



**Drafters' Notes for Use With the  
Comcast Franchise Agreement Template**

<u>Page</u>	<u>Section</u>	<u>Notes</u>
1	Title	Insert the correct legal name of your City/County/Village as well as the correct legal name of the Comcast entity that operates the cable system in your community (e.g., Comcast of Illinois, IV). Your Comcast representative will be able to provide the current name of this entity. Some entity names have changed since Comcast assumed control of various Chicago-area franchises since 2002.
1	Preamble	<u>First paragraph:</u> Insert the correct legal name of your City/County/Village and the correct legal name of the Comcast entity that operates the cable system in your community. Also enter the Effective Date. In selecting the Effective Date, you will want to consider whether the Agreement should be effective from a date prior to its actual execution.
1	Preamble	<u>Third paragraph:</u> We have given you two options for this paragraph. Please use the Non-Home Rule provision if you are a non-home rule government or the Home Rule paragraph if you are home rule. The distinction between the two is a reference to the Illinois Constitution from which home rule units receive their powers.
2	Definitions	<u>Grantee:</u> Insert the correct legal name of the Comcast entity that operates the cable system in the community.
3	Definitions	<u>Gross Revenues:</u> Each City/County/Village should be aware that the last sentence of this definition includes Franchise Fees collected from Subscribers in Gross Revenues, which has the effect of imposing a Franchise Fee on a Franchise Fee. Different communities have different views in whether they wish to include it. Most communities elect to allow this practice, but some do not. The Cable Act has been interpreted by court decisions to prohibit the inclusion of revenues from cable modems and Internet service, telephone service, or wireless service, as they are not "cable service," even though those services are sold under the Comcast brand.

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3	Definitions	<u>Public Way</u> : Each City/County/Village should insert the citation to its local code or other ordinance containing its Right of Way Construction Standards in the first sentence of this definition.
4	2.1	All municipalities should use the citation to Chapter 65 of the Illinois Compiled Statutes in the first sentence of this paragraph. Counties should use the citation to Chapter 55. If you are a home rule unit, you should also cite the Illinois Constitution. Each local government should insert a citation to the ordinance it adopts (which grants the actual franchise which is subject to the franchise agreement) and authorizes this Agreement.
4	2.2	<u>Term of Franchise</u> : The term is to be separately negotiated between the local franchising authority and Comcast. The drafters do not recommend a specific term, but the most common term among recent renewals is 10 years. If there are issues on which the City/Village wants more frequent review, it should consider a shorter term, but be aware that the renewal process under the Cable Act begins three years before the end of the term.
4	2.6	<u>Competitive Equity</u> : This section does not include the issuance of a video service authorization by the ICC to a video service provider (e.g., AT&T or WOW). The Illinois General Assembly has provided that an authorization to provide video service is considered substantially equivalent to an existing cable provider. 65 ILCS 5/11-42-11.2(c); 55 ILCS 5/5-1096.5.
5	3.1	<u>Construction and Maintenance</u> : Insert citation to location in the local code in which your Right-of-Way Construction Standards Ordinance is codified or other local ordinance which governs construction in the Public Way.
5	3.3.1	<u>Undergrounding and Beautification Projects</u> : The last clause in this section refers to ComEd's use of its Rider 28 (granted by the ICC) that allows it to recover the cost of facilities relocation from ratepayers in the community that has required it to move its facilities. Comcast, AT&T, Nicor and Peoples Gas do not have similar riders or ratemaking powers. For the purposes of the section, ratepayer recovery funds are not considered public or private funds.
6	4.2	<u>General Service Obligation</u> : This provision establishes the residential density requirement for extensions of the Cable System to new areas at 30 dwelling units per mile. This would include dwelling units on both sides of a street, regardless of whether or not the units are occupied. Some communities may wish to discuss with Comcast commitments to serve non-residential areas as well.

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6	4.3	<p><u>Programming:</u> Local franchising authorities have little, if any, authority to dictate specific programming (other than on PEG Channels, see Section 8).</p> <p>In the past, this section of a cable franchise agreement contained language prohibiting indecent or obscene programming. The Cable and Video Customer Protection Law, 220 ILCS 5/22-501(n), specifically addresses obscene or indecent programming.</p>
6	4.4	<p><u>Technical Standards:</u> Technical inspections conducted by the local franchising authority and Comcast to determine signal quality under 47 CFR Part 76, Subpart K are allowed. The “significant” number of complaints triggering the need for such inspections will vary based on the size of the community and the nature of the complaints.</p>
7	4.6.1	<p><u>Service to School Buildings and Governmental Facilities:</u> The Cable and Video Customer Protection Law, 220 ILCS 5/22-501(f) may be broadly interpreted to include buildings owned by a local unit of government. This free service requirement is for one cable television set or box per building and is now imposed by the Cable and Video Customer Protection Law, 220 ILCS 5/22-501(f), and the Agreement acknowledges it.</p>
7	4.7	<p><u>Emergency Alerts:</u> Prior to entering into this Agreement, check with your local ESDA coordinator to determine if your City/County/Village participates in the State of Illinois Emergency Alert System State Plan. If a municipality belongs to a county-wide or regional ESDA, check to see if the county or regional ESDA participates in the State Plan. If a City/County/Village is not part of the State Plan, it should discuss with Comcast how best to do emergency alerts.</p>
7	4.8	<p><u>Customer Service Obligations:</u> The Cable and Video Customer Protection Law, 220 ILCS 5/22-501 et seq., applies throughout Illinois, and cities, villages and counties are authorized to adopt this Law by local ordinance with local penalties that can be locally enforced. If you have done so, you should include the appropriate cite to your local code in this section. If you have not adopted such an ordinance, a model is available at <a href="http://www.Impl.org">www.Impl.org</a>.</p>
8	5.1.2	<p><u>Franchise Fees:</u> Insert the applicable state law citation: Municipalities use Section 11-42-11 of the Illinois Municipal Code; Counties use Section 5-1095 of the Counties Code.</p>
8	5.2	<p><u>Franchise Fees Subject to Audit:</u> Insert the appropriate cite to State law. Municipalities should cite Chapter 65. Counties should cite Chapter 55. These new provisions are effective</p>

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8	5.2 (cont.)	August 3, 2010 (Public Act 96-1422, SB 2612) and establish provisions for municipal audits of cable providers and require compliance with the Local Government Taxpayers Bill of Rights Act. Prior to conducting an audit, local cable administrators should become familiar with P.A.96-1422 and its rules and procedures.
9	6.4	<u>Transfer of Cable System or Franchise or Control of Grantee:</u> These transfers are largely governed by the Cable Act. In the event of a transfer under this Section, it is important to review the FCC Form 394 and request additional information before the conclusion of the 30-day timeline. After that timeline has expired, the franchising authority's rights to request such additional information are diminished.
10	7.1	<u>Insurance:</u> Include a citation to your local code or ordinance provision containing the applicable insurance requirements.
10	7.2	<u>Indemnification:</u> This section was extensively discussed and addresses a variety of important issues pertaining to indemnity. You may wish to compare it to any local indemnification requirements.
10	8	<p><u>Public, Educational and Governmental Access:</u> This section is to be separately negotiated based on your community's level of, and desire for, access programming operations. Local franchising authorities that have an access programming operation or plan seeking to establish an access programming channel will want to consider conducting a needs ascertainment that includes, but may not be limited to, identifying public interest in PEG programming, determining equipment and operational requirements, and estimating resources needed for current and future programming, in order to support a request from Comcast for capital support in this Section.</p> <p>In negotiating this section with Comcast, the City/County/Village (as the local franchising authority) should note the following:</p> <ol style="list-style-type: none"> <li>a. PEG channels must be for non-commercial use;</li> <li>b. A City/County/Village which uses a PEG Channel and makes it available for non-governmental use should create content-neutral rules governing access to the channel;</li> <li>c. PEG Access Fees are limited to capital expenditures and may not be used for operating expenses. PEG Access Fees used for operating expenses can be considered a credit against the Franchise Fee;</li> </ol>

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10	8 (cont.)	<p>d. Comcast reports that it will not agree to PEG Access Fees of more than \$0.35/subscriber/month. However, Comcast has agreed to a higher amount where there is a well-established PEG Access Program with a track record and documentable PEG capital needs that were funded by a PEG fee of greater than \$0.35; and</p> <p>e. The Cable Act provides authority to pass on the PEG Fee to Subscribers, which means such a PEG Fee could appear on your local Subscribers' bill as an itemized fee imposed by your unit of government.</p>
11	9.4	<p><u>Remedies Not Exclusive:</u> Include citations to your Local Customer Service Ordinance and Right-of-Way Construction Standards Ordinance. The Franchise Agreement does not restrict remedies exclusively to revocation or fines. The City/Village/County may impose other legal remedies, including specific performance related to enforcement.</p>
12	10.3	<p><u>Entire Agreement:</u> It is highly recommended that municipal officials review their current code to identify old cable regulatory ordinances which may no longer apply to this renewal agreement. In the early years of cable TV franchising, many communities adopted a cable regulatory ordinance as well as executing a franchise agreement. It is recommended that the old ordinances be repealed or modified prior to the approval of a new franchise agreement to avoid confusion and misapplication.</p>
13	10.3.1	<p>In the event a City/County/Village does not have a cable provider/video service provider regulatory ordinance and seeks to enact such an ordinance, the regulatory ordinance should be prepared and enacted prior to franchise agreement approval in order for it to apply to the grantee when the City/County/Village approves the Agreement.</p>