

**COUNCIL OF THE CITY OF ABERDEEN**  
**Ordinance No. 22-O-02**

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**Date Introduced:** March 14, 2022

**Sponsored By:** Councilman Adam Hiob and Councilwoman Sandra Landbeck

**Public Hearing:** March 28, 2022

**Amendments Adopted:** None

**Date Adopted:** April 11, 2022

**Date Effective:** May 2, 2022

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**AN ORDINANCE** concerning

**COMCAST CABLE TELEVISION FRANCHISE AGREEMENT**

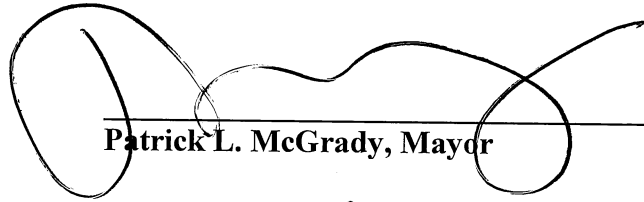
**FOR** the purpose of approving a new cable television franchise agreement with Comcast of Harford County, LLC.

**EXPLANATORY STATEMENT:** The City of Aberdeen has negotiated a new ten (10) year, non-exclusive, franchise agreement with Comcast of Harford County, LLC, for Comcast to provide cable television services within the corporate limits of the City. The Aberdeen City Council has reviewed the Agreement and believes that approval of this Agreement is in the interests of the City and its residents. Now, therefore,

**SECTION 1. BE IT ENACTED BY THE COUNCIL OF THE CITY OF ABERDEEN,** that a certain “Cable Franchise Agreement Between City of Aberdeen and Comcast of Harford County, LLC”, a copy of which is attached to this Ordinance and incorporated herein, is hereby approved, and the Mayor is authorized to execute the Agreement on behalf of the City.

**SECTION 2. AND BE IT FURTHER ENACTED BY THE COUNCIL OF THE CITY OF ABERDEEN** that this Ordinance shall become effective at the expiration of twenty (20) calendar days following adoption.

**COUNCIL OF THE CITY OF ABERDEEN**



**Patrick L. McGrady, Mayor**



**Adam M. Hiob, Councilman**

**Jason W. Kolligs, Councilman**



**Sandra J. Landbeck, Councilwoman**

**Timothy W. Lindecamp, Councilman**

**ATTEST:**

**SEAL:**

  
**Monica A. Correll, City Clerk**

**Date** April 11, 2022

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CABLE FRANCHISE AGREEMENT  
BETWEEN  
CITY OF ABERDEEN  
AND  
COMCAST OF HARFORD COUNTY, LLC

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**FRANCHISE AGREEMENT**

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the City of Aberdeen (hereinafter, "City" or "Franchising Authority") and Comcast of Harford County, LLC (hereinafter, "Grantee").

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

**SECTION 1 - Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 - 631 (the "Cable Act"), unless otherwise defined herein. Words not defined in the Cable Act or herein shall be given their common and ordinary meaning.

1.1. "Cable Service" or "Service" means the one-way transmission to Subscribers of Video Programming or other Programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other Programming service.

1.2. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, and as further defined under Section 602 (7) of the Cable Act.

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

1.4. "Effective Date" means the date on which all authorized persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the "Term" section herein.

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

1.6. "Franchise" means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

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

1.8. "Franchise Area" means the present legal boundaries of the City of Aberdeen, Maryland, as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means, as per the requirements set forth herein.

1.9. "Franchising Authority" means the City of Aberdeen, Maryland or the lawful successor, transferee, designee, or assignee thereof.

1.10. "Grantee" shall mean Comcast of Harford County, LLC.

1.11. "Gross Revenue" shall be defined as and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee's Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation: monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services); installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels; fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the City; converter, remote control, and other Cable Service equipment rentals, leases, or sales; Advertising Revenues as defined herein; late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City; revenues from program guides; franchise fees; FCC Regulatory Fees; commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City. Gross Revenues shall not include actual bad debt write-offs, except any portion which is subsequently collected; any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that franchise fees and the FCC regulatory fee shall not be regarded as such a tax or fee; fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees; launch fees and marketing co-op fees; and unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

1.11.1. "Advertising Revenues" means revenues derived from sales of advertising that are made available to Grantee's Cable System subscribers within the City and shall be allocated on a *pro rata* basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

1.11.2. Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

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

1.13. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, park or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Franchise Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and appurtenant to the Cable System. Use of the Public Way by Grantee is subject to reasonable regulation to minimize the interference with, and enable location of, other lawful users of rights-of-way.

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

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

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

2.1. Franchise Grant. The Franchising Authority hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act [47 U.S.C. §546], as amended, and other applicable law.

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

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



1           3.2.   Conditions of Street Occupancy.

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3                 3.2.1. New Grades or Lines. If the grades or lines of any Public Way  
4 within the Franchise Area are lawfully changed at any time during the term of this  
5 Franchise Agreement, then the Grantee shall, upon reasonable advance written  
6 notice from the Franchising Authority (which shall not be less than thirty (30)  
7 business days) and at its own cost and expense, protect or promptly alter or  
8 relocate the Cable System, or any part thereof, so as to conform with any such  
9 new grades or lines. If public funds are available to any similarly situated user of  
10 the Public Way (i.e. telephone, electric utilities, telecommunications, and other  
11 similar wired video services) for the purpose of defraying the cost of any of the  
12 foregoing, the Franchising Authority shall notify Grantee of such funding and make  
13 available such funds to the Grantee. It is understood that the Franchising Authority  
14 does not guarantee that any public or private funds will be available to help defray  
15 the cost of such protection, alteration or relocation.

16  
17                 3.2.2. Relocation at Request of Third Party. The Grantee shall, upon  
18 reasonable prior written request of any Person holding a permit issued by the  
19 Franchising Authority to move any structure, temporarily move its wires to permit  
20 the moving of such structure; provided (i) the Grantee may impose a reasonable  
21 charge on any Person for the movement of its wires, and such charge may be  
22 required to be paid in advance of the movement of its wires; and (ii) the Grantee  
23 is given not less than thirty (30) business days advance written notice to arrange  
24 for such temporary relocation.

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26                 3.2.3. Restoration of Public Ways. If in connection with the  
27 construction, operation, maintenance, or repair of the Cable System, the Grantee  
28 disturbs, alters, or damages any Public Way, the Grantee agrees that it shall at its  
29 own cost and expense promptly replace and restore any such Public Way to a  
30 condition reasonably comparable to the condition of the Public Way existing  
31 immediately prior to the disturbance.

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33                 3.2.4. Safety Requirements. The Grantee shall undertake all  
34 necessary and appropriate efforts to maintain its work sites in a safe manner in  
35 order to prevent failures and accidents that may cause damage, injuries or  
36 nuisances. All work undertaken on the Cable System shall be performed in  
37 substantial accordance with applicable FCC or other federal, state and generally  
38 applicable local regulations. The Cable System shall not endanger or interfere  
39 with the safety of Persons or property in the Franchise Area.

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41                 3.2.5. Trimming of Trees and Shrubbery. The Grantee shall have  
42 the authority to trim trees or other natural vegetative growth encroaching or  
43 overhanging any of its Cable System in the Public Ways ("trimming") so as to  
44 prevent contact with the Grantee's wires, cables, or other equipment, subject to  
45 applicable Maryland Department of Natural Resources required approval and any  
46 required generally applicable City permit. Except in emergency situations or to  
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restore service, Grantee shall provide thirty (30) days' prior notice to the City before any trimming. In any event, Grantee will comply with City generally applicable emergency permit requirements All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any collateral, personal and real property damage caused by such trimming.

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

3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. In the event that public and/or private funds are not available, Grantee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

## **SECTION 4 - Service Obligations**

4.1. General Service Obligation. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) occupied dwelling units per mile and is within one (1) mile as measured in strand footage from the nearest point on the Cable System trunk or feeder line from which a usable cable signal can be obtained. For purposes of this section, a home shall be counted as a “dwelling unit” if, and only if, such home is within three hundred (300) feet of the public right of way. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within one hundred and twenty-five (125) feet of the Grantee’s distribution cable at the standard installation rate. Should, through

1 new construction, an area within the Franchise Area meet the density  
2 requirements, Grantee shall provide Cable Service to such area within one (1) year  
3 after it confirms that the density requirements have been met following notice from  
4 the Franchising Authority that one (1) or more residents has requested service.

5  
6 The Grantee may elect to extend service to areas that do not otherwise  
7 qualify to receive service under this section if any resident or group of residents  
8 agree in writing to pay to Grantee the cost of construction, including materials,  
9 labor, and the total cost of any easement(s) necessary to accomplish the  
10 proposed line extension. One half of the cost of construction shall be paid to the  
11 Grantee prior to engineering and the balance shall be paid prior to installation.

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13 4.2. Programming. The Grantee shall offer to all Customers a diversity  
14 of Video Programming services in accordance with federal law.

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16 4.3. No Unfair Discrimination. Neither the Grantee nor any of its  
17 employees, agents, representatives, contractors, subcontractors, or consultants,  
18 nor any other Person, shall discriminate or permit discrimination between or among  
19 any Persons in the availability of Cable Services provided in connection with the  
20 Cable System in the Franchise Area; provided, however, Grantee reserves the  
21 right to deny service for good cause, including but not limited to non-payment or  
22 theft of service, vandalism of equipment, or documented or founded harassment  
23 or abuse of Grantee's employees or agents. It shall be the right of all Persons to  
24 receive all available services provided on the Cable System so long as such  
25 Person's financial or other obligations to the Grantee are satisfied. Nothing  
26 contained herein shall prohibit the Grantee from offering bulk discounts,  
27 promotional discounts, package discounts, or other such pricing strategies as part  
28 of its business practice.

29  
30 4.4. New Developments. The Franchising Authority shall provide the  
31 Grantee with written notice of the issuance of building or development permits for  
32 planned developments within the Franchise Area requiring undergrounding of  
33 cable facilities. The Franchising Authority agrees to require the developer, as a  
34 condition of issuing the permit, to give the Grantee access to open trenches for  
35 deployment of cable facilities and at least ten (10) business days written notice of  
36 the date of availability of open trenches.

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38 4.5. Prohibition Against Reselling Service. No Person shall resell,  
39 without the express prior written consent of the Grantee, any Cable Service,  
40 program or signal transmitted over the Cable System by the Grantee.

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

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45 5.1. All rates, fees, charges, deposits and associated terms and  
46 conditions to be imposed by the Grantee or any affiliated Person for any Cable  
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1 Service as of the Effective Date shall be in accordance with applicable FCC rate  
2 regulations. Before any new or modified rate, fee, or charge is imposed, the  
3 Grantee shall follow the applicable FCC notice requirements and rules and notify  
4 affected Customers, which notice may be by any means permitted under  
5 applicable law.

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

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11 6.1. Customer Bills. Customer bills shall be designed in such a way as  
12 to present the information contained therein clearly and comprehensibly to  
13 Customers, and in a way that (A) is not misleading and (B) does not omit material  
14 information. Notwithstanding anything to the contrary in Section 6.1, above, the  
15 Grantee may, in its sole discretion, consolidate costs on Customer bills as may  
16 otherwise be permitted by Section 622 (c) of the Cable Act [47 U.S.C. §542 (c)].

17  
18 6.2. Privacy Protection. The Grantee shall comply with all applicable  
19 federal and state privacy laws, including Section 631 of the Cable Act and  
20 regulations adopted pursuant thereto.

21  
22 6.3. Notifications. The Grantee shall provide the Franchising Authority  
23 and Customers an annual notification including its rules and regulations and  
24 customer complaint procedure.

25  
26 6.4. Office. So long as it continues to operate the Cable System, or any  
27 portion thereof in the Franchise Area, Grantee's customer service center shall be  
28 conveniently located and open during Normal Business Hours. In the event that  
29 the Grantee relocates said office, the Grantee agrees that any new location will be  
30 conveniently located to Subscribers, open during Normal Business Hours, and  
31 Grantee shall provide appropriate notice to its Subscribers of the relocation. Prior  
32 to relocating said office, the Grantee agrees to provide sixty (60) day advanced  
33 notice to the Franchising Authority. Grantee shall maintain options for bill payment  
34 and equipment return within the City for the term of this Franchise. Current bill  
35 payment and equipment return options are identified in Exhibit B. The Grantee  
36 may, upon Subscriber request, arrange for pickup and/or replacement of  
37 converters or other company equipment at the subscriber's address or by a  
38 satisfactory equivalent (such as the provision of a postage-prepaid mailer).

39  
40 6.4.1. The Grantee shall provide Subscribers with the option of paying  
41 for Cable Service by check, by phone, by credit card, or through an automatic  
42 payment option where the amount of the bill is automatically deducted from a  
43 checking account. Based on credit and/or payment history, at the option of the  
44 Grantee, the payment alternative may be limited.

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

7.1. Franchise Fees. The Grantee shall pay to the Franchising Authority a franchise fee in an amount equal to three- and one-half percent (3.50%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area. The Franchising Authority may, to the extent permitted by law, upon one hundred twenty (120) calendar days' notice to the Grantee, require the Grantee to negotiate with the Franchising Authority a higher amount up to a maximum of five percent (5%). Grantee agrees to pay any such negotiated higher amount on a going forward basis. However, Grantee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each first, second and third calendar quarter (i.e., May 15, August 15, November 15) and sixty (60) days after the close of the calendar year (last day of February). Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period.

7.2 Franchise Fees Subject to Audit.

7.2.1 Upon sixty (60) days' notice, during Normal Business Hours at Grantee's principal business office, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within five (5) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

7.2.2 Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Franchisee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Final Settlement Amount." For purposes of this Section, the term "Final Settlement Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," either party may bring an action to have the disputed amount determined by a court of law.

7.2.3 The City's audit expenses shall be borne by the City unless the audit determines that the payment to the City should be increased by five percent (5%) or more in the audited period, in which case the reasonable and documented cost of the audit together with any Final Settlement Amount due the

1 City as a result of such audit shall be paid by the Grantee to the City within forty-  
2 five (45) days from determination of the Final Settlement Amount. Grantee's  
3 obligation to pay or reimburse the City's audit expenses shall not exceed an  
4 aggregate of ten thousand dollars (\$10,000) per audit. If the audit determines that  
5 there has been an overpayment by Grantee, Grantee may credit any overpayment  
6 against its next quarterly payment. Once the parties agree upon a Final Settlement  
7 Amount and such amount is paid by the Grantee, the Franchising Authority shall  
8 have no further rights to audit or challenge the payment for that period.  
9

10 7.3. Technical Standards. The Grantee shall comply with all applicable  
11 technical standards of the FCC as published in subpart K of 47 C.F.R. § 76.601 et  
12 seq. To the extent those standards are altered, modified, or amended during the  
13 term of this Franchise, the Grantee shall comply with such altered, modified or  
14 amended standards within a reasonable period after such standards become  
15 effective. The Franchising Authority shall have, upon written request, the right to  
16 obtain a copy of tests and records required to be performed pursuant to the FCC  
17 rules.  
18

19 7.4. Maintenance of Books, Records, and Files.  
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21 7.4.3. Proprietary Information. Notwithstanding anything to the  
22 contrary set forth in this Section, the Grantee shall not be required to disclose  
23 information which it reasonably deems to be proprietary or confidential in nature.  
24 The Franchising Authority agrees to treat any information disclosed by the Grantee  
25 as confidential and only to disclose it to those employees, representatives, and  
26 agents of the Franchising Authority that have a need to know in order to enforce  
27 this Franchise Agreement and who agree, through the execution of a non-  
28 disclosure agreement, to maintain the confidentiality of all such information. The  
29 Grantee shall not be required to provide Customer information in violation of  
30 Section 631 of the Cable Act or any other applicable federal or state privacy law.  
31 For purposes of this Section, the terms "proprietary or confidential" include, but are  
32 not limited to, information relating to the Cable System design, customer lists,  
33 marketing plans, financial information unrelated to the calculation of franchise fees  
34 or rates pursuant to FCC rules, or other information that is reasonably determined  
35 by the Grantee to be competitively sensitive. Grantee may make proprietary or  
36 confidential information available for inspection, but not copying or removal of  
37 information by the Franchising Authority's representative. Grantee shall mark any  
38 information that it wishes to remain "confidential" or "proprietary" before providing  
39 the information to the City. In the event that the Franchising Authority has in its  
40 possession and receives a request under the Maryland Public Information Act, §4-  
41 101 *et seq.* of the General Provisions Article, Annotated Code of Maryland, for the  
42 disclosure of information the Grantee has designated as confidential, trade secret  
43 or proprietary, which must be disclosed, in accordance with the law, the City  
44 shall, so far as consistent with applicable law, advise Franchisee prior to  
45 disclosure and provide Franchisee with a copy of any written request by the  
46

1 party demanding access to such information within a reasonable time. Grantee  
2 shall bear the cost of any proceedings objecting to the disclosure of the  
3 information.

#### 4 5 **SECTION 8 - Transfer of Cable System or Franchise**

6  
7 8.1. Neither the Grantee nor any other Person may transfer the Cable  
8 System or the Franchise without prior written notice to the Franchising Authority.  
9 No prior notice shall be required, however, for: (i) a transfer in trust, by mortgage,  
10 hypothecation, or by assignment of any rights, title, or interest of the Grantee in  
11 the Franchise or in the Cable System in order to secure indebtedness, (ii) a transfer  
12 to an entity directly or indirectly owned or controlled by Comcast Corporation, or  
13 (iii) the sale, conveyance, transfer, exchange or release of fifty percent (50%) or  
14 less of its equitable ownership. Within thirty (30) days of receiving a notice of  
15 transfer, the Franchising Authority may, in accordance with FCC rules and  
16 regulations, notify the Grantee in writing of the additional information, if any, it  
17 requires regarding the legal, financial, and technical qualifications of the transferee  
18 or new controlling party.

#### 19 20 21 **SECTION 9 - Insurance and Indemnity**

22  
23 9.1. Insurance. Throughout the term of this Franchise Agreement, the  
24 Grantee shall, at its own cost and expense, maintain Commercial General Liability  
25 Insurance and provide the Franchising Authority certificates of insurance  
26 designating the Franchising Authority and its officers, boards, commissions,  
27 councils, elected officials, agents and employees as additional insureds and  
28 demonstrating that the Grantee has obtained the insurance required in this  
29 Section. Such policy or policies shall be in the minimum amount of One Million  
30 Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One  
31 Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more  
32 persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00)  
33 for property damage resulting from any one accident. Such policy or policies shall  
34 be non-cancelable except upon thirty (30) days prior written notice to the  
35 Franchising Authority. The Grantee shall provide workers' compensation  
36 coverage in accordance with applicable law. The Grantee shall indemnify and hold  
37 harmless the Franchising Authority from any workers compensation claims to  
38 which the Grantee may become subject during the term of this Franchise  
39 Agreement.

40  
41 9.2. Indemnification. The Grantee shall indemnify, defend and hold  
42 harmless the Franchising Authority, its officers, employees, and agents acting in  
43 their official capacities from and against any liability or claims resulting from  
44 property damage or bodily injury (including accidental death); copyright  
45 infringements; and any failure by Grantee to secure consents from the owners,  
46 authorized distributors, or licensees of programs to be delivered by the Cable  
47

1 System, whether or not any act or omission complained of is authorized, allowed,  
2 or prohibited by the Cable Act or this Agreement that arise out of the Grantee's  
3 construction, operation, maintenance, or removal of the Cable System, including,  
4 but not limited to, reasonable attorneys' fees and costs, provided that the City shall  
5 give Grantee prompt written notice of its obligation to indemnify the City as soon  
6 as practicable after receipt of a claim or action pursuant to this Subsection and  
7 sufficiently in advance of the time for Grantee's response to a third party claim in  
8 order that Grantee will be able to timely respond and the defense against such  
9 claim will not be prejudiced. The Franchising Authority agrees that it will take all  
10 necessary action to avoid a default judgment and not prejudice the Grantee's  
11 ability to defend the claim or action. If the Franchising Authority determines that it  
12 is necessary for it to employ separate counsel, the costs for such separate counsel  
13 shall be the responsibility of the Franchising Authority.

14  
15 9.2.1. Grantee shall not be required to indemnify the Franchising Authority  
16 for negligence or misconduct on the part of the Franchising Authority or its officials,  
17 boards, commissions, agents, or employees, subject to applicable law.

## 18 19 20 **SECTION 10 - System Description and Service**

21  
22 10.1. System Capacity. During the term of this Agreement, the Grantee's  
23 Cable System shall be capable of providing Video Programming with reception  
24 available to its customers in the Franchise Area in accordance with the Cable Act.

25  
26 10.2. Cable Service to Public Buildings. Grantee shall continue to provide,  
27 at no cost to the Franchising Authority, Basic Cable Service and Standard  
28 Installation at one (1) outlet to each existing Public Building listed in Exhibit A.  
29 Upon request, the Grantee shall provide, at no cost to the Franchising Authority,  
30 Basic Cable Service and Standard Installation at one (1) outlet to additional Public  
31 Buildings located in the Franchise Area within one hundred twenty-five (125) feet  
32 of the Grantee's distribution cable. No charge shall be made for installation or  
33 service, except that Grantee may charge for installation beyond one hundred  
34 twenty-five (125) feet aerial distance of the cable plant and service for more than  
35 one (1) drop in each building. Public Buildings are those buildings owned or leased  
36 by the Franchising Authority for municipal government administrative purposes,  
37 and shall not include buildings owned by Franchising Authority but leased to third  
38 parties or buildings such as storage facilities at which government employees are  
39 not regularly stationed. Any additional levels of Cable Service, other service,  
40 outlets, or service locations ordered by the City shall continue to be subject to  
41 standard rates.

42  
43 10.2.1. The parties have agreed that the Grantee's marginal cost of  
44 the service provided under this Section, together with the franchise fees paid to  
45 the City under Section 7.1 (currently at 3.50%), are below the maximum franchise  
46 fee authorized under applicable law. The Franchising Authority and Grantee  
47



1 recognize that the Federal Communications Commission's Third Report and  
2 Order, dated August 1, 2019, ("In-Kind Order") concerning in-kind contributions  
3 provides that the value of various services set forth herein constitute a franchise  
4 fee and may be recovered as provided by law.

5  
6 10.2.2. If the Grantee's marginal cost of providing the service under  
7 this Section, together with the franchise fees paid to the City, exceeds the  
8 maximum franchise fee allowed by law, Grantee may invoice for payment the  
9 marginal cost of the service provided under this section or off-set the amount from  
10 the franchise fee to the extent allowed under the In-Kind Order. Grantee shall notify  
11 the City in writing regarding the amount of the monthly service fee for each account  
12 based on marginal cost and shall provide the basis for the calculation. The City  
13 shall then notify Grantee, within one hundred twenty (120) days of receiving the  
14 Grantee's notice, whether it desires the amount due each month to be invoiced for  
15 payment or deducted from the next franchise fee payment. In the event the 621  
16 Order is reversed on appeal as to the issue of complimentary cable services as in-  
17 kind contributions in a cable franchise and such result becomes final, within forty-  
18 five (45) days of such decision, if Grantee is charging or offsetting from franchise  
19 fees the marginal cost of the courtesy accounts set forth herein, Grantee will  
20 discontinue the charge for marginal cost of providing Basic Service for the Public  
21 Buildings listed in Exhibit A, or added per this Section, and provide such service  
22 on a complimentary basis. Marginal cost of service provided under this section  
23 shall be determined in accordance with applicable law.

## 24 25 26 **SECTION 11 - Enforcement and Revocation Proceedings**

27  
28 11.1. Notice of Violation or Default and Opportunity to Cure. In the event  
29 the Franchising Authority believes that the Grantee has not complied with the  
30 material terms of the Franchise, it shall notify the Grantee in writing with specific  
31 details regarding the exact nature of the alleged non-compliance or default.

32  
33 11.1.1. Grantee's Right to Cure or Respond. The Grantee shall have  
34 forty-five (45) days from the receipt of the Franchising Authority's written notice:  
35 (A) to respond to the Franchising Authority, contesting the assertion of non-  
36 compliance or default; or (B) to cure such default; or (C) in the event that, by nature  
37 of the default, such default cannot be cured within the forty-five (45) day period,  
38 initiate reasonable steps to remedy such default and notify the Franchising  
39 Authority of the steps being taken and the projected date that the cure will be  
40 completed.

41  
42 11.1.2. Public Hearings. In the event the Grantee fails to respond  
43 to the Franchising Authority's notice or in the event that the alleged default is not  
44 remedied within forty-five (45) days or the date projected by the Grantee, the  
45 Franchising Authority shall schedule a public hearing to investigate the default.  
46 Such public hearing shall be held at the next regularly scheduled meeting of the  
47

Franchising Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

11.1.3. Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any material provision of the Franchise, the Franchising Authority may:

(i) Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or

(ii) If agreed to by the parties, submit an issue to be decided by arbitration.

(iii) Commence an action in a court of law for monetary damages or seek other equitable relief; or

(iv) In the case of a substantial material default of a provision of this Agreement, seek to revoke the Franchise.

(a) The Franchising Authority shall give written notice to Grantee of such intent. The notice shall set forth the specific nature of the noncompliance. Grantee shall have ninety (90) calendar days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) calendar days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to submit information for inclusion in the record, and to provide rebuttal evidence. Grantee shall be permitted to record or make a transcript of such hearing. If the Franchising Authority determines that the Franchise shall be revoked, the Franchising Authority shall promptly provide Grantee with written evidence setting forth its reasoning. To the extent permitted by applicable law, Grantee may challenge such determination of the Franchising Authority to an appropriate court. Grantee shall be entitled to such relief as the court finds appropriate.

(v) The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising

Authority's rights under the Franchise in lieu of revocation of the Franchise, and, except as otherwise provided in this Agreement or the Cable Act, any action, proceeding or exercise of a right by the Franchising Authority under Section 11.1 shall not constitute an election of remedies or a waiver of any other rights the Franchising Authority may have, including the right to seek specific performance of any provision which reasonably lends itself to such remedy as an alternative to damages, provided such remedies are not duplicative. In the event of a final revocation or non-renewal of the Franchise, Grantee will continue to make Cable Service available for a reasonable period of time, not less than six (6) months or greater than twelve (12) months, if necessary to allow customers to transition to an alternate Cable Service provider.

**11.2. Remedies.** In determining which of the remedies available under this Franchise is appropriate, the Franchising Authority may consider, among other things:

- (i) The nature of extent of the violation;
- (ii) whether the Grantee has had a history of similar violations;
- (iii) the damage suffered by the public and cost of remedying these violations;
- (iv) and, such other factors that the Franchising Authority may deem appropriate.

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

11.3.1. in instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

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

**11.4. No Removal of System.** Grantee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Grantee from providing Cable Service, if the Cable System is actively and lawfully being used to facilitate any other services not governed by the Cable Act, or any portion thereof [47 U.S.C. §541 (b)].

**SECTION 12 - Competitive Equity**

12.1 Competitive Equity. The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one or more additional franchises to construct operate and maintain a Cable System within the City. If the Franchising Authority grants a competitive cable franchise, or other authorization to provide similar wired cable/video services, which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise Agreement, the Franchising Authority, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide cable/video service to subscribers in the Franchise Area under the same agreement and/or under the same terms and condition as apply to competitor. The Grantee and Franchising Authority shall enter into an agreement or other appropriate authorization containing the same terms and conditions as are applicable to the competitor within sixty (60) days after the Grantee submits a written request to the Franchising Agreement.

**SECTION 13 - Miscellaneous Provisions**

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

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

To the Franchising Authority:

City of Aberdeen  
60 North Parke Street  
Aberdeen, MD 21001  
Attention: City Clerk

To the Grantee:

Comcast Cable  
1215 E. Fort Avenue, Suite 103  
Baltimore, MD 21230  
Attention: Government Affairs Department

With a copy:

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

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

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

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

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

1           13.7. No Third-Party Beneficiaries. Nothing in this Franchise Agreement  
2 is or was intended to confer third-party beneficiary status on any member of the  
3 public to enforce the terms of this Franchise Agreement.  
4

5           13.8. Captions. Captions to sections throughout this Franchise Agreement  
6 are solely to facilitate the reading and reference to the sections and provisions of  
7 this Franchise Agreement. Such captions shall not affect the meaning or  
8 interpretation of this Franchise Agreement.  
9

10          13.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be  
11 construed as a waiver of any rights, substantive or procedural, which Grantee may  
12 have under federal or state law unless such waiver is expressly stated herein.  
13

14           13.10. Incorporation by Reference  
15

16           (a) All presently and hereafter applicable conditions and  
17 requirements of federal, State and generally applicable local laws, including but  
18 not limited to the rules and regulations of the FCC and the State where the  
19 Franchise Area is located, as they may be amended from time to time, are  
20 incorporated herein by reference to the extent not enumerated herein. However,  
21 no such general laws, rules, regulations, and codes, as amended, may alter the  
22 obligations, interpretation and performance of this Renewal Franchise to the extent  
23 that any provision of this Renewal Franchise conflicts with or is inconsistent with  
24 such laws, rules or regulations  
25

26           The City and the Grantee recognize that this Renewal Franchise Agreement  
27 may impose certain burdens and obligations on the Grantee that are greater than  
28 those imposed by applicable law, and the Grantee agrees to be bound by these  
29 greater burdens and obligations. The provisions of this agreement shall be liberally  
30 construed to effectuate their objectives. Grantee is subject to generally applicable  
31 local law and the Cable Act in effect as of the Effective Date of this Agreement and  
32 to all reasonable and lawful exercises of police power by the City, provided that  
33 each of these authorities is applied in a manner consistent with Grantee's rights  
34 under this Agreement. In the event of a conflict between the generally applicable  
35 local law and this Agreement, this Agreement shall prevail, except to the extent  
36 pre-empted by the Cable Act. The City shall not modify the terms and conditions  
37 of the Agreement by changes to local law enacted after the Effective Date. Any  
38 amendments to local law shall be consistent with state and federal law and shall  
39 not abrogate any contractual rights Grantee contained herein or impose any new  
40 obligations or duties on Grantee that would be inconsistent with this Agreement  
41

42           (b) Should the State, the federal government or the FCC require  
43 Grantee to perform or refrain from performing any act the performance or non-  
44 performance of which is inconsistent with any provisions herein, the Franchising  
45 Authority and Grantee will thereupon, if they determine that a material provision  
46

herein is affected, modify any of the provisions herein to reflect such government action.

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

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

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

City of Aberdeen:

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

Print Name: Patrick L. McGrady\_\_\_\_\_

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

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

Comcast of Harford County, LLC:

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

Print Name: Michael Parker\_\_\_\_\_

Title: Regional Senior Vice President\_\_\_\_\_

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

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**Exhibit A**

**Public Building Service Locations**

Aberdeen Department of Public Works	341 Michael Lane, Aberdeen, MD 21001
Aberdeen Department of Public Works	361 Michael Lane, Aberdeen, MD 21001
Aberdeen City Hall	60 North Parke Street, Aberdeen, MD 21001
Aberdeen Activity Center	7 North Parke Street, Aberdeen, MD 21001
Aberdeen Activity Center (Future)	684 W Bel Air Avenue, Aberdeen, MD 21001

6



## Exhibit B

### Comcast 3<sup>rd</sup> Party Payment and Equipment Drop-off Partners

#### **Comcast Customer Service Options Available to Residents of Aberdeen, MD**

There are many convenient ways that customers may interact with us, 24 hours a day, 7 days a week. These include:

- *Customers wishing to make a payment will continue to have a number of convenient options available to them including:*
  - By mail
  - By telephone 1-800-XFINITY
  - Online at [www.Comcast.com/myccount](http://www.Comcast.com/myccount)
  - Mobile: Xfinity My Account App
  - Third Party Locations:
    - **SHOPRITE OF ABERDEEN at 949 Beards Hill Rd (via Western Union)**
    - **Walgreens at 950 Beards Hill Rd (via Western Union)**
    - **Walmart at 645 S Philadelphia Blvd (via Western Union)**
  - In person at the nearest Comcast Xfinity Store
- *Customers have many convenient ways to contact Comcast, including:*
  - Speaking with a Comcast customer care representative toll-free at 1-800-XFINITY
  - Online at [www.comcast.com](http://www.comcast.com), 24 hours a day, seven days a week.
  - Via our dedicated Digital Care team that communicates with customers on blogs, social media and twitter.
  - In person at the nearest Comcast Xfinity Store
- *Customers have several options when it comes to receiving, installing or returning equipment, including:*
  - Calling 1-800-XFINITY to order a self-install kit, making it convenient for customers to add, install and activate Comcast services on their own schedules.
  - UPS pre-paid mailers which are available to be sent to the home for customers to easily return equipment at no-charge.
    - **Customers may take the pre-paid UPS Office Customer Pick-Up/Drop Off Center at 1013 Beards Hill Rd Ste 101-M, Aberdeen, MD 21001**
  - Comcast offers early morning, evening and weekend in-home appointments, as well as two-hour appointment windows for professional installation.
  - In person at the nearest Xfinity Store
  - Visiting a UPS Store. Comcast has teamed up with UPS to offer convenient and free equipment returns (4,400 total locations across the US). Comcast customers can bring their equipment directly to The UPS Store, where it will be processed, packed and shipped back to Comcast, free of charge. All equipment can be returned as-is, without wrapping or a box and customers will receive a confirmation of receipt and tracking information from UPS, eliminating any questions about the status of their return. Located at: **1013 Beards Hill Rd**

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All of these options are complimented by Comcast's Customer Guarantee, the Company's written promise that we will hold our products, service and employees to the highest standards. The Guarantee makes clear what customers should expect of Comcast, and backs it up with a 30-day money-back guarantee on our services. Comcast is committed to making it easier for customers to do business with us on their own terms.