

**Resolution No. 2010-10-028R:**

**A Resolution to Authorize the Mayor to  
Execute a New Cable Franchise Agreement with Comcast**

**WHEREAS**, the City of Urbana ("City") has a population of more than 25,000 and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970 and 65 ILCS 5/1-1-10; and

**WHEREAS**, Comcast of Illinois/Indiana/Ohio, LLC. ("Comcast"), currently operates a cable system for the provision of cable service in the City of Urbana, Illinois ("City"); and

**WHEREAS**, the City commenced a proceeding to review the past performance of Comcast and to ascertain the future cable-related needs and interests of the community; and

**WHEREAS**, the City and Comcast have engaged in good-faith negotiations to produce an Agreement for continued cable franchised operations in the City; and

**WHEREAS**, said Agreement is in accordance with the material findings of the needs analysis conducted by the City's consultants;

**NOW, THEREFORE**, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follow:

**Section 1.** That the Mayor of the City of Urbana, Illinois, be and the same is, hereby authorized to execute and deliver the Agreement between City and Comcast Corporation for the continued operation of Comcast's cable franchise, and the City Clerk of the City of Urbana, Illinois, be, and the same is, hereby authorized to attest to said execution of said Agreement, as so authorized and approved for and on behalf of the City of Urbana, Illinois.

**Section 3.** That the Mayor, or her designee, is authorized to take such actions as are required of the City under the Agreement.

PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

AYES:

NAYS:

ABSTAINS:

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Phyllis D. Clark, City Clerk

APPROVED by the Mayor this \_\_\_\_\_ day of October, 2010.

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Laurel Lunt Prussing, Mayor

**CITY OF URBANA, ILLINOIS**  
**FRANCHISE AGREEMENT**  
**COMCAST OF ILLINOIS/ INDIANA/ OHIO, LLC**

**August 12, 2010**

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## **AGREEMENT**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of Urbana, Illinois (hereinafter, the “City”) and Comcast of Illinois/Indiana/ Ohio, LLC (hereinafter, “Grantee”) this \_\_\_\_ day of \_\_\_\_\_, 2010 (the “Effective Date”).

The City, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

This Franchise Agreement is entered into by and between the parties under the authority and shall be governed by the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the “Cable Act”).

### **SECTION 1 Definition of Terms**

For the purpose of this Franchise Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Other terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the “Cable Act”), unless otherwise defined herein.

1.1 “Basic Cable Service”. Means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational and governmental (“PEG”) access programming.

1.2 “Cable Act” or “Act”. Means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as the same may be amended from time to time.

1.3 “Cable Service” or “Service”. Means the one-way transmission to Subscribers of Video Programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

1.4 “Cable System,” “System,” “Cable Communications System,” or “CATV System”. Means a facility, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part,

to the provisions of subchapter II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand service; (D) an open video system that complies with section 573 of the Cable Act; or (E) any facilities of an electric utility used solely for operating its electric system. 47 USC 522.

1.5 “Channel” or “Cable Channel”. Means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the FCC by regulation.

1.6 “City”. Means the City of Urbana, Illinois a municipal corporation, in the State of Illinois, acting by and through its City Council, or its lawfully appointed designee..

1.7 “City Council”. Means the governing body of the City of Urbana, Illinois.

1.8 “City Code”. Means the Municipal Code of Urbana, Illinois.

1.9 “Drop”. Means the cable that connects the ground block on a home or building to the nearest feeder cable of the System.

1.10 “FCC”. Means the Federal Communications Commission or successor governmental entity thereto.

1.11 “Franchise”. Means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.12 “Franchise Agreement” or “Agreement”. Shall mean this Agreement and any amendments or modifications hereto.

1.13 “Franchise Area” or “Service Area”. Means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement.

1.14 “Grantee”. Shall mean Comcast of Illinois/Indiana/Ohio, LLC.

1.15 “Gross Revenue”. Means any and all revenue derived by Grantee from or in connection with the operation of the Cable System to provide Cable Services in the Franchise Area. Gross Revenues shall include, by way of example but not limitation, revenues from Basic Cable Service, all Cable Service fees, premium, pay-per-view, pay television, Franchise Fees, late fees, guides, home shopping revenue, Installation and reconnection fees, upgrade and downgrade fees, advertising revenue (excluding advertising sales commissions paid to unaffiliated third parties), converter rental fees and lockout device fees. Gross Revenue shall not include refundable deposits, bad debt, investment income, nor any taxes, fees or assessments of general applicability imposed or assessed by any governmental entity (a Franchise Fee is not



such a tax, fee or assessment). The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

1.16 “Installation”. Means the connection, by or on behalf of the Grantee, of the System from feeder cable to the point of connection with the Subscriber Converter or television receiver or other terminal equipment.

1.17 “PEG”. Means public, educational, and governmental access channel(s).

1.18 “Person”. Means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

1.19 “Public Building”. Means, pursuant to 220 ILCS 5/22-501(f), all local government buildings, public libraries, and public primary and secondary schools, whether owned or leased by that local unit of government.

1.20 “Right-of-Way” or “Public Way”. Means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. "Right-of-way" shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures, and other structures or improvements, regardless of whether they are situated in the right-of-way.

1.21 “Right-of-Way or Public Way Regulations”. Means any ordinance or policy of general applicability regarding requirements regarding regulation, management and use of Rights-of Way in City, including registration and permitting requirement which shall not be specific to the Cable Television System, this Franchise or Grantee.

1.22 “Subscriber”. Means a Person who lawfully receives and pays for Cable Service with the Grantee’s express permission.

1.23 “Video Programming”. Means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

## **SECTION 2 Grant of Authority**

2.1 Nonexclusive Franchise Authority. The City hereby authorizes Grantee to occupy or use the Right-of-Way subject to 1) the provisions of this non-exclusive Franchise Agreement to provide Cable Service within the Franchise Area; and 2) all applicable provisions of the City Code and Right-of-Way or Public Way Regulations.

Nothing in this Franchise Agreement shall be construed to prohibit the Grantee from providing services other than Cable Services to the extent not prohibited by applicable law. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by applicable law and no provision herein shall be construed to limit or give up any right to regulate.

2.2 Term of Franchise. The term of the Franchise granted hereunder shall be 10 years from the Effective Date unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. Upon passage and approval of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement shall replace all existing franchise agreements, including the prior Franchise, with the Grantee, regardless of whether said franchise agreements are in effect.

2.3 Renewal. Any renewal of this Franchise Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.4 Reservation of Authority. The terms of this Franchise Agreement shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the Cable System in City.

2.4.1 The Grantee, through this Franchise, is granted the right to operate its Cable System using the Rights-of-Way within the Franchise Area in compliance with the City Code, as may be amended periodically. The Grantee specifically agrees to comply with the lawful provisions of the City Code, Right-of-Way or Public Way Regulations and lawful applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City Code or Ordinances, Right-of-Way or Public Way Regulations or lawful applicable regulations of the City and B) this Franchise, the express provisions of this Franchise shall govern.

2.4.2 Subject to express federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power unless expressly provided herein. Grantee acknowledges that the City may modify its generally applicable regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code. Grantee reserves all rights it may have to challenge such lawful modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

Nothing in this Franchise Agreement shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any City Codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.5 Competitive Equity.

2.5.1 In the event the City grants an additional Franchise to use and occupy the public right-of-way for the purposes of operating a cable system, the additional Franchise shall be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11, if applicable.

2.5.2 In the event an application for a new cable television franchise or other similar authorization is filed with the City proposing to serve the Franchise Area, in whole or in

part, the City shall serve or require to be served a copy of such application upon Grantee by registered or certified mail or via nationally recognized overnight courier service.

**SECTION 3 Construction and Maintenance of the Cable System**

Grantee shall comply with the provisions of Chapter [redacted] of the City of Urbana Municipal Code, as may be amended from time to time.

**SECTION 4 Service Obligations**

4.1 General Service Obligation. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density equivalent is at least seven (7) dwelling units per 1/4 mile and is within one (1) mile of the existing Cable System and to commercial establishments if they agree to pay for line extensions, non-standard installations, services and monthly fees. Subject to the density requirement, Grantee shall offer Cable Service to all new homes and commercial establishments located within 125 feet of the Grantee’s distribution cable.

4.1.1 The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a Drop or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return to be calculated on that portion of the installation that exceeds the standards set forth above.

4.2 Programming. The Grantee agrees to provide cable programming services in the following broad categories:

|                                   |                       |                 |
|-----------------------------------|-----------------------|-----------------|
| Children                          | General Entertainment | Family Oriented |
| Ethnic/Minority                   | Sports                | Weather         |
| Arts, Culture and Performing Arts | News & Information    | Educational     |

Pursuant and subject to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of the Grantee.

4.3 Annexation. In the event City annexes territory that is not within the City limits at the Effective Date, the City shall provide written notice to Grantee and Grantee shall provide Cable Services to the newly annexed area as follows:

4.3.1 if the newly annexed area does not receive any Cable Services, Grantee and City shall meet within thirty (30) days to reach an agreement on the time deadline to serve the new area Grantee shall serve the new area as soon as possible, pursuant to the terms of this Franchise Agreement;

4.3.2 if the newly annexed area receives Cable Services from another Cable operator, Grantee shall have the right, but not the requirement to provide Cable Services to the area. In these circumstances, Grantee agrees that the City would not be required to force any

cable operator serving the newly annexed area to serve the entire Franchise Area in order to obtain a Franchise Agreement to continue serving the residents in the newly annexed area;

4.3.3 if the newly annexed area is served by Grantee or its affiliate, the newly annexed area will be subject to the provisions of the franchise previously covering that area in accordance with 55 ILCS 5/5-1095. Upon expiration of the franchise covering the newly annexed area, Grantee shall provide Subscribers in the newly annexed area with the PEG channels required under this Franchise Agreement in Section 10.1. Grantee agrees that if the annexation occurs in Champaign County, Grantee will provide Subscribers with the PEG channels required under this Franchise Agreement without cost to the City. In the event the Grantee is required to reconfigure its system or head end in order to provide the PEG channels, the Grantee shall provide the City with a written notice detailing the necessary expenses for the reconfiguration and the proposed timeline for the deduction of said expenses from the PEG Capital Fee required under this Franchise Agreement in Section 10.3 or the Franchise Fee required under this Franchise Agreement in Section 5. The City shall have the discretion to provide the Subscribers in the newly annexed areas with the PEG channels required under this franchise agreement in Section 10.1 and will notify the Grantee in writing of its decision prior to the proposed reconfiguration of the system or head end.

4.4 Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Manager, police chief, fire chief, or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages. Notwithstanding the above, Grantee reserves the right to assert a right of reimbursement or compensation from any responsible party.

4.4.1 At all times during the term of this Franchise, the Grantee shall provide and maintain an Emergency Alert System ("EAS") consistent with applicable federal law and regulation including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time.

4.5 Complimentary Service to Schools, Libraries and Municipal Buildings. The Grantee and City acknowledge that complimentary service for schools, libraries and municipal buildings is included in 220ILCS5/22-501(f), whereby the Grantee shall provide a free service line drop and free Basic Service to all current and future public buildings within their footprint, including, but not limited to, all City buildings, public libraries, and public primary and secondary schools, whether owned or leased by the City ("Eligible Buildings"). Such Service shall be used in a manner consistent with the government purpose for the eligible building and shall not be resold. This obligation only applies to those cable or video service providers whose Cable Service or video service systems pass Eligible Buildings and Cable Service or video service is generally available to residential Subscribers in the City. The burden of providing such Cable Service or video service at each Eligible Building shall be shared by all Cable and video providers whose systems pass the Eligible Buildings in an equitable and competitively neutral manner, and nothing herein shall require duplicative installations by more than one Cable or video provider at each Eligible Building. Cable or video providers operating in the City shall meet as necessary and determine who will provide Cable Service or video service to Eligible Buildings. If the Grantee and other provider(s) are unable to reach agreement, the City shall meet with both providers and shall determine which provider will serve which Eligible Building.

The City shall bear the costs of any inside wiring or video equipment costs not ordinarily provided as part of the provider's basic offering.

## **SECTION 5 Oversight and Regulation by City**

5.1 **Franchise Fees.** The Grantee shall pay to the City a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues. Upon ninety (90) days advance written notice from the City to Grantee, City may increase or decrease, by ordinance, the franchise fee, and pursuant to said notice and direction, Grantee shall pay to City an annual franchise fee of up to the maximum amount permitted by applicable law. The payment of franchise fees shall be made on a monthly basis and shall be due thirty (30) days after the end of the month. No more than twice per year and upon written request from the City, the Grantee shall be required to provide a detailed written report prepared by a representative of the Grantee showing the basis and reasonable background support for the computation of the Franchise Fees paid during that period. Any undisputed franchise fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest from the due date of the delinquent payment at an annual rate equal to twelve percent (12%) or two (2) percent over prime lending rates as quoted by Chase Bank U.S.A. or its successor, whichever is higher, computed daily from time due until paid. Any undisputed overpayments made by Grantee to the City shall be returned or credited upon discovery of such overpayment and shall be payable within sixty (60) days of the receipt of written notice from Grantee.

5.1.1 Unless otherwise provided under applicable law, for purposes of the franchise fee to be paid by Grantee under this Franchise Agreement, in the case of Cable Service that may be bundled or integrated functionally with other services, capabilities, or applications of Grantee, the fee shall be applied to the Gross Revenues attributable to Grantee's Cable Service, as reflected on the books and records of Grantee kept in the regular course of business in accordance with generally accepted accounting principles and applicable law.

### 5.2 **Franchise Fees Subject to Audit.**

5.2.1 All amounts paid shall be subject to audit and re-computation by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount; however, mutually agreed upon payments made as a result of an audit shall be deemed final payments. Audits may be performed during normal business hours, upon no less than twenty (20) days prior written notice no more than once in any twelve (12) month period and the audit period may not extend back beyond six (6) years. However, the parties agree that the City shall be limited to three (3) years to review audit issues regarding jurisdictional coding to verify addresses that may or may not be included within the City limits and therefore subject to franchise fee payment obligations by Grantee. Both parties agree that upon the Effective Date of this Franchise, the City is responsible for notifying the Grantee of any annexations beginning on the Effective Date of this Franchise Agreement. If the results of the audit by the City show a discrepancy of more than five percent (5%) in the Franchise Fees that were to be paid to the City, the Grantee shall pay for the reasonable cost of such audit. All audits shall be conducted using the principles of generally accepted auditing standards otherwise known as GAAS.

5.2.2 Upon the completion of an independent audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the City with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. The City shall determine if an underpayment has occurred and pursue enforcement via the provisions of this Franchise Agreement, subject to Grantee's right of appeal as set forth herein. Upon final determination of any fees underpaid or overpaid, Grantee and City shall remit such payments that may be due within 30 days. The City has the choice to remit an overpayment via check or to take an offset against future franchise fee payments. Once such amount is paid, neither the Grantee nor the City shall have further rights to audit or challenge the payment for the audit period.

### 5.3 Not Franchise Fees. Taxes.

5.3.1 Franchise fee not a Tax. Grantee acknowledges and agrees that the Franchise fees payable by Grantee to City pursuant to this section shall take precedence over all other material provisions of the Franchise and shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which do not fall within the definition of a franchise fee under 47 U.S.C. § 542.

5.3.2 No Deduction or Offset against Franchise Fees. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) that do not fall within the definition of a franchise fee under 47 U.S.C. § 542 as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made by Grantee to City pursuant to this Franchise which shall be deemed to be separate and distinct obligations of Grantee.

### 5.4 Maintenance of Books, Records, and Files.

5.4.1 Book and Records. Throughout the term of this Franchise Agreement, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise Agreement. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of six (6) years. The Grantee shall not deny the City access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation, affiliated entity or a third party. The City may request in writing copies of any such records or books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30) days of the receipt of such request. One copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) days of receipt of such request, that the City inspect them at the Grantee's local offices or at one of Grantee's offices more convenient to City or its duly authorized agent. If any

books or records of the Grantee are not kept or made available for review in Champaign County or not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise Agreement, then all reasonable travel expenses incurred by City or its agents traveling from Urbana to such designated locations in order to make such examination shall be considered as reasonable costs of the audit pursuant to the conditions of Section 5.2.1 above

5.4.2 Preservation of Confidential Information. Grantee may choose to provide any confidential books and records that it is obligated to make available to the City pursuant to this Franchise Agreement, by allowing the City, or its designated representative(s), to view the books and records at a mutually agreeable location and without City obtaining its own copies of such books and records. The intent of the parties is to work cooperatively to insure that all books and records reasonably necessary for City's monitoring and enforcement of Franchise obligations are provided to City. To the extent that Grantee does provide books or records directly to the City, City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the work confidential or proprietary in accordance with state and federal law.

5.5 Impact of State Law on City Franchise Fee Reviews. The City and Grantee acknowledge that as of the Effective Date of this Agreement, the State of Illinois is considering adoption of a statutory procedure that will govern municipal Franchise Fee reviews and requests for information. As drafted this new state legislation will amend 65 ILCS 5/11-42-11.05 and other provisions of state law to direct municipalities and cable operators regarding the review of past Franchise Fee payments. The City and Grantee hereby agree that should this new state legislation become effective after the Effective Date of this Agreement, Sections 5.2 and 5.4 of this Agreement shall be enforceable only to the extent not in conflict with then existing state law.

## **SECTION 6 Transfer of Cable System or Franchise or Control of Grantee**

Neither the Grantee nor any other Person may transfer the Cable System or this Franchise Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. City shall process any transfer request submitted by Grantee in accordance with all applicable laws and regulations.

The consent or approval of the City to any assignment, sale, transfer, or sublet, shall not constitute a waiver or release of any pending violations of this Franchise Agreement, known or unknown to the City or Grantee, nor any enforcement rights of the City under any ordinance or this Franchise Agreement.

## **SECTION 7 Insurance and Indemnity**

7.1 Insurance. Within thirty (30) days of the Effective Date of this Franchise Agreement, the Grantee shall, at its sole cost and expense take out and maintain Comprehensive General Liability Insurance and provide the City certificates of insurance designating the City and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds. Such policy or policies shall be in the minimum amount of Three Million Dollars (\$3,000,000.00) for bodily injury or death to any one person, and Three Million Dollars (\$3,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and Three Million Dollars (\$3,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement. The policy shall provide coverage on an "occurrence" basis. The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage. Broad form property damage liability shall be afforded. City shall be named as an additional insured on the general liability policy. An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Grantee's operations under this franchise and that no other insurance maintained by the Grantor will be called upon to contribute to a loss under this coverage. Standard form of cross-liability shall be afforded. Grantee shall provide certificates of insurance to the City showing that the above enumerated policies of insurance are in force.

7.2 Indemnification. The Grantee shall indemnify, defend and hold harmless the City, its officers, boards, commissions, employees, and agents (collectively the "Indemnified Parties") from and against any and all lawsuits, claims, causes or action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including reasonable attorney's fees and disbursements) and costs directly related thereto that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee's operations, the exercise of the Franchise, the breach by Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractors, employees and agents hereunder. This obligation shall survive the term of this Franchise Agreement to the extent required to effectuate this provision. The City shall give the Grantee written notice of its obligation to indemnify and defend the City within ten (10) business days of receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

7.2.1 City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise Agreement, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise Agreement.

7.2.2 The indemnification of City by Grantee provided for in this Franchise Agreement shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise Agreement, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.



7.2.3 The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from the willful misconduct or negligence of the City, its officers, employees and agents. To the extent permissible under State law and without waiver of any affirmative defense, the City shall indemnify the Grantee for any liabilities, damages, costs or expenses resulting from misconduct or negligence of the City's government, educational or public access programming. The Grantee shall give the City written notice of its obligation to indemnify and defend the Grantee within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Grantee determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Grantee. The City shall at all times retain control over the settlement of any claim or action subject to the aforementioned indemnification. The City's indemnification of Grantee shall in no way serve as a waiver or modification of any statutory cap on municipal liability that may exist under applicable law.

## **SECTION 8 System Description**

8.1 Technical Standards. The technical standards used in the operation of the Cable System shall comply, at a minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The Cable System shall be designed, constructed, routinely inspected, and maintained to guarantee that the Cable System meets or exceeds the requirements of the most current editions of the National Electrical Code (NFRA 70) and the National Electrical Safety Code (ANSI C2) at such time that the design, construction and/or maintenance is performed.

8.2 Special Testing. Where there exists recurring evidence, which in the judgment of the City, casts doubt that the above technical standards are being met, the City, at the City's expense, shall have the right and authority to require the Grantee to test and analyze the performance of the Cable System. Before ordering such tests, Grantee shall be afforded thirty (30) days following receipt of written notice to investigate and, if necessary, correct problems. City shall meet with Grantee prior to requiring tests to discuss the need for such tests. If both parties agree Grantee has not met FCC technical standards, at the time of testing, Grantee shall reimburse City's reasonable expenses incurred for ordering Grantee's testing.

## **SECTION 9 Enforcement of Franchise**

9.1 Notice of Violation. If at any time the City believes that Grantee has not substantially complied with the terms of the Franchise, the City shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the issue, the City shall then notify Grantee in writing of the exact nature of the alleged noncompliance (the "Noncompliance Notice").

9.2 Grantee's Right to Cure or Respond. Grantee shall have: 1) fifteen (15) business days from receipt of the Noncompliance Notice to respond to the City, if Grantee contests (in whole or in part) the assertion of noncompliance; or 2) thirty (30) days from receipt of the Noncompliance Notice to cure such noncompliance; or 3) in the event that, by its nature, such

noncompliance cannot be cured within such thirty (30) day period, initiate all reasonable steps to remedy such noncompliance as quickly as possible and notify the City of the steps being taken and the projected date by which cure is projected to be completed. Upon cure of any noncompliance, the Grantee shall notify the City in writing and the City shall provide written confirmation that such cure has been accepted by the City.

9.3 Public Hearing. The City shall schedule a public hearing if the City seeks to continue its investigation into the alleged noncompliance in the event that: (1) Grantee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Section 9, or (2) in the event that Grantee has not remedied the alleged noncompliance within the cure period specified in Section 9.2(2) above or projected cure period in Section 9.2 (iii) above. The City shall provide Grantee at least twenty (20) days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Grantee the opportunity to be heard.

9.4 Enforcement. Subject to applicable federal and state law, in the event the City, after the public hearing set forth in Section 9.3, determines that Grantee is in default of any provision of this Franchise Agreement, the City may:

9.4.1 Seek specific performance of any provision that reasonably lends itself to such remedy, as an alternative to damages; or

9.4.2 Commence an action at law for monetary damages or seek other equitable relief; or

9.4.3 In the case of a substantial default of a material provision of the Franchise Agreement, seek to revoke the Franchise Agreement in accordance with Section 9.5.

9.5 Liquidated Damages. Enforce the following liquidated damages, but only after the due process provisions outlined above have been completed, for the following violations of this Agreement, because such violations will result in injury to the City, and because it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance:

9.5.1.1 For failure to comply with the reporting requirements as set forth in Section 5 and or otherwise provided requested books and records required under the Franchise: One hundred dollars (\$100.00) per day for each day the violation continues;

9.5.1.2 For failure to materially comply with the carriage of PEG Access Channel(s) requirements as set forth in Section 10: Two hundred dollars (\$200.00) per day for each day the violation continues;

9.5.1.3 For purposes of any liquidated damages assessments, all similar violations or failures arising out of the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under any single one of the above-referenced categories. Violations or failures shall not be deemed to have occurred or commenced until they are deemed not cured as provided in Section 9.2.

9.5.1.4 The amount of all liquidated damages per annum shall not exceed thirty thousand dollars (\$30,000.00) in the aggregate.

## 9.6 Revocation.

9.6.1 Should the City seek to revoke this Franchise after following the procedures set forth above in this Section 9, including the public hearing described in Section 9.3., the City shall give written notice to Grantee of such intent. The notice shall set forth the specific nature of the noncompliance. The Grantee shall have sixty (60) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a second public hearing. The City shall cause to be served upon the Grantee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

9.6.2 At the designated hearing, consistent with applicable federal and state law, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence consistent with applicable federal and state law, to compel the relevant testimony of persons as permitted by law, and to question and/or cross examine witnesses, submit written testimony, and to all other due process rights in accordance with state and federal law. A complete verbatim record and transcript shall be made of such hearing. All costs associated with the conduct of the hearing, including any required hearing officer as determined by the City, as well as the creation of a written transcript shall be shared by the Grantee and the City.

9.6.3 Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the City shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Grantee. The City shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Grantee to affect any cure. If the City determines that the Franchise shall be revoked, the City shall promptly provide Grantee with a written decision setting forth its reasoning. Grantee may appeal such determination of the City to an appropriate court of jurisdiction. . Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the franchising authority.

9.6.4 The City may, at its sole discretion, take any lawful action, which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

## **SECTION 10 Access Programming**

10.1 PEG Capacity. Grantee shall provide capacity for the City's four (4) PEG Channels on Grantee's Basic Cable Service tier for the City's noncommercial public, educational and governmental ("PEG") programming through Grantee's Cable System consistent with the requirements set forth herein. As of the Effective Date of this Agreement, the City utilizes four (4) PEG Channels. By mutual consent of the Cities of Champaign and Urbana; the City of

Champaign programs one of the four Channels and this Channel is made available in the City of Urbana and at no charge by the Grantee.

10.1.1 The Grantee shall monitor the PEG Access Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of PEG Channels; provided however, that the Grantee is not responsible for the production quality of PEG Access programming productions. The City, or its designee, shall be responsible for the production and quality of all PEG access programming. The PEG Channels must be receivable by Subscribers without special expense other than the expense required to receive Basic Cable Service or digital service, as applicable. Nothing herein precludes the Grantee from charging for equipment needed for Basic Cable Service.

10.1.2 Grantee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. However, the PEG Channel(s) is (are), and shall be, operated by the City, and the City may at any time allocate or reallocate the usage of the PEG Channel(s) among and between different non-commercial uses and users for the purpose of cablecasting noncommercial public, educational and governmental (“PEG”) programming.

10.1.3 Noncommercial use of PEG. Permitted noncommercial uses of the PEG Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited, non-profit, public educational institutions, which include Parkland Community and the University of Illinois, which offer telecourses over an educational PEG channel.

10.2 Additional Access Channel. At City’s sole discretion, the City may request, and the Grantee shall provide, one (1) additional PEG access channel (beyond the initial four (4) PEG channels referenced above) to be utilized for noncommercial public, educational and governmental programming. Upon written request from the City and no later than one hundred twenty (120) days from receipt of the request, the Grantee shall make this additional PEG channel available on a digital tier of Service available to at least sixty percent (60%) of its Subscribers in the City. No later than thirty (30) days after receiving the written request from the City, Grantee shall provide the City with a written estimate of Grantee’s expenses related to the activation of the channel. These expenses may include, but not be limited to, construction of a fiber optic return line and any equipment needed to transmit and receive the programming at the Grantee’s head end. The City agrees to reimburse the Grantee for all documented expenses related to the activation of the additional access channel. Grantee shall not assess the City a monthly fee for the lease of equipment or transmission facilities in order to provide the additional access channel on the channel line-up. Upon activation of the additional access channel Grantee may relocate the educational access channels operated by Parkland Community College and University of Illinois to a digital tier of Service available to at least sixty percent (“60%”) of Grantee’s Subscribers in the City.

10.3 PEG Capital Fee. Upon the Effective Date of this Franchise Agreement, Grantee shall maintain the current PEG fee and continue to collect from all Subscribers in the Service Area and shall pay to City an amount equal to two percent (2%) of Grantee’s Gross Revenues to

support PEG (“PEG Fee”). City shall utilize the PEG Fee for capital expenses by PEG entities within the City, as determined in City’s sole discretion for cable-related purposes. The City recognizes that as of the Effective Date, under existing federal law the PEG Fee must be used exclusively for PEG capital expenses as that phrase is defined by applicable law. If, during the term of this Agreement, the Cable Act is modified so that the PEG fee may be used for other PEG support purposes then the City shall have the right to utilize the PEG fee for those purposes. The PEG Fee shall be remitted by Grantee on a monthly basis in the same manner as the franchise fee required by section 5.1 hereof.

City shall be permitted to hold all or a portion of the PEG Fee from year to year as a designated fund to permit the City to make large capital expenditures, if necessary, as long as the City spends the entire amount of PEG Fees collected by the end of the term of this Franchise Agreement. Moreover, if City chooses to borrow from itself or a financial institution revenue for large PEG access capital purchases or capital expenditures, the City shall be permitted to make periodic repayments using the PEG Fee.

The PEG Fee is not part of the Franchise Agreement fee, and falls within one or more of the exceptions in 47 U.S.C. § 542. Such costs may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other applicable law. The City and Grantee agree that the PEG Fees received by the City will not be used to enable the City or another designated third party to directly or indirectly offer a service that is intended to compete with Grantee.

10.4 Origination Point. Grantee shall maintain throughout the life of this Franchise Agreement all existing fiber return lines that are in place as of the Effective Date as stated below in order to enable the distribution of PEG access programming to Grantee’s residential Subscribers. Grantee shall ensure that the System is capable of cablecasting live programming (i.e. program origination capability) from the following locations:

City Hall – 400 S. Vine St., Urbana

Urbana School District Administration Building – 205 N. Race St., Urbana

University of Illinois – 300 N. Goodwin Ave. Urbana

Future Origination Points. At such time that the City determines that it wants the capacity to allow subscribers in the City to receive public, educational and/or governmental access programming (video and character generated) which may originate from schools, City facilities and/or other government facilities (other than those indicated above ); or at such time that the City determines that it wants to establish or change a location from which public, educational and/or governmental access programming is originated; or in the event the City wants to upgrade the connection to Grantee from an existing signal point of origination, the City will give Grantee written notice detailing the point of origination and the capability sought by the City. Grantee agrees to submit a cost estimate to implement the City’s plan within a reasonable period of time. After an agreement to reimburse Grantee for its expenditure, Grantee will implement any necessary system changes within a reasonable period of time.

10.5 Grantee Use of Access Channels. Pursuant to 47 U.S.C. 531(d) and because the City and Grantee agree that a blank or under utilized Access Channel is not in the public interest, the City shall (1) develop rules and procedures under which the Grantee is permitted to use Access channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and (2) develop rules and procedures under which such permitted use shall case. The above referenced rules shall be provided to the Grantee no later than twelve (12) months following the execution of this Franchise Agreement

10.6 Access Channel Relocation.

Grantee shall use reasonable efforts to provide at least thirty (30) days prior written notice of an Access Channel relocation to Subscribers and at least a thirty-one (31) day written notice to the City. In conjunction with any occurrence of PEG Channel(s) relocation, Grantee shall notify its Subscribers of such relocation in the form of a bill message, or other form of written communication in accordance with applicable law, sent to all subscribers. When possible the PEG Access Channels will be located in reasonably close proximity to similar news, information, educational or public affairs programming on the Grantee's channel line-up as more fully described in section 4.2 herein.

**SECTION 11 Miscellaneous Provisions**

11.1 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by Acts of God including but not limited to tornados, floods, earthquakes, and unusually severe rain or snow storms that make travel difficult; strikes, riots, wars, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

11.2 Notice. Any notification that requires a response or action from a party to this franchise, within a specific time-frame or would trigger a timeline that would affect one or both parties' rights under this franchise, shall be made in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

|                 |  |
|-----------------|--|
| To the City:    | Mayor<br>City of Urbana<br>400 South Vine St.<br>Urbana, Illinois 61801<br>Attn: _____ |
| To the Grantee: | Comcast  |

1500 McConnor Pkwy  
Schaumburg, Illinois 60173  
Attn: Vice President of Government Affairs

With non-binding courtesy copies to: Comcast  
NorthCentral Division  
676 Island Pond Rd.  
Manchester, NH 03109

Comcast  
1701 John F. Kennedy Blvd.  
Philadelphia, PA 19103  
ATTN: Government Affairs

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above.

11.3 Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral

11.4 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

11.5 Governing Law. This Franchise shall be construed and interpreted according to the laws of the State of Illinois and federal law, as applicable. Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise shall be in the court of proper jurisdiction in the County of Champaign, Illinois

11.6 Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City, as required by applicable law.

11.7 No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

Work Performed by Others. All applicable obligations of this Franchise Agreement shall apply to any subcontractor or others performing any work or services pursuant to the provisions

of this Franchise Agreement, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a Cable System or provide Cable Service within the City. Upon written request, Grantee shall provide notice to City of the name(s) and address(es) of any entity performing any work or services pursuant to the provisions of this Franchise Agreement, other than Grantee.

11.8 Rights Cumulative. All rights and remedies given to City or Grantee by this Franchise Agreement or retained by City or Grantee herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City or Grantee at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise Agreement or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City or Grantee and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

11.9 No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, City or Grantee may have under federal or state law unless such waiver is expressly stated herein.

Acceptance. Grantee shall accept this Franchise Agreement within thirty (30) days of receipt of an executed copy from the City, unless the time for acceptance is extended by City.

This Franchise Agreement will be properly executed and acknowledged by Grantee and delivered to City. With its acceptance, Grantee shall also deliver insurance certificates within 30 days, as required herein that have not previously been delivered.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

**For the City of Urbana:**

**For Comcast of Illinois/ Indiana/  
Ohio, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_