

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7040

A RESOLUTION Granting a Non-Exclusive Cable Television Franchise to Comcast of Bellevue, Inc. to Construct, Operate and Maintain a Cable Communications System in the City of Bellevue, Washington, and Setting Forth Conditions Accompanying the Grant of Franchise.

WHEREAS, Comcast of Bellevue, Inc. (hereinafter the "Franchisee") has requested renewal of its cable television franchise; and

WHEREAS, the City of Bellevue (hereinafter the "City") has analyzed and considered the technical ability, financial condition, legal qualification, and general character of the Franchisee, and has determined that it is in the best interest of the City and its residents to grant a cable communications franchise to the Franchisee; and

WHEREAS, the Franchisee and the City have agreed to be bound by the conditions set forth herein; and

WHEREAS, the City determines to exercise its authority, consistent with state and federal law, to grant a non-exclusive franchise renewal to the Franchisee in accordance with the provisions of this Franchise;

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

THIS FRANCHISE is made and entered into this 29<sup>th</sup> day of July 2004, by and between Comcast of Bellevue, Inc. (hereinafter referred to, together with any lawful successor, transferee, or assignee, as the "Franchisee") and the City of Bellevue, Washington (the "City").

**SECTION 1. DEFINITIONS**

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

1.1 "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 the City and its designees, of particular channels on the Cable Communications System to receive and 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.

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

1.3 "Access Capital Contribution" means the capital contribution paid to the City by the Franchisee in accordance with Section 9.

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

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

1.6 "Basic Cable Service" means the lowest service Tier that includes the retransmission of local television broadcast signals and Access Channels, or as such service Tier may be further defined by federal law.

1.7 "Cable Act" means 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, and any amendments thereto.

1.8 "Cable Communications System" or "System" means the Franchisee'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 a community, but such term shall not include:

(A) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(B) A facility that serves subscribers without using any public right-of-way;

(C) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934 (47 U.S.C., 201 et seq.), except that such facility shall be considered a Cable Communication System (other than for purposes of Section 621(c) (47 U.S.C. 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;

(D) An open video system that complies with Section 653 of the Cable Act;  
or

(E) Any facilities of any electric utility used solely for operating its electric utility systems.

1.9 "Cable Company" means any Person or group of Persons, including the Franchisee, who provides Cable Service over the Cable Communications System and directly or through one or more Affiliates owns a significant interest in such System or who otherwise controls or is responsible for, through any arrangement, any of the management and/or operation of the System.

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

1.11 "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, as television channel is defined by FCC regulations.

1.12 "City" means the City of Bellevue, Washington, a municipal corporation, of the State of Washington.

1.13 "Designated Access Provider" means the entity or entities designated by the City to manage or co-manage Educational or Governmental Access Channels and facilities. The City may be a Designated Access Provider.

1.14 "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.

1.15 "Franchise" means the non-exclusive right and authority to construct, maintain, and operate a Cable Communications System through use of the public streets, dedications, public utility easements, or other public ways in the Franchise Area pursuant to a contractual agreement executed by the City and the Franchisee.

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

1.17 "Franchise Fee" means consideration paid by the Franchisee for the privilege granted under this Franchise for the use of Streets and Public Ways and the privilege to construct and/or operate a Cable Communication System in the Franchise Area. The term Franchise Fee does not include:

- (A) Any tax, fee or assessment of general applicability;
- (B) Capital costs which are required by the Franchise to be incurred by the Franchisee for Public, Educational or Governmental Access facilities, including the support required in Section 9;
- (C) Requirements or charges incidental to the awarding or enforcing of the Franchise, including but not limited to, payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
- (D) Any fee imposed under Title 17, United States Code.

1.18 "Fully Allocated Costs" means the City's proportionate share of all direct and actual material and labor costs (excluding profit) of constructing, relocating or placing additional ducts, conduit or related structures by the Franchisee for the City alongside or together with ducts, conduit or structures by and for the Franchisee.

1.19 "Gross Revenues" means all revenues derived directly or indirectly by the Franchisee or an Affiliated Entity from the operation of the Cable Communications System to provide Cable Services within the Franchise Area. Gross Revenues shall not include (i) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Franchisee which are imposed directly on any Subscriber by the State, City or other governmental unit and which are collected by the Franchisee on behalf of said governmental unit; or (iii) any Access Capital Contributions as defined by this Franchise.

1.20 "Headend" means any facility used for signal reception and dissemination on the Cable Communications System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, and all other related equipment and facilities.

1.21 "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 the Franchisee 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 the Franchisee would otherwise incur to construct, relocate or place ducts, conduit or related structures for the Franchisee.

1.22 "Institutional Network" or "I-Net" means the dedicated network and equipment designed for private non-commercial voice, video and data communications to, from and among City departments, schools and libraries within the Franchise Area.

1.23 "Interconnect" or "Interconnection" means the actual physical linking of the Cable System's Access Channels with the Access Channels of 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 that permits the transmission and receiving of Access programming between the Cable Communications System and other cable systems.

1.24 "Leased Access Channel" means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.

1.25 "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some hours on Saturday.

1.26 "PEG Fee" means the amount, as set periodically throughout the term of the Franchise by the City, to be collected from the subscriber each month.

1.27 "Person" means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.

1.28 "Right-of-Way" means land previously acquired or dedicated to the public, or hereafter acquired or 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 and similar public property located within the Franchise Area.

1.29 "School" means any State accredited K-12 public or private educational institution in the City of Bellevue.

1.30 "Subscriber" or "Customer" means any Person(s) who lawfully elects to receive Cable Services provided by the Franchisee by means of the Cable Communications System.

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

## **SECTION 2. GRANT OF FRANCHISE**

### **2.1 Grant**

(A) The City hereby grants to the Franchisee a nonexclusive authorization to make reasonable and lawful use of the Right-of-Way within the Franchise Area to construct, operate, maintain, reconstruct, repair and upgrade a Cable Communications System for the purpose of providing Cable Services. Such grant is subject to the terms and conditions set forth in this Franchise, and applicable law. This Franchise shall constitute both a right and an obligation to provide Cable Services and to fulfill the obligations set forth in the provisions of this Franchise.

(B) The Franchisee is granted the right to operate its Cable Communications System using the City's Right-of-Way in compliance with all lawfully enacted applicable City codes, ordinances, standards, procedures and regulations, provided that in the event of a conflict between the provisions of the City codes, ordinances, standards, procedures and regulations and this Franchise, the express provisions of this Franchise shall govern. The express provisions of this Franchise constitute a valid and enforceable contract between the parties. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to any ordinance, rule, regulation, resolution, or other enactment of the City, except in the lawful exercise of the City's police power. The Franchisee reserves the right to challenge provisions of any ordinance, rule, regulation, resolution or other enactment of the City that conflicts with the rights granted by this Franchise, either now or in the future.

(C) This Franchise shall not be interpreted to prevent the City from imposing other conditions, to the extent permitted by law, including additional compensation for use of the Right-of-Way, should the Franchisee provide service(s) other than Cable Service.

(D) No rights shall pass to the Franchisee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement or authorization required by the City for Right-of-Way users in connection with operations on or in the Right-of-Way or other public property, including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise, including, without limitation, permits and agreements for placing devices

on poles, in conduits or in or on other structures.

(E) This Franchise is intended to convey limited rights and interests only as to those Right-of-Ways in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Franchisee with any interest in any particular location within the Right-of-Way. This Franchise shall not be deemed to authorize the Franchisee to provide service, or install cables, wires, lines, or any other equipment or facilities upon City property other than the Right-of-Way, or upon private property without the owner's consent, or to utilize publicly or privately owned utility poles or conduits without a separate agreement with the owners thereof.

(F) No grant of use by this Franchise shall extend to the Franchisee any permission or use outside the purpose, dedication, or reservation granted to or held by the City. Nothing herein shall prohibit the City or the Franchisee from exercising its rights under Section 621 of the Communications Act of 1934, as amended, 47 U.S.C. 541.

(G) This Franchise is an express authorization to provide Cable Services. This Franchise is not a bar to the imposition of any lawful conditions on the Franchisee with respect to Franchisee's delivery of non-cable services, telecommunications services or information services, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve the Franchisee of any obligation it may have to obtain from the City an authorization to provide non-cable services, telecommunications services or information services or relieve the Franchisee of its obligation to comply with any such authorization(s) that may be lawfully required. However, this Franchise shall not be read as a concession by the Franchisee that it needs authorization to provide non-cable services, telecommunications services or information services.

## **2.2 Duration**

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be five (5) years from the effective date of this Franchise.

## **2.3 Effective Date**

(A) This Franchise and the rights, privileges and authority granted hereunder shall take effect and be in force from and after the effective date of this Franchise. The effective date of this Franchise shall be July 29, 2004.

(B) Within forty-five (45) days after the effective date of the Resolution granting this Franchise, the Franchisee shall signify its acceptance of this Franchise by executing a written acceptance of this Franchise. This Franchise is voidable unless accepted in writing by the Franchisee within this timeframe.

(C) The grant of this Franchise shall have no effect on the Franchisee's duty under the prior franchise, in effect prior to the effective date of this Franchise, to indemnify or insure the City against acts and omissions occurring during the period that the prior franchise was in effect, nor shall it have any affect upon liability to pay all Franchise Fees which were due and owed under a prior franchise.

## **2.4 Franchise Nonexclusive**

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

## **2.5 Grant of Other Franchises**

In the event the City enters into a cable franchise with any other Person or entity other than the Franchisee to use the City's streets or Right-of-Way for the purpose of constructing or operating a cable system to provide Cable Service to all or any part of the Franchise Area in which the Franchisee is providing Cable Service under the terms and conditions of this Franchise then the parties agree that the terms and conditions of the cable franchise, taken as a whole, should be substantially similar in order that one Cable Company not be granted an unfair competitive advantage over another. However, nothing in this provision shall be constructed in such a way as to limit the City's authority to enter into other cable franchises that the City, in its sole discretion, determines meet the cable related needs and interests of the community, considering both the added risk of entry into the market and the benefits of incumbency. The parties recognize and acknowledge that other cable franchises granted by the City might contain terms and conditions that are different than the terms and conditions the Franchisee has negotiated and accepted in this Franchise. Nothing in this provision shall be construed so as to require certain terms and conditions in other cable franchises granted by the City and/or require that the City modify or change the terms and conditions of this Franchise.

## **2.6 Familiarity with Franchise**

The Franchisee acknowledges and warrants by acceptance of the rights and privileges granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions, terms and conditions herein. The Franchisee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are

