

**Village of  
Barrington Hills**

# Memo

**To:** Trustee Mallen  
**From:** Robert Kosin  
**CC:** Board of Trustees  
Village President  
**Date:** August 20, 2010  
**Re:** Comcast - Xfinity

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The attached draft franchise agreement is the result of the meeting with Chris Nelson of Comcast. Mr. Nelson is to appear before the Board of Trustees at the August 23, 2010 meeting.

By way of information, Comcast is also doing business as Xfinity.

## Sarah Kenney

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**From:** Robert Kosin [rkosin@barringtonhills-il.gov]  
**Sent:** Saturday, August 07, 2010 11:08 AM  
**To:** Beth Mallen  
**Cc:** Sarah Kenney  
**Subject:** FYI Reference 8/10 Who Is Xfinity

Comcast Corporation (NASDAQ: CMCSA and NASDAQ: CMCSK), founded in 1963, is the largest cable operator and the largest home internet service provider in the United States, providing cable television, broadband Internet, and telephone service to both residential and commercial customers in 39 states and the District of Columbia.

Xfinity (cable television, broadband internet, digital voice), home networking  
Revenue ▲ \$ 35.756 billion (2009)  
Operating income ▲ \$ 7.214 billion(2009)  
Net income ▲ \$ 3.638 billion(2009)  
Total assets ▼ \$ 112.733 billion(2009)  
Total equity ▲ \$ 42.721 billion(2009)  
Employees 100,000 - September 2009

Website <http://www.comcast.com>

### Cable television

Comcast has around 23.5 million television subscribers in 39 states inside the U.S.

### Internet

Comcast has 15.930 million high-speed internet customers.

### Home Telephone

Comcast tallies 6.4 million household telephone service accounts, making it the United States' third-largest telephone provider. As of December 31, 2009 Comcast has 7.622 million voice customers.

### Business Class services

In addition to residential consumers, Comcast also serves businesses as customers, specifically targeting the segment of businesses with fewer than 20 employees. In 2009, Minneapolis - Saint Paul became the first city that Comcast Business Class offered 100 Mbps Internet service, which includes Microsoft Communication Services.

### Programming

Comcast not only delivers third-party programming content to its own customers, but also produces content that is delivered to both its subscribers and customers of other competing television services. This is a way to diversify Comcast's revenue to both sides of the content/delivery equation. Fully- or partially-owned Comcast programming includes CN8, Comcast SportsNet, SportsNet New York, MLB Network, Comcast Sports Southeast/Charter Sports Southeast, E!

Entertainment, Style Network, G4, Versus, The Golf Channel, AZN Television, and FEARnet.

### Cable

Comcast Cable Communications

AT&T Broadband

Susquehanna Communications

Adelphia Communications (partially owned by Time Warner Cable) Patriot Media Commuter Cable

## Programming

CN8 – The Comcast Network

Comcast SportsNet

Mid-Atlantic

Philadelphia

Chicago

Washington

Northwest

New England

Bay Area

SportsNet New York (joint venture with the New York Mets and Time Warner Cable) MLB Network (joint venture with Major League Baseball and other providers) Comcast Sports Southeast/Charter Sports Southeast (in part with Charter Communications) Comcast Television (formerly Comcast Local) available in Michigan E! Networks E! Entertainment Style Network G4

Versus (formerly OLN, which was formerly Outdoor Life Network) The Golf Channel AZN Television (formerly International Networks) ExerciseTV FEARnet NHL Network (United States) (joint venture with National Hockey League)

## Sport Franchises

Philadelphia 76ers

Philadelphia Flyers

## Other Business Units

Comcast Interactive Capital

Comcast-Spectacor

Comcast Spotlight (Advertising)

Comcast Interactive Media

## Joint Ventures

TV One (in partnership with Radio One and DirectTV) TVWorks (67%) (in partnership with Cox Communications) GuideWorks (51%) (in partnership with Gemstar TVGuide) PBS Kids Sprout (in partnership with HIT Entertainment, PBS and Sesame Workshop)

## Acquisitions and joint ventures (December 2009)

Comcast bought 25% of Group W Cable in 1986, doubling its size. Two years later, it purchased a 50% share in Storer Communications, Inc.

Comcast acquired American Cellular Network Corporation the same year before combining with Metrophone in 1990. Comcast became the third largest cable operator in 1994 following its purchase of Maclean-Hunter's American division. Comcast owned the majority of the electronic retailer QVC from 1995-2004 when its share was sold to Liberty Media. Following other acquisitions, Microsoft invested \$1 billion in Comcast in 1997.

In 2001, Comcast announced it would acquire the assets of the largest cable television operator at the time, AT&T Broadband (AT&T's spun-off cable TV service) for \$44.5 billion USD. In 2002, Comcast acquired all assets of AT&T Broadband, thus making Comcast the largest cable television company in the United States with over 22 million subscribers.

When it was first announced that AT&T Broadband and Comcast were going to merge, the chosen name for the new company was "AT&T Comcast". That decision was changed so as to not confuse current and future investors in the company, and the merged company retained the Comcast name.

This also spurred the start of Comcast Advertising Sales (using AT&T's groundwork) which would later be renamed Comcast Spotlight. As part of this acquisition, Comcast also acquired the National Digital Television Center in Centennial, Colorado as a wholly-owned subsidiary, which is today known as the Comcast Media Center.

On February 11, 2004, Comcast surprised the media industry by announcing an unsolicited \$66 billion bid for The Walt Disney Company, a deal that would have made Comcast the largest media conglomerate in the world.[38] After rejection by Disney and uncertain response from investors, the bid was abandoned in April. The deal would have also required Comcast to sell off either the Philadelphia Flyers (which they own through Comcast Spectacor) or the Disney-owned Mighty Ducks of Anaheim, since they wouldn't be permitted to own two NHL teams. It was later discovered that the deal was mostly for Comcast to acquire one of Disney's most profitable operations, ESPN, in an attempt to expand its sports reach. Comcast has since opted to rename OLN as Versus and expand their sports coverage with the Tour de France and the NHL. Comcast's NHL deal also obligated them to launch a U.S. version of NHL Network by the summer of 2007. The network finally launched in October 2007. Disney later sold the now-Anaheim Ducks to Henry Samueli in 2005 in an unrelated transaction.

Comcast announced on March 25, 2004 that its new gaming-oriented television network G4 (operated by subsidiary G4 Media, Inc.) would acquire Vulcan Venture's technology-oriented television network TechTV. The deal was finalized on May 10, 2004 - and the two networks became G4techTV on May 28, 2004. On January 11, 2005, Comcast announced that it would drop TechTV from the station's name and again be known as "G4".

On April 8, 2005, a partnership led by Comcast and Sony Pictures Entertainment finalized a deal to acquire MGM and its affiliate studio, United Artists, and create an additional outlet to carry MGM/UA's material for cable and Internet distribution.

In July 2006, Comcast purchased the Seattle-based software company thePlatform. This represented an entry into a new line of business - selling software to allow companies to manage their Internet (and IP-based) media publishing efforts. Customers of thePlatform include Verizon Wireless, BBC Worldwide, PBS, CNBC, CBS College Sports, and HiT Entertainment .[43] thePlatform also provides media access for Hulu and Fancast.com.

In May 2008 Comcast purchased Plaxo for a reported \$150 million to \$170 million.

On May 19, 2009, Disney and ESPN Media Networks and Comcast Corporation announced an agreement to add ESPNU to its Digital Classic level of service. Comcast added ESPNU to a majority of its cable systems in time for the start of the 2009 college football season. This includes Comcast's southern systems which enjoys coverage of ESPNU's new Saturday game-of-the-week Southeastern Conference (SEC) package. With this agreement, ESPNU has more than 46 million subscribers.

In the same agreement, it was announced that ESPN360.com (now ESPN3.com)—the sports company's U.S. live sports broadband network—would be made available to all Comcast high speed Internet subscribers. ESPN3.com provides live streaming of more than 3,500 sports events from around the world annually. Programming includes major soccer leagues, US college football, basketball, baseball and softball, NBA, MLB, coverage of major golf and tennis tournaments (such as tennis "grand slam" events, the US Open and Wimbledon). With the agreement ESPN360.com became available to nearly 41 million homes, a majority of broadband homes in America.

Media outlets began reporting in late September 2009 that Comcast was in talks to buy NBC Universal. Comcast denied the rumors at the first, while NBC would not comment on them. However, CNBC itself reported on October 1 that General Electric was considering spinning NBC Universal off into a separate company that would merge the NBC television network and its

cable properties such as USA Network, Syfy and MSNBC with Comcast's content assets. GE would maintain 49% control of the new company, while Comcast owned 51%. Vivendi, which owns 20%, would have to sell its stake to GE. It's been reported under the current deal with GE that it would happen in November or December. On November 1, 2009, The New York Times reported Comcast had moved closer to a deal to purchase NBC Universal and that a formal announcement could be made sometime the following week. On December 3, 2009, the parties announced that Comcast will take a controlling 51% stake in NBC Universal. Still under review by the FCC July 2010 for reasons as follows:

The move to form a joint venture between cable company Comcast and content network NBC Universal has been extended by 135 days.  
[www.betanews.com](http://www.betanews.com)

Today, [July 13, 201] William T. Lake, of the FCC Media Bureau announced that the application process, which was originally slated to take no more than 180 days, has been restarted at Day 45 after Comcast and NBCU submitted renewed responses. This means the bureau's review period will last nearly four and a half months before the merger can progress.

Late in 2009, cable company Comcast made the move to merge with NBC Universal with the intention of eventually forming a joint content company (to be called simply NBC Universal) that would run alongside Comcast's Xfinity pipeline company. The joint venture would be 51% owned by Comcast, 49% owned by General Electric, and managed by Comcast.

The company would combine NBCU's two broadcast television networks (NBC and Telemundo), its 26 local broadcast television stations, several national cable programming networks, a motion picture studio, international theme park businesses and online content businesses with Comcast's regional sports networks, other programming networks, and certain online businesses.

Of course, the merger raised concerns among both legislators and the entertainment industry. For many, it was the unsettling combination of a for-pay TV provider taking control of a company that produces content for free, over-the-air broadcasting.

"Clearly the concern here is that when a company that has the wire going into the home merges with a company that has all of NBC Universal's content, there could be a temptation to discriminate against others," said Representative Ed Markey (D -Mass.) in February.

For companies such as Netflix, the concern was similar, except for online services like Comcast's TV Everywhere. With that, Comcast would deliver streaming on-demand content anywhere, but only to Comcast subscribers, tying cable subscriptions with online content delivery.

"By bundling the traditional cable TV offering with Internet delivery of content, vertically integrated MVPDs and network operators are potentially extending and expanding their dominant market position at the expense of competitive online offerings," Netflix wrote in comments to the FCC.

For seven months, the deal has been going through the process of getting regulatory approval, and in May, Comcast, GE, and NBC Universal filed applications to assign and transfer control of broadcast, satellite earth station, wireless and other licenses to the NBC Universal joint venture.

**Clerk**

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**From:** Nelson, Christopher [Chris\_Nelson@cable.comcast.com]  
**Sent:** Tuesday, August 17, 2010 3:22 PM  
**To:** clerk@barringtonhills-il.gov  
**Cc:** rkosin@barringtonhills-il.gov  
**Subject:** FOR REVIEW - Barrington Hills + Comcast - Draft Agreement

Good afternoon. Please forward this draft franchise renewal document to Trustee Beth Mallen.

Thank you in advance.

Christopher J. Nelson  
Manager of Government Affairs  
Comcast  
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Carpentersville, IL 60110

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8/18/2010

**CABLE TELEVISION FRANCHISE AGREEMENT  
BY AND BETWEEN  
The  
VILLAGE OF BARRINGTON HILLS  
And  
COMCAST OF ILLINOIS IX, LLC**

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the Village of Barrington Hills, an Illinois municipal corporation (hereinafter, the "Village") and Comcast of Illinois IX, LLC, (hereinafter, "Grantee") this \_\_\_\_\_ day of \_\_\_\_\_, 2010 (the "Effective Date").

Pursuant to the Cable Act, and the Illinois Municipal Code (65 ILCS 5/11-42-11), the Village has the authority to franchise cable television service providers seeking to provide cable television service within its corporate limits. 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 of and shall be governed by the Cable Act and the Illinois Municipal Code (65 ILCS 5/11-42-11), provided that any provisions of the Illinois Municipal Code which 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 Service" or "Service" has the meaning set forth in 47 U.S.C. § 522 of the Cable Act as amended, and 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 (47 USC § 541(c))) 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 (47 USC § 573); 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.

“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.

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

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

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

“Grantee” shall mean Comcast of Illinois IX, 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, premium and pay-per-view video fees, advertising and

home shopping revenue, late fees, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources directly related to Cable Service delivered over the Cable System as may hereafter develop, provided that such revenues, fees, receipts, or charges are deemed lawful and to be included in the gross revenue base for purposes of computing the Franchising Authority's permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, advertising sales commissions and third party agency fees, nor any taxes, fees or assessments 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 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.

"Village" means the Village of South Barrington, Illinois or the lawful successor, transferee, designee, or assignee thereof.

**SECTION 2: Grant of Authority**

2.1. Pursuant to the authority granted to the Village by the Cable Act and the Illinois Municipal Code (65 ILCS 5/11-42-11), 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 \_\_\_\_\_ ( ) years from the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. Upon passage and approval of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to replace all existing franchise agreements – including the prior Franchise with the Grantee, regardless of whether said prior Franchise or franchise agreements are in effect.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of 47 U.S.C. § 546 (Section 626) of the Cable Act, as amended.

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

2.5. 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.

2.6. Competitive Equity.

2.6.1. 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.

2.6.2. To the extent permitted by applicable law, 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 use its best efforts to provide or require to be provided a copy of such application to the Grantee promptly following the submission of such application.

**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. Improvements of Public Way. The Grantee agrees that it shall, upon reasonable notice by the Village and at the Grantee's own expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such street or other public place any network, system, facilities, or equipment when required to do so by the Village because of public health, safety and welfare improvements as deemed necessary by the Village. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project in the event such funds are made available to other users of the Public Way to the extent such funds are made available to other users of the Public Way.

3.3. 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 the 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 to the extent such funds are made available to other users of the Public Way.

3.4. The Grantee shall not be required to relocate its facilities unless it has been afforded at least sixty (60) days' notice 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. 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 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 one hundred twenty-five (125) feet of the Grantee's distribution cable.

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

4.2. Customer Service Obligations. The Village 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. 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.*, as amended from time to time.

4.3. 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.

4.4. New/Planned Developments. The Village agrees to use its best efforts to provide the Grantee with notice of the issuance of building permits within the Franchise Area for projects requiring undergrounding of cable facilities and with summaries of all planned developments in the Village at the same time as such notices and summaries are provided to all utilities or other like occupants of the Village's right-of-way. To the extent the Village requires builders or developers to notify utilities of the pending availability of open trenches for the installation of utility facilities to the building or development, the Village agrees to require the builder or developer to provide the same notice to the Grantee. The purpose of the notices as described in this section are to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction and capital resources. Should the Grantee not obtain such notices, 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.

4.5. Annexations. The Village shall use its best efforts to notify the Grantee of all annexations by the Village and of any and all planned developments in areas expected to be annexed at the same time the Village informs utilities or other like occupants of the Village's rights-of-way. 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 actual and planned annexations, 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. The parties agree that Grantee's Franchise and Franchise Fee obligations with respect to annexations are as set forth in the Counties Code – 55 ILCS 5/5-1095(a) – as amended from time to time and that the period for which franchise fees shall continue to be paid to the county shall commence on the later of the date on which the Grantee was informed of the annexation or the actual date on which the annexation occurred. The Village shall use its best efforts to provide the Grantee with written notice of the issuance of building or development permits within the Franchise Area for projects requiring undergrounding of cable facilities. The Village agrees to use its best efforts to require the builder or developer to give the Grantee access to open trenches for deployment of cable facilities and at least sixty (60) business days' written notice of the date of availability of open trenches.

4.6. Service to School Buildings and Governmental Facilities.

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

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

4.6.3. 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 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.

4.7. 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. The Village agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the Village, its employees or agents in using such system.

**SECTION 5: Oversight and Regulation by Village**

5.1. **Franchise Fees.** The Grantee shall pay to the Village a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as quoted by Chase Bank U.S.A or its successor, from the time of the discovery of the delinquent payment until the date paid. Any undisputed overpayments made by Grantee to the Village shall be returned or credited upon discovery of such overpayment and shall be payable within thirty (30) days of the receipt of written notice from Grantee.

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

5.1.2. **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 Subscribers).

5.2. Franchise Fees Subject to Audit. The Village and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05, entitled "Municipal Franchise Fee Review; Requests For Information." Any audit shall be conducted in accordance with generally applicable auditing standards. The Village and/or its designee may be required to execute a non-disclosure agreement with the Grantee prior to inspection of the Grantee's financial records. Enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with 65 ILCS 5/11-42-11.05.

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. 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" and "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 Village'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 consistent with the provisions of 5 ILCS 140/7 (1), (including, but not limited to, subsections g, h, i, k, m, v and x) as amended from time to time, the Village shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the Village from and against any claims arising from the Village's opposition to disclosure of any information Grantee designates as proprietary or confidential.

## **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 fifty-one percent (51%) or greater ownership interest in Grantee, shall take place without the prior written consent of the Village, which consent shall not be unreasonably withheld or delayed. No consent shall be 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, a Pennsylvania 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 Commercial General Liability Insurance and provide the Village certificates of insurance designating the Village and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of five million dollars (\$5,000,000.00) for bodily injury or death to any one person, and five million dollars (\$5,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and five million dollars (\$5,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City/Village. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City/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, in accordance with the Village's generally applicable Right-of-Way Ordinance.

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.

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

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

This Section Left Intentionally Blank.

#### **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

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 Village:

Village of Barrington Hills  
112 Algonquin Road  
Barrington Hills, Illinois 60010  
ATTN: Director of Administration

To the Grantee:

Comcast  
155 Industrial Drive  
Elmhurst, Illinois 60126  
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.

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

10.3.1. The Village 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.

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. 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. Authority. Grantee warrants to the Village that it is authorized to execute, deliver and perform this Franchise Agreement. Grantee warrants to the Village that execution, delivery and performance of this Franchise Agreement does not constitute a breach or violation of any agreement, undertaking, law or ordinance by which Grantee is bound. The individual signing this Franchise Agreement on behalf of Grantee warrants to the Village that he or she 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 Village of Barrington Hills:**

**For Comcast of Illinois IX, LLC:**

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

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

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

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

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

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

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

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