

ORDINANCE NO. 5056

An Ordinance Amending the 2012-2022 Franchise Agreement between the City of McMinnville and Comcast of Oregon II, Inc. (Ord. 4960)

RECITALS:

In December 2012, the City Council enacted Ordinance 4960, which established a 10-year non-exclusive franchise allowing Comcast of Oregon II, Inc. (Comcast), to construct and operate a Cable System within the corporate limits of the City, subject to the terms and conditions set forth in a Franchise Agreement.

Among the terms of the Franchise Agreement, was a requirement that Comcast provide one (1) dedicated Public, Educational, and Governmental (PEG) access channel in Standard Definition (SD) format, and that Comcast to provide up to two additional SD PEG Channels, if the City met certain programming requirements. The Agreement also provided that the City could request a review of the agreement (Franchise Review) after two years for the purpose of discussing, among other things, the provision of a high definition (HD) format for the PEG Channel.

The City initiated a review of the Franchise Agreement by a letter dated November 30, 2016, for the express purpose of considering the provisions of HD PEG Channel. Following several months of discussion, Comcast has indicated that they will only agree to simulcast the existing SD PEG Channel in HD format, if the City agrees to forfeit its right to activate either of the two remaining PEG Channels for the remainder of the term of the Franchise Agreement.

The Franchise Agreement requires that the Franchise Review process provide a full opportunity for public comment, to ensure that Comcast continues to effectively serve the public. On July 24, 2018, the City Council held a public hearing for the purpose of reviewing the revisions to the Franchise Agreement proposed by Comcast.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

1. The provisions amending Ordinance 4960, set forth in the attached Exhibit 1 and incorporated by this reference, are hereby adopted.
2. This ordinance will take effect 30 days after its passage by the Council.

Passed by the Council on July 24, 2018, by the following votes:

Ayes: Drabkin, Garvin, Menke, Peralta, Ruden, Stassens

Nays: _____

Approved on July 24, 2018.

Scott A. Hill

MAYOR

Approved as to form:

[Signature]

CITY ATTORNEY

Attest:

Melissa Grace

CITY RECORDER

FIRST AMENDMENT TO FRANCHISE AGREEMENT

This First Amendment to Franchise Agreement is made and entered into this 9th day of September, 2018, by and between the City of McMinnville, Oregon ("Franchising Authority"), and Comcast of Oregon II, Inc. ("Grantee").

This Amendment shall modify the Franchise Agreement dated December 11, 2012 as follows:

1. Section 3.17 of the Franchise Agreement entitled "Additional Public, Education, and Government Access Channels" shall be deleted and replaced with the following:

3.17 Additional Public, Education, and Government Access Channels. The Franchising Authority may request that the Standard Definition ("SD") channel set forth in Section 3.16 be simulcast in High Definition ("HD").

Before the Franchising Authority may request additional capacity for HD PEG, the currently utilized PEG access channel must be programmed at least eight (8) hours a day with non-repetitive, locally produced programming, Monday through Saturday, for a minimum of six (6) consecutive weeks. For the purpose of determining the threshold use requirement, "non-repetitive, locally produced programming" shall be defined as locally provided, non-character generated programming in its initial cablecast on the system or in its first or second repeat. The Franchising Authority must provide Grantee with written detailed documentation evidencing that the usage meets the threshold requirement for the currently utilized channel. Moreover, the Franchising Authority acknowledges that receipt of HD format Access Channels may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to all HD services.


Grantee shall have 120 days to provide the requested additional capacity. Once the threshold is met and the additional capacity made available, the Channels must maintain the threshold requirement. If the Channels fail to meet the threshold for four (4) consecutive months, the Channels may be reclaimed by Grantee upon sixty (60) calendar days' written notice. If either the PEG Channel provided under this Section or the PEG Channel provided under Section 3.16 are not being utilized by the Franchising Authority, the Grantee may utilize that PEG Channel, in its sole discretion, until such time as the Franchising Authority elects to utilize the PEG channel for its intended purpose and provides the Grantee sixty (60) days written notice of its intent to reclaim the channel.

2. Except as amended by this First Amendment, all other terms and conditions of the Franchise Agreement between the Grantee and the Franchising Authority shall remain unchanged and in full force and effect.
3. That by agreeing to this First Amendment, it is understood that both the Franchising Authority and Grantee are reserving all other rights that each may have according to law, including but not limited to franchise renewal rights set forth in Section 626 of the Cable Act, 47 U.S.C. § 546.


The effective date of this Amendment is August 23, 2018 according to the provisions of applicable law.

Considered and approved this 9th day of September, 2018.

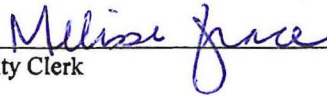
City of McMinnville, Oregon

By: 
Title: City Manager

Comcast of Oregon II, Inc.

By: 
Title: Rodrigo Lopez
Regional Vice President

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney