

TRANSFER AGREEMENT

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TRANSFER AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2002, by and between:

1.1.1. The County Board of Arlington County, Virginia, the governing body of Arlington County, Virginia, organized under the laws of the Commonwealth of Virginia (the "County Board");

1.1.2. Comcast Cable of Maryland, Inc., a Delaware corporation ("Comcast-Maryland"); 1.1.3. AT&T Comcast Corporation, a Pennsylvania corporation ("AT&T Comcast"); and

1.1.4. Comcast Cablevision of Potomac, LLC., a _____ limited liability company ("Certificate Holder");

1.1.5. Certificate Holder, AT&T Comcast, and Comcast-Maryland may be referred to jointly herein as "Companies," or individually as a "Company."

RECITALS

WHEREAS, the County Board has granted the Certificate Holder a nonexclusive cable television franchise (the "Franchise") for a term of fifteen (15) years pursuant to Arlington County Code, Chapter 41.2 (the "Cable Ordinance") and the Restated and Amended Certificate of Public Convenience and Necessity for Cable Television (the "Certificate") granted to the Certificate Holder, effective July 1, 1998; and

WHEREAS, certain other obligations of the Certificate Holder are set forth in the Settlement Agreement among the County Board, the Certificate Holder, and SBC Media Ventures, L.P. effective July 1, 1998 (the "Settlement Agreement"); and

WHEREAS, certain other obligations of the Certificate Holder are set forth in the

Transfer Agreement among the County Board, the Certificate Holder, and Prime Communications, LLC, Prime Communications-Potomac, LLC, and Comcast Cable of Maryland, Inc. effective August 1, 2000 (the “2000 Transfer Agreement”) (hereafter the Cable Ordinance, Certificate, Settlement Agreement and 2000 Transfer Agreement and exhibits to such documents shall be collectively referred to as the “Franchise Documents”); and

WHEREAS, pursuant to a transaction (the “Proposed Transaction”) described in an Agreement and Plan of Merger dated as of December 19, 2001 (the “Merger Agreement”), AT&T Comcast will acquire control of the Certificate Holder and the cable system serving the County (the “System”) (the “Transfer”); and

WHEREAS, if the Proposed Transaction is consummated, the Certificate Holder will continue to own and operate the cable system in Arlington County, and it will continue to hold the Certificate; and

WHEREAS, Certificate Holder is a wholly-owned subsidiary of Comcast-Maryland and Comcast-Maryland is a wholly-owned subsidiary of Comcast Cable Communications, Inc. (“Comcast Cable”) which is a wholly-owned subsidiary of Comcast Corporation (“Comcast Corp.”); and

WHEREAS, the Proposed Transaction will result in a change of control of the Certificate Holder, because Comcast Corp. will become a wholly-owned subsidiary of AT&T Comcast, whereupon AT&T Comcast will indirectly own all of the equity interests in the Certificate Holder and thereby control the Certificate Holder; and

WHEREAS, the County Board has legal authority under Section 41.2-15 of the Cable Ordinance, the Certificate, and applicable state and federal law to approve or disapprove the Transfer; and

WHEREAS, Section 3.20(b)(6) of the Certificate states that the County Board shall not

approve a transfer unless the Certificate Holder and the transferee satisfy all requirements of the Certificate and the Ordinance; and

WHEREAS, on or about March 8, 2002, Comcast Corp. and AT&T Comcast filed an FCC Form 394 with the County and requested that the County approve the Proposed Transaction (the “Transfer Application”); and

WHEREAS, the Companies have represented to the County that no changes in the management or operation of the System are being proposed at this time as a direct result of the Proposed Transaction;; and

WHEREAS, the Certificate Holder has agreed that it will continue to comply with the Franchise Documents and applicable law from and after the consummation of the Proposed Transaction;

WHEREAS, the Companies have represented that the Certificate Holder will not be an obligor for any debt that may be incurred to meet cash funding requirements described in the Merger Agreement, and that no assets of the System will be encumbered as a result thereof; and

WHEREAS, the Certificate Holder agrees to continue to be bound by all of the provisions, terms, conditions and limitations prescribed in the Certificate, the Settlement Agreement, and the 2000 Transfer Agreement, each as modified by this Agreement and by all applicable federal, state and local laws, including without limitation, the Cable Ordinance; and

WHEREAS, relying on the completeness and accuracy of the representations of the Companies, which representations are considered material, the County Board is willing to consent to the Transfer, and

WHEREAS, the County and the Companies have reached agreement on the terms and conditions set forth herein, and the Companies agree to be bound by those terms and conditions.

NOW, THEREFORE, in consideration for the County's consent to the Proposed Transaction, and subject to the terms and conditions of this Agreement and of the County's Resolution consenting to the Proposed Transaction ("Transfer Resolution"), THE PARTIES DO HEREBY AGREE as follows:

1. TRANSFER

3.1.1.1.The foregoing recitals are true and correct and are incorporated herein by reference.

3.1.1.2.The County has consented through the Transfer Resolution to the Proposed Transaction as described in the Transfer Application, in consideration for the promises and performances of the Companies as expressed in this Transfer Agreement, and the delivery of the guaranty of Comcast Cable required by Section 2.6.

2. ACCEPTANCE OF FRANCHISE OBLIGATIONS

3.1.2.1.Nothing in this Transfer Agreement amends or alters the Franchise Documents or any requirements therein in any way, and all provisions of the Franchise Documents remain in full force and effect and are enforceable in accordance with their terms and with applicable law.

3.1.2.2.The Companies agree that neither the Proposed Transaction nor the County's approval of the Proposed Transaction shall in any respect relieve the Certificate Holder or any of its successors in interest of responsibility for past acts or omissions, known or unknown. Certificate Holder hereby agrees that it shall continue to be liable for any such acts and omissions, known and unknown, including liability for any and all previously accrued but unfulfilled obligations to the County under the Franchise Documents and applicable law, for all purposes, including but not limited to review of past performance for purposes of determining

whether its Franchise should be renewed. Certificate Holder agrees that all acts and omissions of Certificate Holder occurring prior to the effective date of this Agreement will continue to be deemed to be those of Certificate Holder. The Proposed Transaction shall not restrict or expand the rights of the Certificate Holder under or related to the Franchise Documents as compared to those that could have been exercised by the Certificate Holder prior to the Proposed Transaction.

3.1.2.3. The Companies shall ensure that all records pertaining to the Franchise, including financial records, shall continue to be available to the County after the Proposed Transaction to the same extent such information was available prior to the Proposed Transaction, and pursuant to procedures no more burdensome to the County than those in effect prior to the Proposed Transaction.

3.1.2.4. AT&T Comcast agrees that, from and after the consummation of the Proposed Transaction, it shall not take or fail to take any action that would prevent the Certificate Holder from fully complying with all of the terms and conditions set forth in the Franchise Documents and (when executed and delivered) this Transfer Agreement.

3.1.2.5. Pursuant to Section 3.20(a) of the Certificate, in the event of any future transfer, the Companies shall provide the County complete and accurate copies of all documents required by the FCC Form 394 and the Franchise Documents as part of any transfer application.

3.1.2.6. The Companies agree to provide a parent company guarantee in a form acceptable to the County, guaranteeing performance by Comcast Cable of all of Certificate Holder's obligations under the Franchise Documents and this Transfer Agreement. The guarantee shall remain in effect through December 31, 2006. In addition, Certificate Holder shall replace the letter of credit provided pursuant to Section 3.7 of the Certificate with a new letter of credit in the amount of \$300,000. The new letter of credit shall comply with all of the requirements of Section 3.7 of the Certificate and Section 41.2-14 of the Cable Ordinance.

Finally, Certificate Holder may, at its option, replace the \$2 million performance bond now in effect with a bond in the amount of \$1 million. The guarantee and the new letter of credit must be provided within thirty (30) days of the closing of the Proposed Transaction.

3.1.2.7.The Certificate Holder agrees to reimburse the County for all costs, including fees and expenses, actually and reasonably incurred (including, without limitation, for attorneys and financial and technical consultants) in the County's review of the Transfer Application, including but not limited to the costs of negotiations, evaluating the past performance and qualifications of Certificate Holder and AT&T Comcast, and preparing this Agreement and related documentation. Pursuant to Section 3.20(d) of the Certificate, the Certificate Holder shall reimburse the County regardless of whether the Transfer Application is approved or the Proposed Transaction is consummated. The County shall provide the Certificate Holder with an accounting and invoices of these fees and expenses. The amount of the application fee shall be credited against the County's fees and expenses. Payment to the County shall be delivered within thirty (30) days of receipt of the documentation, and interest on any late payment shall accrue at the rate specified in the Certificate for late franchise fee payments. Such payments are in addition to any franchise fee, and such payments shall not be treated as costs eligible for treatment as conditions of the franchise in accordance with 47 CFR §76.925. Failure to make timely payment of these costs and expenses, except to the extent that they are the subject of legitimate dispute, shall constitute a material violation of this Agreement.

3.1.2.8.Exhibit C to the Certificate requires the Certificate Holder to provide certain Supplemental Institutional Network Services (the "Supplemental I-Net"). Exhibit A to this Agreement clarifies the provisions of Exhibit C and describes how the parties will establish the Supplemental I-Net.

3. RESERVATION OF RIGHTS

3.1. The County and each of the Companies reserves all rights not expressly granted in this Transfer Agreement, including without limitation those specified below.

3.1.3.2. The County waives none of its rights with respect to the Certificate Holder's compliance with the requirements set forth in the Franchise Documents. At no time will the Companies contend, either directly or indirectly, that the County is barred, by reason of the Proposed Transaction, from considering, or raising claims based on, any defaults of Certificate Holder, any failure by Certificate Holder to provide reasonable service in light of the community's needs, or any failure by Certificate Holder to comply with the terms and conditions of the Franchise Documents or with applicable law. The County's approval of the Proposed Transaction shall in no way be deemed a representation by the County that the Certificate Holder is in compliance with all of its obligations under the Franchise Documents.

3.1.3.3. Neither this Transfer Agreement, nor any other action or omission by the County at or before the execution of this Transfer Agreement, shall be construed to grant the County's consent to any future transfer of the Franchise and/or the System, and/or any future change in ownership and/or control of the Franchise and/or the System, or to mean that the County's consent to any future transaction is not required.

3.1.3.4. Any consent given by the County to the Proposed Transaction is made without prejudice to, or waiver of, the County's right to investigate and take into account any lawful considerations during any future franchise renewal or transfer process.

3.1.3.5. This Transfer Agreement does not affect and shall not be construed to affect any rights or authority that the County may have to regulate or authorize, by ordinance, license or otherwise, use of the public rights-of-way or the System for purposes other than for cable service. To the extent that the Companies may seek to provide a service other than cable service

over the System, the County reserves the right to require any additional authorizations regarding such services that it may lawfully require. Consent to the Transfer shall not be deemed to be consent to the use of the public rights-of-way by any of the Companies or any of their Affiliates for any purpose other than those purposes permitted by the Certificate.

3.1.3.6.The County reserves all of its rights regarding the charging of a franchise fee or other compensation for the right to provide cable modem service using the rights-of-way within the County. The County's consent to the Transfer shall not relieve the Certificate Holder of any obligation that it may or may not have to pay such compensation, past, present, or future, to the extent any such obligation exists.

3.1.3.7.The County reserves any rights it may have to regulate cable modem service under applicable law, including, without limitation, the right to adopt rules related to subscriber privacy and customer service.

4. NO EFFECT ON RATES

3.1.4.1.The Companies represent and warrant that neither the Proposed Transaction nor this Transfer Agreement will result in any increase in subscriber rates, provided, however, that the Certificate Holder reserves the right to make lawful rate increases in the ordinary course of business and in accordance with the procedures established by FCC rules and the Cable Ordinance.

5. REPRESENTATIONS AND WARRANTIES

3.1.5.1.Each of the Companies hereby represents and warrants that at the time of the execution of this Agreement: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; (b) the Franchise Documents and,

assuming due execution hereof by the other parties hereto, this Transfer Agreement constitute legal, valid and binding obligations of such Company enforceable in accordance with their terms;

(c) the execution and delivery of, and performance by such Company under, this Transfer Agreement and the Franchise Documents, where applicable, are within such Company's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite corporate or partnership action on the part of such Company and are not in contravention of such Company's charter, bylaws, and/or other organizational documents; and

(d) no representation made to the County by such Company is incomplete, untrue or inaccurate in any material respect.

[3.1.5.2.](#) Certificate Holder represents and warrants that neither the Proposed Transaction nor this Transfer Agreement will adversely affect its ability to meet the requirements of the current Franchise Documents.

[3.1.5.3.](#) The Companies represent and warrant that the Proposed Transaction will not have a material adverse financial effect on the System, or adversely affect the performance of the System, including, without limitation, customer service and system maintenance or repair. Certificate Holder represents and warrants that after the Proposed Transaction, Certificate Holder's financial qualifications will be such as shall enable it to maintain and operate the System.

[3.1.5.4.](#) Certificate Holder represents and warrants that it owns, in its own name, materially all of the cables, equipment and other physical facilities that constitute the System.

6. INDEMNIFICATION

[3.1.6.1.](#) Each of the Companies agrees to indemnify and hold the County, its elected and appointed officers, officials, employees, agents, and contractors, harmless against any loss,

claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) caused by or arising from any representation or warranty made herein by that Company, which is determined by a court of competent jurisdiction or by the parties to be untrue or inaccurate in any material respect.

3.1.6.2. Certificate Holder shall indemnify and hold the County, its elected and appointed officers, officials, employees, agents, and contractors, harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) incurred by the County in connection with any action or proceeding commenced by a third party (not one of the parties to this Transfer Agreement) claiming or asserting any liability of the County relating to or arising from the Proposed Transaction or this Transfer Agreement. Notwithstanding the foregoing, this Agreement shall not be construed to create any third party rights.

7. ADDITIONAL CONDITIONS

3.1.7.1. In the event the Proposed Transfer does not close by March 31, 2003, or closes on terms that are in any material respect different from the terms disclosed to the County in writing, then any County consent to the Proposed Transaction shall be void and of no force or effect, and the Proposed Transaction deemed to have been timely denied.

3.1.7.2. The Companies hereby waive any and all claims that they may have that any denial of the Transfer Application that results from failure of the conditions in Section 7.1 fails to satisfy the deadlines established by applicable law including, without limitation, claims based on, arising out of, or relating to 47 U.S.C. § 537, as amended, and agree that they shall be deemed to have agreed to an extension of the time to act on the Transfer Application as required to make any such denial effective.

8. **BREACHES**

Any breach of this Transfer Agreement shall be deemed a breach of the Franchise Agreement and shall be subject to all remedies available for a breach of the Franchise Agreement, in addition to any other remedies the parties may have under this Transfer Agreement at law or equity.

9. **MISCELLANEOUS PROVISIONS.**

3.1.9.1.Effective Date: This Transfer Agreement shall be effective and binding upon the signatories once it has been signed by all signatories.

3.1.9.2.Binding Acceptance: This Transfer Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof. Any purported assignment of this Transfer Agreement is void without the express written consent of the signatories.

3.1.9.3.Voluntary Agreement: This Transfer Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Transfer Agreement. Neither any of the Companies, nor any of their affiliates, nor the County, will take any action to challenge any provision of this Transfer Agreement; nor will they participate with any other person or entity in any such challenge.

3.1.9.4.Severability: If any term, condition, or provision of this Transfer Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

3.1.9.5. Counterparts: This Transfer Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

3.1.9.6. Conforming Amendments to Certificate: AT&T Comcast and Certificate Holder agree to accept amendments to the Certificate that may be adopted by the County to the extent necessary to reflect the Proposed Transaction or the provisions of this Transfer Agreement.

3.1.9.7. Governing Law: This Transfer Agreement shall be governed in all respects by the law of the Commonwealth of Virginia and all applicable federal law.

3.1.9.8. Captions and References: The captions and headings of sections throughout this Transfer Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Transfer Agreement. Such captions shall not affect the meaning or interpretation of this Transfer Agreement.

AGREED TO BY THE PARTIES:

COUNTY BOARD OF ARLINGTON COUNTY,

VIRGINIA

By: _____

Date

APPROVED AS TO FORM
AND LEGALITY:

Office of the County Attorney

COMCAST CABLEVISION OF POTOMAC, LLC

Date

By: _____
Its: _____

COMCAST CABLE OF MARYLAND, INC.

Date

By: _____
Its: _____

AT&T COMCAST CORPORATION

Date

By: _____

Its: _____

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