposits and associated terms and conditions to be imposed by Comcast or any affiliated person for any cable service as of the effective date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, Comcast shall follow the applicable FCC notice requirements and rules and notify affected subscribers, which notice may be by any means permitted under applicable law.

§ A188-6. Customer service standards; subscriber bills; and privacy protection.

- A. Customer service standards. The Township hereby adopts the customer service standards set forth in Section 76.309 of Part 47 of the FCC's rules and regulations, 47 C.F.R. 76.309. Comcast shall comply in all respects with the customer service requirements established by the FCC. Additionally, Comcast shall have a publicly listed telephone number by which persons can communicate with Comcast. Comcast shall comply with § A1 88-6B through G, so long as they are consistent with applicable FCC rules and regulations.
- B. Notices.
 - (1) Comcast shall provide written notice and information to each subscriber upon initial subscription and at intervals not more than one year thereafter, annually to the Township, and at any time upon request by the Township or a subscriber, concerning each of the following areas:

- (a) Products and services offered;
 - (b) Prices and options for programming services and conditions of subscription to programming and other services;
 - (c) Installation and service maintenance policies;
 - (d) Instructions on how to use the cable service and any converters;
 - (e) Channel positions and programming carried on the cable system;
 - (f) Billing and customer complaint procedures;
 - (g) Comcast's addresses, telephone numbers and office hours;
 - (h) The subscriber's right to obtain a parental control device; and
 - (i) A notice of subscriber privacy rights as required by federal law and contained in Subsection G below.
- (2) Comcast shall provide subscribers and the Township with 30 days' advance notification of any changes in services including, but not limited to, any changes in channel positions. Comcast shall also provide subscribers and the Township with 30 days' advance notification of any changes in rates to be charged subscribers for service tiers, installation or any other cable services provided by Comcast. This notification shall not be required for the offering of any particular pay-per-view programming. Comcast shall also not be required to provide prior notice to subscribers of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the Commonwealth of Pennsylvania or the Township on the transaction between Comcast and the subscriber.
- (3) Comcast shall maintain such files as required by the FCC to be made available to the public containing all written notices provided to subscribers pursuant to the requirements contained herein and containing a copy of printed promotional material submitted to subscribers during the previous 24 months.

C. Subscriber bills.

- (1) Bills shall be clear, concise and understandable and will be itemized in accordance with FCC or other federal and state requirements. Bills must be fully itemized, with itemizations including, but not limited to, basic service tier, standard tier and premium tier service charges, if applicable, equipment charges and any installation or repair charges. The bill shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.
- (2) Comcast shall include on the face of each bill the name of and contact information for Comcast of Southeast Pennsylvania, LLC.
- (3) Comcast shall include on the face of each bill the name of the municipality to which each subscriber is assigned by Comcast. Upon written request from the

Township, Comcast shall not include the municipality's telephone number on the face of the bill.

- (4) Comcast shall provide bill payment facilities at its local business office to accept such payments at least during normal business hours.
 - (5) With respect to advance billing, late fees, and the collection of past due debts owed to it by subscribers, Comcast may exercise its rights under and shall comply with applicable law.
- D. Subscriber complaint procedures. Comcast shall establish clear, written procedures for resolving all subscriber complaints. which shall include at least the following:
- (1) Comcast shall provide the subscriber with a written response to a written complaint addressed to the local business office within 15 days of its receipt. Such response shall include the fact that the complaint has been received, the results of its initial inquiry into the subject matter of the complaint and either its decision based on those results, or its need to perform further investigation into the complaint. If Comcast needs to perform further investigation, it shall provide the subscriber with a written response containing its decision when its investigation is completed. Upon request, a copy of Comcast's written response(s) shall be sent to the Township.
 - (2) If the Township is contacted directly about a subscriber complaint, it shall refer the subscriber to Comcast.
 - (3) Any subscriber who, in good faith, disputes all or part of any bill sent by Comcast has the option of withholding the disputed amount or the initiation of collection procedures until Comcast has investigated the dispute in good faith and has made a determination that the amount is owed provided that:
 - (a) The subscriber provides a written complaint to Comcast in a timely fashion and includes identifying information;
 - (b) The subscriber pays all undisputed charges; and
 - (c) The subscriber cooperates in determining the appropriateness of the charges in dispute.
 - (4) Comcast shall maintain a record of trouble calls received by Comcast that have generated a service response action in the Township. Upon request, Comcast shall make available to the Township a copy of such records. Comcast agrees to maintain such records for at least 24 months from the date of receipt. If the Township believes that there has been an increase in trouble calls, it may request a trouble call report and request that Comcast conduct an inquiry concerning trouble calls or a service-related issue. Comcast shall complete the inquiry and provide the Township with a written report no later than 60 days after the request is received by Comcast.
- E. Disconnection. Comcast may disconnect or terminate a subscriber's service for cause, if:

- (1) At least 30 days have elapsed from the due date of the bill which the subscriber has failed to pay; and
 - (2) Comcast has provided at least 10 days' written notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection; and
 - (3) At any time and without notice Comcast determines in good faith that the subscriber has tampered with or abused Comcast's equipment or is engaged in theft of cable service.
- F. Damaged or lost equipment. In the event that a subscriber is unable to provide documentation to substantiate that a converter or other equipment was stolen or destroyed by fire, Comcast shall be entitled to assess a replacement cost for the equipment.
- G. Privacy.
- (1) Comcast shall respect the rights of privacy of every subscriber and shall not violate such rights through the use of any device or signal associated with the cable system. Comcast shall at all times comply with the privacy provisions of Section 631 of the Cable Act, 47 U.S.C. § 551, and all other applicable federal and state privacy laws and regulations.
 - (2) Comcast shall be responsible for complying with such privacy policy, and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.
 - (3) Upon a request by a subscriber, Comcast shall make available for inspection at a reasonable time and at its principal place of business all personal subscriber information that Comcast maintains regarding said subscriber. Comcast shall ensure that all information related to billing and service requests is accurate and up-to-date and shall promptly correct any errors upon discovery.
 - (4) All references in this section are subject to the provision of Public Law No. 107-56 (October 26, 2001) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, known as the "USA Patriot Act."

§ A188-7. Oversight and regulation by Township.

- A. Franchise fees. Comcast shall pay to the Township a franchise fee in an amount equal to 5% of annual gross revenue received from the operation of the cable system to provide cable service in the franchise area. Said franchise fee may be increased not more than once annually at the sole and exclusive election of the Township to an amount not to exceed the maximum amount allowed by law, upon 180 days' prior written notice to Comcast. The payment of franchise fees shall be made on a quarterly basis and shall be due 45 days after the close of each calendar quarter and 60 days after the end of the fourth quarter of the year. Each franchise fee payment shall be accompanied by a report prepared by a representative of Comcast, which shows the basis for the computation of

all gross revenue actually received from the operation of the cable system for the provision of cable service in the franchise area during the period for which such franchise fee payment is made.

B. Franchise fees subject to inspection.

- (1) Upon reasonable prior written notice, during normal business hours, at Comcast's principal business office, the Township shall have the right to inspect Comcast's financial records used to calculate the Township's franchise fees; provided, however, that any such inspection shall take place within 36 months from the date the Township receives such payment, after which period any such payment not contested by the Township shall be considered final.
- (2) Upon 20 days' prior written notice, the Township shall have the right to inspect and make extracts at Comcast's local office of the records of gross revenue of Comcast for the purpose of verifying or identifying revenue owed to the Township. Where, in the opinion of the Township, they are reasonably necessary to verify or supplement Comcast's records, the Township may request, and Comcast shall use its best efforts to obtain and furnish the records of the gross revenues of affiliates providing cable service in the cable system and make the same available for inspection by the Township at the office of the Township. Upon completion of any such inspection by the Township, the Township shall provide to Comcast a final report, which sets forth the Township's findings in detail, including any and all substantiating documentation. Comcast shall have 30 days from the receipt of the report to provide the Township with a written response, including any substantiating documentation. Any finally settled amount(s) due to the Township as a result of such inspection shall be paid to the Township by Comcast within 30 days from receipt of written notice of the acceptance of such finally settled amount from the Township. For purposes of this section, the term "finally settled amount(s)" shall mean the agreed-upon underpayment, if any, to the Township by Comcast as a result of any such inspection. The Township shall bear the expense of any inspection of Comcast's books and records.
- (3) In the event that any franchise fee or other payment is not made or the requisite documentation and certification is not provided on or before the applicable dates heretofore specified, then Comcast shall pay the amount due, plus 6% on an annual basis. Any amount recomputed to reflect the correct payment due shall bear annual interest as described from the date such payment was originally due.
- (4) On an annual basis, upon 30 days' prior written notice given on or prior to September 30 of the year following that for which franchise fees have been paid, the Township shall have the right to conduct an independent audit of Comcast's records and the records of its affiliates providing cable service in the cable system related to the sources, amounts and computation of Gross Revenue in accordance with generally accepted accounting principles. In the event that an audit finds an underpayment, Comcast shall pay the amount owed, and if such amount owed is 3% or more, Comcast will pay the cost of such audit.

- C. Oversight of franchise and testing for compliance. In accordance with applicable law, the Township shall have the right to oversee, regulate and, on reasonable prior written notice, periodically inspect the construction, operation and maintenance of the cable system in the franchise area, and all parts thereof, as necessary to monitor Comcast's compliance with the provisions of this franchise agreement. Upon written request of the Township, Comcast shall furnish a copy of all technical tests performed on the cable system as required by the FCC by it or on its behalf to the Township at no cost or expense to the Township. The Township may perform technical tests of the cable system during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of Comcast or the cable system in order to determine whether or not Comcast is in compliance with the requirements herein and all applicable laws, ordinances, rules and regulations. For its technical tests, the Township shall retain, at its sole cost and expense, a professional engineering organization that has been certified by a national technical standards body to conduct such inspections and examinations. Except in emergency circumstances, such tests may be undertaken only after giving Comcast reasonable notice thereof, not to be less than 20 business days, during normal business hours, and providing a representative of Comcast an opportunity to be present during such tests. In the event that such testing demonstrates that Comcast has failed to comply with any FCC technical standard or any technical standard approved by the FCC, the costs of such tests shall be borne by Comcast and paid to the Township within 30 days. In the event that such testing demonstrates that Comcast has complied therewith, the cost of such testing shall be borne by the Township.
- D. Technical standards. Comcast shall comply with all applicable technical standards of the FCC as published in Subpart K of 47 C.F.R. 76. To the extent those standards are altered, modified, or amended during the term of this franchise, Comcast shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective.
- E. Maintenance of books, records, and files.
- (1) Books and records. Throughout the term of this franchise agreement, Comcast agrees that the Township, upon reasonable prior written notice to Comcast, may review such of Comcast's books and records regarding the operation of the cable system and the provision of cable service in the franchise area which are reasonably necessary to monitor Comcast's compliance with the provisions of this franchise agreement at Comcast's local business office, during normal business hours and without unreasonably interfering with Comcast's business operations. Such books and records shall include any records required to be kept in a public file by Comcast pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that relate to the franchise fee and its calculation may be the subject of an inspection by the Township, and shall be retained by Comcast for a period not to exceed three years.
 - (2) File for public inspection. Throughout the term of this franchise agreement, Comcast shall maintain at the appropriate location pursuant to FCC Public Inspection File Regulation, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

- (3) Proprietary information. Notwithstanding anything to the contrary set forth in this § A188-7, Comcast shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Township agrees to treat any information disclosed by Comcast as confidential and only to disclose it to employees, representatives, and agents of the Township that have a need to know, or in order to enforce this franchise agreement and who agree in writing to maintain the confidentiality of all such information, except to the extent such information or records are not exempt from disclosure or are considered a public record within the Right to Know Act, 65 P.S. § 66.1 to 66.4, or any other open records laws. In the event a request is made by an individual or entity not an employee, agent or representative of the Township or by an employee, agent or representative of the Township not acting in his or her official capacity for information related to the franchise and marked by Comcast as confidential and/or proprietary, the Township shall permit Comcast to protect its interests to the extent permitted by law (e.g., if such information is exempt from disclosure or not considered a public record within the Right to Know Act) before providing documents or access to documents to the requestor. Comcast shall reimburse the Township for any reasonable expense related to protecting Comcast's rights, including attorneys' fees, incurred as a result of permitting Comcast to protect its interests. Comcast shall not be required to provide subscriber information in violation of Section 631 of the Cable Act, 47 U.S.C. § 551. For purposes of this § A188-7, the terms "proprietary or confidential" include, but are not limited to, information relating to the cable system design, subscriber lists, marketing plans, employee records, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by Comcast to be competitively sensitive.

§ A188-8. Insurance; indemnity.

- A. Insurance. Throughout the term of this franchise agreement, Comcast shall, at its own cost and expense, maintain comprehensive general liability insurance and provide to the Township, certificates of insurance designating the Township and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that Comcast has obtained the insurance required in this § A188-8. Such policy or policies shall be in the following minimum amounts:
- (1) The amount of such insurance against liability for damage to property shall be no less than \$1,000,000 as to any one occurrence resulting from any one accident.
 - (2) The amount of such insurance against liability for injury or death to any one person shall be no less than \$1,000,000.
 - (3) The amount of such insurance against liability per occurrence for bodily injury or death of any two or more persons resulting from one occurrence shall be no less than \$1,000,000.

1. Editor's Note: See now 65 P.S. § 67.101 et seq.

- (4) The amount of such insurance for excess liability for both property damage and injury or death shall be no less than \$3,000,000 in umbrella form, which shall drop-down without allowing a gap in coverage.
 - (5) The amount of such insurance for libel and slander associated with programming on channels that are directly or indirectly controlled by Comcast shall be \$500,000 per occurrence.
 - (6) Such policy or policies shall be noncancelable except upon 30 days' prior written notice to the Township. Comcast shall provide workers' compensation coverage in accordance with applicable law.
- B. Indemnification. Comcast shall indemnify, defend and hold harmless the Township, its elected and appointed officials, officers, employees, and agents acting in their official capacities, from and against any liability, damages or claims which arise out of the construction, operation, maintenance or removal of the cable system, including, but not limited to, reasonable attorneys' fees, provided that the Township shall give Comcast written notice of its obligation to indemnify the Township within 10 business days of receipt of a claim or action pursuant to this § A1 88-8. If the Township determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Township.

§ A188-9. System description; service.

A. Complimentary service.

- (1) Comcast shall provide without charge one outlet of standard nonpremium service (i.e., basic and standard service exclusive of premium channels) including the requisite converter box or other requisite equipment for signal reception to all public and private elementary and secondary schools in the franchise area which receive Title I funding. Additional buildings and facilities to be connected with complimentary service as of the date of this agreement are identified in Exhibit A,2 attached hereto and made a part hereof.
- (2) Comcast shall also provide without charge one outlet for cable modem service to all public and private elementary and secondary schools existing or hereafter constructed at any time during the term of the franchise that receive Title I funds and the Township Administrative Office.
- (3) Comcast shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to such premises exceeds 125 feet of cable unless the appropriate municipal entity agrees to pay the difference between Comcast's cost of installing a one-hundred-twenty-five-foot drop and the cost of installing a longer drop. In the event more than one outlet is provided to such buildings, the owner shall pay the usual installation and service fees associated therewith.

2. Editor's Note: Exhibit A is included at the end of this chapter.

- B. System capacity. During the term of this agreement, Comcast's cable system shall be capable of providing a minimum of 70 channels of video programming with reception available to its subscribers in the franchise area that meets the FCC's technical standards.
- C. System specifications. Comcast shall maintain and operate a cable system(s) covering the Township which utilizes at the time of the effective date fiber optic receiver nodes located throughout the plant that divides the distribution of cable signals to subscribers in a manner which provides high quality programming signals and reliable service. Comcast represents and warrants that this cable system is capable for digital television standards with a bandwidth no less than 750 MHz with addressable technology with video channels reserved for digital or analog transmission and with sufficient portion of said bandwidth delivering reliable two-way cable services. Comcast reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the cable system at any time during the term of the franchise, in accordance with the terms and conditions in this agreement. Notwithstanding the above, Comcast agrees that no alteration, adjustment, modification, rebuild, upgrade, redesign, or other reconfiguration of the cable system shall have the effect of degrading the cable signal or reducing the technical capabilities of the cable system from those that exist on the effective date of this franchise.
- D. New cable services.
- (1) Throughout the term of this agreement, Comcast shall construct, operate, maintain and upgrade the cable system consistent with the following provisions: Comcast has recently upgraded its cable system within the Township and in the surrounding communities. In the event that additional future upgrades are performed in any communities served by Comcast of Southeast Pennsylvania, LLC in Lancaster County, Pennsylvania, the Township shall have the option to request a similar future upgrade. The Township will receive new services, associated equipment and facilities without request to the extent reasonably feasible; otherwise, Comcast will provide the service as soon as practical whenever the Township provides written notice to Comcast of its request for such service(s), associated equipment and facilities and after both parties determine that such service(s), associated equipment and facilities are provided in any of the communities identified in Exhibit B.~ The Township may not make such request more than one year after receiving an annual report, as referenced below. Comcast shall be in compliance with this provision as long as the technical quality of the services, associated equipment and facilities is substantially comparable to the communities identified in Exhibit B.
 - (2) Within 180 days from the third anniversary of the effective date of this agreement and annually thereafter, the Township may request from Comcast a written report describing new services. Upon such request, Comcast shall provide the Township with a report describing any and all new services, associated equipment and facilities which have been introduced in the prior year in the communities identified in Exhibit B,~ and for purposes of information only shall provide information regarding new services, associated equipment and facilities introduced

3. Editor's Note: Exhibit B is included at the end of this chapter.

4. Editor's Note: Exhibit B is included at the end of this chapter.

by Comcast within the service area in the prior year. Notwithstanding the foregoing, Comcast shall not be required to provide any new services, associated equipment and facilities unless and until the Township has approved a rate plan, where such approval is required by applicable law, that will allow full recovery of the cost of providing any such new services over the then-remaining term of the franchise or over five years, whichever is longer.

§ A188-10. Subscriber service rates.

To the extent permitted by Section 623 of the Cable Act, 47 U.S.C. § 543, and the regulations promulgated thereunder, and to the extent permitted by future amendments to the Cable Act, the Township hereby reserves the right to regulate the rates charged by Comcast for cable service provided by the cable system, to enforce regulations prescribed by the FCC, and to file complaints challenging a rate as unreasonable to the extent permitted by federal and state law including, but not limited to, the Cable Act.

§ A188-11. Transfer, assignment and foreclosure.

- A. The franchise herein granted is personal to Comcast. It cannot be transferred, leased, assigned or disposed of as a whole, or in part, either by sale of stock, forced sale, merger, consolidation, change in control of Comcast, or otherwise, without the prior written consent of the Township expressed by ordinance or resolution and then only under such conditions as may be therein prescribed. Subject to compliance by the transferee or assignee with the provisions of § A1 88-1 1E below, no such consent shall be required for a transfer in trust, by mortgage, hypothecation, or by assignment of any right, title, or interest of Comcast in the franchise or in the cable system in order to secure indebtedness, or a transfer to an entity presently owned and/or controlled by Comcast Corporation. For purposes of this § A1 88-1 1A only, the phrase "owned and/or controlled" shall mean an instance where Comcast Corporation or one of its subsidiaries is the majority owner of 51% or more of the voting stock of the transferee or assignee or where Comcast Corporation has and continues to have the right to make management decisions concerning the transferee or assignee.
- B. Comcast shall make written application to the Township for the Township's consent described in §A188-11A above. As part of such application, Comcast shall provide the Township with all information required by FCC Form 394 and any other applicable federal, state and local laws and regulations regarding transfer or assignment or change of control.
- C. Any foreclosure or judicial sale of all, or any part, of the cable system may be considered a default under this agreement. Initiation of any such proceedings shall be treated as a notification of a change of control of Comcast.
- D. The consent of the Township to any transfer or assignment or change of control as described above shall be provided only after a public hearing before the Board of Supervisors. Comcast shall be given notice of any such public hearing, and Comcast shall be afforded an opportunity to be heard at any such hearing.

- E. Any consent by the Township for any transfer or assignment or change of control 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.
- F. The Township shall have the right to terminate this franchise 120 days after the election or appointment of a receiver or trustee to take over and conduct the business of Comcast, whether in receivership, reorganization, bankruptcy, or other action or proceedings, unless such receivership or trusteeship shall have been vacated prior to the expiration of the 120 days, or unless:
- (1) Within 120 days after the election or appointment, such receiver or trustee shall have fully complied with all provisions of this agreement and remedied all defaults thereunder; and
 - (2) Within said 120 days such receiver or trustee shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this agreement, or
 - (3) The action would violate bankruptcy law.

§ A188-12. Franchise violations; damages; revocation.

A. Violations.

- (1) If the Township reasonably believes that Comcast violated any provision of this agreement, it shall notify Comcast in writing, by certified mail, of the nature of such violation and the section of this agreement which it believes has been violated.
- (2) Comcast shall have 90 days to cure or commence to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this agreement. If Comcast believes it is compliant and not in default, Comcast may provide proof of its compliancy. If the nature of the violation is such that it cannot be fully cured within 90 days due to circumstances outside of Comcast's control, the period of time in which Comcast must cure the violation shall be extended by the Township in writing for such additional time necessary to complete the cure, provided that Comcast shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the Township. If Comcast is given written notice once in accordance with § A188-12A(1) above, the Township need not notify Comcast a second time for the same violation, and Comcast shall be liable for liquidated damages in accordance with § A188-12B without an additional opportunity to cure. Notwithstanding the foregoing, Comcast shall not be held liable or responsible under this agreement for work delays caused by waiting for utility providers to service or monitor their own utility poles on which Comcast's cable and/or equipment is attached, as well as for unavailability of materials and/or qualified labor to perform the work necessary.

- (3) In the event that Comcast fails to respond to the Township's notice, or in the event that the alleged default is not remedied within 90 days or the date projected by Comcast, the Township may schedule a public hearing to investigate the default. The Township shall notify Comcast in writing of the time and place of such meeting and provide Comcast with a reasonable opportunity to be heard.

B. Liquidated damages.

- (1) Because Comcast's failure to comply with provisions of this agreement may result in injury or harm to the Township and because it will be difficult to measure the extent of such injury or harm, the Township may assess liquidated damages against Comcast in the following amounts, provided Comcast has had an opportunity to cure in accordance with § A188-12A(2). Such damages shall not be a substitute for specific performance by Comcast. Such damages shall not be a substitute for specific performance by Comcast or for other penalties imposed by other laws or regulation.
- (2) For the liquidated damages set forth in this section, the maximum period for assessing liquidated damages for each single occurrence of noncompliance shall be 60 days. The first day for which damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period.
- (3) The exercise of liquidated damages by the Township shall not release Comcast from its obligations or from any liability under this agreement, except with regard to any breach for which liquidated damages are paid as provided in this section or as necessary to avoid duplicative recovery from or payments by Comcast. During such time period as the Township elects to assess liquidated damages for an alleged breach, that remedy shall be the sole remedy for the breach for that time period. Nothing contained in this section shall be construed to permit duplicative recovery from or payment by Comcast.
 - (a) For failure to comply with the technical requirements: \$150 per day for each day the violation continues;
 - (b) For failure to provide and maintain cable service: \$100 per day for each day the violation continues;
 - (c) For failure to obtain and maintain construction permits as set forth in § A1 88-3A: \$50 per day for each day the violation continues;
 - (d) For failure to make repairs and restorations as set forth in § A1 88-3B: \$100 per day for each day the violation continues;
 - (e) For failure to disconnect, relocate, or remove equipment as set forth in § A1 88-3 B: \$100 per day for each day the violation continues;
 - (f) For failure to obtain permission for removal of trees: \$100 per day for each day the violation continues;

- (g) For failure to comply with any customer service standard set forth in § A1 88-6 and A188-9: \$100 per day for each day the violation continues;
- (h) For failure to cooperate with the right of inspection as set forth in § A188-7B, C, and E: \$150 per day for each day the violation continues;
- (i) For failure to submit reports, notices or required information as set forth in various provisions throughout this agreement in a timely fashion: \$50 per day for each day the violation continues;
- (j) For failure to provide a performance bond as set forth in § A188-12C: \$200 per day for each day the violation continues;
- (k) For failure to carry all the insurance required: \$150 per day for each day the violation continues;
- (l) For failure to comply with transfer or renewal provisions as set forth in § A1 88-11: \$150 per day for each day the violation continues; and
- (m) For failure to comply with removal of system provision: \$300 per day for each day the violation continues as set forth in § 1 88-12F.

C. Performance bond.

- (1) Comcast shall obtain, at its sole cost and expense, within 30 days of the execution of this franchise, and shall maintain during the franchise term, a performance bond running in favor of the Township to secure faithful performance by Comcast of any and all obligations under this agreement. Such financial security shall be issued by a bonding company in the form of a surety bond, provided that said bonding company is authorized to conduct such business within the commonwealth and is listed on United States Treasury Circular 570. This performance bond, however, shall not limit the liability of Comcast for any failure to perform its obligations under this agreement.
- (2) The performance bond shall be in the amount of \$25,000. Comcast shall not reduce, cancel, or change said bond from the requirements contained herein without the express prior written permission of the Township.

D. Revocation.

- (1) In addition to the other rights, remedies and powers reserved or retained by the Township under this agreement or otherwise, the Township reserves the right to lawfully revoke the franchise and all rights and privileges of Comcast or any successor thereto in the event of a material breach of the terms and conditions of this agreement, in accordance with the notice and opportunity to cure provisions. In interpreting this agreement, material provisions shall include all provisions labeled as such and all others, which, under all the facts and circumstances indicated, are a significant provision of this agreement. A material breach by Comcast shall include, but is not limited to, the following acts and omissions:

- (a) Comcast knowingly practices any fraud or deceit upon the Township in its operation of its cable system or any other activities pursuant to this agreement;
 - (b) Comcast repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in this agreement;
 - (c) Comcast fails, after notice and opportunity to cure, to remit a franchise fee or other payment together with any requisite statement or certification.
 - (d) Comcast fails to operate over 25% of the cable system (as determined by lineal miles or portions thereof within the franchise area) for a period in excess of 15 consecutive days except when approval of such interruption is obtained from the Township.
 - (e) A court of competent jurisdiction orders the assumption or custody or sequestration of all or a significant part of the cable system.
 - (f) Comcast fails to maintain the required insurance and performance bond.
 - (g) Comcast fails to comply with any federal, state, county or Township law, code, ordinance, rule or regulation which has a significant impact on subscribers.
- (2) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Comcast or occurs as a result of a force majeure or of circumstances beyond its control. Comcast shall not be in violation of this agreement and no revocation shall be effected if Comcast is prevented from performing its duties and obligations or observing the terms and conditions of this franchise by any acts of God, labor disputes, manufacturers' or contractors' inability to timely provide personnel or material or other causes of like or different nature beyond the control of Comcast. Furthermore, the parties hereby agree that it is not the intention of the Township to subject Comcast to revocation by the Township where the violation was a good faith error that resulted in no or minimal negative impact on subscribers within the service area, or where strict performance would result in practical difficulties and hardship to Comcast which outweigh the benefit to be derived by the Township or subscribers.
- (3) This franchise may be revoked only by a written decision of the Board of Supervisors of West Earl Township after an appropriate public hearing affording Comcast due process and full opportunity to be heard, to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with federal law. All notice requirements shall be met by providing Comcast at least 60 days' prior written notice, having been served upon Comcast by certified mail, return receipt requested, of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation and provide a citation of the federal, state, county or Township law, code, ordinance, rule, or regulation that has been violated. The Board of Supervisors, after a public hearing and upon finding the existence of grounds for

revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Comcast of mitigating circumstances or good cause for the existence of such grounds.

- E. Equitable and other relief. In addition to or in lieu of the penalties provided in § A1 88-12B of this agreement, the Township may commence actions in equity or at law for violations of this agreement.
- F. Removal of equipment. Upon abandonment of its cable system or the voluntary relinquishment of the franchise granted under this agreement, the Township shall have the right to require that Comcast remove its supporting structures, poles, transmission and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways and other public and private places, in, over, under or along which they are installed, but only to the extent that such items listed above are not required and utilized to provide other services by Comcast, and shall restore the areas to their original condition. If such removal is not completed within six months of such abandonment or relinquishment, the Township or property owner may deem any property not removed as having been abandoned and the Township may remove it at Comcast's cost.

§ A188-13. Compliance with applicable laws and ordinances.

Comcast shall, at all times during the term of this agreement, be subject to the exercise of the police power by the Township and to such lawful ordinances, rules and regulations as the Township shall hereafter adopt pursuant to such power(s). There is hereby reserved to the Township every right and power which is required to be herein reserved or provided by any ordinance, rule or regulation of the Township, and Comcast shall comply with any lawful action or lawful requirements of the Township in its exercise of such right or power heretofore or hereafter enacted or established. Comcast shall comply with all ordinances, codes, statutes, rules and regulations of the Township, to the extent they are not contrary to the terms of this agreement and which do not materially alter the rights and obligations of Comcast under this agreement, the County of Lancaster, the Commonwealth of Pennsylvania, and the United States of America which are now in effect or hereafter enacted.

§ A188-14. Waiver.

- A. No course of dealing between the Township and Comcast nor the failure of the Township to enforce or to timely enforce any provision of this agreement or any federal, state or local law, code, ordinance, rule or regulation shall be deemed to be a waiver of, or acquiescence in the actions of Comcast in contravention of, that or any other provision, law, code, ordinance, rule or regulation.
- B. No course of dealing between the Township and Comcast nor the failure of Comcast to enforce or to timely enforce any provision of this agreement or any federal, state or local law, code, ordinance, rule or regulation shall be deemed to be a waiver of, or acquiescence in the actions of the Township in contravention of, that or any other provision, law, code, ordinance, rule or regulation.

- C. Any waiver of any provision of this agreement or federal, state or local law, code, ordinance, rule, or regulations shall be in writing and operate only as a waiver as expressed in such writing, signed by both parties, and shall not be of any other force or effect.

§ A188-15. Miscellaneous provisions.

- A. This franchise is subject to all orders, rules and/or regulations of the FCC or other federal or state agencies applicable to a cable system and such other orders, rules and/or regulations as any such agency or agencies may from time to time adopt. In the event any such agency ceases to exist or revokes any applicable orders, rules and/or regulations, Comcast and the Township shall meet and discuss what amendments, if any, would be appropriate to be made to this agreement.
- B. The granting of this nonexclusive franchise under this agreement by ordinance shall not be construed as an undertaking or guarantee by the Township of the efficiency of Comcast or maintenance of service by Comcast. It is fully understood that the Township assumes no responsibility for the acts or omissions of Comcast other than to require, to the extent the Township elects to do so, compliance with this agreement.
- C. Comcast shall comply with all applicable federal and state antitrust laws and regulations.
- D. Force majeure. If for any reason of force majeure, Comcast is unable in whole or in part to carry out its obligations hereunder, Comcast shall not be deemed in violation of this agreement during the continuance of such inability. The term "force majeure" as used herein shall have the following meaning: acts of God; acts of public enemies, orders of any kind of the government of the United States of America or of the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; acts of terrorism, riots; strikes or labor disputes; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; tornados; tsunamis; washouts; droughts or other catastrophic act of nature; explosions; and partial or entire failure of utilities.
- E. 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:

The Township:	West Earl Township 157 West Metzler Road P.O. Box 787 Brownstown, PA 17508
with a courtesy copy to:	Morgan, Hallgren, Crosswell & Kane, P.C. 700 North Duke Street P.O. Box 4686 Lancaster, Pennsylvania 17604-4686

Comcast:	Comcast 1 East Uwchlan Avenue, Suite 411 Attention: Government Affairs Department
with a courtesy copy to:	Comcast 1500 Market Street Philadelphia, PA 19102 Attention: Government Affairs Department

- F. Entire agreement. This franchise agreement, including all exhibits, embodies the entire understanding and agreement of the Township and Comcast with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with the provisions of this franchise agreement are superseded by this franchise agreement.
- G. 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.
- H. Governing law. This franchise agreement shall be deemed to be executed in the Township of West Earl, Lancaster County, Pennsylvania, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, as applicable to contracts entered into and performed entirely within the Commonwealth.
- I. 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 Township and Comcast, which amendment shall be authorized on behalf of the Township through the adoption of an appropriate resolution or order by the Township, as required by applicable law.
- J. The effective date of this agreement shall be the date of ordination and enactment of the agreement by ordinance duly enacted by the Board of Supervisors.

§ A188-16. Repeals.

All provisions of prior ordinances and parts of prior ordinances are repealed insofar as they be inconsistent with this ordinance.

ARTICLE II

**Blue Ridge Franchise Agreement
[Adopted 7-26-2010 by Ord. No. 211]****§ A188-17. Definitions.**

For the purposes of this agreement, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Unless otherwise defined herein, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended.

AFFILIATE — When used in relation to Blue Ridge, another person who or which owns or controls, is owned or controlled by, or is under common ownership or control with, Blue Ridge. For the purpose of this definition the words "owns", "owned", and "common ownership" shall mean a direct or indirect stock, partnership, membership or other equity interest of 25% or more.

BASIC SERVICE — Any service tier which includes the retransmission of local broadcast television signals.

BLUE RIDGE — Blue Ridge cable Technologies, t/a, d/b/a Blue Ridge Communications.

CABLE ACT — The Communications Act of 1934 (47 U.S.C. §§ 521 to 561), as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as now or hereafter further amended.

CABLE SERVICE — The one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

CABLE SYSTEM — A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include the following:

- A. A facility that serves only to retransmit the television signals of one or more television broadcast station(s);
- B. A facility that serves subscribers without using any public right-of-way;
- C. A facility of a common carrier which is subject, in whole or in part, to 47 U.S.C. § 201 to 276, except that such facility shall be considered a cable system [other than for purposes of 47 U.S.C. § 541(c)] to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- D. An open video system that complies with 47 U.S.C. § 573; or

E. Any facilities of any electric utility used solely for operating its electric utility system.

FCC — The Federal Communications Commission or successor governmental entity thereto.

FRANCHISE — The initial authorization, or renewal thereof, issued by West Earl Township, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the cable system for the purpose of offering cable service to subscribers in the franchise area.

FRANCHISE AGREEMENT OR AGREEMENT — This agreement and any amendments or modifications hereto.

FRANCHISE AREA — The present legal boundaries of the Township as of the effective date of this agreement, and shall also include any additions thereto, by annexation or other legal means.

GROSS REVENUES — All cash, credits, in-kind contributions, property of any kind or nature, or other consideration whatsoever in any form arising from or attributable to the sale or exchange of cable service (as currently or hereafter defined) or in any way derived directly or indirectly from the operation of the cable system in the Township by the company and/or its affiliates including, but not limited to, subscription fees, equipment sales or rentals (including converters and remote controls), equipment replacements, premium services, fees from each cable programming tier, change-in-service fees, additional set and outlet fees, converter fees, remote fees, installation fees, service fees, disconnection fees, relocation fees, pay-per-view fees, fees for any and all music services (including DMX), reconnections, cancellations, leased access fees, video-on-demand, cable-related publications, any and all advertising revenues (including national, regional and local advertising), commissions from home shopping channels (revenues from home shopping channels and advertising may be prorated among the Township and adjacent franchise authorities on a per-subscriber basis), late payment fees, NSF check charges, channel leasing payments, revenue received from the sale of time or programming on leased channels, the sale of commercial time or programs, the sale of program guides, revenue from interactive television services, fees for trouble calls, fees for downgrading any level of cable service programming, fees charged for any optional, per-channel or per-program services, bank-at-home services and other revenue-sharing arrangements provided through the cable system, franchise fees, and revenue received from provision of any lawful cable service in the Township. But for a decision of the company not to conduct operations directly by Blue Ridge, all revenues collected by an affiliate shall be considered total local gross revenues and subject to the franchise fee if such revenues reasonably could have been derived from the operations of its cable system within the service area directly by Blue Ridge. Nothing herein shall be interpreted to expand the Township's right to impose franchise fees on services beyond those provided by law.

PERSON — Any natural person or any association, firm, partnership, joint venture, limited liability company, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Township.

PUBLIC WAY — The surface of, and the space above and below, any public street, highway, turnpike, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible

uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Township in the franchise area, which shall entitle the Township and Blue Ridge 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 Township 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 Township and Blue Ridge to the use thereof for the purposes of installing, operating, and maintaining the 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.

SERVICE AREA — The present municipal boundaries of the Township and shall include any additions thereto by annexation or other legal means.

SUBSCRIBER — A person or user of the cable system who lawfully receives or has received cable services or other services therefrom with Blue Ridge's express permission within the service area.

TROUBLE CALL — Any oral or written communication to Blue Ridge reporting a service interruption that was not caused by circumstances beyond Blue Ridge's direct control.

§ A188-18. Grant of authority.

- A. Grant of franchise. The Township hereby grants to Blue Ridge under the Cable Act a nonexclusive franchise, which authorizes Blue Ridge to construct and operate a cable system in, along, among, upon, across, above, over, under, or in any manner connected with public ways within the franchise area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any public way and all extensions thereof and additions thereto, 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. Nothing in this franchise agreement shall be construed to prohibit Blue Ridge from offering any service over its cable system that is not prohibited by federal, state or local law.
- B. Term of franchise. Unless terminated earlier in accordance with applicable provisions of this agreement, the franchise granted pursuant to this agreement shall commence upon the date of execution by all parties necessary to sign the document and shall expire seven years thereafter.
- C. Renewal. Any renewal of this franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, 47 U.S.C. § 546.
- D. Reservation of authority. Nothing in this franchise agreement shall:
 - (1) Abrogate the right of the Township to perform any public works or public improvements of any description;

- (2) Be construed as a waiver of any codes or ordinances of general applicability promulgated by the Township; or
- (3) Be construed as a waiver or release of the rights of the Township in and to the public ways.

§ A188-19. Cable system.

- A. Permits and general obligations. Blue Ridge shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the cable system, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the cable system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by Blue Ridge 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. Blue Ridge shall not be required to obtain prior approval or permits for routine repair and maintenance of its cable system, such as service drops to individual subscribers or work involving a single pedestal.
- B. Conditions on street occupancy.
 - (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 Blue Ridge shall, upon reasonable advance written notice from the Township (which shall not be less than 20 business days) and at its own cost and expense, protect or promptly alter or relocate the cable system, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any person using such street or public right-of-way for the purpose of defraying the cost of any of the foregoing, the Township shall upon written request of Blue Ridge make application for such funds on behalf of Blue Ridge.
 - (2) Relocation at request of the Township.
 - (a) Upon receipt of reasonable advance notice (except under exigent circumstances) Blue Ridge shall, in a timely manner and at its own expense, locate, protect, support, temporarily disconnect, relocate in the public way, or remove from the public way or other property owned by the Township, any property of Blue Ridge when lawfully required by the Township by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Township; provided, however, Blue Ridge in all such cases shall share proportionately with utility companies in any federal, state, or county funds awarded to the Township specifically for any of the purposes enumerated above. Nothing in this section shall be construed to require the Township to make application for or seek a grant for any funds.

- (b) Upon the failure of Blue Ridge to commence, pursue, or complete any work required by law (or by the provisions of Blue Ridge's franchise, or any other applicable federal, state or local law, ordinance, rule or regulation) to be done in any public way or other public place within the time prescribed (or, if not prescribed, in a timely manner), and to the satisfaction of the Township, the Township, at its option, may cause such work to be done, and Blue Ridge shall pay to the Township the cost thereof in the itemized amounts reported by the Township to Blue Ridge within 30 days after receipt of such itemized report. However, Blue Ridge, upon prior approval of the Township, may elect to abandon any or all of its underground property, which prior approval shall not be unreasonably withheld.
 - (c) In requiring Blue Ridge to protect, support, temporarily disconnect, relocate or remove any portion of its property, the Township shall treat Blue Ridge the same as, and require no more of Blue Ridge than, any similarly situated entity.
- (3) Relocation at request of third party. Blue Ridge shall, upon reasonable prior written request of any person holding a permit issued by the Township to move any structure, temporarily move its wires to permit the moving of such structure; provided;
 - (a) Blue Ridge 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
 - (b) Blue Ridge is given not less than 20 business days' advance written notice to arrange for such temporary relocation.
- (4) Restoration of public ways. If, in connection with the construction, operation, maintenance, or repair of the cable system, Blue Ridge disturbs, alters, or damages any public way, Blue Ridge 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.
- (5) Safety requirements. Blue Ridge shall, at its own cost and expense, 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 substantial accordance with applicable FCC or other federal, state, and local regulations. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the franchise area.
- (6) Trimming of trees and shrubbery. Blue Ridge shall have the authority to trim trees or other natural growth overhanging any of its cable system in the franchise area so as to prevent contact with Blue Ridge's wires, cables, or other equipment. All such trimming shall be done at Blue Ridge's sole cost and expense.
- (7) Use of Blue Ridge's poles and conduit by the Township. Except as already set forth in this agreement and subject to any applicable state or federal regulations or

tariffs, the Township shall have the right to make additional use of any poles or conduits controlled or maintained exclusively by or for Blue Ridge in any public way; provided, however, that:

- (a) Such use by the Township does not interfere with a current or future use by Blue Ridge;
 - (b) The Township holds Blue Ridge harmless against any and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorneys' fees and costs except for claims and damages arising out of the willful or negligent acts caused by Blue Ridge;
 - (c) Such use by the Township shall not be for providing telecommunications services in competition with Blue Ridge, and
 - (d) At Blue Ridge's sole discretion, the Township may be required either to pay a reasonable rental fee or otherwise reasonably compensate Blue Ridge for the use of such poles, conduits or equipment; provided, however, that Blue Ridge agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the franchise area.
- (8) Emergency usage. Blue Ridge shall comply with emergency or disaster notification requirements of the FCC and state emergency or disaster agencies.
- (9) Aerial and underground 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, Blue Ridge shall place its cable systems' transmission and distribution facilities at least 18 inches underground, provided that such facilities are actually capable of accommodating Blue Ridge'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 (excluding facilities such as pedestals as well as customer premises equipment and drops) of the respective public or municipal utilities are both aerial and underground, Blue Ridge shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. If underground, such facilities shall be located at least 18 inches underground. Nothing in this § A118-19B(9) shall be construed to require Blue Ridge to construct, operate, or maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.
- C. Strand maps. Blue Ridge shall provide to the Township for its exclusive use and shall maintain at Blue Ridge's local office(s) a complete set of strand maps of the Township. The hard copy maps shall show the areas in which Blue Ridge's facilities exist in all of the streets of the Township. Updated maps shall be delivered to the Township within 60 days upon request.

§ A188-20. Service obligations.**A. General service obligation.**

- (1) Blue Ridge shall make cable service available to every residential dwelling unit or other occupied structure within the franchise area where the minimum density is at least 25 customers per mile. For the purpose of this paragraph a customer is defined as a Township resident who has signed an agreement committing to the purchase of cable services from Blue Ridge. Subject to the density requirement, Blue Ridge shall offer cable service to all new or previously unserved dwelling units or other occupied structures located within 125 feet of Blue Ridge's distribution cable.
- (2) Blue Ridge may elect to provide cable service to areas not meeting the above density standards. Blue Ridge may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation which exceeds the one-hundred-twenty-five-foot standard set forth above.
- (3) Upon written request for cable service from a developer or any of the residents in a low-density area, Blue Ridge shall respond in writing within 60 days of such request with information regarding the potential for extending cable service, or of providing comparable service through alternative means, and all cost-sharing options available, according to the provisions herein.
- (4) Nothing herein shall be construed to compel Blue Ridge to extend its service to any part of the Township that is being served by another multichannel video provider.

B. Programming.

- (1) Diversity of programming. Blue Ridge shall offer to all subscribers a diversity of video programming services in broad categories. By way of example, the diversity of programming may include education programming, news and public affairs, local and regional news, sports, weather, music, family programming, children's programming, movies, home and garden programming, and business and financial programming. The current programming meets this requirement.
- (2) Signal scrambling. Blue Ridge shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.
- (3) Parental control capability. Upon request, Blue Ridge shall provide subscribers with the capability to control the reception of any video and/or audio channel on the cable system providing sexually explicit adult programming in accordance with applicable law.

C. No discrimination. Neither Blue Ridge nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other person, shall unlawfully discriminate or permit unlawful discrimination between or among any persons in the

availability of cable services provided in connection with the cable system in the franchise area. 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 Blue Ridge are satisfied.

- D. New developments. The Township shall provide Blue Ridge with written notice of the issuance of building or development permits for planned developments within the franchise area requiring undergrounding of cable facilities. The Township agrees to require the developer, as a condition of issuing the permit, to give Blue Ridge access to open trenches for deployment of cable facilities and at least 10 business days' written notice of the date of availability of open trenches. Developer shall be responsible for the digging and backfilling of all trenches. Blue Ridge shall be responsible for engineering and deployment of labor applicable to its cable facilities.
- E. Prohibition against reselling service. No person shall resell, without the express prior written consent of Blue Ridge, any cable service, program or signal transmitted over the cable system by Blue Ridge.

§ A188-21. Rates, fees and charges to customers.

All rates, fees, charges, deposits and associated terms and conditions to be imposed by Blue Ridge or any affiliated person for any cable service as of the effective date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, Blue Ridge shall follow the applicable FCC notice requirements and rules and notify affected subscribers, which notice may be by any means permitted under applicable law.

§ A188-22. Customer service standards; subscriber bills; and privacy protection.

- A. Customer service standards. The Township hereby adopts the customer service standards set forth in Section 76.309 of Part 47 of the FCC's rules and regulations, 47 C.F.R. § 76.309. Blue Ridge shall comply in all respects with the customer service requirements established by the FCC. Additionally, Blue Ridge shall have a publicly listed telephone number by which persons can communicate with Blue Ridge. Blue Ridge shall comply with § A188-22B through F so long as they are consistent with applicable FCC rules and regulations.
- B. Notices.
- (1) Blue Ridge shall provide written notice and information to each subscriber upon initial subscription and at intervals not more than one year thereafter, annually to the Township, and at any time upon request by the Township or a subscriber, concerning each of the following areas:
- (a) Products and services offered;
 - (b) Prices and options for programming services and conditions of subscription to programming and other services;

- (c) Installation and service maintenance policies;
 - (d) Instructions on how to use the cable service and any converters;
 - (e) Channel positions and programming carried on the cable system;
 - (f) Customer service requirements contained in this section;
 - (g) Billing and customer complaint procedures;
 - (h) Blue Ridge's addresses, telephone numbers and office hours;
 - (i) The subscriber's right to obtain a parental control device; and
 - (j) A notice of subscriber privacy rights as required by federal law.
- (2) Blue Ridge shall make reasonable efforts to provide subscribers and the Township with 30 days' advance notification of any changes in services within its control including, but not limited to, the deletion of channels from the basic service tier or the movement of any channel from one service tier to another service tier. Blue Ridge shall also provide subscribers and the Township with 30 days' advance notification of any changes in rates to be charged subscribers for service tiers, installation or any other cable services provided by Blue Ridge. This notification shall not be required for the offering of any particular pay-per-view programming. Blue Ridge shall also not be required to provide prior notice to subscribers of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the Commonwealth of Pennsylvania or the Township on the transaction between Blue Ridge and the subscriber.
- (3) Blue Ridge shall maintain such files as required by the FCC to be made available to the public containing all written notices provided to subscribers pursuant to the requirements contained herein and containing a copy of printed promotional material submitted to subscribers during the previous 24 months.
- (4) Blue Ridge shall provide sample bills, showing the cost to the subscriber of each service tier package, including the franchise fee, to the Township upon request.

C. Subscriber bills.

- (1) Bills shall be clear, concise and understandable and will be itemized in accordance with FCC or other federal and state requirements. Bills must be fully itemized, with itemizations including, but not limited to basic service tier (when ordered as a stand-alone service), standard tier and premium tier service charges, if applicable, equipment charges and any installation or repair charges. The bill shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.
- (2) Blue Ridge shall include on the face of each bill the name of and contact information for Blue Ridge.

- (3) Blue Ridge shall include on the face of each bill the name of the municipality to which each subscriber is assigned by Blue Ridge. Upon written request from the Township, Blue Ridge shall not include the municipality's telephone number on the face of the bill.
 - (4) Blue Ridge shall provide bill payment facilities at its local business office to accept such payments at least during normal business hours.
 - (5) With respect to advance billing, late fees, and the collection of past due debts owed to it by subscribers, Blue Ridge may exercise its rights under and shall comply with applicable law.
- D. Subscriber complaint procedures. Blue Ridge shall establish clear, written procedures for resolving all subscriber complaints, which shall include at least the following:
- (1) Blue Ridge shall provide the subscriber with a written response to a written complaint addressed to the local business office within 15 days of its receipt. Such response shall include the fact that the complaint has been received, the results of its initial inquiry into the subject matter of the complaint and either its decision based on those results, or its need to perform further investigation into the complaint. If Blue Ridge needs to perform further investigation, it shall provide the subscriber with a written response containing its decision when its investigation is completed. Upon request, a copy of Blue Ridge's written response(s) shall be sent to the Township.
 - (2) If the Township is contacted directly about a subscriber complaint, it shall refer the subscriber to Blue Ridge.
 - (3) Any subscriber who, in good faith, disputes all or part of any bill sent by Blue Ridge has the option of withholding the disputed amount or the initiation of collection procedures until Blue Ridge has investigated the dispute in good faith and has made a determination that the amount is owed provided that:
 - (a) The subscriber provides a written complaint to Blue Ridge in a timely fashion and includes identifying information;
 - (b) The subscriber pays all undisputed charges; and
 - (c) The subscriber cooperates in determining the appropriateness of the charges in dispute.
 - (4) Blue Ridge shall maintain a record of trouble calls received by Blue Ridge that have generated a service response action in the Township. Upon request, Blue Ridge shall make available to the Township a copy of such records. Blue Ridge agrees to maintain such records for at least 36 months from the date of receipt. If the Township believes that there has been an increase in trouble calls, it may request a trouble call report and request that Blue Ridge conduct an inquiry concerning trouble calls or a service-related issue. Blue Ridge shall complete the inquiry and provide the Township with a written report no later than 60 days after the request is received by Blue Ridge.

- E. Disconnection. Blue Ridge may disconnect or terminate a subscriber's service for cause, if:
- (1) At least 30 days have elapsed from the due date of the bill which subscriber has failed to pay; and
 - (2) Blue Ridge has provided at least 10 days' written, email or telephone notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection; and
 - (3) At any time and without notice Blue Ridge determines in good faith that the subscriber has tampered with or abused Blue Ridge's equipment or is engaged in theft of cable service or has provided false information with regard to subscriber's account; and
 - (4) The subscriber refuses or fails to provide adequate security for payment after filing for relief under bankruptcy laws.
- F. Privacy.
- (1) Blue Ridge shall respect the rights of privacy of every subscriber and shall not violate such rights through the use of any device or signal associated with the cable system. Blue Ridge shall at all times comply with the privacy provisions of Section 631 of the Cable Act, 47 U.S.C. § 551, and all other applicable federal and state privacy laws and regulations.
 - (2) Blue Ridge shall be responsible for carrying out and enforcing such privacy policy, and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.
 - (3) Upon a request by a subscriber, Blue Ridge shall make available for inspection at a reasonable time and at its principal place of business all personal subscriber information that Blue Ridge maintains regarding said subscriber. Blue Ridge shall ensure that all information related to billing and service requests is accurate and up-to-date and shall promptly correct any errors upon discovery.
 - (4) All references in this section are subject to the provision of Public Law No. 107-56 (October 26, 2001), Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, known as the "USA Patriot Act."

§ A188-23. Oversight and regulation by Township.

- A. Franchise fees. Blue Ridge shall pay to the Township a franchise fee in an amount equal to 5% of annual gross revenue received from the operation of the cable system to provide cable service in the franchise area. Said franchise fee may be increased not more than once annually at the sole and exclusive election of the Township to an amount not to exceed the maximum amount allowed by law, upon 180 days' prior written notice to Blue

Ridge. The payment of franchise fees shall be made on a quarterly basis and shall be due 45 days after the close of each calendar quarter and 60 days after the end of the fourth quarter of the year. Each franchise fee payment shall be accompanied by a report prepared by a representative of Blue Ridge, which shows the basis for the computation of all gross revenue actually received from the operation of the cable system for the provision of cable service in the franchise area during the period for which such franchise fee payment is made.

B. Franchise fees subject to inspection.

- (1) Upon reasonable prior written notice, during normal business hours, at Blue Ridge's principal business office, the Township shall have the right to inspect Blue Ridge's financial records used to calculate the Township's franchise fees; provided, however, that any such inspection shall take place within 36 months from the date the Township receives such payment, after which period any such payment not contested by the Township shall be considered final.
- (2) Upon 20 days' prior written notice, the Township shall have the right to inspect and make extracts at Blue Ridge's local office of the financial records of Blue Ridge for the purpose of verifying or identifying revenue owed to the Township. Where, in the opinion of the Township, they are reasonably necessary to verify or supplement Blue Ridge's records, the Township may request, and Blue Ridge shall use its best efforts to obtain and furnish, financial records of affiliates providing cable service in the cable system and make the same available for inspection by the Township at the office of the Township. Upon completion of any such inspection by the Township, the Township shall provide to Blue Ridge a final report, which sets forth the Township's findings in detail, including any and all substantiating documentation. Blue Ridge shall have 30 days from the receipt of the report to provide the Township with a written response, including any substantiating documentation. Any finally settled amount(s) due to the Township as a result of such inspection shall be paid to the Township by Blue Ridge within 30 days from receipt of written notice of the acceptance of such finally settled amount from the Township. For purposes of this section, the term "finally settled amount(s)" shall mean the agreed upon underpayment, if any, to the Township by Blue Ridge as a result of any such inspection. The Township shall bear the expense of any inspection of Blue Ridge's books and records.
- (3) In the event that any franchise fee or other payment is not made or the requisite documentation and certification is not provided on or before the applicable dates heretofore specified, interest shall be compounded daily and set at the one-year United States Treasury Bill rate existent on the date payment was due. Any amount recomputed to reflect the correct payment due shall bear annual interest as described from the date such payment was originally due.
- (4) On an annual basis, upon 30 days' prior written notice given on or prior to September 30 of the year following that for which franchise fees have been paid, the Township shall have the right to conduct an independent audit of Blue Ridge's records and the records of its affiliates providing cable service in the cable system reasonably related to the sources, amounts and computation of gross revenue in

accordance with generally accepted accounting principles. In the event that an audit finds an underpayment, Blue Ridge shall pay the amount owed, and if such amount owed is 3% or more, Blue Ridge will pay the cost of such audit.

- C. Oversight of franchise and testing for compliance. In accordance with applicable law, the Township shall have the right to oversee, regulate and, on reasonable prior written notice, periodically inspect the construction, operation and maintenance of the cable system in the franchise area, and all parts thereof, as necessary to monitor Blue Ridge's compliance with the provisions of this franchise agreement. Upon written request of the Township, Blue Ridge shall furnish a copy of all technical tests performed on the cable system by it or on its behalf to the Township at no cost or expense to the Township.
- D. Technical standards. Blue Ridge shall comply with all applicable technical standards of the FCC as published in Subpart K of 47 C.F.R. 76. To the extent those standards are altered, modified, or amended during the term of this franchise, Blue Ridge shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective.
- E. Maintenance of books, records, and files.
- (1) Books and records. Throughout the term of this franchise agreement, Blue Ridge agrees that the Township, upon reasonable prior written notice to Blue Ridge, may review such of Blue Ridge's books and records regarding the operation of the cable system and the provision of cable service in the franchise area which are reasonably necessary to monitor Blue Ridge's compliance with the provisions of this franchise agreement at Blue Ridge's local business office, during normal business hours and without unreasonably interfering with Blue Ridge's business operations. Such books and records shall include any records required to be kept in a public file by Blue Ridge pursuant to the rules and regulations of the FCC. All such documents pertaining to financial matters that may be the subject of an inspection by the Township shall be retained by Blue Ridge for a period not to exceed three years.
 - (2) File for public inspection. Throughout the term of this franchise agreement, Blue Ridge shall maintain at the appropriate location pursuant to FCC Public Inspection File regulation, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.
 - (3) Proprietary information. Notwithstanding anything to the contrary set forth in this § A188-23, Blue Ridge shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Township agrees to treat any information disclosed by Blue Ridge as confidential and only to disclose it to employees, representatives, and agents of the Township that have a need to know, or in order to enforce this franchise agreement and who agree in writing to maintain the confidentiality of all such information, except to the extent such information or records are not exempt from disclosure or are considered a public record within the Right to Know Act, 65 P.S. §§ 66.1 to 66.4,⁵ or any other

5. Editor's Note: See now 65 P.S. § 67.101 et seq.

open records laws. In the event a request is made by an individual or entity not an employee, agent or representative of the Township or by an employee, agent or representative of the Township not acting in his or her official capacity for information related to the franchise and marked by Blue Ridge as confidential and/or proprietary, the Township shall permit Blue Ridge to protect its interests to the extent permitted by law (e.g., if such information is exempt from disclosure or not considered a public record within the Right to Know Act) before providing documents or access to documents to the requestor. Blue Ridge shall reimburse the Township for any reasonable expense related to protecting Blue Ridge's rights, including attorneys' fees, incurred as a result of permitting Blue Ridge to protect its interests. Blue Ridge shall not be required to provide subscriber information in violation of Section 631 of the Cable Act, 47 U.S.C. § 551. For purposes of this § A188-23, the terms "proprietary or confidential" include, but are not limited to, information relating to the cable system design, subscriber lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by Blue Ridge to be competitively sensitive.

§ A188-24. Insurance and indemnity.

- A. Insurance. Throughout the term of this franchise agreement, Blue Ridge shall, at its own cost and expense, maintain comprehensive general liability insurance and provide to the Township certificates of insurance designating the Township and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that Blue Ridge has obtained the insurance required in this § A188-24. Such policy or policies shall be in the minimum amount of \$3,000,000 per occurrence for bodily injury or death to any one person, and \$3,000,000 per occurrence for bodily injury or death of any two or more persons resulting from one occurrence, and \$1,000,000 per occurrence for property damage resulting from any one accident, and \$500,000 per occurrence for libel and slander associated with programming on channels that are directly or indirectly controlled by Blue Ridge. Such policy or policies shall be noncancelable except upon 30 days' prior written notice to the Township. Blue Ridge shall provide workers' compensation coverage in accordance with applicable law.
- B. Indemnification. Blue Ridge shall indemnify, defend and hold harmless the Township, its elected and appointed officials, officers, employees, and agents, from and against any liability, damages or claims which arise out of the construction, operation, maintenance or removal of the cable system, including, but not limited to, reasonable attorneys' fees, provided that the Township shall give Blue Ridge written notice of its obligation to indemnify the Township within 10 business days of receipt of a claim or action pursuant to this § A188-24. If the Township determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Township.

§ A188-25. System description; service.

- A. Complimentary service.

- (1) Blue Ridge shall provide without charge one outlet of standard nonpremium service (i.e., basic and standard service exclusive of premium channels) including the requisite converter box or other requisite equipment for signal reception to all public and private elementary and secondary schools in the franchise area which receive Title I funding and to the Township municipal buildings. The buildings and facilities to be connected with complimentary service as of the date of this agreement are identified in Exhibit A,⁶ attached hereto and made a part hereof.
- (2) Within three months of the effective date of this agreement, Blue Ridge shall supply, at no charge to the Township, high-speed internet service via cable modem to one Township building to be designated by the Township. No charge shall be made for installation or service. The cable modem internet service shall meet the needs of the Township and shall be provided at a minimum of the level of speed and capacity that is being utilized in the building as of the effective date of the agreement. There is no restriction on networking the service within the designated building.
- (3) Blue Ridge shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to such premises exceeds 125 feet of cable unless the appropriate municipal entity agrees to pay the difference between Blue Ridge's cost of installing a one-hundred-twenty-five-foot drop and the cost of installing a longer drop. In the event more than one outlet is provided to such buildings, the municipality shall pay the usual installation and service fees associated therewith.

B. Education and government channel.

- (1) The Township reserves the right to obtain from Blue Ridge, within 60 days of a written request by the Township, an educational and governmental ("EG") channel in accordance with Section 611 of the Cable Act for exclusive use by the Township and/or its designee. The digital channel shall be used for the programming related to community, governmental and/or educational activities. The Township shall have complete control over the content, scheduling, administration and all other aspects of the EG channel and may delegate certain or all of such functions to an appropriate designee. Blue Ridge shall not exercise any editorial control over EG channel programming.
- (2) The Township may obtain the EG channel pursuant to this § A188-25B upon the earlier of the following two events:
 - (a) When Blue Ridge has converted its cable system to a fully digitized transmission (i.e., Blue Ridge no longer utilizes the analog spectrum for transmitting cable programming); or,
 - (b) Four years from the effective date of this agreement.
- (3) To enable the Township and/or its designees to utilize the EG channel, the Township shall select, and Blue Ridge shall connect to the cable system, a mutually agreeable remote origination point. Blue Ridge shall provide and install,

6. Editor's Note: Said exhibit is included at the end of this chapter.

at its sole cost and expense, within 60 days of receiving notice from the Township that it wishes to obtain an EG channel, cable, wires, lines and/or other necessary signal distribution equipment such that live or tape playback of cablecasts or other programming can originate from the selected location and be distributed via the cable system to subscribers in the Township. Those cables, wires, lines and other signal distribution equipment shall be collectively known as the "return line." Blue Ridge shall distribute the video signals for the EG channel in high quality resolution and shall cablecast the signals on the digital basic service tier.

- (4) The Township and Blue Ridge agree that any and all costs incurred by Blue Ridge for providing the EG channel and supporting such channel, including any and all equipment, maintenance and repair, may be designated as "costs of franchise requirements" or "external costs" as defined by the FCC, except as it is mutually agreed that such costs shall not be itemized on subscribers' bills.
 - (5) Blue Ridge shall not be obligated to provide the Township with studio equipment (i.e., camera, lights, microphones, office furnishings, etc.) under this EG channel provision.
- C. System capacity. During the term of this agreement, Blue Ridge's cable system shall be capable of providing a minimum of 70 channels of video programming with reception available to its subscribers in the franchise area that meets the FCC's technical standards.
- D. System specifications. Blue Ridge shall maintain and operate a cable system(s) covering the Township which utilizes at the time of the effective date fiber optic receiver nodes located throughout the plant that divides the distribution of cable signals to subscribers in a manner which provides high quality programming signals and reliable service. Blue Ridge represents and warrants that this cable system is built for digital television standards with a bandwidth no less than 750 MHz with addressable technology with video channels reserved for digital or analog transmission and with sufficient portion of said bandwidth delivering reliable two-way cable services.
- E. New services.
- (1) Throughout the term of this agreement, Blue Ridge shall construct, operate, maintain and upgrade the cable system consistent with the following provisions: Blue Ridge has recently upgraded its cable system within the Township and in the surrounding communities. In the event that additional future upgrades are performed in any communities served by Blue Ridge in Lancaster County, Pennsylvania, the Township shall have the option to request a similar future upgrade. The Township will receive new services, associated equipment and facilities without request to the extent reasonably feasible; otherwise, Blue Ridge will provide the service as soon as practical whenever the Township provides written notice to Blue Ridge of its request for such service(s), associated equipment and facilities and after both parties determine that such service(s), associated equipment and facilities are provided in any of the communities identified in Exhibit B.⁷ The Township may not make such request more than one

7. Editor's Note: Said exhibit is included at the end of this chapter.

year after receiving an annual report, as referenced below. Blue Ridge shall be in compliance with this provision as long as the technical quality of the services, associated equipment and facilities is substantially comparable to the communities identified in Exhibit B.

- (2) Within 180 days from the third anniversary of the effective date of this agreement and annually thereafter, the Township may request from Blue Ridge a written report describing new services. Upon such request, Blue Ridge shall provide the Township with a report describing any and all new services, associated equipment and facilities which have been introduced in the prior year in the communities identified in Exhibit B,⁸ and for purposes of information only shall provide information regarding new services, associated equipment and facilities introduced by Blue Ridge within the service area in the prior year. Notwithstanding the foregoing, Blue Ridge shall not be required to provide any new services, associated equipment and facilities unless and until the Township has approved a rate plan, where such approval is required by applicable law, that will allow full recovery of the cost of providing any such new services over the then remaining term of the franchise or over five years, whichever is longer.

§ A188-26. Subscriber service rates.

To the extent permitted by Section 623 of the Cable Act, 47 U.S.C. § 543, and the regulations promulgated thereunder, and to the extent permitted by future amendments to the Cable Act, the Township hereby reserves the right to regulate the rates charged by Blue Ridge for cable service provided by the cable system, to enforce regulations prescribed by the FCC, and to file complaints challenging a rate as unreasonable to the extent permitted by federal and state law including, but not limited to, the Cable Act.

§ A188-27. Transfer, assignment and foreclosure.

- A. The franchise herein granted is personal to Blue Ridge. It cannot be transferred, leased, assigned or disposed of as a whole, or in part, either by sale of stock, forced sale, merger, consolidation, change in control of Blue Ridge, or otherwise, without the prior written consent of the Township expressed by ordinance, which consent shall not be unreasonably withheld, and then only under such conditions as may be therein prescribed. Subject to compliance by the transferee or assignee with the provisions of § A188-27E below, no such consent shall be required for a transfer in trust, by mortgage, hypothecation, or by assignment of any right, title, or interest of Blue Ridge in the franchise or in the cable system in order to secure indebtedness, or a transfer to an entity presently owned and/or controlled by Blue Ridge. For purposes of this § A188-27A only, the phrase "owned and/or controlled" shall mean an instance where Blue Ridge or one of its subsidiaries is the majority owner of 51% or more of the voting stock of the transferee or assignee or where Blue Ridge has and continues to have the right to make management decisions concerning the transferee or assignee.

8. Editor's Note: Said agreement is included at the end of this chapter.

- B. Blue Ridge shall make written application to the Township for the Township's consent described in § A188-27A above. As part of such application, Blue Ridge shall provide the Township with all information required by FCC Form 394 and any other applicable federal, state and local laws and regulations regarding transfer or assignment or change of control.
- C. Any foreclosure or judicial sale of all, or any part, of the cable system shall be considered a default under this agreement. Initiation of any such proceedings shall be treated as a notification of a change of control of Blue Ridge.
- D. The consent of the Township to any transfer or assignment or change of control as described above shall be provided only after a public hearing before the Board of Supervisors. Blue Ridge shall be given notice of any such public hearing, and Blue Ridge shall be afforded an opportunity to be heard at any such hearing.
- E. Any consent by the Township for any transfer or assignment or change of control 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.
- F. The Township shall have the right to terminate this franchise 120 days after the election or appointment of a receiver or trustee to take over and conduct the business of Blue Ridge, whether in receivership, reorganization, bankruptcy, or other action or proceedings, unless such receivership or trusteeship shall have been vacated prior to the expiration of the 120 days, or unless:
 - (1) Within 120 days after the election or appointment, such receiver or trustee shall have fully complied with all provisions of this agreement and remedied all defaults thereunder; and
 - (2) Within said 120 days such receiver or trustee shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this agreement.

§ A188-28. Franchise violations; damages; revocation.

- A. Violations.
 - (1) If the Township has reason to believe that Blue Ridge violated any provision of this agreement, it shall notify Blue Ridge in writing, by certified mail, of the nature of such violation and the section of this agreement which it believes has been violated.
 - (2) If Blue Ridge does not dispute the violation within 30 days after written notice is received by Blue Ridge, then Blue Ridge shall have an additional 60 days to cure such violation. If the nature of the violation is such that it cannot be fully cured within 90 days due to circumstances outside of Blue Ridge's control, the period of time in which Blue Ridge must cure the violation shall be extended by the Township in writing for such additional time necessary to complete the cure,

provided that Blue Ridge shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the Township. If Blue Ridge is given written notice once in accordance with § A188-28A(1) above, the Township need not notify Blue Ridge a second time for the same violation, and Blue Ridge shall be liable for liquidated damages in accordance with § A188-28B without an additional opportunity to cure. In the event of a dispute regarding a violation, liquidated damages shall be assessed retroactively to the date of violation only if a court of competent jurisdiction makes a determination of violation or if Blue Ridge and the Township reach an agreement which provides for liquidated damages to be assessed against Blue Ridge. Notwithstanding the foregoing, Blue Ridge shall not be held liable or responsible under this agreement for work delays caused by waiting for utility providers to service or monitor their own utility poles on which Blue Ridge's cable and/or equipment is attached, as well as for unavailability of materials and/or qualified labor to perform the work necessary.

B. Liquidated damages.

- (1) Because Blue Ridge's failure to comply with provisions of this agreement may result in injury to the Township and because it will be difficult to measure the extent of such injury, the Township may assess liquidated damages against Blue Ridge in the following amounts, provided Blue Ridge has had an opportunity to cure in accordance with § A188-28A(2). Such damages shall not be a substitute for specific performance by Blue Ridge or for other penalties imposed by other laws or regulation.
- (2) For the liquidated damages set forth in this section, the maximum period for assessing liquidated damages for each single occurrence of noncompliance shall be 60 days. The first day for which damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period.
- (3) The exercise of liquidated damages by the Township shall not release Blue Ridge from its obligations or from any liability under this agreement, except with regard to any breach for which liquidated damages are paid as provided in this section or as necessary to avoid duplicative recovery from or payments by Blue Ridge. During such time period as the Township elects to assess liquidated damages for an alleged breach, that remedy shall be the sole remedy for the breach for that time period. Nothing contained in this section shall be construed to permit duplicative recovery from or payment by Blue Ridge.
 - (a) For failure to comply with the technical requirements: \$150 per day for each day the violation continues;
 - (b) For failure to provide and maintain cable service: \$100 per day for each day the violation continues;
 - (c) For failure to obtain and maintain construction permits: \$50 per day for each day the violation continues;

- (d) For failure to make repairs and restorations: \$100 per day for each day the violation continues;
- (e) For failure to disconnect, relocate, or remove equipment: \$100 per day for each day the violation continues;
- (f) For failure to obtain permission for removal of trees: \$100 per day for each day the violation continues;
- (g) For failure to comply with any customer service standard set forth in § A188-22: \$100 per day for each day the violation continues;
- (h) For failure to cooperate with the right of inspection: \$150 per day for each day the violation continues;
- (i) For failure to submit reports in a timely fashion: \$50 per day for each day the violation continues;
- (j) For failure to provide a performance bond: \$200 per day for each day the violation continues;
- (k) For failure to carry all the insurance required: \$150 per day for each day the violation continues;
- (l) For failure to comply with transfer or renewal provisions: \$150 per day for each day the violation continues; and
- (m) For failure to comply with removal of system provision: \$300 per day for each day the violation continues.

C. Performance bond.

- (1) Blue Ridge shall obtain, at its sole cost and expense, within 30 days of the execution of this franchise, and shall maintain during the franchise term, a performance bond running in favor of the Township to secure faithful performance by Blue Ridge of any and all obligations under this agreement. Such financial security shall be issued by a bonding company in the form of a surety bond provided that said bonding company is authorized to conduct such business within the Commonwealth and is listed on United States Treasury Circular 570. This performance bond, however, shall not limit the liability of Blue Ridge for any failure to perform its obligations under this agreement.
- (2) The performance bond shall be in the amount of \$25,000. Blue Ridge shall not reduce, cancel, or change said bond from the requirements contained herein without the express prior written permission of the Township.
- (3) The Township shall make no claim against the bond unless and until a court of competent jurisdiction makes a determination that damages (whether liquidated damages or otherwise) are due and payable to the Township.

D. Revocation.

- (1) In addition to the other rights, remedies and powers reserved or retained by the Township under this agreement or otherwise, the Township reserves the right to lawfully terminate the franchise and all rights and privileges of Blue Ridge or any successor thereto in the event of a material breach of the terms and conditions of this agreement, in accordance with the notice and opportunity to cure provisions. In interpreting this agreement, material provisions shall include all provisions labeled as such and all others, which, under all the facts and circumstances indicated, are a significant provision of this agreement. A material breach by Blue Ridge shall include, but is not limited to, the following acts and omissions:
 - (a) Blue Ridge knowingly practices any fraud or deceit upon the Township in its operation of its cable system or any other activities pursuant to this agreement;
 - (b) Blue Ridge repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in this agreement;
 - (c) Blue Ridge fails to remit a franchise fee or other payment together with any requisite statement or certification.
 - (d) Blue Ridge fails to operate over 25% of the cable system (as determined by lineal miles or portions thereof) for a period in excess of 15 consecutive days except when approval of such interruption is obtained from the Township.
 - (e) A court of competent jurisdiction orders the assumption or custody or sequestration of all or a significant part of the cable system.
 - (f) Blue Ridge fails to maintain the required insurance and performance bond.
 - (g) Blue Ridge fails to comply with any federal, state, county or Township law, code, ordinance, rule or regulation for which liquidated damages, a fine or penalty may be assessed against Blue Ridge.
- (2) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Blue Ridge or occurs as a result of a force majeure or of circumstances beyond its control. Blue Ridge shall not be in violation of this agreement and no revocation shall be effected if Blue Ridge is prevented from performing its duties and obligations or observing the terms and conditions of this franchise by any acts of God, labor disputes, manufacturers' or contractors' inability to timely provide personnel or material or other causes of like or different nature beyond the control of Blue Ridge. Furthermore, the parties hereby agree that it is not the intention of the Township to subject Blue Ridge to revocation by the Township where the violation was a good faith error that resulted in no or minimal negative impact on subscribers within the service area, or where strict performance would result in practical difficulties and hardship to Blue Ridge which outweigh the benefit to be derived by the Township or subscribers.
- (3) This franchise may be revoked only by a written decision of the Board of Supervisors after an appropriate public hearing affording Blue Ridge due process

and full opportunity to be heard, to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with federal law. All notice requirements shall be met by providing Blue Ridge at least 60 days' prior written notice, having been served upon Blue Ridge by certified mail, return receipt requested, of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The Board of Supervisors, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by Blue Ridge of mitigating circumstances or good cause for the existence of such grounds. Nothing herein shall be deemed to be a waiver of the rights of Blue Ridge under federal and state law with regard to the revocation of a cable franchise.

- E. Equitable and other relief. In addition to or in lieu of the penalties provided in § A188-28B of this agreement, the Township may commence actions in equity or at law for violations of this agreement.
- F. Removal of equipment. Upon abandonment of its system or the voluntary relinquishment of the franchise granted under this agreement, the Township shall have the right to require that Blue Ridge remove its supporting structures, poles, transmission and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways and other public and private places, in, over, under or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six months of such abandonment or relinquishment, the Township or property owner may deem any property not removed as having been abandoned and the Township may remove it at Blue Ridge's cost.

§ A188-29. Compliance with applicable laws and ordinances.

Blue Ridge shall, at all times during the term of this agreement, be subject to the exercise of the police power by the Township and to such lawful ordinances, rules and regulations as the Township shall hereafter adopt pursuant to such power(s). There is hereby reserved to the Township every right and power which is required to be herein reserved or provided by any ordinance, rule or regulation of the Township, and Blue Ridge shall comply with any lawful action or lawful requirements of the Township in its exercise of such right or power heretofore or hereafter enacted or established. Blue Ridge shall comply with all ordinances, codes, statutes, rules and regulations of the Township, to the extent they are not contrary to the terms of this agreement, the County of Lancaster, the Commonwealth of Pennsylvania, and the United States of America which are now in effect or hereafter enacted.

§ A188-30. Waiver.

- A. No course of dealing between the Township and Blue Ridge nor the failure of the Township to enforce or to timely enforce any provision of this agreement or any federal, state or local law, code, ordinance, rule or regulation shall be deemed to be a waiver of, or acquiescence in the actions of Blue Ridge in contravention of, that or any other provision, law, code, ordinance, rule or regulation.

- B. No course of dealing between the Township and Blue Ridge nor the failure of Blue Ridge to enforce or to timely enforce any provision of this agreement or any federal, state or local law, code, ordinance, rule or regulation shall be deemed to be a waiver of, or acquiescence in the actions of the Township in contravention of, that or any other provision, law, code, ordinance, rule or regulation.
- C. Any waiver of any provision of this agreement or federal, state or local law, code, ordinance, rule, or regulations shall be in writing and operate only as a waiver as expressed in such writing, signed by both parties, and shall not be of any other force or effect.

§ A188-31. Miscellaneous provisions.

- A. This franchise is subject to all orders, rules and/or regulations of the FCC or other federal or state agencies applicable to a cable system and such other orders, rules and/or regulations as any such agency or agencies may from time to time adopt. In the event any such agency ceases to exist or revokes any applicable orders, rules and/or regulations, Blue Ridge and the Township shall meet and discuss what amendments, if any, would be appropriate to be made to this agreement.
- B. Nothing herein contained shall be construed to be a representation by the Township, or any of its officers, agents or employees, that the authorization of this nonexclusive franchise is within the authority of the Township to grant. Further, the granting of this franchise under this agreement by Ordinance shall not be construed as an undertaking or guarantee by the Township of the efficiency of Blue Ridge or maintenance of service by Blue Ridge. It is fully understood that the Township assumes no responsibility for the acts or omissions of Blue Ridge other than to require, to the extent the Township elects to do so, compliance with this agreement.
- C. Blue Ridge shall comply with all applicable federal and state antitrust laws and regulations.
- D. If for any reason of force majeure, Blue Ridge is unable in whole or in part to carry out its obligations hereunder, Blue Ridge shall not be deemed in violation of this agreement during the continuance of such inability. The term "force majeure" as used herein shall have the following meaning: acts of God; acts of public enemies, orders of any kind of the government of the United States of America or of the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; strikes or labor disputes; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; tornados; tsunamis; washouts; droughts or other catastrophic act of nature; explosions; and partial or entire failure of utilities.
- E. 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:

The Township:

West Earl Township
157 West Metzler Road
P.O. Box 787
Brownstown, PA 17508

with a courtesy copy to:

Morgan, Hallgren, Crosswell & Kane,
P.C.
700 North Duke Street
P.O. Box 4686
Lancaster, Pennsylvania 17604-4686

Blue Ridge:

Blue Ridge Communications
804 Academy Heights Avenue
P.O. Box 150
Ephrata, PA 17522
Attention: Government Affairs

- F. This franchise agreement, including all exhibits, embodies the entire understanding and agreement of the Township and Blue Ridge with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with the provisions of this franchise agreement are superseded by this franchise agreement.
- G. 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.
- H. This franchise agreement shall be deemed to be executed in the Township of West Earl, Lancaster County, Pennsylvania, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, as applicable to contracts entered into and performed entirely within the Commonwealth.
- I. 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 Township and Blue Ridge, which amendment shall be authorized on behalf of the Township through the adoption of an appropriate resolution or order by the Township, as required by applicable law.
- J. The effective date of this agreement shall be the date of ordination and enactment of the agreement by ordinance duly enacted by the Board of Supervisors.

§ A188-32. Repeals.

All provisions of prior ordinances and parts of prior ordinances are repealed insofar as they be inconsistent with this agreement.

CABLE FRANCHISE AGREEMENT

A188 Attachment 1

Township of West Earl

**Comcast Exhibit A
Complimentary Service Locations**

Section A188-9A: Complimentary Service Locations

West Earl Township Administrative Office
157 West Metzler Road
P.O. Box 787
Brownstown, PA 17508

West Earl Township Police Department
157 West Metzler Road
P.O. Box 787
Brownstown, PA 17508

West Earl Fire Company
14 School Lane Avenue
Brownstown, PA 17508

Brownstown Elementary School
50 School Lane
Brownstown, PA 17508

Basic and Standard Video Service for all; internet access for Brownstown Elementary School and Township Administrative Office.

CABLE FRANCHISE AGREEMENT

A188 Attachment 2

Township of West Earl

**Comcast Exhibit B
New Services**

Section A188-9D: New Services

Manheim Township

Warwick Township

Lancaster City

CABLE FRANCHISE AGREEMENT

A188 Attachment 3

Township of West Earl

**Blue Ridge Exhibit A
Complimentary Service Locations**

Section A188-25A: Complimentary Service Locations

Basic and Standard Video Service

West Earl Township Municipal Building
157 West Metzler Road
P.O. Box 787
Brownstown, PA 17508

Brownstown Elementary School
51 School Lane Avenue
Brownstown, PA 17508

West Earl Fire Company
14 School Lane Avenue
Brownstown, PA 17508

Farmersville Fire Company
74 East Farmersville Road
Ephrata, PA 17522

Basic and Standard Video Service and High Speed Internet Service

See § A188-25.

CABLE FRANCHISE AGREEMENT

A188 Attachment 4

Township of West Earl

**Blue Ridge Exhibit B
New Services**

Section A188-25E: New Services

Adamstown Borough

East Cocalico Township

Ephrata Borough

West Cocalico Township

West Earl Township