

ORDINANCE NO. 2010-1

AN ORDINANCE OF THE TOWN OF SIGNAL MOUNTAIN, TENNESSEE, GRANTING TO COMCAST OF THE SOUTH, A COLORADO GENERAL PARTNERSHIP, ITS SUCCESSORS, LESSEES AND ASSIGNS, A FRANCHISE FOR THE TERM OF FIVE (5) YEARS, THE RIGHT, AUTHORITY, POWER, PRIVILEGE AND PERMISSION TO OPERATE A NONEXCLUSIVE CABLE TELEVISION SYSTEM WITHIN THE TOWN OF SIGNAL MOUNTAIN.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SIGNAL MOUNTAIN, TENNESSEE, after the Town, 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, and because it desires to enter into this Franchise Ordinance with the Grantee for the construction, operation, and maintenance of a Cable System on the terms and conditions set forth herein., this Franchise Ordinance is adopted as follows:

SECTION 1. Short Title. This Ordinance shall be known and may be cited as the COMCAST OF THE SOUTH - Cable Television Company Franchise Ordinance."

SECTION 2. Definition of Terms

For the purpose of this Ordinance, 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 et seq. (the "Cable Act"), unless otherwise defined herein.

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

2.2. "Effective Date" means the date on which all persons necessary to sign this Ordinance in order for it to be binding on both parties have executed this Ordinance as indicated on the signature page, unless a specific date is otherwise provided in Section 2.2, herein.

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

2.4. "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.

2.5. "Franchise Ordinance" shall mean this Ordinance and any amendments or modifications hereto.

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

2.7. "Franchising Authority" or "Town" means the Town of Signal Mountain, Tennessee, or the lawful successor, transferee, designee or assignee thereof.

2.8. "Grantee" shall mean Comcast of the South, or the lawful successor, transferee, designee or assignee thereof.

2.9. "Gross Revenue" means the Cable Service revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium, and pay-per-view video fees, advertising and home shopping revenue, installation fees, and equipment rental fees. Gross Revenue shall not include: refundable deposits; investment income; advertising sales commissions; any tax, surcharge, governmental fee or assessment, including franchise fees, imposed or assessed by any governmental authority; revenue billed for but not actually received; revenue received by an affiliate or any other Person in exchange for supplying goods and services to Grantee; amounts attributable to refunds, rebates or discounts; amounts received from non-cable services such as digital voice services, information services, Internet access services or Internet advertising services; returned check fees; late fees or interest; revenue from the sale or rental of property; revenue from maintaining an inside wiring plan; and reimbursement of costs including, but not limited to, the reimbursements by programmers of marketing costs incurred for the promotion or introduction of video programming.

2.10. "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.

2.11. "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 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 Franchising Authority and 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 Franchising Authority and 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.

SECTION 3. Grant of Authority

3.1. The Franchising Authority hereby grants to the Grantee a nonexclusive 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.

3.2. Term of Franchise. The term of the Franchise granted hereunder shall be five (5) years, commencing upon January 11, 2010 (the "Effective Date"), and expiring on January 11, 2015, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Ordinance, Tennessee state law, and the Cable Act.

3.2.1 Grantee Option to Extend Term. The Grantee shall have the option to automatically extend the term of this Franchise Ordinance for an additional five (5) year term upon the same terms and conditions as set forth herein provided Grantee has substantially complied with all such terms and conditions for the initial term of the Franchise Ordinance. Grantee shall exercise this option by giving the Franchise Authority written notice of its intention to extend the Franchise Ordinance for an additional five (5) year term not less than ninety (90) days prior to the expiration date of the initial term hereof.

3.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

3.4. Reservation of Authority. Nothing in this Franchise Ordinance shall (A) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority, or (C) be construed as a waiver or release of the rights of the Franchising Authority in and to the Public Ways.

SECTION 4. Construction and Maintenance of the Cable System

4.1. Permits and General Obligations. The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Ordinance 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.

4.2. Conditions of Street Occupancy.

4.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Ordinance, then the Grantee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than thirty (30) days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify Grantee of such funding and make available such funds to the Grantee. If the Town requests the relocation, removal or reinstallation of Grantee's property in any of the Public Ways in the Franchise Area for the sole purpose of installing or providing its own cable television or telecommunications services or those of a second cable television or telecommunications service provider in competition with Grantee, then such cost shall not be borne by Grantee but by the Town or the requesting entity.

4.2.2. Relocation at Request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on such Person for the movement of its wires and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

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

4.2.4. Safety Requirements. The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

4.2.5. Trimming of Trees and Shrubbery. 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 Franchise Area so as to prevent contact with the Grantee's wires, cables or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming and will notify customers in advance of trimming beyond the public way.

4.2.6. 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 Systems' 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 Section 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.

4.2.7. 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, upon reasonable prior written notice, 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.

SECTION 5. Service Obligations

5.1. 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) dwelling units per mile as measured from the nearest point of connection to Grantee's existing distribution cable. Subject to this density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within one hundred twenty five (125) feet of the Grantee's distribution cable. Notwithstanding the foregoing, Grantee shall not be required to offer Cable Service to residential dwelling units in the Franchise Area which have access to service by another Video Service Provider as that term is defined in Section 10.5, herein.

5.1.1. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

5.2. Programming. The Grantee shall offer to all Customers a diversity of video programming services.

5.3. No Discrimination. The Grantee shall not discriminate or permit discrimination between or among any Persons in the availability of Cable Services or other services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons,

subject to Section 5.1 above, to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts or other such pricing strategies as part of its business practice.

5.4. New Developments. The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least sixty (60) business days written notice of the date of availability of open trenches.

5.4.1 In the event a developer or property owner fails to give the required notice as provided for in Section 5.4, above, the developer or property owner shall be responsible for the cost of new trenching for the installation of Grantee's facilities and equipment.

SECTION 6. Customer Service Standards; Customer Bills; and Privacy Protection

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

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

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

SECTION 7. Oversight and Regulation by Franchising Authority

7.1. Franchise Fees. The Grantee shall pay to the Franchising Authority a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other Video Service Provider, as defined in Section 10.5, herein, 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 calendar quarter. 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 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 occur no more often than annually and take place within two (2) years from the date the Franchising Authority receives such payment, after which period, any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a Finally Settled Amount. For purposes of this Section, the term "Finally Settled Amount" 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 Finally Settled Amount, the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.2.3. Any Finally Settled Amount 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 review of the Grantee's books and records as provided for in Section 7.2.1, above.

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

7.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified or amended during the term of this Franchise Ordinance, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Throughout the term of this Franchise Ordinance, the Grantee agrees that the Franchising Authority may review the Grantee's books and records regarding customer service performance levels in the Franchise Area to monitor Grantee's

compliance with the provisions of this Franchise Ordinance, upon reasonable prior written notice to the Grantee, at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. All such documents that may be the subject of an inspection by the Franchising Authority shall be retained by the Grantee for a minimum period of two (2) years.

7.5.2. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section 6, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Franchising Authority that have a need to know in order to enforce this Franchise Ordinance and who agree to maintain the confidentiality of all such information.

7.5.2.1. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law.

7.5.2.2. For purposes of this Section, the terms "trade secret," "proprietary" or "confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules or other information that is reasonably determined by the Grantee to be competitively sensitive.

7.5.2.3. Grantee may make proprietary or confidential information available for inspection but not for copying or removal by the Franchise Authority's representative.

7.5.2.4. In the event that the Franchising Authority has in its possession and receives a request under a state "sunshine," public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Franchising Authority shall notify Grantee of such request and cooperate with Grantee in opposing such request.

7.5.2.5. Grantee shall have the right to require employees, representatives, and agents of Franchising Authority to enter into a non-disclosure agreement with Grantee prior to conducting a review of any of Grantee's books and records subject to this Section 7.5.

7.6 Rate Regulation. The Franchising Authority acknowledges that due to increased competition from both wireline and non-wireline Cable Service and / or video service providers in the Franchise Area and varying regulatory regimes under which those services are offered, rate regulation no longer serves the public interest, therefore, the parties agree to take the necessary steps to effectuate the change within the unregulated rates within Hamilton County within sixty (60) days of the Effective Date, as set forth by Exhibit B attached.

SECTION 8. Transfer of Cable System

8.1 The Franchise shall be fully transferable to any successor in interest to the Grantee. A Notice of Transfer shall be filed by the Grantee with the Franchising Authority within forty five (45) days of such transfer. The Notice of Transfer shall consist of an affidavit signed by an officer or general partner of the transferee that contains the following:

- a) An affirmative declaration that the transferee shall comply with the terms and conditions of this Franchise Ordinance, all applicable federal, state laws and regulations, including municipal and county ordinances regarding the placement and maintenance of facilities in the Public Way that are generally applicable to users of the Public Way.
- b) A description of transferee's service area; and
- c) The location of the transferee's principal place of business and the names or names of the principal executive officer or officers of the transferee.

SECTION 9. Insurance and Indemnity

9.1. **Insurance.** Throughout the term of this Franchise Ordinance, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Franchising Authority copies of certificates of insurance designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one (1) person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two (2) or more persons resulting from one (1) occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one (1) accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Franchising Authority. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Franchising Authority from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Ordinance

9.2. **Indemnification.** The Grantee shall indemnify, defend, and hold harmless the Franchising Authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

SECTION 10. Enforcement and Termination of Franchise

10.1. Notice of Violation or Default. In the event the Franchising Authority believes that the Grantee has not complied with the material terms of this Franchise Ordinance, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

10.2. Grantee's Right to Cure or Respond. The Grantee shall have sixty (60) days from the receipt of the Franchising Authority's written notice: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by the nature of the default, such default cannot be cured within the sixty (60) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that the cure will be completed.

10.3. Public Hearings. In the event the Grantee fails to respond to the Franchising Authority's notice or in the event that the alleged default is not remedied within sixty (60) days or the date projected by the Grantee, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority that is scheduled at a time that is no less than thirty (30) 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.

10.4. 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:

10.4.1. seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or

10.4.2. in the case of a substantial default of a material provision of the Franchise, declare the Franchise Ordinance to be revoked in accordance with the following:

(i) The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including two (2) or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, 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 request termination of the Franchise.

(ii) At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence, and question witnesses, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the

Grantee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee by certified mail in accordance with Section 12.2, herein. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as justice may require.

10.5. 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:

10.5.1. 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

10.5.2. 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 this Franchise Ordinance.

SECTION 11. Competitive Equity

11.1. Purposes. 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 Town residents; 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 Way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to Town residents; promote local communications infrastructure investments and economic opportunities in the Town; 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.

11.2. New Video Service Provider.

11.2.1. Notwithstanding any other provision of this Franchise Ordinance 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 Town, or (ii) otherwise provides video services to subscribers in the Town (with or without entering into an agreement with the Franchising Authority) regardless of the technology used to deliver such video services, 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 Customers in the Town 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.

11.2.2. 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 VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the Town.

11.3 Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to subscribers in the Town, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP providing video services to subscribers in the Town, the Franchising Authority agrees that, notwithstanding any other provision of law, upon Grantee's written request the Franchising Authority shall: (i) permit the Grantee to provide video services to Customers in the Town on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Franchise Ordinance to comply with the changed law; or (iii) modify this Franchise Ordinance to ensure competitive equity between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to subscribers in the Town. The Franchising Authority and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the Franchising Authority. Notwithstanding any provision of law that imposes a time or other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

11.4 Effect on This Franchise Ordinance. Any agreement, authorization, right or determination to provide video services to Subscribers in the Town under Sections 11.2 or 11.3 shall supersede this Franchise Ordinance, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

11.5 The term "Video Service Provider" or "VSP" shall mean any entity using the Public Way to provide video programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities or technology used. A VSP shall include but is not limited to any entity that provides Cable Services, multi-channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

SECTION 12. Miscellaneous Provisions

12.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise Ordinance, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, 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.

12.2. 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:

The Town of Signal Mountain
Attn: Mayor's Office
1111 Ridgeway Avenue
Signal Mountain, Tennessee 37377

To the Grantee:

Comcast of the South
Attn: General Manager
2030 Polymer Drive
Chattanooga, TN 37422
with a copy to:

Comcast Cable
Attention: Vice President, Government Affairs
600 Galleria Parkway, Suite 1100
Atlanta, Georgia 30339

and:

Comcast Cable
Attn.: Government Affairs Department
One Comcast Center
1701 JFK Blvd.
Philadelphia, PA 19103

12.3. Entire Agreement. This Franchise Ordinance, including all Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements, and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Ordinance are superseded by this Franchise Ordinance.

12.4. Severability. If any section, subsection, sentence, clause, phrase or other portion of this Franchise Ordinance 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.

12.5. Governing Law. This Franchise Ordinance shall be deemed to be executed in the State of Tennessee, and shall be governed in all respects, including validity, interpretation, and effect and construed in accordance with, the laws of the State of Tennessee, as applicable to contracts entered into and performed entirely within the State.

12.6. Modification. No provision of this Franchise Ordinance 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.

12.7. No Third-Party Beneficiaries. Nothing in this Franchise Ordinance is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Ordinance.

12.8. No Waiver of Rights. Nothing in this Franchise Ordinance shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under federal or state law unless such waiver is expressly stated herein.

12.9.1 Service to School and Government Buildings.

12.9.1 Existing Facilities. Grantee shall continue to provide free monthly Basic Cable Service at one (1) outlet to elementary and secondary schools (not including home schools), libraries, and government buildings existing in the Franchise Area as of the Effective Date of this Agreement listed in Exhibit A, herein.

12.9.2 New Facilities. Grantee shall provide monthly Cable Service and installation of such Cable Service to elementary and secondary schools, libraries, and other government buildings not listed in Exhibit A, herein, upon receipt of a written request by an authorized representative of the Franchising Authority, such installation and monthly Cable Service to be provided at Grantee's lowest commercial unit rate for commercial businesses. Government Buildings are those non-residential buildings owned or leased by the Franchising Authority for government administrative purposes, and shall not include buildings owned by Franchising Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

SECTION 13. Performance and Construction Bonds

13.1. Performance Bond. Within thirty (30) days of the Effective Date of this Agreement, Grantee shall post a performance bond in the amount of Ten Thousand Dollars (\$10,000) as surety for the faithful performance and discharge by Grantee of all obligations imposed by this Franchise Ordinance. The performance bond shall remain in force and effect throughout the Term of this Franchise Ordinance. If Grantee fails to timely pay any fees or

charges as provided for in this Franchise Ordinance, the Franchising Authority shall give Grantee twenty (20) business days' notice of its intent to draw the amount owed from the performance bond. The Franchising Authority may not draw from the security bond while any action, appeal or other process has been instituted by Grantee to challenge the amount owed.

SECTION 14. Educational and Governmental Access

14.1. Use of Channel Position. Grantee will continue to provide one (1) channel position for the use of the Franchising Authority for the purpose of showing educational and governmental access programming ("EG Access") in accordance with the Cable Act, Section 611, and as further set forth below. "Channel Position" means a number designation on the Grantee's channel lineup regardless of the transmission format (analog or digital) which shall be at the sole discretion of Grantee.

14.1.1. Grantee does not relinquish its ownership of or ultimate right of control over, a Channel Position by designating it for EG Access use. The Franchising Authority, education access user or governmental access user acquires no property or other interest by virtue of the use of a Channel Position so designated.

14.1.2. Grantee shall not exercise editorial control over any EG Access use of the Channel Position, except Grantee may refuse to transmit any EG Access program or portion of an EG Access program that contains obscenity, indecency or nudity as provided by applicable law. The Franchising Authority shall be responsible for developing, implementing, interpreting, and enforcing rules for EG Access use.

14.2. EG Access. The Channel Position designated for EG Access programming shall be for a) noncommercial use by the Franchising Authority for the purpose of showing local government at work, and b) noncommercial use by educational institutions such as public or private schools (but not "home schools"), community colleges, and universities. Unused time on the Channel Position may be utilized by Grantee subject to the provisions for "fallow time" below.

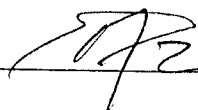
14.3. Grantee Use of Fallow Time. Because a blank or under-utilized EG Access Channel Position is not in the public interest, in the event the Franchising Authority or other EG Access user elects not to fully program the Channel Position with EG Access programming, Grantee may program unused time on such Channel Position subject to reclamation by the Franchising Authority upon no less than sixty (60) days notice.

14.4. Indemnification. The Franchising Authority shall indemnify Grantee for any liability, loss or damage it may suffer due to violation of the intellectual property rights of third parties or arising out of the content of programming shown on the Channel Position designated for EG Access programming and from claims arising out of the Franchising Authority's rules for the administration of the EG Access Channel Position and programming.

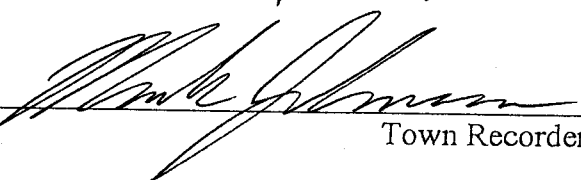
SECTION 15. Effective Date. This ordinance shall take effect from and after its date of passage on second reading, the public welfare of the Town requiring it.

Passed First Reading 1-4-, 2010.

Passed Second Reading 1-11, 2010.




Mayor



Town Recorder

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

For Franchising Authority:

By: 

Mayor Bill Lusk

Attest: 

Phillip A. Noble

For Comcast of the South:

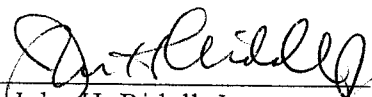
Attest: _____

Comcast of the South

By: Comcast of the South, L.P., its general partner

By: COM South, LLC, its general partner

By: Comcast of the South, Inc. its sole member

By: 

John H. Ridall, Jr.
President, Southern Division

EXHIBIT A

Schools, Libraries, and Government Building Locations

Schools

Thrasher Elementary
1301 James Boulevard

Nolan Elementary
4425 Shackelford Ridge Road

Signal Mountain Middle School
2650 Sam Powell Drive

Signal Mountain High School
2650 Sam Powell Drive

Library

Signal Mountain Library
1114 James Boulevard

Government Buildings

Town Hall
1111 Ridgeway Avenue

Police/Fire Department
1111 Ridgeway Avenue

Public Works Department (Transfer Station)
714 Mississippi Avenue

Mountain Arts Community Center
809 Kentucky Avenue

Exhibit B

[Date]

Federal Communications Commission
P.O. Box 18598
Washington, D.C. 20036

RE: Decertification
Signal Mountain, Tennessee
Comcast of the South

The purpose of this letter is to notify you of our determination that rate regulation no longer serves the interests of cable subscribers serviced by the cable system within our jurisdiction, and that the City has not received any consideration for its withdrawal of certification. By copy of this letter to the cable operator referenced above, we are providing notice that this withdrawal becomes effective as of the date written above. This notification fulfills all requirements of § 76.917 of the FCC's rules regarding rate regulation.

Sincerely,

Bill Lusk
Mayor

CC: Russell E. Byrd, Senior Director of Government and Public Affairs
Douglas Wells, vice President of Regulatory Affairs