

ORDINANCE NO. 2477

AN ORDINANCE OF THE CITY OF ENUMCLAW, KING COUNTY, WASHINGTON AFFIRMING AND AUTHORIZING THE MAYOR TO ENTER INTO A CABLE TELEVISION FRANCHISE BY AND BETWEEN THE CITY OF ENUMCLAW AND COMCAST OF WASHINGTON IV, INC. AND COMCAST OF CALIFORNIA/COLORADO/WASHINGTON I, INC.

Whereas, the City has been negotiating a new cable television franchise with the cable television provider, Comcast of Washington IV, Inc. and Comcast of California/Colorado/Washington I, Inc., and

Whereas, the parties have arrived at an agreement, and

Whereas, the agreement is in conformity to the Master Franchise Ordinance, and

Whereas, the entry into a cable television franchise is for the benefit of public health, safety and welfare.

Now, therefore, the City Council of the City of Enumclaw, King County, Washington do ordain as follows:

Section 1: The cable television franchise by and between the City of Enumclaw and Comcast of Washington IV, Inc. and Comcast of California/Colorado/Washington I, Inc. is hereby approved and the Mayor is authorized to enter into the Cable Television Franchise Agreement, Exhibit "1".

Section 2: If any provision of the attached Cable Television Franchise Agreement and/or this ordinance, and/or the Master Franchise Ordinance is determined to be invalid or unenforceable, the remaining provisions of this ordinance and/or the Cable Television Franchise Agreement attached hereto and/or the Master Franchise Ordinance shall remain in force and affect.

Ordinance No.: 2477

Draft No.: 1

Draft Date: 2-9-11

Ordinance Requested By:


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Section 3: This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as required by law.



Mayor Liz Reynolds
INTRODUCED 2-14-11
PASSED 2-29-11
APPROVED 3-1-11
PUBLISHED 3-9-11

Attested:



Maureen J. Burwell
Interim City Clerk

Approved as to form:



Michael J. Reynolds
City Attorney

CABLE TELEVISION FRANCHISE

This Cable Television Franchise ("Franchise") is entered into this ____ day of _____, 2011, by and between the City of Enumclaw, Washington, a municipal corporation, (hereinafter "City") and Comcast of Washington IV, Inc. and Comcast of California/Colorado/Washington I, Inc. (hereinafter "Grantee"). The City and Grantee are sometimes referred to hereinafter collectively as the "parties."

WHEREAS, the City has reviewed Grantee's performance under the prior franchise and the quality of service during the prior franchise term, has identified the future cable-related needs and interests of the City and its citizens, and has determined that Grantee's plans for operating and maintaining its Cable System are adequate; and

WHEREAS, the public has had adequate notice and opportunity to comment on this Franchise during a public proceeding; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of state-of-the-art cable communications service, the high technical capability and reliability of a cable system in the Franchise Area, the availability of local programming and quality customer service; and

WHEREAS, diversity in Cable Service is an important policy goal and the Grantee's Cable System should offer a broad range of programming services; and

WHEREAS, flexibility to respond to changes in technology and Subscriber interests within the Cable Service market should be an essential characteristic of this Franchise; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises to construct, operate and maintain a Cable System within the boundaries of the City.

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Grantee do hereby agree as follows:

SECTION 1. DEFINITIONS

For the purposes of this Franchise and the Exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Basic Service" means the lowest tier of Cable Service that includes, at a minimum, the retransmission of local television broadcast signals and access programming.

1.2 "Cable Operator" means any Person, including Grantee, who provides Cable Service over the Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is(are) responsible for, through any arrangement, the management and operation of such a Cable System.

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

1.4 "Cable System" shall mean the Grantee's facility, 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 within the Franchise Area.

1.5 "City" means the City of Enumclaw, Washington, a municipal corporation.

1.6 "FCC" means the Federal Communications Commission or its lawful successor.

1.7 "Franchise" means this document, a contractual agreement, and any amendments and modifications thereto executed between the City and Grantee, containing the specific provisions of the authorization granted to operate a Cable System in the City.

1.8 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.9 "Grantee" shall mean Comcast of Washington IV, Inc.

1.10 "Gross Revenues" means the revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. These revenues includes but not limited to monthly basic, premium and pay-per-view fees, installation fees, equipment rental fees, advertising sales revenues net of commissions due to advertising agencies that arrange for the advertising buy, and revenues from program guides. Gross Revenue shall not include home shopping revenue, refundable deposits, bad debt, late fees, investment income, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

1.11 "Headend" means Grantee's primary facility for signal reception and dissemination on the Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors and other related equipment.

1.12 "PEG" means Public, Educational and Government access.

1.13 "Person" means any individual, partnership, association, joint stock company, trust, corporation, or governmental entity, but shall not mean the City.

1.14 "Premium Service" means programming (movie Channels such as HBO) for which a periodic subscription fee is charged.

1.15 "Right-of-Way" means 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, utility easements, dedicated utility strips, or Right-of-Way dedicated for compatible uses now or hereafter held by the City in the Franchise Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, upgrading and maintaining the Cable System. Right-of-Way shall also mean any easement now or hereafter held by the City within the Franchise Area for the purpose of public travel or for utility or public service use dedicated for compatible uses.

1.16 "School" means any State accredited public educational institution K-12.

1.17 "State" means the State of Washington.

1.18 "Subscriber" means any Person who lawfully receives Cable Service provided by Grantee by means of the Cable System and whose premises are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Right-of-Ways within the Franchise Area, and for that purpose to install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Right-of-Way such wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment and use existing poles as may be necessary or appurtenant for the deployment of Cable Services over the Cable System. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Grantee, through this Franchise, is granted the right to operate its Cable System using the Right-of-Ways within the Franchise Area. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to any ordinance, regulation, resolution or other enactment of the City, except within the lawful exercise of the City's police power. In the event of a conflict between the municipal code and this Franchise, this Franchise shall control. Grantee has the right to challenge any City ordinance or regulation that conflicts with its rights under this Franchise. Grantee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety and welfare of the public, and Grantee agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power.

(C) Grantee guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee offering Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Franchise.

2.2 Duration

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be Seven (7) years from the effective date of this Franchise, unless extended or terminated as hereinafter provided.

2.3 Effective Date

The effective date of this Franchise shall be twenty (20) days after publication following the adoption of this Franchise by the City's City Council, unless Grantee fails to file with the City an unconditional written acceptance of this Franchise and post the security required hereunder within sixty (60) days of the effective date of this Franchise, in which event this Franchise shall be voidable.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, permits or licenses granted by the City to any Person to use any property for any purpose whatsoever, including the right of the City to use the same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Right-of-Ways for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for cable systems as the City deems appropriate.

2.5 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the City's intervening, to the extent that the City is legally entitled to do so, in any legal or regulatory proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Franchise; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, the City agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant within ninety (90) days of the Grantee's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; system build-out requirements; security instruments; Access Channel and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the City which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, the City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by City and Grantee.

(B) In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon the Grantee by registered or certified mail or via nationally recognized overnight courier service.

(C) In the event that a wireline multichannel video programming distributor provides video service to the residents of the City under the authority granted by federal or State legislation or other regulatory entity, the Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The City shall not unreasonably withhold consent to the Grantee's petition.

SECTION 3. FRANCHISE FEES AND FINANCIAL CONTROLS

3.1 Franchise Fees

As compensation for the use of the City's Right-of-Ways, Grantee shall pay as a franchise fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues, pursuant to 47 U.S.C. § 542. Accrual of such franchise fees shall commence as of the effective date of this Franchise.

3.2 Payments

Grantee's franchise fee payments to the City shall be computed quarterly for the preceding quarter. Each payment shall be due and payable no later than thirty (30) days after the end of the preceding quarter, after which time interest will accrue. The quarters shall end respectively on the last day of March, June, September and December. Each payment shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form that includes a breakdown by category of Grantee's Gross Revenues and the computation of the payment amount.

3.3 Acceptance of Payment

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Audits

Upon forty-five (45) days prior written notice, the City shall have the right to conduct an annual independent audit of Grantee's records necessarily related to the enforcement of this Franchise and to recompute any amounts determined to be payable under this Franchise. If Grantee cooperates in making all relevant records available to the City, the City will attempt to complete each audit within six (6) months, and the audit period shall be no greater than the previous three (3) years, unless the City has information relating to previous years beyond the three (3) years which raises doubt as to the accuracy of payments made under this or previous franchises in which case an additional three (3) years may be audited. Any undisputed amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the City, which notice shall include a copy of the audit findings. If the audit shows that franchise fees have been underpaid by five percent (5%) or more in any calendar year, Grantee shall pay the cost of the audit in an amount not to exceed five thousand dollars (\$5,000) per year being audited for a maximum of 3 years. If

Grantee disputes all or part of the audit findings, then the parties shall meet in an attempt to resolve the matter. If the parties are unable to resolve the matter, then either of the parties may refer that matter to non-binding arbitration. Each party shall bear one-half of the costs and expenses of the arbitration proceedings. The decision of the arbitrator(s) shall be subject to judicial review at the request of either party.

3.5 Late Payments

In the event any payment due the City is not timely made, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law, from the payment due date until the City receives the payment.

3.6 Underpayments

If a franchise fee underpayment is discovered as the result of an audit, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law, calculated from the date the underpayment was originally due until the date the City receives the payment.

3.7 Maximum Franchise Fees

The parties acknowledge that, at present, applicable federal law limits the City to collecting a franchise fee of five percent (5%) of Gross Revenues in a 12-month period.

3.8 Additional Commitments Not Franchise Fees

No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay franchise fees. Although the total sum of franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not franchise fees, nor are they to be offset or credited against any franchise fee payments due to the City, nor do they represent an increase in franchise fees to be passed through to Subscribers.

3.9 Tax Liability

The franchise fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use, utility, occupation and other taxes.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

The City shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable law or to delegate that power and right, or any part thereof, to the extent permitted under law, to any agent in the sole discretion of the City.

4.2 Rate Regulation

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the effective date shall be in accordance with applicable law.

4.3 Low Income Discount

The Grantee voluntarily agrees to offer a discount to those individuals who are low income (according to applicable federal guidelines) and either permanently disabled or 65 years of age or older and who are the legal owners or tenants of the Dwelling Unit. Such discounts will consist of thirty percent (30%) off of Basic Service or the Basic Service portion of expanded basic service when not discounted by inclusion in other promotional or programming package rates at which time the promotional or programming package rate will apply. The City, its designee, or Grantee, at the City's discretion, will be responsible for determining an individual's eligibility under this program.

4.4 Leased Access Channel Rates

Grantee shall offer leased access channel capacity on such terms and conditions and rates as may be negotiated with each lessee, subject to applicable law. Upon request, Grantee shall provide a complete schedule of current rates and charges for all Leased Access Channels, or portions of such Channels, provided by Grantee.

SECTION 5. INDEMNIFICATION AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold harmless the City, City Council, and any of the City's officers, officials, boards, commissions, agents and employees acting in an official capacity from any action, claim, damage, loss, liability, cost or expense, including court costs and attorneys' fees and expenses, arising from the death of or injury to any Person, casualty or accident to equipment or property, and all other damages arising out of, or by reason of, any construction, operation, maintenance or removal of the Cable System, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee, its agents or employees, except for injuries and damages caused by the sole negligence of the City.

(B) Procedures and Defense. The City shall give the Grantee written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. If a claim or action arises, the City or any other indemnified party shall then tender the defense of the claim to Grantee, which defense shall be at Grantee's expense.

(C) Other Counsel. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall select additional counsel with no conflict with the City.

5.2 Insurance Requirements

Throughout the term of this Franchise, the Grantee shall, at its own cost and expense, maintain comprehensive general liability insurance and provide the City certificates of insurance designating the City as additional insured and demonstrating that the Grantee has obtained the insurance required herein. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The

Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise

5.3 Bonds

(A) Grantee shall provide to the City a faithful performance bond in the initial amount of fifty thousand dollars (\$50,000) and obtain additional bonds on a project specific basis as required by the municipal code.

(B) Grantee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by Grantee, or limit the liability of Grantee to the amount of the bond(s), or otherwise limit the City's recourse to any other remedy available at law or in equity.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2 Subscriber Privacy

Grantee will comply with privacy rights of Subscribers in accordance with federal, State and local laws.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

The City shall have access to, and the right to inspect, any books and records of Grantee and its Affiliates which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise at the Grantee's regional business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. The City may, in writing, request copies of any such records or books that are not identified as proprietary or confidential, and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to the City at the sole expense of Grantee. If the requested books and records are too voluminous, or identified as proprietary and confidential, or for security reasons cannot be copied or removed, then the City shall inspect them at Grantee's regional office.

7.2 Confidentiality

Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate of Grantee that is not providing Cable Service in the Franchise Area. The City agrees to keep confidential any proprietary or confidential books or records of Grantee to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the records as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential or proprietary and how it may be treated as such under State or federal law. The Grantee shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable federal or State privacy law. For purposes of this Section, the terms "proprietary or confidential"

include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the Person demanding access to such information within five (5) business days.

7.3 Maps and Records Required

Grantee shall provide to the City upon request:

(A) A route map that depicts the general location of the Cable System facilities placed in the Right-of-Ways. The route map shall identify Cable System facilities as aerial or underground and is not required to depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers. The Grantee shall also provide, if requested, an electronic format of the aerial/underground facilities in relation to a Right-of-Way centerline reference to allow the City to add this information to City's geographic information system program;

(B) A copy of all FCC filings which relate to the operation of the Cable System in the Franchise Area; and

(C) A list of Grantee's Cable Services, rates and channel line-up.

7.4 Annual Reports

Upon request, thirty (30) days after the end of the first quarter, Grantee shall submit to the City a written report, which shall include the following information:

(A) The most recently completed annual corporate report;

(B) A Gross Revenue statement for the preceding fiscal year and all deductions and computations for the period, and such statement shall be reviewed by a certified public accountant, who may also be the chief financial officer or controller of Grantee;

(C) A summary of the previous year's activities regarding the development of the Cable System, including, but not limited to, homes passed, beginning and ending plant miles, any technological changes occurring in the Cable System and the number of Subscribers for each class of Cable Service;

(D) A description of planned construction, if any, for the current year; and

(E) An summary of Subscriber complaints received in the previous year.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

The Grantee shall offer to all Subscribers a diversity of video programming services.

8.2 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, trap or filter to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Such devices, traps or filters will be provided at no charge to the Subscriber, unless otherwise provided by federal law.

SECTION 9. ACCESS

9.1 Access Channels

(A) As of the effective date of this Franchise, the Grantee is providing and maintaining three (3) Access Channels to the City. The City individually programs one (1) Access Channel for Government Access. The other two (2) channels are not directly programmed by the City but are dedicated towards regional Educational and Public Access.

(B) Under the terms of this Franchise, the Grantee shall continue to make available a total of three (3) Access Channels to facilitate the City's needs for Access Programming. Notwithstanding anything to the contrary set forth herein, if the City desires to program an Educational Access Channel above and beyond the existing regional Educational Access Channel, the Grantee will implement the City's request by replacing the existing Access Channel currently airing the regional Educational Access programming.

(C) The City acknowledges that the Grantee's Cable System provides additional benefits to Access programming needs beyond the requirements listed above. This is accomplished through the inclusion of other regional access programming within the regional channel line-up that services the Franchise Area. The Grantee will endeavor to provide the Subscribers in the Franchise Area with the other regional access channels so long as the programmers offer them for use on the Cable System.

9.2 Control and Connectivity of Access Channels

(A) The City may authorize Designated Access Providers to control, operate and manage the use of any and all Access facilities provided by Grantee under this Franchise, including, without limitation, the operation of Access Channels. The City or its designee may formulate rules for the operation of the Access Channels, consistent with this Franchise.

(B) Regarding the City's and Designated Access Providers use of Access facilities and Access Channels, Grantee shall fully cooperate with requests from the City, and provide all necessary assistance related thereto.

(C) As of the effective date of this Franchise, the Grantee shall maintain all existing fiber optic return line(s) to facilitate the City's current Access connectivity to Grantee's Headend and hubs. If the City desires to relocate or expand the fiber optic return line(s) to new location(s) over the term of this Franchise, upon one hundred twenty (120) days written request by the City and at the City's cost for Grantee's reasonable time and materials, the Grantee shall construct the requested new fiber optic return line(s).

9.3 Location and Quality of Access Channels

(A) All Access Channels provided to Subscribers under this Franchise shall be included by Grantee subject to applicable law.

(B) Any Access Channels shall have at least the same transmission quality as is used to carry any of the commercial Channels that deliver programming on the Cable System. The Grantee shall provide Headend and hub equipment and routine maintenance and repair and replace, if necessary, any of Grantee's equipment required to carry the Access signal to and from the City's and any other Access origination point and the Grantee's Headend and hubs for the Access Channels.

(C) If Grantee makes a change in its Cable System and related equipment and facilities, or in its signal delivery technology, which directly or indirectly affects the signal quality or method or type of transmission of Access programming or services, Grantee shall take necessary technical steps and provide necessary technical assistance, including the acquisition of all necessary equipment and full training of Access personnel, to ensure that the capabilities of Access Channels and delivery of Access programming are not diminished or adversely affected by such change. For example, live and taped programming must be cablecast with as good or better signal quality than existed prior to such change.

(D) Grantee shall provide as much notice as possible but not less than sixty (60) days advance written notice to the City prior to any relocation of an Access Channel. In connection with the movement of any of the City controlled Access Channel(s), Grantee shall provide a bill message on subscriber's bills.

9.4 Access Capital Contribution

(A) Grantee shall provide a PEG Capital Contribution to the City for Access purposes including, without limitation, equipment purchases and construction and relocation costs. Within forty-five (45) days after the acceptance date of this Franchise by the Grantee, the Grantee shall provide an up-front PEG Capital Contribution in the amount of \$25,000 and place an amount of \$0.40 per month on Subscriber billing statements. From the total dollars received each month throughout the term of this Franchise, the Grantee will recoup and remit the monthly total as follows:

(1) recoup the initial twenty-five thousand dollars (\$25,000) in an amount equal to thirty cents (\$0.30) per Subscriber per month until the amount is recovered in full;

(2) until the initial PEG capital contribution is recouped completely, the Grantee will remit to the City, on a quarterly basis along with the franchise fee payments, an amount equal to ten cents (\$0.10) per Subscriber per month; and

(3) after completion of the initial PEG capital contribution recovery, the Grantee will remit the total monthly dollars received to the City on the same quarterly schedule as franchise fee payments.

Grantee shall not be responsible for paying the Capital Contribution with respect to gratis or Bad Debt accounts. The City shall have discretion to allocate the Capital Contribution in accordance with applicable law. To the extent the City makes Access capital investments using City funds prior to receiving the capital advances or monthly PEG Capital Contribution funds, the City is entitled to apply the subsequent capital advances and monthly PEG Capital Contribution payments from

Grantee toward such City capital investments. The City agrees that the PEG Capital Contribution may be treated as external costs under applicable federal law.

(B) Upon the Grantee's written request, the City shall submit a report annually on the use of the City specific access channel and capital contribution. The City shall submit a report to the Grantee within one hundred twenty (120) days of a written request. The Grantee may review the records of the City regarding the use of the capital contribution.

(C) The City shall dedicate the time, personnel and other resources needed to operate the access channel designated herein.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Right to Construct

Subject to the other provisions of this Franchise, Grantee may perform all construction in the Right-of-Ways for any facility needed for the maintenance, operation or extension of Grantee's Cable System.

10.2 General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All equipment shall be durable and installed and maintained in accordance with good engineering practices and comply with applicable law.

10.3 Movement of Facilities During Emergencies

During emergencies, except those involving imminent danger to the public health, safety or welfare, the City shall provide notice to Grantee, at a designated emergency response contact number, to allow Grantee the opportunity to respond and rectify the problem without disrupting Cable Service. If after providing notice, there is no immediate response, the City may move Grantee's facilities.

10.4 One Call

The Grantee shall, at its own expense, participate in the call before you dig program required under State law.

10.5 Permits Required

Prior to doing any work in the Right-of-Way or other public property (with the exception of installations or general maintenance that involves no construction and with no disruption to the use of the Right-of-Ways or other public property, Grantee shall apply for, and obtain, in advance, appropriate permits from the City. As part of the permitting process, the City may impose such conditions as are necessary for protecting any structures in such Right-of-Ways, and for providing for the proper restoration of such Right-of-Ways and to protect the public and the continuity of pedestrian or vehicular traffic. Grantee shall pay all generally applicable fees for the requisite City permits.

10.6 Emergency Permits

In the event that emergency repairs are necessary, Grantee may initiate such emergency repairs, and, if necessary, shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.7 Compliance with Applicable Codes

(A) City Codes. Grantee shall comply with all generally applicable City codes regarding the construction and use of the Right-of-Ways.

(B) Regulations and Safety Codes. Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) standards.

10.8 Least Interference

Work in the Right-of-Ways, or on other public property, shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and City residents. Grantee's Cable System shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the Right-of-Way by, or under, the City's authority. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

10.9 Poles & Undergrounding Requirements

(A) If all of the wires and lines of electric and telephone service providers in any given area within the Franchise Area are now or in the future placed underground, the Grantee shall place its Cable System distribution cables underground. In any part of the Franchise Area where the wires and lines of the electric and telephone service providers are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its distribution cables, or any part thereof, aerially or underground. In areas where the electric and telephone service providers wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. Nothing in this subsection shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as power supplies, or pedestals.

(B) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on poles or equipment of the City or of any other Person.

10.10 Restoration of Property

(A) If in connection with the construction, operation, maintenance, upgrade, repair or replacement of the Cable System, the Grantee disturbs, alters, or damages any public property, the Grantee agrees that it shall at its own cost and expense pay for any damage and replace and restore any such property to a condition reasonably comparable to the condition existing immediately prior to the disturbance.

(B) Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property for one (1) year, unless a longer period is required by the municipal code or any generally applicable ordinance or resolution of the City. If restoration is not satisfactorily and timely performed by the Grantee, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety,

cause the repairs to be made and recover the reasonable cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

10.11 Movement of Cable System Facilities

(A) Relocation at Request of City. Upon thirty (30) days prior written notice to Grantee, City shall have the right to require Grantee to relocate any part of the Cable System within the Right-of-Way when the safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. Should Grantee fail to remove or relocate any such facilities by the date established by the City, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its facilities located within the Right-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Right-of-Way. If public funds are available to any Person using such Right-of-Way for the purpose of defraying the cost of any of the foregoing, the Grantee may make application for such funds.

(B) In the case of relocation projects where the City hires and designates an independent contractor to accommodate and coordinate the conversion of overhead utilities within a City capital improvement project, if the Grantee decides to participate in the joint trench opportunity than the Grantee shall pay to the City the Grantee's portion trench costs, including excavation and other associated costs, trench bedding, and backfill commensurate with Grantee's proportionate share of trench usage. However, notwithstanding anything to the contrary set forth herein, if bids from the City's contractor for placement of Grantee's conduits and vaults/pedestals in the supplied joint trench, in the reasonable estimation of the Grantee, are not acceptable, the Grantee shall have the option to utilize contractor(s) of its choice to complete the required work. The City's contractor shall coordinate with the Grantee's contractor(s) to provide reasonable notice and time to complete the placement of the Grantee's facilities in the supplied joint trench.

10.12 Movement of Cable System Facilities for Others

(A) If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder(s) or any facilities-based entity authorized to provide Cable Services or comparable video programming within the franchise area without a franchise granted by the City, Grantee shall, after at least thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible entity, as long as, the other Person pay for the Grantee's time and material costs associated with the project and Grantee is issued a permit for such work by the City.

(B) The Grantee shall, upon reasonable prior written request of any Subscriber or City residence, relocate its aerial distribution cable facilities underground, as long as, the responsible Person pays for the Grantee's time and material costs associated with the project and Grantee is issued a permit for such work by the City.

(C) In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new land use development, not associated with a City capital improvement project, this Franchise shall in no way limit the Grantee's right to recoup all time and material costs associated with the underground conversion of the Cable System from the Person responsible for the project.

(D) At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder.

10.13 Tree Trimming

The Grantee shall have the authority to conduct pruning and trimming for access to Cable System facilities in the Right-of-Way. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

SECTION 11. CABLE SYSTEM ARCHITECTURE/TECHNICAL STANDARDS

11.1 Subscriber Network

Prior to the effective date of this Franchise, Grantee has upgraded its Cable System to a fiber-to-the-node Cable System architecture. Fiber-optic cable was deployed from the Headend to the nodes and tying into a hybrid fiber-coaxial Cable System. Active and passive devices are capable of passing a minimum of 750 MHz. The Cable System is capable of delivering high quality signals that meet or exceed FCC technical quality standards. Over the term of this Franchise, the Grantee will maintain the Cable System in a manner consistent with, or in excess of these specifications.

11.2 Emergency Alert

The Grantee shall provide an operating emergency alert system in accordance with and at the time required by the provisions of State and federal laws, including FCC regulations.

11.3 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal technical standards, as they may be amended from time to time, regardless of the transmission technology utilized.

11.4 Cable System Performance Testing

(A) Grantee shall perform on its Cable System all technical tests presently or hereafter required by the FCC.

(B) Upon request, all required FCC technical performance tests may be witnessed by representatives of the City.

(C) Grantee shall maintain written records of its Cable System tests performed. Upon request, copies of such test results will be provided to the City.

SECTION 12. SERVICE EXTENSION AND SERVICE TO PUBLIC BUILDINGS

12.1 Service Availability

(A) Subject to the density provisions described in Section 12.1(B) below and accessibility, Cable Service shall be made available in the entire Franchise area. If such availability does not now exist in the Franchise Area, the Grantee shall complete such construction and wiring and be in a position to offer Cable Service to all residents within six (6) months of such availability. Other areas subsequently annexed shall be provided with Cable Service within twelve (12) months.

(B) Distribution Line Extension Charges. The Grantee must make Cable Service available to every residential Dwelling Unit within the Franchise Area where the minimum density is at least thirty (30) Dwelling Units per strand mile in areas served by overhead facilities and sixty (60) Dwelling Units per mile in areas served by underground facilities. The Grantee may elect to provide Cable Service to areas not meeting the above density standard and charge the requesting resident(s) for the line extension on a time and material cost basis.

(C) Extraordinary Installation Charges. All residents requesting Cable Service and living within one hundred twenty-five (125) aerial feet of existing cable distribution or trunk lines shall have the cable installed at the prevailing published installation rate. In the event a request is made for service and the residence is more than one hundred twenty-five (125) aerial feet from an existing cable distribution or trunk line, such installation shall be completed on a time and material cost basis for that portion of the service line extending beyond one-hundred twenty-five (125) feet.

12.2 Connection of City and Other Public Facilities

Upon request through the designated City representative, the Grantee will voluntarily make available without charge, as long as it is economically feasible, a standard installation and a minimum of one outlet of Basic and Expanded Basic Cable Services to City administrative buildings as designated by the City (whether they are owned or leased), and fire station(s), police station(s), libraries, Access facilities, K-12 public School(s), and within the community meeting room at the Green River Community College Extension Campus Building. If the installation to such building does exceed one hundred twenty-five (125) aerial feet the City or other agency agrees to pay the incremental cost of such installation in excess of one hundred twenty-five (125) feet or a necessary distribution line extension of the Cable System, including the cost of such excess labor and materials. The recipient of the service will secure any necessary right of entry. The Cable Service will not be used for commercial purposes, and the outlets will not be located in jail cells or areas open to the public, except for one outlet to be located in a public lobby in City buildings that will be used by the public for viewing City selected programming. The City will take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, loss or damage to the Cable System. If additional outlets of Cable Service are needed in such buildings, only the Grantee is authorized to complete the Cable Service expansion to support the outlet installation(s) and the building occupant will pay the standard installation fees. No other Cable Service fees shall be owed in connection with additional outlets.

SECTION 13. INSTITUTIONAL NETWORK (I-NET)

13.1 I-Net History

The Grantee has provided I-Net connections to the following public buildings and schools as agreed upon under the previous Franchise, Ordinances No. 1842:

Site Name	Entity	Address	Status
Enumclaw High School	School	226 Semanski ST. S.	Active
Enumclaw Junior High	School	550 Semanski ST. S.	Active
Enumclaw Schools Administration	School	2929McDougall St	Active
Byron Kibler Elementary	School	2057 Kibler AVE	Active
J. J. Smith Elementary	School	1640 Fell ST	Active
Southwood Elementary	School	3240 McDougall Way	Active
Westwood Elementary	School	21200 SE 416th	Active
Sunrise Elementary	School	899 Osceola	Active
City Hall	City	1339 Griffin AVE	Active
Stevenson - Yerxa	City	1309 Myrtle	Active
Community Center	City	1350 Cole	Active
Fire Station	City	1330 Wells	Active
Police Station	City	1705 Wells	Active
City Shops	City	1942 Railroad	Active
Library	City	1700 First ST	Active
Visitor Information Center	City	1421 Cole ST	Active
Enumclaw Pool	City	Semanski St. Enumclaw, WA	Active
Waste Water Treatment	City	Semanski St. Enumclaw, WA	Splice

Each agreed upon site connects to the hub at City Hall. Fiber has been constructed and terminated in accordance with Grantee's standard practices. The City has agreed to grant Grantee all necessary rights of entry, easements and licenses to accomplish the construction to the I-net sites. Each fiber connection has been terminated at an internal point of demarcation in a Grantee standard fiber termination panel, unless the City provided another means of termination, in which case the City has provided, at its expense, all necessary fiber termination equipment. At each fiber termination location the City has provided wall mount backboards and a power source for the basic termination, or such equipment as chosen by the City as a replacement. The City has an indefatigable, exclusive right of use thereof for educational and public safety communications, which right cannot be revoked by the Grantee, or successor companies.

13.2 I-Net Maintenance, Relocation, and Future Construction

The City and Grantee will follow the terms and conditions addressed in Exhibit I for the on-going I-Net maintenance, relocation, and future construction activities.

SECTION 14. FRANCHISE VIOLATIONS

14.1 Non-Material Franchise Violations

(A) If the City believes that Grantee has failed to perform any non-material obligation under this Franchise, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

- (1) respond to the City, contesting the City's assertion that a default has occurred, and request a meeting in accordance with subsection (B), below; or
- (2) cure the default; or

(3) notify the City that Grantee cannot cure the default within thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or denies the default and requests a meeting in accordance with subsection (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than fifteen (15) business days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, Grantee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order Grantee to correct or remedy the default or breach within thirty (30) days or within such other reasonable timeframe, beyond thirty (30) days as the City shall determine. In the event Grantee does not cure the default within such time to the City's reasonable satisfaction, the City may:

(1) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or

(2) Pursue any other legal or equitable remedy available under this Franchise or applicable law.

(D) The determination as to whether a non-material violation of this Franchise has occurred shall be within the discretion of the City. Any such determination by the City must be in writing and must be based upon findings that include Grantee's submissions, provided that any such determination may be subject to appeal to the City Council or review by a court of competent jurisdiction under applicable law.

14.2 Material Franchise Violations

(A) The City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in any of the following circumstances:

(1) If Grantee willfully fails for more than three (3) days to provide continuous and uninterrupted Cable Service;

(2) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers; or

(3) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(B) Prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection and provide any explanation. In the event the City has not received a timely and satisfactory response from Grantee, it may then seek a termination of the Franchise in accordance with this subsection.

(C) The City Council shall conduct a public hearing to determine if revocation of the Franchise is warranted.

(1) At least thirty (30) days prior to the public hearing, the City shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the City Council shall hear any Persons interested therein; and provide that the Grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

(2) A verbatim transcript shall be made by a court reporter of such proceeding and the cost shall be paid jointly by both parties.

(3) Within thirty (30) days after the close of the hearing, the City Council shall issue a written decision regarding the revocation and termination of the Franchise.

(D) Grantee shall be bound by the City Council's decision to revoke the Franchise unless an appeal to a court of competent jurisdiction is filed within thirty (30) days of the date of the City Council's decision.

(F) Grantee and the City shall be entitled to such relief as the court may deem appropriate.

14.3 Termination

If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(A) Require Grantee to maintain and operate its Cable System on a month-to-month basis until a new cable operator is selected; or

(B) Purchase Grantee's Cable System in accordance with federal law.

14.4 Alternative Remedies

No provision of this Franchise shall be deemed to bar the City from seeking appropriate judicial relief. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the either party to recover damages, as allowed under applicable law, or to seek and obtain judicial enforcement of either parties obligations, injunctive relief or mandate, or any other remedy at law or in equity. The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise

available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law.

14.5 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may obtain an injunction, or operate the Cable System, or designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City. If the City operates the Cable System, or designates another entity to operate the Cable System, the Grantee shall reimburse the City or the City's designee, as applicable, for all reasonable costs and expenses incurred. If Grantee permanently abandons its entire Cable System (namely, for a period of one [1] year or more), then, at the City's sole discretion, such Cable System may become the property of the City, and Grantee shall then submit to the City a bill of sale and other conveyance documents, to be approved in advance by the City Attorney, transferring ownership of such property to the City.

SECTION 15. FRANCHISE RENEWAL

Any renewal of this Franchise shall be governed by and comply with applicable federal law, as amended.

SECTION 16. FRANCHISE TRANSFER

Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No change in control of the Grantee, defined as an acquisition of 50% or greater ownership interest in Grantee, shall take place without the prior written consent of the City, 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 Grantee. Within thirty (30) days of receiving a request for consent, the City 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 City has not taken action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

SECTION 17. MISCELLANEOUS PROVISIONS

17.1 Notices

Throughout the term of this Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:

Grantee's address shall be:

Comcast of Washington IV, Inc.

4020 Auburn Way N
Auburn, WA 98002
Attention: Franchise Director

With a copy to:

Comcast of Washington IV, Inc.
15815 25th Ave W
Lynnwood, WA 98087
Attention: Franchising Department

City's address shall be:

City of Enumclaw
1339 Griffin Ave
Enumclaw, WA 98002-3091
Attention: City Manager/Cable TV Manager

17.2 Cumulative Rights

Subject to applicable law, all rights and remedies given to the City by this Franchise shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City.

17.3 Costs to be Borne by Grantee

Grantee shall reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, contemporaneous with its acceptance of this Franchise.

17.4 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

17.5 Authority to Amend

This Franchise may be amended at any time by mutual written agreement between the parties.

17.6 Governing Laws

This Franchise shall be governed, construed and enforced in accordance with federal, State and local laws and any applicable rules, regulations and orders of the FCC, as such now exist, are later amended or subsequently adopted.

17.7 Captions

The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provision of this Franchise.

17.8 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other. Further, the

Grantee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City.

17.9 Cooperation

The parties recognize that it is in their mutual best interests for the Cable System to be operated as efficiently as possible. To achieve this, the parties agree to cooperate with each other in accordance with the terms and provisions of this Franchise.

17.10 Waiver

The failure of the City at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same, nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

17.11 Severability

If any Section, subsection, paragraph or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

17.12 Entire Agreement

This Franchise and Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties.

17.13 Force Majeure

The Grantee will not be held in violation under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement relating thereto, where such noncompliance or alleged violation occurred or was caused by circumstances reasonably beyond the ability of the Grantee to control. This includes war or riots, civil disturbances, floods or other natural catastrophes, labor stoppages or slow downs not attributable to Grantee's employees, or power outages exceeding back-up power supplies, and work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached as well as verifiable unavailability of materials and/or qualified labor to perform the work necessary.

Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the provisions of this Franchise, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

17.14 Attorneys' Fees

If any action or suit arises in connection with this Franchise (excluding Franchise renewal proceedings), the court shall determine which party shall be entitled to recover all of its reasonable

attorneys' fees, costs and expenses in connection therewith, in addition to such other relief as the court may deem proper.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Enumclaw, Washington, this ___ day of _____, 2011__.

CITY OF ENUMCLAW, WASHINGTON

Liz Reynolds, Mayor

Attest:

Maureen J. Burwell, Interim City Clerk

Approved as to Legal Form:

Michael J. Reynolds, City Attorney

Accepted and approved this ___ day of _____, 20__.

COMCAST OF WASHINGTON IV, INC.

By: _____
Its: _____

COMCAST OF CALIFORNIA/COLORADO/WASHINGTON I, INC.

By: _____
Its: _____

Attest:

By: _____
Secretary

EXHIBIT I -- I-NET MAINTENANCE, RELOCATION, AND FUTURE CONSTRUCTION

Section 1. Non-Commercial Applications

(A) In the context of the I-Net, non-commercial means internal network communications from and among government agencies, schools, libraries and other public agencies, which subject to other limitations herein, includes encrypted wireless, internet, telecommunications, information, voice, video and data services. Unless otherwise agreed upon by Comcast and the City, noncommercial internal network communications excludes any other uses, such as the sub-leasing, gifting, or reselling I-Net capacity to a third party for any purpose.

(B) Upon request from Comcast, the City shall provide a report identifying and certifying the City's authorized non-commercial users of the I-net. Comcast shall have the right to verify the fiber connection points outside the physical site termination panels for all users on the I-net to validate the City's report. If there are discrepancies found, both parties shall use the Dispute Resolution procedure under paragraph 25 to resolve to the matter.

Section 2. Maintenance and Repair of Fiber

Maintenance and repair on the fiber used for City utilized I-Net purposes and including associated facilities and equipment used exclusively by the City or another Qualified I-Net User for I-Net communications shall be performed by Grantee, with prior notice of at least five (5) business days to the City when practicable. In emergency conditions, such as a natural emergency resulting from a windstorm or unplanned fiber cuts, Grantee will effect emergency repair work on the Grantee utilized fiber and City utilized I-Net fiber, if any, in the course of conducting its own emergency repair work on its Cable System, excepting where City utilized I-Net fiber may not be co-located with Grantee's Cable System on a strand or in conduit in which case Grantee fiber shall be repaired as a first priority and City utilized I-Net fiber shall be repaired as a second priority in a continuous repair window. In such event, Grantee shall have no liability to the City for a delay in I-Net service restoration. Grantee shall charge for time and materials for all routine maintenance and repairs upon the I-Net fiber and associated facilities and equipment from the Grantee side of the I-Net fiber termination panel located at each site out to and including the backbone fiber. The City shall make payment within ninety (90) days of receipt of an invoice. Should the City fail to make payment within such period, both parties shall either agree upon an mutually acceptable re-payment plan or the payment shall be paid from the next applicable quarterly franchise fee.

Section 3. Service Trouble Calls and Escalation

The City acknowledges that Grantee does not actively monitor the signal transmission upon City utilized I-Net fiber, and may have no notice of a service outage but for a City-initiated notification. For any outages of City utilized I-Net fiber as determined by the City, the City's designated representative shall contact the designated local Network Operations Center (NOC). Grantee shall respond on-site to any routine trouble calls within four (4) hours of receipt of notification at the NOC and shall actively begin working on the problem until it is resolved. In order to document its work on the City-utilized I-Net fiber, Grantee will use its normal trouble ticket processes. In the event of an inability to initially resolve I-Net problems, Grantee shall follow its normal escalation procedures for correcting fiber outages. Grantee will communicate with the City's designated representative following resolution of the I-Net problems and, at the City's request, provide documentation of the I-Net problem resolution. Such documentation shall include, among other things, a description of the cause and resolution of the problem for each I-Net trouble ticket.

Section 4. Administration, Maintenance and Management

The City shall be responsible for the ongoing administration, maintenance and management of the non-backbone I-Net facilities and equipment located on the City side of the I-Net fiber termination panel located at each site, and the internal site network itself, unless it contracts with Grantee separately for a managed network. All such maintenance conducted by the City shall be performed in accordance with industry standards, and any equipment owned and used by the City shall comply in all respects with applicable governmental codes, laws, ordinances or regulations.

Section 5. Equipment or Modifications

The City will not attach any equipment or otherwise modify the I-Net in any way that will interfere with the signal quality and the normal operation of Grantee's Cable System. The City may not access any part of the backbone fiber and associated facilities and equipment outside the actual I-Net site fiber termination panel, and the City's permitted access shall in no event extend beyond the City's side of the fiber termination panel.

Section 6. Undergrounding

When electric and telephone utility wiring in an area of the City are relocated underground, Grantee shall be responsible for relocating City I-Net utilized fiber when Grantee's Cable System is placed underground at the same time. Notwithstanding the foregoing, should an increased cost differential arise because of Grantee's having to do additional splicing, increase the size of its conduit, vaults, or fiber sheath (because of the undergrounding), then the City shall pay the reasonable, incremental cost differential pertaining to the City I-Net utilized fiber only.

Section 7. Future I-Net Construction and/or Modification

Grantee and the City shall cooperate in investigating and considering options for expansion or modification of the I-Net within current or future City limits. Upon request of the City, the Grantee shall investigate and provide the City a plan with cost estimates based on the current I-Net configuration and the most cost efficient connection utilizing current technology, such as Dense Wave Division Multiplexing, or a managed network, to accommodate the City's I-Net needs for the proposed expansion or modification as mutually agreed upon. After receiving a request for additional I-Net construction or modification, Grantee shall provide the City a plan, including an estimate of the construction costs, within ninety (90) days. The cost estimate shall include the fully allocated construction cost from the nearest Grantee identified fiber access location to the requested site, including, but not limited to, site construction, fiber, labor, materials and Grantee provided equipment. The City shall pay all of Grantee's design engineering costs associated with development of the requested plan and cost estimate(s), if the City decides not to proceed with the construction. To approve the Grantee to perform the work, the City shall provide the Grantee with written authorization to complete the expansion or modification construction and a purchase order in the amount of the cost estimate. Any additional I-Net construction shall be performed and completed within six (6) months after the City authorizes that the work be performed, unless the parties agree in writing to a different completion date prior to commencement of the work in order to accommodate special considerations of the City.

Section 8. Testing and Acceptance.

For any new construction of I-Net fiber backbone, the Grantee shall certify the integrity through testing in accordance with industry standards. Tests will be conducted from the demarcation point

to termination point, example City Hall to the I-Net site. Industry standards for loss and attenuation will determine the acceptable loss of a given link. A copy of the documentation shall be provided by the Grantee in an electronic format. The City or its designee shall have the option of attending any I-Net test conducted by Grantee and also have the option of conducting a physical inspection of the construction taking place in the right-of-way or on City property or other property used by the City, provided that this inspection should not include touching, moving or manipulating the fiber, and provided further that this inspection is conducted prior to the date of Grantee's planned testing.