

**ORDINANCE NO. 2007- 43**

**AN ORDINANCE** of the City of Bainbridge Island, Washington relating to Cable Television Service, amending the City's Cable Television Franchise (comprised of City Ordinance Nos. 70-14, 2001-52, and 2003-26); specifically amending Section 1 of Ordinance No. 2003-26; adding a section to the Franchise to extend the term of the Franchise an additional five years; and adding a competitive equity section to the Franchise.

**WHEREAS**, the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, all codified in Title 47 of the United States Code, authorize local governments to grant franchises for the provision of cable television service within their corporate boundaries; and

**WHEREAS**, the City of Bainbridge Island (the "City" or "Grantor") in Ordinance No. 70-14, Ordinance No. 2001-52 and Ordinance No. 2003-26 (all hereinafter referred to collectively as the "Franchise") granted a Franchise for the construction, maintenance, and operation of a cable television system to the predecessors of Comcast of California/Colorado/Washington, L.P. ("Comcast" or "Grantee"); and

**WHEREAS**, by a transfer from Northland Cable Television, Inc. to TCI Cable Partners of St. Louis, L.P. and a subsequent change in control, Comcast is the current franchisee; and

**WHEREAS**, the term of the Franchise expires on January 31, 2008 in accordance with its terms and conditions; and

**WHEREAS**, the City warrants that conditions resulting from the amendment to this Franchise have been considered by the City, and has determined that it is in the best interest of the City and its residents to amend the Franchise with Comcast; and

**WHEREAS**, Comcast and the City have agreed to be bound by the conditions hereinafter set forth.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1.** Section 1 of Ordinance No. 2003-26 of the Franchise is hereby amended to read as follows:

“ 1. **Definitions**

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

"Access" includes Educational Access, Governmental Access and Public Access, collectively, and means the availability for Noncommercial use by various governmental and educational agencies, institutions, organizations, groups and individuals in the community, including City and its designees, of particular Channel(s) on the Cable System to distribute Video Programming to Subscribers, as permitted under applicable law, including, but not limited to:

A. "Educational Access" means Access where Schools are the primary users having editorial control over programming and services.

B. "Governmental Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services; and

C. "Public Access" means Access where the public is the primary user.

"Access Channel" means any Channel, or portion thereof, designated for Noncommercial Access purposes or otherwise made available to facilitate or transmit Access programming.

"Affiliate" when used in connection with Grantee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

"Bad Debt" means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Grantee, but not collected after reasonable efforts by Grantee.

"Basic Service" means any Cable Service Tier that includes, at a minimum, the retransmission of local television Broadcast Signals and Access Channels.

"Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System off-the-air by antenna.

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

operation of such a Cable System.

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

"Channel" means a portion of the frequency band capable of carrying a Video Programming Service or combination of Video Programming Services, including both the video and audio components thereof, whether by analog or digital signal, on a twenty-four (24) hour per day basis or a portion thereof.

"Designated Access Provider" means the entity or entities designated by the City to manage or co-manage Public, Educational or Governmental Access Channels and facilities.

"Downstream" means carrying a transmission from the Headend to remote points on the Cable System or to interconnection points on the Cable System.

"Dwelling Unit" means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy.

"Expanded Basic Service" means Cable Services not included in the Basic Service and excluding premium or pay-per-view services.

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

"Fiber Optic" means a transmission medium of optical fiber, along with all associated electronics and equipment capable of carrying Cable Service or Institutional Network Service by means of lightwave pulses.

"Fully Allocated Costs" means the City's proportionate share of all direct and actual project costs, including, but not limited to; engineering, permitting, material and labor costs (excluding profit) of constructing, relocating or placing additional ducts, conduits, cables, or related structures by Grantee for the City together with ducts, conduits, cables, or structures by and for Grantee, or those placed solely for the City or solely for the City's use.

"Gross Revenues" means as provided in Ordinance No. 2001-52 and shall also include revenue from any Cable Service offered by Grantee whereby Persons receive access to the Internet through the Cable System to the extent this service is classified as a Cable Service under federal or state law.

"Headend" means any facility for signal reception and dissemination on a Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, equipment for the interconnection of the Cable System with adjacent systems and interconnection of any networks that are part of the Cable System, and all other related equipment and facilities.

"Incremental Costs" means the direct and actual material and labor cost (excluding profit) of constructing, relocating or placing additional ducts, conduit or related structures by Grantee for the City excluding the costs of design, trenching, boring, pipe bedding, backfilling, compacting, restoring the surface, installation and other charges, costs or expenses that Grantee would otherwise incur to construct, relocate or place ducts, conduit or related structures for the Grantee.

"Interconnect" or "Interconnection" means the linking of the Access Channels with another geographically contiguous cable system, including technical, engineering, physical, financial and other necessary components to accomplish, complete and adequately maintain such linking, in a manner to permit the transmission and receiving of the PEG Channel(s) between the Cable System and other cable system(s).

"Locally Scheduled Original Programming" means Public Access, Government Access or Educational Access programming that is created by the City or any School or public Access provider including edited coverage of live programming. Such Locally Scheduled Original Programming shall not be considered as qualifying as original programming after three (3) cablecasts (initial, first repeat and second repeat). Automated Video Programming or community reader board filler, such as cablecasts of highways and roads does not constitute Locally Scheduled Original Programming that qualifies herein.

"Noncommercial" means, in the context of Access Channels, that particular products and services are not promoted or sold. This term shall not be interpreted to prohibit an Access Channel operator or programmer from soliciting and receiving financial support to produce and transmit Video Programming on an Access Channel, or from acknowledging a contribution, in the manner of the Corporation for Public Broadcasting and applicable law.

"Person" shall have the meaning as provided in Section 1 of the City Code, as amended.

"Rights-of-Way" means land acquired or dedicated to the public or hereafter dedicated to the public and maintained under public authority or by others, including but not limited to public Streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements where installation of Grantee's facilities is within the scope of

the easement granted and similar public property located within the City.

"School" means any Washington State accredited K-12 educational institutions, excluding home schools.

"State" means the State of Washington.

"Street" means Rights-of-Way.

"Subscriber" or "Customer" means any Person who lawfully receives Cable Services provided by Grantee by means of the Cable System with Grantee's express permission.

"System" or "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any public right-of-way; (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act (47 U.S.C. Section 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of Section 621(c) (47 U.S.C. Section 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653; or (5) any facilities of any electric utility used solely for operating its electric utility systems. When used herein "System" or "Cable System" means Grantee's Cable System in the City.

"Tier" means a category of Cable Services provided by the Grantee for which a separate rate is charged.

"Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## **2. Customer Service Standards.**

Grantee shall comply with Customer Service Standards, as provided in FCC standards 47 C.F.R. Section 76.309, Section 76.1602, Section 76.1603 and Section 76.1619 and as may be amended by the City in accordance with applicable law. Grantee reserves the right to challenge any Customer service ordinance that it believes is inconsistent with its contractual rights under this Franchise.

### **3. Cable Service.**

The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic to those administrative buildings now existing or hereafter constructed and owned and occupied or leased and occupied by the City, fire station(s), police station(s), libraries and School(s), the Park District Central Office and the building in which the Designated Access Provider is located provided that they are currently served or are within 125 aerial feet or 60 underground feet (a Standard Installation) of its Cable System, and provided further that those buildings or portions of buildings that house or occupy prison/jail populations shall be excluded. The Cable Service described herein is a voluntary initiative of Grantee and Grantee agrees to continue this initiative throughout the term of this Franchise. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Grantee. In the case of leased facilities, the City is responsible for securing approval for appropriate right of entry suitable to the Grantee in its reasonable discretion. 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 intent of the preceding provision is to ensure Access to Cable Services is for the primary benefit of the City, libraries and Schools. The City 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. To the extent not inconsistent with other provisions in this Franchise, the City shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service provided by this Section. For new hookups, the Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation (beyond 125 aerial feet or 60 underground feet) is required, unless the City or building owner/occupant agrees to pay the Fully Allocated Costs of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Cable Service are provided to such buildings beyond those required herein, the building owner/occupant shall pay the Fully Allocated Costs associated with installation and the service fees, if any, associated therewith.

#### **4.0 Educational and Governmental Access Channels.**

Grantee shall provide at all times during the term of this Franchise at no charge the following:

Two (2) ~~One (1)~~ Channels for PEG (Public, Educational, Government) programming.

Additionally, Grantee shall provide at no charge one (1) additional Channel to be triggered for PEG programming as provided herein.

Each of the above Channels shall be provided at no cost to the City and must be capable of carrying one standard analog or one digital Channel, on Basic Service.

Any Access Channels provided via digital or compressed video technology shall have at least the same transmission quality as is used to carry any of the commercial Channels that deliver programming on the Cable System and shall be full motion video, and result in comparable production quality. The provision of Access Channels via digital or compressed video technology will not reduce the total Access Channel requirement herein.

In the event Grantee makes any change in the Cable System and related equipment and facilities or in Grantee's signal delivery technology, that directly or indirectly affects the signal quality or transmission of Access Channel programming or services, the Grantee shall, at its own expense take necessary technical steps, and provide necessary technical assistance, including the acquisition of all necessary equipment and training of Access personnel, to ensure that delivery of Access video programming signals is not diminished or adversely affected by such change. For example, this provision shall apply if Basic Service on the Cable System is converted from an analog to a digital format, such that the Access Channels must also be converted to digital in order to be received by Subscribers.

#### **4.1 Management and Control of Access Channels**

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

#### **4.2 Triggers for Expansion of Access Channels**

The City may require Grantee to provide at no charge one (1) additional Channel beyond the initial ~~two~~one, up to a maximum of ~~three~~two (3~~2~~) Channels that shall be made available for Access programming at such time it occurs that the ~~two~~first Channels ~~are~~is being used for community access or cablecasting Locally Scheduled Original Programming during at least forty eight (48) hours per week Eighty percent (80%) of the time between the hours of 10:00 am and 10:00 pm, Monday through Friday during any consecutive ten weeks running, on the average, and within six (6) months of the City's request of such additional Channel. This excludes character generated and filler programming such as NASA, and stationary cablecasts of highways and roads. The replay of programs for not more than two (2) times per week shall be considered as the initial first run programming. Therefore an average of 3.2 hours of non-replay original programming per day on a five day per week basis for a ten (10) consecutive week period is required to trigger use of this additional Access Channel. The programming of the additional Access Channel required herein must contain distinct and non-repetitive programming of the other Access Channels.

### 4.3 Underutilized ~~Third~~Second Access Channel

Grantee and the City agree that it is their mutual goal to fully and efficiently use the Channel capacity of the Cable System, which may include allowing the Grantee to use underutilized time on the ~~second~~third Access Channel. If Grantee believes that the ~~second~~third Access Channel has significantly underutilized time, Grantee may file a request with the City to use that time. The City shall render a decision regarding the matter within sixty (60) days of receiving the request. Should the City find that the third~~second~~ Access Channel or portion of the third~~second~~ Access Channel may be used by the Grantee, then Grantee may begin using such time ninety (90) days after receipt of the decision. The Grantee's request shall not be unreasonably denied. Thereafter, the third~~second~~ Access Channel shall revert back to the City upon ninety (90) days written notice from City to Grantee upon the City meeting the trigger terms referenced herein. However, in no event shall the ~~first~~two Access Channels revert to the Grantee.

### 4.4 Access Channel Identification/Location/Relocation, Promotional Services and Bill Insertions

Change in Channel placement shall occur with respect to the City Access Channel(s) at the sole discretion of the Grantee, but shall not be changed unless determined to be necessary for the improvement of the Grantee's business or to meet Federal or State guidelines. Written notice shall be provided by Grantee to City ninety (90) days prior to a change in placement of Channels~~Channel placement~~.

Grantee will allow the City to include one bill insertion per year. The insertion will be no larger than the current size of Grantee's invoice and printed in one color on a paper stock no heavier than used for Grantee's invoice. The City or Designated Access Provider shall be responsible for the costs of printing its bill insertions and the Grantee shall be responsible for the cost of inserting the information into Grantee's bills and for any incremental postage costs. The bill insertion must conform to Grantee's reasonable mailing requirements. Grantee shall be provided an opportunity to review and approve the Access bill insertion.

### 5. Support for ~~Aceess~~PEG Capital Costs

Grantee shall provide an initial Capital Contribution payment to the City of Eighty-One Thousand Dollars (\$81,000) by January 31, 2008 to be used for PEG capital purposes.

Grantee shall continue collecting from Subscribers an amount of One Dollar (\$1.00) per Subscriber per month. Effective February 1, 2008, Grantee shall retain such amount until the sum total retained by Grantee equals the Capital Contribution as referred to above. After the Capital Contribution is fully recovered, Grantee shall

collect from Subscribers and remit to the City the sum of One Dollar (\$1.00) per Subscriber per month for PEG capital purposes. The Capital Contribution and subsequent payments may only be applied by the City toward capital expenditures related to PEG Access, including, but not limited to, studio, City Council chamber equipment, portable production equipment, editing, program playback equipment, Access related facilities purchases, renovation or construction, local origination, and return feeds.

Grantee agrees that at the end of the initial 5-year term and if the Franchise is extended for an additional five (5) years, Grantee shall provide an additional Capital Contribution matching the initial Capital Contribution under the same recovery terms and conditions as the initial Capital Contribution as referred to above. Grantee shall collect and remit to the City the sum of One Dollar (\$1.00) per subscriber per month once the additional Capital Contribution is fully recovered, in the same manner as provided in the previous paragraph.

Grantee shall not be responsible for withholding, collecting or remitting any PEG capital support on gratis or Bad Debt accounts. The City can inquire as to the status of any such accounts, and the Grantee agrees to meet with the City, upon request, to discuss such matters as necessary.

The City shall have discretion to allocate PEG capital support received under this Section in accordance with applicable law, provided that the City submits a summary of capital expenditures to Grantee within sixty (60) days of the end of each calendar year. After Grantee has recouped its Capital Contribution(s) payment, the City may, at any time, waive or subsequently reinstitute the requirement of Grantee to make all or part of the One Dollar (\$1.00) per Subscriber per month capital payment to City, provided that Grantee is given sixty (60) days' advance written notice.

To the extent the City makes Access capital investments using City funds prior to receiving necessary Capital Contributions funds, the City is entitled to apply subsequent Capital Contributions payments from Grantee toward such City capital investments. The City and Grantee agree that any Capital Contributions or subsequent capital payments shall be referred to on Subscribers' bills as a "PEG Fee", or language substantially similar thereto. Grantee shall not change such reference on the Subscribers' bills without the prior written consent of the City, which consent shall not be unreasonably withheld.

The Capital Contribution payments are not an advance against any Franchise Fee payment and there shall not be any offset or credit against any such Franchise Fee payment (previously or hereafter made) due to the Capital Contribution payments from Grantee to the City.

Commencing within sixty (60) days from the effective date hereof, Grantee shall pay to the City Capital Contributions payments to be used for Access purposes. These

~~payments are to be used by the City, in its sole discretion, for Access equipment, for Access-related facilities renovation or construction purposes in accordance with this Franchise and applicable law. To the extent allowed by federal law, the Capital Contributions payments may be treated as an external cost by Grantee and itemized on Subscriber billing statements. Grantee shall pay to City Capital Contributions for PEG capital costs of up to one dollar (\$1.00) per Subscriber per month. The Capital Contributions will be paid to the City quarterly on the same schedule as franchise fees. This amount shall initially be one dollar (\$1.00) per Subscriber per month and may be modified by the City with sixty (60) days notice to the Grantee, but shall not in any case exceed the maximum limit of one dollar (\$1.00) per Subscriber per month.~~

~~Grantee shall not be responsible for paying the Capital Contributions with respect to gratis or Bad Debt accounts. The City can inquire as to the status of any such accounts, and the Grantee agrees to meet with the City, upon request, to discuss such matters as necessary.~~

~~The City shall have discretion to allocate the Capital Contributions in accordance with applicable law, provided that the City submits a summary of capital expenditures from the Capital Contributions to Grantee within sixty (60) days of the end of each calendar year. The City may institute, reinstitute or waive the requirement of Grantee to make Capital Contributions to City altogether, provided that Grantee is given sixty (60) days advance written notice.~~

~~To the extent the City makes Access capital investments using City funds prior to receiving necessary Capital Contributions funds, the City is entitled to apply subsequent Capital Contributions payments from Grantee toward such City capital investments. The City and Grantee agree that any Capital Contributions shall be referred to on Subscribers' bills as a "PEG Fee", or language substantially similar thereto as allowed by applicable law.~~

~~City and Grantee agree that the Capital Contributions referred to herein may be used solely for capital support. Although the total sum of franchise fee payments and additional commitments set forth in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments regarding PEG funding and Access Channels are excluded from the definition of franchise fees and are not franchise fees and are not an advance against any franchise fee payment and there shall not be any offset or credit against any such franchise fee payment (previously or hereafter made) due to these payments from Grantee to the City. The Grantee agrees not to assert or otherwise claim, that as of the effective date of this Franchise or at any time thereafter, before any Court of competent jurisdiction or any administrative agency, that such PEG funding or Access Channels are franchise fees as defined under Federal or State Law or regulations so as to form the basis for any offset or credit~~

~~against any and/or all franchise fee payments paid or due to the City.~~

~~On an annual basis, City or its designee shall provide to the Grantee a statement showing quarterly Capital Contributions account balance, the amount expended including a detailed list of purchases, and the interest earned.~~

## **6. Access Interconnections**

A. The Access Channel(s) Interconnection required by this Franchise shall at the request and expense of the City and with the approval of the geographically adjacent jurisdiction where the cable system is owned and operated by Grantee, be completed so that the Designated Access Provider programming can be carried outside of the City as well. Grantee shall take all necessary technical steps to ensure that Downstream transmissions provide an adequate signal quality in accordance with FCC regulations.

B. In the event that the City elects to carry programming other than that provided by its Designated Access Provider on its Access Channel(s), the City, at its cost and expense, shall provide any necessary equipment at the Designated Access Provider site so that when the City programs or telecasts on the Government Channel it shall automatically override any other programming. Additionally, it shall be the decision of the City and not Grantee as to what Access programming is carried on the City Channel(s) 24 hours per day, seven days per week.

## **7. Return Lines.**

Within ninety (90) days from the date hereof, Grantee shall, at its expense, test and document a fiber return line from the demarcation point at City Hall to Grantee's Headend and install any necessary equipment at Grantee's expense at the Headend and in the Cable System in order to enable the distribution of Access programming to Subscribers on the Access Channels throughout the duration of the Franchise. Additionally, within six (6) months from the date of a written request from City, Grantee shall at the City's expense, construct and activate a fiber return line at Fully Allocated Cost, or Incremental Costs if it is done at the time Grantee upgrades the Cable System from the demarcation point identified by the staff at the High School to the City's Access Provider studio and install any necessary equipment at City's expense in the Cable System in order to enable the distribution of Access Programming to Subscribers on the Access Channels throughout the duration of the Franchise. Should the City or the City's Designated Access Provider elect to move the location of their facilities during the term of the Franchise or any amendment thereto, relocating the feeds to the new location shall be the expense of the City. Should the Grantee elect to have the Designated Access Provider move to another location, Grantee shall be responsible for the cost of relocating the feed to the new location.

## **8. Institutional Network**

In conjunction with and amending its prior commitment in Ordinance No. 2001-52, Grantee shall, upon receipt of the City's written request conduct an engineering study to determine the feasibility of an institutional network in the City. This study shall include the sites specified in the written request, considering system design and examining feasibility of an institutional network. While the study will not be a detailed estimate of all engineering design or cost related issues, it will include a report that addresses the conceptual feasibility of such an institutional network. The conceptual design shall be for an institutional network for Noncommercial purposes. Upon receipt of such report by the City, the City and Grantee shall thereafter meet to examine the possible development of a mutually acceptable institutional network.

## **9. Service Availability and Extension**

A. In general, except as otherwise provided herein, Grantee shall provide a standard aerial installation or schedule construction for a standard underground installation of Cable Service within seven (7) days of a request by any Person within the City. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee (except as provided in Section 1, Subsection 3, Cable Service, herein), receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such service:

1. With no line extension charge except as specifically authorized elsewhere in this Franchise.
2. At a non-discriminatory installation charge for a Standard Installation, consisting of a one hundred twenty-five (125) foot aerial or sixty (60) foot Underground drop connecting to the exterior demarcation point for Subscribers, with additional charges for Non-Standard Installations computed according to a non-discriminatory methodology for such installations.
3. At non-discriminatory monthly rates for all Subscribers, excepting commercial Customers, MDU Bulk Customers and other lawful exceptions to uniform pricing.

B. No Customer shall be refused service arbitrarily. However, for unusual circumstances, such as the existence of more than one hundred twenty-five (125) aerial feet or sixty (60) underground feet of distance from distribution cable to connection of service to Customers, or a density of less than twenty-five (25) Dwelling Units per 5280 cable-bearing strand feet of aerial trunk or distribution cable or sixty (60) Dwelling Units per 5280 cable-bearing strand feet of underground trunk

or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of engineering, permitting, material, labor and easements.

#### **10. Quarterly Franchise Fees and Reports**

Grantee shall pay as a franchise fee to the City throughout the duration of the Franchise an amount equal to five percent (5%) of Grantee's Gross Revenues. Grantee's franchise fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30 and December 31 and shall be due and payable no later than forty five (45) days after said dates. Each quarterly franchise fee payment shall be accompanied by a written report to the City containing an accurate statement in summarized form with sufficient information regarding Grantee's Gross Revenues and the computation of the payment amount. Such reports shall include all Gross Revenues of the Cable System. At a minimum, each payment shall be accompanied by an explanation of the method of computation showing (i) Gross Revenues by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, collections, miscellaneous and others) with specific listings of new revenue sources, etc. and (ii) any deductions.

No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of such payment be construed as a release of any claim the City may have to additional sums payable.

The franchise fee payments are not payments in lieu of any tax, fee or other assessment including, but not limited to, the City Utility Tax provided or referred to in City Code Subsection 5.08.040D (or any amendment or modification thereto or any successor provision thereto) or any other utility tax or business and occupation tax.

#### **11. Acquisition of Facilities**

Upon Grantee's acquisition of facilities in connection with the Cable System in any City Rights-of-Way, or upon the annexation to the City of any area, or the annexation of any area in which Grantee owns or operates any facility in connection with the Cable System, such area and facilities shall immediately be subject to the terms of this Franchise.

#### **12. Transfer of Ownership or Control**

A. The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or

equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council, acting by ordinance or resolution.

B. The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Except as provided in Subsection H, with respect to a change in control to an Affiliate, every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

C. The parties to the sale, assignment or transfer or change in control shall make a written request to the City for its approval of a sale, assignment or transfer or change in control and shall furnish all information required by law and the City.

D. In seeking the City's consent to any change in ownership or control, the proposed transferee, assignee or controlling entity shall indicate whether it:

1. Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

2. Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against it by any court of competent jurisdiction;

3. Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system;

4. Is financially solvent, by submitting financial data including financial statements that are certified by a certified public accountant or an officer of the transferee or controlling entity, along with any other data that the City may lawfully require; and

5. Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

E. The City shall act by ordinance or resolution on the request within one hundred twenty (120) days of receipt of the FCC Form 394 application, provided it has received a completed application. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

F. Within thirty (30) days of any transfer, assignment or sale or change in control, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale, assignment or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, assignee or controlling entity. In the case of transfer of ownership, the transferee or assignee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise subject to applicable law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to applicable law, and will not be required to file an additional written acceptance. The approval of a change in control shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise. For purposes herein, to the extent that a transfer, assignment, sale or change of control involves an entity that was not an Affiliate prior to the contemplated transaction, the City's consent shall be required.

G. In reviewing a request for sale, assignment, transfer or change in control, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party, assignee or transferee, and Grantee shall assist the City in so inquiring. The City may condition said sale, assignment, transfer or change in control upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical and financial qualifications of the prospective controlling party, transferee, or assignee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee.

H. Notwithstanding anything to the contrary in this Subsection, the prior approval of the City shall not be required for any sale, assignment, transfer or change in control of the Franchise or Cable System to an intracompany entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee, transferee or new controlling entity must show financial responsibility as may be determined necessary by the City and must give thirty (30) days prior written notice to the City and agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

### **13. Notices**

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

Grantee's address shall be:

Comcast of California/Colorado/Washington, L.P.  
~~22025 30th Ave. SE~~ 15815 25<sup>th</sup>. Ave. West  
~~Bothell, WA 98021~~ Lynwood, WA 98087

City's address shall be:

City of Bainbridge Island  
280 Madison Avenue North  
Bainbridge Island, Washington 98110

**14. Cumulative Rights**

Subject to applicable law, all rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

**15. Binding Effect**

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

**16. Venue**

The venue for any dispute related to this Franchise shall be in the United States District Court for the Western District of Washington or in the Kitsap County Superior Court in Port Orchard, Washington.

**17. Governing Law**

The Franchise shall be governed in all respects by federal law, the laws of the State of Washington and local laws and regulations.

## **18. Captions**

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

## **19. Waiver**

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

## **20. Severability**

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

## **21. Force Majeure**

The Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or imposition of damages 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, including war or riots, civil disturbances, floods or other natural catastrophes, labor stoppages, slow downs, power outages exceeding back-up power supplies or work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached.

## **22. Attorneys' Fees**

If any action or suit arises in connection with this Franchise, the court shall be empowered to determine who shall be entitled to recover reasonable attorneys' fees, costs and expenses in connection therewith, in addition to such other relief as the court may deem proper."

**Section 2. Term of Franchise.** The Franchise shall be extended for an additional term of five (5) years, effective on February 1, 2008 and terminating on January 31, 2013; then at any time during the three (3) year franchise renewal period, this Franchise may be further extended by mutual agreement of the parties for five (5) additional years, to January 31, 2018.

### **Section 3. Competitive Equity.**

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

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

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

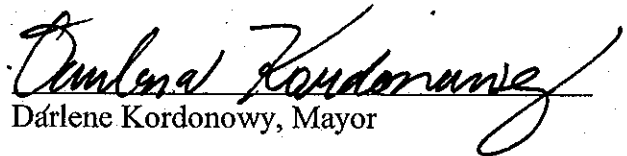
**Section 4.** Other than as provided in this Ordinance, the Franchise shall remain unmodified and continue to be of full force and effect. In the event of an inconsistency between this Ordinance and the Franchise, this Ordinance shall prevail.

**Section 5.** This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum. This Ordinance shall take effect five (5) days after its


passage, approval and publication as required by law.

PASSED BY THE CITY COUNCIL THIS 12<sup>TH</sup> DAY OF DECEMBER, 2007.

APPROVED BY THE MAYOR THIS 20<sup>TH</sup> DAY OF DECEMBER, 2007.

  
Darlene Kordonowy, Mayor

**ATTEST/AUTHENTICATE:**

  
Rosalind D. Lassoff, CMC, City Clerk

FILED WITH THE CITY CLERK:	November 20, 2007
PASSED BY THE CITY COUNCIL:	December 12, 2007
DATE OF PUBLICATION:	December 26, 2007
EFFECTIVE DATE:	December 31, 2007
ORDINANCE NO.	2007-43