

ORDINANCE NO. 5151

An Ordinance Approving the Cable Franchise between the City of McMinnville and Comcast of Oregon II, Inc.

RECITALS:

On December 11, 2012, pursuant to Ordinance No. 4960, the City of McMinnville entered into a non-exclusive, ten year cable franchise with Comcast of Oregon II, Inc. for the installation, construction, operation, and regulation of a cable television system for the provision of cable services in McMinnville.

On February 11, 2020, Comcast of Oregon, II, Inc. requested renewal of its cable franchise with the City.

The City of McMinnville and Comcast of Oregon II, Inc. have recently negotiated a proposed successor cable franchise.

The franchise will read as follows:

**SECTION 1**  
**Definition of Terms**

**1.1 Terms.** For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. "Affiliate" when used in connection with Grantee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.
- B. "Basic Cable" means any service tier that includes the retransmission of local television broadcast signals and other programming provided by the Grantee.
- C. "Cable Act" means Title VI of the Communications Act of 1934, as amended.
- D. "Cable Operator" means any Person or groups of Persons, including Grantee, who provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.
- E. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

- F. "Cable System" shall have the meaning specified in the definition of "Cable System" in the Cable Act
- G. "Demarcation Point" means up to and including the device where the Designated Access Provider signal is converted into a format to be transmitted over a connection to the Grantee.
- H. "Designated Access Provider" means McMinnville Community Media or other local access entity as designated by the Franchising Authority.
- I. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- J. "Franchising Authority" means the City of McMinnville or the lawful successor, transferee, or assignee thereof.
- K. "Grantee" means Comcast of Oregon II, Inc., or its lawful successor, transferee, or assignee.
- L. "Gross Revenues" means any revenue derived by the Grantee or any Affiliate from the operation of the Cable System to provide Cable Services in the Service Area, consistent with federal and state law, provided, however, that such phrase shall not include: (1) any tax, fee, or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency; (2) unrecovered bad debt; and (3) advertising agency commissions that are retained by unaffiliated third parties and launch fees, to the extent consistent with GAAP. Gross Revenues shall include, without limitation, franchise fees, Public, Education, and Government (PEG) amounts and FCC user fees collected from Subscribers.

The parties acknowledge that Grantee maintains its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Grantee further agrees that it will not utilize GAAP to unlawfully, or in contravention of this agreement, avoid payment of franchise fees. At all times, Franchising Authority reserves its right to challenge Grantee's calculation of Gross Revenues, including Grantee's interpretation of GAAP and Grantee's interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise required document at the time of submittal, identifying each revised Section or line item.

- M. "Hardwired Origination Point" means any point other than the DAP Location (as defined in Section 3.13.4) where Public, Educational or Government access programming originates and from which it is delivered to Grantee for transmission on the Cable System.
- N. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

- O. "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, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area, but only to the extent of the Franchising Authority's right, title, interest, or authority to grant a franchise to occupy and use such areas for the purpose of installing, operating, repairing, and maintaining the Cable System to provide Cable Services.
- P. "Service Area" means the legal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.
- Q. "Standard Installation" is defined as 125 feet from the existing distribution system.
- R. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

## **SECTION 2** **Grant of Franchise**

**2.1 Grant.** Subject to the terms of this Franchise and applicable laws, the Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, or under the Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System. This Franchise shall constitute the authority and the obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

No rights, privileges or authority shall pass to Grantee by implication. Nothing in this Franchise shall be construed to authorize Grantee to provide or prohibit Grantee from providing services other than Cable Services. The Franchising Authority hereby reserves all of its rights to regulate such other services to the extent not prohibited by applicable law and no provision herein shall be construed to limit or give up any right to regulate.

**2.2 Other Ordinances.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance adopted pursuant to the Franchising Authority's police power. Neither the Franchising Authority nor the Grantee may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and an express provision of this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

**2.3 Competitive Equity.**

2.3.1 The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services over a Cable System within the Service Area. Subject to subsection 2.3.2, the Franchising Authority agrees that, within ninety (90) days of the Grantee's request, it shall amend this Franchise, as requested by the Grantee and mutually agreed to by the Franchising Authority, to include any material terms or conditions that it makes available to the new Cable Operator, or provide relief from existing material terms or conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent to the extent permissible under applicable laws. "Material terms and conditions" include: franchise fees; insurance; system build-out requirements; security instruments; customer service standards; required reports and related record keeping; PEG Channels and PEG Fees; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entry, so long as the regulatory and financial burdens on each entity are materially equivalent to the extent permissible under applicable laws. Video programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

2.3.2 Subsection 2.3.1 does not apply:

- A. if the Franchising Authority is ordered or required to issue a franchise on different terms and conditions, or it is legally unable to comply with this Section;
- B. if the new Cable Operator does not actually commence the provision of Cable Service in the market to at least one residential customer. Should the new Cable Operator fail to continuously provide Cable Service for a period of six (6) months, the Franchising Authority has the right to implement this Franchise with its original terms upon sixty (60) days' notice to Grantee.
- C. to open video systems; common carrier systems exempted from franchise requirements pursuant to 47 U.S.C. § 571; systems that serve less than five percent (5%) of the geographic area of the Franchising Authority; or to systems that only provide video service via the public Internet.

**2.4 Term.** The Franchise granted hereunder shall be for an initial term of ten (10) years, commencing on the effective date of the Franchise as set forth in Section 8.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

**2.5 Franchise Review.** Within sixty (60) days of the second anniversary (or any one of the subsequent anniversaries) of the effective date of the Franchise, the Franchising Authority may, but is not required to, give written notice to Grantee of its intent to conduct a review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in light of new cable law and regulation, and community needs and interests, with consideration of all financial, technological, and operational impacts that may affect the Grantee, including Public, Education, and Government access channel(s) and provision of high definition (HD) format for the PEG channel(s). Both the Franchising Authority and Grantee agree to make a full and good faith effort to participate in the review. If, after completion of the review, the Franchising Authority and Grantee agree that the public interest will be served by modifying certain franchise obligations and/or extending the term of the Franchise, the Franchising Authority, with the expressed agreement of the Grantee, may modify the obligations and/or extend the term of the Franchise.

**SECTION 3**  
**Standards of Service**

**3.1 Conditions of Occupancy.** Subject to applicable laws, regulations, codes and ordinances of Franchising Authority and the provisions of this Franchise, Grantee may perform all construction in the Public Ways necessary for the operation of its Cable System to provide Cable Services. Grantee shall at all times comply with applicable provisions of the McMinnville Municipal Code related to work in the rights-of-way and the placement, location, relocation and other provisions related to communications facilities in the rights-of-way, including but not limited to MMC 3.18.200-.325, as amended from time to time. All construction and maintenance of any and all facilities within Public Ways incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility.

**3.2 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority pursuant to MMC Chapter 15.08, protect, support, raise, lower, temporarily disconnect, relocate in, or remove from the Public Way as necessary any property of Grantee, provided: (A) the expense of such is paid by the Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this Section 3.2, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) business days for a permanent relocation. In the case of the failure of Grantee to comply with the terms of this Section 3.2, the superintendent of streets or other proper officer of the Franchising Authority may take action to relocate in or remove from the Public Way any property of Grantee, at the expense of the Grantee; provided, however, Grantee shall not be penalized for any good faith dispute regarding payment due from any such third party.

**3.3 Reservation of Franchising Authority - Public Ways.** Nothing in this Franchise shall prevent the Franchising Authority from constructing, repairing or removing sewers, grading, paving, repairing or altering any street, alley, or public highway, constructing, repairing or removing water mains, or maintaining, repairing, constructing, or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure, or prevent the use and operation of Grantee's Cable System.

**3.4 Vegetation Management.** The Grantee shall have the authority to trim trees or other natural growth within the Public Ways in order to access and maintain the Cable System, subject to the street tree maintenance guidelines contained in Chapter 17.58 of the McMinnville Municipal Code.

**3.5 Safety Requirements.** Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

**3.6 Required Extensions of the Cable System.** Grantee agrees to provide Cable Service to all residents in the Service Area subject to the density requirements specified in this Section 3.6. Whenever the Grantee receives a request for Cable Service from a Subscriber in a

contiguous unserved area where there are at least ten (10) residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the nearest point of Grantee's trunk or distribution system capable of supporting the additional distance for service, it shall extend its Cable System to such Subscriber at no cost to said Subscriber for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service.

**3.7 Subscriber Charges for Extensions of the Cable System.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 3.6 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet (one-quarter cable mile) from Grantee's trunk or distribution cable capable of supporting the additional distance for service, and whose denominator equals ten (10). Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

**3.8 Cable Service to Public Buildings.** The parties acknowledge that as of the effective date of this Franchise, Grantee continues to provide one outlet of Basic Cable and expanded basic service, or its reasonable equivalent ("Complimentary Services") to certain schools, libraries, and public buildings within the Service Area, and Grantee shall continue to provide these Complimentary Services throughout the term of this Franchise. In the event Grantee elects, to the extent expressly permitted by applicable laws, to deduct from its franchise fee payment the marginal cost to the Grantee of providing Complimentary Services, Grantee agrees that it will do so only after providing Franchising Authority with one hundred twenty (120) days' prior written notice that includes documentation of the Grantee's marginal costs reasonably acceptable to Franchising Authority. Grantee agrees not to unfairly or unreasonably discriminate against the Franchising Authority with respect to other Oregon served local franchising authorities, with respect to the deducted or calculation of costs for Complimentary Services.

The Franchising Authority shall have the right, at any time, to discontinue the receipt of all or a portion of the Complimentary Services provided by the Grantee in the event Grantee elects to deduct from its franchise fee payment Grantee's marginal cost to provide the Complimentary Services as set forth in the preceding paragraph.

**3.9 Emergency Use.** In accordance with, and at the time required by, the provisions of FCC Regulations 47 C.F.R. Part 11, as such provisions may from time to time be amended, EAS activation will be accomplished in compliance with such regulations and consistent with the FCC approved Oregon State EAS plan, and local area EAS plan applicable to Yamhill County.

**3.10 Reimbursement of Costs.** If public or private funds, other than the funds of Franchising

Authority or McMinnville Water and Light, are made available to any Person using the Public Way for the purpose of defraying the cost of any of the relocation of facilities as part of the same project for which Grantee must relocate, Grantee shall be afforded equal treatment subject to applicable law and regulations and nothing in this Franchise limits Grantee's ability to apply for such funds.

**3.11 System Standards.** The Cable System shall meet or exceed all applicable technical and performance standards of the FCC.

The Grantee shall also comply with all applicable testing requirements of the FCC. Upon request, Grantee shall advise the Franchising Authority of schedules and methods for testing the Cable System within the Service Area to determine compliance with the provisions of applicable FCC technical standards. Representatives of the Franchising Authority may witness the tests. Written records of all system tests required to be performed by or for the Grantee shall be maintained at Grantee's business office, and shall be available for inspection by the Franchising Authority upon written request during Grantee's normal business hours. Grantee, upon written request of Franchising Authority, shall provide a summary or complete copies of such test results prepared in accordance with FCC rule.

**3.12 Customer Service Standards/Complaint Resolution.** Grantee shall comply with the customer service standards set forth in 47 C.F.R. Part 76 of the FCC's rules and regulations, as amended, including but not limited to 47 C.F.R. §§ 76.309, 76.1602, 76.1603, 76.1619 and 76.1713. Nothing in this Franchise shall be deemed to waive any rights or authority the Franchising Authority may have pursuant to 47 U.S.C. § 552.

Grantee may arrange for payment stations or drop boxes or the equivalent within the city limits of the Franchising Authority where Subscribers may drop or deliver their bill payment for Cable Service. Grantee may operate and maintain a cable store within the city limits of the Franchising Authority where Subscribers may drop or pick-up equipment, or drop or deliver their bill payment related to their Cable Service.

**3.13 Public, Education, and Government Access.**

3.13.1 All Access Channels required by this Franchise shall be included by Grantee in Basic Cable Service, and shall throughout the term of the Franchise be fully available and accessible to every Subscriber without additional costs, charges or equipment. Grantee shall provide one (1) dedicated Public, Educational, and Government (PEG) access channel in high definition (HD) throughout the term of this Franchise. Grantee shall continue to provide the PEG access channel in standard definition (SD) format, until SD format is no longer utilized on the cable system. Grantee shall only be required to provide such PEG channel so long as all other Cable Operators within the Service Area provide it.

For purposes of this Franchise, "HD" format or signal refers to a PEG channel signal delivered by Grantee to Subscribers in the resolution received by Grantee from the Designated Access Provider without any degradation. The Franchising Authority acknowledges that receipt of HD format access channels may require Subscribers to buy or lease special equipment or pay additional HD charges applicable to all HD services.

3.13.2 Grantee shall not change PEG access channel designations without Franchising Authority's consent, which shall not be unreasonable withheld in cases of master channel

alignment or if someone else has the legal right to the channel. The current PEG access channel designations are channel 11 for the SD channel and channel 331 for the HD channel.

3.13.3 Grantee shall carry all components of access channel signals provided by the Franchising Authority or its Designated Access Provider including, but not limited to, closed captioning, stereo audio, and other elements associated with the programming. The Designated Access Provider shall be responsible for providing the access channel signal in an HD format to the Demarcation Point at the designated point of origination for the access channel. Grantee shall transport and distribute the access channel signal on its Cable System and shall not discriminate against the PEG access channel with respect to the functionality, signal quality, and features from those of the local broadcast channels carried on the Cable System. With respect to signal quality, Grantee shall not be required to carry a PEG access channel in a higher quality format than that of the channel signal delivered to Grantee, but Grantee shall distribute the access channel signal without degradation. Upon reasonable written request by the Franchising Authority or its Designated Access Provider, Grantee shall verify signal delivery to Subscribers with Franchising Authority or its Designated Access Provider, consistent with the requirements of this Section.

#### 3.13.4 PEG Transport.

- A. Grantee shall continue to provide to Franchising Authority the existing fiber paths, equipment and existing connectivity between 823 NE Third Street, McMinnville, Oregon ("DAP Location"), all other existing Hardwired Origination Points and Grantee's headend to permit the transport of PEG programming during the term of this Franchise. Grantee shall continue to provide, install, and maintain in good working order the equipment necessary for transmitting the PEG signal to Subscribers. Grantee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Grantee, of suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and such cooperation of Franchising Authority as is reasonably necessary for Grantee to fulfill such obligations.
- B. Such upstream transmission provided by Grantee shall comply with all applicable FCC standards governing the transport and distribution of PEG signals to Subscribers.
- C. If Grantee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment and facilities to continue to be used as they were intended under the terms of this Franchise, then Grantee shall, without charge to Franchising Authority, make such changes in either the equipment and/or facilities referred to in Section 3.13.4.A or in Grantee's video channel aggregation point, distribution equipment, and facilities in order to permit the continuation of such intended use.
- D. At the Franchising Authority's request, Grantee shall construct a dedicated connection to facilitate the transmission of character-generated, pre-recorded, and live cablecasts from additional Hardwired Origination Points, to enable the



distribution of PEG access programming on the Cable System on access channels. In the event the DAP Location changes during the term of this Franchise, Grantee shall construct a dedicated connection to the new DAP location that complies with the provisions of this Section 3. Dedicated connections between additional Hardwired Origination Points and the DAP Location or master control site, and/or dedicated connections to a new DAP location, shall be at the Grantee's marginal cost. In the alternative, notwithstanding any other provision of this subsection, the Franchising Authority (or Designated Access Provider) may construct the connections referenced in this subsection on its own behalf, using contractor(s) of its choice. Whether constructed by Grantee or by Franchising Authority (or Designated Access Provider), Franchising Authority may utilize PEG capital support provided in Section 3.13.6 to pay all costs to construct the connection(s).

- E. All Hardwired Origination Points the Franchising Authority or Designated Access Provider requires Grantee to construct pursuant to subsection 3.13.4.D shall be provided within one hundred twenty (120) days following receipt of written notice from Franchising Authority and not before payment for the construction has been paid to Grantee by the Franchising Authority or Designated Access Provider.
- F. Except as otherwise provided herein, there shall be no charge to the Franchising Authority, Designated Access Provider, nor to any other Person, for the use of the upstream capacity from the DAP Location or any Hardwired Origination Points described in this Section, except to the extent expressly permitted by applicable law. In the event applicable law expressly permits Grantee to deduct from its franchise fee payment any costs of compliance with this Section, if Grantee elects to take the deduction, the amount deducted shall be consistent with applicable law, which as of the effective date is defined as Grantee's marginal cost to provide the service, and Grantee and the Franchising Authority shall agree on the calculation of marginal cost prior to Grantee taking any deductions.

3.13.5 Navigation to PEG Channels and Electronic Programming Guide. Grantee will maintain the existing ability of the Designated Access Provider to place PEG channel programming information on the interactive channel guide via the electronic programming guide ("EPG"). So long as the configuration of the Cable System allows for detailed program listings to be included on the digital Channel guide, Grantee will allow Franchising Authority or the Designated Access Provider to make arrangements with the Channel guide vendor to make detailed Programming listings available on the guide. The Franchising Authority or Designated Access Provider will be solely responsible for providing the program information to the vendor in the format and timing required by the vendor and shall bear all costs of this guide service.

#### 3.13.6 Support for Access Capital Costs.

- A. Grantee shall pay to the Franchising Authority as capital support for access facilities and equipment ("PEG Capital Support"), an amount specified by the Franchising Authority up to a maximum one and one half percent (1.5%) of Gross Revenues. The Grantee shall make such payments quarterly, following

the effective date of this Franchise for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. If at any point during the term of this Franchise, Franchising Authority or its designee shall cease to operate an access channel, Grantee's obligation for capital support under this Section 3.13.6 shall end.

- B. If Franchising Authority enters into a franchise, or amends an existing franchise with another Cable Operator after the effective date of this Franchise to provide Cable Service in all or any portion of the Grantee's Service Area that includes PEG Capital Support that is less than one and one half percent (1.5%) of Gross Revenues, then Grantee shall be entitled to reduce the PEG Capital Support to match that of the other Cable Operator(s).
- C. The Franchising Authority shall provide a report annually to the Grantee on the use of the PEG Capital Support provided to the Franchising Authority under this Section 3.13.6. The annual report shall be submitted to Grantee within one-hundred twenty (120) days of the close of the Franchising Authority's fiscal year, which fiscal year runs for twelve (12) consecutive months from July 1 to and including June 30. Grantee may review records of the Franchising Authority regarding the use of the PEG Capital Support described in such report. The Franchising Authority agrees that the report shall document the amounts spent or encumbered for capital support for PEG access. If the report indicates the PEG Capital Support is higher than the need for said funds, Grantee may request in writing, within sixty (60) days of receiving the annual report, that the PEG Capital Support be reduced to a more appropriate level. To the extent permitted by federal law, the Grantee shall be allowed to recover the costs of the PEG Capital Support and any other costs arising from the provision of the PEG services from the residential Subscribers and to include such costs as a separately billed line item on each residential Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Grantee may externalize, line-item, or otherwise pass through these costs to Subscribers. Notwithstanding the foregoing, in no event shall Grantee be allowed to in any way recover from or pass through to Subscribers any costs that Grantee is collecting, has collected or will collect from the Franchising Authority or Designated Access Provider or that Grantee offsets or deducts from any franchise fee payment to the extent such offset or deduction is permitted by this Franchise and applicable law.
- D. In recognition that the Franchising Authority has identified certain PEG capital needs and the projected needs may change, after the third anniversary of the effective date of this Franchise, Grantee may request to review the use of the PEG Capital Support to date. To the extent the PEG capital needs have been lower than projected by twenty percent (20%) or more, the PEG Capital Support may be adjusted.

**3.14 Franchising Authority Non-Liability.** The Franchising Authority reserves the right and privilege to cut or remove any cables, wires, equipment or any other portion of the Cable

System of Grantee as the Franchising Authority may determine to be necessary, appropriate, or useful in response to a public health or safety emergency and/or in order to get fire ladders or other apparatus to a building during a city conflagration or emergency. The Franchising Authority will attempt to inform Grantee of any cutting or moving of facilities, provided that the Franchising Authority has notice of the existence of those facilities, in advance or immediately after city action. The Franchising Authority shall not be liable for any damage done to such cables, wires, equipment or any other portion of the Cable System, or for any consequential losses resulting directly or indirectly therefrom.

#### **SECTION 4** **Regulation by the Franchising Authority**

##### **4.1 Franchise Fee.**

4.1.1 The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5%) of annual Gross Revenues (as defined in Section 1.1 of this Franchise). In accordance with the Cable Act, the 12-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The Grantee shall make such payments quarterly, following the effective date of this Franchise for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

4.1.2 In the event that a franchise fee payment or other sum is not received by the Franchising Authority on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate in the State of Oregon.

##### **4.2 Audit of Franchise Fee Payments.**

4.2.1 Franchising Authority or its designee may conduct an audit or other inquiry in relation to payments made by Grantee (any of which shall be an "audit" for purposes of this section 4.2) no more than once every three (3) years during the term of the Franchise. As a part of the audit process, Grantee shall provide Franchising Authority or Franchising Authority's designee access to books of accounts and any other records of Grantee and/or any Affiliate relative to Franchising Authority and/or calculation and payment of the franchise fee and PEG fees required pursuant to this Franchise any time during regular business hours and after thirty (30) calendar days written notice.

4.2.2 All books and records deemed by Franchising Authority or Franchising Authority's designee to be reasonably necessary for such audit, including books and records of any Affiliate relative to Franchising Authority, shall be made available by Grantee in a mutually agreeable format within thirty (30) calendar days after written notice from Franchising Authority or its designee. Grantee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of a written request. If agreed upon in writing by the Franchising Authority, Grantee may provide such responses within a reasonable time after the expiration of the response period above, so long as Grantee has made a good faith effort to procure any such requested information.

4.2.3 The cost of any such audit shall be borne by the Franchising Authority, except that

if through the audit it is established that the Grantee has made underpayment of four percent (4%) or more in franchise fees than required by this Franchise, then Grantee shall, within thirty (30) days of being requested to do so by the Franchising Authority, reimburse the Franchising Authority for the cost of the audit up to fifteen thousand dollars (\$15,000.00). If any audit discloses an underpayment of the franchise fee in any amount, Grantee shall pay Franchising Authority the amount of the underpayment, together with interest computed from the applicable due date, compounded at the at the rate of one percent (1%) per month from the due date.

4.2.4 Grantee shall be provided with a reasonable opportunity to review the results of any audit and to dispute any audit results which indicate an underpayment to Franchising Authority. The Franchising Authority agrees to require a third-party auditor to execute a mutually agreed upon nondisclosure agreement with the Grantee in connection with any such audit if the auditor will have access to the Grantee's confidential or proprietary information.

4.2.5 The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

#### **4.3 Renewal of Franchise.**

4.3.1 The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (47 U.S.C. § 546).

4.3.2 The Grantee and Franchising Authority consider the terms set forth in this Section 4.3 to be consistent with the express provisions of Section 626 of the Cable Act.

**4.4 Transfer of Franchise.** The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness, or a transfer to an entity directly owned or controlled by Comcast Corporation and which entity will remain directly owned or controlled by Comcast Corporation after the transfer. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial, and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given, unless the Grantee and Franchising Authority agree to an extension of time.

### **SECTION 5** **Books, Records, and Maps**

**5.1 Books and Records** The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its or its Affiliates relative to Franchising Authority, books and records regarding the operation of the Cable System and the provision of Cable Service in the Service Area which are reasonably necessary to monitor Grantee's

compliance with the provisions of this Franchise at the Grantee's business office, during normal business hours, and on a non-disruptive basis. Such notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. In the event the Grantee asserts that certain information is proprietary or confidential in nature, the Grantee shall identify generally the information which it deems proprietary or confidential and the reasons for its confidentiality in writing at the time of disclosure.

Insofar as possible under the Oregon Public Records law, the Franchising Authority agrees to treat any information disclosed by the Grantee as confidential under applicable federal and state law, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

**5.2 Maps.** Grantee shall maintain as built drawings for the Cable System at Grantee's business office and make them available to the Franchising Authority for inspection during normal business hours upon written request. As built drawings shall be updated as changes occur in the Cable System serving the Service Area. Upon written request of the Franchising Authority, Grantee shall maintain and make available to the Franchising Authority copies of maps showing the location of Grantee's lines within the Public Ways in the Service Area within ten (10) days of request for the same. The Franchising Authority recognizes that the information contained in such maps is confidential and proprietary and remains the property of the Grantee. The Franchising Authority shall safeguard such information from the public record unless affirmatively and expressly required to disclose and provide access by state or federal law.

## **SECTION 6** **Insurance and Indemnification**

### **6.1 Insurance Requirements.**

6.1.1 Grantee shall secure and maintain the following liability insurance policies including the Franchising Authority and its elected and appointed officers, officials, agents, and employees as additional insured under the required Commercial General and Automotive Liability policies:

- A. Commercial general liability insurance with limits not less than Three Million Dollars (\$3,000,000) for bodily injury or death and property damage per occurrence.
- B. Automobile liability for owned, non-owned, and hired vehicles with a limit of Three Million Dollars (\$3,000,000) for each accident.
- C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).

6.1.2 The liability insurance policies required by this Section shall be maintained by the

Grantee throughout the term of this Franchise, and such other period of time during which the grantee is operating without a franchise, or is engaged in the removal of its Cable System. Each such insurance policy shall provide for notice of cancellation thirty (30) days' prior to cancellation by e-mail, save that ten (10) days' notice may be given for cancellation due to non-payment of premiums.

6.1.3 Grantee shall provide a certificate or certificates of insurance evidencing compliance with the requirements upon request of Franchising Authority at any time when such coverage is required hereunder to be maintained.

6.1.4 The minimum amounts of insurance set out in subsection 6.1.1 of this Section shall be increased upon thirty (30) days' notice by the Franchising Authority from time to time to the extent necessary to provide coverage at least as great as the limits on the Franchising Authority's liability under the Oregon Tort Claims Act.

**6.2 Indemnification.** The Grantee agrees to indemnify, defend and hold the Franchising Authority harmless as required in MCM 3.18.545, which currently requires the Grantee to defend, indemnify, and hold the Franchising Authority and its officers, employees, agents, and representatives harmless from and against any and all damages, losses, and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failures to act, or misconduct of the Grantee or its Affiliates, officers, employees, agents, contractors, or subcontractors in the construction, operation, maintenance, repair, or removal of its Cable System, and in providing or offering Cable Services over the Cable System, whether such acts or omissions are authorized, allowed, or prohibited by this Franchise.

**6.3 Bonds and Other Surety.** Within sixty (60) days of the effective date of the Franchise, the Grantee shall furnish a performance bond in the amount of \$10,000.00 guaranteeing that the Grantee shall observe, fulfill, and perform each term and condition of the Franchise. The guarantee shall be conditioned that in the event the Grantee fails to comply with any one or more of the provisions of this Franchise, then there shall be recoverable jointly and severally from the principal and surety of such bond, any damages suffered by the Franchising Authority as a result thereof, including the full amount of compensation, indemnification, or cost of removal or abandonment of property as prescribed; said condition to be a continuing obligation for the duration of the Franchise and thereafter until the Grantee has liquidated all of its obligations with the Franchising Authority that may have arisen from the acceptance of the Franchise by the Grantee or from its exercise of any privilege herein granted.

## **SECTION 7** **Enforcement and Termination of Franchise**

**7.1 Notice of Violation.** In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

**7.2 The Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from

receipt of the notice described in Section 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of the default, the default cannot be cured within the thirty (30) day period, to initiate reasonable steps to remedy the default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed, which projection shall be subject to approval by the Franchising Authority, which shall not be unreasonable denied.

**7.3 Public Hearing.** In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2 (C) above, or in the event the Franchising Authority does not approve Grantee's projected completion date, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place, and purpose of such hearing, and shall provide Grantee the opportunity to be heard.

**7.4 Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in Section 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. Impose liquidated damages in accordance with Section 7.5; or
- B. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- C. Commence an action at law for monetary damages or seek other equitable relief; or
- D. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 7.6.

**7.5 Liquidated Damages.**

7.5.1 In the event the Franchising Authority determines that the Grantee has violated the Franchise after the procedures set forth in Sections 7.1 through 7.3, the Franchising Authority may assess, as liquidated damages and not as a penalty, the following sums up to twenty five thousand dollars (\$25,000) per year.

- A. For failure to extend Cable Services within the Service Area as required by this Franchise, two hundred fifty dollars (\$250) per day, per affected subscriber;
- B. For failure to provide any capability for Public, Education, and Government access use of the Cable System required in the Franchise, two hundred fifty dollars (\$250) for each violation, per day;
- C. For failure to provide data, documents, reports, or information when and as required in this Franchise or applicable law, two hundred fifty dollars (\$250.00) per day;

- D. For all other material violations of this Franchise for which actual damages may not be ascertainable, excluding those specified in subsections A, B, and C of this subsection 7.5.1, two hundred fifty dollars (\$250) per day for each provision of this Franchise that is violated.

7.5.2 Grantee shall pay any liquidated damages assessed by Franchising Authority within thirty (30) calendar days after they are assessed. If liquidated damages are not paid within the thirty (30) day period, Franchising Authority may proceed against the performance bond required by Section 6.3.

**7.6 Revocation.** Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in Section 7.1-7.3 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees, or consultants of the Franchising Authority, and to compel the testimony of other persons as permitted by law. Upon Grantee's request and at Grantee's cost, a complete verbatim record and transcript shall be made of the hearing. Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked, Grantee may appeal such determination to an appropriate court. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

**7.7 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged default occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System within the Service Area is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures, or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Franchising Authority or on Subscribers within the Service Area, or



where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

**SECTION 8**  
**Miscellaneous Provisions**

**8.1 Actions of Parties.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms of this Franchise, the party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms of this Franchise, the approval or consent shall not be unreasonably withheld.

**8.2 Entire Document.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to the Franchise shall be mutually agreed to in writing by the parties.

**8.3 Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail. General updates may be communicated electronically as appropriate and agreed to by both parties.

The notices or responses to the Franchising Authority shall be addressed as follows:

*City of McMinnville*  
Attention: City Manager  
230 NE 2nd Street  
McMinnville, OR 97128

The notices or responses to the Grantee shall be addressed as follows:

*Comcast of Oregon II, Inc.*  
Attention: Government Affairs  
11308 SW 68<sup>th</sup> Parkway  
Tigard, OR 97223

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section 8.3.

**8.4 Descriptive Headings.** The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**8.5 Severability.** If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, that determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision

hereof, all of which will remain in full force and effect for the term of the Franchise.

**8.6 Effective Date.** The effective date of this Franchise is December 12, 2024, pursuant to the provisions of applicable law. This Franchise shall expire on December 12, 2034 unless extended by the mutual agreement of the parties, revoked pursuant to Section 7.6 or rendered null and void pursuant to Section 8.7 hereof.

**8.7 Acceptance.** This Franchise shall take effect thirty (30) days after its enactment by the City Council and approval by the Mayor, but shall become null and void unless, within sixty (60) days after enactment, the Grantee shall file with the Recorder Grantee's acceptance of the terms, conditions, and obligations to be complied with or performed by it hereunder.

**NOW, THEREFORE, THE COMMON COUNCIL FOR THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:**

1. The financial, legal and technical ability of Comcast of Oregon II, Inc. is reasonably sufficient to provide Cable Services necessary to meet the future cable-related needs of the community.
2. The terms of the Franchise as set out in this Ordinance are acceptable and approved.

Passed by the McMinnville City Council this 12<sup>th</sup> day of November, 2024, by the following votes:

Ayes: Peralta, Menke, Garvin, Geary, Chenoweth

Nays: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

Attest:

Claudia Csneros

\_\_\_\_\_  
City Recorder

Accepted this 27th day of November 2024, subject to applicable federal, state and local law.

COMCAST OF OREGON II, INC.

DocuSigned by:  
Rodrigo Lopez  
634FB5051CC54CB...

Name/Title: Rodrigo Lopez

Date: 11/27/2024