

CHAPTER 8

CABLE TELEVISION

ARTICLE I – FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the Village of Newman, Illinois (hereinafter, the "Village") and Comcast of Illinois/Indiana/Ohio, LLC (hereinafter, "Grantee"), 9th day of November, 2009 (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 the 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").

8-1-1 DEFINITION OF TERMS. For the purpose of this Chapter, capitalized 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.

(A) **"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.

(B) **"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.

(C) **"Cable System", "System", "Cable Communications System", or "CATV System"** shall be defined in accordance with the Cable Act definition found at 47 USC 522, which reads as follows, the term "cable system" means a facility, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations, (B) a facility that serves subscribers without using any public right-of-way, (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this Chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on demand service; (D) an open video system that complies with section 573 of this title, or (E) any facilities of an electric utility used solely for operating its electric system, 47 USC 522.

(D) **"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.

(E) **"Village"** means the Village of Newman, Illinois or the lawful successors, transferee, designee, or assignee thereof.

(F) **"Customer"** means a person who lawfully receives and pays for Cable Service with the Grantee's express permission.

(G) **"Effective Date"** shall mean the date as indicated on the first page of this Chapter.

(H) **"FCC"** means the Federal Communications Commission, or successor governmental entity thereto.

(I) **"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.

(J) **"Franchise Agreement" or "Agreement"** shall mean this Agreement and any amendments or modifications hereto.

(K) **"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 Chapter.

(L) **"Grantee"** shall mean Comcast of Illinois/Indiana/Ohio, LLC.

(M) **"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 Service, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross Revenue shall not include refundable deposits, bad debt late fees, investment income, programming launch support payments, advertising sales commissions and third-party agency fees, nor any taxes, fees or assessments 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. FCC, 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" case, City of Pasadena, California, et al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-5, 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 (5th Cir. 2003).

(N) **"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.

(O) **"Public Way"** shall mean 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, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easement is dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now, or hereafter, held by the village in the Franchise Area, which shall entitle the Village and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Village within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Village and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

8-1-2 GRANT OF AUTHORITY.

(A) **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 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 and to provide such services over the Cable System as may be lawfully allowed.

(B) **Term of Franchise.** The term of the Franchise granted hereunder shall be **five (5) 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.

(C) **Renewal.** Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

(D) **Reservation of Authority.** Nothing in this Franchise Agreement shall (1) abrogate the right of the Village to perform any public works or public improvements of any description, (2) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Village, or (3) be construed as a waiver or release of the rights of the Village in and to the Public Ways.

(E) **Competitive Equity.**

(1) In the event the Village 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) 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 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.

(F) **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.

8-1-3 CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM.

(A) **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.

(B) **Undergrounding and Beautification Projects.** In the event all 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.

(C) The Grantee shall not be required to relocate its facilities unless it has been afforded at least **thirty (30) days'** notice 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. The Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

8-1-4 SERVICE OBLIGATIONS.

(A) **General Service Obligation.** The Grantee shall make Cable Service available 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 **one hundred twenty-five (125) feet** of the Grantee's distribution cable.

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.

(B) **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.

(C) **New Developments.** The Village 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. The Village 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 **sixty (60) days** written notice of the date of availability of open trenches.

8-1-5 OVERSIGHT AND REGULATION BY VILLAGE.

(A) **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. No later than **one hundred twenty (120) days** following the execution of this Franchise Agreement the Grantee shall increase the franchise fee from **three percent (3%) to five percent (5%)** 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. 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 equal to prime lending rate as quoted by Chase Bank U.S.A. 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.

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 Village and the Grantee has made reasonable efforts to affect an accurate calculation in the event of a delinquent or corrective payment being made no interest shall apply to any such payments.

(B) **Franchise Fees Subject to Audit.**

- (1) Upon reasonable prior written notice during normal business hours at Grantee's principal business office, the Village shall have the right to inspect the Grantee's financial records used to calculate the Village's franchise fees; provided, however, that any such inspection shall take place within **two (2) years** from the date the Village receives such payment, after which period any such payment shall be considered final.
- (2) Upon the completion of an independent audit by the Village, the Village shall provide to the Grantee a final report setting forth the Village's

findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have **thirty (30) days** from the receipt of the report to provide the Village with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses the parties shall agree upon a "Finally Settled Amount". For purposes of this Section, the term, "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Village by the Grantee, or overpayment to the Village by the Grantee as the case may be, as a result of any such audit. In the event an agreement is not reached, either party may bring an action to have the disputed amount determined by a court of law.

- (3) Any "Finally Settled Amount(s)" due to the Village as a result of such audit shall be paid to the Village by the Grantee within **thirty (30) days** from the date the parties agree upon the "Finally Settled Amount". Any overpayment by the Grantee to the Village shall be credited against subsequent franchise fee payments by the Grantee to the Village until such time as the overpayment is fully credited; or shall be paid by the Village to the Grantee within **thirty (30) days** from the date the parties agree upon the "Finally Settled Amount" in the event no subsequent franchise fee payments are due to the Village. In the event Grantee does not pay the "Finally Settled Amount" within **thirty (30) days**, Grantee shall be charged and shall pay, in addition to the amount due interest on the amount due equal to the prevailing prime rate from the due date for payment of the "Finally Settled Amount".
- (4) Once the parties agree upon a "Finally Settled Amount" and such amount is paid by or credited to the Grantee, the Village shall have no further rights to audit or challenge the payment for that period. The Village shall bear the expense of its audit of the Grantee's books and records.

(C)

Maintenance of Books, Records, and Files.

- (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 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 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.

8-1-6 TRANSFER OF CABLE SYSTEM OR FRANCHISE OR CONTROL OF GRANTEE. 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 **fifty-one percent (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 acquired, 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 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.

8-1-7 INSURANCE AND INDEMNITY.

(A) **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 **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 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.

(B) **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.

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

8-1-8 SYSTEM DESCRIPTION.

(A) **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.

8-1-9 ENFORCEMENT OF FRANCHISE.

(A) **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.

(B) **Grantee's Right to Cure or Respond.** The Grantee shall have **forty-five (45) days** from the receipt of the Village's written notice: (1) to respond to the Village, contesting the assertion of noncompliance or default, or (2) to cure such default; or (3) in the event that, by nature of the default, such default cannot be cured within the **forty-five (45) 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.

(C) **Enforcement.** Subject to applicable federal and state law, and pursuant to the provisions of paragraph (B) herein in the event the Village determines that the Grantee is in default of any material provision of the Franchise, the Village may seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages or seek other equitable relief.

(D) **Technical Violation.** The Village 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:

- (1) 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
- (2) 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.

8-1-10 MISCELLANEOUS PROVISIONS.

(A) **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.

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

To the Village: Village of Newman
PO Box 507
Newman, Illinois 61942
Attn: Village President

To the Grantee: Comcast
303 E Fairlawn
Urbana, IL 61801
Attn: Manager of Government Affairs

With a copy to: Comcast
1500 McConnor Pkwy
Schaumburg, IL 60173
Attn: Vice President Government Affairs

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

(C) **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.

(D) **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.

(E) **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.

(F) **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.

(G) **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.

(H) **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.