

**RESOLUTION  
VILLAGE OF CAMPTON HILLS**

**A RESOLUTION RATIFYING FRANCHISE AGREEMENT  
WITH COMCAST OF ILLINOIS V. INC.**

WHEREAS, the Corporate Authorities of the Village of Campton Hills, Kane County, Illinois (the "Village") previously authorized the Village President to negotiate the details of a Franchise Agreement between this Village and Comcast of Illinois V. Inc. ("Comcast"); and

WHEREAS, said Franchise Agreement was completed and thereupon approved as to form by the Village Attorney;

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Campton Hills, Kane County, Illinois that:

**Section 1:** The Franchise Agreement between the Village of Campton Hills and Comcast is approved and ratified in the form attached hereto.

**Section 2:** This Resolution shall be in full force and effect from and after its passage and approval pursuant to law.

Passed this 15<sup>th</sup> day of January, 2008 by roll call vote as follows:

	<b>AYES</b>	<b>NAYS</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Trustee Bernard Bertsche	X			
Trustee Charles Cappell	X			
Trustee Jim Kopec	X			
Trustee Albert Lenkaitis, Jr.			X	
Trustee Mike Millette	X			
Trustee Roy Pollack				X
President Patsy Smith				

APPROVED THIS 15<sup>th</sup> DAY OF JANUARY, 2008

Patsy J. Smith  
Patsy J. Smith, Village President

(SEAL)

ATTEST: Rebecca R. Lambe  
Rebecca R. Lambe, Village Clerk

## FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the Village of Campton Hills, Illinois (hereinafter, the "Village") and Comcast of Illinois V. Inc., (hereinafter, "Grantee") as of the 31<sup>st</sup> day of December, 2007 (the "Effective Date").

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

This agreement is entered into by and between the parties under the authority and shall be governed by the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act").

### 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 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.

"Cable Act" or "Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as the same may be amended from time to time.

"Cable Service" means the one-way transmission to Subscribers of Video Programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

"Cable System," "System," "Cable Communications System," or "CATV System," means any facility which is constructed in whole or in part in, on, under, or over any Public Way or public place and which is operated in whole or in part to perform for hire the service of receiving and amplifying Video Programming and redistributing such Programming by wire, cable, or other means to members of the public who subscribe to such service; except that such definition shall not include (a) any system which serves only the residents of one or more apartment dwellings under common ownership, control, or management, and (b) commercial establishments located on the premises of such dwellings. A CATV System is classified by reason of the purpose and operation of the facilities; the technology by which the signals are received, amplified, and redistributed, except for necessarily using the Public Way, is not relevant to the determination of whether such a system is a CATV System.

"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.

"Village" means the Village of Campton Hills, Illinois, an Illinois Municipal Corporation, or the lawful successor, transferee, designee, or assignee thereof.

“Customer” 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.

“Franchise” means the initial authorization, or renewal thereof, issued by the Village, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

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

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

“Grantee” shall mean Comcast of Illinois V, Inc.

“Gross Revenue” means the Cable Service revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view video fees, 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, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

At the Village’s request the definition of Gross Revenue shall include franchise fees collected and non-subscriber revenue permitted pursuant to the “Dallas” and “Pasadena” decisions.

“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.

“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 easements 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.

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

2.1. 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.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be 10 years unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law.

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.

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

2.5. Competitive Equity.

2.5.1. 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.

2.5.2. In the event an application for a new cable television franchise or other similar authorization is filed with the Village proposing to serve the Franchise Area, in whole or in part, the Village shall serve or require to be served a copy of such application upon any existing Company or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.

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

3.1. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground

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

3.2. 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.

3.3. The Grantee shall not be required to relocate its facilities unless it has been afforded at least 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.

**SECTION 4 - Service Obligations**

4.1. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per 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 or previously unserved homes located within 125 feet of the Grantee's distribution cable at its standard rates.

4.1.2. 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 to be calculated on that portion of the installation that exceeds the standards set forth above.

4.2. Programming. The Company 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     |

4.3. 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 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 ten (10) business days written notice of the date of availability of open trenches. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner and Village shall provide the Grantee written notice at the time of notice to the utilities of such construction or development, and of the particular date on which open trenching will be available for the Grantee's installation of conduit, pedestals, and/or vaults and laterals. The Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if the Grantee fails to install its conduit, pedestals and/or vaults and laterals within ten (10) business days of the date the trenches are available, as designated in the notice given by the property owner or developer to the Grantee, then should the trenches be closed after the ten (10) day period, the cost is to be borne by the Grantee.

4.4. Notice to Grantee. The Village shall notify the Grantee of any and all planned developments in its Franchise Area or those located in areas expected to be annexed. Such notices shall be provided at the time of notice to all other utilities or like occupants of the Village's rights-of-way. The Village shall provide summaries of all planned developments in the Village or the areas expected to be annexed. Said notice is to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction and capital resources. Should the Village fail to provide advance notice of such developments 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.

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

5.1. Franchise Fees. The Grantee shall pay to the Village a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due thirty (30) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period. Due to the Village's recent incorporation, the Village shall indemnify the Grantee in the event the County of Kane, State of Illinois, makes any claim for franchise fees, which have been paid to the Village, generated from the Grantee's cable system in the franchise area which is now the Village of Campton Hills. In the event of any dispute between the County of Kane, State of Illinois and the Village of Campton Hills, Comcast agrees to cooperate to assist in reaching an amicable resolution.

## 5.2. Franchise Fees Subject to Audit.

5.2.1. 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.

5.2.2. 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. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

5.2.3. 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 days (30), Grantee shall be charged and shall pay, in addition to the amount due, interest on the amount due equal to the prevailing prime rate plus two hundred base points of interest compounded daily from the due date for payment of the "Finally Settled Amount."

5.2.4. 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.

## 5.3. Maintenance of Books, Records, and Files.

5.5.1. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The 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.

#### **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 Village, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the Village, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. 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.

#### **SECTION 7 – Insurance and Indemnity**

7.1. **Insurance.** Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the 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

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the Village, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, provided that the Village shall give the Grantee written notice of its obligation to indemnify and defend the



Village within fourteen (14) days of receipt of a claim or action pursuant to this Section. If the Village determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Village.

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

## **SECTION 8 - System Description**

8.1. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K.

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

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

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

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

9.3.1. seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or

9.4. 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:

9.4.1. 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

9.4.2. 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.



10.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois or Federal law as applicable, 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. 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.

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

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

10.9. Service to Village and Schools. Grantee shall provide basic television service without charge to the Village Office/Village Hall and to all public schools located within the Village, subject to the provisions of the Cable and Video Customer Service Protection Law, 220 ILCS 70/501 et. Seq.. The Village shall be responsible for any charges for a non-standard installations including installing services to buildings located greater than 125 feet from Grantee's cable system.

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

**For the Village of Campton Hills:**

By: Patsy J. Smith

Name: Patsy J. Smith

Title: Village President

**For Comcast** \_\_\_\_\_

By: Jason M. Gumbs

Name: Jason M. Gumbs

Title: V.P. of West Area