

Network Services Agreement

This Agreement ("Agreement") is made on the ___ day of _____ 2010 by and between Comcast of West Florida, Inc., ("Company" or "Comcast"), with offices located at 5205 Fruitville Road, Sarasota, FL 34232 and Sarasota County, a political subdivision of the State of Florida, 1660 Ringling Blvd., Sarasota, FL 34236 (the "County"), the School Board of Sarasota County, Florida, a body corporate, 1960 Landings Blvd., Sarasota FL 34231 (the "School Board"), and the City of Sarasota, a municipal corporation of the State of Florida, 1565 1st Street, Sarasota, FL 34236 (the "City"), collectively referred to as the ("Customers").

Description of Services to be provided by Company to Customers: Maintenance, repair, replacement and expansion of fiber for networking services, as set forth in Schedules A and B attached hereto, as amended from time to time.	
Term of Agreement (months): sixty (67)	Agreement Number:
Non-Recurring Charges ("NRC"): \$0.00	Total Monthly Recurring Charges ("MRC"): \$26,287.00 (\$99.42 per span mile)
Any Additional Charges/Explanation: \$ 0.00	
Number of Sites: 148	Service Date: March 1, 2009
Notes / Comments: A credit of \$246,142.00 will be applied to the total retroactive amount of MRC due for the period from March 1, 2009 through September 30, 2010 (\$499,453), leaving a total balance due of \$253,311 ("Retroactive MRC Balance"). Company shall invoice each Customer for its proportionate share of the Retroactive MRC Balance based upon its proportionate share of I-Net span miles pursuant to Schedule B, attached hereto and incorporated herein (County – 56%; School Board - 36% and City- 8%) The Retroactive MRC Balance due from each Customer shall be paid within forty-five (45) days of the date of the last signatory hereto.	
General Manager: Barbara Hagan	Telephone Number: (941) 342-3552
County Contact: Glenn Zimmerman, CIO, Sarasota County City Contact: Chance Craig, Information Technology Manager School Board Contact: Leona Collesano, Dir., Information Technology	Telephone Number: (941) 861-5326 (941) 954-4170 (941) 927-9000

This Network Services Agreement sets forth the terms and conditions under which Comcast will provide the Services identified above to Customers. The Agreement does not address the provision of telecommunications services and at no time shall Services be considered telecommunications services. This Comcast Network Services Agreement consists of this document ("Cover Page"), the General Terms and Conditions, and Schedules A, B and C ("Schedules"), and any jointly executed amendments ("Amendments"), collectively referred to as the "Agreement". In the event of any inconsistency among these documents, precedence will be as follows: (1) Amendments, (2) General Terms and Conditions, (3) this Cover Page, and (4) Schedules. This Agreement shall commence and become a legally binding agreement upon the date of the last signature on this Cover Page with an effective date retroactive to March 1, 2009. The Agreement shall terminate as set forth in the General Terms and Conditions. All capitalized terms not defined on this Cover Page shall have the definitions given to them in the General Terms and Conditions. All modifications to the Agreement, if any, must be captured in a written Amendment, executed by an authorized Comcast Vice President and each of the Customers. All other attempts to modify the Agreement shall be void and non-binding on Comcast and the Customers. Customers and Company, by signing below, agree and accept the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their respective representatives to execute this Agreement on their behalf, on the dates indicated below.

WITNESSES:

COMCAST OF WEST FLORIDA, INC.

Signature

By: _____
Its: _____

Print

Date: _____

Signature

Print

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA**

KAREN E. RUSHING, Clerk of the
Circuit Court and Ex-Officio Clerk of the
Board of County Commissioners of
Sarasota County, Florida

By: _____
Chairman

By: _____
Deputy Clerk

Date: _____

Approved as to form and correctness:
By: _____
County Attorney

ATTEST:

CITY OF SARASOTA, FLORIDA

City Auditor & Clerk _____

By: _____
Mayor

Approved as to form and correctness:

Date: _____

By: _____
City Attorney

ATTEST:

**SCHOOL BOARD OF
SARASOTA COUNTY, FLORIDA**

Clerk

By: _____
Chair

Approved as to form and correctness:

Date: _____

School Board Attorney

COMCAST OF WEST FLORIDA, LLC

GENERAL TERMS AND CONDITION

SECTION 1 - SCOPE OF SERVICE

1.1 Company will provide to Customers the Services at the prices set forth on the Cover Page of this Agreement and in the attached Schedule A for the location(s) set forth in attached Schedule B (the "Facilities"), as amended from time to time. The Service consists of providing maintenance, repair and replacement of the fiber, as necessary, that transports and distributes digital signals in a standards based Internet Protocol (IP) format for standards based IP applications to Customers' Buildings identified in the attached Schedule B, as same may be amended from time to time (the "Network") at the transmission level designated in Schedule A attached hereto. The Network is provisioned into Customers' Facilities at the point of interconnection between the Network and Customers equipment located at Customers Facilities ("Demarcation Points").

1.2 The Service does not include connection to the public switched network, building wire, any Local Area Networks ("LANs"), Customer Premise Equipment ("CPE"), IP addressing capability, firewalls or any other equipment, electronics, or wiring required on the Customers' side of the Demarcation Points.

1.3 Upon the request of Customer(s), Company will consider providing other services to Customer(s) at terms, conditions, and prices to be mutually agreed upon in writing between the Parties.

SECTION 2 - MAINTENANCE OF NETWORK

2.1 Customers, at no cost to Company, shall secure throughout the term of this Agreement and any renewals thereto any easements, leases or other agreements necessary to allow Company to use existing pathways into and in each Building to that Building's Demarcation Point for the Service.

2.2 Company and its employees, agents, lessees, officers and its authorized vendors will require free ingress and egress into and out of the Buildings in connection with the provision of Services. Upon reasonable notice from Company, Customers shall assist Company in accessing their respective Buildings. Before coming onto any School Board campus while students are present, Company will assure that its employees have complied with the screening requirements established by Sections 1012.467 and 1012.468, Florida Statutes, as may be amended from time to time.

2.3 Company shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.

2.4 Each Customer shall be responsible for providing maintenance, repair, operation and replacement of all wire, cable facilities on the respective Customer's side of the Demarcation Points. Any Customer-provided equipment (CPE) and wiring that a Customer uses in connection with the Service shall be compatible with the Network.

2.5 Customers shall use reasonable efforts to maintain their property and Facilities in a manner that preserves the integrity of the Service and shall promptly notify Company of any event that affects such integrity including but not limited to damage to the Network.

2.6 Company shall have no obligation to install, operate, or maintain CPE. Customers alone shall be responsible for providing maintenance, repair, operation and replacement of all inside telephone wiring and equipment and facilities on the Customers' side of the Demarcation Points. All CPE and wiring that Customers use in connection with the Services must be fully compatible with the Services. Customers shall be responsible for the payment of all charges for troubleshooting, maintenance or repairs attempted or performed by Company's employees or authorized contractors when the difficulty or trouble report results from CPE.

2.7 In the event that Company is required by law or action of any Customer to relocate any portion of the network dedicated for the use of the Customer in accordance with this Agreement, the responsible Customer agrees to reimburse Company for reasonable costs supported by detailed paid invoices.

SECTION 3 - ADDITIONAL NETWORK FIBER

Any Customer who desires to have the Company extend Network fiber to additional Customer-owned or leased facilities, educational institutions and to Sarasota County Economic Development Corporation and Sarasota County Visitors Bureau facilities during the term of this Agreement or any renewals thereof shall issue a Change Order (or such other document in compliance with the Customer's procurement policy) to Company with specifications and requested timeframe. Upon completion of the construction and installation of the additional Network fiber, Company shall invoice the requesting Customer at the current time and materials rate. Such costs shall be proportionate to the requesting Customer's fiber count in the conduit. All invoices shall be supported by detailed pricing and documentation and shall be paid within forty-five (45) days of receipt. Within sixty (60) days of completion of the construction and installation of the additional fiber, Schedule B to this Agreement shall be amended to reflect the additional span miles of the requesting Customer. Maintenance of the additional fiber shall be provided as set forth in this Agreement and shall be billed at the current Span Mile rate set forth on Schedule A. Other Network Fiber extensions shall be provided, at Company's approval. Such approval shall not be unreasonably withheld.

SECTION 4 - COMPENSATION; PAYMENT

4.1 The Monthly Recurring Charges ("Monthly Recurring Charges" or "MRC") for the Service are set forth in the attached Schedule A and on the Cover Page of this Agreement. Unless otherwise stated in this Agreement, Company will invoice each Customer for its proportionate share of the MRC in advance on a monthly basis. Payment will be considered timely made to Company if received within forty-five (45) days after the invoice date set forth in the invoice. Any charges not paid by a customer to Company within such period will be considered past due to that Customer.

4.2 Any payment not made when due will be subject to a late charge of 1.5% per month for the Customer who has not timely paid

or the highest rate allowed by law on the unpaid invoice, whichever is lower.

4.3 Company reserves the right to invoice each Customer for its proportionate share of any fees or payment obligations stemming from an order, rule, or regulation of the FCC, a public service commission or a court of competent jurisdiction with respect to the Services.

4.4 In the event that any newly adopted law, rule, regulation, or judgment increases Company's costs of providing the Services, upon evidence of increased cost, each Customer shall pay its proportionate share of Company's additional costs of providing the Services under the new law, rule, regulation or judgment, commencing sixty (60) days after notice of the increase and supporting documentation. In the event that any newly adopted law, rule, regulation or judgment decreases or removes Customers' responsibility to pay Company to maintain, repair and replace the fiber as described in this Agreement, the parties shall amend this Agreement to comply with such law, rule, regulation or judgment.

4.5 Each Customer is individually liable for its proportionate share of any costs, fees or charges due and owing pursuant to this Agreement. The failure of any Customer to timely pay its proportionate share of said costs, fees or charges shall not impact the amount due and owing by the remaining Customer(s). Any recourse by Company for past due amounts shall be against the defaulting Customer(s) only. The Customers do not have joint and several liability for any of the provisions herein.

SECTION 5 - TERM

Subject to Section 6 herein, this Agreement shall be retroactive to March 1, 2009 and shall terminate on September 30, 2014 (the "Term"). Upon expiration of the Term, this Agreement shall automatically renew for successive five (5) year periods ("Renewal Term"), commencing October 1, unless notice of non-renewal is delivered by any Party to the others by April 1 of the year of renewal. Subject to Section 6 herein, failure to timely notify the Parties of non-renewal shall waive that Party's right to terminate the Agreement until the following Renewal Term. Notice of non-renewal by fewer than all of the Customers will not terminate the Agreement as to the other Customer(s). No later than June 1 of the year of renewal: (a) each remaining Customer shall prepare a "true-up" of the number of span miles being maintained by Company on its behalf; and (b) Company may increase the cost per span mile for the Services rendered pursuant to this Agreement by the CPI (U.S. City Average All Workers) by using the most recent available information for the prior 12-month period or 4%, whichever is lower; provided, however, Company must notify each Customer of the pending increase no later than June 1 of the year of renewal. Failure to timely notify Customers of the increase shall defer any increase for that Renewal Term to the subsequent October 1.

SECTION 6 - TERMINATION WITHOUT FAULT

6.1 Notwithstanding any other term or provision in this Agreement, any one or more of the Customers shall have the right, in its/their sole discretion, to terminate this Agreement at any time during the Term, or any Renewal Term, upon (i) sixty (60) days prior written notice to Company and (ii) the payment for services rendered up to the termination date within thirty days following termination of the Agreement ("Termination Charges").

6.2 Company may, immediately terminate this Agreement in the event that it is unable to provide Service due to any law, rule, regulation, Force Majeure event, or judgment of any court or government agency. In the event Company is declared to be a common carrier by any law, rule, regulation, or judgment of any court or government agency, Company may terminate this Agreement. If Company terminates the agreement under this subsection 6.2, Customer shall have no obligation to pay any remaining Monthly Recurring Charges as a result of Termination by the Company, with the exception of any past due amounts.

6.3 In the event of default, any Party may terminate this Agreement as to the defaulting Party. A "default" exists under this Agreement upon the following events:

- (i) a Party's failure to meet or perform any material term, provision, covenant, agreement, or obligation contained in this Agreement; provided that the non-defaulting Party so advises the defaulting Party in writing of the event of default and the defaulting Party does not remedy the default within thirty (30) days after written notice thereof; or
- (ii) a Party's insolvency or initiation of bankruptcy or receivership proceedings by or against the Party.
- (iii) a Party is in breach of a payment obligation and fails to make payment in full within ten (10) days after receipt of written notice of default.

6.4 The non-defaulting Party(ies) shall be entitled to all available legal and equitable remedies for such breach against the defaulting Party(ies).

SECTION 7 - NON-APPROPRIATION

If Customers are using funds that are appropriated by their respective governing body on a single fiscal year basis for the payment of the Recurring Charges and satisfaction of their obligations hereunder and Customers are required by applicable law to reserve the following right in multi-year contracts, then Customers reserve the right, to the extent required by law, to terminate this Agreement, upon not less than sixty (60) days written notice to Company, in the event such funds have failed appropriation or are otherwise legally unavailable to Customers to fund payment of the Recurring Charges under this Agreement. Upon such termination by Customers, Customers shall not be responsible for payment of the Recurring Charges or any other amounts which would be due and payable to Company in the subsequent budgetary period. However, Customers shall pay to Company any accrued Recurring Charges which are owed to Company. The obligation of Customers to pay amounts required hereunder shall constitute a current expense of the respective governmental entity and shall not in any way be construed to be a debt of the entity in contravention of any applicable constitutional, statutory or charter limitations or requirements concerning the creation of indebtedness of Customers. Customers shall not be obligated to pay any sums due hereunder from the compelled levy of ad valorem or other taxes except from legally available non-ad valorem revenues appropriated for such purpose, if any. Company agrees and acknowledges that no minimum amount of the Recurring Charges is guaranteed by any Customer through the initial term or any renewals of this Agreement.

SECTION 8 - SERVICE RESPONSE TIMES

8.1 Maintenance Service consists of the repair or replacement, at Company's option, of any portion of the Network that is

malfunctioning. Company will maintain the Network twenty-four (24) hours a day, seven (7) days per week, every day of the year.

8.2 Company shall perform monthly routine maintenance on the Network and timely replace those portions of the Network fiber that become opaque or otherwise worn through normal wear and tear. Company shall respond to Customer reporting damaged fiber within one (1) hour with a plan for repair and an estimated time of completion.

8.3 In the event that Company, in responding to a Customer-initiated service call, determines that the reason for such service call is due to Customer-provided equipment or Customer's actions or omissions, or the acts or omissions of an agent of a Customer, the responsible Customer shall compensate Company for Company's costs of such service call at the rate of \$50.00 per half hour and \$150.00 per truck roll charge.

SECTION 9 - LIMITATIONS ON WARRANTIES AND LIABILITY

9.1 COMPANY WILL NOT BE LIABLE TO CUSTOMERS FOR ANY INCIDENTAL, INDIRECT, SPECIAL, COVER, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS REVENUE, LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, COMPANY'S AGGREGATE LIABILITY TO ANY CUSTOMER FOR ANY DAMAGES OF ANY KIND UNDER THIS AGREEMENT WILL NOT EXCEED, IN AMOUNT, A SUM EQUIVALENT TO SIX (6) MONTHS OF THE APPLICABLE MRC FOR THAT CUSTOMER.

9.2 THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9.3 Company's liability for mistakes, errors, omissions, interruptions, delays, outages, or defects in any way related to the Company's provision of the Services hereunder (individually or collectively, "Liability"), excluding any Liability caused by force majeure events or a Customer's actions, omission or equipment, shall be limited solely to a credit on the affected Customers' invoice for MRC in an amount up to six (6) months of the MRC (the "Credit"). The amount of the Credit shall be determined by the duration of fiber outage resulting from Company's mistakes, errors, omissions, interruptions, delays, outages or defects; provided that the Liability is reported by the affected Customer(s) during the duration of the fiber outage.

9.4 Company shall be liable for any act or omission of any other company or companies furnishing a portion of the Service on behalf of Company including, but not limited to, the inability of a supplier to provide equipment in a timely manner, or for damages associated with services, facilities, or equipment which it does not furnish, including, but not limited to, damages which result from the operation of Customer's system, equipment or facilities. In no event shall Company, its affiliates, its/their employees, agents, contractors, merchants, or licensors be liable for any loss, damage or claim arising out of or related to: (1) stored, transmitted, or recorded data, files, or

software. (i.e., Customers are advised to back up all data, files and software prior to the installation of service and at regular intervals thereafter); (2) interoperability, interaction or interconnection of the Service provided under this Agreement with applications, equipment, services or networks provided by Customers or third parties.

9.5 Neither Customers nor their agents or independent contractors shall offer third parties warranties or representations for the Service which would obligate or otherwise bind Company beyond any warranty or representation expressly set forth in this Agreement.

9.6 Customers are prohibited from reselling Company-provided network services. Customers, their employees, agents and independent contractors shall not use the Network to provide any product or service that directly or indirectly competes with any product or services provided by the Company unless authorized by Company.

SECTION 10- ASSIGNMENT

10.1 None of the Parties shall assign any right, obligation or duty, in whole or in part, or of any other interest hereunder, without the prior written consent of the other Parties, which shall not be unreasonably withheld. The foregoing notwithstanding, Company may assign this Agreement to any affiliate, related entity, or successor in interest without Customers' consent.

10.2 All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party.

SECTION 11 - FORCE MAJEURE

None of the Parties hereto shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond their control and without their fault or negligence, such as acts of God, acts of civil or military authority, act of terrorism, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers.

SECTION 12- SEVERABILITY

In the event that any one or more of the provisions in this Agreement shall for any reason be held invalid, unenforceable, or void in any respect under the laws of the jurisdiction governing the entire Agreement, such provision(s) shall be construed so as to render it enforceable and effective to the maximum extent possible in order to effectuate the intention of this Agreement; and the validity, legality, and enforceability of the remaining provisions hereof shall not be affected or impaired.

SECTION 13- THIRD-PARTY BENEFICIARIES

No provision in this Agreement is intended, nor shall any be interpreted, to provide any person not a Party to this Agreement with any remedy, claim, liability, reimbursement, cause of action or create any other third party beneficiary rights against Company.

SECTION 14 - INDEPENDENT CONTRACTORS

14.1 The Parties to this Agreement are independent contractors. None of the Parties hereto is an agent, representative, or partner of any other Party. None of the Parties hereto shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, any other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon any Party.

14.2 The requirements of this Article shall survive the expiration, termination, or cancellation of this Agreement to the greatest extent permitted by law.

SECTION 15- NONDISCLOSURE

Unless prior written consent is obtained from a Party hereto, the other Party will keep in strictest confidence all information identified by the first Party as confidential, or which, from the circumstances, in good faith and in good conscience, should be treated as confidential; provided that (a) the owner thereof has taken reasonable measures to keep such information secret; and (b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by the public. Such information includes but is not limited to all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or not stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. A Party shall be excused from these nondisclosure provisions if the information has been, or is subsequently, made public by the disclosing Party, is independently developed by the other Party, if the disclosing Party gives its express, prior written consent to the public disclosure of the information, or if the disclosure is required by any law or governmental or quasi-governmental rule or regulation.

SECTION 16- NOTICES

Any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing and shall be given via personal delivery, or overnight courier, or via U.S. Certified Mail, Return Receipt Requested, at the following addresses:

To County:
Attn: Chief Information Officer,
Sarasota County Government
1660 Ringling Boulevard,
Sarasota, FL, 34236

To City:
City Manager
City of Sarasota, Florida
1565 1st Street
Sarasota, Florida 34234

To School Board:
Attn: Superintendent of Schools
1960 Landings Blvd.
Sarasota, FL 34231

To Company:

Vice President General Manager
Comcast Cable
5205 Fruitville Rd
Sarasota, FL
34232

With a copy to:
Attn.: Cable Law Department
Comcast Cable Communications, LLC.
One Comcast Center
Philadelphia, PA 19103

SECTION 17 - HEADINGS AND TITLES

The headings or titles of any provisions of this Agreement are for convenience or reference only and are not to be considered in construing this Agreement.

SECTION 18 - GOVERNING LAW AND COURTS

This Agreement and any issues arising out of or in relation thereto shall be governed by the law of the State of Florida, without regard to its choice-of-law provisions. Customers agree to the exclusive jurisdiction of the courts of Sarasota, Florida for any action or proceeding arising out of or in relation to this Agreement.

SECTION 19- COMPLIANCE WITH LAWS

Each of the Parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.

SECTION 20- AMENDMENTS; NO WAIVER

20.1 This Agreement may be amended only by written agreement signed by authorized representatives of all Parties.

20.2 No waiver of any provisions of this Agreement or to any default under this Agreement shall be effective unless the same shall be in writing and signed by or on behalf of the Party against whom such waiver is claimed.

20.3 No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement shall be construed as a waiver of such term, right or condition.

20.4 Waiver by any Party of any default by another Party shall not be deemed a waiver of all Parties and shall be deemed a waiver of any other default.

SECTION 21- SURVIVAL

Provisions contained in this Agreement that by their sense and context are intended to survive the performance, termination or cancellation of this Agreement hereof by any Party hereto shall so survive.

SECTION 22 - FULLY INTEGRATED

This writing constitutes the entire agreement among the Parties as to the subject matter hereof and supersedes and merges all prior oral or

written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the Agreement.

SECTION 23 - INTERPRETATION OF AGREEMENT

This Agreement is a negotiated document. In the event that this Agreement requires interpretation, such interpretation shall not use any rule of construction that a document is to be construed more strictly against the Party who prepared the document.

SECTION 24- RIGHT TO ENTER INTO CONTRACTS

Nothing herein shall be construed as preventing any Party hereto from entering into similar contractual arrangements with other parties, unless such contracts would conflict with the performance of this Agreement.

SECTION 25 - REMEDIES CUMULATIVE

All rights of termination, or other remedies set forth in this Agreement are cumulative and are not intended to be exclusive of other remedies to which the injured Party may be entitled at law or equity in case of any breach or threatened breach by another Party of any provision of this Agreement. Use of one or more remedies shall not bar use of any other remedy for the purpose of enforcing any provision of this Agreement; provided, however, that Party shall not be entitled to retain the benefit of inconsistent remedies.

SECTION 26 - COUNTERPARTS

This Agreement may be executed simultaneously in two or more counterparts, each counterpart shall be deemed an original, and all counterparts individually or together shall constitute one and the same instrument.