

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.e

Title:

Recommendation to Approve Franchise Agreement and Pole Attachment Agreement with Comcast

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: May 29, 2018

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted: **Executive Summary** (*if not budgeted please explain*):

The City's franchise agreement with Comcast expired on March 4, 2018. The Illinois Level Playing Field Statute provides for renegotiation of franchise agreements after a new franchise is granted, and such was triggered with the Metronet agreement. It further requires the City to offer the same terms to Comcast that were recently approved for Metronet. Comcast and Staff negotiated a number of changes to the previous Franchise Agreement. The most significant changes are:

- 10 year franchise instead of 5 years
- Requirement to serve customers
  - Comcast no longer required to serve every property within corporate limits, similar to Metronet
  - Comcast required only to provide service to residential households, within 1,200 feet of Comcast distribution cable, where a minimum of 15 have requested service, similar to Metronet
  - Since Comcast was not the second entrant into the St. Charles marketplace, it is unclear and untested legally as to whether they are entitled to this provision, similar to Metronet
  - Staff does not expect this to be a significant issue for new developments

Staying status quo in the agreement, Comcast would not accept the overhead to underground relocation terms consistent with the Metronet agreement. Comcast desires to keep the old language, which is less firm with respect to requiring Comcast to participate in relocations off of City owned poles at their own expense.

Additionally, Comcast has never had a pole attachment agreement with the City. Comcast is a successor to previous cable franchisees, but no history of any agreement could be found. The City and Comcast negotiated a pole attachment agreement very similar to our recent agreements with Metronet and Verizon. The pole attachment agreement as presented is satisfactory to both parties.

**Attachments** (*please list*):

\* Franchise Agreement \* Pole Attachment Agreement

**Recommendation/Suggested Action** (*briefly explain*):

Recommendation to approve a Franchise Agreement and Pole Attachment Agreement with Comcast and Authorization for the Mayor and City Clerk to Execute both Agreements.

**CABLE TELEVISION FRANCHISE AGREEMENT  
BY AND BETWEEN  
The  
CITY OF ST. CHARLES  
And  
COMCAST OF ILLINOIS/OHIO/OREGON, LLC**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of St. Charles, Illinois (hereinafter, the “City”) and Comcast of Illinois/Ohio/Oregon, LLC, (hereinafter, “Grantee”) this \_\_\_\_\_ day of \_\_\_\_\_, 2018 (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, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

"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 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,” 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 St. Charles, Illinois or the lawful successor, transferee, designee, or assignee thereof.

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

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

“Electric Utility” means the electric service utility owned and operated by the City of St. Charles including, but not limited to, its personal and real property, buildings, fixtures, equipment, poles and all other infrastructure and improvements thereof pursuant to State of Illinois Constitutional and Statutory Authority including, but not limited to, the Municipal Ownership Act of 1913 and 65 ILCS 5/11-117-1 to 11-117-14 and 11-119-1 to 11-119-5.

“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 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/Ohio/Oregon, 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 revenue includes monthly Basic Cable Service, cable programming service regardless of Service Tier, premium and pay-per-view video fees, late fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources from Cable Service delivered over the Cable System as may now exist or hereafter develop, provided that such revenues, fees, receipts, or charges may be lawfully included in the gross revenue base for purposes of computing the City'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, third party advertising sales commissions and 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. F.C.C.*, 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 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 City.

"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," community colleges, and universities.

"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.

"Public Way" shall mean, pursuant and in addition to Chapter 13.22 of the City Code of Ordinances, the surface of, and the space above and below, any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the City in the Franchise Area, to the extent that the City has the right and authority to authorize, regulate, or permit the location of facilities other than those of the City. Public Way shall not include any real or personal City property that is not specifically described in this definition and shall not include City buildings, fixtures, and other structures and improvements, regardless of whether they are situated in the Public Way. Public Way shall not include any portion of the Electric Utility regulated pursuant to Ordinance 1984-M-16.

“Qualified Household” shall mean any single family residential home where a resident has agreed in writing to Grantee’s standard terms and conditions of service including, if applicable, any reasonable deposit requirements and standard installation fees, as a condition of requesting Cable Service from 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. Pursuant to Section 621(a) of the Cable Act, 47 U.S.C. § 541 (a), and 65 ILCS 5/11-42-11(a) of the Illinois Municipal Code, the Illinois Constitution, and Ordinance No. \_\_\_\_\_, 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, 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. From and after the Effective Date of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to be the sole and exclusive Franchise Agreement between the Parties pertaining to the Grantee’s Franchise for the provision of Cable Service.

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. 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.

2.5 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.

## 2.6 Competitive Equity.

2.6.1. In the event the City grants an additional Franchise to use and occupy any Public 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.

2.6.2. 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 to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application.

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

3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of Chapter 13.22, entitled “Construction of Utility Facilities in the Rights-of-Way” of the St. Charles City Code, as may be amended from time to time.

3.2. Aerial and Underground Construction. As of the Effective Date, 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.

3.3.1. In the event the City requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for the project to the same extent as such funds are made available to other users of the Public Way, if any, provided that any utility’s exercise of authority granted under its tariff to charge consumers for the said utility’s cost of the project that are not reimbursed by the City shall not be considered to be public or private funds. The Parties acknowledge and agree that the reimbursement provisions of this section shall not apply to any action taken by the City that pertains to its ownership, operation, or management of the Electric Utility.

3.3.2. The Grantee shall not be required to relocate its facilities unless it has been afforded at least sixty (60) 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. 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. Initial Service Obligations. 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 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.

4.2. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential household within the Franchise Area where a minimum of fifteen (15) Qualified Households have requested Cable Services within 1200 feet of the Grantee's distribution cable (e.g. a Standard Installation).

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

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

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

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

4.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, as amended from time to time. The Grantee shall cooperate with the City in conducting inspections related to these standards upon reasonable prior written request from the City based on a significant number of Subscriber complaints.

4.5. Annexations and New/Planned Developments. In cases of annexation the City shall use reasonable efforts to provide the Grantee written notice of such annexation. In cases of new construction, planned developments or property development where undergrounding or

extension of the Cable System is required, the City shall use reasonable efforts to provide or cause the developer or property owner to provide notice of the same. To the extent notices are provided, such notices shall be provided at the time of notice to all non-City 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 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.

4.6. Service to School Buildings and Governmental Facilities.

4.6.1. The City 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 all eligible buildings as defined in said state statute. Eligible buildings shall not include buildings leased to non-governmental third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.6.2. Long Drops. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds a Standard Installation.

4.7. 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 applicable Federal law and regulation – including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time. Should the City become qualified and authorized to activate the EAS, the Grantee shall provide instructions on the access and use of the EAS by the City to the City on an annual basis. The City agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the City, its employees or agents in using such system.

4.8. Customer Service Obligations. The City and 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.* Enforcement of such requirements and 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.*

**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 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 delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as quoted by JPMorgan Chase & Company or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the City 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.

5.1.1. The Parties acknowledge that, at present, the Cable Act limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that a change in the Cable Act would allow the City to increase the Franchise Fee above five percent (5%), the City shall determine by adoption of an appropriate ordinance if the City should collect the additional amount. Following the determination, the City shall notify the Grantee of its intent to collect the increased Franchise Fee and Grantee shall have a reasonable time (not to be less than ninety (90) days from receipt of notice from the City) to effectuate any changes necessary to begin the collection of such increased Franchise Fee or notify the Grantee of its intent to not collect the increased fee. In the event that the City increases said Franchise Fee, the Grantee shall notify its Subscribers of the City's decision to increase said fee prior to the implementation of the collection of said fee from Subscribers as required by law.

5.1.2. In the event a change in state or federal law requires the City to reduce the 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; or ii) the lowest franchise fee percentage paid by any other Cable Operator granted a Cable Franchise by the City pursuant to the Cable Act, and Section 11-42-11 of the Illinois Municipal Code; provided that: (a) such amendment is in compliance with the change in state or federal law; (b) the City approves the amendment by ordinance; and (c) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

5.1.3. Taxes Not Included. The Grantee acknowledges and agrees that the term "Franchise Fee" does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators on their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or Cable Subscribers).

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. 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. 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 the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), 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. Grantee shall indemnify and defend the City from and against any claims arising from the City’s opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the City 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 140/1 *et seq.*, or with a decision or order of a court with jurisdiction over the City, shall not be a violation of this Section.

#### **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.

6.2. 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 City, which consent shall not be unreasonably withheld or delayed.

6.3. 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.

6.4. The Grantee, and any proposed transferee under this Section 6, shall submit a written application to the City containing or accompanied by such information as is required in accordance with applicable law and FCC regulations, specifically including a completed Form 394 or its successor, and in compliance with the processes established for transfers under FCC rules and regulations, including Section 617 of the Cable Act, 47 U.S.C. §537. Within thirty (30) days after 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. As a condition to granting of any consent, the City may require the transferee to agree in writing to assume the obligations of the Grantee under this Franchise Agreement.

6.5. 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 a 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. §537 and require the City's consent thereto in the manner described in Section 6 above.

## **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 such insurance and provide the City certificates of insurance in accordance with Chapter 13.22 of the St. Charles City Code.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents (the "Indemnitees") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising in the course of the Grantee constructing and operating its Cable System within the City. This duty shall survive for all claims made or actions filed within one (1) year following either the expiration or earlier termination of this Agreement. The City shall give the Grantee timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the City. If the City elects in its own discretion to employ additional counsel, the costs for such additional counsel for the City 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 any conduct for which the City, 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 City by reference to the limits of insurance coverage described in this Agreement.

## **SECTION 8: Public, Educational and Governmental (PEG) Access**

8.1. **PEG Capacity.** The Grantee shall provide capacity for the City's noncommercial Public, Educational and Governmental ("PEG") Access Programming through Grantee's Cable System consistent with the requirements set forth herein. The City's PEG Access Programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time. As of the Effective Date of this Agreement, the City shares (1) PEG channel with the City of Geneva, Illinois. The City may request, and Grantee shall provide, that the shared PEG Channel referenced above be split so that the City has the exclusive use of said channel upon one hundred eighty (180) days advance written notice by the City. Any cost for the activation of the split Channel shall be paid for by the City.

8.1.1 At its sole discretion, the City may request, and the Grantee shall provide, one (1) additional Government Access Channel, upon one hundred eighty (180) days advanced written notice and sufficient proof that the current Channel is inadequate for all programming

offered. “Sufficient proof” shall include a verified program log of all original, non-repeat, first-run, non-character generated, locally produced programs that are carried on the existing Channels for the prior six month period during the times of noon to midnight. In the event that eighty percent (80%) of the programming on the Channels meets the criteria of being original, non-repeat, first-run, non-character generated, locally produced programming, Grantee shall provide a second Channel. Any cost for the activation of the additional Channel shall be paid for by the City. The Grantee may offer the City’s entire PEG Access Programming on its basic digital tier of service.

8.2. 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 Channels are, and shall be, operated by the City, and the City may at any time allocate or reallocate the usage of the PEG Channels among and between different non-commercial uses and Users. The City shall be responsible for the editorial control of the Video Programming on the PEG Channels except to the extent permitted in 47 U.S.C. §531(e).

8.3. Origination Point. At such time that the City determines that it wants to establish capacity to allow its residents who subscribe to Grantee’s Cable Service to receive PEG Access Programming originated 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 change or upgrade a location from which PEG Access Programming is originated; 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 to reimburse the Grantee for its expenditure, the Grantee will implement any necessary system changes within a reasonable period of time.

8.4. PEG Signal Quality. Provided PEG signal feeds are delivered by the City 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.

8.5. PEG Capital Support. At its sole discretion, the City may designate PEG access capital projects to be funded by the City. The City shall send written notice of the City’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 City’s plan prior to agreeing to collect and pay to the City 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 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, as long as the City spends the entire amount collected by

the end of the term of this Agreement. 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. Said PEG Capital Fee shall be imposed within one hundred twenty days (120) of the City's written request.

8.5.1. For any payments owed by Grantee in accordance with this Section 8.5 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 JPMorgan Chase & Company. or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the City 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.

8.5.2. Grantee and City agree that the capital obligations set forth in this Section are not "Franchise Fees" within the meaning of 47 U.S.C. § 542.

8.6. Grantee Use of Unused Time. Because the City and Grantee agree that a blank or under utilized PEG Access Channel is not in the public interest, in the event the City does not completely program a Channel, Grantee may utilize a Channel for its own purposes. Grantee may program unused time on the Channels subject to reclamation from the City upon no less than sixty (60) days' notice. Except as otherwise provided herein, the programming of the PEG 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 a PEG 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.

## **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 a material term 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 City's written notice: (A) to respond to the City, 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 City 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 following notice and an opportunity to cure and respond pursuant to the provisions of Section 9.2 above, 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 or seek other relief available at law, including declaratory or injunctive relief; or

9.3.2. in the case of a substantial or frequent 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. 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 City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, 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 the City shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the City shall be in writing and shall be delivered to the Grantee in a manner authorized by Section 10.2. The Grantee may appeal such determination to any court with jurisdiction within thirty (30) days after receipt of the City's decision.

9.4. Remedies Not Exclusive. In addition to the remedies set forth in this Section 9, the Grantee acknowledges the City's ability pursuant to Section 4.8 of this Franchise Agreement to enforce the requirements and standards, and the penalties for non-compliance with such standards, consistent with the Illinois Cable and Video Customer Protection Law; and, pursuant to Section 3.1 of this Franchise Agreement and Chapter 13.22 of the St. Charles City Code, to enforce the Grantee's compliance with the City's requirements regarding "Construction of Utility Facilities in the Rights-Of-Way." Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit the City 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 City.

## **SECTION 10: Miscellaneous Provisions**

10.1. 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. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

10.2. Notice. Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties' rights under this franchise, 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 St. Charles  
2 E. Main Street  
St. Charles, Illinois 60174  
ATTN: City Administrator

To the Grantee:

Comcast  
1500 McConnor Parkway  
Schaumburg, Illinois 60173  
ATTN: Director of 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. Either party may change its address and addressee for notice by notice to the other party under this Section.

10.3. 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 and contemporaneous agreements, understandings, negotiations and communications, whether written or oral. Except for ordinances adopted pursuant to Sections 2.4 and 2.5 of this Agreement, all ordinances or parts of ordinances related to the provision of Cable Service that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

10.3.1. The City may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.

10.4. 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 by such a binding and final decision, 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.

10.5. 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.

10.6. Venue. Except as to any matter within the jurisdiction of the federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, Kane 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.

10.7. Modification. Except as provided in Sections 5.1.1 and 5.1.2, 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 ordinance or resolution by the City, as required by applicable law.

10.8. 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.

10.9. 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.

10.10. Validity of Franchise Agreement. The parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Franchise Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

10.11. Authority to Sign Agreement. Grantee warrants to the City that it is authorized to execute, deliver and perform this Franchise Agreement. The individual signing this Franchise Agreement on behalf of the Grantee warrants to the City that s/he is authorized to execute this Franchise Agreement in the name of the Grantee.

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 St. Charles:**

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

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

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

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

**For Comcast of Illinois/Ohio/  
Oregon, LLC:**

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

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

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

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

JOINT USE POLE ATTACHMENT AGREEMENT

This Agreement made this \_\_\_\_\_ day of June, 2018 (hereinafter the “Effective Date”) by and between THE CITY OF ST. CHARLES, a municipal corporation of the State of Illinois, hereinafter referred to as “Owner”, and Comcast of Illinois/ Ohio/ Oregon, LLC, hereinafter referred to as “Licensee”.

WITNESS:

WHEREAS, the City of St. Charles and Licensee desire to establish joint use of poles owned by the City of St. Charles under the terms and conditions set forth below:

WHEREAS, among the purposes of this Agreement are to reduce the number of dual pole lines utilized by both parties and to provide better economy of service to customers of both parties; and

WHEREAS, the conditions determining such joint use shall depend upon the service requirements to be met by each party, including considerations of safety and economy.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, their successors and assigns, do hereby agree as follows:

Section 1. Scope of Agreement.

- A. Poles. This Agreement covers all sole owned and jointly-used poles within the corporate limits as now or hereafter existing of the City of St. Charles and/or its electrical service area as such corporate limits and/or electrical service areas may be amended from time to time. This Agreement includes all electric distribution poles which are: (a) presently owned by the Owner, or (b) as hereafter erected by the Owner, or (c) as may be purchased from time to time by the Owner from the Licensee in accordance with the procedures hereinafter set forth. The Owner reserves the right to exclude from joint use such poles which, in the Owner’s judgment, are necessary for its sole use. This Agreement shall not exempt the Licensee from the requirements of the Owner’s Subdivision Control Ordinance or such ordinances that relate to subdivisions.
- B. Red Gate Road Bridge. Owner agrees that Licensee may place a four-inch diameter(4”) Schedule 40 PVC Conduit, to be attached to East and West bridge abutments, and run along the entire course, of the Red Gate Road Bridge across the Fox River, between IL State Highway 31 and IL State Highway 25 (hereinafter the “Bridge”). The conduit would be placed directly underneath the road surface of the Bridge, adjacent to Owner’s existing six-inch (6”) conduits, and be supported horizontally on existing St. Charles Power Services conduit hangers. Licensee would place Comcast cable inside the conduit, which would be a part of Licensee’s network that serves St. Charles. Owner agrees that it will not charge Licensee any fees to place its facilities on the Bridge; however, a permit submittal showing the details of the attachment to the bridge shall be required prior to placement of the conduit.

## Section 2. Code Specifications.

The joint use, construction and maintenance of poles covered by this Agreement shall be in conformity with all applicable engineering and safety standards governing the installation, maintenance, and operation of facilities and the performance of all work in or around electric City Facilities and includes the most current versions of National Electrical Safety Code (“NESC”), the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of City or other federal, state, or local authority with jurisdiction over City Facilities. Any joint use pole which does not conform to the most stringent standards as set forth above shall be brought to the attention of Owner by Licensee, or vice versa, as the case may be, and corrected not later than sixty (60) days after notice of discovery of such non-conformity, Acts of God excepted. However, in the event Owner shall have scheduling conflicts, Owner, upon notice to the Licensee, shall be given such additional time as may be required, and shall set forth a proposed schedule therefor. If Licensee attachment is the sole cause of the non-conformity with standards, Licensee shall be responsible for the cost to bring the attachment into conformance. Owner will only be responsible for costs related to conformance as if the Licensee was not attached to the pole. If a dispute arises as to the costs of work related to standard conformity a meeting shall be held to discuss and resolve all issues. If the costs are unable to resolved, after good faith efforts on the part of both parties, the Licensee will have 180 days to remove its attachments.

## Section 3. Placing, Transferring or Rearranging of Pole Attachments.

- A. Definitions. For the purposes of this Section, the following terms will have the meaning ascribed herein:
  - a. The term "Make Ready Costs" as used in this Agreement means the just and reasonable actual costs incurred performing work necessary to provide adequate space and pole strength for licensees proposed attachment per the National Electrical Safety Code (NESC), directly and exclusively associated with accommodating Licensee’s attachments, and promptly following Licensee’s written request, Owner shall provide to Licensee detail of such costs sufficient for Licensee to verify the reasonableness of the costs or charges.
  - b. The term "Make Ready Estimate" as used in this Agreement means Owner’s estimate of Make Ready Costs prepared for Owner pursuant to Section 3.B below.
  - c. The term “Make Ready Work” means all work, as determined by Owner, required to accommodate licensee’s attachments and to meet the National Electric Safety Code (“NESC”) or other reasonable requirements of Owner, including rearrangements and/or transfer of existing facilities.
- B. Whenever the Licensee desires to reserve space on any pole which Licensee is not already using, Licensee shall make written application to the Owner specifying in

such application (1) the location of the pole in question, (2) the number or kind of attachments which it desires to place thereon, (3) calculations as to weights of Licensee's attachments, based upon Comcast engineering studies, supporting the adequacy of the existing pole to support the attachments or the requirements for proposed changes to achieve structural adequacy,(4) any Make Ready Work proposed to complete such attachment in conformance with all NESC safety codes, and (5) the proposed completion date for any Make Ready Work. Licensee shall submit such application upon a form as depicted in Exhibit A. Within twenty (20) business days after receipt of such application, the Owner shall notify the Licensee, in writing, of its Make Ready Estimate.

- C. Upon notice that the Make Ready Estimate has been accepted by Licensee, Owner shall proceed with the Make Ready Work covered by the Make Ready Estimate. The Parties agree that Owner will perform Make Ready work within the power zone and work related to City fiber on the poles designated by Licensee, and Licensee will manage and perform Make Ready Work and adjustments and transfers necessary in the communications zone on such poles, other than such work related to City fiber. Owner shall complete make ready work within 30 days. If said work will require additional time, notice shall be given to the Licensee and the Owner shall propose a revised timeline shall be provided. . Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work. Upon completion of all Make Ready Work, Owner shall send to Licensee an itemized statement for the actual costs of the Make Ready Work. Owner shall provide an itemized invoice within thirty (30) days after completion of the Make Ready Work and Licensee shall pay such costs within sixty (60) days from the date the invoice is received by Licensee, provided however that to the extent Licensee in good faith disputes the costs detailed in the invoice, Licensee will remit payment for the undisputed costs as set forth herein.

Upon completion of the Make Ready Work and payment of the Make Ready Costs, Owner shall advise Licensee that such poles are available for attachment.

- D. In the event that Owner determines that any pole has inadequate capacity to accommodate Licensee's attachments and must be replaced solely to make capacity for Licensee attachments, Licensee agrees to reimburse Owner for the (1) actual cost of the new pole; (2) the actual cost of transferring Owner's facilities to the new pole; and (3) any other actual costs incurred by Owner in such replacement, such as the expense of removing the old pole. Owner shall provide Licensee with the estimated expenses for the new pole, transfer of services and all other costs in order to provide Licensee with the opportunity to seek alternate routes or placement of facilities.
- E. Except as otherwise provided herein, Owner and Licensee shall each place, rearrange, transfer, remove and maintain its respective attachments, including any necessary tree trimming or cutting, at its own expense and shall at all times

perform such work within sixty (60) days of notice by the other party, Acts of God excepted. Licensee shall be responsible for the costs of pole replacements related to pole breakage due to foreign object contact with only their facilities. For example if a tree falls and makes contact only with the Licensee facilities and such causes pole breakage, the Licensee shall be responsible for the entire cost the Owner incurs to restore with no depreciation credited. Should the contact be due to negligence, for example a garbage truck or dump truck driving over allowed height catches the Licensee cable causing pole/s to break, the Owner shall replace the poles, Licensee shall reimburse Owner for costs, and Licensee shall be responsible for recovering from the negligent party

- F. Subject to resolving any safety, reliability or engineering concerns in advance, and without Licensee’s prior approval but upon prior notice to Owner, Licensee may overlash facilities on its own attachments or the attachments of any third party that authorizes Licensee to overlash.
- G. Without Owner’s prior written approval, Licensee may place service drops from the poles covered by this Agreement. Owner agrees that service drops are not considered compensable additional attachments after Licensee is already paying to be attached to said pole.
- H. Licensee shall place a marker/indicator identifying cable ownership near their attachment point at each pole, visible from the ground, for the purpose of positively identifying ownership during audits or emergencies. The marker should have the emergency contact phone number on it. City shall notify Licensee via telephone at the following emergency number 866-623-3732 which is staffed 24/7/365.

Section 4. Standard Space.

- A. For the purposes of this Agreement Licensee’s “standard space” shall be defined as that area of the poles reserved for Licensee’s attachments as set forth below. Note that third party attachments may already exist within the Licensee’s Standard Space. In the event that there is inadequate space within Licensee space due to existing attachments, and the pole needs to be replaced with a taller pole, the cost for this work shall be borne by the Licensee.

Pole Size	Setting Depth	Licensee’s Standard Space	Point of Beginning of Standard Space from Top of Pole
35’	6’	4’	13-1/3’
40’ (1)(5)	6’	4’	20-1/3’
45’ (1)	6-1/2’	4’	20-1/3’
40’ (2)(3)	6’	4’	13-1/3’
45’ (2)(3)	6-1/2’	4’	13-1/3’

40' (4)	6'	2'	13-1/3'
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- (1) Equipment pole for Owner.
  - (2) Non-equipment pole for Owner.
  - (3) Equipment pole for Third Party User
  - (4) Street crossing poles.
  - (5) For only poles accessible by pedestrian traffic, provided that at alley locations Licensee's standard space shall commence 18-1/3 feet from the top of the pole.
- B. For the purposes of this Agreement, all other space upon any pole, other than Licensee's standard space, shall be deemed Owner's standard space.
  - C. Where existing equipment (as of the date of this Agreement) of either Owner or Licensee is located in the other's standard space, it shall so remain until the opportunity arises to relocate it without undue burden or expense. In the interim, any new or additional equipment shall be installed to conform with the location of existing equipment. When either party requires full use of its standard space for installation of new or replacement equipment, the other party will cooperate with the requesting party to relocate its equipment within sixty (60) days after the request. In emergency service situations, the party whose equipment must be relocated will complete such relocation as soon as practicable.
  - D. Owner retains and shall have the unrestricted right to use or license Owner's standard space, provided such use complies with the provisions of Section 2 herein.
  - E. In the event of third party attachments to poles covered by this Agreement, communication attachments shall be required to be made above the standard space of Licensee and such attachments shall maintain a minimum one foot (1') clearance from other licensee's facilities and shall be on the same side of pole as other licensee's facilities, unless specifically authorized by Owner.
  - F. From and after the date of this Agreement, any subsequent third party attaching to a joint use pole shall reimburse Owner or Licensee their respective costs for changing the location of their facilities, erecting or replacing poles, or relocating or readjusting their facilities in order to accommodate said third party's facilities. Provided, however, where either Owner or Licensee are then in violation of any Code or Order under Section 2 herein at the time of said third party attachment, Owner or Licensee shall relocate that portion of their non-conforming facility without charge.

Section 5. Erecting, Replacing or Relocating Poles.

- A. Whenever it is necessary to change the location of a jointly-used pole, by reason of any State, Municipal, or other governmental requirement, or the requirements

of a private property owner, the Owner first shall give written notice thereof to Licensee, specifying when the relocated pole is available for attachment. The Licensee at its expense, shall within 60 days, transfer its attachments to the newly-located pole.

- B. Whenever a new pole is erected solely to address Licensee requirements within the territory covered by this Agreement, either as an additional pole line, or as an extension of an existing pole line, or as replacement of existing pole(s), Licensee shall first notify the Owner, in writing (at least sixty days prior to such need), with written plans showing the proposed location and character of the new poles. Licensee shall be responsible for the costs of the new pole or poles and said shall be payable prior to commencement of the work. Owner is not required to erect additional poles or extending pole lines that do not benefit Owner.
- C. The cost of erecting new or replacement joint use poles related to normal maintenance, relocation, or end of life, shall be borne by the Owner. However, each party shall place, at its sole expense, its own attachments on the new joint use poles and place any necessary supports to sustain any unbalanced loads caused by their respective attachments. In cases of replacement of existing joint use poles Licensee shall, within sixty (60) days after receipt of written notice from Owner, transfer its facilities. In case of emergency or immediate need, Licensee may be required to transfer on shorter notice. Should the Licensee fail to relocate to a replaced pole within the 60 days, a penalty of \$50 per day shall be assessed by the Owner to the Licensee. Accrued penalty charges shall be billed by the Owner to the Licensee after the attachment is relocated, and remittance shall be due to the Owner consistent with Section 9, paragraph C.
- D. Whenever the Licensee requires a change in location of a jointly-used pole, the Licensee shall first give written notice to Owner specifying the time requirements of such proposed relocation, and the Owner shall, if it does not wish to discontinue the existing pole from joint use as herein provided, relocate such pole by the date specified or within 180 days thereafter in the application for relocation. The cost of relocating such pole by the Owner and the transfer of Owner's attachments thereon shall be at the sole expense of Licensee. In the event of emergency situations, the provisions calling for written notification may be waived, by the Director of Public Works or his delegated nominee, provided prior verbal notice is given to the Director of Public Works.
- E. Whenever it is necessary to replace a defective pole, the procedures set forth in paragraph A of this Section 5 shall be employed.
- F. A replacement pole shall be set by the Owner, in the original position, within reasonable distance of the original pole position, or in the position agreed upon between the Owner and the Licensee.

- G. Whenever it is necessary to change a location of a jointly-used pole, or to erect a new pole, or to relocate or readjust Owner's or Licensee's facilities upon these poles due to the requirements of a subsequent Licensee's needs or third party need, Owner and Licensee shall bill their respective costs therefore (rearrangement costs, plant loss, net removal costs, transfer cost, etc.) to said new Licensee or third party. Owner shall give Licensee sixty (60) days' notice of such relocation. Licensee transfer to any new pole set due to relocation for subsequent licensee or third party will be subject to paragraph C of this Section 5.

#### Section 6. Right of Way for Licensee's Attachments.

Licensee hereby acknowledges and agrees that Owner has tendered no assurance, guarantee or warranty as to Licensee's legal right, title or interest to be located within any easement or right of way area upon which joint use poles are located; and, in the event, objections are made to Licensee's use of said poles, and Licensee is unable to resolve said objections within a 120 days. the Owner may, upon sixty (60) days' written notice to Licensee, or in the event of emergency, on shorter written or verbal notice followed by written notice, require Licensees to remove its attachments from the subject poles at Licensee's sole expense. However, on any new additions or extensions of pole lines, the Owner shall: (1) attempt to secure right-of-way permits applicable to both parties, or (2) notify the Licensee that the Owner is unable to obtain joint right-of-way, but Owner shall not be required to utilize power of eminent domain.

#### Section 7. Maintenance of Poles and Attachments.

Licensee shall, at its own expense, maintain its attachments upon joint use poles in a safe and serviceable condition. Licensee further agrees that it shall maintain and repair its attachments so as not to interfere with Owner's use or maintenance of said poles. Moreover, in the event that Owner determines that any of Licensee's facilities are in an unsafe condition, Licensee, at its own expense, shall relocate or replace said facilities, or transfer them to substituted poles, or perform such other work in connection with said facilities that may be required to place them in a safe condition. However, in the case of emergencies, Owner may temporarily relocate Licensee's facilities to substituted poles, and the cost of such relocation, shall be reimbursed by the Licensee to Owner.

#### Section 8. Abandonment of Jointly-Used Poles.

Licensee may abandon the use of a jointly-used pole at any time by first giving written notice thereof to the Owner and thereafter removing Licensee's attachments within ninety (90) days of said written notice. Written notice shall be in the form shown in Exhibit B.

In the event that Owner intends to remove all of its attachments and to terminate joint use of any pole, Owner shall first give Licensee written notice thereof and shall thereafter remove such attachments within ninety (90) days of said written notice. In such event, at the sole discretion of the Owner, if Owner desires to sell said pole or poles, and if Licensee wishes to purchase them,

Licensee shall pay the Owner \$1.00 per pole. Transfer of ownership will be by means of a Bill of Sale, in the format of Exhibit C attached hereto, and shall be deemed completed when Owner has removed all Owner facilities from the pole and transmits Bill of Sale to Licensee. When bill of sale is completed, Licensee takes complete ownership and responsibility for said pole, except that Owner will be responsible for any events and occurrences relating to each pole prior to the date of sale. Owner has the right to not sell any pole and to request Licensee to remove their attachment from a pole that the Owner wishes to permanently remove. Such removal request shall be issued from Owner to Licensee with at least 180 days notice. Licensee attachments which continue to exist on such poles after 180 days notice shall be subject to the same \$50/pole/day penalty as noted in Section 5C.

#### Section 9. Rentals and Other Payments.

- A. There shall be a rental fee for each pole attached to or reserved by the Licensee. The rental period for joint use poles shall be one (1) year. The Owner shall, before January 10<sup>th</sup> each year, issue a report showing the number of poles to which Licensee has made attachments or reserved therefore as of January 1 of the existing year. Unless Licensee establishes a different number within sixty (60) calendar days after receiving such report, payment for such number shall be due forty-five (45) days following the issuance of the statement by the Owner. In the event of a dispute, Licensee shall specifically designate, in writing, the locations under dispute and until resolved, such disputed pole quantities will be exempt from rental payment until resolved and then payment shall be processed immediately. However, failure to give the report prior to the date mentioned shall not deprive Owner of rental fees. All poles not under dispute shall be paid for at the annual fee.
- B. The amount of the annual rental fee for pole attachments shall be \$13 per pole in the first year of this agreement. Subsequent years pole attachment fees will escalate from the \$13 per pole per year fee at a rate of 2% per year.
- C. Payments for other amounts due under this Agreement shall be invoiced upon completion of the work and payable by the Licensee within sixty (60) days' receipt thereof and shall accrue a late payment penalty of 1-1/2% per month on the unpaid balance from the billing date for any late payment.

#### Section 10. Defaults.

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

Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the City's written notice: (A) to respond to the City, 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 City of the steps being taken and the projected date that the cure will be completed.

Enforcement. Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of Section 9.2 above, in the event the City determines that the Grantee is in default of any material provision of the Franchise, the City may:

seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or

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

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. 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 City has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, 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.

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 the City shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the City shall be in writing and shall be delivered to the Grantee in a manner authorized by Section 10.2. The Grantee may appeal such determination to any court with jurisdiction within thirty (30) days after receipt of the City's decision

## Section 12. Indemnification.

The Licensee shall indemnify, defend and hold harmless the Owner from any and all third party claims, damages, judgments, losses, costs and expenses (including attorneys' fees), for physical injury or damage to tangible property that arises directly out of Licensee's use of poles pursuant to this Agreement; provided, that notice in writing shall be immediately given to the Licensee of any claim or suit against the Owner which, by the terms hereof, the Licensee shall be obligated to defend, or against which the Licensee has hereby agreed to save and keep harmless the Owner and provided further that the Owner shall furnish to the Licensee all information in its possession relating to said claim or suit, and cooperate with the Licensee in the defense of said claim or suit. The governing body of the Owner may, if it so desires, assist in defending any such claim or suit, but solely under the direction of the Licensee or its attorneys

and the Licensee shall not be required to reimburse the Owner for expenses incurred by it in case of the election so to assist.

Contractors performing work on behalf of the Licensee shall provide the Owner with a Certificate of Insurance to cover all locations of the work being done on behalf of the Licensee, and shall name the City of St. Charles as additional insured. Certificates of Insurance shall be filed no later than 10 days prior to commencement of work. Policies shall contain a non-cancellation clause provision preventing cancellation without 30 days written prior notice to City (ten (10) days in the event of nonpayment of premiums by Licensee). Certificates of Insurance shall be completed on the ACCORD 25-S form.

The Owner requires the Licensee to provide and maintain insurance consistent with Exhibit D.

### Section 13. Service of Notices.

All written notices required under this Agreement shall be given by posting the same in first class mail to Owner as follows:

Director of Public Works  
City of St. Charles  
2 East Main Street  
St. Charles, Illinois 60174

and to Licensee as follows:

With a copy to:  
Comcast  
5N301 Medinah Rd,  
Addison, IL  
Attn: Director of Construction

or to such address as the parties hereto may from time to time specify.

### Section 14. Term of Agreement.

Subject to the provisions of Section 10 herein, this Agreement shall continue in force and effect for a period of ten (10) years from and after the Effective Date of this Agreement (the "Initial Term"), and thereafter from year to year (each year a "Renewal Term") unless terminated by either party by giving written notice not less than one (1) year prior to the end of the Initial

Term or any Renewal Term. Notwithstanding any such termination, this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

#### Section 15. Assignment of Rights.

Except as otherwise provided in this Agreement, Licensee shall not assign any of its rights or interests hereunder, or in any of the jointly used poles or attachments covered by this Agreement, to any firm, corporation, or individual, without the written consent of Owner, which consent shall not be unreasonably withheld, except that Licensee may, without the prior consent of the Owner, assign all of its rights under this Agreement to: (i) a parent, subsidiary, or Affiliate of Licensee; (ii) a purchaser of all or substantially all of Licensee's assets related to this Agreement; or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Licensee is participating. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns. For the purposes of the Section, "Affiliate" means, any entity that controls or is controlled by Licensee, or is under common control Licensee. Nothing herein contained shall prevent or limit the right of Licensee to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of Licensee, or enter any merger or consolidation and, in the case of the foreclosing of such mortgage or in the case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be. Subject to all of the terms and conditions of this Agreement, Licensee may permit any corporation or company conducting a business of the same general character as that of Licensee and owned, operated, leased, and controlled by it, associated or affiliated with it in interest, or connected with it, to all or any part of the space allotted hereunder on any pole covered by this Agreement for the attachments used by Licensee, in the conduct of its said business. All such attachments maintained on any such pole shall be considered as the attachments of Licensee, and the rights, obligations and liabilities of such assignee under this Agreement, with respect to such attachments, shall be the same if it were the actual owner thereof. Notwithstanding any of the provisions in this section, Licensee shall not be released from any of its obligations hereunder.

#### Section 16. Scope of Right of Licensee.

No use by Licensee of Owner's poles under the terms of this Agreement, however extended, shall create or vest in Licensee any ownership or property rights in said poles, but Licensee's rights herein shall be and remain a mere license. For poles upon which Licensee has reserved space, nothing herein contained shall be construed to compel Owner to maintain any of such poles for any period longer than demanded by Owner's own service requirements.

Further, the terms and conditions of this Agreement shall not apply to any pole solely owned and used by Licensee.

#### Section 17. Waiver of Terms or Conditions.

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, and the same shall be and remain at all times in full force and effect.

Section 18. Existing Contracts or Agreements.

Any existing agreements between these parties, whether verbal or written, covering the joint use or joint ownership of poles are by mutual consent, hereby abrogated and annulled.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed effective as of the effective date shown on the first page of this Agreement.

**Witness:**

**THE CITY OF ST. CHARLES**

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

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

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

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

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

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

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

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

**Witness:**

**COMCAST of ILLINOIS/OHIO/ORGEON, LLC**

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

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

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

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

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

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

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

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



**EXHIBIT A**

POLE ATTACHMENT APPLICATION AND PERMIT

Permit No. \_\_\_\_\_

Date \_\_\_\_\_

Mr. \_\_\_\_\_

CITY OF ST. CHARLES MUNICIPAL ELECTRIC UTILITY

\_\_\_\_\_

In accordance with the terms and conditions of the agreement between our respective companies dated \_\_\_\_\_, application is hereby requested for permission to make attachments to \_\_\_\_\_ City poles as indicated on the sketch attached hereto.

By \_\_\_\_\_

\_\_\_\_\_

PERMIT

Permission is hereby granted to make the attachments described in the above application subject to all terms and conditions referred to above and in said agreement, and further subject to acceptance by the applicant of the obligation to pay the amount shown below for changes or rearrangements of poles or equipment as indicated below or on a statement attached hereto, and the applicable rental charges for the present year in progress:

Estimated amount to be paid for above charges \$ \_\_\_\_\_ W.O. No. \_\_\_\_\_

Rental charge for year in progress: \_\_\_\_\_ by \_\_\_\_\_ =\$ \_\_\_\_\_

No. of City Poles	Rate	Rental Charge
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The cost of rearrangements provided is an estimate based on preliminary engineering. Such cost shall be reconciled upon completion of the job to establish the actual cost for the work performed by the City. Applicant is responsible for the actual cost and will be issued a refund within 60 days of reconciliation of the job, if the estimated cost exceeded the actual cost. Should the actual cost exceed the estimated cost, Applicant shall be issued a bill with explanation of the actual costs and the reason or reasons that the actual cost was greater than the estimate. Such bill shall be payable , in accordance with Section 9, Paragraph C.

Above charges accepted:

\_\_\_\_\_ CITY OF ST. CHARLES MUNICIPAL ELECTRIC UTILITY

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

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

\_\_\_\_\_ APPLICANT

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

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

PERPETUAL INVENTORY RECORD

City poles in use to date \_\_\_\_\_

City poles added by this permit \_\_\_\_\_

Total City poles in use \_\_\_\_\_

**EXHIBIT B**

**NOTIFICATION OF POLE ATTACHMENT REMOVAL**

Removal Notice No. \_\_\_\_\_

Date \_\_\_\_\_

Mr. \_\_\_\_\_

CITY OF ST. CHARLES MUNICIPAL ELECTRIC UTILITY

\_\_\_\_\_

In accordance with the terms and conditions of the agreement between our respective companies dated \_\_\_\_\_, notification of removal of attachments to \_\_\_\_\_ City poles on the City of \_\_\_\_\_ as indicated on the sketch hereto is hereby given:

By \_\_\_\_\_

Date \_\_\_\_\_

Notice of Acknowledged

Date \_\_\_\_\_ City of ST. CHARLES

By \_\_\_\_\_

INVENTORY

City poles in use to date \_\_\_\_\_

City poles discontinued by this notice- \_\_\_\_\_

Total City poles in use \_\_\_\_\_

**EXHIBIT C**

BILL OF SALE FOR POLE

DATE: \_\_\_\_\_

COMPANY, in consideration of payment of:

\$ \_\_\_\_\_

has taken ownership of the pole/poles identified on the attached drawing.

City of St. Charles certifies that all electric utility and other licensee attachments have been removed from said pole/poles and hereby relinquishes ownership.

\_\_\_\_\_ CITY OF ST. CHARLES MUNICIPAL ELECTRIC UTILITY

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

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

\_\_\_\_\_ COMPANY

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

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

PERPETUAL INVENTORY RECORD

City poles in use to date \_\_\_\_\_

City poles deleted by this sale \_\_\_\_\_

Total City poles in use \_\_\_\_\_