

**ORDINANCE NO. 623
CITY OF DAYTON**

An Ordinance Granting a Franchise for the Operation of a Cable System to Comcast of Oregon II, Inc. to Use City Rights of Way to Provide Cable Services; and Declaring an Emergency

WHEREAS, the City of Dayton, 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 cable related needs of the community.

NOW, THEREFORE, the City Council of the City of Dayton ordains as follows:

This Cable Television System Franchise Agreement ("Franchise") is entered into this 2nd day of February, 2015, by and between the CITY OF DAYTON, OREGON, ("Grantor"), and COMCAST OF OREGON II, INC., ("Grantee").

SECTION 1
Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. Words used in this Franchise that are not defined hereunder but defined in the Cable Act (as defined below) shall have the meaning specified in the Cable Act definition.

- A. "Basic Cable" means any service tier that includes the retransmission of local television broadcast signals and any other programming provided by the Grantee.
- B. "Cable Act" means Title VI of the Communications Act of 1934, as amended.
- C. "Cable Service" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 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.
- E. "FCC" means Federal Communications Commission, or successor governmental entity thereto.

- F. "Franchising Authority" and "Grantor" means the City of Dayton 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 any revenue derived by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area in accordance with Generally Accepted Accounting Principles (GAAP), consistent with federal and state law, provided however that such phrase shall not include: (1) any tax, fee, or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC user fee but not including the franchise fee, which is included in "gross revenues" to the extent it is collected from Subscribers; and (2) unrecovered bad debt.
- 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 but only to the extent of the Franchising Authority's right, title, interest and authority to grant a franchise to occupy and use such areas 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 additions thereto by annexation or other legal means.
- L. "Standard Installation" is defined as 125 feet from the nearest point on the Grantee's existing distribution system 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 Franchise**

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System to provide Cable Service in, along, among, upon, across, above, over, or under the Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

2.2 Other Provisions of Law. This Franchise and all rights and privileges granted under it are subject to, and the Grantee must comply with, applicable law as amended over the Franchise term. 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 materially limiting the benefits or materially expanding the obligations of the Grantee that are expressly granted by this Franchise. Neither the Franchising Authority nor the Grantee may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

2.3 Competitive Equity.

(A) The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one (1) or more additional franchises 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 work with the Grantee to agree on amendments to this Franchise to include any material terms or conditions that it makes in a lawful franchise agreement with a Cable Operator to provide Cable Service, or provide relief from existing material terms or conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent to the extent such amendment is consistent with the Cable Act and related FCC rules, regulations and orders. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; 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 for competitive entry, so long as the regulatory and financial burdens on each entity are materially equivalent to the extent permitted by the Cable Act and related FCC rules, regulations and orders. If after negotiating for no less than sixty (60) days the Franchising Authority and the Grantee are unable to agree on amendments, Grantee may, upon ninety (90) days written notice to the Franchising Authority, shorten the term of this Franchise so that the Franchise shall be deemed to expire on a date three (3) years from the first day of the month following the date of Grantee's notice. Video programming services delivered over wireless broadband networks and any other non-Cable Service are specifically exempted from the requirements of this section.

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

2.5 Franchise Review. Within sixty (60) days of the third anniversary or one of the subsequent anniversaries of the effective date of this Franchise, the Franchising Authority may, but is not required to, conduct a limited review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in light of new developments in cable technology together with related developments in cable law and regulation, and community needs and interests—including public, education and government access, and consideration of all financial, technological, and operational impacts that may affect the Grantee. Both the Franchising Authority and Grantee agree to make a full and good faith effort to participate in the review.

If, after completion of the review, the Franchising Authority and Grantee agree that the public interest will be served by modifying certain franchise obligations and/or extending the term of the

Franchise, the Franchising Authority, with the express written agreement of the Grantee, shall modify the obligations and extend the term of the Franchise accordingly.

2.6 Affiliates. Grantee agrees as a condition of exercising the privileges granted by this Franchise that any Affiliate of Grantee which assumes direct management or operational control of the Cable System to provide Cable Service in the Service Area, will also comply with this Franchise.

2.7 Franchise Nonexclusive. This Franchise shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any, Public Right of Way, and is also subject to Grantor's right to use the Public Rights of Way for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder.

2.8 Police Powers. Notwithstanding any other provision of this Franchise, Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances of general applicability to protect or advance public safety, health, or welfare of the general public and Grantee agrees to comply with all applicable laws, regulations and ordinances enacted by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof.

SECTION 3 **Standards of Service**

3.1 Conditions of Occupancy. 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 and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

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, or where the Franchising Authority determines it is in the public interest.

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 Construction and Location.

A. Subject to applicable laws, regulations and ordinances of the Franchising Authority and the provisions of this Franchise, Grantee may perform all construction necessary for the operation of its Cable System to provide Cable Services. All construction and maintenance of any and all facilities within the Public Way incident to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction, installation or relocation of any facilities, and for excavating and laying any facilities within the Public Way. Grantee shall pay, prior to issuance, all applicable fees of the requisite construction permits.

B. Prior to beginning any construction, Grantee shall provide the Franchising Authority with a construction schedule for work in the Public Way. All construction shall be performed in compliance with this Franchise and all applicable lawful ordinances and codes of the Franchising Authority. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, permittees and other franchisees so as to reduce as far as possible the number of cuts in the Public Way.

C. The Franchising Authority shall have the right to inspect all construction or installation work performed within the Service Area as it shall find necessary to ensure compliance with the terms of this Franchise and other lawful pertinent provisions of law. In addition to providing notice to the public of ongoing work as may be required under applicable law, Grantee shall make available upon the Franchising Authority's request information regarding any ongoing construction, operation or installation of its Cable System sufficient to show: (1) the nature of the work being performed; (2) where it is performed; (3) its estimated completion date; and (4) progress towards completion.

D. Within forty-eight (48) hours after notification of any proposed Public Way excavation, Grantee shall, at Grantee's expense: (1) mark on the surface all of its underground facilities within the area of the proposed excavation; (2) notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or (3) notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

3.6 Trimming of Trees and Shrubbery. The Grantee may trim trees upon and overhanging the Public Way so as to prevent the branches of such trees from coming into contact with the Cable System. Grantee shall dispose of all trimmed materials. No trimming shall be performed in the Public Way without previously informing the Franchising Authority. Except in emergencies, all trimming of trees on public property shall have the advance written of the Franchising Authority...

3.7 Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety

Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.8 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 (other than high voltage electric lines), the Grantee likewise shall construct, operate, and maintain its Cable System underground. The Franchising Authority shall not incur any cost or expense in the event Grantee is lawfully required by the Franchising Authority to place its distribution facilities underground as provided in this Section 3.8. Nothing contained in this Section 3.8 shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

3.9 Access to Open Trenches. The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees, to the extent consistent with applicable law, to require that any developer (A) give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) provide Grantee with reasonable access to the open trench. Notwithstanding the foregoing, Grantee shall not be required to utilize any open trench.

3.10 Required Extensions of the Cable System. Grantee agrees to provide Cable Service to all residents in the Service Area subject to the density requirements specified in this Section 3.10. Whenever the Grantee receives a request for Cable Service from a Subscriber in a contiguous unserved area where there are at least 6 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 published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service.

3.11 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 3.10 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 twelve (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.

3.12 Cable Service to Public Buildings. The Grantee, upon request, and as a voluntary initiative only, shall provide without charge, a Standard Installation and one outlet of Basic Cable and expanded basic service or its equivalent to those administrative buildings owned and occupied by the Franchising Authority, fire station, police station, and K-12 public school(s) that are within the Service Area and passed by its Cable System; provided, however, those buildings or portions of buildings housing or occupied by prison/jail populations shall be excluded. Cable Service to the Franchising Authority described herein is a voluntary initiative of Grantee. The Cable Service provided shall not be distributed beyond the originally

installed outlet without authorization from Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section 3.11. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable and expanded basic service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

3.13 Emergency Use. Grantee shall provide emergency alert capability in accordance with federal law. 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, Grantee shall activate the Emergency Alert System ("EAS") in compliance with such regulations and consistent with FCC approved Oregon State EAS plan and local area EAS plan applicable to Yamhill County. Grantee shall provide the system capability for the Franchising Authority to override all Cable System programming for emergency purposes, and transmit an emergency message from locations designated by the Franchising Authority to all Subscribers, consistent with the requirements of Part 11 of the regulations of the FCC.

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

Written records of all system tests required to be performed by or for the Grantee shall be maintained at Grantee's business office, and shall be available for inspection 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 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, Grantee's obligation to provide, replace, construct, maintain or operate the Cable System under this Franchise shall be excused for any period during which 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.

Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may be laid in the Public Way by, or under, the Franchising Authority's authority.

3.15 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. Nothing in this Section shall limit the rights of the Grantor to establish additional or different customer service standards in accordance with federal law and regulations.

Grantee may arrange for a drop box or its equivalent within the city limits of the Franchising Authority where Subscribers may drop or deliver their bill payment for cable service.

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 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 Grantee within the Service Area that is reasonably remediable by Grantee, but 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.

3.18 Additional Commitments not Franchise Fees. No term or condition in Section 3.12, 3.16 or 13.17 shall in any way modify or affect Grantee's obligation to pay franchise fees related to Cable Services in accordance with applicable law. Although the total sum of such franchise fee payments and additional commitments set forth in these Sections may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not franchise fees as defined under 47 U.S.C. § 542, nor are they to be offset or credited against any franchise fee payments due to the Franchising Authority so long as such commitments are exercised by the Franchising Authority in a manner consistent with this Franchise.

SECTION 4 **Regulation by the Franchising Authority**

4.1 Franchise Fee.

A. Payment:

1. The Grantee shall pay to the Franchising Authority, throughout the term of this Franchise, a franchise fee equal to five percent (5%) of annual Gross Revenues (as defined in Section 1.1 of this Franchise). The franchise fee payment shall be calculated quarterly and shall be due and payable within forty-five (45) days after the close of each calendar quarter. Each payment shall be accompanied by a 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 (90) days' notice to Grantee by Franchising Authority.

2. To the extent that discounts reduce revenues includable for purposes of calculating franchise fees, Grantee may not unfairly or unlawfully allocate discounts for bundled services for the purpose of evading payments of franchise fees to the Franchising Authority.

3. No acceptance of any payment shall be construed as an accord by Franchising Authority that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as

a release of any claim Franchising Authority may have for further or additional sums payable or for the performance of any other obligations of Grantee.

4. In the event a franchise fee payment or other sum is not received by the Franchising Authority on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment or sum due interest from the due date at a rate equal to nine percent (9%) per annum, compounded monthly.

B. Audit of Franchise Fee Payments:

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

2. All books and records deemed by Franchising Authority or Franchising Authority's designee to be reasonably necessary for such audit or inquiry shall be made available by Grantee in a mutually agreeable format and location within the Service Area. Grantee agrees to give its full cooperation in any audit or inquiry and shall provide responses to inquiries within thirty (30) calendar days of a written request. Grantee may provide such responses after the expiration of the response period above if the Franchising Authority agrees in writing to provide additional time.

3. 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 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.

4. Grantee shall be provided with a reasonable opportunity to review the results of any audit and to dispute any audit results which indicate an underpayment to Franchising Authority.

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

4.2 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 not 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 applicable FCC standards, the reasonable costs of the inspection shall be borne by Grantee. In the event such inspection demonstrates that Grantee has substantially complied with applicable FCC standards, the cost of the inspection shall be borne by the Franchising Authority. 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.

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

4.4 Grantor Acquisition of the Cable System

The parties shall be subject to the provisions of Section 627 of the Cable Act, as amended from time to time. It is not intended that this Franchise diminish the rights of either the Franchising Authority or the Grantee under Section 627 of the Act, and any provision of this Franchise that purports to diminish such rights shall be deemed superseded by the Act.

4.5 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise or Cable System shall not be sold, transferred, assigned, or otherwise encumbered, in whole or in part, 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. In the event of a sale, transfer or assignment to an entity controlling, controlled by, or under common control with Grantee, Grantee shall provide notice to the Franchising Authority within ten (10) days of such sale, transfer or assignment. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. To the extent required by federal law, consent by 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 and all information required by the Franchising Authority and applicable FCC rules, unless the Grantee and the Franchising Authority agree to an extension of time. For purposes of this section, transfer of control is considered the acquisition of fifty-one percent (51%) or greater ownership interest in Grantee.

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 at the Grantee's business office, during normal business hours and on a non-disruptive basis, such of its books and records as are 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 the ability 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 unless the Franchising Authority can protect the proprietary or confidential information from disclosure under Oregon law, 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.

To the extent provided under Oregon law, the Franchising Authority agrees to treat any information disclosed by the Grantee as confidential 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, provided that such information is reasonably considered confidential, proprietary or trade secrets under applicable federal or state law and is clearly marked "Confidential" on each page or, in the case of verbal disclosures, Grantee informs the Franchising Authority that it is confidential information at the time of the disclosure. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

5.2 Maps. Grantee shall maintain "as built" drawings for the Cable System at Grantee's business office, and make them available to the Franchising Authority for inspection during normal business hours upon written request. "As built" drawings shall be updated as changes occur in the Cable System serving the Service Area. Upon written request of the Franchising Authority, Grantee shall 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 may be confidential and proprietary, and, to the extent provided under the Oregon Public Records Law, the Franchising Authority shall safeguard such information from the public.

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:
 - i. Two million (\$2,000,000) dollars for bodily injury or death to each person;
 - ii. Two million (\$2,000,000) dollars for property damage resulting from any one accident; and
 - iii. Two million (\$2,000,000) 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 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 insurance shall be without prejudice to coverage otherwise existing and shall name or cover, or the certificate of insurance shall name or cover, as additional insureds the Grantor and its officers, agents, and employees. The coverage must apply as to claims

between insureds on the policy. The certificate of insurance shall provide that the insurance shall not be canceled 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 amounts 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, claims, damages, costs or expenses, including court and appeal costs and reasonable attorney fees or expenses, that arise out of Grantee's construction, operation, or maintenance of its Cable System or otherwise related to the Franchise, provided that the Franchising Authority shall give Grantee prompt written notice of its obligation to indemnify the Franchising Authority pursuant to this Section 6.2. Notwithstanding the foregoing, Grantee shall not indemnify the Franchising Authority for any damages, liability, or claims resulting directly from the willful misconduct or negligence of the Franchising Authority.

6.3 Bonds and Other Surety. The Franchising Authority reserves the right to require a bond or other surety at any time by providing Grantee at least sixty (60) days advance written notice. The bond or other surety shall not exceed fifty thousand dollars (\$50,000.00) unless the City demonstrates that Grantee has failed to comply with the terms and conditions of this Franchise or there has been 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, in which case the City may require a bond or other surety in any amount that it reasonably determines is necessary.

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 reasonably 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. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and 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 reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a 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 the 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 the 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. The Franchising Authority and Grantee shall have the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, and to compel the testimony of other persons as permitted by law. A complete record minutes and audio tape shall be made of the hearing.

Following the hearing, the Franchising Authority shall determine whether or not the franchise shall be revoked. If the Franchising Authority determines that the franchise shall be revoked, Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority as provided by applicable law. 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 reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System

within the Service Area is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

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

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 unreasonably withheld. Grantee is not relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the Franchising Authority to enforce prompt compliance. The Franchising Authority's forbearance or failure to enforce any provision of this Franchise shall not serve as a basis to stop any subsequent enforcement. The failure of the Franchising Authority on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

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 required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

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

City Administrator
City of Dayton
P.O. Box 339
Dayton, OR 97114

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.

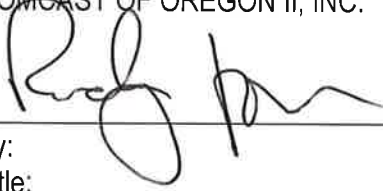
8.5 Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the 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 Effective Date. The effective date of this Franchise is February 2, ²⁰¹⁵~~2013~~, pursuant to the provisions of applicable law. This Franchise shall expire on February 2, 2025, unless extended by the mutual agreement of the parties.

CITY OF DAYTON, OREGON


By: _____
Title: Mayor of Dayton

COMCAST OF OREGON II, INC.


By: _____
Title: _____