

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
COLLIER COUNTY, FLORIDA

FILED
2004 JAN 16 CIVIL ACTION

Date PM 2:06

MARCO ISLAND CABLE, INC., a
Florida corporation,

Plaintiff

vs.

CASE NO. 03-5267-CA

COMCAST CABLEVISION OF THE
SOUTH, INC., a Colorado corporation
and COMCAST CORPORATION, a
Pennsylvania corporation,

Defendants.

2:04-cv-26-FtM-29DNF

Filed 12/29/03

Amended Complaint filed
1/12/04

COMPLAINT

Plaintiff, Marco Island Cable, Inc., a Florida corporation ("MIC"), sues Defendants, Comcast Cablevision of the South, Inc., a Colorado corporation and Comcast Corporation, a Pennsylvania corporation (collectively "Comcast") and alleges:

Statement of the Case

1. MIC requests this Court to stop Comcast from abusing its monopoly power and from engaging in unfair trade practices that hurt the residents of Collier County and potential competitors, such as MIC. Comcast's actions have resulted in residents of gated communities in Naples being charged rates averaging \$30.00 per month and residents of gated communities in Marco Island being charged rates as low as \$11.50 per month for the same service. Comcast protects its monopoly power through predatory pricing, long-term exclusive contracts designed to prevent homeowners and condominium owners from choosing their own cable provider, intimidation and threats to remove cable wiring and threats to sue customers if they choose to get cable from MIC. Comcast's use of

unfair competition has prevented MIC from offering cable in Naples and gives Comcast the power to reap monopoly profits from its customers. Comcast intends through its predatory pricing, exclusive contracts and intimidation of customers to destroy effective competition in Marco Island and prevent effective competition from coming to Naples. For these reasons and more, MIC sues Comcast.

Parties

2. Plaintiff, Marco Island Cable, Inc. ("MIC"), is a corporation organized and existing under the laws of the State of Florida.

3. MIC provides cable services to approximately 8,500 residential units of Collier County's more than 260,000 residents.

4. MIC has succeed in providing cable services only in the Marco Island area of Collier County because unfair competition and anti-competitive acts of Comcast have prevented MIC from offering cable within Naples.

5. Defendant, Comcast Corporation is a Pennsylvania corporation with a national cable business operating through various regional entities.

6. Comcast is the nation's largest cable provider and through its regional entity, Comcast Cablevision of the South, Inc., a Colorado corporation, provides cable services throughout Collier County, Florida to over 120,000 residential units.

Jurisdiction and Venue

7. MIC is suing Comcast, seeking damages in excess of \$15,000.00 exclusive of interest, costs and attorneys' fees, plus declaratory and injunctive relief.

8. The basis of MIC's action against Comcast arise out of the operating, conducting or engaging in or carrying out business in the State of Florida and in Collier County, Florida, making venue proper in Collier County, Florida.

Comcast's Monopoly Power

9. Comcast is the only choice for traditional cable service for the vast majority of Collier County residents.

10. Comcast faces limited competition by Time Warner Cablevision in portions of Golden Gate and competition by MIC in Marco Island.

11. Comcast uses its monopoly power to charge on average \$30.00 per month for cable service in Collier County and charges as little as \$11.50 per month on Marco Island in furtherance of predatory moves linked to exclusive contracts calculated to prevent competition from entrants such as MIC.

12. In August 2002, after receiving FCC approval for its acquisition of AT&T's cable division, Comcast's use of unfair competition and anti-competitive activities increased dramatically.

Exclusive Contracts

13. Within Collier County there are many condominiums and developments governed by homeowners associations.

14. Comcast, to perpetuate its monopoly, enters into exclusive contracts with developers of condominiums and planned unit developments governed by an association to prevent the retail purchasers of condominiums and homes within the developments from being free to choose another cable provider.

15. An example of an exclusive contract for a high-rise condominium, known as the Cozumel Condominium Association, Inc. ("Cozumel"), is attached hereto as Exhibit "1" ("Cozumel Contract").

16. The Cozumel contract was entered into between Comcast's predecessor, Continental Cablevision of Southwest Florida, and the developer of the Cozumel, Point Marco Development Corporation, on July 24, 1996.

17. The Agreement, titled "Cable Television Installation and Service Agreement" provides that Continental and its successor (*i.e.*, Comcast) has the exclusive right to serve the Cozumel and the entire Point Marco Development for fifteen (15) years. A portion of the Cozumel contract reads as follows:

1. License to Continental. Owner licenses and appoints Continental as the sole and exclusive provider of basic cable television and radio service, expanded cable television and radio service and other cable service programming and broadband communications (the Service) to the Premises, or any part thereof, for the term of this Agreement, its extensions and renewals. This exclusive license shall extend to each residential unit, dwelling and lot and Owner further grants Continental the right to connect and disconnect individual residents of the Premises for the Service.

Owner further grants Continental the right to advertise and promote its services on the Premises. Such promotion may include distribution of advertising materials and posters, promotional publicity, live demonstrations and door-to-door sales. Owner shall provide to Continental a list of names and addresses of residents of the Premises upon Continental's request.

18. Residents of the Cozumel in 2001 were paying in excess of \$30.00 per month under the Cozumel Contract and desired to obtain cable service from MIC.

19. Section 718.1232, Florida Statutes (2003), provides that condominium owners may choose the cable provider of their choice.

20. Ignoring Section 718.1232, Comcast first threatened to sue Cozumel if its' residents purchased cable from MIC and then followed through and sued the Cozumel in Collier County Circuit Court, Case No. 01-3598-CA, in an effort to intimidate the Cozumel. A copy of Comcast's Complaint is attached as Exhibit "2".

21. Comcast's case was eventually dismissed. (Exhibit "3").

22. Comcast offers developers cash payments as an inducement for the developers to bind future purchases to Comcast. An example of developer compensation agreement is attached hereto as Exhibit "4".

23. Comcast's combination of threatening to sue if an association chooses to change cable providers and its predatory pricing through selected deep discounts is fatal to competition. For example, when Southern Breeze Gardens Condominiums, Inc. ("Southern Breeze"), wanted to begin getting cable from MIC, Comcast threatened litigation and offered a deep discount to stop Southern Breeze from switching to MIC. A letter from Comcast to Southern Breeze highlighting Comcast's exclusive contract and its offered 65% deep discount is attached as Exhibit "5".

COUNT I
**The Florida Deceptive and
Unfair Trade Practices Act, Fla. Stat. § 501.211 (2003)**

24. MIC sues Comcast for violating Florida's Deceptive and Unfair Trade Practices Act, Section 501.211, Florida Statutes (2003).¹

25. MIC realleges each of its allegations in paragraphs 1 through 23 as though fully set forth in this paragraph.

¹ The scope of Florida's Unfair Trade Practices Act was expanded in 2001 to permit competitors to sue under the Act. Further, under the Act a company's violation of regulatory statutes and rules may form the basis of claim under the Act.

26. Comcast's practice of compensating developers for entering into exclusive contracts to bind future condominium and homeowners to Comcast, Comcast's threats and litigation to enforce exclusive contracts, and Comcast's discriminatory and predatory pricing constitute deceptive and unfair trade practices.

27. Comcast threatens to remove cable wiring² when its customers desire to change to MIC. Comcast's threats violate federal rules governing cable wiring including without limitation 47 C.F.R. § 76.802 which provides in part that:

“[u]pon voluntary termination of cable service by an individual subscriber in a multiple-unit installation, a cable operator shall not be entitled to remove the cable home wiring unless it gives the subscriber the opportunity to purchase the wiring at the replacement cost and the subscriber declines.”

28. The replacement cost for cable homewiring is nominal at approximately 7 cents a foot. Comcast's scare tactics and threats that it will remove cable wiring and force an association to rewire the building is an unfair and deceptive act.

29. Comcast's deceptive and unfair trade practices have directly and proximately damaged MIC and the residents of Collier County, Florida. MIC's damages include without limitation, lost profits within Marco Island and lost profits in other areas of Collier County where its expansion has been prohibited by Comcast's deceptive and unfair trade practices.

30. MIC and the residents of Collier County have and will continue to suffer irreparable harm if Comcast's deceptive and unfair trade practices are not enjoined by the Courts.

² Including distribution wiring, home run wiring and inside wiring.

31. MIC has retained the undersigned attorneys and is obligated to pay them a reasonable fee for their services for which Comcast is liable and responsible pursuant to Section 501.211(2), Florida Statutes (2003).

WHEREFORE, MIC requests this Court to enter a judgment against Comcast for:

- i. All damages suffered by MIC including without limitation lost profits;
- ii. Entering a permanent injunction against Comcast requiring that Comcast cease and desist the use of exclusive contracts, the enforcement of exclusive contracts, and the use of predatory or differential pricing within Collier County for cable services offered by Comcast;
- iii. Awarding MIC its reasonable attorneys' fees and costs in this matter, pursuant to Section 501.211(2), Florida Statutes (2003); and
- iv. Any and all relief the Courts deem just and appropriate.

COUNT II
Declaratory Relief - § 86.011, et. seq. (2003)

32. MIC sues Comcast for Declaratory Judgment pursuant to Section 86.011, et. seq., Florida Statutes (2003), to have this Court declare that all exclusive contracts for providing cable services to residents of Collier County entered into by Comcast or its predecessors are null and void.

33. MIC alleges each of its allegations contained in paragraphs 1 through 23 as if though fully set forth in this paragraph.

34. MIC has a real, present, genuine, bona fide dispute with Comcast regarding whether exclusive contracts entered into by Comcast with residents, associations or developers to bind

communities from utilizing the cable services of any cable providers other than Comcast, including without limitation MIC, are enforceable.

35. Comcast takes the position that its exclusive contracts with homeowners associations, condominium associations, and developers are valid, legal and enforceable to prevent MIC from competing with Comcast in the developments covered by exclusive contracts.

36. MIC believes that all exclusive contracts entered into by Comcast that prevent developers, associations or residents from choosing MIC as a cable provider violate Section 542.18, Florida Statutes (2003), and in the case of condominiums, Section 718.1232, Florida Statutes (2003).

WHEREFORE, MIC requests this Court to enter a judgment against Comcast declaring that all exclusive contracts entered into by Comcast or its predecessors for the exclusive providing of cable services to any residents, associations or communities within Collier County, are void and unenforceable and/or award MIC its damages, costs in this matter, and including any other relief the Court deems just and appropriate.

COUNT III
Florida Antitrust Statute

37. MIC sues Comcast for violation of Section 542.19, Florida Statutes (2003).

38. MIC alleges each of its allegations contained in paragraphs 1 through 23 as though fully set forth in this paragraph.

39. As more fully described herein, Comcast has monopoly power in providing cable services in Collier County, Florida.

40. Comcast uses exclusive contracts with developers to prevent potential competitors from competing with Comcast.

41. Comcast's use of exclusive contracts for cable services are an illegal restraint of trade.
42. Comcast engages in predatory pricing by, among other things, offering deep discounts and cash payments to customers in areas where MIC seeks to enter the market.
43. Comcast maintains prices above a competitive level in Collier County as a whole and engages in predatory pricing to lock out MIC from the market and thereby maintain its monopoly power.
44. Comcast's use of predatory pricing is part of a plan to forgo profits now for the monopoly profits in the future.
45. If Comcast is permitted to continue with its predatory pricing, prices for cable service in Marco Island will rise and prices in other areas of Collier County will not be reduced by competition.
46. As a direct and proximate result of Comcast's predatory and monopolistic conduct, MIC has suffered lost profit, the inability to compete for certain customers, and other compensable damages.
47. Comcast's predatory and monopolistic conduct directly and proximately harm competition and cause MIC to suffer irreparable harm.

WHEREFORE, MIC requests this Court to enter a judgment against Comcast for the following relief:

- i. Declaration that Comcast's conduct violates Florida's Antitrust Act;
- ii. A temporary and permanent injunction engaging in the illegal conduct described herein;
- iii. An award of damages, including treble damages;

- iv. Attorneys' fees and costs pursuant to Section 542.22, Florida Statutes (2003);
and
v. Any additional relief this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

48. MIC demands a jury trial on all issues so triable.

Respectfully submitted,

GOODLETTE, COLEMAN & JOHNSON

By: 

Edmond E. Koester, Esq.
Florida Bar No. 87882
4001 Tamiami Trail North, Suite 300
Naples, FL 34103
Telephone: (239) 435-3535
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and

CHEFFY PASSIDOMO
WILSON & JOHNSON, LLP
Louis D. D'Agostino, Esq.
Florida Bar No. 776890
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Naples, Florida 34102
Telephone: (239) 261-9300
Facsimile: (239) 261-9782
Attorneys for Plaintiff

CABLE TELEVISION INSTALLATION AND SERVICE AGREEMENT

This Agreement is made, effective as of July 24, 1996, by and between CONTINENTAL CABLEVISION OF SOUTHWEST FLORIDA, 301 Tower Road, Naples, Florida 33962, whose mailing address is Post Office Box 413018, Naples, Florida 33941-3018, ("Continental") and POINT MARCO DEVELOPMENT CORPORATION, whose mailing address is 406 Fifth Avenue South, Suite #6, Naples, Florida 33940, ("Owner").

RECITALS

WHEREAS, Owner owns the COZUMEL located at 960 Cape Marco Drive, Marco Island, Florida 33937 (the "Premises"), which consists of 120 dwelling units, and

WHEREAS, Continental owns and operates a cable television system in the service area of the Premises pursuant to a franchise granted by Collier County, Florida (the "Franchise").

AGREEMENT

NOW THEREFORE, in consideration of their respective rights and obligations set forth in this Agreement, and for other valuable consideration the receipt and adequacy of which are acknowledged, Continental and Owner agree:

1. **License to Continental.** Owner licenses and appoints Continental as the sole and exclusive provider of basic cable television and radio service, expanded cable television and radio service and other cable service programming and broadband communications (the Service) to the Premises, or any part thereof, for the term of this Agreement, its extensions and renewals. This exclusive license shall extend to each residential unit, dwelling and lot and Owner further grants Continental the right to connect and disconnect individual residents of the Premises for the Service.

Owner further grants Continental the right to advertise and promote its services on the Premises. Such promotion may include distribution of advertising materials and posters, promotional publicity, live demonstrations and door-to-door sales. Owner shall provide to Continental a list of names and addresses of residents of the Premises upon Continental's request.

2. **Provision of Service.** Continental shall provide cable television services to the Premises. Continental shall design, install, upgrade and maintain cable television service to the Premises using coaxial cable and/or fiber optic line, amplifiers and other equipment currently on the Premises or to be added by Continental (the "Equipment"). Continental will maintain its Equipment on the Premises in accordance with the Franchise. Continental agrees to use its best efforts to complete installation and commencement of service to Owner within 80 days of execution of this Agreement, or within 90 days of completion of the Premises, whichever is later.

OCT. 2. 2001 9:55AM

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3. **Access and Easements/Equipment.** Owner grants Continental an irrevocable easement in gross with respect to the Premises as is necessary for cable routing, for the Equipment Installation and removal, and for servicing and maintaining the Service distribution system. This easement, which shall be exclusive for cable television services, shall include but not be limited to rights of access, ingress and egress and to use such equipment as is already in place. These access rights shall include but not be limited to use of raceways and conduit. Access further shall be provided by Owner to Continental, without charge, to such roof space, common areas, utility areas and spaces on the Premises as are reasonably necessary for installation and operation of the Equipment. Owner agrees to provide an indoor, enclosed, secureable space with adequate heating, cooling and power for installation of Continental's Equipment. Access and electricity shall be without additional charge to Continental. All Equipment for delivery of the Service shall at all times be the sole and exclusive property of Continental and Owner shall acquire no rights in or to the Equipment and property of Continental. No person or entity, including but not limited to Owner, shall in any way move, disturb, alter or change any of Continental's Equipment or attach, directly or indirectly, in part or in full, any equipment or device to any of Continental's Equipment.

4. **Content of Service.** Programming services offered by Continental may include basic cable television services, expanded or premium cable television services and pay-per-view services. Continental may modify, increase or delete programming services and/or channels at its discretion.

5. **Rates and Billing.** Continental shall establish individual accounts with those residents of the Premises desiring to purchase any portion of the Service and shall bill and collect directly from the individual subscribers. Service to those residents shall be on the terms and conditions set forth in Continental's standard Service Agreement for residential cable television service, as modified from time to time, and that Agreement is incorporated here by this reference as Exhibit "A".

6. **Liability.** Continental agrees to indemnify and hold Owner harmless from and against any damage resulting from Continental's construction and maintenance of the cable system on the Premises, except for loss or damage arising from any intentional or negligent act or omission of Owner, its agents, employees or residents and guests of the Premises. However, in no event shall Continental be liable for damages or loss: (a) caused by the failure of Continental's system, Equipment or by acts of God or other occurrences in the nature of force majeure, (b) from interruption of the Service, including but not limited to outages and failures, or (c) incidental or consequential damages. Continental MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SERVICE OR ANY EQUIPMENT OR INSTALLATION AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

T.B.

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Owner agrees to reimburse Continental for the costs of repair or replacement of any equipment of Continental which is damaged by Owner, its agents or employees. Owner shall indemnify and hold Continental harmless from and against any damage or claim arising from any intentional or negligent act or omission of Owner, its agents and employees.

7. **Future Development.** As Owner constructs additional buildings, dwellings or additions to the Premises, all necessary easements and access to them shall be granted by Owner to Continental and this Agreement automatically shall extend to them.

8. **Term.** This Agreement shall commence on the date first written on page one and shall continue for a period of fifteen (15) years and shall automatically be renewed for an additional five (5) year term thereafter, unless earlier terminated as provided in this Agreement, or if Owner or Continental gives written notice to the other party of its intent not to renew at least 90 days prior to the expiration of the then current contract term. Continental may terminate this Agreement upon Owner's failure to pay any sums due hereunder, Owner's failure to comply with any of the terms of this Agreement upon 30 days notice to cure sent by Continental to Owner or upon Continental's reasonable determination that technical or economic factors make it impossible or impracticable to provide the Service to the Premises.

9. **Removal of Equipment.** Upon expiration of this Agreement or termination for any reason, Continental shall have the right, at its option, to (a) remove any or all of its Equipment, (b) deactivate any or all of its Equipment in any practicable manner. Owner shall grant Continental access to remove or deactivate its Equipment. If the Equipment is deactivated, it shall nevertheless remain Continental's property, and in addition to any other remedies it may have, Continental shall be entitled to obtain injunctive relief to prevent the unauthorized use of its Equipment.

10. **Binding Effect.** This Agreement shall be binding on the successors, assigns, transferees, mortgagees, heirs and executors of Owner and the Premises and is entered on behalf of any condominium residents by their association. No transfer, assignment or similar event shall be binding on Continental unless it gives its prior written consent and in no event shall such transfer, assignment or similar event limit or extinguish Continental's rights under this Agreement. Continental, at its option, may record this Agreement, or a Memorandum of Agreement reflecting the essential terms hereof, in the real property records of the county in which the Premises are located. Owner agrees to execute an easement similar in form to the Cable Service Easement as attached and incorporated here by this reference and such further documents and affidavits as reasonably are necessary to evidence and record this Agreement and the licenses, easements and rights granted to Continental hereunder.

Page Four

11. **Entire Agreement.** This Agreement constitutes the complete understanding of the parties on this subject matter and supercedes all prior oral or written understandings or Agreements. This Agreement may be modified or amended only upon written consent of Continental and Owner.

12. **Notices.** All notices or payments from one party to the other shall be mailed to the respective addresses of the parties listed on page one of this Agreement. Such addresses may be changed by giving notice pursuant to this paragraph.

13. **Severability.** If any portion or provision of this Agreement is or is deemed to be illegal, inoperative or unenforceable, then this Agreement shall be modified automatically to exclude such illegal, inoperative or unenforceable provision and all other provisions shall remain in force in effect as if that provision never were written.

14. **Waivers.** The waiver of breach of any provision or right by one party shall not be deemed a waiver of that provision or right or any future breach of it and shall not be deemed to establish a course of performance.

15. **Applicable Law.** This Agreement shall constitute an Agreement to be interpreted and enforced by the laws of the State of Florida without respect to any choice of laws provision. Each party consents to the personal jurisdiction of the state and federal courts in the State of Florida with venue in the county in which the Premises are located.

IN WITNESS WHEREOF the parties have signed this Agreement on the date first written above.

WITNESSES (2):

Handwritten signature of Pamela R. Kuch
Handwritten signature of J.P. M.

Handwritten signature of M.M.

POINT MARCO DEVELOPMENT
CORPORATION

By: *Handwritten signature of Jack Antaramian*
(Signature)

Name: Jack Antaramian

Title: President

CONTINENTAL CABLEVISION OF
SOUTHWEST FLORIDA

By: *Handwritten signature of Ken L. Fuchs*
(Signature)

Name: Ken L. Fuchs

Title: District Manager

CABLE SERVICE EASEMENT

In consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned POINT MARCO DEVELOPMENT CORPORATION (the "Grantor") does hereby grant to CONTINENTAL CABLEVISION OF SOUTHWEST FLORIDA, its successors, assigns, lessees and licensees (the "Company") for the purposes of transmitting and delivering television and broadband communications services, the perpetual right, privilege, and easements (the "Easements") to from time to time:

- A. Construct underground plant;
- B. Operate, maintain, repair, replace, expand, remove, relocate such plant; and
- C. Place within said Easements amplifiers, attachment equipment, cables, wiring, pedestals, accessories, appurtenances and related equipment (hereinafter referred to as "Equipment") used in connection with such plant and distribution of television and broadband communications services.

The Easements shall be located on that real property and improvements of Grantor as those premises are more fully detailed, with legal descriptions, in Schedule 1, which is attached and incorporated here by this reference (The "Premises"). The Easements shall extend to all public utility rights-of-way and easements located within the Premises and to all chases, raceways and conduits within the Premises. The Easements shall further include access rights to the Premises and easement areas, including the rights of ingress and egress. Grantor further grants Company the exclusive right to use said dedicated Easements, chases, raceways and conduits for the purpose of providing cable television and broadband services.

The Equipment shall at all times remain Company's property.

Company shall exercise its rights in a manner so as to cause as little disturbance and inconvenience to said Grantor as is practical. Said easements include the right to trim at Company's expense any trees or shrubbery which may hereafter interfere with the operation and/or maintenance of the Equipment as long as said trees or shrubbery are located on or over the above described portion of the Premises.

The Equipment shall be located so as to not interfere with the Grantor's ingress to and egress from Premises and Grantor may use the rights-of-way and easements for purposes not inconsistent with the Company's full enjoyment of the rights herein granted.

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Grantor agrees that for any period during which the Company shall maintain Equipment in any portion of said rights-of-way or Easements, and in order to preserve the aesthetic value of the Premises, that no outdoor television aerials, satellite receive facilities (e.g. fixed earth stations or dishes) or microwave receivers (e.g. Multi-point Distribution System) shall be placed on the Premises without Company's prior written consent.

This Agreement shall run with the land of the Premises and shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

If any paragraph, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unenforceable by any Federal or State court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Signed, sealed and acknowledged in the presence of:

WITNESSES (2):

Camela B. Kuehn
W. J. W. Y. S.

[Signature]
GRANTOR

BY: Jack Antaramian President
TITLE

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STATE OF FLORIDA

COUNTY OF COLLIER

SS.

Before me, this 14th day of August, 1996, the undersigned authority, personally appeared, Jack Antaramian, known to me to be the person described herein, who stated that he is the duly authorized officer or agent for POINT MARCO DEVELOPMENT CORPORATION with full power and authority to enter into this Cable Service Easement on behalf of said organization, and that his signature was given freely and voluntarily for the purposes therein expressed.

My Commission Expires:

Pamela R. Kuehn
Notary Public, State of Florida
Commission No. 00318661
My Commission Expires 9/26/97

Pamela R. Kuehn

Notary Public Signature

Pamela R. Kuehn

Name (Please Print)

THIS INSTRUMENT PREPARED BY
AND SHALL BE RETURNED TO:

Continental Cablevision of Southwest Florida
301 Tower Road
Post Office Box 413018
Naples, Florida 33941-3018

19413715097 P.16

TO

AUG-13-2001 10:28 FROM MEDIRONE

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SCHEDULE 1

Legal description of Cozumel:

All that part of Section 19, Township 52 South, Range 28 East, Collier County, Florida, being more particularly described as follows:

Commencing at the intersection of the centerline of South Collier Boulevard and Swallow Avenue as shown on the plat of Marco Beach Unit Ten, Plat Book 6, pages 74 through 79, Public Records of Collier County, Florida;

thence along the centerline of said South Collier Boulevard South 04 degrees 18'53" West 77.12 feet;

thence leaving the centerline of said South Collier Boulevard North 85 degrees 41'07" West 50.00 feet to the westerly right-of-way line of said South Collier Boulevard;

thence along said westerly right-of-way-line, South 04 degrees 18'53" West 63.82 feet;

thence continue along said right-of-way line southeasterly 482.97 feet along the arc of a circular curve concave northeasterly having a radius of 450.00 feet through a central angle of 61 degrees 29'37" and being subtended by a chord which bears South 28 degrees 25'55" East 460.12 feet;

thence leaving said right-of-way line along a non-tangential line South 27 degrees 35'50" West 53.64 feet;

thence southwesterly 55.29 feet along the arc of a circular curve concave northwesterly having a radius of 139.00 feet through a central angle of 22 degrees 47'20" and being subtended by a chord which bears South 38 degrees 59'30" West 54.92 feet;

thence South 50 degrees 23'10" West 24.15 feet;

thence North 84 degrees 58'02" West 51.97 feet;

thence South 50 degrees 23'10" West 72.00 feet;

thence South 07 degrees 02'44" West 60.50 feet;

thence South 39 degrees 36'50" East 72.00 feet;

thence South 54 degrees 58'55" West 69.67 feet;

thence southwesterly 86.39 feet along the arc of a non-tangential circular curve concave southeasterly having a radius of 55.00 feet through a central angle of 90 degrees 00'00" and being subtended by a chord which bears

South 49 degrees 47'21" West 77.78 feet;

thence along a non-tangential line North 85 degrees 12'39" West 104.21 feet;

thence South 67 degrees 07'31" West 155.58 feet;

thence South 05 degrees 46'33" West 324.80 feet;

thence North 84 degrees 13'27" West 71.26 feet to the POINT OF BEGINNING of Parcel 13;

thence South 05 degrees 46'33" West 43.23 feet to a point hereinafter referred to as Point "A";

thence North 84 degrees 13'27" West 139.67 feet;

thence North 05 degrees 46'33" East 52.90 feet;

thence North 84 degrees 13'27" West 158.20 feet;

thence North 18 degrees 33'25" West 57.37 feet;

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thence North 05 degrees 37'57" East 379.14 feet;
thence North 45 degrees 11'55" East 74.23 feet;
thence South 89 degrees 59'07" East 42.65 feet;
thence South 44 degrees 48'06" East 100.00 feet;
thence South 45°11'55" West 40.00 feet;
thence North 44 degrees 48'05" West 38.06 feet;
thence South 45 degrees 11'55" West 73.78 feet;
thence South 05 degrees 37'57" West 51.58 feet;
thence South 84 degrees 13'27" East 174.16 feet;
thence South 05 degrees 46'33" West 8.00 feet;
thence South 84 degrees 13'27" East 75.00 feet;
thence South 05 degrees 46'33" West 144.58 feet;
thence North 84 degrees 13'27" West 17.00 feet;
thence South 05 degrees 46'33" West 101.58 feet;
thence South 54 degrees 02'35" East 28.93 feet;
thence South 05 degrees 46'33" West 55.22 feet to the Point of Beginning;

containing 2.75 acres more or less;

LESS AND EXCEPTING the following described parcel, lying between elevation 8.00 NGVD 1929, being the proposed finish floor of Level 1, and elevation of 32.25 NGVD 1929, being the proposed ceiling elevation of Level 2

Beginning at aforementioned point "A":

thence North 84 degrees 13'27" West 134.67 feet;
thence North 05 degrees 46'33" East 85.90 feet;
thence South 84 degrees 13'27" East 78.67 feet;
thence South 05 degrees 46'33" West 33.83 feet;
thence South 84 degrees 13'27" East 43.00 feet;
thence South 05 degrees 46'33" West 34.77 feet;

thence South 31 degrees 09'23" East 21.64 feet to the Point of Beginning;

containing 0.21 acres more or less;

ALSO LESS AND EXCEPTING the following described parcel for the air space above elevation 21.75 NGVD 1929, being the proposed ceiling elevation of Level 1;

COMMENCING at the aforementioned Point "A";

thence North 05 degrees 46'33" East 98.45 feet;
thence North 54 degrees 02'35" West 28.93 feet;
thence North 05 degrees 46'33" East 101.58 feet;
thence North 84 degrees 13'27" West 17.00 feet;
thence North 45 degrees 33'52" West 8.40 feet to the POINT OF BEGINNING;

thence North 84 degrees 13'27" West 19.00 feet;

thence North 05 degrees 46'33" East 16.12 feet;

thence South 84 degrees 13'27" East 19.00 feet;

thence South 05 degrees 46'33" West 16.12 feet to the Point of Beginning;

Containing 0.007 acres more or less;

subject to easements and restrictions of record;

Bearings are based on said centerline of South Collier Boulevard, being south 04 degrees 18'53" West.

In Collier County, Florida

IN THE CIRCUIT COURT OF THE
20th JUDICIAL CIRCUIT, IN AND FOR
COLLIER COUNTY, FLORIDA

CASE NO. 01-3598-CA

COMCAST CABLEVISION OF
THE SOUTH, INC., a Delaware corporation,

Plaintiff,

vs.

COZUMEL CONDOMINIUM
ASSOCIATION, INC., a Florida corporation,

Defendant.

AMENDED COMPLAINT FOR DAMAGES

Plaintiff, Comcast Cablevision of the South, Inc., hereby sues Defendant, Cozumel Condominium Association, Inc., and states as follows:

JURISDICTION AND VENUE

1. This is an action for damages in excess of \$15,000.00, exclusive of interest and costs, and such further relief as this Court deems necessary, arising from the breach of the Cable Television Installation and Service Agreement entered into between the Parties.
2. This Court has jurisdiction over this action as the property is located in and the Agreement was entered into in Collier County, Florida.

THE PARTIES

3. Plaintiff, Comcast Cablevision of the South, Inc. (hereinafter "Comcast"), a Florida corporation, maintains a place of business in Collier County, Florida, and owns and operates a cable distribution system in Collier County, Florida, where the instant claim arose.

Case No. 01-3598-CA

4. Defendant, Cozumel Condominium Association, Inc. (hereinafter "Cozumel"), is a Florida corporation and owns and/or manages the Cozumel Condominium in Naples, Collier County, Florida. Cozumel owns and/or operates the common elements of the property.

COMCAST'S BUSINESS

5. Comcast distributes multichannel video programming services, such as ESPN, CNN, HBO, and many others, through its cable distribution system, which uses fiber optic lines and coaxial cables placed in the public rights-of-way.

6. Programming companies deliver the various signals described above to a satellite. Comcast then receives the signals by means of satellite antenna dishes, or "earth stations," and distributes the programming to its subscribers via its fiber optic and coaxial cable distribution system.

7. Ownership of the fiber optic lines, coaxial cables, converters, and other necessary equipment is retained by Comcast, thereby ensuring that the equipment is maintained in good working condition.

THE AGREEMENT

8. On July 24, 1996, Point Marco Development Corporation (hereinafter "Point Marco"), Cozumel's predecessor-in-interest, entered into the Cable Television Installation and Service Agreement (hereinafter the "Agreement"), which licensed Comcast's predecessor-in-interest, Continental Cablevision of Southwest Florida (hereinafter "Continental") as the exclusive provider of cable television services to the residents of the

Case No. 01-3598-CA

Cozumel Condominium. Agreement at § 1. A copy of the Agreement is attached hereto as Exhibit "A" and incorporated as if fully set forth herein.

9. The initial term of the Agreement was for fifteen (15) years, with the current term to end on July 23, 2011. Agreement at § 8.

10. The Agreement expressly states that all equipment "shall at all times be the sole and exclusive property of [Comcast] and [Cozumel] shall acquire no rights in or to the Equipment...." Agreement at § 3.

11. Additionally, the Agreement specifically states that it "shall be binding on the successors, assigns, transferees, mortgagees, heirs and executors or Owner [Point Marco] and the Premises and is entered on behalf of any condominium residents by the association." Agreement at § 10.

DEFENDANT'S ACTS

12. Without any notice of any kind whatsoever, Cozumel, by and through its officers, directors, and agents, entered into an agreement with a competing cable television company, Marco Island Cable, and has attempted to terminate the Agreement without reason.

13. Moreover, Cozumel and/or Marco Island Cable, with Cozumel's permission, tampered with Comcast's equipment installed on the premises of the Condominium, in direct contradiction to the express terms of Section 3 of the Agreement.

Case No. 01-3598-CA

COUNT IBREACH OF CONTRACT

14. Comcast realleges the allegations of Paragraphs 1 through 13 above as if fully set forth herein.

15. The current term of the Agreement is for 15 years, which will not expire until July 23, 2011. Agreement at § 8.

16. Comcast has not breached any term of the Agreement, nor is there a provision of the Agreement that provides Cozumel with the right to terminate the Agreement at this time.

17. Cozumel materially breached the Agreement in three (3) separate and distinct ways: (1) it has entered into an agreement with another provider of cable services, contrary to the exclusivity provision found in Section 1 of the Agreement; and (2) it has attempted to terminate the Agreement prior to the expiration of the Agreement and without any right thereto; and (3) it has tampered with, disturbed and/or attached equipment to, or allowed another to tamper with, disturb and/or attach equipment to Comcast's cable television equipment on the premises of the Condominium.

18. As a result of the above-mentioned material breaches of the Agreement, Comcast has suffered damages.

19. Comcast has met all conditions precedent for bringing this action.

20. Comcast has retained the undersigned attorneys to represent it in this action, and has agreed to pay said attorneys a reasonable fee for their services.

Case No. 01-3598-CA

WHEREFORE, Comcast demands judgment against Cozumel for compensatory damages in an amount in excess of \$15,000.00, pre- and post-judgment Interest, and such other relief as this Court may deem proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via U.S. Mail to: Edmond E. Koester, Esq. and Kaimi Jones, Esq., Quarles & Brady, LLP, 4505 Tamiami Trail North, Suite 300, Naples, Florida 34103-3060, this ^{8th} ~~5th~~ day of July, 2002.

Respectfully submitted,

DUANE MORRIS, LLP

Attorneys for Plaintiff, Comcast

First Union Financial Center

200 South Biscayne Boulevard, Suite 3400

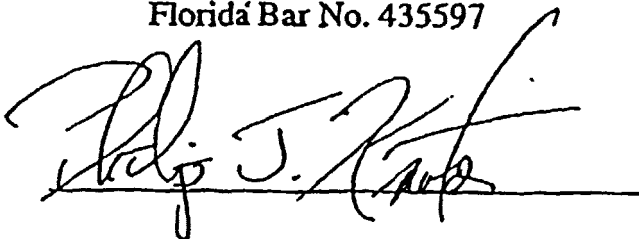
Miami, FL 33131-2397

Telephone: 305.960.2221

Facsimile: 305.960.2201

By: PHILIP J. KANTOR

Florida Bar No. 435597



IN THE CIRCUIT COURT OF THE 20th
JUDICIAL CIRCUIT, IN AND FOR COLLIER
COUNTY, FLORIDA

CASE NO. 01-3598-CA

COMCAST CABLEVISION OF
THE SOUTH, INC., a Delaware corporation,

Plaintiff,

vs.

REC'D MAR 25 2003

COZUMEL CONDOMINIUM
ASSOCIATION, INC., a Florida corporation,
Defendant.

AGREED ORDER APPROVING STIPULATION FOR SETTLEMENT

THIS CAUSE having come before the Court on the Parties' Stipulation for Settlement, and the Court having reviewed the pertinent pleadings and being otherwise advised in the premises, it is ORDERED and ADJUDGED that:

1. The Stipulation for Settlement is hereby approved.
2. The Amended Complaint is hereby dismissed with Prejudice, with each Party to bear its own attorneys' fees and costs.

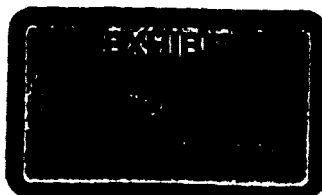
ORDERED in Chambers in Naples, Collier County, Florida, this ____ day of _____, 2003.

Copies furnished to:
Philip J. Kantor, Esq.
Edmond E. Koester, Esq.

CIRCUIT JUDGE

The original of this
document was signed

MAR 19 2003
by Ted Brousseau
Circuit Judge



COMPENSATION AGREEMENT

THIS COMPENSATION AGREEMENT is made and entered into this 14th day of October 2003, by and between Comcast of the South, Inc.] (the "Company"), with offices at 301 Tower Road, Naples, Florida 34113 The Marbelle Club, Inc. (the "Developer"), with offices at 840 South Collier Blvd, Marco Island, FL 34145, who owns or has control over certain real estate and improvements known as [REDACTED] thereon located off of [REDACTED] 34145 (the "Premises") which, consists of ___ units.

WHEREAS, the Company and Developer desire to enter into a Bulk Installation and Services Agreement pursuant to which the Company will provide broadband communications services to the Premises, including, but not limited to, cable television service, on an exclusive basis; and

WHEREAS, in exchange for such exclusive rights, the Company will pay Developer a per unit fee as set forth herein.

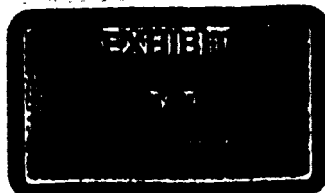
NOW, THEREFORE, for good and valuable consideration, the parties, intending to be legally bound, agree as follows:

1) As consideration for Developer entering into a Bulk Installation and Services Agreement (the "Agreement") with the Company granting the Company, among other things, the exclusive right to provide cable television service to the Development and the Owner's exclusive Marketing Support for the Company's Services delivered to the Premises during the term of the Agreement the Company agrees to pay Developer a per unit fee of \$208.80 (the "Per Unit Compensation") for a total of \$20,462.40 payable within 45 days of a fully executed Agreement

2) Developer's right to receive the Per Unit Compensation described herein shall terminate upon termination of the Agreement.

3) Developer represents, warrants and covenants to the Company that:

- a) Developer is, validly existing and in good standing under the laws of the jurisdiction in which it is organized.
- b) Developer has full authority to enter into this Compensation Agreement and to perform its obligations hereunder.
- c) Developer, its employees and agents shall at all times during the term of this Compensation Agreement comply with all applicable laws, ordinances, rules and regulations.



- d) There are no decrees, orders of any court or administrative agency, consent agreements, or pending formal or informal governmental investigations which would prohibit or affect Developer's ability to perform its obligations hereunder or to construct the Premises.
 - e) The Developer shall file or submit on a timely basis all documents, applications and papers necessary to obtain all permits, licenses and approvals required to construct the Premises.
- 4) In the event either party defaults in the performance of this Compensation Agreement, the non-defaulting party shall give the defaulting party written notice specifying the nature of such default and identifying the specific provision in this Compensation Agreement which gives rise to the default. The defaulting party shall have fifteen (15) days to either (i) notify the non-defaulting party that no default occurred, (ii) cure the default, or (iii) if such default is incapable of cure within such fifteen (15) day period, commence curing the default within such fifteen (15) day period and diligently pursue such cure to completion within thirty (30) days. In the event the default is not cured within the time frames specified in the preceding sentence, the non-defaulting party may terminate this Compensation Agreement. In addition to any and all other remedies available to the Company at law or in equity, in the event Developer, its successors, assigns, principals, subsidiaries, affiliates, partners, joint venturers, employees, officers or directors, permit another multi-channel video distributor to provide service to the Premises, (i) this Compensation Agreement shall terminate immediately, (ii) Developer's right to receive the Per Unit Compensation shall terminate immediately and (iii) Developer shall refund to the Company a portion of the Per Unit Compensation paid by the Company up to the date of termination in an amount equal to (A) the total Per Unit Compensation paid to the date of termination, divided by (B) the number of years in the term of the Agreement, multiplied by (C) the number of years remaining in the term of the Agreement.
- 5) This Compensation Agreement may not be assigned by either party, without the prior written consent of the non-assigning party.
- 6) This Compensation Agreement shall be governed and construed in accordance with the laws of the jurisdiction in which the Premises are located.
- 7) All disputes under this Compensation Agreement shall be submitted to, and settled by arbitration in accordance with the rules of the American Arbitration Association. The parties shall appoint a mutually agreeable arbitrator reasonably familiar with multi-channel video program distribution systems and services. In the event the parties are unable to agree to a single arbitrator, the dispute shall be submitted to a panel of three (3) arbitrators, one of which shall be reasonably familiar with multi-channel video program distribution systems and services. Each party shall appoint an arbitrator and the two arbitrators so appointed shall

then select a third arbitrator. The arbitrators shall apply applicable federal laws and regulations and the laws of the jurisdiction in which the Development is located, without regard to its choice of law principles. The decision of the arbitrators shall be binding and conclusive on all parties involved, and judgment upon their decision may be entered in a court of competent jurisdiction. The prevailing party in any such arbitration shall be entitled to collect from the non-prevailing party, all costs of the arbitration, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have caused this Compensation Agreement to be executed by their duly authorized representatives as of the date first written above.

WITNESS/ATTEST:

[REDACTED]

By: _____
Name:
Title:

ATTEST:

Comcast of the South, Inc.

By: _____
Name:
Title:

BULK INSTALLATION AND SERVICES AGREEMENT

THIS BULK INSTALLATION AND SERVICES AGREEMENT (the "Agreement") is made and entered into this 1st day of April, 2004, by and between COMCAST OF THE SOUTH, INC. (the "Company"), whose address is 301 Tower Road, Naples, Florida 34110 and [REDACTED] Inc. (the "Owner") who owns or has control over certain real estate and improvements thereon located at 840 South Collier Blvd (the "Premises"), consisting of 98 residential units plus any units added or constructed in the future.

The Company has been granted by the [City/County] of Collier (the "[City/County]" or (the "Franchise Authority") a franchise to construct and operate a cable communications system in the [City/County]. The Owner desires to provide broadband communications services to the Premises, including, but not limited to, cable television service (the "Services") and the Company is willing to install, maintain and operate a broadband communications system for such purposes on the Premises in accordance with the terms and conditions below.

NOW, THEREFORE, for good and valuable consideration, the parties, intending to be legally bound, agree as follows:

1. System Construction and Installation. The Company agrees to install all facilities necessary to transmit the Services to the Premises, including, but not limited to, distribution cables, amplifiers, pedestals, lock boxes, cable home run wiring, connectors, splitters, wall plates, equipment and appurtenant devices (the "System"). All work shall be done by the Company in a proper and workmanlike manner in accordance with Federal Communications Commission ("FCC") regulations, industry standards and local codes, unless otherwise provided in this Agreement. The Company shall be responsible for all costs and expenses incurred by it in constructing the System. The Company agrees to repair and/or replace any damage to the Premises resulting from the installation, operation, maintenance or removal of the System. The Company will be responsible for obtaining all necessary permits, licenses and approvals in connection with the construction, installation and operation of the System.

a) Prior to the installation of the System, construction plans prepared by the Company may be reviewed and approved by the Owner, provided that Owner's approval shall not be unreasonably withheld. Owner shall locate on such plans all underground facilities existing on the Premises. Owner shall give the Company at least twenty (20) days notice of the opening of utility trenches on the Premises so that the Company may, at its option, install the System in the common utility trenches, and shall otherwise cooperate with the Company in the construction and installation of the System.

b) The ownership of all parts of the System installed by the Company shall be and will remain the personal property of the Company excluding the cable home wiring. At no time during or after the term hereof shall the Owner or any third party have the right to use the System or any portion thereof for any purpose.

2. Easement. The Owner has the authority to grant and does hereby grant an easement in

favor of the Company to place its lines across the Premises and to operate the System, and shall cause such easement to run with the Premises. The Owner hereby agrees to execute the form of easement attached hereto as Exhibit A.

3. Access. The Owner will allow Company employees to enter all common areas of the Premises for the purposes of auditing, selling or disconnecting service, installing, maintaining, repairing, replacing or removing equipment and apparatus connected with the provision of the Services and will use reasonable efforts to assure the Company access to any parts of the Premises over which it does not have control for the same purposes. Owner will supply the names and unit numbers of residents at reasonable intervals. Owner shall cooperate with the Company to prevent (i) the unauthorized possession of converters or channel selectors and (ii) the unauthorized reception of the Services.

4. Delivery of Services. The Owner has the authority to grant and does hereby grant to the Company during the term hereof the exclusive right to construct, install, operate and maintain the System on the Premises (whether by cable, satellite, microwave or otherwise) and to deliver the Services to the Premises, unless otherwise required by applicable law.

5. Fees and Charges for Services. Additional terms, conditions, charges and fees for the Services provided to residents at the Premises shall be contained in the Bulk Bill Addendum attached hereto between Owner and the Company. Except as set forth in the Bulk Bill Addendum, the Owner assumes no liability or responsibility for service charges contracted for by individual residents. All billing and collections for service charges incurred by individual residents will be accomplished by the Company.

6. Customer Service. The Company shall provide customer service in accordance with its franchise agreement with the Franchise Authority. The Company will maintain a local or toll-free telephone number which will be available to its subscribers 24 hours a day, seven days a week. Company representatives will be available to respond to customer telephone inquiries during normal business hours. The Company will begin working on service interruptions promptly and in no event later than the next business day after notification of the service problem, excluding conditions beyond the control of the Company.

7. Interference. Neither the Owner nor anyone operating on its behalf will tap or otherwise interfere with the System for any purposes. Notwithstanding anything else in this Agreement to the contrary, the Company shall not interfere with the right of an individual resident to install or use his own private reception device, provided, however, that should any device or any facility belonging to a resident (or Owner) not comply with the technical specifications established by the FCC, including, but not limited to, signal leakage, which interferes with the Company's delivery of the Services, the Company reserves the right to discontinue service to the Premises, or, at the Company's discretion, the individual unit, until such non-conformance is cured by the Owner or resident as the case may be.

8. Term. This Agreement, when duly executed by both parties, shall constitute a binding

agreement between the Owner and the Company and their respective successors and assigns for a term of five (5) years. This Agreement shall automatically renew for successive periods of two (2) years unless either party shall provide the other with a minimum sixty (60) days notice of its intention not to renew at the end of the then current term.

9. Insurance. The Company agrees to maintain public liability insurance and property damage liability insurance as required by the Company's franchise agreement with the Franchise Authority. Upon request, the Company will provide the Owner with a certificate evidencing such insurance.

10. Indemnification. The Company shall indemnify, defend and hold the Owner harmless from any and all claims, damage or expense arising out of the actions or omissions of the Company, its agents and employees with respect to the installation, operation, maintenance or removal of the System and the Services provided to residents at the Premises pursuant to this Agreement. The Owner shall indemnify, defend and hold the Company harmless from any and all claims, damage or expense arising out of the actions or omissions of the Owner, its agents and employees.

11. Limitation of Liability. THE COMPANY SHALL NOT BE LIABLE TO OWNER FOR ANY LOST PROFITS, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO FRUSTRATION OF ECONOMIC OR BUSINESS EXPECTATIONS, LOSS OF PROFITS, LOSS OF CAPITAL, COST OF SUBSTITUTE PRODUCT(S), FACILITIES OR SERVICES, OR DOWN TIME COST, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. Termination.

a) Default. In the event either party defaults in the performance of any of the material terms of this Agreement, the non-defaulting party shall give the defaulting party written notice specifying the nature of such default and identifying the specific provision in this Agreement which gives rise to the default. The defaulting party shall have sixty (60) days to either (i) notify the non-defaulting party that no default occurred, (ii) cure the default, or (iii) if such default is incapable of cure within such sixty (60) day period, commence curing the default within such sixty (60) day period and diligently pursue such cure to completion. In the event the defaulting party fails to do so within such sixty (60) day period, the non-defaulting party may terminate this Agreement upon thirty (30) days written notice without further liability of either party.

b) Loss of Franchise. This Agreement shall terminate automatically without any further liability on the part of the Company in the event the Company's franchise with the Franchise Authority or any renewal thereof ceases to be in effect.

13. Removal of System. Upon termination of this Agreement for any reason, the Company shall have a period of six (6) months in which it shall be entitled but not required to remove the System, excluding the cable home wiring. The Company shall promptly repair any damage to the

Premises occasioned by such removal.

14. Dispute Resolution. All disputes under this Agreement shall be submitted to, and settled by arbitration in accordance with the rules of the American Arbitration Association. The parties shall appoint a mutually agreeable arbitrator reasonably familiar with multi-channel video program distribution systems and services. In the event the parties are unable to agree to a single arbitrator, the dispute shall be submitted to a panel of three (3) arbitrators, one of which shall be reasonably familiar with multi-channel video program distribution systems and services. Each party shall appoint an arbitrator and the two arbitrators so appointed shall then select a third arbitrator. The arbitrators shall apply applicable federal laws and regulations and the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles. The decision of the arbitrators shall be binding and conclusive on all parties involved, and judgment upon their decision may be entered in a court of competent jurisdiction. The prevailing party in any such arbitration shall be entitled to collect from the non-prevailing party, all costs of the arbitration, including reasonable attorneys' fees.

15. Miscellaneous.

a) Force Majeure. The Company shall not be liable for failure to construct or to continue to operate the System during the term hereof due to acts of God, the failure of equipment or facilities not belonging to Company (including, but not limited to, utility service), denial of access to facilities or rights-of-way essential to serving the Premises, government order or regulation or any other circumstances beyond the reasonable control of the Company.

b) Assignability, Binding Effect. This Agreement may be assigned by either party. The assignee shall agree in writing to be bound by all the terms and conditions hereof. In the event the Owner sells, assigns, transfers or otherwise conveys the Premises to a third party, the Owner shall give the Company prior written notice of such change of ownership or control. Owner shall cause any new owner or controlling party to expressly assume this Agreement and agree to be bound by its terms. This Agreement shall be binding upon the parties and their respective successors and assigns.

c) Applicable Law. This Agreement shall be governed and construed in accordance with applicable federal laws and regulations and by the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles.

d) Invalidity. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired.

e) Recording. The Company may record this Agreement (or a memorandum summarizing the material terms) in public records of the county in which the Premises are located.

f) Notices. All notices, demands, requests or other communications given

under this Agreement shall be in writing and be given by personal delivery, certified mail, return receipt requested, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to COMCAST OF THE SOUTH, INC.

Attn.: _____

If to the Company:

Attn.: _____

With a copy to:

Comcast Cable Communications, Inc.
1500 Market Street
Philadelphia, PA 19102
Attn.: General Counsel

g) Entire Agreement; Amendments. This Agreement, including Exhibits _____, constitutes the entire agreement between the parties and supersedes all prior agreements, promises and understandings, whether oral or written. This Agreement shall not be modified, amended, supplemented or revised, except by a written document signed by both parties.

h) Authority. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

WITNESS/ATTEST:

OWNER: COMCAST OF THE SOUTH, INC.

By: _____
Name:
Title:

ATTEST:

[INSERT NAME OF LEGAL ENTITY]

By: _____
Name:
Title:

GRANT OF EASEMENT

This Grant of Easement (the "Easement") dated this ___ day of _____, 200__ by and between COMCAST OF THE SOUTH, INC. its successors and assigns, hereinafter referred to as "Grantee" and _____, hereinafter referred to as "Grantor".

Grantor and Grantee are parties to a Bulk Installation and Services Agreement dated September 23, 2003 pursuant to which Grantee provides certain broadband communications services to the Property described below.

In consideration of One Dollar (\$1.00), Grantor(s), owner(s) of the property described below, hereby grant(s) to Grantee, its successors and assigns, an easement in gross and right-of-way to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time a broadband communications system (hereinafter referred to as the "System") consisting of wires, underground conduits, cables, pedestals, vaults, and including but not limited to above ground enclosures, markers and concrete pads or other appurtenant fixtures and equipment necessary or useful for distributing broadband services and other like communications, in, on, over, under, across and along that certain real property (the "Property") located in County of _____, State of _____ described as follows:

LEGAL DESCRIPTION:

(See Attached Exhibit)

Grantor(s) agree for themselves and their heirs and assigns that the System on the Property shall be and remain the personal property of the Grantee and may not be altered, obstructed or removed without the express written consent of the Grantee. The Grantee, and its contractors, agents and employees, shall have the right to trim or cut trees and/or roots which may endanger or interfere with said System and shall have free access to said System and every part thereof, at all times for the purpose of exercising the rights herein granted: provided, however, that in making any excavation on said Property of the Grantor, the Grantee shall make the same in such manner as will cause the least injury to the surface of the ground around such excavation, and shall replace the earth so removed by it and restore the area to as near the same condition as it was prior to such excavation as is practical.

This easement shall run with the land for so long as Grantee, its successors or assigns provides broadband service to the Property.

Executed this _____ day of _____, 200__

WITNESS/ATTEST:

OWNER: COMCAST OF THE SOUTH, INC.

By: _____
Name: _____
Title: _____

ATTEST:

[INSERT NAME OF LEGAL ENTITY]

By: _____
Name: _____
Title: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__ by _____, of _____, on

(Print Name)

behalf of the corporation. He/she is (personally known to me) or (has presented _____ (type of identification) as identification and did/did not take an oath.

Witness my hand and official seal.

(Print Name) Notary Public

My commission expires: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__ by _____, of [INSERT NAME OF LEGAL ENTITY], on behalf of the corporation. He/She is personally known to me and did not take an oath.

Witness my hand and official seal.

(Print Name) Notary Public

My Commission expires:

EXHIBIT D

BULK BILL ADDENDUM

THIS BULK BILL ADDENDUM (the "Bulk Addendum") is made and entered into this 1st day of November, 2003 by and between COMCAST OF THE SOUTH, INC. (the "Company"), whose address is 301 Tower Road, Naples, Florida and [REDACTED] (the "Owner") who owns or has control over certain real estate and improvements thereon located at [REDACTED] (the "Premises"), consisting of 98 residential units. This Bulk Addendum supplements that certain Bulk Installation and Services Agreement dated April 1st, 2004 by and between Owner and the Company (the "Agreement"). All undefined terms used herein shall have the same meaning ascribed to them in the Agreement.

1. The Company agrees to provide Total Basic Service consisting of "Basic I" "Basic II" and "Basic III" tiers of service to four (4) pre-existing CATV outlet(s) in 98 units. As of the date of this Bulk Addendum, Total Basic Service consists of the channel lineup set forth on Schedule A attached hereto which is subject to change from time to time. The Owner shall pay the Company a monthly per unit service fee for Preferred Service equal to \$14.95 per unit for total monthly billing of \$1,465.10, plus all applicable taxes and fees. The monthly per unit service fee may be increased by the Company upon thirty (30) days written notice consistent with service rate increases applicable to residential subscribers in the City not to exceed 5% per annum.
2. Any hearing impaired or legally blind unit owner who does not occupy the unit with a non-hearing impaired or sighted person may discontinue service under this Bulk Addendum without incurring disconnect fees, penalties or subsequent service charges.
3. Monthly per unit service fees pursuant to this Bulk Addendum shall be due and payable upon receipt of an invoice and shall be subject to an administrative fee per month if not paid within fifteen (15) calendar days of receipt thereof. The Company may terminate this Bulk Addendum upon written notice to Owner in the event payment of the monthly per unit service fee remains unpaid for sixty (60) days.
4. In addition to Total Basic Service, the Company may provide to individual residents certain optional services, including, but not limited to, pay television services ("Expanded Service"). Expanded Service will be addressed in separate agreements with individual unit residents. Owner assumes no liability or responsibility for service charges for Expanded Services contracted for by individual residents.
5. Owner acknowledges and agrees that the Company has the right at any time to preempt, without prior notice, specific programs and to determine what substitute programming, if any, shall be made available. Company may in its discretion make additions, deletions or modifications to its channel line-up without liability to Owner or anyone claiming through Owner. Company shall not be liable for failure to deliver any programming which is caused by the failure of the programmer to deliver or make such programming available to Company or any other reason beyond the reasonable control of Company.

6. This Bulk Addendum shall be effective upon activation of the System at the Premises and shall continue for a term concurrent with the term of the Agreement, unless earlier terminated. In the event this Bulk Addendum is terminated by either party for any reason, the Company shall have the right to continue to provide Preferred Service to individual residents pursuant to contracts between the Company and such residents in accordance with the Agreement.
7. Owner may not sell, offer for sale or resell any of the services contemplated by this Bulk Addendum without the prior written consent of the Company.
8. The terms and conditions of the Agreement shall remain in full force and effect, except as modified by this Bulk Addendum.

WITNESS/ATTEST:

OWNER: COMCAST OF THE SOUTH, INC.

By: _____
Name:
Title:

ATTEST:

[INSERT NAME OF LEGAL ENTITY]

By: _____
Name:
Title:

SCHEDULE A
Channel Lineup

Total Basic – Collier

- | | |
|--|--------------------------------------|
| 2 WBBH (NBC) | 45 Disney Channel |
| 3 WGPU (PBS) | 46 ABC Family Channel |
| 4 WFTX (FOX) | 47 TWC (The Weather Channel) |
| 5 WINK (CBS) | 48 MTV |
| 6 WTVK (WB) | 49 TNT (Turner Network Television) |
| 7 WZVN (ABC) | 50 A&E |
| 8 WEVU (UPN) | 51 Bravo |
| 9 Real Estate Network | 52 USA |
| 10 WRXY (CTN) | 53 AMC (American Movie Classics) |
| 11 Government Access | 54 TV Land |
| 12 Government Access | 55 FX |
| 13 QVC | 56 Fox Sports Net |
| 17 TV Guide Channel | 57 Sunshine |
| 18 PAX TV | 58 ESPN |
| 19 HSN (Home Shopping Network) | 59 ESPN2 |
| 20 Educational Access | 60 The Golf Channel |
| 21 C-SPAN | 61 Outdoor Life |
| 22 C-SPAN 2 | 62 TBS (Turner Broadcasting Station) |
| 23 WGN | 63 Cartoon Network |
| 24 The Learning Channel | 64 Sci-Fi Channel |
| 25 Weather Radar | 65 The History Channel |
| 26 CVN (Comcast Visitor's Network) | 66 Travel Channel |
| 27 EWTN | 67 Discovery Health |
| 28 Food Network | 68 Animal Planet |
| 29 BET (Black Entertainment
Television) | 69 Speed Channel |
| 30 VH-1 | 70 Comcast Sports South |
| 31 CMT (Country Music Television) | 71 Fox News |
| 32 TNN | 72 Game Show |
| 33 E! (Entertainment Television) | 73 WE (Women's Entertainment) |
| 34 Comedy Central | 74 TCM (Turner Classic Movies) |
| 35 Court TV | 75 Classic Sports |
| 36 MSNBC | 76 Toon Disney |
| 37 CNBC | 79 Oxygen |
| 38 CNN | 77 PIN/Leases Access |
| 39 CNN HN (Headline News) | 98 Style |
| 40 Univision (en Espanol) | |
| 41 Lifetime | |
| 42 HGTV | |
| 43 Discovery Channel | |
| 44 Nickelodeon | |

Comcast reserves the right to alter the channels at its discretion to remain concurrent with the prevailing channel line-up in the Collier County franchise area.

Comcast

Features and Benefits

Features

Extensive Channel Lineup – The bulk-billing rate provides for a recently enhanced lineup with approximately 70 channels.

4 Hour Service & Repair - Comcast is located within the community to ensure our customers receive the very best picture quality at all times.

On-Going Service – Comcast will provide and maintain the plant extension and distribution for the term of the contract.

Additional Product Availability – Residents will have a choice of optional premium programming such as HBO, Showtime and Pay Per View. As well as, select packages with 200+ channels on our digital lineup.

High-Speed TWO-WAY Cable Modem is available for high speed Internet access.

Additional services are billed directly to the residents without financial obligation on the part of the Community.

Quality - Superior delivery and best home television picture quality.

Benefits

Viewing Choices – Bulk customers will enjoy all of the favorites, including Fox News, Turner Classic Movies, Comedy Central, Sci-Fi and Bravo. In addition to local channels (WWSB, SNN), residents are always up-to-date with both local events and weather situations.

24 hours/day...7 days/week – residents can speak to our own local personnel, not an answering service. Service work is completed quickly and without the inconvenience of properly management or board members. Comcast has a **PROVEN** track record of service. Unlike Satellite providers that are not regulated, Comcast is held to stringent service and repair standards....which we consistently **EXCEED**.

No Unsightly Outdoor Equipment - Our head-end equipment is located off premise, therefore there are no space or temperature control requirements associated with on-site systems.

Group Discount-Bulk Billing - residents enjoy the Preferred Service at a deeply discounted rate.

The Comcast Commitment...

Investment and commitment to technology

Two-Way Communication

Staying on the cutting edge of Technology....

Comcast has invested millions of dollars in fiber optic cables within the area so your residents can enjoy the current and growing list of services only available with two-way communication. Recently introduced products, and others we foresee in the near future have, and will continue to, revolutionize the communication industry. These products include: Cable Internet, HDTV, Video-On-Demand (streaming of movies, sports, etc.), Interactive Television, Security Products, etc.

- Cable Internet:
- Security:
- Interactive Television:
- HDTV:
- VOD:



Comcast Cable Communications, Inc.
301 Tower Road
Naples, FL 34110-0074
239-792-9600 Tci
239-792-1317 Faa

December 30, 2002

Ines Barbee
SOUTHPORT MANAGEMENT
P.O. Box 1039
Marco Island, FL 34146

RE: SOUTHERN BREEZE GARDENS CONDOMINIUM

Dear Ms. Barbee:

As promised I am forwarding you a copy of the current Agreements held between Comcast and Southern Breeze Gardens. In addition I am including a renewal proposal for Southern Breeze Gardens to continue their bulk billing with Comcast.

As I pointed out on the telephone and have highlighted in the Commercial Service Agreement Paragraph 1 License to Company, Comcast would continue to have the right to service the property exclusively on an individual basis until 2010 should Southern Breeze Gardens decide not to continue being billed on a bulk basis.

I have also highlighted Paragraph I in the Broadband Service Bulk Agreement for your reference. This paragraph explains that ownership of the wiring goes to Comcast.

You will notice that in the enclosed proposal for continued bulk billed service Comcast is offering to lower the bulk billed rate for Southern Breeze Gardens. In addition to Comcast's continued challenge to provide the best products and services to the owners of Southern Breeze Gardens we also want to offer a competitive rate and feel that an estimated 63% discount off our proposed retail rate in 2003 is certainly doing that.

We hope that Southern Breeze Gardens will decide to continue to receive Comcast's Total Basic services on a discounted bulk billed basis, however, we will be happy to service the owners there individually as is outlined in the Commercial Service Agreement, should they decide not to continue being billed as a whole.

If you have any questions please do not hesitate to contact me directly at 732-3848. Thank you for doing business with Comcast.

Sincerely,


Nikki Mello
Commercial Development
Account Executive

ENCLOSURES

