

**ORIGINAL****FRANCHISE AGREEMENT**

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the City of Peoria, Illinois, a municipal corporation, (hereinafter, the "City") and Comcast of Illinois/ Indiana/ Ohio, LLC on this 12<sup>th</sup> day of December, 2016. (The "Effective Date")

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

This Agreement is entered into by and between the parties under the authority of the Cable Act, the Illinois Constitution of 1970, including the City's home rule powers, and the Illinois Municipal Code, as amended from time to time, and shall be governed by the Cable Act and the Illinois Municipal Code, as amended from time to time; 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provisions of the Illinois Municipal Code that are inconsistent with the Cable Act shall be deemed to be preempted and superseded.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, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory. Other terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), unless otherwise defined herein.

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

"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, 47 U.S. C. 521 et. seq., 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 Services" 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,” “System,” “Cable Communications System,” or “CATV System,” has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee’s facilities, 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, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

“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.

“City” means the City of Peoria, Illinois or the lawful successor, transferee, designee, or assignee thereof.

“City Code” means the Code of the City of Peoria, Illinois.

“City Council” means the governing body of the City of Peoria, Illinois.

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

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

“Effective Date” means the date that this Agreement is executed by the City and Comcast of Illinois/ Indiana/ Ohio, LLC

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

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and/ or 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 City 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/ Indiana/ Ohio, LLC.

“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 revenues shall include, by way of example but not limitation, revenues from Basic Cable Service, all Cable Service fees, premium, pay-per-view, pay television, Franchise Fees, late fees, guides, home shopping revenue, Installation and reconnection fees, upgrade and downgrade fees, advertising revenue (excluding advertising sales commissions paid to unaffiliated third parties), converter rental fees, and lockout device fees. Gross Revenue shall not include refundable deposits, uncollected bad debt, investment income, programming launch support payments, nor any taxes, fees or assessments imposed or assessed by any governmental authority (a Franchise Fee is not such a tax, fee, or assessment). The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with Generally Accepted Accounting Principles.

Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to City of Dallas, Texas v. FCC., 118 F.3d. 393 (5<sup>th</sup> 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” case, 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. FCC., 56 F. 3d. 151 (5<sup>th</sup> 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.

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

“Public Educational and Governmental (PEG) Access Channel” shall mean a video Channel designated for non-commercial use by the City, the public, and/ or educational institutions such as public or private schools, but not “home schools.”

“Public, Educational and Government (PEG) Access Programming” shall mean non-commercial programming produced by any City residents or organizations, schools



and government entities and the use of designated facilities, equipment and/ or Channels of the Cable System in accordance with 47 U.S.C. 531 and this 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 City.

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

“Right of Way” or “Public Way” shall mean, pursuant and in addition to the City’s Right of Way Ordinance (Chapter 26 of City Code) the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, and circle, all of which are commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City.

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

“Standard Installation” means those installations to Subscribers that are located up to one hundred twenty-five (125) feet from the existing distribution system (Cable System).

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

## **SECTION 2 - Grant of Authority**

2.1. Nonexclusive Franchise Authority. Pursuant to Section 621 (a) of the Cable Act, 47 U.S.C. 541 (a), and 65 ILCS 5/11-42-11(a), the City hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way 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, subject to the City’s Code and other regulations, and to provide such services over the Cable System as may be lawfully allowed by the City’s Code and Right-of-Way or Public Way regulations.



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

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be fifteen (15) 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, if any, including any prior Franchises 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 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 City 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 City; or (c) be construed as a waiver or release of the rights of the City in and to the Public Ways. The terms of this Franchise Agreement shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the Cable System in City.

2.5. Competitive Equity.

2.5.1. In the event the City grants an additional Franchise to use and occupy the public right-of-way for the purposes of operating a cable system, the additional Franchise shall only be granted in accordance with 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 City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon any existing Grantee or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.

2.6 Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the City 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 City pursuant to such police power.



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

3.1. The Grantee shall comply with the provisions of the City of Peoria Code of Ordinances relating to the usage of the right-of-way, as may be amended from time to time.

3.2 Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.3. Undergrounding and Beautification Projects. In the event the City requires users of the Public 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. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way.

3.4. The Grantee shall not be required to relocate its facilities unless it has been afforded at least sixty (60) days' notice or unless otherwise agreed to by the parties of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities.

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



## **SECTION 4 - Service Obligations**

4.1. The Grantee agrees and acknowledges that it shall not deny cable service or video service to any potential residential or commercial subscribers because of race or income of the residents in the local area in which the potential subscribers reside. Further, Grantee shall comply with all federal and state anti-discrimination laws, as well as City anti-discrimination ordinances with regard to providing all said services to potential subscribers. As of the Effective Date of this Agreement, Grantee's Cable System has been designed to provide, and is capable of providing, Cable Service to residential Customers throughout the Initial Franchise Service Area. The Grantee shall continue to make Cable Service available in the Initial Franchise Service Area throughout the term of this Agreement and Grantee shall extend its Cable System and provide service consistent with the provisions of this Franchise Agreement.

4.1.2. General Service Obligation. 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 linear Cable System network mile as measured from the existing Cable System's technically feasible connection point. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes, located within one hundred twenty-five (125) feet of the Grantee's distribution cable (e.g. Standard Installation.)

4.1.3 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.

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. New Developments. The City shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities or extension of the Cable System is required. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. The City agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open



trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches.

4.3.1. Annexation. In the event City annexes territory that is not within the City limits at the Effective Date, the City shall provide written notice to Grantee. Grantee and City shall meet within thirty (30) days to reach an agreement on the time deadline to serve the new area. Grantee shall serve the new area as soon as possible, consistent with the terms of this Franchise Agreement.

4.3.2 In cases of new construction, planned developments or property development where undergrounding or extension of the Cable System is required, the City shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed at least ninety (90) days 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.

4.4 Grantee and the City acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 22/501 et. Seq as may be amended.

4.5 The Grantee and City acknowledge that complimentary service for schools is included in 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to each Illinois accredited K-12 public and private school, not including "home schools," located in the Franchise Area within one hundred twenty-five (125) feet of the Grantee's distribution cable.

4.6 The Grantee and City acknowledge that complimentary service for municipal buildings is included in 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to each Municipal Building located in the Franchise Area within one hundred twenty-five (125) feet of Grantee's distribution cable. "Municipal Buildings" are those building owned by the City for government administrative purposes and shall not include buildings owned by City but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

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



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

5.1. **Franchise Fees.** The Grantee shall pay to the City a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues 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 within thirty (30) days after the close of each calendar quarter. 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 delinquent Franchise Fee payments, Grantee shall make such payments including interest from the time of the discovery of the delinquent payment at an annual rate of two percent (2%) over prime lending rates as quoted by Chase Bank U.S.A or its successor, whichever is higher, computed daily from time due until paid. Any undisputed overpayments made by Grantee to the City shall be returned or credited upon discovery of such overpayment and shall be payable within thirty (30) days of the receipt of written notice from Grantee.

5.1.1 Interest shall only apply to delinquent payments that are solely attributable to the actions of the Grantee. Therefore, where information or data that would be germane to the Grantee's ability to collect, calculate or remit the correct payment is within the control of the City and the Grantee has made reasonable efforts to effect an accurate calculation in the event of a delinquent or corrective payment being made no interest shall apply to any such payments.

5.2. **Franchise Fees Subject to Audit.** The City 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.

### 5.3 **Franchise Fees Not a Tax.**

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

5.3.2. Grantee shall not apply or seek to apply all or any part of any taxes, fees, or assessments of general applicability, levied or imposed by the City (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services), which do not fall within the definition of a franchise fee under 47 U.S.C. §542, as a deduction or other credit or against any of the Franchise fees or other



payments or contributions to be paid or made by Grantee to City, pursuant to this Franchise Agreement, which shall be deemed to be separate and distinct obligations of Grantee.

5.5. Maintenance of Books, Records, and Files.

5.5.1. 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. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City 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 make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority’s representative. In the event that the City 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 City shall notify Grantee of such request and cooperate with Grantee in opposing such request.

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

6.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the City 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 City 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.



**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 Comprehensive General Liability Insurance and provide the City insurance policies designating the City 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 One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement. The policy or policies shall provide coverage on an "occurrence" basis. The policy or policies shall cover blanket contractual liability, subject to the standard, universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries, and property damage. Broad form property damage liability shall be afforded. City shall be named as an additional insured on the general liability policy. An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Grantee's operations under this Franchise Agreement and that no other insurance maintained by Grantor will be called upon to contribute to a loss under this coverage. Standard form of cross-liability shall be afforded. Grantee shall provide certificates of insurance to the City, within thirty (14) business days from the execution of this Agreement, showing that the above-enumerated policies are in force.

7.2 Indemnification. The Grantee shall indemnify, defend and hold harmless the City, 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 City shall give the Grantee written notice of its obligation to indemnify and defend the City within fourteen (14) business days of receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from the willful misconduct or negligence of the City, its officers, employees and agents.

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



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

7.2.4 The Grantee shall not indemnify the City for any liabilities, damages, costs, or expenses resulting from the willful misconduct or negligence of the City, its officers, employees, or agents. To the extent permissible under State law, and without waiver of any affirmative defense, the City shall indemnify the Grantee for any liabilities, damages, costs or expenses resulting from the misconduct or negligence of the City's government, educational, or public access programming. The Grantee shall give the City written notice of its obligation to indemnify and defend the Grantee within fourteen (14) business days from receipt of the claim. If the Grantee determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Grantee. The City shall, at all times, retain control over the settlement of any claim or action subject to the aforementioned indemnification. The City's indemnification of Grantee shall in no way serve as a waiver or modification of any statutory cap on municipal liability that may exist under applicable law.

#### **SECTION 8 - System Description**

8.1. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76 of the Code of Federal Regulations, as may be amended from time to time, which regulations are expressly incorporated herein by reference. The Cable System shall be designed, constructed, routinely inspected, and maintained to guarantee that the Cable System meets or exceeds the requirements of the most current editions of the National Electrical Code (NFRA 70) and the National Electrical Safety Code (ANSI C2) at such time that the design, construction, and/or maintenance is performed.

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

#### **SECTION 9 - Enforcement of Franchise**

9.1. Notice of Violation or Default. In the event the City 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 from date of the receipt of the City's written notice: (a) fifteen (15) business days to respond to the City, contesting the assertion of noncompliance or default; (b) thirty (30) days 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, immediately initiate reasonable steps to remedy such default and notify the City, in writing, of the reasons the default cannot be remedied within thirty days, the steps being taken to remedy the default, and the projected date that the cure will be completed.

9.3. Enforcement. Subject to applicable federal and state law, in the event the City determines that the Grantee is in default of any material provision of the Franchise, the City 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 equitable relief;

9.3.2. Commence an action at law for monetary damages seek other equitable relief;

9.3.3. 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 City 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 forty-five (45) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the City has not received a 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 City 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 City 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 a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the City shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such



determination to an appropriate court, which shall have the power to review the decision of the City to modify or reverse such decision if the City's decision was against the manifest weight of the evidence.

9.4. **Technical Violation.** The City agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

(a) In instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

(b) Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

#### **SECTION 10 – Access Programming**

10.1 **PEG Capacity.** Grantee shall provide capacity for the City's noncommercial Public, Educational and Governmental ("PEG") programming through Grantee's Cable Service consistent with the requirements set forth herein. As of the Effective Date of this Agreement, the City utilizes two (2) PEG channels. The City may request, and Grantee shall provide, a third PEG channel upon one hundred eighty (180) days advance written notice by the City and sufficient proof that the current channels are inadequate for all programming offered. "Sufficient proof" shall include a verified program log of all original, non-repeat, non-character generated, first-run, locally produced programs that are carried on the existing channel for the prior six month period during the times of noon to midnight. In the event that 80% of the programming on the channel meets the criteria of being original, non-repeat, non-character generating, first-run locally produced programming, Grantee shall provide a third channel. Grantee may offer City's entire PEG programming on its Basic Digital Tier of service

10.1.1. Grantee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. However, the PEG channel(s) is (are), and shall be, operated by the City, and the City may at any time allocate or reallocate the usage of the PEG channel(s) among and between different non-commercial uses and Users.

10.2. **Origination Point.** At such time that the City determines that it wants the capacity to allow subscribers in the City to receive Public, Educational and/or Governmental access programming (video and character generated) which may originate from Schools and/or City 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 City determines that it wants to establish or change a location from which Public, Educational and/or Governmental access programming is originated; or in the event the City wants to



upgrade the connection to the Grantee from an existing signal point of origination, the City will give the Grantee written notice detailing the point of origination and the capability sought by the City. The Grantee agrees to submit a cost estimate to implement the City's plan within a reasonable period of time. After an agreement for the City to reimburse the Grantee for its expenditure, the Grantee will implement any necessary system changes within a reasonable period of time.

10.3. Grantee Use of Fallow Time. Because the City and Grantee agree that a blank or under utilized Access Channel is not in the public interest, in the event the City 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 City upon no less than sixty (60) days notice. The programming of the Access Channel with text messaging or playback of previously aired programming shall not constitute fallow time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered fallow 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 fallow time. Fallow 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. Fallow 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.

#### 10.5 PEG Capital Support

At its sole discretion, the City may designate a PEG access capital project to be funded by the City as set forth herein. Within one hundred twenty (120) days of the Effective Date of this Franchise Agreement, Grantee shall collect as an external charge a PEG Capital Fee of up to 1% of Gross Revenues per customer per month charge to be passed on to each Subscriber pursuant to 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 the term of the franchise and shall make the PEG capital payments from such sums at the same time and in the same manner as Franchise Fee payments. The capital payments shall be expended for capital costs associated with PEG access. The City 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 City to make large capital expenditures, if necessary. Moreover, if the City chooses to borrow from itself or a financial institution, revenue for large PEG capital purchases or capital expenditures, the City shall be permitted to make periodic repayments using the PEG Capital Fee.

Within forty-five (45) days of the Effective Date of this Franchise Agreement, Grantee shall pay to the City ten thousand dollars (\$10,000) in upfront PEG capital fees ("PEG Funds"). The PEG Funds are to be spent by the City on PEG capital or other allowed PEG expenses as permitted under federal law. The City need not expend the PEG Funds immediately, but rather may place them in a designated account to be used for PEG capital purchases as determined by the City. Grantee will recoup the PEG Funds



from the PEG Capital Fee. Upon full recovery of the PEG Funds, the Grantee will remit the PEG Capital Fee to the City as noted above.

### **SECTION 11 - Miscellaneous Provisions**

11.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

11.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:  
 City of Peoria  
 Attn: City Manager  
 419 Fulton St., Suite 207  
 Peoria, Illinois 61602

With a copy to:  
 City of Peoria  
 Attn: Corporation Counsel  
 419 Fulton St., Suite 200  
 Peoria, IL 61602

To the Grantee:  
 Comcast  
 Attn: Government Affairs  
 1500 McConnor Pkwy  
 Schaumburg, IL 60173



With a copy to:  
Comcast  
Attn: Government Affairs  
1701 JFK Blvd.  
Philadelphia, PA 19103

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

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 City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City, as required by applicable law.

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

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.



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

**For the City of Peoria:**

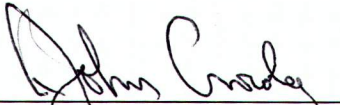
By: 

Name: Patrick Urich

Title: City Manager

Date: 12/12/2016

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

By: 

Name: John Crowley

Title: RSVP

Date: 12/20/16