

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO GANS COMMUNICATIONS, L.P. d/b/a METROCAST COMMUNICATIONS AND ITS SUCCESSORS AND ASSIGNS TO OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR THE COUNTY REGULATION OF THE COMMUNITY ANTENNA TELEVISION SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF MIDDLESEX COUNTY, VIRGINIA, THAT

SECTION 1. SHORT TITLE. This ordinance shall be known and may be cited as the "Community Antenna Television Franchise Ordinance."

SECTION 2. DEFINITIONS. For the purpose of the Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- 2-1 "Basic Service" is MetroCast's lowest level service tier which includes the retransmission of local television broadcast signals.
- 2-2 "Board" is the Board of Supervisors of Middlesex County, Virginia.
- 2-3 "Communications Act" is the Communications Act of 1934, as amended, 47 U.S.C. §521 *et seq.*
- 2-4 "Community Antenna Television System," hereinafter referred to as "CATV System" or "System," means a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee.
- 2-5 "County" is Middlesex County, Virginia.
- 2-6 "FCC" is the Federal Communications Commission.
- 2-7 "Franchise" is an authorization granted by the Board pursuant to this Ordinance which permits the construction, operation, and maintenance of a CATV System within the territorial area involved.
- 2-8 "Grantee" is Gans Communications, L.P. d/b/a MetroCast Communications, or any person or entity who succeeds MetroCast as Grantee hereunder in accordance with the provisions of this Franchise.
- 2-9 "Persons" is any person, firm, partnership, association, corporation, company or organization of any kind.
- 2-10 "Subscriber" is any person lawfully receiving any service provided by or carried on the CATV System.

SECTION 3. GRANT OF AUTHORITY. There is hereby granted by the County to Grantee; the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways, and public places now laid out or dedicated, and all extensions, thereof, and additions thereto in the County, on poles, wires, cable, underground conduits, manholes, and other television conductors, and fixtures, and to use poles, wires, cables and other facilities of persons, providing consent is obtained from such persons, necessary for the maintenance and operation in the County of a community television system for the interception, sale and distribution of television and radio signals.

- 3-1 Non-exclusive Grant. The right to use and occupy said streets, alleys, public ways and places, or the facilities of other places for the purposes herein set forth shall not be exclusive, and the County reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of the Franchise. Any additional franchises granted by the County shall contain the same substantive terms and conditions as this Franchise and shall be competitively neutral and nondiscriminatory as compared to this or any other franchise granted by the County for the operation of a CATV System or other wireline multichannel video distribution system. Grantee may use the CATV System to deliver services other than cable television services as permitted by applicable law.
- 3-2 State Franchise. If the Commonwealth of Virginia adopts a state-issued cable franchise, Grantee may replace this Franchise with a state franchise as provided under the authorizing statute.

SECTION 4. GRANTEE LIABILITY – INDEMNIFICATION. It is expressly understood and agreed by and between Grantee and the County that Grantee shall, and does by its acceptance of this Franchise, specifically agree to save the County harmless from all loss sustained by the County on account of any suit, judgment, execution, claim or demand whatsoever resulting from Grantee's performance of its obligations under this Franchise unless such loss arises from the negligence or intentional misconduct of the County, its officers, agents or employees. The above shall include, but shall not be limited to, damages arising out of copyright infringement and all other damages arising out of the installation, operation or maintenance of the CATV System authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

- 4-1 Grantee, by its acceptance of this Franchise, specifically agrees that it shall maintain throughout the term of this Franchise, liability insurance, insuring the County and Grantee against all claims or damages in the minimum amounts of at least:
- (1) \$1,000,000 for bodily injury or death to any one person, and \$3,000,000 for bodily injury or death resulting from any one accident.
 - (2) \$3,000,000 for property damages resulting from any one accident.
 - (3) Each of the foregoing insurance policies shall contain a statement that the insurer will not cancel the policy or fail to renew the policy for any reason without first giving notice in accordance with the terms of the policy. In addition, in the event that the insurer does not provide such notice directly to the County, Grantee agrees to provide the County with as much advance written notice as is reasonably practicable in the event that any such insurer provides Grantee with notice that it intends to cancel the policy or fail to renew the policy for any reason.

SECTION 5. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. Grantee shall, at all times during the life of this Franchise, be subject to all lawful exercises of the police power by the County and to such regulation as the County, State or Federal Government shall hereafter provide.

- 5-1 Any lawful regulations established by the FCC pursuant to the Communications Act, as the same may be amended, shall be incorporated into this ordinance. Such regulations shall become incorporated on the date they become obligatory under federal law, or, in the event no obligatory date is established, within one (1) year of adoption by the FCC.

SECTION 6. TERRITORIAL AREA INVOLVED. This Franchise relates to the present unincorporated areas of the County and to any area henceforth added thereto during the term of this Franchise, however, in accordance with the terms and conditions set forth below:

- 6-1 Grantee shall make cable service available in accordance with the terms of this Franchise to all residences, businesses and other public or privately owned buildings within the County that are within or contiguous to the CATV System as it exists on the date hereof, including multiple dwelling unit buildings, whose owners or occupants request cable service, except for multiple dwelling unit buildings and other locations to which Grantee cannot legally obtain access; provided, however, that Grantee may refuse to provide cable service when (i) it is not economically feasible to do so, (ii) when it is unable pursuant to normal industry practice to obtain necessary programming, real property or other access rights, (iii) when its prior service, payment, or theft of service history with a Person has been unfavorable, or (iv) pursuant to a written waiver by the Board or its designee. As used herein, "economically feasible" shall mean that there are at least thirty (30) occupied homes per mile of cable television distribution plant and that the area is within or contiguous to the CATV System as it exists on the date hereof. The distance to be included in determining the thirty (30) occupied homes per mile shall be based upon a measurement from the outermost extremity of the CATV System as it exists on the date hereof through and measured along the utility easement now laid out or dedicated to the location requesting service. Notwithstanding anything to the contrary contained in this Section 6-1, Grantee is not obligated to extend service to residences beyond 300 aerial feet or 150 underground feet from the CATV System. Isolated residences requiring more than a standard 300 foot aerial drop or 150 foot underground line may be provided at a premium installation rate if such service has been requested by the resident. Grantee may request advanced payment for such installation.

SECTION 7. OPERATION AND MAINTENANCE OF SYSTEM.

- 7-1 Grantee shall have a publicly listed toll-free telephone number and be operated so as to receive Subscriber complaints and requests during normal business hours. Grantee shall investigate and promptly resolve customer complaints regarding quality of service or service outages.
- 7-2 Grantee shall comply with all FCC regulations regarding customer service requirements, including the standards set forth in 47 CFR 76.309(c) with respect to cable office and telephone availability, installation, outages and service calls and communications with subscribers.

SECTION 8. RULES AND REGULATIONS GOVERNING OPERATION. Grantee shall render its service in accordance with all applicable laws.

SECTION 9. COMPLIANCE WITH THE COMMUNICATIONS ACT AND THE RULES AND REGULATIONS OF FEDERAL COMMUNICATIONS COMMISSION. Grantee and the County shall, at all times, comply in all material respects with the provisions of the Communications Act, 47 U.S.C. §521 *et seq.*, and the Rules and Regulations promulgated by the FCC, as the same may be amended from time to time, with respect to the operation of the System. This obligation shall include adherence in all material aspects by Grantee to the Rules and Regulations of the FCC with respect to technical and engineering specifications involved in the construction of CATV systems and signal carriage therein and adherence in all material respects by the County with the obligations applicable to a “franchising authority” under , 47 U.S.C. §521 *et seq.*

SECTION 10. SERVICE TO LOCAL GOVERNMENT, FIRE DEPARTMENT, RESCUE SQUADS AND PUBLIC SCHOOLS. Upon request from the County, Grantee shall install at no cost one (1) standard cable television service drop for the reception of Basic Service and the next most widely distributed service tier in each of the County’s municipal buildings set forth on Schedule A attached hereto. Service shall be provided to such buildings by means of a drop cable to the outside building only.

SECTION 11. PEG CHANNEL. Upon request and at no cost, Grantee shall provide the County with the capacity and channel position on its Basic service tier for one (1) educational and governmental (EG) access channel for non-commercial, government programming. The County will be responsible for all equipment costs to originate and transmit programming on the EG access channel. The EG channel will be provided within ninety (90) days after request by the County. Until the County requests the utilization of such EG channel capacity for its designated purposes, Grantee shall have the right to use such channel capacity, and will relinquish such use after receiving such request. If the County is not using the EG channel for its designated purposes after such request, Grantee may request the use of this channel subject to written approval by the County.

SECTION 12. CHANGES TO RATES OR SERVICES. Grantee shall provide Subscribers and the County with notice of changes to its cable services or rates in accordance with FCC rules and regulations.

SECTION 13. EMERGENCY USE OF FACILITIES. Grantee shall comply with all applicable FCC rules regarding the Emergency Alert System (“EAS”). In accordance with Federal or State regulations, such persons authorized by the Board or County Administrator shall have the ability to activate the EAS in the event of any emergency or disaster.

SECTION 14. OTHER BUSINESS ACTIVITIES. This Franchise authorizes only the operation of a CATV System as provided for herein, and does not take the place of any other franchise, license, or permit which might be required by law of Grantee.

SECTION 15. PROMULGATION OF RULES. Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the proper operation of the CATV System, and to assure an uninterrupted service to each and all of its Subscribers; provided, however, that such rules, regulations, terms and conditions shall not violate provisions hereof or the laws of the County, the Commonwealth of Virginia, or the United States.

SECTION 16. SAFETY REQUIREMENTS.

- 16-1 Grantee shall at all times employ ordinary care and shall install and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisance to the public.

- 16-2 Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electric Code and the National Electrical Safety Code, and in such manner that they will not interfere with any installation of the County or of a public utility serving in the County.
- 16-3 All structures, and all lines, equipment and connections in, over, under and upon streets, sidewalks, alleys, and public ways and places of the County, where ever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

SECTION 17. CONDITIONS OF STREET OCCUPANCY.

- 17-1 **Use.** All transmission and distribution structures, lines and equipment erected by Grantee or used on other poles or facilities within the County shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys, or other public ways and places.
- 17-2 **Restoration.** In case of any disturbance of pavement, sidewalk, driveway or other surfacing, Grantee shall, at its own cost and expense and in a manner approved by the County Administrator or his or her duly appointed agent, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed in as good conditions as before said work was commenced. If such repairs are not promptly made by Grantee in the time and manner prescribed by the County Administrator or his or her agent, the County shall make such repairs as it deems necessary and charge the same to Grantee.
- 17-3 **Relocation.** In the event that at any time during the period of this Franchise the County shall lawfully elect to alter, or change the grade of any street, alley or other public way, or to alter, change, or install public utilities, Grantee, upon thirty (30) days advance notice by the County, shall remove, replace and relocate its poles, wires, cables, and underground conduits, manholes and other fixtures at its own expense; provided, however, in requiring Grantee to remove, replace and/or relocate its equipment, the County shall treat Grantee the same as, and require no more of Grantee, than any other similarly situated utility (i.e. if other similarly situated utilities are reimbursed for the cost associated with such removal, replacement and/or relocation, Grantee shall also be reimbursed). If an emergency exists, the County shall give Grantee the earliest possible notice.
- 17-4 **Placement of Fixture.** Grantee shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant, or water and sewer mains, and all such poles or other fixtures placed in any street or otherwise shall be placed within the designated easements for such use and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways; all to be approved by the County Administrator, or his or her duly appointed agent and in accordance with existing County policy.
- 17-5 **Temporary Removal of Wire for Building Moving.** Grantee shall, at the request of any person holding a building moving permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the Person requesting the same, and shall not

exceed the actual costs of Grantee. Grantee shall have the authority to require such payment in advance. Grantee shall be given no less than ninety (90) days advance notice to arrange for such temporary wire changes.

- 17-6 Tree Trimming. Grantee shall have the authority to trim trees upon an overhanging street, alley, sidewalk or public place of the County so as to prevent the branches of such trees from coming into contact with the wires and cables of Grantee at the expense of Grantee.

SECTION 18. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED. Grantee shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any Person, provided nothing in this Franchise shall be deemed to prohibit the establishment of a graduated scale of charges, nor shall it be deemed to prohibit Grantee from offering discounts for bundled services or offering inducements meant to attract new customers or to sell additional services to existing customers, nor shall it be deemed to prohibit Grantee from giving free service to County's municipal buildings and public schools, or for any other public use.

SECTION 19. PAYMENTS OF COMMUNICATIONS SALES AND USE TAX.

- 19-1 Communications Sales and Use Tax. Pursuant to Virginia Code § 58.1-648, and Virginia Code § 15.2-2108.1:1, Grantee shall collect the applicable Communications Sales and Use Tax, which shall be remitted to the Commonwealth of Virginia.
- 19-2 Gross Revenue. Upon written request of the County provided to Grantee, Grantee shall provide a summary report detailing the calculation of the payments made by Grantee pursuant to Section 19-1. Such a request may be made no more than once a year by the County, and such request may only relate to the year immediately preceding the date of the request.

SECTION 20. TERM OF FRANCHISE. The Franchise and rights herein granted under the provisions of this Franchise shall take effect and be in force from after the final passage thereof, as provided by law and upon filing of the acceptance and all other instruments required herein by Grantee with the County Administrator, and shall continue in force and effect for a term of fifteen (15) years after the effective date of this Franchise. The parties agree that any proceedings undertaken by the County that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the 1992 Cable Act, as amended. Upon expiration or termination of the Franchise, Grantee shall be afforded a six (6) month period to sell or otherwise dispose of the CATV System located in the County. During such six (6) month period, Grantee shall operate the CATV System in accordance with this Franchise. At the expiration of such six (6) month period, Grantee has the right to remove its facilities in the County within a reasonable period of time.

SECTION 21. TRANSFER OF FRANCHISE. Grantee shall not transfer or assign the Franchise without providing prior written notice to the County. Prior notice shall not be required for the following: (i) the assignment of, or the granting of a security interest in, the Franchise or the CATV System for the purpose of securing indebtedness; or (ii) the assignment or transfer of the Franchise or the CATV System to an affiliate under common ownership or control with Grantee.

SECTION 22. SIGNAL QUALITY REQUIREMENTS; SERVICE TO BE PROVIDED.

- 22-1 Grantee shall engineer, install, maintain, operate and equip the CATV System herein provided so as to meet the technical standards of the FCC.

- 22-2 Grantee shall demonstrate by instruments and otherwise to County, upon request, that a signal of adequate strength and quality is being delivered.
- 22-3 The channel line ups are subject to change with appropriate notice, per federal requirements.

SECTION 23. TERMINATION. Subject to Section 24, the County may terminate the Franchise granted under this Ordinance in case of material noncompliance by Grantee. Material noncompliance shall include: (i) a material violation by Grantee of any term, condition, or provision of this Ordinance that remains uncured within the applicable cure period; (ii) failure of Grantee to comply with any reasonable, material provision of any applicable Ordinance; (iii) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, or there is a notice of prospective foreclosure or other judicial sale of all or a substantial part of the CATV System; (iv) Grantee abandons the CATV System; or (v) Grantee fails to operate the CATV System for a period of 30 days.

SECTION 24. TERMINATION PROCEDURES. If the County seeks to terminate this Franchise under Section 23, the County shall follow the procedures in this section.

- 24-1 **Notice of Complaint.** The County shall provide Grantee with written notice describing with reasonable specificity the alleged noncompliance.
- 24-2 **Opportunity to Cure.** Grantee shall have sixty (60) days from receipt of written notice to cure the alleged noncompliance. If Grantee cures the alleged noncompliance within the sixty (60)-day period, the County shall provide Grantee with written notice withdrawing the complaint.
- 24-3 **Public Hearing.** If Grantee fails to cure the alleged noncompliance within the sixty (60)-day cure period, or if Grantee provides the County with written notice disputing the complaint, and the parties fail to otherwise resolve the matter, the County shall schedule a public hearing on the alleged noncompliance. At the public hearing, Grantee may present testimony, cross-examine witnesses and deliver to the Board all evidence relevant to Grantee's defense. At the conclusion of the public hearing, the Board may dismiss the complaint, defer action, order appropriate sanctions, or terminate the Franchise in accordance with this section.
- 24-4 **Termination.** The County may, after a duly noticed public hearing, terminate the Franchise for material and willful continuing noncompliance by Grantee. If Grantee contests the termination in a court of competent jurisdiction, Grantee may operate the CATV System in accordance with this Ordinance while the case is pending.

SECTION 25. UNAUTHORIZED RECEPTION OF SERVICE; TAMPERING. It shall be unlawful for any Person without Grantee's consent to willfully tamper with, remove or injure any of the CATV System. It shall be unlawful for any Person to make or use any unauthorized connection to any part of the CATV System. Any Person that violates this Section 25 regarding theft of service shall be guilty of a misdemeanor and punished by a fine not to exceed \$500.00 for each occurrence or imprisonment for a term not to exceed 90 days or both, such fine and imprisonment as may be imposed by a court of competent jurisdiction.

SECTION 26. MISCELLANEOUS.

- 26-1 **Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof it being the intent now hereby declared that this Franchise would have been adopted even if such unlawful, unconstitutional or void matter had not been included therein.
- 26-2 **Force Majeure.** Grantee shall not be held in default under, or in noncompliance with, the provisions of this Ordinance, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor utility poles to which the CATV System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary. Furthermore, the parties hereby agree that it is not the County's intention to subject Grantee to penalties, fines, forfeitures or revocation of this Franchise for violations of this Ordinance where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers, or where strict performance would result in practical difficulties and hardship to Grantee which outweigh the benefit to be derived by the County.
- 26-3 **Notices.** Notices under this Ordinance shall be in writing and shall be deemed given delivery by hand delivery, certified mail return receipt requested, or overnight courier to the following addresses:

To the County:
Middlesex County
P.O. Box 428
Saluda, VA23149
Attn: County Administrator

To Grantee:

Gans Communications, L.P. d/b/a MetroCast Communications
126 Urbanna Road
P.O. Box 1147
Saluda, VA 23149
Attn: General Manager

With copy to:

Gans Communications, L.P. d/b/a MetroCast Communications
70 East Lancaster Avenue
Frazer, PA 19355
Attn: General Counsel

A party may designate other addresses for providing notice by providing notice in writing of such addresses.

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ENACTED AND ORDAINED BY THE BOARD OF SUPERVISORS OF MIDDLESEX COUNTY,
VIRGINIA this 7th day of January, 2014.

COUNTY OF MIDDLESEX, VIRGINIA



County Administrator


ATTEST:



Board of Supervisors

Accepted and agreed to:

GANS COMMUNICATIONS, L.P.
D/B/A METROCAST COMMUNICATIONS

By: 

Name: DANNY L JOE
Title: VICE PRESIDENT OF SYSTEM OPERATIONS
Date: 4/10/14

Schedule A

Government Service Locations

| Name | Street Address | City | ZIP | Services Provided for Free |
|--------------------------|--------------------------|-------------|------------|----------------------------|
| MIDDLESEX CO RESCUE SQ | 17684 GENERAL PULLER HWY | DELTAVILLE | 23043-2247 | Expanded Basic, 2 DTA |
| COUNTY ADMINISTRATOR | 877 GENERAL PULLER HWY | SALUDA | 23149-3105 | Expanded Basic, 1 DTA |
| MIDDLESEX SENIOR ACT CEN | 2788 GENERAL PULLER HWY | SALUDA | 23149-3112 | Expanded Basic, 2 DTA |
| HARTFIELD FIRE DEPT | 3309 TWIGGS FERRY RD | HARTFIELD | 23071-0000 | Expanded Basic |
| MIDDLES SENIOR CTR | 400 MEADOWS DR, UNIT A | URBANNA | 23175-0000 | Expanded Basic |
| WATERVIEW FIRE DEPT | 4583 WATER VIEW RD | WATER VIEW | 23180-2010 | Expanded Basic |
| CMVRS | 391 HILLARD ST BLDG B | URBANNA | 23175-0000 | Expanded Basic, 2 DTA |
| MIDDLESEX COUNTY SHERIFF | 75 OAKES LANDING RD | SALUDA | 23149-0000 | Expanded Basic |
| DELTAVILLE FIRE DEPT | 16881 GENERAL PULLER HWY | DELTAVILLE | 23043-2311 | Expanded Basic, 2 DTA |
| DELTAVILLE RESCUE SQUAD | 10946 GENERAL PULLER HWY | HARTFIELD | 23071-3160 | Expanded Basic, 2 DTA |
| MIDDLESEX CTY EXTENSION | 44 OAKES LANDING RD | SALUDA | 23149-0000 | Expanded Basic, 1 DTA |
| ST CLARE WALKER MID SCH | 6814 GENERAL PULLER HWY | LOCUST HILL | 23092-0000 | Expanded Basic |
| MIDDLESEX CO SCHOOL ADMI | 2893 GENERAL PULLER HWY | SALUDA | 23149-3058 | Expanded Basic, 2 DTA |
| MIDDLESEX HIGH SCHOOL | 454 GENERAL PULLER HWY | SALUDA | 23149-3100 | Expanded Basic, 11 DTA |
| MIDDLESEX SCHOOL BOARD 1 | 2838 GENERAL PULLER HWY | SALUDA | 23149-3058 | Expanded Basic, 2 DTA |
| MIDDLES SCHOOLS | 2911 GENERAL PULLER HWY | SALUDA | 23149-3052 | Expanded Basic, 4 DTA |
| MIDDLESEX ELEMENTARY SCH | 823 PHILPOT RD | LOCUST HILL | 23092-9746 | Expanded Basic, 12 DTA |

9/27/18 Three Rivers Health District ofc. 2780 General Puller Hwy Saluda 23149 Expanded Basic