

VIRGINIA:

At a regular meeting of the Washington County Board of Supervisors held Tuesday, January 22, 2002, at 7:00 p.m., at the County Administration Building in Abingdon, Virginia, the following were present:

PRESENT:

Joe W. Derting, Chairman
 John B. Roberts, Sr., Vice Chairman
 Bobby D. Ingle
 Phillip B. McCall
 Anthony S. Rector
 Dulcie M. Mumpower

Mark K. Reeter, County Administrator
 Lucy E. Phillips Bright, County Attorney
 Naoma A. Cook, Administrative Supervisor
 Mark W. Seamon, Accounting & Purchasing Manager

ABSENT:

Jack H. Barker

1 Call to Order

The meeting was called to order by Mr. Joe Derting, Chairman of the Board, who welcomed everyone in attendance.

2 Invocation and Pledge of Allegiance – Bobby D. Ingle

Mr. Bobby D. Ingle gave the Invocation and led the Pledge of Allegiance.

3 Approval of Agenda

On motion of Mr. Ingle, second by Mr. Roberts, it was resolved to approve the Agenda with the following deletions/additions:

Deletions:

Item 7 Consideration of Dog Damage Claim, \$355.00, David Henry, Meadowview, VA
(tabled to February 12, 2002 regular meeting)

Additions:

Item 17 Consideration of Concerns by Residents of Buckhaven Subdivision about
School Bus Service

Item 18b. VACo Legislative Alert – House Bill 1212 – Manufactured Housing in
Residential Zoning Districts

The vote on this motion was as follows: (6-0)

<i>Mr. Derting</i>	<i>Aye</i>
<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

4 Approval of Minutes – January 8, 2002, Organizational Meeting

On motion of Mr. Ingle, second by Mrs. Mumpower, it was resolved to approve the minutes of the January 8, 2002 Organizational Meeting with the following corrections:

Page 12327, Item 5a: *Correct motion to read “On motion of Mr. Barker, second by Mr. Rector, Mr. Joe Derting was nominated for the office of Chairman of the Board of Supervisors for Calendar Year 2002.”*

The vote on this motion was as follows: (6-0)

<i>Mr. Derting</i>	<i>Aye</i>
<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

Scribner’s Note: The above correction has been made to the recorded Minutes of the referenced meeting.

5 Presentation of County Employee Service Pins

Chairman Joe W. Derting and County Administrator Mark K. Reeter presented the following service pins:

- a. Phillip Bledsoe
Information Technology
5 Years
- b. Nadine Culberson
Information Technology Manager
10 Years
- c. Keith Owens
Recreation Manager
10 Years

Mr. Derting and Mr. Reeter expressed their appreciation for the superior service received from these employees.

6 Presentation of Plaques – Abingdon High School Drama Team

On behalf of the Board of Supervisors, Supervisor Phillip McCall and Chairman Joe Derting presented the following Certificates and Plaques:

- ***Plaque to Danielle Finch of Abingdon High School for being named to the AA State Champion All-Star Cast for her role in the play, A Piece of My Heart.***
- ***Plaques to the following Abingdon High School Drama Team cast members for their roles in the play, A Piece of My Heart, performed at the Ferrum College Invitational Tournament. The cast was named the Highlands District Champion, Region IV Champion and AA State Champion: Lisa Bodenhorst, Ali Connell, Danielle Finch, Drew Furst, Beth Gilmer, Ryan Johnsey, Adriane Kiss, Claudia Kiss, Nikki Matney, Rachel McKain, Sarah McKain, Rosa Morris, Chris Stoots, Laurel Sutton and Blair Watson - Directors: Jennifer Bradley and Patrick McCall.***

Mr. McCall stated that it was truly an honor to present these students with this recognition. He commended the students for their achievements and further stated that he was impressed with the research that the students had done while putting the play together.

Mr. McCall recognized Coaches Jennifer Bradley and Pat McCall.

7 Consideration of Dog Damage Claim \$355.00, David Henry, Meadowview, VA

Scribner's Note: This Item tabled to the February 12, 2002 regular meeting.

8 Public Hearing on Proposed Ordinance 2002-01 to Amend Chapter 2, Section 2-121 (B), of the 1997 Code of the County of Washington, Virginia, to Require Appointment of Two more Members to the Smyth-Washington Regional Industrial Facility Authority Board of Directors, to Set End of Term for Initial Members, and to Allow for Appointment in the Event of Vacancy in Office

Mr. Derting opened the public hearing to receive comments in support of and in opposition to a proposed Ordinance 2002-01 to Amend Chapter 2, Section 2-121 (B), of the 1997 Code of the County of Washington, Virginia, to Require Appointment of Two more Members to the Smyth-Washington Regional Industrial Facility Authority Board of Directors, to Set End of Term for Initial Members, and to Allow for Appointment in the Event of Vacancy in Office.

Mr. Derting explained that the previous state law for a multi-county industrial development authority allowed each county two authority board members. During the 2001 General Assembly Session the law was amended to permit each county to appoint a third representative.

Mr. Patrick Mannix addressed the Board explaining that during the January 8, 2002, meeting under Agenda Item 7 g. that County Attorney Lucy Bright stated that any motion to appoint a third member must be subject to adoption of the proposed ordinance. He further explained that the subsequent motion during the January 8, 2002, meeting appointing Bobby Ingle to the Smyth-Washington Regional Industrial Facility Authority was in conflict with the proposed ordinance.

There be no further comments, Mr. Derting declared the public hearing closed.

Mr. Derting responded to Mr. Mannix's comments, explaining that the third appointment to the Smyth-Washington Industrial Facilities Authority could be a Board of Supervisor member or a representative from the general public.

Ms. Lucy Bright, County Attorney, addressed the Board explaining that Mr. Derting was correct with his remarks regarding the third appointment to the Smyth-Washington Industrial Facilities Authority. Ms. Bright further explained that the law does require the appointee be a resident of Washington County, Virginia. Ms. Bright recommended to the Board that if the proposed ordinance

is approved they consider a motion to ratify the appointment of Bobby Ingle that was made on January 8, 2002.

On motion of Mr. Ingle, second by Mr. McCall, it was resolved to adopt the following ordinance:

AN ORDINANCE TO AMEND CHAPTER 2, SECTION 2-121(B), OF THE 1997 CODE OF THE COUNTY OF WASHINGTON, VIRGINIA, TO REQUIRE APPOINTMENT OF TWO MORE MEMBERS TO THE SMYTH WASHINGTON REGIONAL INDUSTRIAL FACILITY AUTHORITY BOARD OF DIRECTORS, TO SET END OF TERM FOR INITIAL MEMBERS, AND TO ALLOW FOR APPOINTMENT IN THE EVENT OF VACANCY IN OFFICE

WHEREAS, the Virginia General Assembly in 2001 amended the Virginia Regional Industrial Facilities Act to allow for a regional authority having only two member localities that the governing bodies of each member locality may appoint to the regional authority board of directors three members from each member locality; and

WHEREAS, the Smyth-Washington Regional Industrial Facility Authority has only two member localities and wishes to have appointed to its Board of Directors three members from each member locality; and

WHEREAS, such change in the membership requires amendment of the Washington County Code of Ordinances; and

WHEREAS, the Regional Industrial Facility Authority ordinance required clarification of the end of term provision for the initial board of directors as well as applicable procedure in the event of vacancy during a term of office;

NOW, THEREFORE, BE IT RESOLVED, that the Washington County Board of Supervisors after notice and public hearing, as required by law, hereby amends Chapter 2, Subsection 2-121(b), as set forth below:

Chapter 2, Administration

Article III, Boards, Committee, Commissions

Division 4, Regional Industrial Facility Authority

Section 2-121. Board of Directors

Subsection 2-121(b). Each Member Locality shall appoint to the board of directors one member from its governing body, one member from its industrial development authority, and one member to be selected from the community at-large. The at-large member shall be a resident of the Member Locality that makes his or her appointment to the Board.

Subsection 2-121(c). Each member of the board of directors shall serve for a term of four years, commencing on January 1 of the first year and ending on December 31 of the fourth year, and may be reappointed for one additional four-year term, with the following exceptions to provide for staggered terms regarding the initial board of directors and the first term of office for the at-large members of the board. One of the two members appointed from each member locality to the initial board of directors shall be appointed for a term of two years and may be reappointed for an additional four-year term. The term of office of the members of the initial board of directors shall begin on the date of the creation of the authority and end on December 31 of the second or fourth year after creation of the authority, as designated by the appointment. The term of office of the first two at-large members shall commence upon the first meeting of the board of directors after

their appointment and shall end on December 31, 2005. In the event of a vacancy during a term of office, the appropriate governing body shall in a timely manner appoint a new member whose term of office shall commence at the first meeting of the board of directors after appointment and shall end upon the end of term of the vacant position to which the member was appointed.

The vote on this motion was as follows: (6-0)

<i>Mr. Derting</i>	<i>Aye</i>
<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

Mr. Derting asked the Board if they wished to entertain a motion to ratify Bobby Ingle's appointment to the Smyth Washington Industrial Facilities Authority.

On motion of Mr. Rector, second by Mrs. Mumpower, it was resolved to follow the County Attorney's recommendation and ratify the appointment made on January 8, 2002, of Mr. Bobby Ingle as the third representative from Washington County on the Smyth-Washington Regional Industrial Facilities Authority.

The vote on this motion was as follows: (5-0-1)

<i>Mr. Derting</i>	<i>Aye</i>
<i>Mr. Ingle</i>	<i>Abstained</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

9 Public Hearing on Proposed Ordinance 2002-02 to Renew Cable Television Franchise to Comcast Cablevision of the South, d.b.a. Virginia Highlands Cable Company

County Attorney Lucy Bright addressed the Board explaining that provided in their agenda packets was a copy of the franchise agreement that was still under negotiation with Comcast at the time of agenda packet distribution. During the time between distribution and tonight's meeting a few minor typographical and non-substantive changes were made. A copy of the final proposed version of the franchise agreement was distributed to Board members.

Mr. Derting introduced Mr. Russell Byrd, Area Manager of Government and Public Affairs with Comcast.

Mr. Byrd addressed the Board presenting a brief overview of the Comcast's recent activities. He stated that in Washington County, Comcast served 4,000 customers not including customers in Abingdon and Bristol.

Responding to a question regarding the cost of high speed Internet service, Mr. Byrd stated it would be \$25.99 per month with additional costs for renting modems.

Mr. Derting commended Comcast for the changes made to the cable system within the last nine months.

Mr. Ingle commended Comcast for the good job and changes within the last several years since Comcast began operation of the cable system in Washington County.

Mr. Rector stated that comments from his constituents were mostly complaints about the fees. However, since Comcast created several package choices his constituents were satisfied. Another complaint from his constituents was about delay in cable service.

Mr. Derting opened the public hearing to receive comments in support of and in opposition to the Proposed Ordinance 2002-02 to Renew Cable Television Franchise to Comcast Cablevision of the South, d.b.a. Virginia Highlands Cable Company.

There being no further comments, Mr. Derting declared the public hearing closed.

On motion of Mr. Rector, second by Mr. McCall it was resolved to adopt the following revised franchise agreement to dated January 22, 2002:

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FRANCHISE RENEWAL AGREEMENT

The Board of Supervisors of the COUNTY OF WASHINGTON, VIRGINIA, a political subdivision of the Commonwealth of Virginia (County), having held a public hearing and considered economic factors, the impact on private property rights, the impact on public convenience, the public need and potential benefit, and such other factors as are relevant, finds that the renewal of its cable television franchise to Comcast Cablevision of the South (Franchisee) will enhance the public welfare.

On the basis of that finding, the Board of Supervisors of the County of Washington, Virginia does hereby renew Franchisee's franchise to construct, operate and maintain a cable television system within the jurisdictional limits of the County and, in doing so, enters into an Agreement with Franchisee to include the following terms and conditions (Franchise Agreement):

SECTION 1 DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meanings given herein, unless the context clearly indicates that another meaning is intended. The word "shall" is always mandatory, and not merely directory:

A. Additional Service - "Additional Service" shall mean any cable service other than Basic Cable Service provided over the Cable Television System by Franchisee directly or as a carrier for its subsidiaries, affiliates, or any other Person engaged in communications services including, but not limited to, premium pay programming, burglar alarms, computer controlled services or other electric intelligence transmissions, facsimile reproductions, meter readings, home shopping, fire and smoke detectors, medical alarms, and police alert systems.

B. Annual Gross Revenue - "Annual Gross Revenue" shall mean any and all compensation received from Subscribers for cable services delivered to Subscribers, as well as rentals of equipment, advertising revenue and home shopping Channel commissions.

C. Application - "Application" shall include all written communications, in whatever form, made by Franchisee to the County concerning construction, rendition of services, maintenance, or any other matter pertaining to the Cable Television System contemplated herein.

D. Basic Cable Subscriber Services; Basic Cable Service - "Basic Cable Subscriber Services" or "Basic Cable Service" shall mean the lowest level of cable service a Subscriber can buy. It includes, at a minimum, all over-the-air television broadcast signals carried pursuant to the must-carry requirements of the Cable Act and any public, educational or government access Channels as required by this Franchise Agreement

E. **Board of Supervisors; Board** - "Board of Supervisors" or "Board" shall mean the governing body of the County or any successor to the legislative powers of the present Board.

F. **Cable Act** - "Cable Act" shall mean Title VI of the Communications Act of 1934, as amended from time to time, 47 USC Sections 521 *et seq.*

G. **Cable Television System, Cable System** - "Cable Television System" or "Cable System" shall mean the facility operated by Franchisee within the County that consists 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 County.

H. **Channel** - "Channel" shall mean a portion of frequencies in the electromagnetic spectrum that is used in a Cable System and which is capable of delivering a television Channel (as "television Channel" is defined by FCC regulations).

I. **County** - "County" shall mean the County of Washington, Virginia.

J. **County Administrator** - "County Administrator" shall mean the Chief Executive Officer of the County, or his/her designee.

K. **County Attorney** - "County Attorney" shall mean the existing or succeeding retained legal counsel of the County or his/her assistants.

L. **Federal Communications Commission, FCC** - "Federal Communications Commission" or "FCC" shall mean that administrative agency of the Federal government responsible for cable television regulation on a national level, or its lawful successor.

M. **Franchise** - "Franchise" shall mean the permission, license or authorization given hereunder to construct, operate and maintain a Cable Television System in the Unincorporated County including this Franchise Agreement.

N. **Franchisee** - "Franchisee" shall mean the Person identified in the first introductory paragraph of this Franchise Agreement as "Franchisee" or any successors, transferees or assignees of such Franchisee.

O. **Good Cause** - "Good Cause" shall represent that set of facts and circumstances which, in an individual case, a reasonable man would adjudge to be beyond Franchisee's reasonable control and which would, therefore, represent a justifiable excuse of non-performance. Depending on the facts and circumstances, good cause may include, but shall not be limited to, delays or interruptions arising from necessary utility changes, rearrangements, power outages, damage to the equipment of Franchisee by the County or a third party, the fulfillment of any Federal, state and/or local governmental or regulatory restrictions or requirements, national emergency, uncontrollable material shortages, fire, earthquakes or the elements and acts of God.

P. **Local Educational Authorities** - "Local Educational Authorities" shall mean those individuals, groups, organizations, or governmental entities that provide for primary or secondary education, whether public or private, within the County.

Q. **Normal Service Interval** - "Normal Service Interval" shall mean the period between the time that Franchisee is notified by a Subscriber of a service deficiency and two business days following the receipt of such notice, provided that the Subscriber or his representative is available during this period at the premises to be serviced.

R. Person - "Person" shall mean any Person, firm, partnership, association, corporation, company or organization of any kind.

S. Private School - "Private School" shall mean any school, college or university that is part of a parochial or religious school system and is operated not for profit.

T. Public School - "Public School" shall mean any school, college or university that is a part of an educational program operated by the County or the State.

U. State - "State" shall mean the Commonwealth of Virginia.

V. Street - "Street" shall mean the surface of and the space above, between, or below any public Street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter used for the purpose of public travel and shall include such other easements or rights-of-way as shall be now or hereafter held by the County which shall, within their proper use and meaning, entitle the County and its Franchisee to the use thereof for the purpose of installing or transmitting Cable Television System transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Cable Television System.

W. Subscriber - "Subscriber" shall mean a purchaser of any service delivered over the Cable System to an individual dwelling unit or of service to be utilized in connection with a business, trade or profession.

X. Unincorporated County - "Unincorporated County" shall mean the unincorporated portions of Washington County, Virginia.

SECTION 2 FRANCHISE AGREEMENT

There is hereby granted by the County of Washington to Comcast Cablevision of the South, its successors and assigns, the right, privilege and Franchise to construct, operate, maintain and upgrade a Cable Television System within the Franchise Territory as herein defined, for a period of seven (7) years from the effective date of this Franchise Agreement, subject to the conditions and restrictions as hereinafter provided. Said Franchise may be renewed by the County for an additional seven (7) year period, or other period as determined by official action of the Board, if such renewal is made in writing and in compliance with the Cable Act and other applicable federal, state, and local law. The County shall provide appropriate public notice and opportunity to comment on such renewal requests.

The County and Franchisee, by its acceptance hereof, agree that the purposes of this Agreement are to create the relationship of Franchising Authority (County) and Franchisee, to provide for the terms and conditions of that relationship, including compensation for the use of County property and County supervision, and the conditions upon which such property may be used.

SECTION 3 AUTHORITY NOT EXCLUSIVE

The right to use and occupy said Franchise Territory as defined in Section 4 herein for the purposes herein set forth shall not be exclusive, and the County reserves the right to grant a similar use of said Franchise Territory to any Person or entity at any time during the term of

this Franchise Agreement, in accordance with state and federal regulations provided, however, no other franchises for a cable service will be granted on terms or conditions more favorable or less burdensome than in any existing franchise except as provided in section 15.2-2108(C) of the 1950 Code of Virginia, as amended.

SECTION 4 FRANCHISE TERRITORY

The Franchise Territory for the Franchise given in this Franchise Agreement is for the present territorial limits of the Unincorporated County and for any area henceforth added thereto during the term of this Franchise Agreement. A copy of the areas within the County that are currently serviced by Franchisee is attached as Exhibit A. Franchisee shall provide to the County a copy of any revisions to the service area as set forth in Exhibit A within thirty (30) days of the effective date of such revision. In addition, Franchisee shall maintain maps and/or plats of the Cable Television System, copies of which shall be furnished to the County, upon request.

SECTION 5 OPERATIONAL STANDARDS

A. The Cable Television System shall be installed and maintained in accordance with the highest accepted industry standards to the end that the Subscriber may receive the most desirable form of service. The Cable Television System will be built in all areas of the unincorporated territory of the County having a density of 25 occupied dwelling units per cable mile. The number of miles will be calculated starting at the closest point of active distribution system and will continue until reaching 300 feet of the dwelling unit. The Cable Television System may be expanded to other areas of the Unincorporated County upon the basis of a capital contribution in aid of construction in accordance with the formula set forth in Exhibit B attached hereto.

B. The Franchisee shall provide upon request of the Board, free of charge, one Basic Service connection to each public school, County owned or leased building, fire station and police station within the County that is passed within one hundred and fifty (150) feet of Franchise's cable distribution system.

C. The Cable Television System shall be installed and remain capable of twenty-four (24) hours per day continuous operation.

D. The Cable Television System shall be capable of and will produce a picture upon any Subscriber's television screen in black and white or color (provided the Subscriber's television set is capable of producing a color picture) that is materially undistorted and free from ghost images and accompanied by proper sound, assuming the technical, standard production television set is in good repair and that the television broadcast signal transmission is receivable satisfactorily at the Franchisee's antenna site. In any event, the picture produced shall be as good as is generally accepted in the cable television industry.

E. The Cable Television System shall transmit or distribute signals of adequate strength to produce good pictures with good sound in all television receivers operating within the manufacturer's specifications of all Subscribers without causing cross modulation in the cables or interference with other electrical or electronic systems.

F. Franchisee shall not allow its cable or other operations to interfere with the television reception of Persons not served by Franchisee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents of

the County. Should Franchisee discover or otherwise become aware of such interference, Franchisee shall respond with reasonable diligence to eliminate the interference.

G. Franchisee shall continue, throughout the term of this Franchise, to maintain the technical standards and quality of service set forth in this Franchise.

H. The requirements of A through G above, or any of them, may be waived by the County upon showing by the Franchisee of Good Cause.

SECTION 6 CONSTRUCTION STANDARDS

A. Franchisee shall, at all times, employ reasonable care and shall install and maintain devices or systems for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. Franchisee shall install and maintain its wires, cables, fixtures and other equipment so as not to interfere with the equipment of any utility serving the residents of the County or any other entity lawfully and rightfully using the conduit, pole or other part of the right of way.

C. The Cable Television System shall at all times conform to the construction and maintenance standards set forth below.

(1) Methods of construction, installation and maintenance of the Cable Television System shall comply with the national Electrical Safety Code 1975 (ANSI CI-1975), and any future amendments, modifications or replacements thereof, to the extent that such Code is consistent with the local law affecting the construction, installation and maintenance of electrical supply and communications lines. To the extent that such Code is inconsistent with the other provisions of this Franchise or with generally applicable local law, the latter shall govern.

(2) Any tower constructed or maintained in the County for use in the Cable Television System shall comply with the standards contained in Structured Standards for Steel Antenna Towers and Antenna Supporting Structures, EIE Standards RS-222-A, as published by the Engineering Department of the Electronic Industries Association, 20001 I Street, N.W., Washington, D.C. 20006 and as the same may be, from time to time, modified, amended or replaced.

(3) Installations and physical dimensions of any tower constructed in the County for use in the Cable Television System shall comply with all appropriate Federal Aviation Agency Regulations including, but not limited to, Objectives Affecting Navigable Airspace, 14 C.F.R. Section 77.1 et seq., February, 1965 and as the same may be, from time to time, modified, amended or replaced.

(4) Any antenna Structure in the Cable Television System shall comply with Construction, Marking and Lighting of Antenna Structure, 47 C.F.R. Section 77.1 et seq., February, 1965 and as the same may be, from time to time, modified, amended or replaced.

(5) Any tower or antenna constructed in the County for use in the Cable Television System shall comply with all applicable local zoning and building ordinances.

(6) All working facilities and conditions used during construction, installation and maintenance of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.

(7) Franchisee shall construct and operate the system and related facilities in accordance with generally accepted related industry codes and standards that are applicable now or that may hereafter become applicable.

D. As stated above, Franchisee shall be required to reasonably comply with standards as set forth in the publications recited above, this to include any modifications, replacements and/or amendments thereto. However, in the event any publications mentioned herein should become obsolete or should expire, then Franchisee shall be required to comply with the latest set of published standards available at such time of obsolescence or expiration. These Franchise Agreement provisions shall in no way be interpreted to waive or otherwise diminish the need of Franchisee to comply with other applicable federal, state, and/or local standards that may not be referenced in the text of this Franchise Agreement.

E. All conductors, cables, towers, poles and other components of the system shall be located and constructed by the Franchisee in back of the Street curbs, except insofar as such components cross Streets and public rights of way, so as to provide minimum interference with access by adjoining property owners to the Streets and public ways, and no pole or other fixture of the Franchisee shall be placed in the public way so as to interfere with the usual travel on such public way.

F. The requirements of A through E above, or any of them, may be waived by the County upon showing of Good Cause.

SECTION 7 CONDITIONS OF STREET OCCUPANCY

A. All transmissions and distribution structures, lines and equipment erected by Franchisee within the Franchise Territory shall be located so as to not cause unreasonable interference with the proper use of Streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of said Streets, alleys or other public ways and places. The Cable Television System shall be constructed and operated in compliance in all material respects with all adopted local, state and national construction and electrical codes which are in effect as of the date of this construction.

B. Prior to commencing any additional construction, Franchisee shall submit to the County detailed maps showing proposed construction locations. These plans shall show the proposed placement of Franchisee's cables on the County right of way, and poles that are to be erected by Franchisee as required for construction, and locations where Franchisee proposes to attach to existing utility poles. Franchisee shall cooperate with the County and any of its agents during any initial construction period and throughout the full term of the Franchise in regards to construction procedures, practices and locations. All cable construction and installations located within County property or County rights-of-way shall be installed and maintained at such locations and depths so as to not interfere with any road or right-of-way maintenance.

C. Whenever the County or State shall require the relocation or re-installation of any property of Franchisee in any of the Streets of the Franchise Territory, it shall be the obligation of the Franchisee, upon reasonable written notice such requirements, to cooperate in the timely removal and relocation or reinstallation of said property so as not to cause unreasonable delay. Such relocations, removal or reinstallations by Franchisee shall be at the

sole cost of Franchisee to the extent governmental funds are not available to reimburse Franchisee for such activity; provided, however, that if the County requests such relocation, removal, or reinstallation of Franchisee's property in any of the Streets in the Franchise area for the sole purpose of installing its own cable television or telecommunications services or those of a second cable television or telecommunications services provider in competition with Franchisee, then the cost shall be borne by the requesting party and not by Franchisee.

D. Whenever in any place within the Franchise Territory, all utilities shall be located underground, it shall be the obligation of the Franchisee to locate or to cause its property to be located underground within such places. If the utilities are to be relocated underground in any place within the Franchise Territory after Franchisee previously installed its property, Franchisee shall, nevertheless, at the same time or in a timely manner thereafter, remove and relocate its property also underground in such places. Any facilities of Franchisee placed underground at the property owner's request, in an area where utilities facilities are aerial, shall be installed with the additional expense being paid by the property owner.

E. Franchisee shall have the authority to trim trees upon and overhanging Streets of the Franchise Territory so as to prevent the branches of such trees from coming into contact with Franchisee's wires and cables. Franchisee shall obtain from the County, if required, a permit to conduct any such trimming and the same shall be conducted in strict obedience to all local laws and ordinances and at the sole expense of Franchisee.

F. In the case of any disturbance of any road, ditch or other area within the County right-of-way caused by Franchisee, Franchisee shall, at its own cost and expense and in a manner approved by the County, replace and restore such Street or sidewalk in at least as good a condition as immediately before the work involving such disturbance was done.

G. Franchisee shall maintain, repair and keep in good condition for a period of one (1) year following such disturbance all portions of a sidewalk or Street disturbed by it or its agents, provided such maintenance and repair shall be made necessary because of defective workmanship or materials supplied by Franchisee.

H. Franchisee shall, upon the request of any Person holding a building permit issued by the County, temporarily remove, raise or lower its wires to permit the moving of such building(s). The expense of such temporary removal or raising or lowering of the wires shall be paid by the Person requesting the same, and the Franchisee shall have the authority to require such payment in advance. Franchisee shall be given not less than five (5) business days advance notice to arrange for such temporary wire changes.

I. Franchisee's work, while in progress, shall be properly executed at all times with suitable barricades, flags, lights, flares or other devices as are reasonably required to protect all members of the public having occasion to use the portion of the Street involved or adjacent property.

SECTION 8 SUPERVISION BY THE COUNTY

A. Franchisee shall construct, operate and maintain the Cable Television System in strict compliance with all laws, ordinances and departmental rules and regulations affecting the Cable Television System.

B. Upon a thirty (30) day written request, or lesser notice as agreed upon by Franchisee, Franchisee shall make an annual report to the Board of Supervisors at a regular

scheduled meeting, determined by the County, on the following subjects: payment of franchise fees for the preceding calendar year, services provided to Subscribers during the preceding calendar year, services anticipated to be added in the current calendar year; general description of nature of complaints received from Subscribers and action taken to resolve complaints; anticipated growth in service area; and other subjects as may be relevant. Franchisee shall make reasonable efforts to make additional presentations to the Board, the County Administrator, or members of the Board upon request of such to discuss specific topics.

C. The Cable Television System and all parts thereof shall be subject, upon reasonable notice, to the right of periodic inspection by the County.

D. If at any time, the powers of the Board or any agency or official of the Board are transferred by law to any other board, authority, agency or official, then such other board, authority, agency or official shall have the powers and rights previously vested under this Franchise in the Board or any agency or official of the County.

E. The Grantee shall provide one non-commercial education and government access (EG) Channel to the County in accordance with this Agreement. It shall be left to the option of the County to determine the allocation of such access Channel for use by the local government, schools and the public. Within one hundred and twenty (120) days of receipt of a written request from the County, the Franchisee shall provide the County with such Channel on a non-exclusive basis for non-commercial educational and governmental (EG) access programming. The Channel shall at all times remain the property of Franchisee and Franchisee shall be entitled to program such Channel after reasonable notice to the County at any time period that the Channel is not used for EG purposes. The County agrees that it will not use such EG access Channel to provide services that compete with the Franchisee's lines of business. In case of emergency or disaster, the Franchisee shall, upon reasonable request of the County, make available its facilities to the County for emergency use during an emergency or disaster.

F. Franchisee shall offer to all customers a diversity of video programming services consisting of at least forty (40) Channels.

SECTION 9 FRANCHISE FEES

A. Franchisee shall pay to the County for the use of the Streets and other facilities of the County in the operation of the Cable Television System and for the County supervision thereof a sum equal to five percent (5%) of the Annual Gross Revenues, as defined herein, from receipts from Subscribers within the County. Said fee shall be paid on a yearly basis within forty-five (45) days after the end of a calendar year. The Franchisee shall file with the County within forty-five (45) days after the expiration of each of the Franchisee's fiscal years a statement clearly showing in detail the Annual Gross Revenues received by the Franchisee during the preceding fiscal year.

B. In the event this Franchise should be terminated or forfeited prior to the end of the Franchise term, as defined herein, Franchisee shall immediately submit to the County a financial statement prepared by a certified public accountant or chief financial officer of Franchisee acceptable to the County showing the Annual Gross Revenues of Franchisee for the time elapsed since the last fiscal year report. Franchisee shall pay to the County not later than forty-five (45) days following the termination of this Franchise a like percentage of such Annual Gross Revenues and any other sums legally due and owing the County.

C. In the event that any payment is not made on or before the applicable date fixed herein, Franchisee shall be subject to payment of interest penalty in the amount of one and one-half percent (1.5 %) per month after the payment due date. The County Commissioner of Revenue may waive or reduce such interest penalty upon Franchisee showing Good Cause for late payment. If Franchisee refuses to pay the interest penalty as set forth herein, then the County may demand payment of such interest penalty from the Performance Bond, subject to the provisions stated in Section 12 of this Franchise Agreement titled, "Performance Bond."

D. The County shall have the right to inspect the Franchisee's records showing the Annual Gross Revenues from which its franchise payments are computed. The right of audit and computation of any and all amounts paid under this Franchise shall always be accorded to the County. Should the County notify Franchisee in writing of its desire to inspect and/or audit Franchisee's records, Franchisee shall be obligated to produce such records and make them available to the County of Washington within twenty (20) working days of such notification.

SECTION 10 SERVICE MAINTENANCE STANDARDS

A. Franchisee shall maintain sufficient repair and maintenance crews capable of responding to Subscriber complaints or requests for service within the Normal Service Interval as defined herein.

B. Service to Subscribers

(1) Any verbal, telephonic or written complaint relating to the quality or continuity of service shall be attended to within the Normal Service Interval as defined herein.

(2) The provisions contained in this Subsection shall not apply if the discontinuation of service is occasioned because of an act of God, strike, national emergency, or any other circumstance beyond the control of Franchisee. Similarly, this provision shall not apply to service requests or complaints pertaining to television set malfunctions or other breakdowns not related to the operation of the Cable Television System.

(3) Franchisee shall have the right to prescribe reasonable service rules, regulations and rates for the conduct of its business; provided however that such service rules and regulations, as well as subsequent amendments or modifications thereof, shall be made available upon request for inspection by the County.

SECTION 11 COMPLAINT PROCEDURES

A. Franchisee shall establish procedures for receiving, acting upon and resolving Subscriber complaints. Franchisee shall furnish a notice of such procedures to each Subscriber at the time of the initial subscription to the system, and Franchisee shall provide to the County a copy of such procedures in effect at the time of entry into this Franchise Agreement. Franchisee shall also provide in a timely manner a copy of revised versions of the complaint procedure as such revised versions go into effect. In addition, Franchisee shall maintain a written record, or "log," listing the date and time of each customer's complaints, identifying the Subscriber, describing the nature of the complaints, and when and what action was taken by Franchisee in response thereto. Such records shall be kept for a period of one (1) year reflecting the operations to date and shall be available for inspection by the County during normal business hours. A copy of such records shall be provided to the County upon

request and upon payment of reasonable copy expense. The County agrees to Franchisee redaction of information protected by the Privacy Protection Act.

B. Franchisee shall notify each Subscriber at the time of initial installation and all Subscribers at least once a year of the name and address of its Customer Service Department, for purposes of filing a complaint, and of the procedures contained in this section in accordance with Section 76.607 of the FCC Rules and Regulations.

SECTION 12 PERFORMANCE BOND

A. Franchisee shall deposit with the County Attorney within sixty (60) days of the effective date of this Franchise a Performance Bond from surety authorized to do business in the State, in the minimum amount of Ten Thousand Dollars (\$10,000.00). The form and content of such Performance Bond shall be acceptable to the County. The Performance Bond shall be used to ensure the faithful performance by Franchisee of all provisions of this Franchise; compliance with all orders, permits and direction of any agency, commission, board, department, division, or office of the County having jurisdiction over its acts or defaults under this Franchise; and the payment of Franchisee of any claims, liens and taxes due the County which arise by reason of the construction, operation or maintenance of the system.

B. The Performance Bond shall be maintained at the minimum amount of Ten Thousand Dollars (\$10,000.00) during the entire term of this Franchise, even if amounts have to be withdrawn pursuant to Subsections A, C or D of this Section.

C. If Franchisee fails to pay the County any compensation within the time fixed herein, and fails after thirty (30) days' written notice to pay to the County any fees due and unpaid, or fails to repay the County within such thirty (30) days any damages, costs or expenses which the County is compelled to pay by reason of the acts of default of Franchisee in connection with this Franchise Agreement, the County may, subject to Subsection D herein, demand payment of the amount thereof, with interest and any penalties, from the Performance Bond. Upon such demand for payment, the County shall notify Franchisee of the amount and date thereof.

D. Notwithstanding Subsection C, in the case of a bona fide dispute regarding compliance, Franchisee may request a hearing before the County Administrator within thirty (30) days after written notification of non-compliance and penalty by the County. At such hearing, all parties may file evidence and the merits of the dispute will be decided. The County Administrator shall make public his decision, along with a statement reciting the basis for that decision. Within thirty (30) days, Franchisee may appeal to the Board, in writing, the decision rendered by the County Administrator. At the appeal hearing, Franchisee may contest the findings of fact or interpretation of controlling law, at which time the Board may affirm, reject or modify the decision of the County Administrator. The affirmation, rejection or modification of said decision by the Board shall be final, subject to judicial review upon request of Franchisee. The procedures stated in this paragraph D shall not apply in the context of a dispute involving Liquidated Damages for which specific procedures are stated in Section 19 of this Franchise Agreement.

E. The rights reserved to the County with respect to the Performance Bond are in addition to all other rights by the County, whether reserved by negotiation with Franchisee or authorized by law, and no action, proceeding or exercise of a right with respect to such Performance Bond shall affect any other rights the County may have.

**SECTION 13
LIABILITY INSURANCE**

A. Franchisee shall maintain, and by its acceptance of this Franchise specifically agrees that it will maintain, throughout the term of this Franchise, liability insurance insuring the County and Franchisee with regard to any and all damages for the following:

(1) A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the County, its officers, boards, agents or employees from any and all claims by any Person or entity whatsoever on account of injury to or death of a Person or Persons or derivative from any injury to or death of a Person or Persons (i.e., including but not limited to claims for loss of services, medical and other expenses) occasioned by the operations of Franchisee under this Franchise or alleged to have been so caused or occurred with a minimum liability of One Million Dollars (\$1,000,000.00) per Personal injury or death of any one (1) Person and Two Million Dollars (\$2,000,000.00) per Personal injury or death of any two (2) or more Persons in any one (1) occurrence.

(2) Property damage insurance indemnifying, defending and saving harmless the County, its officers, boards, agents and employees from and against all claims by any Person or entity whatsoever for property damage, including loss of use and all consequential damages, occasioned by the operation of Franchisee under this Franchise Agreement or alleged to have been so caused or occurred with a minimum liability of Five Hundred Thousand Dollars (\$500,000.00) for property damage to any one (1) Person and One Million Dollars (\$1,000,000.00) for property damage to any two (2) Persons in any one (1) occurrence.

(3) One Million Dollars (\$1,000,000.00) for all other types of liability.

All insurance shall be kept in full force and effect by Franchisee throughout the term of this Franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and other conductors and fixtures incident to the maintenance and operation of the Cable Television System as defined in this Franchise.

B. The Franchisee shall file with the County Attorney, and maintain during the term of this Franchise Agreement, a certificate of insurance designating the County as an additional insured, in the amounts no less than those amounts stated herein.

C. Neither the provision of this Section nor any damages recovered by the County hereunder shall be construed as limiting the terms, obligations or liabilities imposed under any other Section of this Franchise or other applicable law.

**SECTION 14
GENERAL INDEMNIFICATION**

A. Franchisee agrees by its acceptance of this Franchise to indemnify, hold and save the County free and harmless from all liability on account of injuries, deaths or damages to Persons or property arising out of the construction, maintenance, repair and operation of its Cable Television System. In the event that suit shall be brought against the County, either independently or jointly with Franchisee on account thereof, Franchisee shall upon written notice by the County, defend the County in any such suit at the cost of Franchisee, and, in the event of a settlement approved by Franchisee or final judgment being obtained against the County, which Franchisee had notice and opportunity to defend, Franchisee shall indemnify the County and pay such settlement or judgment, together with all reasonable costs and reasonable expenses, and hold the County harmless therefrom. County shall provide to Franchisee within ten (10) business days of receipt of a claim or action, as described in this

section, notice of any lawsuit alleging liability as herein described. Failure to provide written notice as required herein shall relieve Franchisee of its responsibility to defend and indemnify unless Franchisee provides written agreement to waive such notice requirement.

B. Franchisee shall pay, and by its acceptance of this Franchise specifically agrees that it will pay, all expenses incurred by the County in defending itself with regard to all damages and penalties mentioned in Subsection A hereinabove, provided Franchisee had written notice and declined to defend the County. These expenses shall include, but not be limited to, all out-of-pocket expenses, such as attorney's fees, and shall also include the reasonable value of any services rendered by the County Attorney, her assistants, or any other employees of the County or its agents.

C. Franchisee does not agree to defend or indemnify County against grossly negligent or willful misconduct of County employees and officers related to Franchisee's operations within County's geographic territory that results in property damage or bodily injury (including accidental death).

SECTION 15 ASSIGNMENT OF FRANCHISE

A. No assignment of this Franchise shall take place, whether by forced or voluntary sale, lease, or assignment, without prior written notice to and approval by the Board, which approval shall not be unreasonably withheld. The notice shall include full identifying particulars of the proposed transaction; including, but not limited to, the name, address, telephone number, facsimile number, and, if available, the e-mail address of the contact Person for notification purposes under this Franchise Agreement after completion of the transaction. The Board shall act by resolution to approve or deny continued operation of the Franchise pursuant to this Franchise Agreement after completion of the transaction. The Board shall have forty-five (45) days within which to approve or disapprove a proposed assignment of this Franchise Agreement. If no action is taken within such forty-five (45) day period, approval shall be deemed to have been given.

B. Franchisee shall have the right to mortgage, pledge or otherwise hypothecate the assets of its Cable Television System including the rights granted under this Franchise without the approval of the Board.

SECTION 16 REVIEW & RENEWAL

A. The County shall not make a decision involving renewal, cancellation or expiration of this Franchise unless the County Administrator has advised Franchisee in writing, at least thirty (30) days prior to such meeting, as to its time, place and purpose. Such renewal procedures will be conducted pursuant to requirements of local, state, and federal law, and, specifically, in compliance with Section 626 of the Cable Act.

B. It shall be the policy of the County to amend this Franchise upon application of the Franchisee when necessary to enable Franchisee to take advantage of advancements in the state of the art which shall afford it an opportunity to more effectively, efficiently or economically serve its Subscribers. No such amendment shall create any rights in Franchisee other than those specifically set out in such amendments.

**SECTION 17
REVOCATION OF FRANCHISE**

A. In addition to all other rights and powers reserved or pertaining to the County, the County reserves, as an additional and as a separate and distinct remedy, the right to revoke this Franchise and all rights and privileges of Franchisee hereunder in any of the following enumerated events or for any of the following reasons:

(1) Franchisee shall, by act or omission, violate any material or substantial term or condition of this Franchise Agreement and shall within thirty (30) days following written notice by the County fail to effect such compliance or has failed to begin to take such reasonable steps as necessary to bring the Franchisee into such compliance; or

(2) Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt, or all or part of Franchisee's facilities should be sold under an instrument to secure a debt and are not redeemed by Franchisee within thirty (30) days from said sale; or

(3) Franchisee fails to restore service following ninety-six (96) consecutive hours of interrupted service, except when an act of God, disaster, or other action beyond the control of the Franchisee caused such service interruption; or

(4) Franchisee attempts to or does practice any fraud or deceit or pattern of material misrepresentation in its conduct or relations with the County under this Franchise.

B. No such revocation shall be effective unless or until the Board shall have adopted a Resolution setting forth the cause and reason for the revocation and the effective date thereof, which Resolution shall not be adopted without thirty (30) days' prior written notice thereof to Franchisee and an opportunity for the Franchisee to be heard upon the proposed adoption of said Resolution. Franchisee shall furnish to the County a written statement at least ten (10) days prior to the date on which the Board will convene to consider such proposed Resolution setting out its position relative to the cause(s) of such revocation. In the event the revocation as proposed in said Resolution depends upon findings of fact, such findings of fact as made by the Board shall be in writing, after the hearing provided for, if requested by Franchisee.

C. Notwithstanding the grounds for termination herein, no termination procedure shall be held except in compliance with FCC Rules and Regulations and the Cable Act.

D. Franchisee shall not be declared in default nor be subject to any sanction under any provision of this Section in any case in which the performance of such provision is prevented for reasons of Good Cause. Any final determination shall be subject to judicial review upon request of the Franchisee.

**SECTION 18
FRANCHISEE'S OBLIGATION TO REMOVE OR TO SELL ITS FACILITIES IN THE
EVENT OF REVOCATION OR NON-RENEWAL**

A. In the event of revocation of this Franchise as provided for above, or in the event this Franchise is not renewed as provided for above, the County shall have the option of either requiring Franchisee to commence removal from the public Streets above which its cables are located, within ninety (90) days of the effective date of receiving written notice of such revocation or non-renewal, or of requiring Franchisee to leave all of its equipment and facilities in place within the Franchise area.

B. The County Administrator is hereby authorized to enforce the provisions of this Section as hereinafter provided. The County Administrator shall immediately notify Franchisee in writing of such revocation or non-renewal by written notice as provided for above. Within ninety (90) days following receipt of such notice, Franchisee shall, if required, commence to remove from the Streets of the County over which its cables are located all of said cables. Such removal, if required, shall be performed by Franchisee in such a manner so as to not permanently destroy, mar or damage the right of ways and/or Franchise Territory areas in which such removal is conducted.

The County shall make an inspection of the areas in which the removal is conducted, and should it be found that Franchisee has unreasonably destroyed, marred or damaged such areas, Franchisee shall be held responsible for the expenses of repairing such areas to the satisfaction of the County.

C. In the event Franchisee has not commenced removal of its facilities within ninety (90) days as described herein, or in the event the County elects not to require Franchisee to remove its facilities, Franchisee shall be obligated to sell its facilities in place within the Franchise area to either the County or to any new Franchised operator. Any sale of facilities as required by this subsection shall be pursuant to the valuation requirements of Section 627 of the Cable Act.

SECTION 19 LIQUIDATED DAMAGES

Liquidated damages shall be chargeable against Franchisee in accordance with the following procedures and schedule of liquidated damages.

A. Procedures.

- 1. Applicability. These procedures shall be followed prior to enforcement by charging Liquidated Damages to the Performance Bond for all matters of non-compliance or default.**
- 2. Notice of Violation or Default. In the event the County believes that the Franchisee has not complied with the requirements of this Franchise Agreement or otherwise defaulted its responsibilities under this Franchise Agreement, it shall notify the Franchisee in writing with specific details regarding the exact nature of the alleged noncompliance or default.**
- 3. Franchisee's Right to Cure or Respond. The Franchisee shall have ten (10) days from receipt of the County's notice described in paragraph A, above, to proceed with one of the following three options:**
 - (i) Franchisee shall initiate reasonable steps to remedy such default and, within ten (10) business days of its receipt of the County's notice of default, notify the County in writing of its intent to cure such default within thirty (30) days of its receipt of the County notice described in paragraph A, above.**
 - (ii) In the event that, by nature of the default, Franchisee determines that such default cannot be cured within the thirty (30) day time period, Franchisee shall initiate reasonable steps to remedy such default and, within ten (10) business days of its receipt of the County's notice of default, notify the County in writing of the steps to be taken to cure the default and the projected date that those steps will be completed. Upon receipt of such**

written notice, the County Administrator shall return to Franchisee such written offer, certified as agreed with the County Administrator's signature, OR the County Administrator shall propose in writing to Franchisee an alternate date of completion, to which Franchisee shall have the option of indicating agreement by returning the County Administrator's alternate proposal certified as agreed. If the parties cannot agree on a time schedule within ten (10) business days of the County Administrator's receipt of Franchisee's request for additional time to cure.

- (iii) default, then a public hearing shall be scheduled, as described below. However, scheduling a public hearing shall not relieve Franchisee of its obligation to continue to take steps to remedy the default.
- (iv) In the event that Franchisee disputes that a default has occurred, Franchisee shall, within ten (10) business days of its receipt of the County's notice of default, provide a written response to the County Administrator contesting the assertion of noncompliance or default and requesting the County's dismissal of allegation of default, which shall include Franchisee's specific arguments in support of its position. The County Administrator shall have twenty (20) days to provide a written response either in favor of Franchisee's argument or to notify Franchisee of the decision to proceed with a public hearing as described below.

4. **Public Hearing.** In the event the Franchisee and the County Administrator are unable to reach agreement on a time period to cure default, if Franchisee asserts that thirty (30) days is insufficient, or if Franchisee disputes that default has occurred and the County Administrator denies Franchisee's request to dismiss allegation of default, the County shall schedule a public hearing to investigate the alleged default. Such public hearing shall be held at the next regularly scheduled meeting of the Board that is scheduled at a time, which is no less than ten (10) business days nor later than two regular meetings of the Board after the date of County Administrator notification of the determination to proceed to a public hearing, unless Franchisee agrees in writing to a lesser advance time period. The County shall notify the Franchisee of the time and place of such meeting and provide the Franchisee with a reasonable opportunity to be heard. After such public hearing, the Board of Supervisors shall decide by majority rule whether a default has occurred and the appropriate remedy, by allowance of time to cure or by payment of liquidated damages, in accordance with the schedule of liquidated damages set forth herein.
 5. **Judicial Review.** Any liquidated damages assessed under this Section shall be subject to judicial review in the appropriate court in Washington County.
- B. Schedule of Liquidated Damages.** In the event that Franchisee does not respond as required by paragraph two (2), above; fails to cure the default within the thirty (30) day time period or other time period as agreed in writing by the County Administrator or by the Board after public hearing; or if the Board determines, after a public hearing, that a default has occurred and liquidated damages are appropriate, Franchisee shall pay liquidated damages, as determined by the County Administrator or by the Board, if a public hearing is held, in the following amounts:
1. For failure to provide or maintain data and reports as required by this Agreement, Franchisee shall forfeit no more than One Hundred Dollars (\$100) per day or part thereof that the violation continues.

2. For failure to comply with the operation standards as specified in this Agreement, Franchisee shall forfeit no more than Fifty Dollars (\$50) per day or part thereof that the violation continues.
3. For failure to test, analyze and report on the performance of the system following the reasonable written request of the County, Franchisee shall forfeit no more than Fifty Dollars (\$50) per day or part thereof.
4. For other matters of non-compliance or default, Franchisee shall forfeit no more than Fifty Dollars (\$50) per day or part thereof.

SECTION 20 RIGHTS RESERVED TO THE COUNTY

Without limitation upon the rights that the County might otherwise have, the County does hereby expressly reserve the following rights, powers and authorities:

- A. To exercise its governmental police powers now or hereafter to the full extent that such powers may be vested in or granted to the County.
- B. To grant additional franchises within the County to other Persons for the construction of a cable television system, provided, however, no other franchises for a cable service will be granted on terms or conditions more favorable or less burdensome than in any existing franchise, except as provided in section 15.2-2108(C) of the 1950 Code of Virginia, as amended.
- C. To exercise any other rights, powers or duties required or authorized under the Constitution and laws of the Commonwealth of Virginia or the Constitution and laws of the United States of America.

SECTION 21 COMPLIANCE WITH MUNICIPAL, STATE AND FEDERAL LAWS, RULES AND REGULATIONS

- A. Notwithstanding any other provision of this Franchise to the contrary, Franchisee shall at all times reasonably comply with all laws, rules and regulations of the State and Federal governments or any administrative agencies thereof; provided, however, that if any such State or Federal law, rule or regulation shall require Franchisee to perform any service or shall prohibit Franchisee from performing any service or shall permit Franchisee to perform any service in conflict with the terms of this Franchise or of any law, rule or regulation of the County, then as soon as possible following knowledge thereof, Franchisee shall notify the County Administrator of the point of conflict believed to exist between such law, rule or regulation and the rules or regulations of the County or this Franchise; provided, however, that nothing herein shall compel Franchisee to act in any way which violates or contravenes any local, State or Federal law, rule or regulation.
- B. Franchisee shall be subject to all applicable rules and regulations that, from time to time, may be promulgated by the Federal Communications Commission for Cable Television Systems.
- C. Franchisee agrees it shall strive to maintain low, competitive rates and maintain and upgrade the Channel line-up in effect as of the date of this Franchise Agreement, or the quality and variety of same, while abiding by the provisions cited above and all other

provisions and restrictions of the Cable Act. Attached hereto as Exhibit C is a current rate schedule and Channel line-up for Basic Service and Additional Services. Franchisee shall provide Subscribers and the County with written notice of any change in Channel assignment or in any addition or deletion of video programming service.

**SECTION 22
FRANCHISEE TO HAVE NO RECOURSE**

A. Except as expressly provided for in this Franchise, Franchisee herein shall have no recourse whatsoever against the County for any loss, cost or expense of damage arising out of any of the provisions or requirements of this Franchise or because of the enforcement thereof by the County.

B. Franchisee expressly acknowledges that upon acceptance of this Franchise it did so relying upon its own investigation and understanding of the power and authority of the County to grant this Franchise.

C. Franchisee further acknowledges by the acceptance of this Franchise that it has carefully read the terms and conditions hereof and is willing to and does accept all of the risks of the meaning of such terms and conditions.

D. Franchisee further acknowledges by the acceptance of this Franchise that this Franchise is non-exclusive.

**SECTION 23
NOTICES TO FRANCHISEE**

At any time the County Administrator, members of the Board, or a resident of the County brings an issue regarding this Franchise, agreements or applications thereunder, or the activities of the Franchisee to a meeting or work session of the Board, the County Administrator will notify Franchisee. Such notification shall take place at least ten (10) days prior to the meeting.

Notifications pursuant to this Franchise Agreement shall be addressed as follows:

Notice to Franchisee:

Comcast Cablevision of the South
ATTN: General Manager
614 North Central Avenue
Knoxville, Tennessee 37917
Tel. (865) 971-1544 (ext. 208)
Facs. (865) 637-8805

With a copy of notice to:

Comcast Cable Communications, Inc.
ATTN: Vice-President Government Affairs
360 Interstate North Parkway, Suite 600
Atlanta, GA 30339
Tel. (678) 385-5100
Facs. (678) 385-5101

**Comcast Corporation
ATTN: Legal Department
1500 Market Street
Philadelphia, Pennsylvania 19102
Facs. (215) 640-4050**

Notices to County:

**County Administrator
Washington County, Virginia
205 Academy Drive
Abingdon, Virginia 24210
Tel. (276) 676-6202
Facs. (276) 676-6201**

With a copy of notice to:

**County Attorney
Washington County, Virginia
205 Academy Drive
Abingdon, Virginia 24210
Tel. (276) 676-6203
Facs. (276) 676-6201**

The County and the Franchisee may designate such other address or addresses from time to time by giving notice to the other. Best efforts shall be made to provide such notice no less than thirty (30) days in advance of the effective date of the new address(es).

**SECTION 24
CONTINUITY OF SERVICE MANDATORY**

It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to Franchisee are honored. In the event that Franchisee elects to upgrade, rebuild, modify or sell the Cable Television System, or the Board terminates or otherwise declines to renew the Franchise, Franchisee shall do everything in its power to ensure that all Subscribers receive continuous, uninterrupted services regardless of the circumstances. In the event of a change of Franchisee, the current Franchisee shall cooperate with the County to operate the system for at least twelve (12) months after the change in Franchisee in order to maintain continuity of service to all Subscribers.

**SECTION 25
SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this Franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holdings shall not affect the validity of the remaining portions thereof.

**SECTION 26
ACCEPTANCE**

This Franchise Agreement shall be executed and acknowledged by the County and Franchisee to indicate each party's acceptance of the terms and provisions set forth herein.

The County and Franchisee shall execute three (3) original identical Franchise Agreements. The Office of the County Attorney shall maintain one (1) original executed Franchise Agreement, and Franchisee shall maintain the other two (2).

PASSED AND APPROVED THIS _____ DAY OF _____, _____.

BOARD OF SUPERVISORS OF
COUNTY OF WASHINGTON, VIRGINIA

By: _____
Joe W. Derting, Its Chairman

ACCEPTED BY:
COMCAST CABLEVISION
OF THE SOUTH
By: COM South, Inc. its general partner

By: _____
John H. Ridall, Jr.
Its President, Southern Division

NOTARY CERTIFICATIONS

State of _____
County of _____, to-wit:

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that Joe W. Derting, Chairman of the Board of Supervisors of Washington County, Virginia, has this date signed and acknowledged the foregoing writing before me in my said County and State.

Given under my hand and seal this _____ day of _____, _____.
My commission expires:

Notary Public

State of _____
County/City of _____, to-wit:

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that John Ridall, Jr., President, Southern Division of Comcast Cablevision of the South, has this date signed and acknowledged the foregoing writing before me in my said County/City and State.

Given under my hand and seal this _____ day of _____,
_____.

My commission expires:

Notary Public

EXHIBIT A

**MAPS OF FRANCHISE TERRITORY SHOWING AREAS
TO WHICH FRANCHISEE PROVIDES CABLE TELEVISION SERVICE
AS OF January 22, 2002**

Scribner's Note: Exhibit A referenced above is included as Minutes Exhibits Item 01-22-02-A

**EXHIBIT B
CUSTOMER COST SHARE FORMULA FOR
EXTENSION OF CABLE SERVICE**

This procedure pertains to determining a price for extending cable service pursuant to Section 3.10 of the Franchise to customers that live in areas not meeting the home density requirements of the Franchise.

TOTAL INDIVIDUAL COST FOR A COST SHARE LINE EXTENSION SHALL BE AS FOLLOWS:

$$\text{INDIVIDUAL CUSTOMER COST} = \frac{\text{TOTAL PROJECT COST}/2}{\text{NUMBER OF PERSONS REQUESTING SERVICE}}$$

NOTES TO PLAN

- *All customer contributions must be collected prior to project start*
- *No refunds of customer contributions will be due after project starts*
- *No pro-rata refunds will be due in the event additional Subscribers are connected to this extension at a later date*
- *All equipment remains the sole property of the Franchisee*
- *Total project cost will be determined from an engineering study conducted by the Franchisee*
- *All projects requiring more than 1,000 feet of cable to be constructed may need to be delayed until the following budget year*

EXHIBIT C

**Monthly Rate Information and Channel Line-Up
as of
January 22, 2002**

Scribner's Note: Exhibit C referenced above is included as Minutes Exhibits Item 01-22-02-B

The vote on this motion was as follows: (6-0)

<i>Mr. Derting</i>	<i>Aye</i>
<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

10 Presentation of Audit Report for Fiscal Year Ended June 30, 2001

Mr. Jim Fern with Hicok, Fern and Chapman presented the Audit Report for Fiscal Year ended June 30, 2001. Mr. Fern reported that Washington County is financially sound. He further reported that the internal control structure is adequate.

Mr. Fern informed the Board that it was not longer required to publish the Treasurer's Statement of Accountability. Discussion ensued regarding this subject and it was the consensus of the Board to publish the Treasurer's Statement of Accountability for Fiscal Year ending June 30, 2001.

On motion of Mr. Roberts, second by Mr. Rector, it was resolved to accept the Audit Report for Fiscal Year Ended June 30, 2001, as presented by Hicok, Fern and Chapman.

The vote on this motion was as follows: (6-0)

<i>Mr. Derting</i>	<i>Aye</i>
<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

11 Report on Audits from Recipients of County Funds

Mark Seamon addressed the Board giving a report on audits received from recipients of County Funds. Mr. Seamon stated that most agencies were on a schedule for reporting and only three had not submitted an audit report. The three agencies have given their information to an auditor and the report is in process.

Mr. Seamon reported that one new agency; White's Mill Foundation had been added to the list.

12 Quarterly County Budget Status Report

Mr. Mark Seamon, Accounting and Purchasing Manager gave a brief County Budget Status Report. He said that most departments were well within their budgets with the exception of the Jail. Mr. Seamon commented that 37% of jail funds are available for the remaining six months of fiscal year 2001-02.

13 Recess

On motion of Mr. Roberts, second by Mr. Ingle, it was resolved to take a ten-minute recess.

The vote on this motion was as follows: (6-0)

<i>Mr. Derting</i>	<i>Aye</i>
<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

14 Consideration of County Personnel Committee Recommendations for Adjustments to Salaries of Administrative Assistant and GIS Assistant

Mrs. Mumpower and Mr. Roberts addressed the Board explaining that the Personnel Committee is recommending that the Board approve salary adjustments for the positions of Administrative Assistant and Geographic Information System Assistant. The recommendation is a result of changes in the duties and scope of the two positions. Further, it is recommended to make the salary changes retroactive to July 1, 2001.

Mr. Reeter stated that no supplemental appropriation is required for these increases as both Departments have money in other line items to cover the increase.

On motion of Mr. Ingle, second by Mr. Rector, it was resolved to approve salary adjustments for the Administrative Assistant to \$22,000.00 and the GIS Assistant to \$24,740.00 retroactive to July 1, 2001. Further it was resolved to approve the following line item transfers:

GIS Department - 12520

From Line Item 3164 - Outsourced Services \$3,090.00 to Line Item 1130- Compensation.

From Line Item 3164 - Outsourced Services \$209.00 to Line Item 2100-FICA

From Line Item 3164 - Outsourced Services \$309.00 to Line Item 2200-Retirement

From Line Item 3164 - Outsourced Services \$25.00 to Line Item 2400-Life Insurance

Economic Development - 81500

From Line item 5840-Prospect Development \$2,581.00 to Line Item 1132-Compensation

From Line item 5840-Prospect Development \$197.00 to Line Item 2100-FICA

From Line item 5840-Prospect Development \$258.00 to Line Item 2200-Retirement

From Line item 5840-Prospect Development \$21.00 to Line Item 2400-Life Insurance

The vote on this motion was as follows: (6-0)

<i>Mr. Derting</i>	<i>Aye</i>
<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

15 Consideration of Expiring Appointments:

The following action was taken on consideration of expiring appointments:

a. Washington County Recreation Advisory Board (appointment/reappointment with all terms ending December 31, 2006)

It was the consensus of the Board to defer these appointments until the February 12, 2002 meeting.

b. Washington County Board of Building Code of Appeals Term of R. Leon Denton, F-01 "Tyler" Election District, Expires January 11, 2002

It was the consensus of Board to defer this appointment until the February 12, 2002 meeting.

c. Washington County Transportation Advisory Board

On motion of Mr. McCall, second by Mr. Ingle, it was resolved to appoint Tim Collins to fill the unexpired term of Byrd T. Preston, Jr., to represent the A-01 "Harrison" Election District on the Transportation Advisory Committee to be effective immediately and expire December 31, 2002.

The vote on this motion was as follows: (6-0)

<i>Mr. Derting</i>	<i>Aye</i>
<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

16 Consideration of Appointments to Highlands Community Services Board

a. David Gillespie, Consumer Representative (inactive), Term Expires June 30, 2002

On motion of Mrs. Mumpower, second by Mr. Roberts, it was resolved to appoint Leslie A. Birch to fill the unexpired term of David Gilliespie as the consumer appointment to the Highlands Community Services Board to be effective immediately and expire on June 30, 2002.

The vote on this motion was as follows: (6-0)

<i>Mr. Derting</i>	<i>Aye</i>
<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

b. Vacant position formerly held by Marianne Grzywacz (resigned July 10, 2001)

It was consensus of the Board to defer this appointment until the February 12, 2002 meeting.

17 Consideration of Concerns by Residents of Buckhaven Subdivision about School Bus Service

Mr. Larry Thornsby, a resident of Buckhaven Subdivision addressed the Board explaining that he has appeared before the Washington County School Board requesting bus service for the private roads in Buckhaven Subdivision. He further explained that there are 15 children in the subdivision currently in school and they must walk approximately 1.5 miles to and from the point where the bus picks up each day. Mr. Thornsby stated that parents were concerned for the safety of their children.

Mr. Thornsby reviewed a road condition evaluation form he received from Mr. Ronnie Walls of Washington County Schools. He stated that the School Board had denied the request for bus service.

Mr. Thornsby asked the Board for any help they could provide in obtaining bus service to Buckhaven Subdivision. It was suggested to Mr. Thornsby that the residents of Buckhaven consider participating in the County's program to bring private roads up to state standards for eventual incorporation into the state secondary highway system. Mr. Thornsby responded indicating that subdivision residents have explored this program previously but that the cost to individual property owners was too high.

Mr. Michael Dillard addressed the Board explaining that he has three children, ages four, five and six. Two of his children are in school, with the youngest starting in Fall of 2002. He expressed his concerns for the safety of his children.

Mr. Dillard requested that the Board consider the idea of hiring a private individual to bus children to and from school that live on private roads.

18 County Administrator Reports

The following action was taken on County Administrator comments:

a. Consideration of Joint Meeting with Washington County Planning Commission to Discuss Possible Changes to the County Subdivision Code Provisions Regarding Private Streets

Mr. Reeter commented that the situation the Buckhaven residents are facing is a perfect example of the need for a joint meeting with the Planning Commission to discuss possible changes to the County Subdivision Code provisions regarding private streets.

Discussion ensued regarding this subject. Mr. Reeter stated that the Board needed to choose some dates he could recommend to the Planning Committee for the joint meeting. In addition, Mr. Reeter stated that he would be inviting representatives from the development and construction community, real estate agents and personnel from the Virginia Department of Transportation.

It was the consensus of the Board for Mr. Reeter to recommend February 18, 2002, as the primary date for the joint meeting and February 20, 2002, as a backup date.

b. VACo Legislative Alert – House Bill 1212 – Manufactured Housing in Residential Zoning Districts

Mr. Reeter addressed the Board explaining he had provided the Board with a copy of the VACo Legislative Alert regarding the proposed House Bill 1212, which allows provisions for manufactured housing to locate in residential zoning districts. Specifically, the proposed legislation

would allow location of doublewides or tri-wide manufactured homes in residential zoning districts, but would not allow singlewides.

Mr. Reeter informed the Board that VACo has requested that localities voice their opinions regarding the proposed legislation prior to January 25, 2002, which is the date the bill is scheduled to be heard.

It was consensus of Board that Mr. Reeter express to VACO that Washington County is strongly opposed to House Bill 1212.

19 County Attorney Comments

Ms. Bright addressed the Board explaining that the GIS Department had entered the Comcast service area in the GIS System as an additional layer of information. She further explained that she could provide maps of the service area to the Board.

20 Consent Agenda

a. Reimbursement Request, \$5,686, Washington County Sheriff's Department

Mr. Seamon made a clarification that the request was for a supplemental appropriation for unexpected reimbursements.

On motion of Mr. Rector, second by Mr. McCall it was resolved to approve the consent agenda item for a supplemental appropriation of \$5,686.00 for reimbursements received by the Sheriff's Office, Department 31200.

The vote on this motion was as follows: (6-0)

<i>Mr. Derting</i>	<i>Aye</i>
<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

21 Board Member Reports

Mrs. Mumpower reported that she had petitions from residents of Melvin Hills Subdivision requesting that the Washington County Service Authority install fire hydrants in Melvin Hills. The petition is a result of a recent fire of a home in Melvin Hills. Additionally, Mrs. Mumpower stated that Mr. Don Paxton, Chief of the Washington County Fire/Rescue #1, sent her a letter requesting assistance in obtaining these hydrants for the Melvin Hills Subdivision. Mrs. Mumpower requested that Mr. Reeter send a letter along with the petitions to the Washington County Service Authority asking them to install fire hydrants in Melvin Hills Subdivision.

Mr. Ingle reported that the Brumley Gap Water Project is making good progress and stated that the construction company is doing an excellent job with reclamation.

Mr. Derting reported that he received VACo's list of top legislative priorities. One item of importance is the E-911 tax. Mr. Derting stated that most localities are charging residents \$2.50 for the E-911 tax and suggested that the Board consider increasing Washington County's E-911 tax.

Additionally, Mr. Derting stated that he, Mr. Ingle and Mr. Reeter will be attending the VACo/VML Legislative Day on January 31, 2002. This is an opportunity to voice the needs of Washington County to its legislators.

22 Adjourn

On motion of Mr. Rector, second by Mr. Ingle, it was resolved to adjourn the meeting.

The vote on this motion was as follows: (6-0)

<i>Mr. Derting</i>	<i>Aye</i>
<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

Prepared by:

Naoma A. Cook, Recording Clerk

**Approved by the Washington County
Board of Supervisors:**

Joe W. Derting, Chairman