

**CITY OF LOGAN, UTAH
RESOLUTION NO. 16-50**

**A RESOLUTION APPROVING A CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN THE CITY OF LOGAN AND COMCAST OF INDIANA/KENTUCKY/UTAH**

BE IT HEREBY RESOLVED that the Logan Municipal Council authorizes the Mayor to execute, in behalf of the City of Logan, a Cable Television Franchise Agreement, a copy of which is attached, with Comcast of Indiana/ Kentucky/Utah.

PASSED BY THE LOGAN MUNICIPAL COUNCIL, STATE OF UTAH, THIS
20 DAY OF SEPTEMBER, 2016 BY THE FOLLOWING VOTE:

AYES: Needham, Simmons, Baird, Olsen, Jensen

NAYES: none

ABSENT: none

ATTEST

Teresa Harris
Teresa Harris, City Recorder



Herm Olsen
Herm Olsen, Chairman

505

**CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN LOGAN CITY, A
UTAH MUNICIPAL CORPORATION AND COMCAST OF INDIANA/ KENTUCKY/**

UTAH

2016

This Franchise Agreement ("Franchise") is between Logan City, hereinafter referred to as the "Franchising Authority" and Comcast of Indiana/ Kentucky/ Utah hereinafter referred to as the "Grantee".

The Franchising Authority hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

SECTION 1

Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- B. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- C. "Cable Act" means Title VI of the Communications Act of 1934, as amended.
- D. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- E. "Cable System" shall mean the Grantee's 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 Service Area.

F. "FCC" means Federal Communications Commission or successor governmental entity thereto.

G. "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 within the Franchise Area.

H. "Franchising Authority" means Logan City, within the State of Utah, or the lawful successor, transferee, or assignee thereof.

I. "Grantee" means Comcast of Indiana/ Kentucky/ Utah, or the lawful successor, transferee, or assignee thereof.

J "Gross Revenue" means any and all revenue in whatever form, from any source, directly or indirectly received by the Grantee or Affiliate of the Grantee, according to generally accepted accounting principles consistently applied, that would constitute a Cable Operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Services in any manner that requires use of the Public Ways in the Service Area. Gross Revenues shall include, but are not limited to, basic, expanded basic and pay service revenues, revenues from installation, rental of converters, the applicable percentage of the sale of local and regional advertising time, and any leased access revenues.

Gross Revenues do not include (i) revenue from sources excluded by law;(ii) revenue derived by Grantee from services provided to its Affiliates;(ii) late payment fees; (iii) charges other than those described above that are aggregated or bundled with amounts billed to Cable Service Subscribers such as charges for Broadband or Telephone services; (iv) fees or taxes which are imposed directly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency including the FCC User Fee; (v) revenue which cannot be collected by the Grantee and are identified as bad debt, provided, that if revenue previously representing bad debt is collected, this revenue shall then at time of collection be included in Gross Revenues for the collection period; (vi) refundable deposits, investment income, programming launch support payments, or advertising sales commissions; and (vii) Internet services.

For purposes of interpreting this Agreement, the definition of "Gross Revenue" found in this subsection shall prevail over any conflicting definition found in local ordinance notwithstanding the conflict provision in Section 2.2 herein

K. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity but not the Franchising Authority.

L. "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, 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

Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall not include bike paths or trails not dedicated for utility services or compatible uses. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service 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 Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

M. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means..

N. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.

O. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

SECTION 2

Grant of Franchise

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee 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 Service 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 such facilities and equipment as may be necessary or appurtenant to the Cable System.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. The local ordinances in effect at the time of the execution of this Franchise Agreement shall control in the event of a conflict between this Franchise Agreement and local ordinance or future changes to local ordinances provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

Each and every term, provision or condition herein is subject to the provisions of State law, federal law, and County ordinances and regulations enacted pursuant thereto. Notwithstanding

the foregoing, the Franchising Authority may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

2.3 Competitive Equity.

(A) Overview.

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

(B) New Video Service Provider

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

(C) No Written Agreement between Franchising Authority and Third Party VSP

If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Grantee and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSP's, taking into account the terms and conditions under which other VSP's are allowed to provide video services to subscribers within the boundaries of the Franchising Authority.

(D) Effect of this Section on the Overall Agreement

Any agreement, authorization, right or determination to provide video services to subscribers in the Franchising Authority under any provision under this Section 2.3 shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

(E) VSP Defined

The term "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple video programming services to subscribers, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multichannel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet Protocol based services.

2.4 Term. The Franchise granted hereunder shall be for an initial term of five (5) years commencing on the effective date of the Franchise as set forth in subsection 8.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION 3

Standards of Service

3.1 Conditions of Occupancy. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee or Grantee's contractor, subcontractor or supplier, Grantee shall, within a reasonable time, replace and restore such Public Way at Grantee's expense to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 Relocation for the Franchising Authority. Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall at its own expense protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority 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, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the Grantee's services. In the event that Franchise Authority requests relocation efforts from Grantee solely for aesthetic reasons, then Franchise Authority agrees to pay all costs associated with relocation. The Grantee shall in all cases have the right of

abandonment of its underground property, and unless otherwise agreed to in writing, shall, in the event of relocation or revocation of this Franchise Agreement, take all necessary steps to remove all aerial infrastructure associated with the Cable System, within a reasonable time and shall restore any effected Rights-of Way to the condition that existed at the time immediately preceding the removal of the property. Grantee shall be responsible for any and all costs and fees associated with the removal, disassembly, deconstruction, demolition, displacement, resale or relocation of such abandoned aerial property and associated restoration costs. In the event that Grantee still desires to use any portion of the aerial Cable System for other non-video related services, then Grantee shall have the right to maintain those aerial lines subject to a mutually agreed upon agreement governing that future use.

In the event of an emergency, the Franchising Authority shall notify the Grantee, who shall immediately respond to the emergency. Should the Grantee be unable to respond in a timely manner, the Franchising Authority shall take such action as is necessary to meet the emergency. Grantee shall be responsible for all necessary and reasonable costs incurred by Franchising Authority in responding to an emergency.

3.4 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 Trimming of Trees and Shrubbery. After obtaining the prior written consent of the Franchising Authority's City Forester, the Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System within the Public Way in the Service Area so as to prevent branches from coming into contact with the Grantee's wires, cables or other equipment. The Grantee shall reasonably compensate the Franchising Authority for any damage caused by such trimming, or shall, in its sole discretion and at its own cost and expense, with the prior written consent of the City Forester, reasonably replace all trees or shrubs damaged as a result of any construction of the system undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the Franchising Authority pursuant to the terms of this Section. Nothing herein shall give the Grantee the right to trim trees not within Public Ways without the written permission of the Landowner or without the permission of the Franchising Authority upon showing of public need.

3.6 Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.7 Aerial and Underground Construction. Prior to construction, in each case, all applicable permits shall be applied for and granted and all fees shall be paid. All other codes and ordinances of the Franchising Authority that pertain to such construction shall be complied with.

A. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System 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 consult with the City Engineer to determine whether the construction will be aerial or underground, and wherever possible depending on the season, location, connection route and pole condition, construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, underground. If the reason for not putting the facilities underground is seasonal, subject to Franchising Authority waiver as weather and other conditions may require the Grantee shall make reasonable efforts to move such facilities underground as weather permits, but no later than June 30 of the next summer.

B. For the purposes of this Franchise, with the exception of service drops, any new facilities to be placed underground after the date of this Agreement, shall be at least eighteen inches below the surface grade.

C. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals or other related equipment.

D. Grantee shall have no more than ten (10) business days, excluding weekends, to bury a customer drop if it should have to be placed temporarily above ground for any reason. If the Franchising Authority determines that the Grantee is not in compliance with this Subsection, 3.7(D), the Franchising Authority may impose a fine of seventy-five (\$75.00) per day for the first five (5) days and one hundred and fifty dollars (\$150.00) per day thereafter, until such time that the Grantee has buried the drops. The Franchising Authority shall give the Grantee advanced written notice of at least ten (10) business days prior to imposing the fine. The Franchising Authority recognizes that there are seasonal limitations to the Grantee's ability to comply with this Section during the winter months, therefore:

1. This requirement is waived during any period in which the Grantee is unable to comply due to frozen ground or other weather conditions but shall be subject to the June 30 requirement described above in subpart A of this Section.

3.8 New Subdivisions. The Franchising Authority agrees to include the Grantee as a signee on any new subdivision plat in the platting process for any new subdivision and provide Grantee with notice of Franchising Authority's pre-development meetings. Franchising Authority's obligation to provide notice to Grantee of pre-development meetings is conditioned upon Grantee furnishing the Franchising Authority with the contact information for the individual Grantee desires to attend the pre-development meeting.

3.9 Required Extensions of the Cable System. Whenever Grantee receives a request for Cable Service from a Subscriber in a contiguous unserved area where there are at least 15 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the connection fees charged to all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System. Notwithstanding the foregoing, Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

3.10 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.9 above, Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from Grantee's trunk or distribution cable, and whose denominator equals 15. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any non-Standard Installation charges to extend the Cable System from the tap to the residence.

3.11 Cable Service to Public Buildings. Franchising Authority acknowledges that complimentary services reflect a voluntary initiative on the part of Grantee. Grantee does not waive any rights it may have regarding complimentary services under federal law or regulation. Subject to applicable law, should Grantee elect to offset governmental complimentary services against franchise fees, Grantee shall first provide Franchising Authority with ninety (90) days' prior notice. The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in any loss or damage to the Cable System. The

Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said building or premises exceeds one hundred twenty five (125) cable feet unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of one hundred twenty five (125) cable feet. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

3.12 Technical Standards. The Grantee is responsible for ensuring that the Cable System is designed, installed and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time. As provided in these rules, the Franchising Authority shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules but has no authority, pursuant to federal law, to enforce compliance with such standards.

3.13 Emergency Use.

A. In accordance with and at the time required by the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, and as other provisions which may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations, Section 11.18.

B. The Franchising Authority shall permit only appropriately trained and authorized persons to operate the EAS equipment and take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority agrees to hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorneys' fees and costs.

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

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

3.16 Customer Bills and Privacy Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 3.15 above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(C) of the Cable Act (47 U.S.C. 542(c)). The Grantee shall also comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

3.17 Public, Educational and Government Channel. A. Access. The Grantee shall make available to the Franchising Authority or one (1) channel to be used for public, educational and government cablecast programming. The Grantee also reserves the right to program the designated educational and government channel during the hours not used by the Franchising Authority or other governmental entities. The Grantee reserves the right to share the channel with other municipalities receiving programming from the common head end receive sight location. The Franchising Authority shall agree to indemnify, save and hold harmless the Grantee from any liability resulting from the uses of the aforementioned educational and government channel by the Franchising Authority, except for liability resulting from program time shared with other municipalities.

Grantee shall maintain any currently existing lines and facilities necessary for it to receive PEG Channel programming for simultaneous distribution on the Cable System. Nothing herein is intended to limit Grantee's rights under federal law, including, but not limited to, the FCC's Orders implementing Section 621(a)(1) of the Cable Communication Policy Act, as amended. In the event the Franchising Authority requests additional lines and/or facilities from Grantee under this section, it shall do so at its own cost.

B. Educational and Government Access Capital Contributions. At any time during the term of this Franchise the Franchising Authority may require that the Grantee prospectively provide a "Capital Contribution," paid annually during the remaining term of the Franchise, to be used specifically for educational and governmental access as provided for in Paragraph 3.16.A. ("Grantee's Provision of Educational and Government Access Channels"). The Franchising Authority shall give the Grantee ninety (90) days written notice of such a requirement. The amount of the Capital Contribution payable by the Grantee to the Franchising Authority shall not exceed One Dollar and Twenty Cents (\$1.20) per year per primary connection. The Franchising Authority agrees that all amounts due to the Franchising Authority by the Grantee as the Capital Contribution may be added to the price of cable services, prorated monthly, and collected from the Grantee's Subscribers as "external costs," as such term is used in 47 C.F.R. 76.922. In addition, all amounts paid as the Capital Contribution may be separately stated on Subscribers' bills as permitted in 47 C.F.R. 76.985. The Capital Contribution will be payable by Grantee to the Franchising Authority after; a) the approval of the Franchising Authority, if required, to the inclusion of the Capital Contribution on Subscribers' bills including any required approval pursuant to 47 C.F.R. 76.933; b) notice to Grantee's Subscribers of the inclusion; and c) the collection of the Capital Contribution by the Grantee from its Subscribers. The "Capital Contributions" are not to be considered in the calculation of Franchise Fees pursuant to this Franchise.

SECTION 4

Regulation by the Franchising Authority

4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5 %) of annual Gross Revenue (as defined in subsection 1.1 of this Franchise) received by the Grantee from operation of the Cable System to provide Cable Service in the Franchise Area; provided however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other video service provider providing service in the Franchise Area. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. Payments shall be made by Grantee to the Franchising Authority on a quarterly basis, within thirty (30) days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

C. The Franchising Authority agrees that all amounts paid by the Grantee as Franchise Fees may be passed through to customers and identified as a separate line item on the bill in accordance with 47 U.S.C 542 added to the price of Cable Services and collected from the Grantee's customers as "external costs" as such term is used in 47 C.F.R. 76.22. In addition, all amounts paid as Franchise Fees may be separately stated on customers' bills as permitted in 47 C.F.R. 76.985.

D. The Grantee shall pay a Franchise Application Fee in accordance with Chapter 12.36.040 of the Logan City Municipal Code. Pursuant to the Logan City Municipal Code, the franchise application fee shall be five hundred dollars (\$500.00) and is non-refundable, however, if this Agreement is approved by the Franchising Authority, Grantee may offset the five hundred dollar (\$500.00) franchise application fee against any franchise fees due and payable to Franchising Authority on the first quarterly payment.

4.2 Rates and Charges. The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.

4.3 Renewal of Franchise.

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 546 and 626 of the Cable Act. The parties further agree that in the event of any conflict between this provision and Section

12.36.090(C)(1) of the Logan Municipal Code, that the rights afforded Grantee under Federal law control.

B. In addition to the procedures set forth in said Section 546(a) and/or 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.3 to be consistent with the express provisions of Sections 546 and 626 of the Cable Act.

4.4 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.5 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising

Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

SECTION 5

Oversight and Regulation by Franchising Authority

5.1 Books and Records The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

5.2 Franchise Fees Subject to Audit.

5.2.1. Upon reasonable prior written 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 three (3) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

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

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

5.2.3. Any “Finally Settled Amount(s)” due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within thirty (30) days from the date the parties agree upon the “Finally Settled Amount.” Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Grantee’s books and records. The Grantee agrees to reimburse the Franchising Authority for all reasonable costs of an audit, not to exceed \$5,000, if the audit discloses that the Grantee has paid ninety-five (95%) or less of the compensation due the Franchising Authority for the period of such audit.

SECTION 6

Insurance and Indemnification

6.1 Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise the following insurance:

6.1.1 Commercial General Liability Insurance. Commercial general liability insurance, in the amount not less than two million dollars (\$2,000,000) per occurrence, with a two million dollar (\$2,000,000) aggregate limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon commencement of this Franchise Agreement, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection. The Grantee shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63-30d-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3.

6.1.2 Workers’ Compensation. Workers’ Compensation insurance sufficient to cover all of the Grantee’s employees pursuant to Utah law. In the event any work is subcontracted, the Grantee shall require its subcontractor(s) to provide workers’ compensation insurance for the latter’s employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

6.1.3 Comprehensive Automobile Liability. Commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, with the Franchising Authority as an additional insured, in the minimum amount of a combined single limit of \$500,000 per occurrence, or \$500,000 liability per person, \$500,000 liability per occurrence, and \$250,000 property damage.

6.1.4 Additional Insured/Claims Made Basis. The Franchising Authority shall be named as an additional insured on all policies (other than policies for workers' compensation and employer's liability), to the extent such coverage is commercially reasonably available. Any notice of cancellation of coverage will be delivered to the Franchising Authority. Grantee shall annually provide Franchising Authority with a certificate of insurance evidencing such coverage. All insurance policies (other than workers' compensation and employer's liability) shall be written on an occurrence basis and not on a claims-made basis.

6.1.5 Qualified Carriers. All insurance shall be effected under valid and enforceable policies insured by insurance carriers licensed to do business in the State of Utah or by surplus line carriers on the State Insurance Commissioner's approved list of companies qualified to do business in the State of Utah. All insurance carriers and surplus line carriers shall be rated A-:IX or better by A.M. Best Company.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its elected officials, officers, employees, agents and volunteers from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's installation, construction, operation, maintenance or condition of its Cable System or Grantee's failure to comply with any Federal, State or local statute, ordinance or regulation. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority to the extent of any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

6.3 Assumption of Risk. The Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any Franchising Authority owned or controlled property, including Public Ways.

6.4 Bonds and Other Surety Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise. The Franchising Authority acknowledges that the legal, financial, and technical qualifications of the Grantee are sufficient for compliance with the terms of the Franchise and the enforcement thereof. The Grantee and the Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for services. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefore.

SECTION 7

Enforcement and Termination of Franchise

7.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally

discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2 The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed. Notwithstanding the foregoing, the Grantee acknowledges that its breach, or threatened breach, of this Agreement may cause the Franchising Authority to suffer irreparable harm or otherwise be left without an adequate remedy at law. Accordingly, Franchising Authority may elect to seek injunctive or other equitable relief from a court of competent jurisdiction to enforce specific performance or to enjoin the breach, or threatened breach, of this Agreement. Such remedies which the Franchising Authority may have shall be cumulative, and not exclusive, and shall be in addition to any other remedy which the Franchising Authority may have.

7.3 Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority may schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

7.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
 - B. Commence an action at law for monetary damages or seek other equitable relief;
- or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with subsection 7.5.

7.5 Revocation. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from 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 the 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) 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, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo*. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority. In the event of revocation, the Grantee shall in all cases have the right of abandonment of its property.

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.

7.6 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

SECTION 8

Miscellaneous Provisions

8.1 Actions of Parties. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.2 Entire Agreement. This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

8.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a

properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

Logan City
Attn: City Attorney
290 N. 100 W.
Logan, Utah 84321

The notices or responses to the Grantee shall be addressed as follows:

Comcast Cable Communications
Attn: Government Affairs
9602 South 300 West
Sandy UT 84070

with a copy to:

Comcast Corporation
Legal Department
1701 John F Kennedy Blvd.
Philadelphia PA 19103

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

8.4 Descriptive Headings. The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5 Severability. If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

8.6 Effective Date. The effective date of this Franchise is the ____ day of September 2016 pursuant to the provisions of applicable law. This Franchise shall expire on the ____ day of September of 2021 unless extended by the mutual agreement of the parties.


8.7 Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Utah and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall be governed by the laws of the State of Utah.

IN WITNESS WHEREOF, the Franchise Authority has entered into this Franchise Agreement on the date first considered above.

Logan City

Signature: 
H. Craig Petersen, Mayor

ATTEST:


Teresa Harris
City Recorder



Council Vote

Mr. Jensen	<u>aye</u>
Ms. Daines	<u>aye</u>
Mr. Needham	<u>aye</u>
Ms. Simmonds	<u>aye</u>
Mr. Olsen	<u>aye</u>

Accepted this ____ day of September, 2016, subject to applicable federal, state and local law.

Comcast of Indiana/ Kentucky/ Utah

Signature: _____

By: _____

Title: _____