

ORDINANCE NO. 2019-1

AN ORDINANCE RENEWING THE FRANCHISE FOR THE OPERATION OF A CABLE SYSTEM TO COMCAST OF OREGON II, INC. AND SUPERCEDING ORDINANCE NO. 33, AND ALL OTHER ORDINANCES IN CONFLICT WITH THIS ORDINANCE

WHEREAS, the City of Maywood Park, Oregon, has determined that the financial, legal, and technical ability of COMCAST OF OREGON II, INC. is reasonably sufficient to provide services, facilities and equipment necessary to meet the future cable related needs of the community; now, therefore,

WHEREAS, this Franchise Agreement (hereinafter, the Agreement” or “Franchise Agreement” is made between the City of Maywood Park, Oregon and Comcast of Oregon II, INC. (hereinafter, “Grantee”); and

WHEREAS, the City of Maywood Park, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

THE CITY OF MAYWOOD PARK ORDAINS AS FOLLOWS:

TITLE. This Ordinance shall be known as City of Maywood Park Ordinance 2019-1 Comcast Franchise Renewal.

Section 1 Definition of Terms

1.1. For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. 521 et seq. (the “Cable Act”).

- A. “Basic Cable” means any service tier that includes the retransmission of local television broadcast signals and any other programming provided by the grantee to all Subscribers in the Service Area.
- B. “Cable Act” means Title VI of the Communications Act of 1934 as amended.
- C. "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.
- D. “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 to multiple Subscribers within the Service Area have the meaning specified in

the definition of “Cable System” in the Cable Act.

E. “FCC” means the Federal Communications Commission or successor governmental entity thereto.

F. “Franchising Authority” and “Grantor” means the City of Maywood Park or the lawful successor, transferee, or assignee thereof.

G. “Grantee” means Comcast of Oregon II, INC., or the lawful successor, transferee, or assignee thereof.

H. “**Gross Revenue**” means, and shall be construed broadly to include, all amounts in whatever form and from all sources derived directly or indirectly by Grantee and/or an Affiliate from the operation of Grantee’s Cable System to provide Cable Services within the Franchise Area. Gross Revenues include, by way of illustration and not limitation:

- Fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial Subscribers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, audio channels and video-on-demand Cable Services);
- Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service;
- fees paid to Grantee for Channels designated for commercial/leased access use; which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area;
- Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Payments for pre-paid Cable Services and/or equipment;
- Advertising Revenues as defined herein;
- Fees including, but not limited to: (1) late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area; (2) Franchise fees; and (3) the FCC user fee.
- Revenues from program guides; and
- Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area.
- “Gross Revenues” shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. “Gross Revenues”, however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee’s revenue to an Affiliate and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Franchise. “Gross Revenues” shall include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such

types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates. "Gross Revenues" shall not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, "Gross Revenues" shall not include bad debt.

(A) "Advertising Revenues" shall mean amounts derived from sales of advertising that are made available to Grantee's Cable System Subscribers within the Franchise Area and shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Whenever Grantee acts as the principal in advertising arrangements involving representation firms and/or advertising Interconnects and/or other multichannel video providers, Advertising Revenues subject to Franchise fees shall include the total amount from advertising that is sold, and not be reduced by any operating expenses (e.g., "revenue offsets" and "contra expenses" and "administrative expenses" or similar expenses), or by fees, commissions, or other amounts paid to or retained by National Cable Communications or Comcast Spotlight or similarly affiliated advertising representations firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.

(B) "Gross Revenues" shall not include:

- Actual Cable Services bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
- Any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state or other governmental unit, provided that the Franchise fee, the FCC user feeshall not be regarded as such a tax or fee;
- Launch fees and marketing co-op fees; and,
- Revenues associated with the provision of managed network services provided under separate business contract.
- Unaffiliated third party advertising sales agency fees or commissions which are reflected as a deduction from revenues, except when Grantee acts as a principal as specified in paragraph (A) immediately above.

(C) To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card prices for such components. Late fees and other multi-

service revenues shall be treated the same as bundled services – thus allocated on a pro-rata basis. Except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee’s calculations.

Example: Prior to any bundle-related price reduction, if Cable Service is valued at 50% of the total of the services to be offered in a bundle, then Cable Service is to be valued and reported as being no less than fifty percent (50%) of the price of the bundled service total.

(D) Grantee reserves the right to change the allocation methodologies set forth in paragraph (C) above to meet standards mandated by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Grantor acknowledges and agrees that Grantee shall calculate Gross Revenues in a manner consistent with GAAP where applicable; however, the Grantor reserves its right to challenge Grantee’s calculation of Gross Revenues, including Grantee’s interpretation of GAAP and Grantee’s interpretation of FASB, EITF and SEC directives. Grantee agrees to explain and document the source of any change it deems required by FASB, EITF and SEC concurrently with any Franchise-required document at the time of submittal, identifying each revised Section or line item.

(E) Grantor agrees and acknowledges that Grantee shall maintain its books and Records in accordance with GAAP.

I. “Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

J. “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way lane, public way, drive circle, or other public right-of-way, including, but not limited to , public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.

K. “Service Area” means the legal boundaries of the Franchising Authority, and shall include any addition(s) thereto by annexation or other legal means, subject to the exceptions in Section 3.9.

L. “Standard Installation” is defined as 125 feet from the nearest tap to the Subscriber’s terminal.

M. “Subscriber” means a Person who lawfully receives Cable Service of the Cable System with the Grantee’s express permission.

Section 2 - Grant of Authority

2.1. Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System and to provide such Cable Services over the Cable System as may be lawfully allowed. Nothing in this Franchise shall be construed to prohibit Grantee from providing services other than Cable Services to the extent not prohibited by Applicable Law. The City hereby reserves all of its rights to regulate such other services to the extent consistent with Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither the Franchising Authority nor the Grantee may unilaterally alter the material rights nor obligations set forth in this Franchise unless specifically stated herein. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

2.3 Renewal. Competitive Equity.

A. The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful organizations to provide Cable Services within the Service Area; provided, the Franchising Authority agrees that, within ninety (90) days of the Grantee's request, it shall amend this Franchise to include any material terms or conditions that it makes to the new entrant, or provide relief from existing material terms or conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; system build-out requirements; security instruments; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorizations for competitive entry, so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services delivered over wireless broadband networks are specifically exempted from the requirements of this section.

B. Notwithstanding any provision to the contrary, at any time that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of Video Programming within the Service Area without a franchise or other similar lawful authorization granted by the Franchising Authority, and is allowed to continue operating without a franchise by the Franchising Authority, then Grantee may seek modification as per (A) above, or the term of the Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date six (6) months from the first day of the month following the date of Grantee's notice.

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

Section 3 - Standards of Service

3.1 Conditions of Occupancy.

A. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways. Prior to the commencement of any construction, extension or relocation of Grantee's Cable System in the Public Ways, Grantee agrees to obtain the necessary and required approvals from the Franchising Authority, including a right-of-way permit and payment of applicable fees.

B. Grantees 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, cables or other facilities that may be in the Public Way by or under the City's authority. Grantee and City shall work together during any design process affecting the Public Way to establish suitable locations for Grantee's Cable System, provided however, that all new installations serving new development shall access new lots and parcels through utility easements delineated on the approved partition or subdivision plat for such development

3.2 Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. In the event Grantee fails to restore the Public Way to a condition reasonably comparable to the condition existing immediately prior to such disturbance, the Franchising Authority may restore or cause to restore such Public Way at the expense of Grantee; provided, that the Franchising Authority provides Grantee with reasonable notice to restore and grantee fails to restore such Public Way within the time period given by the franchising authority.

3.3 Relocation at request of the Franchising Authority. Upon its receipt of reasonable advance written notice, to be not less than five (5) business days, the Grantee, at its own expense, shall protect, support, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority which are not used to compete with the Grantee's services.

3.4 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of Grantee, provided: (A) the expense of such paid by the Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this Section 3.4, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than 120 days for a permanent relocation.

3.5 Trimming of Trees and Shrubbery.

Subject to acquiring prior written permission of the Grantor, including any required permit, the Grantee shall have the authority to trim trees that overhang a Public Right of Way of the Grantor so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations.

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

3.7 Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. The Franchising Authority shall not incur any construction or expense in the event Grantee is lawfully required by the Franchising Authority to place its distribution facilities underground as provided in this Section 3.7. Nothing contained in this Section 3.7 shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

3.8 Placement of Facilities Underground; Access to Open Trenches. Should it become a matter of public interest and convenience that a certain portion of the Grantee's aerial facilities and aerial facilities of other users of the Public Ways be placed underground, the Franchising Authority shall conduct a hearing to determine whether the underground placement of such facilities will serve said public interest and convenience. The Franchising Authority shall provide written notice of this hearing to Grantee, who shall be afforded a meaningful opportunity to comment at the hearing. In no event, however, shall the Grantee be required to place more than 800 feet of its facilities underground in any given year at its sole expense.

For all projects within the Service Area, it shall be the responsibility of the developer to provide adequate advance notification to Grantee and other potential users of an open trench. In the case of any new development, new construction, and/or extension of utility services, the Franchising Authority agrees to receive information from the Grantee in the platting process for any new subdivision within the Franchise Area, and at a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that will utilize underground or aerial lines for any other purpose that: (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide Grantee with reasonable access to the open trench. Grantee shall make a good faith effort to utilize such open trenches in its provision of Cable Service to affected properties so long as such properties are passed by Grantee's Cable System. Notwithstanding the foregoing, Grantee shall not be required to utilize any open trench. Neither Franchising Authority nor Franchisee shall be liable or financially responsible for any failure to give notice of, require notice of, or failure to utilize open trenches created by a developer.

3.9 Required Extensions of the Cable System. Grantee agrees to provide Cable Service to all residents in the Service Area subject to the density requirements specified in the Section 3.9. Whenever the Grantee

receives a request for Cable Service from a subscriber in a contiguous unserved area where there are at least 12 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscriber at no cost to said Subscriber for the Cable System extension, other than the publicized Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area, where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

3.10 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if any area does not meet the density requirements of Section 3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from Grantee's trunk or distribution cable, and whose denominator equals (12). Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

3.11 Emergency Use. In accordance with, and at the time required by, the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, as such provisions may from time to time be amended, Emergency Alert System ("EAS") activation will be accomplished in compliance with such regulations and consistent with FCC approved Oregon State EAS plan and local area EAS plan applicable to Yamhill County.

3.12 Reimbursement of Costs. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the relocations under Sections 3.3 and 3.4 hereof, the Franchising Authority shall reimburse Grantee in the same manner in which other Persons affected by the requirement are reimbursed by the Franchising Authority. If funds are controlled by another government entity, the Franchising Authority shall make application for such funds on behalf of Grantee

3.13 System Standards. The Cable System shall meet or exceed all applicable technical and performance standards of the FCC. The Grantee shall also comply with all applicable testing requirements of the FCC. Upon request, Grantee shall advise the Franchising Authority of schedules and methods for testing the Cable System within the Service Area to determine compliance with the provisions of applicable FCC technical standards. Representatives of the Franchising Authority may witness the tests.

Written records of all system tests required to be performed by or for the Grantee shall be maintained at Grantees business office, and shall be available for inspection during Grantee's normal business hours by the Franchising Authority upon written request. Grantee, upon written request of Franchising Authority, shall provide a summary or complete copy of such test results prepared in accordance with the FCC rule.

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs or maintaining the Cable System, Grantee shall do so at such times that will cause the least amount of inconvenience to

Subscribers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to Subscribers. Notwithstanding anything to the contrary, Grantees obligation to provide, replace, construct, maintain or operate the Cable System under this Franchise shall be excused for any period during with such service is prevented or interrupted by causes beyond the control of Grantee including acts of nature, fire, flood, unavoidable casualty, extra-ordinary delays in transportation, strikes or power interruption or regulations. Cable Service shall thereafter be restored as soon as reasonably possible.

3.14 Customer Service Standards/Complaint Resolution. Grantee shall comply with the customer service standards set forth in Section 76.309 of the FCC's Rules and Regulations, as may be amended from time to time. Should a Subscriber have an unresolved complaint regarding Cable Service with Grantee, the Subscriber may file a complaint with the Franchising Authority and thereafter to meet or discuss jointly with the representatives of the Franchising Authority and grantee within 30 days of filing the complaint with the franchising authority to address and resolve the Subscriber's complaint. For purposes of this paragraph, a "complaint" is a grievance related to the Cable Service provided by the Grantee within the Service Area that is reasonably remedial by Grantee but that does not include grievances regarding the content of programming or information services other than broad categories of programming, and does not include customer contacts resulting in routine service calls that resolve the subscriber's problem satisfactorily to subscriber.

Section 4 - Regulation by the Franchising Authority

4.1 Franchise Fee; Regulation of Rates.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent of annual Gross Revenue (as defined in Section 1.1 of this Franchise). In accordance with the Cable Act, the 12 month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due quarterly and payable within forty five days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. The percentage amount of the franchise fee may change, at the discretion of the Franchising Authority, if provided for by new federal law and upon ninety days' notice to Grantee by Franchising Authority.

B. Audit of Franchise Fee Payments

B.1. Franchising Authority or its designee may conduct an audit or other inquiry in relation to payments made by Grantee no more than once every two years during the Term. As a part of the audit process, Franchising Authority or Franchising Authority's designee may inspect Grantee's books of accounts relative to Franchising Authority at any time during regular business hours and after thirty (30) calendar days' prior written notice.

B.2. All records deemed by Franchising Authority for Franchising Authority's designee to be reasonably necessary for such audit shall be made available by Grantee in a mutually agreeable format. Grantee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of written request. Grantee may provide such responses within a reasonable time that is mutually agreeable, after the expiration of the response period above, so long as Grantee has made a good faith effort to procure any such tardy response.

B.3. If the results of any audit indicate that Grantee (i) paid the correct franchise fee,

(ii) overpaid the franchise fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by five percent (5%) or less, then the Franchising Authority shall pay the costs of the audit. If the results of the audit indicate Grantee underpaid the franchise fee by more than five percent (5%), then Grantee shall pay the reasonable, documented, independent third-party costs of the audit, which costs shall be limited to seven thousand five hundred dollars (\$7,500) if any audit discloses an underpayment of the franchise fee in any amount, Grantee shall pay Franchising Authority the amount of the underpayment, together with interest computed from the applicable due date, at a rate per annum equal to the highest Bank Prime Rate during the period of delinquency plus one percent (1%). The Bank Prime Rate shall mean the prime lending rate as it appears in the wall Street Journal during the period of delinquency.

B.4. Any auditor employed by Franchising Authority shall not be compensated on a success based formula, e.g., payment based on a percentage of underpayment, if any. Grantee shall be provided with a reasonable opportunity to review the results of any audit and to dispute an audit result which indicates an underpayment to Franchising Authority.

C. Limitation on Franchise Fee Actions. The period of limitation for recovery of franchise fee payable hereunder shall be three years from the date on which payment by the Grantee is due.

4.2 Inspections for Compliance. The Franchising Authority may inspect the Cable System within the Service Area, during reasonable times and in a manner that does not unreasonably interfere with the normal business operations of Grantee, in order to determine compliance with applicable FCC standards. Except in emergency circumstances, such inspections may be undertaken only after giving no less than five (5) days advance notice thereof and after giving Grantee an opportunity to be present during such inspections. In the event such inspection determines that Grantee's Cable System has substantially failed to comply with the applicable FCC standards, the cost of the inspection shall be borne by the Grantee. Except in emergency circumstances, the Franchising Authority agrees that such inspection shall be undertaken no more than annually, and that the results thereof shall be provided to Grantee.

4.3 Renewal of Franchise.

A. The Franchising Authority and the grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal for the grantee's Franchise shall be governed by and comply with the provision of Section 626 of the Cable Act

B. In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this Section 4.4, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal

negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this Section 4.4 to be consistent with the express provisions of Section 626 of the Cable Act.

4.4 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness, and for change in control to Grantee's parent company or an entity controlling, controlled by, or under common control with Grantee. Within thirty (30) days of receiving and request for transfer, the Franchising Authority shall be deemed given if the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, unless the requesting party and the Franchising Authority agree to an extension of time.

Section 5 - Books, Records and Maps

5.1 Books and Records. The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location or to provide the Franchising Authority to view certain books and records in electronic format. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate of Grantee which is not providing Cable Service in the Service Area. In the event the Grantee asserts that certain information is proprietary or confidential in nature, the Grantee shall identify generally the information which it deems proprietary or confidential and the reasons for its confidentiality in writing.

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

5.2 Maps. Grantee shall maintain "as built" drawings for the Cable System at Grantee's business office, and make them available to the Franchising Authority for inspection during normal business hours upon written request. "As built" drawings shall be updated as changes occur in the Cable System serving the Service Area. Upon written request of the Franchising Authority, Grantee shall provide the Franchising Authority copies of strand and trench maps showing the location of Grantee's lines within the Public Ways in the Service Area within sixty (60) days of request for the same. The Franchising Authority recognizes that the

information contained in such maps is confidential and proprietary, and remains the property of the Grantee. To the extent provided under the Oregon Public Records Law, the Franchising Authority shall safeguard such information from public law.

Section 6 - Insurance and Indemnification

6.1 Insurance Requirements. The Grantee shall maintain in full force and effect at its own cost, and expense, during the term of the Franchise, the following liability policies that protect the Grantee and the Grantor, as well as the Grantor's officers, agents, and employees:

- A. Comprehensive general liability insurance with limits not less than:
 - A.1. One million (\$1,000,000) dollars for bodily injury or death to each person
 - A.2. One million (\$1,000,000) dollars for all other types of liability.
 - A.3. One million (\$1,000,000) dollars for all other types of liability.
- B. Motor vehicle liability insurance for owned, non-owned and hired vehicles with a limit of one million (\$1,000,000) dollars for each person and two million (2,000,000) dollars for each accident.
- C. Workers' Compensation insurance within the statutory limits and employer's liability with limits of not less than \$1,000,000.
- D. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The coverage must apply as to claims between insured on the policy. The Franchising Authority shall be designated as an additional insured. The certificate of insurance shall provide that the insurance shall not be cancelled or materially altered without 30 days prior written notice first being given to the Grantor. If the insurance is cancelled or materially altered, the Grantee shall provide a replacement policy with the terms as outlined in this section. The Grantee shall maintain continuous uninterrupted coverage, in the terms and amount required. The Grantee may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.
- E. The grantee shall maintain on file with the grantor a certificate of insurance or proof of self-insurance acceptable to the Grantor, certifying the coverage required above.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend, the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of Grantee's construction, operation, or maintenance of its Cable System, provided that the Franchising Authority shall give Grantee written notice of its obligation to indemnify the Franchising Authority within 30 days of receipt of a claim or action pursuant to this Section 6.2. or such later time as shall be reasonable under the circumstances. Notwithstanding the forgoing, Grantee shall not indemnify the Franchising authority for any damages, liability, or claims resulting from the willful misconduct or negligence of the Franchising Authority.

6.3 Bonds and Other Surety. No bond or other surety shall be required of the Grantee at the inception of the Franchise. In the event Grantee is required by the Franchising Authority to obtain a bond or other surety in the future, the Franchising Authority agrees to give Grantee at least sixty (60) days in advance written notice thereof stating the specific reasons for such requirement. Such reasons must demonstrate a change in Grantee's legal, financial or technical qualifications that would materially prohibit or impair Grantee's

ability to comply with the terms and conditions of this Franchise.

Section 7 - Enforcement and Termination of Franchise

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

7.2 The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

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

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

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

7.5 Revocation. Should the Franchising Authority seek to revoke the Franchise after following procedures set forth in Section 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to call the relevant officials, agents, employees or consultants of the Franchising Authority as permitted by law, to compel the testimony of other persons as permitted by law. A complete record consisting of all written exhibits, minutes and an audio tape shall be made of the hearing by the Franchising Authority.

Following the hearing, the Franchising Authority shall determine whether the franchise shall be revoked. If the Franchising Authority determines that the franchise shall be revoked, Grantee may appeal such

determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority de novo. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

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

7.6 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonable beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System within the Service Area is attached, as well as unavailability to materials and/or qualified labor to perform the work necessary. Furthermore, the parties hereby agree that it is not the Franchising authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or subscribers.

7.7 Removal of Facilities after Revocation, Termination or Expiration of Franchise. After revocation, termination or expiration of the franchise, and upon reasonable notice from the Franchising Authority, Grantee shall remove from the Public ways all or a portion of its Cable System and property. The Franchising Authority's notice shall be in writing and shall state whether all or a portion of Grantee's Cable System must be removed and the date by which removal shall be completed.

Section 8 Miscellaneous Provisions

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

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

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

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

City Clerk
City of Maywood Park
10100 NE Prescott St. Suite 147
Maywood Park, OR 97220

Notices or responses to the Grantee shall be addressed as follows:

Comcast of Oregon II, Inc.
Attention: Government Affairs
9605 SW Nimbus Ave.
Beaverton, OR 97008

With a copy to:

Comcast of Oregon II. Inc.
Attention: West Division-Government Affairs
15815 25th Ave. West
Lynnwood, WA 98087

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


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

8.5 Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph term or provision hereof, all of which will remain in full force and effect for the term of the franchise.


8.6 Inconsistent Ordinances repealed, in whole or part. All ordinances, inconsistent with this ordinance, to the extent of such inconsistency, are hereby repealed.

8.7 Acceptance of Franchise. This ordinance does not grant a franchise unless it is accepted in writing by Franchisee within sixty (60) days after its enactment.

PASSED and APPROVED by the City Council of the City of Maywood Park on the 4th day of March, 2019.



Matthew Castor, Mayor

ATTEST:


Bonnie Davey, City Recorder