

## FRANCHISE RENEWAL AGREEMENT

THIS FRANCHISE RENEWAL AGREEMENT made and entered into as of the 16<sup>th</sup> day of August, 2004, (the "Effective Date"), by and between the CITY OF WARRENVILLE, an Illinois municipal corporation (hereinafter called "Municipality" or "City") and COMCAST OF ILLINOIS/OHIO/OREGON, LLC

### WITNESSETH

WHEREAS, the City is authorized to grant one or more nonexclusive franchises to construct, operate and maintain a cable television system within the City; and

WHEREAS, Comcast has been operating a cable television system within the City pursuant to a franchise granted to its predecessor in interest on April 20, 1981; and

WHEREAS, Comcast wishes to continue to provide cable service in the City and has requested renewal of the franchise agreement; and

WHEREAS, the City has considered the financial, legal and technical ability of Comcast to meet the future cable-related needs and interests of the community; and

WHEREAS, the City has determined that Comcast has the legal, technical and financial ability to meet the future cable-related needs and interests of the community as set forth in this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

### **Section 1. Renewal of Non-Exclusive Franchise**

There is hereby granted by the City of Warrenville, Illinois, a renewed, non-exclusive Franchise to Comcast, to operate and maintain a cable system for a period of seven (7) years from the effective date of this franchise.

### **Section 2. Definitions**

For the purposes of this Agreement, the following terms, phrases, words and their derivations shall have the meanings given herein. The word "shall" is always mandatory and not merely directory.

"Access User" shall mean a person or entity, including City, that provides programming on a PEG Channel.

"Affiliate" and "Affiliated" mean any entity Controlling, Controlled by or under common Control of the Franchisee.

“Cable Drop” means a length of cable or wire, not to exceed 125 feet that connects a customer’s premises to the distribution portion of a Cable System in the right of way or easement adjacent to the customer’s property.

“Cable Services” shall mean the one-way transmission to all subscribers of video programming or other programming services, including subscriber interaction, if any, used for the selection or use of such video programming or other programming services.

“City” shall mean the City of Warrenville, DuPage County, Illinois.

“Construction” shall mean any digging, boring, excavating or grading within the Public Ways for the purpose of adding to or replacing any portion of the Cable System.

“Council” shall mean the City Council of the City of Warrenville.

“Franchise” shall mean the authorization to operate a cable television system, including all mutual rights, duties and obligations of the Franchisee and the City as contained in this Agreement.

“Gross Revenue” The revenue derived by the Grantee from the operation of the cable system in the Franchise Area to provide cable service calculated in accordance with generally accepted accounting principles, including, but not limited to, monthly basic, premium and pay-per-view service fees, installation fees and equipment rental fees. Gross Revenue shall not include refundable deposits, bad debt, investment income, nor any taxes, fees or assessments imposed and/or assessed by any governmental authority. Gross Revenue shall also include the calculation of the franchise fee on the collected franchise fees in accordance with the “Dallas decision” and the per-subscriber allocation of advertising sales and home shopping revenue for the City of Warrenville.

“Public Ways” shall mean all dedicated public rights-of-way, streets, highways, and alleys within the boundaries of City regardless of whether or not they are under the jurisdiction of City. “Public Ways” shall not include property of City that is not a dedicated public right-of-way, street, highway, or alley.

“PEG Channels” shall mean the downstream public, educational and governmental access channels provided by Company on the Cable System under this agreement.

“Schools” shall mean all public and private elementary and secondary schools which have been granted a certificate of recognition by the Illinois State Board of Education, pursuant to Illinois State Statutes, and which are located within the Franchise Area.

“System” or “Cable System” A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is

designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community.

### **Section 3. Grant of Authority**

There is hereby granted by the City which represents and warrants that it has the requisite power and authority to do so, to the Franchisee the non-exclusive right and franchise to construct, use, operate, own, modify, maintain and extend such towers, antennas, cables, electronic equipment and other appurtenances necessary for the operation of a Cable System to all territory within the Corporate Limits of the City, subject to all applicable federal, state and local laws and regulations.

- A. Without reducing its police powers to adopt and enforce any ordinances of general applicability that is necessary to protect the health, safety and welfare of the public, the City hereby grants to Franchisee authority to use the Public Ways, and this Franchise shall be construed to authorize the construction, reconstruction, upgrading, or rebuilding of a Cable System in, over, and upon such Public Ways in accordance with Section 621(a)(2) of the Cable Act, and to grant access to such Public Ways whether or not such Public Ways specifically contemplate or designate "Cable TV". The City, to the extent that it is lawfully able, shall also include this grant in future easements, licenses, and rights-of-way as they are created.
- B. The parties acknowledge the existence and applicability of the terms and conditions of 65 ILCS 5/11-42-11, Illinois's Cable Television Level Playing Field statute to the issuance of additional franchises granted by the City to new operators of cable systems in the City of Warrenville.
- C. To the extent allowed by applicable State and federal law, this Agreement authorizes the construction, maintenance and operation of the Cable System over Public Ways, and through easements within the City. Franchisee shall arrange any easements over or under private property necessary for the Construction or operation of the Cable System. Property owned by the City other than the Public Ways shall be deemed "private" except that Franchisee may use general utility easements that are dedicated for compatible uses on property owned by City. In using all easements, Franchisee shall comply with all federal, State, and local laws and regulations.
- D. The facilities of Franchisee shall be installed underground in those areas of City where telephone and electric services are both underground at the time of system Construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system Construction, Franchisee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, Franchisee shall likewise place its facilities underground, under the same terms and conditions as all other occupants of the rights-of-way.
- E. The Franchisee shall protect, support, temporarily disconnect, relocate, or remove any property of Franchisee when, in the opinion of the City the same is required by reason of traffic conditions, public safety, street vacation, freeway or street Construction, change or establishment of street grade, installation of sewers, drains, water pipes,

power line, signal line, transportation facilities, tracks, or any other types of structure or improvements by governmental agencies whether acting in a governmental or public improvement, including but not limited to movement of buildings, urban renewal and redevelopment, and any general program under which the City shall undertake to cause all such properties to be located beneath the surface of the ground. Under all such circumstances above the Franchisee agrees to conduct all necessary work under the same terms and conditions as all other occupants of the rights-of-way.

- F. City may temporarily disconnect, remove or relocate any of the Franchisee's facilities, which have not been disconnected, removed or relocated within a reasonable period of time after written request from City, provided the City has provided at least 30 days advance notice of the necessary work to be completed by the Franchisee. Neither City nor any agent, contractor or employee thereof shall be liable to Franchisee, its customers or third parties for any damages caused them or the Cable System due to any activities described in this Section.

#### **Section 4. Franchise Term and Acceptance of the Franchise Agreement**

- A. Term: The Franchise granted herein shall expire seven (7) years from and after its effective date unless otherwise extended, terminated, or revoked in accordance with this Agreement. The term of the Franchise may also be extended by written agreement of the parties. The effective date shall be the date on the first page of this Agreement.
- B. Acceptance: The Franchise as well as all rights, privileges, obligations and authority granted therein shall become effective upon the authorization of the Corporate Authority of the City for the execution of this Agreement, and the parties' execution of said Franchise Agreement. By their execution of the Agreement, the parties promise to comply with and abide by all provisions, terms and conditions of this Agreement.

#### **Section 5. Construction and Cable System Design**

- A. Franchise Area: The Franchise Area shall be the corporate limits of the City, as they exist now and throughout the term of the Franchise. Any subsequently annexed or areas already being served by the Franchisee shall continue to be provided service under the franchise pertaining to the annexed area. The Franchisee shall make all reasonable efforts, in accordance with this Agreement, to provide common services to the annexed area as soon as practical.
- B. Extension of Cable System; Line Extension to Residences: In areas of the Franchise territory not included in the initial Franchise service area, the Franchisee shall be required to extend its Cable System pursuant to the following density and proximity requirements. The Franchisee shall extend and make Cable Service available to every dwelling unit in all unserved, developing areas having at least thirty-five (35) occupied dwelling units per cable mile, as measured from the existing system, simultaneously with the installation of utility lines to the extent practical.

- C. **Non-Standard Extension:** In areas not meeting the requirements for mandatory extension of service, the Franchisee shall provide, upon the request of a potential Subscriber(s) an estimate of the Franchisee's costs required to extend service and, if the potential Subscriber(s) agrees to pay such costs, the Franchisee shall extend service to the potential Subscriber(s).
- D. **New Development Undergrounding:** In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Franchisee advance notice at the time of notice to the utilities of such construction or development. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if the Franchisee fails to install its conduit, pedestals and/or vaults and laterals, as designated in the notice given by the property owner or developer or the City to Franchisee, then should the trenches be closed, the cost is to be borne by the Franchisee.
- E. **Special Agreements:** Nothing herein shall be construed to prevent the Franchisee from serving geographical areas not covered under this Section upon agreement with developers, property owners, residents, or businesses.
- F. **Non-residential Service:** The Franchisee will make every effort to offer the commercial establishments within the Franchise Area Cable Service, provided that the installation is economically reasonable. The commercial establishment shall be responsible for the total cost of installation as determined by the Franchisee.
- G. **Subscriber Network:** The Franchisee shall construct, operate and maintain its cable system in accordance with its current engineering practices.
- H. **Backup Power:** The Franchisee shall provide backup power for the cable system including but not limited to backup power supplies capable of providing eight (8) hours of power to the headend and three (3) hours of power to the cable system plant in the event of an electrical outage, with additional backup capacity provided by portable generators.
- I. **Emergency Override:** The Franchisee shall provide and maintain an emergency override system capable of providing an audio and video signal over all of the analog Channels on the Cable System. Control over such override shall be assigned to the City and the audio and video signals shall be operable by the City from remote locations. The City agrees to indemnify and hold the Franchisee harmless from any damages or penalties arising out of the willful and wanton negligence of the City, its employees or agents in using such service. Both parties shall comply with applicable rules and regulations regarding Emergency Alert Systems (EAS) by providing the Cable System capability to transmit an emergency alert signal in the event of disaster or public emergency.
- J. **Periodic Testing and Compliance with FCC Standards:**

1. The Franchisee shall construct and operate the Cable System to comply with the FCC technical standards contained in Part 76, Subpart K of the Commissions rules and regulations, as updated and amended from time to time (47 U.S.C. §76, Subpart K).
2. The Franchisee shall perform all tests necessary to determine compliance with the FCC technical standards. Tests shall include, at minimum, proof-of-performance tests required by FCC Rule Section 76.601 (47 U.S.C. §76.601) and such additional or repeat tests involving specified Subscriber terminals as may be required to determine compliance with the FCC technical standards.
3. Written records of test results shall be maintained at a Franchisee's local system office and made available for inspection by the City or other designated agent of the City, upon request of the City. The selection of any such agent of the City shall be subject to the mutual consent of the City and Franchisee and the Franchisee shall not unreasonably withhold its consent to the City's selection.
4. The City or other designated agent of the City may monitor compliance with the FCC technical standards referenced herein in accordance with applicable law.
5. Not later than ninety (90) days after any new or substantially upgraded or rebuilt portion of the Cable System is made available for service to Subscribers, technical performance tests shall be conducted by the Franchisee to demonstrate full compliance with the FCC Technical Standards cited hereinabove. Such tests shall be performed by or under the supervision of a qualified engineer with proper training and experience. Upon request, a copy of the report shall be submitted to the Franchising Authority describing test results, instrumentation, calibration, and test procedures. Where said report has been requested, the Franchisee shall send such completed report to the City within seven (7) calendar days of the receipt of said request.
6. Where there exists recurring evidence, which in the judgment of the City, based upon documented reports of poor signal quality in a localized area of the City being served off of a common node that casts doubt upon the reliability or quality of Cable Service, the City shall have the right and authority to require the Franchisee to test, analyze, and report on the performance of the Cable System. The Franchisee shall fully cooperate with the City in performing such testing and shall prepare results and a report, if requested, within thirty (30) days after notice. Such report shall include the following information:
  - a. The nature of the complaint or problem that precipitated the special tests;
  - b. The system component(s) tested;
  - c. The equipment used and procedures employed in testing;

- d. The method, if any, in which such complaint or problem is resolved; and
  - e. Any other information pertinent to the tests and analysis, which may be required.
7. The City may require that the City observe the tests or an agent designated by the City. The selection of any such agent of the City shall be subject to the mutual consent of the City and Franchisee and the Franchisee shall not unreasonably withhold its consent to the City's selection. The City or the City's agent as the case may be, shall be given records of the special tests a report interpreting the results of the special tests. If the tests show that the poor signal quality is due to the Franchisee's equipment, the Franchisee shall take such measures as are necessary to cure the poor signal quality.

K. Permitting and Inspection:

- 1. The Franchisee shall comply with all applicable federal, state and local rules, regulations and construction codes governing the construction, operation, maintenance and installation of the Cable System, as such rules, regulations and codes are in force as of the time of the installation or other work. Franchisee shall comply with the provisions of the National Electrical Safety Code of the National Bureau of Standards (ANSI-2002), the National Electrical Code of the National Fire Protection Association (NFPA-2001).
- 2. All construction, installation, restoration and maintenance work shall be subject to pertinent Ordinances, regulations or policies of the City applicable to all occupants of the Public Ways.
- 3. All work done by or on behalf of the Franchisee shall be done in a manner that does not unreasonably interfere with the rights and convenience of property owners who adjoin the Public Ways of the City. If property is disturbed or damaged, the Franchisee shall restore the property to its former condition, normal wear and tear accepted. All facilities shall be installed in a manner consistent with existing utility installations in the Public Way and shall be completed in a manner that does not unreasonably interfere with the proper and usual use of the Public Way.
- 4. All restoration shall be performed in accordance with the permit requirements and with applicable ordinances.
- 5. The Franchisee shall not construct any facilities within the City until it has secured all necessary approvals and permits from the City, and any other governmental body having jurisdiction; provided that the City shall impose no permit fees upon the Franchisee. In any permit issued by the City, the City may impose any condition, restriction, or regulation, consistent with the City codes and regulations, for the purpose of

protecting any structures or facilities in the Public Ways of the City, for the proper restoration of the Public Ways of the City, for the continuity of pedestrian and vehicular traffic, and for protection of the public.

6. Franchisee may, upon reasonable notice to the City, trim trees or other vegetation on public property owned by the City or encroaching upon the Public Ways to prevent branches or leaves from touching or otherwise interfering with Franchisee's wires, cables, or other structures. All trimming or pruning shall be at the sole cost of Franchisee. Franchisee may contract for trimming or pruning services with any Person approved by the City prior to the rendering of such services, which approval shall not be unreasonably withheld. Franchisee shall comply with the City's ordinance regarding restoration of parkways or tree bark and the City agrees that the security deposit required, if any, in said ordinance is satisfied by the Security Fund provided in this agreement. The Franchisee shall be responsible to ensure its compliance with the City's tree trimming regulations.
7. The Franchisee shall make reasonable effort to avoid major disturbances of street pavements, sidewalks, alleys, public and private landscaping, and all other publicly or privately held properties or structures during all phases of construction and maintenance of the cable system within the Public Ways of the City. The open cutting of Public Ways shall be prohibited except when specifically agreed upon by the City, and restoration shall conform to the City's then current engineering standards.
8. All cable passing under any roadway or public way shall be installed in conduit, which has been augured, not open cut, under the roadways or Public Ways, unless the permit issued for the work contains an express waiver of this requirement and approval for an alternative installation.
9. In the case of the disturbance for construction or maintenance of any landscape plantings, which may include, but is not limited to trees, shrubs, and grass, none of which are located in the Public Way, Franchisee shall, at its own expense, within five (5) working days, weather permitting, in the manner required by the City's ordinances, regulations, or policies, replace and restore all such surfaces to their condition prior to Franchisee's activities. In the case of grass, restorations shall be accomplished by re-sodding or seeding the area as appropriate.
10. The City shall have the right to inspect all construction work performed within the City Public Ways. Any inspections of construction work made by the City shall be at the expense of the City.
11. The Franchisee shall be a member of J.U.L.I.E. (the Joint Utility Location Information for Underground Excavators), and shall be responsible for

contacting J.U.L.I.E. or any successor agency for all of its construction and for responding in a timely manner to requests from J.U.L.I.E. or successor agency and the City to locate its cables. The Franchisee is responsible for accurately marking its plant in conformance with J.U.L.I.E. or successor agency standards.

12. A full and complete reproducible set of plans, records, and “as-built” maps showing the location of all of the Franchisee’s cable installed or in use within the Franchise Area, exclusive of Subscriber service drops, shall be provided sixty (60) days after upgrading of the Cable System is completed. The “As-Built” maps shall be provided in computer-readable format compatible with the City’s Geographic Information System (GIS). To the extent permitted by law, the Franchisee may declare its “As-Built” maps, plans and records to be proprietary and exempt from the provisions of the Illinois Freedom of Information Act.

L. Personnel: The Company Franchisee is responsible for all of its personnel, including its contractors, agents, employees and subcontractors engaged in system construction and maintenance. All employees working for the Company Franchisee in the field shall carry identifications of the person at all times. All of the Franchisee’s vehicles, and any contractor or sub-contractor vehicles, shall be clearly identified as performing work for the Company Franchisee.

M. Installation Standards:

1. All underground drops shall be buried a minimum of six (6) inches.
2. A Subscriber shall have the option to connect a standard drop to the dwelling unit by either:
  - a. Connection of the aerial drop to the dwelling unit at a minimum of twelve (12) feet above the ground level; or,
  - b. Attachment of the drop to the side of the utility pole and buried from the base of the utility pole to the dwelling unit.
3. All temporary service drops placed between November 1 of the prior year and March 1 of the current year, also known as snowdrops, shall be buried between April 1 and May 31, weather permitting, in addition to any delays permitted by the City.
4. Weather permitting; the Franchisee shall bury all temporary drops, excluding snowdrops referenced above, within fourteen (14) business days after placement.
5. Nothing contained in this Agreement shall relieve any person or entity from liability arising out of the failure to exercise reasonable care to avoid interfering with Franchisee facilities while performing the public works.

- 6. If any of the Franchisee's equipment shall interfere with the public works, that part of the Franchisee's equipment which interferes shall be removed or replaced by the Franchisee in such manner as shall be directed by the City so that the same shall not interfere with the public works as reasonably determined by the City and Franchisee shall bear the expense of such removal or replacement, provided the City is not providing directly or indirectly financial assistance or reimbursement to any other occupant of the ROW for like facilities relocations.
  
- N. City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In Public Ways, where necessary, the location shall be verified by excavation or by requesting "locates" from City and from J.U.L.I.E.
  
- O. All cables and wires or other work shall be installed parallel with existing telephone and electric utility wires whenever possible. Multiple cable configurations shall be in parallel arrangement and bundled in accordance with engineering and safety considerations and all applicable codes.

**Section 6. Renewal Process**

Renewal of Franchise: The City and the Franchisee shall follow the renewal procedure as provided by applicable federal law, namely 47 USC 546, commonly referred to as the Section 626 process

**Section 7. Subscriber Services**

- A. The Franchisee agrees to provide, at a minimum, cable-programming services in the following broad categories:
 

Children	Sports
Family oriented	Ethnic/Minority programming
Educational programming	Arts, culture and performing arts
News & Information	General Entertainment
Weather	
  
- B. Business Office: The Franchisee operates and maintains several conveniently located bill payment and customer service facilities throughout metropolitan Chicago. For as long as such facilities continue to be operated by the Franchisee the facilities will be available during normal business hours capable of accepting payments and to the extent provided for the answering of cable television inquiries.

**Section 8: Government and Institutional Services**

- A. The Franchisee will provide and maintain without charge one standard video service connection to each non-residential, non-commercial purpose, local government building and school building within the Franchise Area passed by the Subscriber network and to any local government building and school building constructed in the

Franchise Area during the term of this Agreement. If any such institution declines such installation, the institution shall retain the right to request such installation at any time during the life of this Agreement.

- B. The Franchisee agrees to install within each local government building and school building at a location to be approved by the institution one service drop, and to provide Basic Cable service. In the event that the existing cable plant must be extended beyond 125 feet, the local institution shall be solely responsible for the labor and materials costs of such extension. At such locations for which internal wiring is required or requested, Franchisee shall provide such internal wiring and the entities shall pay Franchisee's actual expenses therefore.

### **Section 9. Customer Service Standards**

- A. Franchisee shall comply with the FCC Customer service standards including any future amendments thereto.
- B. The Franchisee shall provide thirty (30) day written notice of all programming changes and price adjustments to the City.
- C. In the instances of the Franchisee's intention to add or supplement programming without re-locating existing programming or other services or impacting customer bills the Franchisee should be permitted to provide such programming or services as soon as possible. Therefore in those instances the Franchisee shall do so at the earliest practical opportunity and make every effort to notify the City and its customers of those additional benefits as soon as possible.
- D. Any customer shall have the right to have their service disconnected, in accordance with applicable federal and State law, which shall include the removal of any equipment owned by Franchisee from the customer's residence.

### **Section 10. Records and Reports**

- A. Upon request by the City, no more than once annually and with sixty (60) days notice, the Franchisee shall submit a written report to the City, including the following information:
  - 1. A status report for new construction projects within the City.
  - 2. Upon request, Franchisee shall provide the total number of its Subscribers in the Franchise Area, including Subscribers added and discontinued during the reporting year. The Franchisee may, at its discretion, identify these statistics as proprietary or a trade secret, subject to exemption from the terms and conditions of the Illinois Freedom of Information Act.
  - 3. A log of service interruptions, including a general description as to the nature of the cause of the interruption.

4. A log of service calls detailed by broad category.
  5. A telephone answering profile containing the number of phone calls answered within thirty (30) seconds, the percentage of phone calls answered within thirty (30) seconds and the average speed of answer.
- B. Additional Information: The Franchisee shall provide such additional information as the City may reasonably require from time to time, regarding the enforcement of this Agreement, or any applicable Federal, state, rules or regulations wherein the City is responsible for enforcement. The Franchisee may reasonably require the execution of a confidentiality agreement by the City before the inspection of any records containing privileged, confidential or proprietary information.

### **Section 11. Community Programming and Capital Funding**

- A. The Franchisee agrees to provide up to a maximum of two (2) downstream channels in order to allow the City to provide non-commercial programming to the Franchisee's customers. The City currently operates only one channel and the second channel shall be made available when the programming on the City channel reaches a level where a second channel becomes necessary. The City and the Franchisee agree to cooperatively determine when the programming reaches that level and will consider the public demand for an additional access channel as well as the impact on the services to be lost by the Franchisee's customers.
- B. In the event that the Franchisee would relocate the channel position of either PEG channel the Franchisee will provide thirty (30) days notice of its intention to move the channel and agrees to work with the City to inform its customers of such relocation.
- C. In the event that the programming insertion point for the City would need to be relocated the Franchisee agrees to work with the City and take all reasonable steps necessary to establish a return path from the alternative location. The franchisee will work in earnest to complete all work necessary to provide the connection within four (4) months of receiving notice of the alternative location, the Franchisee shall be accorded reasonable time extensions to allow for the readiness of the studio and for weather conditions impact on construction. The costs of such construction shall be borne by the City.
- D. Upon the direction of the City, the franchisee shall add a line-item charge to its customers' bills for the purpose of collecting monies for use in the purchase of PEG access equipment in order to produce programming to be placed on the Franchisee's cable system. The maximum amount of the line item charge shall be fifty cents per month per subscriber and shall not be implemented for longer than any 12-month period. The City will have two separate opportunities to trigger this line-item charge, between the effective date of this agreement and its first anniversary date and upon the fifth anniversary.
- E. In order for the City to initiate the line-item pass through the City shall provide the Franchisee with a written request indicating the amount of the line-item charge as

well as the duration of such charge, in accordance with the paragraph above, as well as a demonstration of the intended utilization of the equipment and the City's allocation of operating costs in order to produce and air the intended programming on Franchisee's cable system.

## **Section 12. Franchise Fee**

- A. Franchisee shall pay City throughout the term of the franchise granted herein a Franchise Fee in an amount equal to 5% of Franchisee's Gross Revenues.
- B. Franchisee shall pay Franchise Fees on a quarterly basis within Thirty (30) days of the last day of the quarter.
- C. Upon Request, no more than once annually, the Franchisee shall file with the Director of Finance an annual report, prepared and audited by a representative of the Franchisee, showing the yearly total Gross Revenues for Franchisee's preceding fiscal year. The annual report shall be provided to the City within one hundred twenty (120) calendar days of Franchisee's fiscal year end.
- D. City may audit Franchisee to verify the accuracy of Franchise Fees paid to the City. City shall pay the cost of the accountant. Franchisee shall make all records reasonably necessary for such audit available at a location reasonable and convenient to the City, in the Chicago metropolitan area. Any audit shall be conducted in accordance with Generally Acceptable Accounting Principles. Any additional amount due the City shall be limited to the five (5) calendar years preceding the audit and paid within forty-five (45) days of the City's submitting an invoice for such sum. If such sum exceeds 3% of the total Franchise Fees, which the audit determines should have been paid for any calendar year, Franchisee shall also pay the City's cost of auditing that calendar year.
- E. All sums not paid when due shall bear interest at a rate which is 1% over the prime rate then being charged by Bank One (or its successors), and computed monthly, on a single interest, three hundred sixty (360) days per year basis. Interest shall be calculated monthly based on the actual number of days in the interest period.

## **Section 13. Indemnification and Insurance**

- A. The City shall not at any time be liable for any injury or damage occurring to any Person or property from any cause whatsoever arising out of this Agreement or from the use, operation, or condition of the Cable System; except that the City does hereby indemnify, save, and hold harmless and agrees to defend Franchisee from all liens, charges, claims, demands, suits, actions, fines, penalties, losses, costs (including, but not limited to, legal fees and court costs), judgments, injuries, liabilities, or damages, in law or equity; of any and every kind and nature whatsoever, whether caused by or arising out of any act of omission or commission, or any negligence of the City, or its officers, elected or appointed officials, servants, agents, employees, or contractors, whether or not arising out of or in any way connected with the City's use of the Cable

System facilities or equipment; however, the indemnity granted hereby shall not extend to liabilities of any type or kind whatsoever arising out of any acts of negligent or willful misconduct on the part of Franchisee, its officers, servants, agents, employees, or contractors.

- B. The Franchisee shall defend, indemnify, save and hold the City and its officers, agents and employees free and harmless from and against any and all liens, claims, actions, demands, suits, damages, costs, judgments, injuries, expenses and liabilities, including legal fees and, court costs and fines, which may be incurred by them, asserted against them, or sought to be imposed upon them, individually, jointly or severally, and which arise directly or indirectly out of or are connected in any way with the construction, installation, maintenance, operation or condition of the Franchisee's Cable System, except to the extent those damages, claims, awards and judgments arise from the negligence of the City, or its officers, elected and appointed officials and employees, including but not limited to:
1. Any negligent, tortious or wrongful act or omission of the Franchisee, and its officers, agents, employees, contractors or subcontractors resulting in personal injury, bodily injury, sickness or death to any Person, or in loss or damage of any kind to the property of any Person including the Franchisee and its officers, agents, employees, licensees and invitees.
  2. Any negligent, tortuous or wrongful act or omission of the Franchisee, and its officers, agents, employees, contractors or subcontractors resulting in damage to, loss of, destruction or unauthorized use of any trademark, trade name, copyright, patent or other intangible property rights of any person including libel, slander and invasion of privacy.
  3. Loss or damage of any kind related to Franchisee's failure to comply with the provisions of this Franchise Agreement, or of any federal, state or local law or regulation applicable to the Franchisee or the cable system.
- C. The Franchisee shall assume for its officers, agents, employees, contractors and subcontractors all risk of dangerous or hazardous conditions in, on or about any public streets, easements or rights-of-way of the City, except for latent conditions actually caused by the willful or negligent acts of the City or its employees.
- D. The indemnity granted hereunder shall not extend to, judgments or liabilities to the extent they arise out of the negligence or willful misconduct on the part of the City, or its officers, agents or employees while acting on behalf of the City.
- E. Except to the extent caused by the negligence, malicious or intentional wrongful acts, or the willful misconduct of the City, or its officers, agents or employees while acting on behalf of the City, the City and its officers, agents or employees shall not be liable to the Franchisee for any claims for damage to, or loss of, all or any part of Franchisee's Cable System arising out of any public work, public improvement, alteration of any municipal structure, change in the grade or line of any Public Way of

the City, the elimination, discontinuing or closing of any Public Way of the City, or other exercise by the City of its lawful authority over the Public Ways.

- F. The Franchisee recognizes the City's right to exercise its police powers over the Public Ways of the City in case of fire, disaster or other emergency as reasonably determined by the City. Notwithstanding the provisions in Paragraph D above, the City shall not be liable to the Franchisee for any damage to the Franchisee's Cable System or other property when such damage results from the exercise by the City of its police powers in order to protect the public in case of fire, disaster or other emergency. When practicable, as determined by the City, the City agrees to consult with the Franchisee prior to the exercise by the City of such police power, where the exercise may affect the Franchisee's Cable System and to permit the Franchisee to take necessary actions to protect the public and the Franchisee's Cable System or other property.
- G. Each party shall give the other reasonably prompt written notice of any claim, demand, action or proceeding for which indemnification will be sought under this provision of the Agreement and, if such claim, demand, action, or proceeding is a third-party claim, demand, action or proceeding, Franchisee will have the right at its expense to assume the defense of such claim, demand, action, or proceeding, using counsel reasonably acceptable to the City. The City shall have the right to participate, at its own expense, with respect to any such third-party claim, demand, action, or proceeding. Franchisee and the City shall cooperate with each other and provide each other with access to relevant books and records in their possession. No such third-party claim, demand, action, or proceeding shall be settled without the prior written consent of the City, which consent shall not unreasonably be withheld or delayed.
- H. Insurance:
  - 1. As a part of the indemnification provided by the provisions of this Section, but without limiting the foregoing, the Franchisee shall within thirty (30) days of the execution of this Franchise Agreement, file with the City Administrator, and at all times thereafter maintain in full force and effect at its sole expense, evidence of a policy or policies for the following:
    - a. Commercial General Liability Insurance. Comprehensive or Commercial general liability insurance, including, but not limited to, coverage for bodily injury, personal injury, and property damage shall be maintained at the sum(s) of five million dollars (\$5,000,000) per occurrence and five million dollars (\$5,000,000) aggregate.
    - b. Business Automobile Liability. Comprehensive automobile liability include, but not limited to, non-ownership and hired car coverage as well as owned vehicles with coverage for bodily injury and property damage, shall be maintained at the sum(s) of three million dollars (\$3,000,000) per accident.

- c. Property Loss. Fire insurance with coverage for extended perils on the Franchise property used by the Franchisee in the conduct of Franchise operations in an amount adequate to enable the Franchisee to resume Franchise operations following the occurrence of any risk covered by this insurance.
  - d. Workers Compensation Insurance. In such coverage, with statutory limits as may be required by the State of Illinois.
- 2. The policy or policies shall specifically recognize and cover the indemnification provisions of this Agreement. The City and its officers, agents, and employees shall be named as an additional insured, and the policy or policies shall contain cross-liability endorsements. The insurance shall provide that the insurance provided by the Franchisee shall be primary and that any provision of any contract of insurance or other risk protection benefit or self-insurance policy purchased or in effect or enacted by the City and any other insurance or benefit shall be in excess thereof.
- 3. The insurer or insurers shall have Best Insurance Rating of at least A-, VII and shall be approved by the State of Illinois.
- 4. The policy or policies of insurance shall be maintained by the Franchisee in full force and effect during the entire term of the Franchise. All certificate(s) shall contain the following endorsement:
 

“Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 day prior written notice to the holder named on the certificate.”
- 5. The Franchisee may, at its option, self-insure with respect to any or all of the foregoing insurance requirements.

**Section 14. Notice**

- A. All notices between the parties shall be given as follows and shall be provided to the representatives specified below. All notices or other written communications required to be provided to the City or the Franchisee under any provision of this Agreement, shall be deemed served when delivered by hand or by Federal Express or similar service to that party’s address set forth below during normal business hours; or when mailed to any other Person designated by that party in writing herein to receive such notice, via certified mail, return receipt requested.

Notice shall be given to the following:

City:	Franchisee:
City Administrator	Director of Government Affairs
City of Warrenville	Comcast Corporation

28 W701 Stafford Place  
Warrenville, IL 60555

2001 York Road  
Oak Brook, IL 60523

- B. All notices with regard to compliance or enforcement matters relating to any Ordinance or this Franchise Agreement shall be provided via certified mail with return receipt required. All other routine notices may be provided via regular U.S. Mail. Routine notices provided via facsimile or other electronic means may be acceptable as long as each is subsequently provided via U.S. Mail.
- C. Either party can change the designated address for notices provided that the notice of such change complies with this provision as stated above.

### **Section 15. Transfers, Ownership and Control**

- A. In the event of a change of control or ownership of Franchisee (“change of control” shall mean a change in ownership of a majority interest in voting stocks), the parties to the sale or transfer shall make a written request to the City for its approval of sale or transfer (a “Transfer Requiring Approval”). The written request shall be accompanied by information required by FCC rules and shall be presented on a form as prescribed by FCC rules (currently FCC Form 394).
- B. In accordance with the Cable Act, the City shall have one hundred twenty (120) days from receipt of the information referred to in Subsection (A) above to act on the request for approval. If the City fails to render a final decision on the request within that time, the request shall be deemed granted unless Franchisee and the City agree to an extension of the time.
- C. During the review period described in Subsection (b) above, the City may advise Franchisee that a public hearing is deemed necessary to evaluate any potential adverse effect of the sale or transfer upon Franchisee’s Subscribers. In such event, Franchisee shall receive written notice of the hearing and of the opportunity to participate fully in it, as far in advance as possible, and in no event less than fourteen (14) days before the start of the hearing.
- D. A decision of the City upon a request pursuant to this Section shall be in writing and subject to review and appeal as provided in the Cable Act.
- E. In reviewing a request for sale or transfer pursuant to this Section, the City may inquire into the technical, legal, and financial qualifications of the prospective controlling party, and Franchisee shall assist the City in so inquiring. The City shall not unreasonably withhold its approval. In no event shall a transfer or assignment of ownership or control be approved without the transferee or assignee assuming, in writing, the obligations of the Franchisee under this Agreement.
- F. Notwithstanding anything to the contrary, no consent or approval by the City shall be required for a transfer or assignment to any Person or entity controlling, controlled

by, or under common control with Franchisee, or for any sale, transfer, or assignment other than a Transfer Requiring Approval.

## **Section 16. Security Fund**

- A. On the effective date of the Franchise Agreement, the Company shall establish a permanent Security Fund with the City in the amount of ten thousand dollars (\$10,000.00) in the form of a corporate surety bond or other instrument, which complies with the generally utilized requirements of the City for such instruments provided by other occupants of the right-of-ways. The Company shall maintain the Security Fund so long as any part of the System is located within the Public Ways of the City. Should an existing fund be in place the Franchisee shall have at least 30 days to replace the existing fund in order to comply with this agreement.
- B. Purpose of Fund: The fund shall serve as security for the full and complete performance of the Company for all of its obligations under this Franchise Agreement, including payment of any costs, expenses, damages or loss the City pays or incurs because of any act or omission attributable to the Company that constitutes a violation, default or failure to comply with the codes, Ordinances, rules, regulations or permits of the City, and the payment of any undisputed liquidated damages, judgments, fees or taxes actually due the City.
- C. Assessing the Fund: The City may assess the Security Fund pursuant to the procedures set forth in Subsection D of this Section in the following circumstances:
  - 1. In the event of any default or failure of the Company, to pay any undisputed liquidated damages or undisputed fees due the City and required pursuant to this Agreement.
  - 2. In the event the City has incurred any out-of-pocket cost, expense, damage or loss because of any act or omission attributable to the Company that constitutes a violation, default or failure to comply with the requirements of this Agreement, but only to the extent that the amount of such out-of-pocket cost, expense, damage or loss is not greater than one thousand five hundred dollars (\$1,500.00).
- D. Notice to Company: Before any sums may be withdrawn from the Security Fund, the City shall give not less than thirty (30) days written notice to the Company which shall:
  - 1. Identify the amount that the City contends it is due as liquidated damage fees or out-of-pocket costs incurred by the City as described in Subsection C.1. and C.2. of this Section.
  - 2. Contain a plain statement of the alleged act, omission, default or failure to comply with the requirements of this Agreement stating the default, including a description of the Company's failed attempts to correct such errors.

3. Provide the Company with an opportunity to review the Notice with City Administrator or his/her designee.
  4. Provide the Company with an opportunity to first pay the amount, if any, due the City.
  5. Provide the Company an opportunity to answer the notice, secure a hearing and obtain a written determination in accordance with the violation procedures set forth in Section 17.
- E. Undisputed Amounts: The Company shall promptly pay any undisputed liquidated damages, judgments, fees, taxes or amounts due the City. If the Company fails to pay any undisputed amounts due the City within thirty (30) days after written notice from the City, the City may withdraw the amount stated in the notice from the Security Fund.
- F. Restoring the Fund: The Company shall replenish the Security Fund within thirty (30) days after written notice from the City that monies have been withdrawn from the fund, or if there is otherwise a deficiency in the amount of the fund.

#### **Section 17. Franchise Compliance**

- A. General: The Franchisee shall comply with the requirements of this Franchise Agreement at all times during the term of its Franchise. In the event of any dispute between Franchisee and City regarding compliance with any aspect of this Agreement, both parties agree to cooperate with one another in good faith to assure as much as possible the smooth, continuous operation of the Cable System and the provision of service of the highest possible quality to subscribers; provided, however, nothing herein shall serve to limit or abrogate the rights and duties of either party under this Agreement.
- B. Material Violations: If the City has reason to believe that the Franchisee has committed a material violation of this Franchise Agreement, the City may act to remedy the violation in accordance with the procedures set forth below. A material violation shall include:
1. Construction or operation in the City or in the Public Ways of the City without a required permit, license or authorization.
  2. Construction or operation at an unauthorized location.
  3. Unauthorized Franchise transfer.
  4. Material misrepresentation by or on behalf of the Franchisee in any application to the City.

5. Failure to construct, complete, relocate or remove all or any part of the Cable System as required by this Franchise Agreement.
  6. Failure to provide the services, facilities or resources required by this Franchise Agreement.
  7. Failure to pay taxes, Franchise Fees, or other payments required under this Agreement when and as due the City.
  8. Failure to deliver evidence of Franchisee's insurance coverage as specified in Section 11 of this Agreement.
  9. Failure to establish and maintain the Security Fund required pursuant to this Agreement.
  10. Repeated failure to comply with the Customer Service Standards as required by this Franchise Agreement.
  11. Failure to comply with the Public, Educational or Governmental Access provisions of this Franchise Agreement.
- C. Notice of Violations: Written notice shall be given to the Franchisee setting forth the nature of the material violation and a reasonable period of time for the Franchisee to correct the violation. Unless the City determines that the violation is of such a nature that a lesser period of time is warranted for remedying the violation, the Franchisee shall be given thirty (30) days after receipt of such notice to remedy the violation.
- D. Answer to Notice of Violations: Within the thirty (30) days, or such other period of time specified by the City, but not less than thirty 30 days, in its notice to the Franchisee, the Franchisee shall respond in writing to the City:
1. That it contests the City's notice of violation and requests an opportunity to be heard as provided herein. The Franchisee shall submit supporting documentation with its response to the notice.
  2. That it contests the City's notice of violation for the reason(s) that no violation exists or the violation was beyond the reasonable control of the Franchisee, and requests an opportunity to be heard as provided herein. The Franchisee shall submit supporting documentation with its response to the notice.
  3. That the Franchisee will remedy the violation within the time specified by the City in its notice to the Franchisee.
  4. If the Franchisee contends that an extended period of time is reasonably needed to remedy the violation, it shall submit a written request for an extension, together with supporting documentation that the Franchisee cannot reasonably remedy the violation within the time period specified by

the City in its notice to the Franchisee. The City shall not unreasonably deny an extension of time to remedy the violation. If the City grants the extension, the Franchisee shall proceed to remedy the violation within the extended time prescribed, provided that the Franchisee shall also inform the City on a regular basis of the steps being taken to remedy the violation.

- E. **Public Meeting:** The City shall give the Franchisee not less than fourteen (14) days written notice of the date, time and place of the public meeting to be held before the Corporate Authorities. At the public meeting, the Corporate Authorities shall hear and determine the issues and render its findings and its decision. If the City has appointed a hearing officer, the hearing officer shall hear the relevant evidence and shall render a record of the administrative hearing and recommended findings and decision to the Corporate Authorities.
- F. **Determination:** If the Franchisee fails to submit a written response to the City's notice of violation as provided in Paragraph D of this Section; or if the Franchisee fails to remedy the violation within the time period specified by the City in its notice to the Franchisee, or any extensions thereto granted by the City; or if the Franchisee submits a response, and if the Corporate Authorities determine after a hearing that the Franchisee has committed a material violation as provided herein; the Corporate Authorities may, after giving the Franchisee an opportunity to be heard, seek or obtain judicial relief to enforce the provisions of this Franchise Agreement.

## **Section 18. Franchise Revocation and Termination**

- A. **Revocation.** The Franchise granted to the Franchisee pursuant to this Agreement is subject to revocation in the event of any substantial breach of this Franchise Agreement or default in performance of the Franchisee's performance of the Franchise. The following events, acts or omissions on the part of the Franchisee are a substantial breach and may be considered cause for revocation of the Franchise and termination of this Franchise Agreement:
  - 1. Repeated failure, after notice and an opportunity to cure, to comply with the material terms or provisions of this Agreement;
  - 2. Repeated failure to cure material violations of the Franchise Agreement within a reasonable time after notice from the City;
  - 3. Practices fraud or deception upon the City which actions may include any attempt to purposefully evade or avoid any of the provisions of this Franchise;
  - 4. The Franchisee has been adjudged to be bankrupt, has a receiver appointed for it, makes an assignment for the benefit of creditors, or has a significant amount of its property sold under the execution or other legal process or is seized by creditors; or

5. Repeated failure to pay taxes, Franchise Fees, other financial obligations under this Agreement, costs or penalties when and as due the City.
- B. Notice of Substantial Breach: Written notice shall be given to the Franchisee setting forth:
1. The nature of the substantial breach or default by the Franchisee;
  2. A written demand that the Franchisee correct the violation; and
  3. Notice that any failure to correct the substantial breach or default within thirty (30) days or other time period as the parties may agree may be cause for revocation of the Franchise.
- C. Answer to Notice of Breach. Within thirty (30) days the Franchisee shall respond in writing to the City, together with documentation in support of its response:
1. That it contests the City's notice of substantial breach and requests an opportunity to be heard as provided herein.
  2. That corrective action has been implemented by the Franchisee and the substantial breach or default has been cured.
  3. That corrective action has been implemented by the Franchisee and is being actively and diligently pursued in accordance with a written corrective action plan to be submitted to the City.
- D. Opportunity for Franchisee to be Heard: If requested by the Franchisee, or if the City is not satisfied that sufficient corrective action is being actively and expeditiously pursued by the Franchisee to remedy the substantial breach or default, the City shall schedule a public meeting to hear and determine the issues and to consider whether sufficient cause exists to revoke the Franchise.

The City shall give the Franchisee not less than fourteen (14) days written notice specifying the City's intent to consider the revocation of the Franchisee's Franchise, and the date, time and place of the public hearing to be held before the City Council, or a hearing officer appointed by the City Council. If a hearing officer has been designated, the officer shall hear the relevant evidence and shall render a record of the administrative hearing and recommended findings and decision to the City Council.

- E. Determination by Hearing Officer: If the recommended findings and decision in subsection D above are provided to the City Council by a hearing officer, the parties shall be entitled to an opportunity to present their respective positions to the City Council. The City Council shall hear the relevant evidence, provide the Franchisee the opportunity to be heard on said relevant evidence and shall determine whether or not a substantial breach or default by the Franchisee has occurred, whether it has been cured or a satisfactory corrective action plan has been submitted and is being actively and diligently pursued, and whether cause exists to impose a lesser sanction. In the

event that the City is caused to revoke the Franchise, it shall send notice of revocation and file within a reasonable time after said determination.

- F. **Determination by Corporate Authorities:** If the Corporate Authorities determine that cause exists to revoke the Franchise, it may by ordinance declare a Franchisee's Franchise to be terminated and revoked, provided that the City may grant the Franchisee an additional period of time to remedy the substantial breach or default before such ordinance is fully effective.
- G. **Judicial Relief:** No provision of this Section shall be deemed to bar or otherwise limit the right of the City to seek or obtain judicial relief to enforce the provisions of this Franchise Agreement.

### **Section 19. Liquidated Damages**

- A. **Amounts.** Because Grantee's failure to comply with or to perform certain obligations under this Franchise Agreement, or its failure to do so in a timely manner may result in damage to the City that is difficult to determine, the City and the Grantee agree to the following liquidated damages as the liquidated sum or sums to be reasonably paid in light of the anticipated loss caused by or resulting from the specified violation, default and resulting injury:
  - 1. Failure to provide data, documents, applications or reports, including financial reports to the City----\$50.00 per day or any part thereof until filed.
  - 2. Failure of Grantee to provide or maintain required insurance coverage---- \$150.00 per day from the time the insurance lapsed until policy is reinstated, but not more than \$750.00 for failure to provide evidence of required insurance.
  - 3. Commission of a material violations of this Franchise Agreement as set forth in Section 17 of this Agreement----\$100.00 per day.
- B. **Accrual of Liquidated Damages.** Unless otherwise specified in this Agreement, liquidated damages accrue from the date written notice of the violation is given.
- C. **Assessment of Liquidated Damages.** Liquidated damages shall be assessed against the Grantee at such time upon the following events:
  - 1. The failure to answer a Notice of Violation within the time period allowed as provided in Section 17.C. of this Agreement and a determination made pursuant to Section 17.F. of this Agreement.
  - 2. If not disputed, the failure to cure the violation within the time period allowed in the Notice of Violation or such extended time period as

provided in Section 17(D)(4) of this Agreement and a Determination made pursuant to Section 17 (F) of this Agreement; or

3. If disputed, a determination that a violation occurred as provided in Section 17(F) of this Agreement.
- D. **Effect on Grantee's Franchise Duties.** The assessment and collection of liquidated damages shall not affect Grantee's obligation to comply with the provisions of this Agreement or applicable law.
  - E. **Other Remedies.** If the City elects to assess liquidated damages, such election shall constitute the exclusive remedy for a period of sixty (60) days. Thereafter, if the Grantee remains in noncompliance with the requirement of this Agreement, the City may pursue any available remedy.

## **Section 20. Privacy**

The Franchisee agrees to comply with the specific provisions and restrictions of the Cable Privacy Act and its subsequent amendments if any.

## **Section 21. Rate Regulation**

To the extent that federal or State law or regulation may now, or as the same may hereafter be amended to, authorize the City to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Franchisee, the City shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the FCC and any State or federal statutes.

## **Section 22. General Provisions**

- A. **Commercial Leased Access:** The Franchisee shall comply with the Commercial Leased Access requirements of the Cable Act (47 CFR §532).
- B. **No Waiver:** The failure of the City or the Franchisee on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a breach is not a waiver of any other breach. No delay or omission of the City or Franchisee to exercise any right or remedy shall be considered to be a waiver of or acquiescence in any default.
- C. **Severability:** If any section, subsection, sentence, clause, phrase, or provision of this Agreement is for any reason held to be unconstitutional or invalid as conflicting with any federal, state or local law rule or regulation now or hereafter in effect by any federal or state court, or administrative or governmental agency of competent

jurisdiction, including but not limited to the FCC, or is held by such court or agency to be modified in any way to conform to the requirements or any such law, rule or regulation, such provision shall be deemed a separate, distinct and independent part of this Agreement, and such holding shall not affect the validity of the remaining parts of this Agreement, which shall be applied and construed as reasonably as possible in the absence of the invalidated provision.

- D. Franchisee's Inability to Perform (Force Majeure): In the event the Franchisee's performance of any of the terms, conditions, obligations of this Franchise is prevented or impaired by a cause or event beyond the Franchisee's reasonable control, the inability to perform shall be deemed to be excused and no liquidated damages, penalties or sanctions shall be imposed as a result thereof, provided, however, that the inability to perform shall not relieve the Franchisee from the obligations pertaining to refunds and credits for interruptions in service. For the purpose of this Section, causes or events not within the reasonable control of Franchisee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, Franchisee's inability to obtain permits or permission to access necessary Public Ways or Easements, and natural disasters such as floods, earthquakes, landslides, and fires or other events beyond the Franchisee's control, but shall not include financial inability of the Franchisee to perform or failure of the Franchisee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Franchisee, or the failure of the Franchisee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the Cable System where the Franchisee has failed to exercise reasonable diligence to secure such supplies, services or equipment.
- E. Franchise Validity: The Franchisee expressly acknowledges that upon accepting the right, privilege and Franchise granted it does so relying upon its own investigation and understanding of the power and authority of the City. By the acceptance of a Franchise, the Franchisee shall agree it will not at any time set up against the City in any claim or proceeding any provision, condition or term of the Franchise Agreement as unreasonable, arbitrary or void or that the City had no power or authority to make such provision, term or condition except as to those matters preempted by federal or state agency or law.
- F. Acknowledgments by the Parties: The Parties expressly acknowledges the following:
1. By acceptance of the Grant, the parties acknowledge that they have carefully read and considered the terms and conditions of this Franchise Agreement and accept all of the terms and conditions and agree to abide by the same.
  2. Acknowledge that they have carefully read the terms and conditions of this Franchise Agreement and expressly waives any claims that any provisions are unreasonable or arbitrary or void, or that either party had no power or authority to make the provision, term or condition as part of or

pursuant to this Franchise Agreement except as to those matters which are preempted by federal or state law.

3. Acknowledge that they have not been induced to accept the Franchise by any promise, oral or written, by or on behalf of the City, Franchisee or by any third person, regarding any term or condition of this Franchise Agreement not expressed herein.
  4. Represent that no promise or inducement, oral or written, has been made to any City employee, agent or official regarding receipt of this Franchise.
- G. **Venue of Enforcement:** Except as to any matter within the jurisdiction of the federal courts, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, DuPage County, Illinois. With respect to any matter within the jurisdiction of the Federal Court shall be brought in the United States District Court of the Northern District of Illinois.
- H. **Entire Agreement:** This Agreement constitutes the entire Agreement among the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussion of the parties, whether oral or written, and there are no representations or other agreements among the parties except as specifically set forth herein.
- I. **Amendment:** No provision of this Agreement shall be deemed amended by either party, unless such amendment is in writing and signed by the authorized representative of each party.
- J. **Modification:** The Franchisee and the City shall follow the procedures for Franchise modifications as established by the Cable Communications Policy Act of 1984 as set forth in Section 625 (47 CFR §545). This provision only pertains to those modifications meeting the specific parameters of Section 625. Either party has the right to propose any mutually agreed to modifications in writing at any time.
- K. **No Third-Party Beneficiaries.** Nothing in this Chapter or any Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such Chapter or Franchise Agreement.

CITY OF WARRENVILLE

By: [Signature]  
Mayor Pro Tem

Date: Aug. 24, 2004

Attest: [Signature]  
City Clerk

COMCAST OF ILLINOIS/OHIO/OREGON, LLC

By: [Signature]  
Comcast

Date: 9/24/04

Witness: [Signature]