

ORDINANCE NO. 2589

AN ORDINANCE OF THE CITY OF ISSAQUAH, WASHINGTON, GRANTING A NONEXCLUSIVE RENEWAL FRANCHISE ("FRANCHISE") TO COMCAST OF CALIFORNIA/COLORADO/WASHINGTON I, INC. AND COMCAST OF WASHINGTON IV, INC. TO OPERATE A CABLE COMMUNICATIONS SYSTEM WITHIN THE CITY LIMITS OF THE CITY OF ISSAQUAH.

THE CITY COUNCIL OF ISSAQUAH, WASHINGTON, DO ORDAIN AS FOLLOWS:

1. GRANT:

This Franchise shall constitute an agreement between the City of Issaquah (hereinafter referred to as the "City") and Comcast of California/Colorado/Washington I, Inc. and Comcast of Washington IV, Inc. (hereinafter referred to as the "Grantee"), authorizing the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Rights-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. Upon acceptance by the Grantee, this Franchise shall supersede and replace that franchise created under Ordinance Number 2187 and that franchise created under King County Ordinance Number 11680, as it applies within the Franchise Area. This Franchise does not authorize the provision of any services other than those authorized under federal law. Nor does it in any way relieve the Grantee of any obligation to obtain authorizations, licenses, or permits to comply with requirements governing the use of Public Ways or the provision of such services.

2. LENGTH OF FRANCHISE:

The term of this Franchise and all its rights, privileges, obligations and restrictions shall be ten (10) years from the effective date. However, upon the fifth year anniversary date of the Franchise term, the Grantee has the option to provide written notice to the City opting out of the remaining five (5) years given a change in federal or State law which negatively impacts the City's ability to regulate this Franchise. To exercise the option, the Grantee shall give the City such written notice at least six (6) months prior to the fifth year anniversary date of the Franchise term.

3. TERMS OF THE FRANCHISE:

A) This Franchise granted to the Grantee shall not be deemed exclusive and shall not in any manner prevent the City from granting other or further franchises, nor shall this grant in any way hereafter limit the City from itself constructing, maintaining and operating a Cable System for the distribution of Cable Service within the City. 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; 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 the Grantee. 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. 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 the Grantee's belief that certain provisions of the Franchise place the 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.

B) The Grantee, through this Franchise, is granted the right to operate its Cable System using the Rights-of-Way within the Franchise Area. Such use must be in compliance with all lawful and applicable Issaquah Municipal Code provisions in effect on the date Grantee accepts this Franchise. In the event of a conflict between the Issaquah Municipal Code and this Franchise, this Franchise shall control subject to the limitation of the City's exercise of the police powers set forth below. 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. The Grantee has the right to challenge any City ordinance or regulation that conflicts with its rights under this Franchise. The 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 the Grantee agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such power so long as the same do not unduly discriminate against the Grantee.

4. FRANCHISE FEE:

The Grantee, as compensation for the use of the City's Rights-of-Way, 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 as described in IMC Section 12.50.0020. Accrual of such franchise fees shall commence as of the effective date of this Franchise.

5. ACCEPTANCE:

This grant of Franchise and its terms and provisions shall be accepted by the Grantee by written instrument, executed and sworn to by a corporate officer of the Grantee before a Notary Public or other officer authorized by law to administer oaths, and filed with the City Clerk within sixty (60) days after the date of this grant. Such written instrument shall state and express the Grantee's unconditional acceptance of this Franchise and shall promise to comply with and abide by all its provisions, terms and conditions.

The effectiveness of this grant of Franchise is contingent upon formal acceptance of its terms and conditions by the Grantee as herein provided, and in the form approved by the City Attorney, which acceptance shall be filed, together with all submittals required pursuant to IMC 12.50.0340, with the City Clerk within such sixty (60) days. Unless this grant of Franchise is accepted within the time set forth in this section and in the manner herein provided, it shall not become effective.

The Grantee 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.

6. UNIVERSALITY AND EQUALITY OF SERVICE AND RATES:

A) All of the Grantee's rates and charges shall be published (in the form of a publicly-available rate card), and shall be nondiscriminatory for all Persons of similar classes, under similar circumstances and conditions. Nothing herein shall be construed to prohibit:

- 1) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;
- 2) The offering of reasonable discounts to similarly situated Persons; or
- 3) The offering of bulk discounts for Multiple Dwelling Units.

B) Subject to the density provisions described 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.

C)The Grantee must make Cable Service available to every residential Dwelling Unit within the Franchise Area where the minimum density is at least twenty-five (25) 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 standards and charge the requesting resident(s) for the line extension on a time and material cost basis.

D)The City shall use its best efforts to provide the Grantee with written notice of the issuance of formal approvals for new subdivisions and/or planned developments, within the Franchise Area, requiring underground installation and/or the conversion of the Cable System as part of the approval condition(s).

E) 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.

F) The Grantee shall provide Cable Service to Multiple Dwelling Units in accordance with this Franchise and applicable laws.

G) The City and Grantee recognize the importance of customer service in the grant of this Franchise. The Grantee shall comply in all respects with the customer service requirements established by the FCC. Grantee reserves the right to challenge any customer service standard adopted by the City that it believes is inconsistent with its contractual rights granted pursuant to this Franchise or State or federal law. Grantee will comply with privacy rights of Subscribers in accordance with federal, State and local laws.

7. PROGRAMMING REQUIREMENTS:

A) The Grantee shall provide video and audio programming services in at least the following broad categories:

1. News, weather, and information
2. Sports
3. General Entertainment (including but not limited to movies)
4. Arts, Culture, Performing Arts, History
5. Children/Family programming
6. Science/documentary
7. Government and Educational Programming

The City acknowledges that identification of these broad categories of programming in no way implies regulatory authority by the City over specific programming services or networks which may be carried on the Grantee's Cable System.

No broad category of services as referred to above may be deleted, or so limited as effectively to be deleted by the Grantee without prior notice to the City. The City acknowledges that Grantee has no editorial control over programming carried on PEG Channels.

B) Upon request by any Subscriber, Grantee shall make available at Grantee's actual cost a parental control or lockout device compatible with the Grantee's equipment and will enable the Subscriber to block access to any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of installation and annually thereafter.

C) Leased Access Channels shall be provided in accordance with federal law.

D) In the event the Grantee conducts an ascertainment survey related to Franchise renewal under the guidelines of Section 626 of the Cable Act, the Grantee agrees to provide, upon request, the results of said ascertainment survey to the City within thirty (30) days of the completion thereof.

8. TECHNICAL IMPROVEMENTS& STANDARDS:

A) Prior to the effective date of this Franchise, the Grantee 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 delivering high quality signals that meet or exceed FCC technical quality standards. Regional Cable Services provided by the Grantee from a common Headend or hub shall be deployed and made available in the City as soon as practicable, economically and technically feasible.

B) As part of its annual report to the City, the Grantee shall provide a description of any material technical improvements implemented in any Grantee cable system in the area and all technical improvements planned for introduction in the City.

C) 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. The City shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

D) Grantee shall perform all technical tests presently or hereafter required by the FCC. Upon request, all required FCC technical performance tests may be witnessed by representatives of the City. Per IMC 12.50.0240, the City shall advise the Grantee a month prior to the Cable Operator's standard scheduled date of FCC proof of performance tests that the City is requesting the presence of an observer. Grantee's required testing occurs in the months of January and June of each year; the Grantee will notify the City if the testing schedule substantially changes to another monthly schedule. Grantee shall maintain written records of its Cable System tests performed by or for Grantee. Copies of such test results will be provided to the City upon request. Grantee shall promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Sites shall be re-tested following correction.

9. RATES AND CHARGES:

The Grantee acknowledges the City's rights to regulate the rates and charges related to or regarding Cable Services as authorized by applicable federal laws. During any period in which the City elects not to regulate rates as authorized by law, the Grantee shall have the right to impose any rates and charges to Subscribers in the City for services, equipment, etc. as allowed under federal law.

10. ADDITIONAL ASSURANCES OF PERFORMANCE:

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

B) If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then Grantee shall, upon written request, establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, an irrevocable letter of credit from a local financial institution satisfactory to the City in the amount of fifteen thousand dollars (\$15,000). If a letter of credit is furnished pursuant to this subsection, the letter of credit shall then be maintained at that same amount throughout the remaining term of this Franchise. After the giving of notice to Grantee and expiration of any applicable cure period, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

- 1) Failure of Grantee to pay the City sums due under the terms of this Franchise;
- 2) Reimbursement of costs and expenses borne by the City to correct Franchise violations not corrected by

- Grantee; and
3) Monetary remedies or damages assessed against Grantee as provided in this Franchise.

Within ten (10) days following notice that a withdrawal from the letter of credit has occurred, Grantee shall restore the letter of credit to the full amount required herein. Grantee's maintenance of the letter of credit shall not be construed to excuse unfaithful performance by Grantee or limit the liability of Grantee to the amount of the letter of credit or otherwise limit the City's recourse to any other remedy available at law or in equity. Grantee shall first appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Thereafter, Grantee shall have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise.

11. PUBLIC, EDUCATIONAL, AND GOVERNMENT CABLE SYSTEM:

A) For the purpose of meeting the community's need for Access programming, Grantee shall make available and maintain throughout the term of this Franchise the following Access Channels throughout the Franchise Area:

one (1) Government Access Channel;

one (1) Educational Access Channel; and

one (1) Public Access Channel which may carry either local or regional programming and recognizing that the Grantee does not exercise any editorial control over the programming content of this Channel.

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 is available within 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.

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 all necessary technical steps and provide necessary technical assistance, including the acquisition of all necessary equipment, up to the point of demarcation to ensure that the capabilities of the 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.

B) In addition to the Access Channels referenced in subsection (A) above, the City may require Grantee to make available an additional Access Channel as established by the following triggers:

One (1) additional channel shall be made available for Government Access use when the Government Access Channel required above is used for original programming (excluding character generated and filler programming, e.g., AM/FM radio programming) during fifty percent (50%) of the hours between 10:00 a.m. and 10:00 p.m., five (5) days per week during any consecutive twelve (12) week period. The programming shall generally be distinct and non-repetitive of the previous channel. Based upon these criteria, the Grantee shall, within four (4) months following a written request by the City, make available an additional Access Channel.

C) 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.

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.

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).

D) All Access Channels provided to Subscribers under this Franchise shall be included by Grantee as provided by federal law.

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 a Government, Educational or Public Access Channel. In connection with the movement of those Access Channels to other Channel numbers, Grantee shall provide a bill message on subscriber's bills.

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.

E) Grantee acknowledges that it is the City's goal to further the community's needs and interests by providing for the interconnection of Access Channels between the City and surrounding communities. Therefore, Grantee will implement Access Channel interconnections, at the cost of the City (such cost to be agreed upon by both parties prior to beginning of construction) which facilitate the sharing of Access programming between and among the City and surrounding (geographically adjacent, but not necessarily contiguous) communities that are served by the Grantee's same Headend or hub. The City shall have the right to use any Access programming provided to it through an interconnection and approved for use by the interconnecting municipality. The Grantee shall not be required by the City to interconnect the Access Channels carried on Grantee's Cable System with those carried on a system of another Cable Operator with a franchise granted by the City within the Franchise Area.

Additionally, the Grantee shall not be required, by the City, to interconnect its Access Channels with a newly authorized Cable Operator or facilities based entity, legally authorized by State or federal law, who makes available for purchase by customers, Cable Services within the Franchise Area without a franchise or other similar lawful authorization granted by the City.

12. PUBLIC BUILDING CONNECTIONS:

Grantee shall, upon request through the designated City representative and without charge, provide 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 and K-12 public School(s). 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) aerial 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 Hall that will be used by the public for viewing City Council meeting broadcasts. 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.

13. CONSTRUCTION REQUIREMENTS:

A) Subject to the other provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance, operation or extension of Grantee's Cable System. Grantee agrees to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

B) 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.

C) 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.

D) 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-Way 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 Rights-of-Way, and for providing for the proper restoration of such Rights-of-Way 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.

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

F) No construction activities shall occur within the Rights-of-Way of the City unless plans there for shall have been first submitted to the City.

G) The Grantee shall comply with all applicable City codes, including, without limitation, construction codes, building codes, the Fire Code and zoning codes and regulations. Grantee shall comply with all applicable federal, State and City safety requirements, rules, regulations, laws and practices. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

H) Work in the Right-of-Way, 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 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 Rights-of-Way by, or under, the City's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with travel and use of public places by Persons during the construction, repair, operation or removal thereof. 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.

I) Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. Grantee shall repair, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents.

J) Except in the case of an emergency involving public safety, Grantee shall give reasonable advance notice to private property owners or tenants of construction work on or adjacent to such private property.

K) 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, aurally 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. Cable System equipment such as pedestals may be accompanied by landscaping and screening which, if required by the City, will meet with the approval of the City on a case by case basis. Grantee shall not erect or authorize or allow others to erect any poles within the Rights-of-Way of the City for operation of its Cable System.

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.

L) If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours. If in connection with the construction, operation, maintenance, upgrade, repair or replacement of the Cable System, the Grantee disturbs, alters, or damages any public or private 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. Whenever Grantee disturbs or damages any Right-of-Way or other public property, Grantee shall complete the restoration work within forty-eight (48) hours or as authorized by the City's Public Works Director or designee.

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.

M) The City may inspect any of Grantee's facilities, equipment or construction within the Rights-of-Way and on other public property upon at least twenty-four (24) hours notice, or, in case of an emergency, upon demand without prior notice. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Grantee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to inspect, repair and correct the unsafe condition if Grantee fails to do so, and to reasonably charge Grantee there for.

N) On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as reasonably determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the work may immediately be stopped by the City. The stop work order shall be in writing; given to the Person doing the work and be posted on the work site; sent to Grantee by overnight delivery at the address given herein; indicate the nature of the alleged violation or unsafe condition; and establish conditions under which work may be resumed.

O) Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's and State's regulations and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

14. SEVERABILITY AND CHANGE IN LAW:

A) 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.

B) The Grantee and the City shall be entitled to all rights and be bound by all changes in local, State and federal law that occur subsequent to the effective date of this Franchise. The Grantee and the City acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes.

15. RECORDS:

A) 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. If any books or records of Grantee are not kept in a regional office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by Grantee.

B) 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 subsection, 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.

16. Liquidated Damages:

A) Because it may be difficult to calculate the harm to the City in the event of a breach of this Franchise by the Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the City elects to assess liquidated damages as provided in this Franchise and such liquidated damages have been paid, such damages shall be the City's sole and exclusive remedy for such breach or violation for one hundred eighty (180) days. Nothing in this subsection is intended to preclude the City from exercising any other right or remedy with respect to a breach that continues past the time the City stops assessing liquidated damages for such breach.

B) Prior to assessing any liquidated damages, the City shall follow the enforcement procedures of this Franchise that provide the Grantee proper notice and a right to cure.

C) The City shall not assess any liquidated damages if the Grantee has cured or commenced to and completes the cure under the cure provisions of this Franchise. In the event the Grantee fails to cure, the City may assess liquidated damages and shall inform the Grantee in writing of the assessment. The Grantee shall have thirty (30) days to pay the damages.

D) The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City.

E) The Grantee may appeal (by pursuing judicial relief) any assessment of liquidated damages within thirty (30) days of paying the assessment.

F) In no event may liquidated damages be assessed for a time period exceeding one hundred eighty (180) days. If after that time the Grantee has not cured the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

G) Pursuant to the requirements outlined herein, liquidated damages shall not exceed the following amounts: one-hundred dollars (\$100.00) per day for material departure from the FCC technical performance standards; one hundred dollars (\$100.00) per day for failure to provide the Access Channels or any equipment related thereto which is required hereunder; one hundred dollars (\$100.00) per day for each material violation of the Customer Service Standards; one hundred dollars (\$100.00) per day for failure to provide reports or notices as required by this Franchise; and one hundred dollars (\$100.00) per day for any material breaches or defaults not previously listed.

17. MISCELLANEOUS PROVISIONS:

A) Comcast of Washington IV, Inc. and Comcast of California/Colorado/Washington I, Inc. shall be jointly and severally liable for the obligations of the Grantee under the Franchise and applicable law governing Grantee's operations in the City, for compliance with the provisions, terms and conditions set forth herein, and a default by one shall be deemed a default by both. A notice to Comcast Cable shall be considered notice to both Comcast of Washington IV, Inc. and Comcast of California/Colorado/Washington I, Inc.

B) 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
4020 Auburn Way N
Auburn, WA98002
Attention: Director, Franchising and Government Affairs

With a copy to:

Comcast
15815 25th Ave W
Lynnwood, WA98087
Attention: Franchising Department

City's address shall be:

City of Issaquah
135 E. Sunset Way
Issaquah, WA 98027
Attention: City Clerk

C) 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.

D) 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.

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

F) 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).

G) 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.

H) 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.

I) 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.

J) This Franchise 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.

K) 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.

L) 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.

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

PASSED by the City Council and approved by the Mayor at regular meeting this 20th day of September, 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

PUBLISHED: September 29, 2010
EFFECTIVE DATE: October 4, 2010
ORDINANCE NO. 2589/AB 6124