

FIRST AMENDMENT
to
Dark Fiber Lease Agreement No. GA-BHens-080723-KA01

This First Amendment (“Amendment”) is concurrently entered into on September 18, 2023 (“Effective Date”) in conjunction with the Dark Fiber Lease Agreement No. GA-BHens-080723-KA01 (“Agreement”) by and between Comcast Cable Communications Management, LLC (“Comcast”) and City of Augusta (“Customer”), individually referred to herein as “Party” and jointly referred to as “Parties”. In the event of an explicit conflict between this Amendment and the Agreement, the terms and conditions of this Amendment shall take precedence in the interpretation of the explicit matter in question. Unless otherwise set forth herein, all capitalized terms set forth herein shall have the same meaning as set forth in the Agreement.

Whereas, the Parties desire to amend the Agreement by this writing to reflect the amended or additional terms and conditions to which the Parties have agreed to;

Now, therefore, in consideration of the mutual covenants, promises, and consideration set forth in this Amendment, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 4.2 of the Comcast Enterprise Dark Fiber Lease Agreement General Terms and Conditions (“General Terms and Conditions”) is hereby revised to read as follows:

To the extent not prohibited by law, any payment not made when due will be subject to a late charge of 1.5% per month or the highest rate allowed by law on the unpaid invoice, whichever is lower.

2. Section 9.1 of the General Terms and Conditions is hereby revised to read as follows:

To the extent not prohibited by law, subject to Section 8, each Party (“Indemnifying Party”) will indemnify and hold harmless the other Party (“Indemnified Party”), its affiliates, officers, directors, employees, stockholders, partners, independent contractors and agents from and against any and all joint or several costs, damages, losses, liabilities, expenses, judgments, fines, settlements and any other amount of any nature, including reasonable fees and disbursements of attorneys, accountants, and experts (collectively, “Damages”), arising from any and all claims, demands, actions, suits, or proceedings whether civil, criminal, administrative, or investigative (collectively, “Claims”) relating to:

- (i) Any Claim of any third party resulting from the gross negligence or willful act or omission of Indemnifying Party arising out of or related to this Agreement, the obligations hereunder, and uses of Services; and
- (ii) Any violation of this Agreement by the Indemnifying Party or any violation of any law, rule, regulation, or order of any governmental authority having jurisdiction over any aspect hereof, or in violation of any patent, right, license, agreement, or certificate relating to the subject matter hereof.

3. Section 10.1 of the General Terms and Conditions is hereby revised to read as follows:

Customer shall, at its own expense, secure and maintain in force, throughout the term of this Agreement, General Liability Insurance, with competent and qualified issuing insurance companies, including the following coverages: Product Liability; Hazard of Premises/Operations (including explosion, collapse and underground coverages); Independent Contractors; Products and Completed Operations; Blanket Contractual Liability (covering the liability assumed in this Agreement); Personal Injury (including death); and Broad Form Property Damage in policy or policies of insurance such that the total available

limits to all insureds will not be less than \$2,000,000 Combined Single Limit for each occurrence and \$2,000,000 aggregated for each annual period. Such insurance may be provided in policy or policies, primary and excess, including the so-called Umbrella or Catastrophe forms and each such policy shall be endorsed to show Company, its parent and affiliates and its and their directors, officers, agents, servants, employees and independent contractors as additional insureds. In addition, Customer shall maintain in effect, with insurance companies of recognized responsibility, at its own expense, (i) "All Risk" property insurance coverage with limits sufficient to cover the full replacement cost of the Facilities with no co-insurance, (ii) Business Interruption coverage on an actual loss sustained basis, and (iii) such other insurance as may be required by any applicable franchise and/or pole attachment or conduit license agreements, as applicable and naming Company as the loss payee. All policies required by this Section shall require the insurance companies to notify Company at least thirty (30) days prior to the effective date of any cancellation or material modification of such policies. Augusta, Georgia is a self-insured entity, and as such, to the extent allowable by law, this contract shall be covered by such self-insurance.

4. Section 16.1 of the General Terms and Conditions is hereby revised to read as follows:

Unless prior written consent is obtained from a Party hereto, the other Party will keep in strictest confidence all information identified by the first Party as confidential, or which, from the circumstances, in good faith and in good conscience, should be treated as confidential; provided that (a) the owner thereof has taken reasonable measures to keep such information secret; and (b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by the public. Such information includes but is not limited to all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or not stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. A Party shall be excused from these nondisclosure provisions if the information has been, or is subsequently, made public by the disclosing Party, is independently developed by the other Party, if the disclosing Party gives its express, prior written consent to the public disclosure of the information, or if the disclosure is required by any law, including pursuant to Georgia Open Records Act found in O.C.G.A. 50-70-18, or governmental or quasi-governmental rule or regulation.

5. Section 19 of the General Terms and Conditions is hereby revised to read as follows:

Choice of Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Georgia without regard to its conflict of laws principles. Any claim or controversy arising out of or relating to this Agreement shall be brought exclusively in federal or state court located in Richmond County, Georgia and the parties hereby consent to personal jurisdiction and venue in such court. Both parties hereby waive any right to a trial by jury.

6. Section 28 of the General Terms and Conditions is hereby added to read as follows:

Non-Appropriation of Funds. In the event funds are not appropriated by the applicable federal and/or state agency during any fiscal period of the Service Term of Sales Order under Agreement No. GA-BHens-080723-KA01, such Sales Order may be terminated by the Customer upon written notification to Comcast, to include a copy of the non-appropriation of funds notification, as of the beginning of the fiscal year for which funds are not appropriated or otherwise secured, provided that (a) Customer agrees to include in its budget request appropriations sufficient to cover Customer's obligations under the Sales Order; and (b) Customer agrees it will not use non-appropriations as a means of terminating the

Sales Order in order to acquire functionally equivalent products or services from a third party . In the event Customer terminates the Sales Order under this provision, neither Party shall have any further obligation to the other Party with respect to such Sales Order, excepting Customer shall be responsible for the payment of any and all unpaid charges for Services rendered, for Comcast Equipment, and, any and all unpaid capital expenses incurred by Comcast on behalf of Customer under the Sales Order, all of which are to be paid by Customer to Comcast within thirty (30) days of the invoice date; provided, that, the amount of capital expenses owed by Customer shall be reduced by the total amount of non-recurring charges and monthly-recurring charges already paid to Comcast by Customer under the Sales Order at the time of termination. Customer hereby agrees to notify Comcast in writing as soon as it has knowledge that funds are not available for any fiscal period under the applicable Sales Order Service Term.

7. In the event of an explicit conflict between this Amendment and the Agreement, the terms and conditions of this Amendment shall take precedence in the interpretation of the explicit matter in question.
8. Except as expressly modified by this Amendment, all other terms and conditions set forth in the Agreement shall remain in full force and effect and are hereby ratified and confirmed by the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the day and year written below and the persons signing covenant and warrant that they are duly authorized to sign for and on behalf of the respective Parties. Except as otherwise modified by this Amendment, all other terms and conditions set forth in the Agreement shall remain in full force and effect.

City of Augusta

Comcast Cable Communications Management, LLC

Signature:		Signature:	
Printed Name:		Printed Name:	
Title:		Title:	
Date:		Date:	