## Statement of the Case

Comcast of Chesterfield, Inc. ("Comcast") filed an erroneous tax assessment action pursuant to Va. Code § 58.1-3984 because Chesterfield County (the "County") assessed Comcast's electronic cable television equipment (the "Equipment"[1]) as tangible personal property. The County applied Va. Code § 58.1-1101(A)(2a) which provides in pertinent part:

> Machines and tools, motor vehicles, delivery equipment, trunk and feeder cables, studio equipment, antennae and office furniture and equipment of [cable television] businesses shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property.

The County assessed the Equipment as tangible personal property in part because it met the definition of the word "machine" found in the 1981 edition of Webster's New Collegiate Dictionary. That definition is: "a mechanically, electrically, or electronically operated device for performing a task." App. 247 and 258. The Webster's definition was similar to that found in the 1976 edition of The American Heritage Dictionary: "Any system or device, such as an electronic computer, that performs or assists in the performance of a human task." App. 705. Both the Webster's and

[1] "Equipment" as used in this brief refers to Comcast's plant electronics, remote controls, modems, and converters—all the contested items of personal property in this case.

American Heritage definitions were in use before Va. Code § 58.1-1101(A)(2a) was enacted in 1984. App. 703-705.

The Circuit Court separated this case into two hearings, and heard the first issue, whether the Equipment should be classified as tangible personal property, taxable locally, or intangible personal property, taxable only at the state level, on November 28, 2007. The Court entered its order on February 15, 2008, holding that the County had properly classified the Equipment as tangible personal property, and it was therefore subject to local taxation. App. 835. The order for the first half of the case provides in pertinent part:

> After considering all of the evidence presented (including ore tenus testimony, deposition designations, exhibits and the briefs and oral arguments of counsel), the Court rules, for the reasons stated by counsel for the Board of Supervisors of Chesterfield County in oral argument and in the brief filed by the Board, that the items of property at issue are "machines" under the plain meaning of that word and are, therefore, items of property properly classified as business tangible personal property under Va. Code § 58.1-1101(A)(2a).

Pursuant to Va. Code § 58.1-3987, the court thereafter set the hearing on the second part of the case, being for valuation of the Equipment, for June 12 and 13, 2008. Before this case could be completed as contemplated by the Court, the parties, and Virginia law,

Comcast filed its Petition with this Court on May 14, 2008, and the valuation hearing was continued pending this appeal.

## The Amici and Their Interest in the Case

Local Government Attorneys of Virginia, Inc. ("LGA") was founded in 1975 and now has a membership of over 650 public and private attorneys. One of the primary functions of LGA is to provide information and support to assist local government attorneys in performing the duties of their position. LGA periodically files amicus briefs in cases involving important local government issues. This case is of critical importance to LGA not only because of its financial implications for localities throughout the Commonwealth, but also because of the need for local government attorneys to be able to rely on the plain meaning of statutes, where there is no ambiguity in the language of the statute, without resort to legislative history. The LGA supports the County's claim that "machines" is clear under Va. Code § 58.1-1101(A)(2a), and no resort to legislative history is necessary.

The City of Hampton, like the City of Chesapeake and other jurisdictions in the Commonwealth, has a dispute with its cable operator on some of the same issues of statutory interpretation presented in the appeal. Relying on the plain language of the statute, these localities and their respective Commissioners of Revenue have determined that plant electronics are tangible personal property, taxable by the locality.

The Commissioners of the Revenue Association of Virginia ("COR") likewise has an interest in this case. The object and purpose of COR is, *inter alia*, to promote an understanding of the responsibilities of the Commissioners of the Revenue to administer the revenue laws, and to study the tax system of the state and make recommendations to all proper authorities concerning the tax laws as will promote the best interests of the taxpayers, the localities, and the state. The COR supports the Circuit Court's finding that the County properly classified the Equipment as tangible personal property, taxable by the County.

## Questions Presented

1. Is Comcast's interlocutory appeal before the Circuit Court has reached a decision on the assessment of the equipment procedurally proper?

2. Was the Circuit Court's determination that the Equipment is taxable as "machines" under Va. Code § 58.1-1101(A)(2a) correct?

## Argument

### I. Comcast's Appeal is Not Procedurally Proper.

Comcast's action below was filed pursuant to Va. Code § 58.1-3984. The Circuit Court divided the case into two parts and, thus far, the Circuit Court has decided only the first part of the case. It has not reached the second phase of the case, assigning a valuation to the Equipment as contemplated by the parties, the Court, and as required by Va. Code § 58.1-3987. Therefore, the case has not been fully and finally adjudicated.

Generally, only final orders may be appealed. Leggett v. Caudill, 247 Va. 130, 133, 439 S.E.2d 350, 351 (1994). An order is final only if it disposes of the whole subject matter of the case and leaves nothing further to be done by the Circuit Court. Id. See also Daniels v. Truck Corporation, 205 Va. 579, 585, 139 S.E.2d 31, 35 (1964) (final order leaves only "ministerial superintendence" of execution of order).

Va. Code § 58.1-3987 requires a circuit court to determine whether a tax assessment is too high or too low and make the correct assessment for each tax year at issue. The parties and the Court expressly agreed to this determination as the second part of the case. Although the Circuit Court has determined that the County properly classified the Equipment as personal property, it has not held the trial to determine the proper tax

assessments for each year in controversy. The Circuit Court's order, therefore, is not final.

In the alternative, Comcast argues that it may appeal the case under either Va. Code § 8.01-670(A)(1)(f) or Va. Code § 8.01-670(A)(1)(g), and that a case need not be final to do so. Appellant's Br. at 8. Comcast does not cite any cases in support of the proposition that cases need not be final to appeal under Va. Code § 8.01-670(A)(1)(f) or (g). Its appeal is proper only if these sections of the statute do not require the Circuit Court case to be final. These sections of the statute, however, do require a final order, and this Court should dismiss Comcast's appeal as premature and not in accord with the agreement of the parties, the order of the Court, and Virginia law.

## II. The Circuit Court's Determination that the Equipment is Taxable as "Machines" Under Va. Code § 58.1-1101(A)(2a) Was Correct.

The Circuit Court's decision was appropriate given the record before it and the standards for decision as set forth in previous decisions of this Court. Because the Circuit Court's decision was free from error, this Court should affirm it.

### A. The Circuit Court Applied the Appropriate Decisional Standard.

City of Winchester v. American Woodmark Corp., 250 Va. 451, 457, 464 S.E.2d 148, 152 (1995) ("American Woodmark") requires that where there is a "just doubt" concerning the classification of a taxpayer's property for taxation, that doubt should be resolved in the taxpayer's favor. The County raised this point in oral argument before the court at the November 28 classification hearing (App. 714) and in its brief filed with the Circuit Court. The Circuit Court was therefore aware of this principle of law when it concluded that the Equipment was "machines" under Va. Code § 58.1-1101(A)(2a).

Virginia Cable Telecommunications Association ("VCTA") in its amicus brief states that the Circuit Court failed to construe narrowly Va. Code § 58.1-1101(A)(2a), as required by American Woodmark. VCTA Br. at 12. VCTA states that the Circuit Court was required to "avoid any extension of local taxing authority by implication beyond the clear language of the statute." Id. Although the Circuit Court had an obligation to construe the statute narrowly, it had no obligation to select the most restrictive definition of "machines" as proposed by Comcast. This is what VCTA urges to achieve the most favorable tax treatment for Comcast. Although selecting a highly-restrictive definition of machines achieves a favorable tax

treatment for Comcast, it also violates settled rules of statutory construction.

The record from the November 28 hearing demonstrates that there was more than sufficient evidence for the Circuit Court to conclude that the Equipment is composed of electronically operated, computer-like devices that fit the commonly-accepted meaning of the word "machines", in use since well before Va. Code § 58.1-1101(A)(2a) was enacted in 1984. See, e.g. App. 340; App. 342; App. 346; App. 351; App. 360; App. 409. Accordingly, the Circuit Court ruled in its February 15 Order that the Equipment was "machines" and subject to local taxation as tangible personal property.

### B. The Circuit Court Was Not Permitted to Resort to Legislative History to Interpret the Statute.

Comcast and VCTA argue that the Circuit Court should have consulted legislative history to determine the meaning of the word "machines". See Appellant's Br. at 24-26; VCTA Br. at 14-16. In construing Va. Code § 58.1-1101(A)(2a), the Circuit Court was required to "give effect to the intention of the legislature" which "must be gathered from the words used" in the statute "unless a literal construction would involve a manifest absurdity." American Woodmark, 250 Va. at 457, 464 S.E.2d at 152. All "just" or "substantial" doubts in the meaning of the legislative language are to be resolved in favor of the taxpayer, but "[w]here the legislature has used words of a ***plain and definite import***, the courts cannot put upon them a construction which amounts to holding the legislature ***did not mean what it actually expressed***." Id. at 456-57, 464 S.E.2d at 152. (Emphasis added.)

### 1. The Circuit Court Gave the Words in the Statute Their Ordinary and Usual Meaning.

Comcast and VCTA advocate that this Court ignore what the legislature actually expressed. The legislature used, and the court properly considered and relied upon, the word "machines". In the absence of a contrary definition, the words in a statute are presumed to have their usual and ordinary meaning. Anderson v. Commonwealth, 182 Va. 560, 565, 29 S.E.2d 838, 840 (1944) ("In the absence of a statutory definition, words in statutes are to be given their ordinary meaning within the statutory context".)

Comcast argues that the legislature used "machines" to refer only to devices with "moving parts" that exert mechanical force. Appellant's Br. at 24-25. If the legislature intended that, it would have been simple enough to include such language in the statute. The legislature, however, did not do so, and at the time of the enactment of the statute in 1984, computers were commonly referred to as, and understood to be, "machines." See, e.g. Soul of a New Machine, Tracy Kidder (Little, Brown and Company, 1981), a non-fiction account of a computer design project; see also App. 706.

### 2. The Circuit Court Appropriately Consulted Dictionary Definitions of the Word "Machines".

Virginia courts regularly consult dictionaries to determine the common usage of words that are not defined in a statute. See American Woodmark, 250 Va. 456, 464 S.E.2d at 151 (Court consulted Webster's Third New International Dictionary for definition of "exemption".) The Circuit Court appropriately consulted dictionaries to determine that the commonly-understood definition of a "machine" is "a mechanically, electrically, or electronically operated device for performing a task." It is important to note that the definition chosen must be consistent with the context in which the word is used in the statute. Anderson, 182 Va. at 565, 29 S.E.2d at 840; Grant v. Com., 223 Va. 680, 684, 292 S.E.2d 348, 350 (1982); Loyola Fed. Sav. & Loan Ass'n v. Herndon Lumber, 218 Va. 803, 805, 241 S.E.2d 752, 753 (1978). See e.g., Adams Outdoor Advertising, L.P. v. Bd. of Zoning Appeals, 274 Va. 189, 196, 645 S.E.2d 271, 275 (2007) (defining "enlarge" in context of billboard); PMA Capital Ins. Co. v. US Airways, Inc., 271 Va. 352, 360, 626 S.E.2d 369, 375 (2006) (defining "recovery" in context of insurance claim for September 11, 2001 closure of Reagan National Airport). In this case, the context in which the statute is used is for an industry that runs on electronic machines.

### 3. Comcast and VCTA Advocate an Archaic and Restrictive Definition of "Machines".

VCTA characterizes the Circuit Court's definition of machines as "expansive." VCTA Br. at 12. It would be more accurate to characterize the definition of machines advocated by Comcast and VCTA as "restrictive" or "archaic". Restricting the definition of "machines" to "devices that contain moving parts and exert mechanical force" is not a 21st century view, or even a view in accord with the 20th century, which ushered in a digital and electronic revolution commencing before 1984. See App. 706. The Circuit Court appropriately declined to adopt such an archaic and restrictive view.

VCTA makes much of the amendment and reenactment of Va. Code § 58-405 as § 58.1-1101 in 1984 because it removed the words "converters" and "tuners" from the statute. See VCTA Br. at 8. After pointing out that tuners and converters are solid state electronic devices[2], VCTA claims that because the legislature removed "converters" and "tuners" from the statute, "machines" must not include solid state electronic devices. A computer, however, is a solid state device. When the statute

[2] A solid state device is one that uses a semiconductor component, such as a transistor or silicon chip, in which current flow is through solid material, rather than a valve or mechanical part, in which current flow is through a vacuum. See Collins Essential English Dictionary, 2nd Edition 2006 (HarperCollins Publishers, 2006).

was amended and reenacted in 1984, computers were commonly referred to and known as "machines", and a computer-like device such as a converter or tuner should be understood to be a "machine" under Va. Code § 58.1-1101(A)(2a).

#### 4. The Circuit Court's Definition of "Machines" Is Consistent with the Other Terms Used in the Statute.

VCTA also argues that if the legislature had intended that "machines" include electronic equipment, it would not have separately listed "studio equipment" and "antennae". VCTA Br. at 16. No rule of statutory construction supports this argument. Furthermore, the term "studio equipment" encompasses a wide range of items, some of which could be considered "machines", and some of which could not, such as sets, stages, curtains, and studio furniture. "Studio equipment" is more descriptive of the location of items than of the type of items. Its inclusion in the statute does not show that "machines" cannot include electronic equipment.

Likewise, "antennae" encompasses a variety of equipment ranging from simple to complex. One common definition of an "antenna" is "a metallic device for sending or receiving electromagnetic waves, such as radio waves". The American Heritage Science Dictionary, Houghton Mifflin (2002). An "antenna", however, can also be defined as "equipment that sends and/or receives signals from a satellite".

www.thesaudi.net/vsat/vsat-glossary.htm (accessed October 30, 2008). This would include satellite dishes, which are highly sophisticated electronic devices.

Comcast reports its satellite dishes as locally taxable personal property, not because they are "antennae", but because they are part of the cable headend. App. 751-52. The cable headend is comprised predominantly of electronic machines. Headend equipment fits only one of the seven categories of equipment enumerated in the statute: machines. Comcast's reporting of its headend as tangible personal property is consistent with the County's interpretation of the statute, and consistent with the ruling of the Circuit Court.

**5. The Circuit Court Correctly Disregarded Comcast's Arguments Regarding Tax Bulletins.**

Comcast attempts to support its argument for legislative intent with a "tax bulletin," (Bulletin No. VTB 84-72), which it argues shows the General Assembly intended to exempt cable television converters from local taxation. Appellant's Br. at 34. A tax bulletin is an "administrative interpretation" that cannot be introduced into evidence and cannot be accorded any weight by a court. Va. Code § 58.1-205(5).

Moreover, the tax bulletin favored by Comcast directly conflicts with another tax bulletin issued in 1984 by the State Department of Taxation

(Bulletin No. VTB 84-8), and with the 1984 Legislative Digest issued by the Department of Taxation, a publication which provides the official summary of all tax legislation enacted by the 1984 General Assembly (1984 Legislative Digest, Document No. 84-274). Tax Bulletin No. VTB 84-8, unlike Comcast's tax bulletin, does not mention the deletion of the words "tuner and converters" but instead emphasizes the addition of the new word "machines":

> Machines and tools, a new category of property, apparently the *actual machines* and tools of *cable television businesses*, is now excluded from the definition of intangible personal property and is subject to local taxation as tangible personal property. (Emphasis added.)

The "actual machines . . . of cable television businesses" are electronic machines. See App. 702. This is the context in which the Circuit Court appropriately considered the statutory language.

Furthermore, the 1984 Legislative Digest states that the General Assembly amended the statute in 1984 to "define the machines and tools of [cable television businesses] as tangible personal property." In both Tax Bulletin No. VTB 84-4 and the 1984 Legislative Digest, the Department of Taxation concludes that the significance of the 1984 amendment is the addition of the phrase "machines and tools" to the list of tangible personal property that may be taxed at the local level.

Notwithstanding this emphasis on the addition of "machines and tools" as taxable items, there remains no reason to resort to tax bulletins or any other form of legislative history to interpret Va. Code § 58.1-1101(A)(2a), as its language is clear and unambiguous. See Marsh v. City of Richmond, 234 Va. 4, 11, 360 S.E.2d 163, 167. "Machine" is an unambiguous word with a commonly accepted meaning, and this was as true in 1984 as it is in 2008. The plain language of the statute controls, and it is improper to consult legislative history. "When the General Assembly 'has spoken plainly' on a subject, [this Court] must not 'change or amend its enactments under the guise of construing them.'" City of Martinsville v. Tultex Corp., 238 Va. 59, 63, 381 S.E.2d 6, 8 (1989).

### C. The Circuit Court Correctly Determined that the Equipment is "Machines."

When the General Assembly enacted Va. Code § 58.1-1101(A)(2a) in 1984, "machines" commonly meant "mechanically, electrically, or electronically operated devices for performing a task." App. 703-04. A computer was commonly referred to as a "machine." App. 706. Comcast's cable television system is predominantly composed of electronically operated, computer-like devices. The definition of a "machine" as an electronically operated, computer-like device best fits the context of a cable television system.

#### 1. The Circuit Court's Decision is Consistent with this Court's Use of the Term "Machinery".

The commonly-understood definition of the word "machinery" is "machines or machine systems collectively". http://www.websters-online-dictionary.org/definition/machinery (accessed November 13, 2008). In City of Virginia Beach v. International Family Entertainment, Inc., 263 Va. 501, 504, 561 S.E.2d 696, 698 (2002), the taxpayer reported its satellite transponders as "machinery and tools" under Va. Code § 58.1-3507(A).[3]

[3] A transponder is a device that amplifies and relays transmissions between transmitting and receiving stations. International Family Entertainment, 263 Va. at 504, 561 S.E.2d at 698. The transponder receives audio and video programs from a transmitting station on the earth and transmits the signals to satellite dishes, like the ones in Comcast's headend, on the earth. See Id. Cable television companies and home satellite dishes

Satellite transponders are similar in form and function to the Equipment. Just as the Equipment moves a terrestrial cable signal from one place to another, satellite transponders move a signal from one place to another through space. Like the Equipment, satellite transponders do not have moving parts and do not exert mechanical force. The taxpayer in International Family Entertainment correctly reported its satellite transponders as "machinery", and Comcast should likewise report the Equipment as "machines".[4]

**2. The Circuit Court's Definition of "Machines" is Consistent with the Attorney General's Interpretation of "Machinery".**

Similarly, the Virginia Attorney General has concluded that electronic equipment used for monitoring and control, projection equipment, radio and testing equipment, and transmitters used by a radio broadcaster was properly classified as "machinery and tools". 1984-85 O.A.G. 338. The opinion further noted that this had been the interpretation of the State Tax Commissioner and the Attorney General's Office since 1967.

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receive these signals, and the cable television companies transmit the signals to their subscribers. Id.

[4] The Court ultimately held that the situs of the transponders was not within the City of Virginia Beach and the transponders could not be locally taxed for that reason. 263 Va. at 508, 561 S.E.2d at 700.

"While it is not binding on this Court, an Opinion of the Attorney General is 'entitled to due consideration'". Twietmeyer v. City of Hampton, 255 Va. 387, 393, 497 S.E.2d 858, 861 (1998). This is particularly true when the legislature has known of the Attorney General's Opinion, and has done nothing to change it. "The legislature is presumed to have had knowledge of the Attorney General's interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General's view." Browning-Ferris, Inc. v. Commonwealth, 225 Va. 157, 161-62, 300 S.E.2d 603, 605-06 (1983); see also Beck v. Shelton, 267 Va. 482, 492, 593 S.E.2d 195, 200 (2004).

By the time Va. Code § 58.1-1101(A)(2a) was enacted, the Attorney General's Office had classified electronic equipment used by a radio broadcaster as "machinery and tools" for approximately seventeen years. The legislature is presumed to have known of this interpretation. Browning-Ferris, 225 Va. at 161-62, 300 S.E.2d at 605-06. Because the legislature did not take steps to change it, the legislature acquiesced in the Attorney General's view. Id. If electronic equipment used by a radio broadcaster is "machinery and tools", certainly electronic equipment used by a cable television operator is "machines".

### 3. The Arlington Cable Partners Unreported Order Has No Precedential Value.

Comcast and VCTA rely heavily on a 1992 unreported final order of the Arlington Circuit Court in Arlington Cable Partners v. County of Arlington, Law No. 90-1616. In that order, the Arlington Circuit Court stated that "amplifiers, power supplies and radios of a cable television business are not machines and tools under § 58.1-1101(A)(2a)." The Arlington court did not provide any analysis or support for that statement, and it conflicts with the position of the Attorney General in 1984-85 O.A.G. 338 that equipment very similar to amplifiers, power supplies, and radios constitutes "machinery". Moreover, the conclusion of the Arlington court is contrary to the dictionary definition of "machines" in common usage when the statute was enacted in 1984, and when the final order was written in 1992. It is also critical to note that, unlike this case, the parties in Arlington Cable Partners agreed to a lengthy and confusing stipulation which the Arlington court considered and relied upon in its decision.

Both Comcast and VCTA mischaracterize the purported precedential value of Arlington Cable Partners. See Appellant's Br. at 34 (Arlington Cable Partners has been "followed consistently for the last fifteen to twenty years by cable television companies and local taxing jurisdictions across the Commonwealth"); VCTA at 3 ("local taxing authorities have not

generally claimed that such property is taxable"). Contrary to Comcast and VCTA's claim, localities are not following Arlington Cable Partners. In fact, until localities audit their local cable operator, which many localities are just now doing, they have not determined what their cable operator is reporting as locally taxable. An audit of a cable operator is a tremendous administrative and economic task for a locality. Moreover, once local taxing authorities, such as the City of Hampton, the City of Chesapeake, and Chesterfield County, have determined that cable companies are not reporting electronic equipment as locally taxable, some are assessing their cable operator's electronic equipment.

### 4. The Circuit Court Decision is Consistent with Comcast's Reporting of Headend Equipment as Locally Taxable.

Perhaps the best argument that the Circuit Court was correct in determining that the Equipment is "machines" comes from Comcast itself. Comcast reports the electronic equipment in its headend as tangible personal property that is locally taxable. (App. 751-52; see also Appellant's Br. at 12, fn. 6.) Although Comcast states that it does this for "historical and administrative reasons", there is only one logical explanation for reporting this electronic equipment as tangible personal property: it constitutes "machines" under Va. Code § 58.1-1101(A)(2a). Comcast further admits that the headend is treated as tangible personal property in Arlington Cable Partners. Appellant's Br. at 12, fn. 6. The electronic equipment in the headend is indistinguishable from the Equipment. It is electronically-operated, computer-like equipment. It lacks moving parts and does not exert a mechanical force. The lack of moving parts and mechanical force is critical to Comcast's argument that the Equipment is not "machines." See, e.g. Appellant's Br. at 25; App. 491, 620, and 694.

If the electronic equipment in Comcast's headend is "machines", the Equipment found in Comcast's cable plant and on subscriber premises is

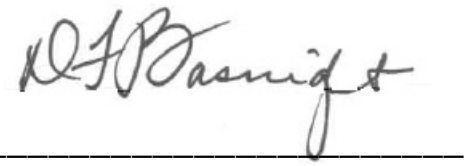
"machines". Because the Equipment is "machines" under Va. Code § 58.1-1101(A)(2a), it is tangible personal property that is locally taxable.

## Conclusion

The Circuit Court properly applied the accepted and commonly-understood definition of "machine" to classify the Equipment as tangible personal property that is locally taxable. The court correctly focused on the plain meaning of Va. Code § 58.1-1101(A)(2a) without resort to legislative history because the statute is unambiguous. The definition of "machine" the Circuit Court applied to the Equipment is consistent with the common meaning of the term, the interpretation of the Attorney General since 1967, the reporting of satellite transponders as "machinery" in City of Virginia Beach v. International Family Entertainment, and even the reporting by Comcast itself of its headend equipment as locally taxable. Even if Comcast were correct that the Equipment is misclassified, which it is not, its appeal to this Court is premature. The Circuit Court has not yet completed its assessment in accordance with Va. Code § 58.1-3987. For these reasons, and the reasons stated above, Local Government Attorneys of Virginia, Inc., the City of Hampton, and Commissioners of Revenue Association of Virginia respectfully request that this Court affirm the decision of the Circuit Court.

LOCAL GOVERNMENT ATTORNEYS OF VIRGINIA, INC.

HAMPTON ROADS CHAPTER OF THE REVENUE ASSOCIATION OF VIRGINIA



By: _____
Counsel

Mark A. Short (VSB # 37740)
Daniel F. Basnight (VSB # 42583)
Kaufman & Canoles, P.C.
11817 Canon Boulevard, Suite 408
Newport News, Virginia 23606
757.873.6309
mashort@kaufcan.com
dfbasnight@kaufcan.com

## Certificate

I hereby certify that pursuant to Rule 5:26(d):

(1) The name of Appellant is: Comcast of Chesterfield County, Inc.

(2) The name, address, and telephone number of counsel for Appellant are: James S. Kurz and Virginia W. Hoptman, Womble Carlyle Sandridge & Rice PLLC, 8065 Leesburg Pike, 4th Floor, Vienna, VA 22182. Telephone: (703) 394-2230.

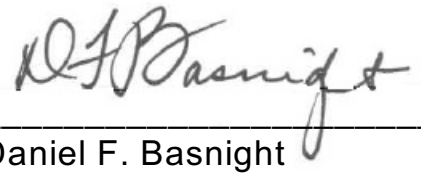
(3) The name of the Appellee is Board of Supervisors of Chesterfield County.

(4) The name, address, and telephone number of counsel for Appellee are: Jeffrey L. Mincks, Deputy County Attorney, Post Office Box 40, Chesterfield, Virginia 23832. Telephone: (804) 748-1491.

(5) Twelve paper copies of the foregoing Brief Amicus Curiae were hand-filed with the Clerk of the Supreme Court of Virginia and one copy was filed electronically on a disc.

(6) Three copies of the foregoing brief were sent, via U.S. Mail, postage prepaid, to all opposing counsel this 20th day of November, 2008.

Date: November 20, 2008



Daniel F. Basnight

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