

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
DECEMBER 7, 2010 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Renewal of the Cable Television Franchise Agreement between the Village of Downers and Comcast of Illinois	✓ Resolution Ordinance Motion Discussion Only	Douglas Kozlowski, Communications Director

SYNOPSIS

A resolution has been prepared to authorize approval of the Cable Television Franchise Agreement between the Village of Downers Grove and Comcast of Illinois VI, Inc., for a ten year term.

STRATEGIC PLAN ALIGNMENT

The Goals 2013 identified *Exceptional Municipal Organization*

FISCAL IMPACT

The Comcast Franchise Agreement generates \$585,000 annually in General Fund revenue.

RECOMMENDATION

Approval on the December 14, 2010 Active Agenda

BACKGROUND

The regulations and guidelines regarding municipal cable television franchises are primarily governed by the Cable Communications and Policy Act of 1984 (the Cable Act). Certain tenants of the Illinois Municipal code, Downers Grove Municipal Code, the Illinois Cable and Video Customer Protection Law and FCC Technical Standards are also applicable to the proposed franchise agreement.

Negotiations between Comcast and the Village opened in March 2009, in advance of the expiration of the prior agreement in August 2009. Since that time both organizations have proceeded in good faith to negotiate a renewed franchise document, as the prior agreement remained in full force and effect during negotiations.

Staff approached the negotiations with goals for ensuring that the cable television service provided by Comcast conforms to all federal, state and locally prescribed standards for customer service, technical performance, public right-of-way usage, Public-Educational-and-Governmental (PEG) capacity, and financial obligations. However, it is important to note that the Cable Act prohibits local franchising authorities from prescribing service rates or the carriage of specific programming services (channels) as a condition of the franchise agreement.

The goals outlined for a renewed franchise agreement have been achieved and are reflected in the following components of the proposed agreement:

Customer Service (SECTION 4.3)

The agreement incorporates the customer service standards and customer privacy protections as set forth in the Illinois Cable and Video Customer Protection Law, including but not limited to the following;

- Providing customers with at least 30 days written notice before increasing rates

- End charges to customers for service within one business day of a request for cancelation
- Limiting customer service appointment windows to four-hour time slots
- Scheduling appointment times that are convenient to the customer
- Providing customers who have mobility impairments with free use of a converter or remote control unit

Technical Performance (SECTION 8.1)

The FCC Technical Standards as cited in this section are designed to ensure that the signal provided by the Grantee is free of interference, color quality and audio signal degradation. It establishes the Village as the specific point of contact for unresolved complaints in this regard.

Right-Of-Way Standards (SECTION 3.1)

Ensures Grantee compliance with the Rights-of way standards within the Downers Grove Municipal Code, allowing the Village to permit and inspect all installations in addition to encouraging collocation to minimize disruptions whenever possible.

PEG Capacity/Optional Funding Mechanism (SECTION 10)

Provides for the preservation of current capacity including DGTv-ch.6 and District 99-ch.16, in addition to the establishment of a 3rd channel if certain “need for capacity” requirements are met. This section provides the Village with the ability to enact a pass-through PEG fee of up to .35 per month per subscriber, to be used solely for capital improvements relating to cable TV operations. This fee can only be implemented by Village Council action separate from the adoption of this franchise agreement.

Financial Obligations (SECTION 5)

Under the agreement Comcast will pay to the Village a franchise fee in an amount equal to five percent 5% of annual Gross Revenues received from the operation of the Cable System in Downers Grove.

Other notable requirements within the proposed agreement include the availability of an Emergency Alert system, as well as the provision of complimentary basic cable service to all public and private State accredited school buildings and public buildings owned/operated by local government units.

ATTACHMENTS

Resolution

Proposed Franchise Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A
CABLE TELEVISION FRANCHISE AGREEMENT**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Franchise Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and Comcast of Illinois VI, Inc. (the “Grantee”), for Village wide cable television services, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the Village of Downers Grove, Illinois (hereinafter, the “Village”), an Illinois municipal corporation and home rule unit of government, and Comcast of Illinois VI, Inc., (hereinafter, the “Grantee”), on this _____ day of _____, 2010 (the “Effective Date”).

The Village, 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 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”), the Illinois Constitution of 1970, including the Village’s home rule powers, and the Illinois Municipal Code, as amended from time to time, including without limitation 65 ILCS 5/11-42-11 provided that any provisions of the Illinois Municipal Code that are inconsistent with the Cable Act shall be deemed to be preempted and superseded.

SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, unless otherwise defined in this Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, as the Cable Act is defined in this Section.

“Access Channel” means a channel position for Public, Educational and/or Governmental access as defined herein.

“Public Access” is noncommercial use of an access channel by the public on a first-come, first-served, nondiscriminatory basis.

“Educational Access” is noncommercial use of an access channel by educational institutions, such as public or private schools (but not “home schools”), community colleges, and universities.

“Government Access” is noncommercial use of an access channel by the Village for the purpose of providing local government information and programming.

"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.

“Cable Operator” means any Person or group of Persons who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System; or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

"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.

“Cable System,” or “System” means a facility as defined in the Cable Act 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 the Franchise Area.

“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 a television channel is defined by the Federal Communications Commission by regulation.

“Converter” means an electronic device, which converts signal carriers from one form to another.

“Customer”, “Cable Subscriber” or “Subscriber” means a Person who lawfully receives and pays for Cable Service with the Grantee’s express permission and does not further distribute it.

“Dwelling Unit” means a single-family or multiple-family residential place of occupancy.

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

“Franchise” means the initial authorization, or renewal thereof, issued by the Village, 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.

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

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

“Grantee” shall mean Comcast of Illinois VI, Inc., or the lawful successor, transferee, designee or assignee thereof.

“Gross Revenue” means the Cable Service revenue received by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view video fees on all tiers of Cable Service, any event-based charges for cable service, advertising and home shopping revenue, late fees, installation, activation and termination fees, repair charges and equipment charges including but not limited to equipment rental fees. Gross Revenue shall also include such other revenue sources directly related to Cable Service as may now exist or hereafter develop, provided that such revenues, fees, receipts, or charges are lawfully included in the gross revenue base for purposes of computing the Village’s permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, advertising sales commissions and third party agency fees, nor any taxes, fees or assessments of general applicability imposed or assessed by any governmental authority. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5th Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the “Pasadena Decision,” *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues*, CSR 5282-R, *Memorandum Opinion and Order*, 16 FCC Rcd. 18192 (2001), and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5th Cir. 2003).

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Cable System as of the Effective Date of this Franchise Agreement.

“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 Village.

"Right-of-Way" or "Rights-of-Way" means any street, alley, other land or waterway including the surface, the air space above the surface and the area below the surface, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including but not limited to, public utility easements and other easements which have been dedicated for compatible uses, now or hereafter held by the Village in the Franchise Area, in which the Village has the right and authority to authorize, regulate or permit the location of facilities other than those of the Village. "Right-of-way" or "Rights-of-way" shall not include any real or personal Village property that is not specifically described in this definition and shall not include Village buildings, fixtures and other structures or improvements, regardless of whether they are situated in the right-of-way.

"Village" means the Village of Downers Grove, Illinois.

"Village Council" means the corporate authorities of the Village of Downers Grove, Illinois.

"Village Manager" means the duly appointed Village Manager of the Village of Downers Grove, or his/her designee.

SECTION 2 - Grant of Authority

2.1. Nonexclusive Franchise Authority. The Village hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Rights-of -Way within the Franchise Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Right-of-Way, subject to Sections 3.1 and 2.4 of this Franchise Agreement such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ten (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 shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, and any applicable State law which may exist at the time of renewal and which is not superseded by the Cable Act.

2.4. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the Village to authorize the use of the Rights-of-Way for public purposes or to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Village, or (C) be construed as a waiver or release of the rights of the Village in and to the Rights-of -Way.

2.5. Competitive Equity.

2.5.1. In the event the Village grants an additional Franchise to use and occupy the Rights-of-Way for the purposes of operating a cable system, the additional Franchise shall only be granted in accordance with applicable federal, state and local law including the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.

2.5.2. In the event an application for a new cable television franchise or other similar authorization is filed with the Village proposing to serve the Franchise Area, in whole or in part, the Village shall promptly inform the Grantee and to the extent permitted by law provide a copy of such application to the Grantee.

2.6. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the Village of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the Village pursuant to such police power.

SECTION 3 – Construction and Maintenance of the Cable System

3.1. Generally. Except as otherwise provided in this Agreement, Grantee shall comply with all requirements generally applicable to all occupants of the Rights-of Way established in the Downers Grove Municipal Code including Section 19.40 which incorporates, “Standards for Construction of Facilities on the Public Rights-of-Way.”

3.2. Undergrounding and Beautification Projects. In the event all users of the Rights-of -Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities at no cost to the Village. Grantee’s relocation costs shall be included in any computation of necessary project funding. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds, or payment in advance from private funds, allocated for the project to the same extent as such funds are made available to other users of the Rights-of-Way, provided that any

utility's exercise of authority granted under its tariff to charge consumers for the cost of the project shall not be considered to be public or private funds.

3.3. In instances where a third party is seeking the relocation of the Grantee's facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

SECTION 4 - Service Obligations

4.1. General Service Obligation. The Grantee shall continue to provide Cable Service within the Initial Franchise Service Area. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile of the existing Cable System's technically feasible connection point. Subject to the density requirement, Grantee shall offer Cable Service to all new homes 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 in 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. Customer Service Obligations. The Village and the Grantee acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 et seq., and Chapter 11, Article 11.800 of the Downers Grove Municipal Code. Enforcement of such standards and the penalties for non-compliance with such standards shall be consistent with the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 et seq.

4.4. New Developments.

4.4.1. Underground Utilities. In the case of new construction or property development where utilities are to be placed underground, the Village agrees to require the developer or property owner to provide the Grantee written notice concurrent with notice to the other utilities of such construction or development, and of the particular date on which open trenching will be available for the Grantee's installation of conduit, pedestals, and/ or vaults and laterals for the Cable System. The Grantee shall also provide specifications to the developer or property owner as needed for trenching.

4.4.2. Notice to Grantee. The Village shall notify, or require the developer or property owner to notify, the Grantee of any and all planned developments in its Franchise Area or those located in areas expected to be annexed. Such notices shall be provided at the time of notice to all other utilities or like occupants of the Village's Rights of way, and shall include sufficient information to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction and capital resources. If advance notice of such developments is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise Agreement.

4.5. Service to Public Buildings.

4.5.1. Service to School Buildings. The Village and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to State accredited K-12 public and private schools not including "home schools," located in the Franchise Area within one hundred twenty five feet (125) of the Grantee's distribution cable.

4.5.2. Service to Governmental Facilities. The Village and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to current and future public buildings located in the Franchise Area within one hundred twenty five (125) feet of Grantee's distribution cable. "Public buildings" includes, but is not limited to, all local unit of government buildings owned or leased by the unit of local government for government administrative purposes, and shall not include buildings owned by a unit of local government but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed. Service shall be used in a manner consistent with the governmental purpose for the eligible building and shall not be resold.

SECTION 5 - Oversight and Regulation by Village

5.1. Franchise Fees. The Grantee shall pay to the Village a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis 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 undisputed Franchise Fee payments, owed by Grantee in accordance with this Section which are not made on or before the due dates, Grantee shall make such payments including interest at the prime lending rate as quoted by JP Morgan Chase & Co. or its successor, computed daily from time due until paid. Any undisputed overpayments made by Grantee to the Village shall be returned or credited upon discovery of such overpayment and shall be payable within thirty (30) days of the receipt of written notice from Grantee.

5.1.1. Change in Amount. The Parties acknowledge that, at present, the Cable Act limits the Village to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. If, during the term of this Agreement, the Cable Act is modified so that the Village would otherwise be authorized to collect a Franchise fee at a rate greater than five percent (5%) of Gross Revenues, the Village may unilaterally amend this Agreement to increase the required percentage to be paid by the Grantee to the City/Village up to the amount permitted by the Cable Act, provided that: (i) such amendment is competitively neutral; (ii) the Village conducts a public hearing on the proposed amendment; (iii) the Village approves the amendment by ordinance; and (iv) the Village notifies Grantee at least ninety (90) days prior to the effective date of such an amendment. In the event a change in state or federal law requires a reduction in the maximum permissible franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: i) the maximum permissible franchise fee percentage; ii) the lowest franchise fee percentage paid by any other video service provider, under state authorization or otherwise, providing service in the Franchise Area or any other cable provider granted a cable franchise by the Village pursuant to Title 47; or, iii) such franchise fee percentage as may be approved by the Village, provided that: (a) such amendment is competitively neutral; (b) the amendment is in compliance with the change in state or federal law; (c) the Village approves the amendment by ordinance; and (d) the Village

notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

5.2. Franchise Fees Subject to Audit. The Village and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards.

5.4. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature with the exception of the information directly related to an audit of Franchise Fees as set forth in Section 5.2, or of PEG Capital Support as set forth in Section 10.6. The Village agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Village that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may (upon receipt of an appropriate confidentiality agreement) make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority’s representative. In the event that the Village has in its possession and receives a request under a state “sunshine,” public records, or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Village shall notify Grantee of such request and cooperate with Grantee in opposing such request to the extent permitted by law and at Grantee’s expense. Grantee shall indemnify and defend the Village from and against any and all claims arising from the Village’s opposition to disclosure of any information Grantee designates as proprietary and/or confidential. Compliance by the Village with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, 5 ILCS 140, or with a decision or order of a court with jurisdiction over the Village, shall not be a violation of this Section.

SECTION 6 – Transfer of Cable System or Franchise or Control of Grantee

6.1. Consent. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Village, 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 Village, 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. The Grantee or any proposed transferee under this Section 6 shall submit a written application to the Village containing or accompanied by such information as is required in accordance with applicable law and FCC regulations, including Section 617 of the Cable Act, 47 U.S.C. Sec. 537.

6.1.1. Within thirty (30) days of receiving a request for consent, the Village shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the Village has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted. As a condition to the granting of any consent, the Village may require the transferee to agree in writing to assume the obligations of the Grantee under this Franchise Agreement.

6.2. Insolvency. Any transfer of control resulting from or after the appointment of a receiver or receivers or trustee or trustees, however denominated, designated to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of a one hundred twenty (120) day period, shall be treated as a transfer of control pursuant to 47 U.S.C. Section 537 and require the Village's consent thereto in the manner described in Section 6.1.

SECTION 7 – Insurance and Indemnity

7.1. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the Village certificates of insurance designating the Village and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of Five Million Dollars (\$5,000,000.00) for bodily injury or death to any one person, and Five Million Dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and Five Million Dollars (\$5,000,000.00) 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 Village. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Village from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.

7.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the Village, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, provided that the Village shall give the Grantee written notice of its obligation to indemnify and defend the Village within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Village determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Village.

7.2.1. The Grantee shall not indemnify the Village for any liabilities, damages, costs or expense resulting from any conduct for which the Village, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the Village by reference to the limits of insurance coverage described in this Agreement.

SECTION 8 - System Description

8.1. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R. Sec. 76.601 *et seq.*, as amended from time to time.

SECTION 9 - Enforcement of Franchise

9.1. Notice of Violation or Default. In the event the Village believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

9.2. Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the Village's written notice: (A) to respond to the Village, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Village of the steps being taken and the projected date that the cure will be completed.

9.3. Enforcement. Subject to applicable federal and state law, and pursuant to the provisions of 9.2 herein, in the event the Village determines that the Grantee is in default of any material provision of the Franchise, the Village may:

9.3.1. seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other relief available at law including declaratory judgment and injunctive relief; or

9.3.2. in the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

(i) The Village shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including two or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Village has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The Village shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the Village shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and an audio/video recording shall be made. A copy of the recording shall be made available to the Grantee within ten (10) business days. The Grantee may, at its own expense, arrange for a written transcript of the public hearing. The decision of the Village shall be in writing and shall be delivered to the Grantee in the manner authorized in Section 11.2. The Grantee may appeal such determination to an appropriate court in accordance with Section 11.9 within thirty (30) days of receipt of the Village's decision.

9.4. Remedies Not Exclusive. In addition to the remedies set forth in this Section 9, the Grantee acknowledges the Village's ability pursuant to Section 4.1 of this Franchise Agreement to enforce the requirements and standards, and the penalties for non-compliance with such standards, consistent with the Cable and Video Customer Protection Law; and, pursuant to Section 3.1 of this Franchise Agreement. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit the Village to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such remedies may be exercised from time to time and as often and in such order as may be deemed expedient by the Village.

SECTION 10 – Access Programming

10.1 PEG Capacity. The Grantee shall provide capacity for the Village’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 Village utilizes two (2) PEG Channels. Unless otherwise agreed to by the Village and the Grantee to the extent required by applicable law, the Channels may be carried on the Grantee’s basic digital service tier. The Village’s PEG programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time.

10.1.1. Additional PEG Capacity. At its discretion, the Village may request an additional channel; provided, however, the Village must demonstrate that the Threshold Use Requirement is satisfied. For the purposes of this Agreement, the term “Threshold Use Requirement” means that the initial channels shall be programmed by the Village at least eight (8) hours per day with non-repetitive, video programming, Monday through Saturday, for a minimum of six (6) consecutive months. The Village shall provide the Grantee with written documentation evidencing that the Threshold Use Requirement is being satisfied. Grantee shall have one hundred twenty (120) days from receipt of the Village’s request to provide the additional channel. Unless otherwise agreed to by the Village and the Grantee to the extent required by law, the additional channel shall be carried on the most basic service tier offered by the Grantee. Once provided, the additional channel may not be removed or withdrawn by Grantee for the first twelve (12) months following the provision of such additional channel. Any such removal or withdrawal shall not occur until after Grantee has given the Village written notice that the Threshold Use Requirement for the initial channels provided as of the Effective Date of this Agreement is not being satisfied. The Village shall have one hundred twenty (120) days to cure, or take diligent steps towards curing such condition, in which to establish that the Threshold Use Requirement on the initial channels is satisfied.

10.1.2. Grantee Use of Unused Time. Because the Village and Grantee agree that a blank or under utilized Access Channel is not in the public interest, in the event the Village does not completely program a Channel, Grantee may utilize the Channel for its own purposes. Grantee may program unused time on the Channel subject to reclamation from the Village upon no less than sixty (60) days notice. Except as otherwise provided herein, the programming of the Access Channel with text messaging or playback of previously aired programming shall not constitute unused time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered unused time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period of time, in excess of six (6) hours, where no community produced

programming of any kind can be viewed on an access Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

10.2. Rules and Procedures for Use of PEG Access Channels. The Village shall be responsible for establishing and enforcing rules for the non-commercial use of public, educational and governmental access channels and to promote the use and viewership of the channels.

10.3. Editorial Control. Grantee shall not exercise any editorial control over any use of PEG channels, nor shall Grantee or its Affiliates incur any criminal or civil liability pursuant to the federal, state or local laws of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws for any programs carried on any PEG channel.

10.4. Allocation and Use of PEG Channel(s).

10.4.1. By Village. The 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 Village, and the Village may at any time allocate or reallocate the usage of the PEG Channel(s) among and between different uses and users.

10.4.2. By Grantee. The Village shall adopt rules and procedures under which the Grantee may use the PEG Channel(s) for the provision of Video Programming if the PEG Channel(s) are not being used for their respective purposes pursuant to Section 611(d) of the Cable Act, 47 U.S.C. §531.

10.5. Origination Point. At such time that the Village determines that it wants the capacity to allow subscribers in the Village to receive public, educational and/or governmental access programming (video and character generated) which may originate from schools, Village facilities and/or other government facilities (other than those having a signal point of origination at the time of the execution of this Agreement); or at such time that the Village 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 Village wants to upgrade the connection to Comcast from an existing signal point of origination, the Village will give Comcast written notice detailing the point of origination and the capability sought by the Village. Comcast agrees to submit a cost estimate to implement the Village's plan within a reasonable period of time. After an agreement to reimburse Comcast for its expenditure, Comcast will implement any necessary system changes within a reasonable period of time.

10.6. PEG Capital Support. At its sole discretion, the Village may designate PEG access capital projects to be funded by the Village. The Village shall send written notice of the Village's desire for Grantee to collect as an external charge a PEG Capital Fee of up to thirty-five cents (\$0.35) per customer per month charge to be passed on to each Subscriber pursuant Section 622(g)(2)(C) of the Cable Act (47 U.S.C. §542(g)(2)(C)). The Grantee shall collect the external charge over a period of twelve (12) months, unless some other period is mutually agreed upon in writing, and shall make the PEG capital payments from such sums at the same time and in the same manner as Franchise Fee payments. The notice shall include a detailed and itemized description of the intended utilization of the PEG Capital Fee for PEG Access Channel facilities and/or equipment and the Grantee shall have the opportunity to review and make recommendations upon the Village's plan prior to agreeing to collect and pay to the Village the requested amount. The capital payments shall be expended for capital costs associated with PEG access. Consistent with the description of the intended utilization of the PEG Capital Fee, the Village shall be permitted to hold all or a portion of the PEG Capital Fee from year to year as a designated fund to permit the Village to make large capital expenditures, if necessary, as long as the Village spends the entire amount collected by the end of the term of this Agreement. Moreover, if the Village chooses to borrow from itself or a financial institution revenue for large PEG capital purchases or capital expenditures, the Village shall be permitted to make periodic repayments using the PEG Capital Fee. Said PEG Capital Fee shall be imposed within one hundred twenty days (120) of the Village's written request.

10.6.1. For any payments owed by Grantee in accordance with this Section which are not made on or before the due dates, Grantee shall make such payments including interest at an annual rate of the prime lending rate as quoted by Chase Bank U.S.A. or its successor, whichever is higher, computed from time due until paid. Any undisputed overpayments made by the Grantee to the Village shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this section.

10.6.2. Grantee and Village agree that the capital obligations set forth in this Section are not "Franchise Fees" within the meaning of 47 U.S.C. § 542. Notwithstanding the foregoing, the Village and Grantee, respectively, may conduct audits of the collection and use of PEG Capital Fees pursuant to Section 5 of this Agreement.

10.7. PEG Signal Quality. Provided PEG signal feeds are delivered by the Village to the designated signal input point without material degradation, the PEG channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Cable System set forth in this Agreement.

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.

Either party may change its address and addressee by providing notice to the other Party under this Section.

11.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the Village and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

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. If any material provision of this Agreement is made or found to be unenforceable in a binding and final judicial or administrative proceeding, or as a result of a legislative or regulatory enactment, either party may notify the other in writing that the Franchise has been materially altered by the change and of the election to begin negotiations to amend the Franchise in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

11.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

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 Village and the Grantee, which amendment shall be authorized on behalf of the Village through the adoption of an appropriate resolution or order by the Village, 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.

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

11.9. Venue. Except as to any matter within the jurisdiction of the federal courts or the FCC, all judicial actions relating to 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. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Northern District of Illinois.

11.10. Village's Contract Rights; Exercise of Home Rule Authority. The parties hereby acknowledge and agree that the Village's execution and enforcement of this Agreement, and the grant of such benefits given to the Grantee in consideration for the same, are an exercise of the Village's home rule authority to enter into contracts having a bearing on the local government and affairs of the Village to the extent granted or permitted by Article VII, Section 6 of the Illinois Constitution.

11.11. Removal of the Cable System. Upon the revocation, termination, or denial of renewal of this Franchise Agreement, Grantee either (a) by mutual agreement of the Village and Grantee, (b) by Grantee's acquiescence or failure to challenge same, or (c) by a final order of a court which Grantee either does not appeal or from which there is no further right of appeal, then the following shall occur: Grantee, at the direction of the Village, shall remove its Cable System, including all supporting structures, poles, transmission and distribution portions of the system and other appurtenances, fixtures or property from the rights of way within six (6) months of the revocation, termination or denial of renewal except that Grantee may not remove its facilities without the prior written consent of the Village, which shall not be unreasonably withheld. Grantee shall also restore any property, public or private, to the condition in which it existed prior to the installation, erection or construction of its Cable system, including any improvements made to such property subsequent to the installation of its Cable System. Restoration of streets and Village property, including the rights of way, shall be in accordance with the directions and specifications of the Village and at the Grantee's sole expense. If such removal and restoration is not completed within one year after the revocation, termination or expiration, all of Grantee's property located within the rights of way of the Village shall be deemed abandoned. If the Grantee fails to restore any affected property to the condition in which it existed prior to the original construction of the Cable System, the Village may perform such work and collect the costs from Grantee if such work is completed within two years of the revocation, termination, or denial of renewal of this Franchise Agreement.

11.11 Continuing Obligation. In the event the Grantee continues to operate all or any part of the System after the expiration of this Agreement, and provided that the Village and Grantee are actively negotiating renewal of this Franchise as provided for in Section 2.3 of this Agreement, the Grantee shall continue to comply with all applicable provisions of this Agreement throughout the period of continued operation.

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 Village of Downers Grove:

For Comcast of Illinois IV, Inc.:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____