

ORDINANCE 21-10-02

Introduced: Oct. 2, 2023

Approved:

AN ORDINANCE TO AMEND CHAPTER A191: CABLE TELEVISION FRANCHISE, IN THE TOWN OF MIDDLETOWN CODE OF ORDINANCES

BE IT ENACTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MIDDLETOWN (a majority of the members elected thereto concurring therein):

Section 1. That the Town of Middletown, Delaware, Code of Ordinances, Chapter A191: Cable Television Franchise, is hereby amended by adding Article III to Chapter A191 and placing therein the following:

“Article III Comcast of New Castle County, LLC

FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the Town of Middletown, Delaware (hereinafter, “Town” or “Franchising Authority”) and Comcast of New Castle County, LLC (hereinafter, “Grantee”).

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, desires to enter into this Franchise Agreement with the Grantee for the construction, operation, and maintenance of a Cable System on the terms and conditions set forth herein.

SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 - 631 (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words used to refer to the masculine include the feminine, and words in the plural number include the singular number. The word “shall” is mandatory and “may” is permissive. Words not defined in the Cable Act or herein shall be given their common and ordinary meaning.

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

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

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

1.4. “Effective Date” means the date on which the Town signs this Agreement, subject to all necessary parties executing this Agreement as indicated on the signature page(s).

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

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

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

1.8. “Franchise Area” means the present legal boundaries of the Town of Middletown, County of New Castle, Delaware, as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.9. “Franchising Authority” means the Town of Middletown or the lawful successor, transferee, designee, or assignee thereof.

1.10. “Grantee” shall mean Comcast of New Castle County, LLC.

1.11. “Gross Revenue” means revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Service, calculated in accordance with generally accepted accounting principles (“GAAP”). Gross Revenue includes monthly basic cable, premium and pay-per-view video fees, installation fees and subscriber equipment rental fees. Gross Revenue shall not include refundable deposits, advertising revenue, advertising sales commissions, home shopping revenue, leased access fees, late fees, investment income, programming launch support payments, nor any taxes, franchise fees, or other fees or assessments imposed or assessed by any governmental authority. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with generally accepted accounting principles,

provided however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in the Gross Annual Revenues in the period so collected.

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

1.13 “Public Buildings” shall mean those buildings owned or leased by the Franchising Authority for municipal government administrative purposes and shall not include buildings owned by the Franchising Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

1.14. “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 Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

1.15 “Standard Installation” shall mean the standard one hundred twenty-five foot (125’) aerial Drop connection to the existing distribution system.

1.16 “Video Programming” or “Programming” shall mean the programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2 - Grant of Authority

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

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

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

SECTION 3 – Construction and Maintenance of the Cable System

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

3.2. Conditions of Street Occupancy.

3.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than thirty (30) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. Grantee shall be entitled to reimbursement of its relocation and construction costs from public or private funds raised for the project and made available to other users of the Public Way. In the event that public and/or private funds are not made available as described herein, Grantee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

3.2.2. Relocation at Request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i.) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii.) the Grantee

is given not less than sixty (60) business days advance written notice to arrange for such temporary relocation.

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

3.2.4. Safety Requirements. The Grantee shall undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations.

3.2.5. Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural vegetative growth encroaching or overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any collateral, real property damage caused by such trimming.

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

3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the Town or private parties. Grantee shall be entitled to reimbursement of its construction and relocation costs from public or private funds raised for the project and made available to other users of the Public Way. In the event that public and/or

private funds are not made available as described herein, Grantee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

SECTION 4 - Service Obligations

4.1. Area to be Served. Within two (2) years of the Effective Date of this Agreement, Comcast shall construct the Cable System to make Cable Service available to residential dwelling units within one hundred twenty-five (125) feet of Comcast's Cable plant main distribution line within the geographic area designated in Appendix A ("Planned Build-Out Area"). In the event that construction is delayed by factors outside of Comcast's control, including weather, make-ready delays, or other factors identified as Force Majeure, Comcast shall provide a written request for an extension of time to complete the Planned Build-Out Area, which request shall not be unreasonably denied.

Any dwelling unit within one hundred twenty-five (125) feet aerial distance from the main distribution line shall be entitled to a Standard Installation rate. For any dwelling unit located more than one hundred twenty-five (125) feet from the main distribution line or that requires an underground installation, Grantee shall extend the Cable System if the Subscriber pays Grantee the actual cost of installation from its main distribution system with such cost being only the incremental portion beyond twenty-five (125) feet for aerial installations.

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

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

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

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

SECTION 5 - Fees and Charges to Customers

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

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.

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.

7.1.1. The Grantee shall pay to the Franchising Authority a franchise fee in an amount equal to zero percent (0%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each first, second and third calendar quarter (i.e., May 15, August 15, November 15) and sixty (60) days after the close of the calendar year (last day of February). Grantee shall provide 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, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall enter into discussions related to agreement upon a Final Settlement Amount. For purposes of this Section, the term Final Settlement Amount(s) shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit. If the parties cannot agree on a Final Settlement Amount, the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. If 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 Final Settlement Amount(s) due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within sixty (60) days from the date the parties agree upon the Final Settlement Amount. Once the parties agree upon a Final Settlement Amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Grantee's books and records.

7.3. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC.

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

7.5.1. Proprietary Information. Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Franchising Authority that have a need to know in order to enforce this Franchise Agreement and who agree, through the execution of a Non-Disclosure Agreement, to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or

any other applicable federal or state privacy law. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection, but not copying or removal of information by the Franchising Authority’s representative. In the event that the Franchising Authority has in its possession and receives a request under a state “sunshine,” public records, or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Franchising Authority shall notify Grantee of such request and cooperate with Grantee in opposing such request.

SECTION 8 – Pole Attachments

8.1. Grant of License. Subject to the terms herein contained, Grantor hereby grants Grantee a non-exclusive license to erect, attach, install and maintain cables, wires, and/or equipment (“Attachments”) to Grantor’s utility poles (“Poles”). For all new attachments to be attached to Grantor’s Poles after the Effective Date, Grantee shall file an application (“Application”), in the format described in Appendix B, attached hereto, and Grantor shall provide its written response to the Application by granting a license or providing the reasons for denial within thirty (30) days of receipt. An Application shall not be required for Grantee’s existing attachments (“Existing Attachments”) made prior to the Effective Date or for over lashing of Grantee’s Attachments or service drops.

Grantor’s license granted hereunder extends to Grantee’s Existing Attachments. To the extent that Grantor holds rights in the underlying real property, however obtained, that are sublicensable to Grantee for the purposes contemplated by this Agreement, Grantor hereby grants Grantee a non-exclusive license to use such real property for such purposes during the Term or until the later removal of such Attachments, including the rights of ingress, egress and access, subject to any notice or other conditions set forth in or required under such rights of Grantor.

8.2. No Conflict. Grantor reserves to itself, its successors and assigns, the right to maintain its poles and to operate its facilities thereon in such manner as will best enable it to fulfill its own core electric utility service requirements. Grantor expressly grants Grantee the right to access the area in and around Grantor’s pole attachments and other pole facilities for the purpose of complying with the NESC and the terms of this Agreement. Grantee shall at its own expense attach, erect, install, maintain, and repair the Attachments in compliance with the National Electrical Safety Code (NESC), and all applicable laws. The Attachments shall not conflict with the use of the utility poles by Grantor for its core electric utility service requirements. Grantee acknowledges responsibility for the safe conduct of its employees, contractors, and agents in erecting, attaching, installing, maintaining, servicing, repairing or in any other way working in, around, or on the Attachments and Grantor’s utility poles.

8.4. Maintenance of Attachments. Grantee shall at its own expense maintain the Attachments in a safe condition. Grantee shall exercise its commercially reasonable efforts to avoid damage to Grantor's utility poles and facilities, and the facilities and attachments of third parties. Upon one hundred eighty (180) days' notice from Grantor, Grantee shall immediately and at its own expense, relocate, replace, repair or otherwise remove the Attachments, and transfer them, if required by Grantor for its core electric utility service requirements; otherwise, Grantor shall reimburse Grantee for its reasonable costs to so transfer its facilities. In case of an emergency, as determined in the reasonable discretion of Grantor, Grantor shall use commercially reasonable efforts to notify Grantee when such emergency requires the relocation of Grantee's Attachments, but in the event Grantor is unable to do so, Grantor may relocate, replace, repair or otherwise remove the Attachments, transfer them to substituted poles or perform any other work, maintenance, and/or repair in connection with the Attachments, and Grantee shall, on demand, reimburse Grantor for the reasonable expense thereby incurred by Grantor.

8.5. Replacement or Alteration of Poles. In the event that the Grantor's existing poles are inadequate to support or otherwise accommodate new Attachments proposed by Grantee, Grantee may request that Grantor make alterations to Grantor's poles or other accommodations including rearrangement of existing facilities attached to Grantor's poles or replacement of poles by supplying the relevant information to the Grantor. Grantee agrees that if replacement or other alteration of the poles is required in order to accommodate the Grantee's Attachments, Grantee shall pay the actual cost of such replacement or other alteration necessary to accommodate Grantee's Attachments, within forty-five (45) days of receipt of notice of such costs by Grantor. Grantor shall cause any necessary alterations to be completed within ninety (90) days of receipt of payment, and any necessary pole replacements to be completed within one hundred and twenty (120) days of receipt of payment. If Grantor is unable to timely complete the work, Grantee may undertake completion of the make ready work and Grantor will refund any payments for work it did not complete. In the event that any Pole is unsuitable for the Attachments requested by Grantee, Grantor shall use reasonable efforts to provide an alternate pole route. Grantee agrees to bear the full expense of such alternative arrangements and shall reimburse Grantor for any and all actual costs and expenses incurred by Grantor in making such alternative arrangements within forty-five (45) days of receipt of notice of all reasonable related costs. Any strengthening of poles (guying) required to accommodate the Attachments of Grantee shall be provided by and at the expense of Grantee.

8.6. Work Orders. When Grantor receives applications from multiple attachers, such applications shall be prioritized based upon the application first received by Grantor. Where applications are filed for the same pole and require rearrangements or replacements, Grantor shall endeavor to accommodate both requests and to allocate costs between the parties.

8.7. Inspections. Grantor reserves the right to inspect Grantee Attachments, at Grantor's sole cost and expense, to ensure that such Attachments comply with the NESC and applicable law. In the event that Grantor discovers that any pole to which Grantee is attached is out of compliance with the NESC or applicable law, it shall notify Grantee in writing, which notice shall include an

explanation of such non-compliance and the extent to which Grantee's Attachments are implicated. If it is agreed that such non-compliance was caused by Grantee's Attachments, Grantee shall promptly correct any such non-compliance that is deemed to present a threat of property damage or personal injury; all such other non-compliance shall be designated for correction in accordance with the NESC.

8.8. Grantee's Authority. Grantee shall secure any necessary consent from state or municipal authorities or from the owners of property to erect, attach, install, repair, service, and maintain the Attachments. This Franchise Agreement the Town shall be accepted as such evidence.

8.9. Report of Damage. Grantee and Grantor shall exercise special precautions to avoid damage to the facilities of the other party and each shall be responsible for any and all loss it causes to the other party's facilities and shall notify the other party promptly in the event it causes any such damage.

8.10. Non-Exclusive License. Grantee recognizes that it holds a non-exclusive license to install, erect, attach, maintain, service and repair attachments and other facilities to Grantor's utility poles and that other Grantors may seek to install attachments on the same poles desired by Grantee. No use, however extended, of Grantor's poles, under this Agreement, shall create or vest in Grantee any ownership or property rights in said poles, and Grantee's rights therein shall not be construed to compel Grantor to maintain any of Grantor's poles for a period longer than demanded by its own service requirements. Grantor shall not enter into an agreement with another attacher that interferes with Grantee's use of Grantor's poles under this Agreement.

SECTION 9 – Transfer of Cable System or Franchise of Grantee

9.1. No transfer of control of the Grantee, defined as an acquisition of 51% or greater direct ownership interest in Grantee, shall take place without prior written notice to the Franchising Authority. No notice shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation.

SECTION 10 - Insurance and Indemnity

10.1. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the Franchising Authority certificates of insurance designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, 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) per occurrence

for bodily injury or property damage. The Grantee shall provide workers' compensation coverage in accordance with applicable law.

10.2. Indemnification. Comcast shall indemnify, defend, save and hold harmless the Town, its elected and appointed officials, officers, agents and employees acting in their official capacities, from claims for injury, loss, liability, cost or expense arising in whole or in part from, caused by or connected with any act or omission of Comcast, its officers, agents, contractors, subcontractors or employees, arising out of, but not limited to, the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System. The Town shall give Comcast timely written notice of its obligation to indemnify and defend the Town. The obligation to indemnify, defend, save and hold the Town harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, penalties, and reasonable attorneys' fees. If the Town determines that it is necessary for it to employ separate counsel, in addition to that provided by Comcast, the cost for such separate counsel shall be the responsibility of the Town. Comcast shall not indemnify the Town for any claims resulting from acts of willful misconduct or negligence on the part of the Town. (b) Neither party shall be liable to the other for any interruption to service arising in any manner out of the use of Town's poles hereunder.

SECTION 11 - System Description and Service

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

SECTION 12 - Enforcement and Revocation Proceedings

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

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

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

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

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

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

(ii). in the case of a substantial default of a material provision of the Franchise, initiate revocation proceedings in accordance with the following:

(a) The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Grantee, including two or more instances of substantial non-compliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the non-compliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Grantee or upon receipt of the response does not agree that the allegations of non-compliance have been or will be resolved, it may then seek revocation of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request revocation of the Franchise.

(b) At the designated public hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania, 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. 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.

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

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

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

12.3 No Removal of System. Grantee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Grantee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act, or any portion thereof.

SECTION 13 – Competitive Equity

13.1. Competitive Video Service Provider.

13.1.1. Notwithstanding any other provision of 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 Town, or (ii.) otherwise begins to provide video services to subscribers in the Town (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 Town under the same agreement and/or under the same terms and conditions as apply to the VSP. The Grantee and the Franchising Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same material terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the Franchising Authority.

13.1.2. If there is no written agreement or other authorization between the 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.

13.2. 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 subscribers in the Town on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement 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.

13.3. Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the Town under Sections 12.2 or 12.3 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.

13.4. Video Service Provider. 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, 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 14 - Miscellaneous Provisions

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

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

To the Franchising Authority:

Town of Middletown
19 W. Green Street
Middletown, DE 19709
Attention: Town Manager

To the Grantee:

Comcast of New Castle County, LLC
110 Springbrook Boulevard
Aston, PA 19014
Attention: Government Affairs Department

with a copy to:

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

Comcast Cable
One Comcast Center
1701 John F. Kennedy Boulevard
Philadelphia, PA 19103-2838
Attention: Government Affairs Department

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

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

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

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

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

14.8. Captions. Captions to sections throughout this Franchise Agreement are solely to facilitate the reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

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

14.10. Incorporation by Reference. All presently and hereafter applicable conditions and requirements of federal and state laws, including but not limited to the rules and regulations of the FCC and the Commonwealth of Pennsylvania, as they may be amended from time to time, are incorporated herein by reference to the extent not enumerated herein. Should the Commonwealth of Pennsylvania, the federal government or the FCC require Grantee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Franchising Authority and Grantee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

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

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

Attest:

Franchising Authority:

By: _____

Print Name: _____

Title: _____

Date: _____

Attest:

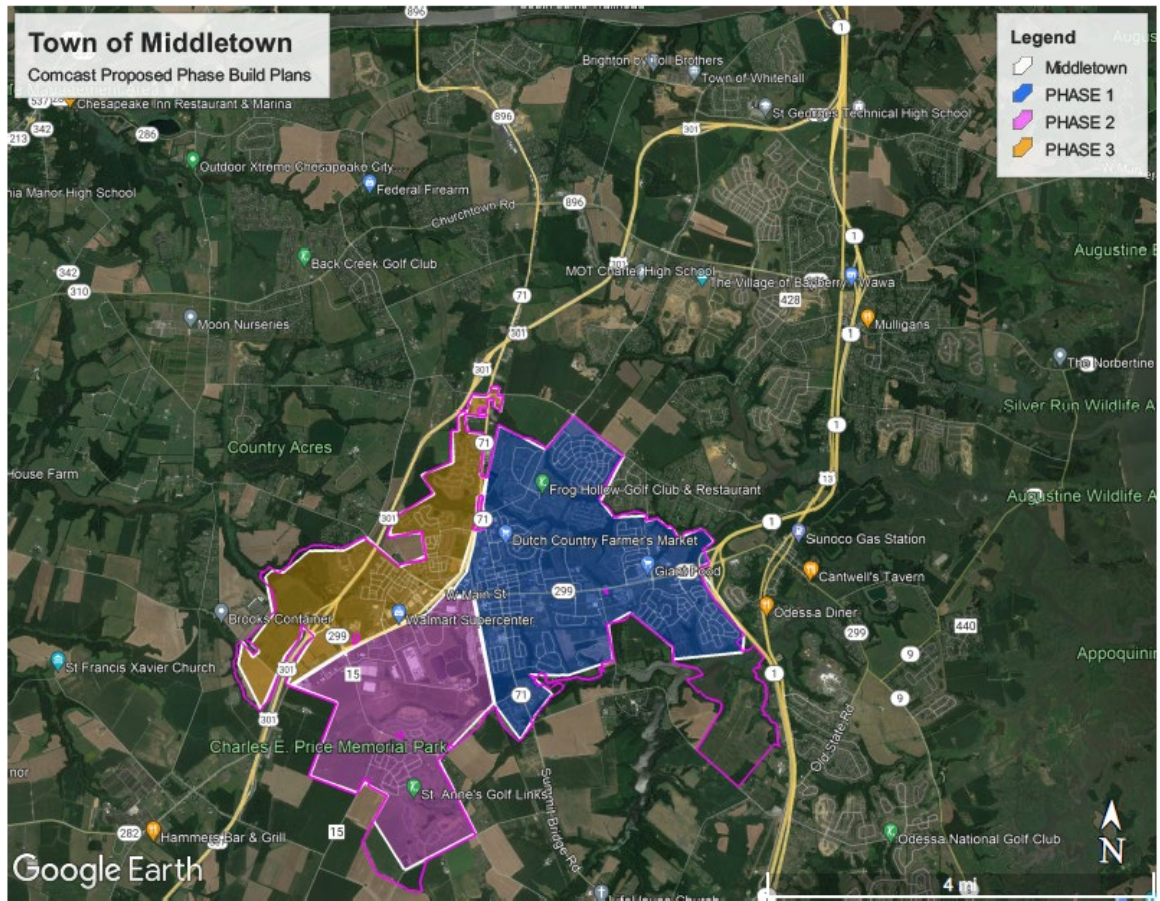
Grantee:

By: _____

Title: Senior Vice President – Freedom Region

Date: _____

APPENDIX A



APPENDIX B

APPLICATION

Name of Grantee: Comcast of New Castle County, LLC

Contact name: _____

Billing address: _____

Phone: _____ Fax: _____

Number and location of Attachments: _____

Requested Pole Accommodation, if any: _____

TO BE COMPLETED BY XXXXX UTILITY ONLY:

Approved: Yes _____; No _____

Additional Requirements of Licensee: _____

Initials of Licensee's Authorized Representative: _____ Date: _____

DRAFT