

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 612

AN ORDINANCE OF THE CITY OF BURIEN, GRANTING A NON-EXCLUSIVE CABLE FRANCHISE RENEWAL TO COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC TO OPERATE AND MAINTAIN A CABLE SYSTEM THROUGHOUT THE HEREIN DESIGNATED PUBLIC RIGHTS OF WAY OF THE CITY OF BURIEN; SETTING FORTH PROVISIONS, TERMS AND CONDITIONS OF THE FRANCHISE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City Council adopted Ordinance No. 457, granting a new Cable Franchise to Comcast of Washington IV, Inc. ("Comcast") to be effective from October 27, 2006 through October 26, 2011; and

WHEREAS, the City Council subsequently adopted Ordinance No. 593, extending the Comcast Franchise through December 31, 2014; and

WHEREAS, Comcast has recently changed its corporate name to Comcast Cable Communications Management, LLC; and

WHEREAS, the City has reviewed Comcast's performance under the prior franchise and the quality of service during the prior franchise term, has conducted a community survey and identified the future cable-related needs and interests of the City and its citizens, and has determined that Comcast's plans for operating and maintaining its Cable System are adequate; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of state-of-the-art cable communications service, the high technical capability and reliability of a cable system in the Franchise Area, the availability of local programming and quality customer service; and

WHEREAS, diversity in Cable Service is an important policy goal and the Grantee's Cable System should offer a broad range of programming services; and

WHEREAS, flexibility to respond to changes in technology and subscriber interests within the Cable Service market should be an essential characteristic of this Franchise; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises to construct, operate, and maintain a cable system within the boundaries of the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

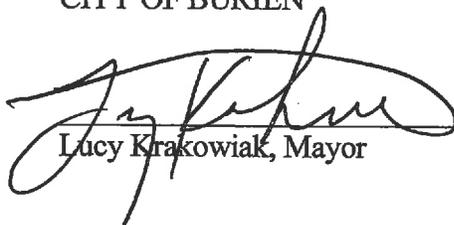
Section 1. Cable Franchise – Grant and Authorization. The City hereby grants to Comcast Cable Communications Management, LLC (“Comcast”) a non-exclusive franchise renewal, which shall authorize Comcast to use the City’s public rights-of-way within the Franchise Area to install, construct, repair, replace, reconstruct, maintain, or retain in, a Cable System for the deployment of Cable Services over the Cable System all in the manner and upon the terms and conditions as are set forth in the Cable Franchise Amendments attached hereto as Exhibit A, which Cable Franchise Amendments are incorporated by this reference as though fully set forth herein.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 15th DAY OF SEPTEMBER, 2014, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 15th DAY OF SEPTEMBER, 2014.

CITY OF BURIEN

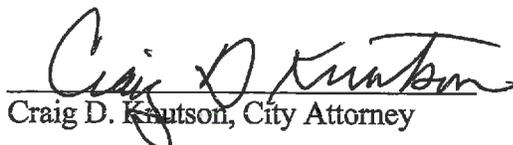

Lucy Krakowiak, Mayor

ATTEST/AUTHENTICATED:



Monica Lusk, City Clerk

Approved as to form:


Craig D. Knutson, City Attorney

Filed with the City Clerk: September 9, 2014

Passed by the City Council: September 15, 2014

Ordinance No. 612

Date of Publication: September 18, 2014 ✓

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**ORDINANCE NO. 612
EXHIBIT A**

AMENDMENTS TO CABLE FRANCHISE

THESE AMENDMENTS TO CABLE FRANCHISE are entered into by and between the City of Burien, Washington (hereinafter "City") and Comcast Cable Communications Management, LLC (hereinafter "Grantee") as of the first day of January, 2015.

WITNESSETH:

WHEREAS, pursuant to Ordinance No. 457, Grantee holds a Cable Franchise from the City with a commencement date of October 27, 2006 and a termination date of October 26, 2011 ("Franchise"), to own and operate a cable system within the City, and

WHEREAS, Grantee has requested that the City renew the Franchise, and

WHEREAS, the City has conducted a community survey regarding the Grantee's past performance and the City's cable system needs to be addressed in a Franchise renewal, and

WHEREAS, the City and Grantee have engaged in negotiations to determine what amendments are appropriate to include in a Franchise renewal, and

WHEREAS, the City and Grantee agreed to extend the Franchise through December 31, 2014 to allow for the negotiations to continue, and the City Council adopted Ordinance No. 593 extending the Franchise accordingly, and

WHEREAS, the City and Grantee each desire to renew the Franchise based on the amendments to the Franchise set forth herein,

NOW, THEREFORE, the City and Grantee agree as follows:

1) All terms and conditions set forth in the Franchise adopted in Ordinance No. 457 shall remain in full force and effect except as otherwise set forth herein.

2) Section 2.4 of the Franchise is amended to read as follows:

2.4 Effective Date

(A) This Franchise and the rights, privileges, and authority granted hereunder and the contractual relationship established hereby shall take effect and be in force from and after the effective date of this Franchise.

(B) The effective date of this Franchise shall commence 10/27/2006 and run through midnight of 10/26/2011. At the expiration of the initial term, the City may offer to extend this Franchise for an additional term of five (5) years by

giving written notice to the Grantee, provided that there has not been a change in federal or State law which negatively impacts the City's ability to extend this Franchise. This Franchise may be extended for such additional term of five (5) years, subject to written agreement of both parties.

(C) The grant of this Franchise shall have no effect on the Grantee's duty under the prior 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 effect upon Grantee's liability to pay all franchise fees which were due and owed under the prior franchise.

(D) Following the expiration of the initial term of the Franchise on 10/26/2011, the City and Grantee agreed to extend the Franchise through 12/31/2014 to allow for negotiation of a franchise extension/renewal.

(E) Based on the Amendments to Cable Franchise, which have been agreed upon by the City and Grantee, adopted in Ordinance No. 612, and thereby incorporated in the Franchise, the Franchise shall be extended and renewed for a term of five (5) years, commencing 1/1/2015 and running through 12/31/2019, unless terminated sooner pursuant to the provisions of the Franchise.

- 3) Subsection 2.7 of the Franchise ("Grant of Other Franchises") is deleted in its entirety and replaced with the following:

2.7 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; Access channel 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 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 subsequent applicable federal or State legislation or a regulatory entity other than the City, 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.

(D) The City and Grantee recognize and acknowledge that other cable franchises granted by the City might contain provisions and conditions that are different than the provisions and conditions that the Grantee has negotiated and accepted in this Franchise. Nothing in this Franchise shall be construed so as to require identical provisions and conditions in other cable franchises granted by the City.

- 4) Subsection 5.3 of the Franchise ("Letter of Credit") is deleted in its entirety, and Subsection 5.4 ("Bonds") is renumbered to 5.3.
- 5) Subsection 5.3(A) of the Franchise is amended to read as follows:

5.3 Bonds

(A) Grantee shall provide to the City a faithful performance bond in the ~~initial amount of fifty (\$50,000)~~ two hundred fifty thousand dollars (\$250,000) and obtain additional bonds on a project specific basis as required by the Municipal Code or regulations.

- 6) Subsection 7.2 of the Franchise is amended to read as follows:

7.2 Confidentiality

Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any Affiliate of Grantee that is not providing Cable Service in the Franchise Area. The City agrees to keep confidential any proprietary or confidential books or records of Grantee to the extent permitted by law. For confidential or proprietary books and records, Grantee shall accommodate the review of those books and records through a Non-Disclosure Agreement negotiated with the City or its designated third-party consultant. Grantee shall be responsible for clearly and conspicuously identifying the records as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential or proprietary and how it may be treated as such under State or federal law. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any

other applicable federal or State privacy law. For purposes of this subsection, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the Person demanding access to such information within five (5) business days.

- 7) Subsection 9.2 of the Franchise is amended to read as follows:

9.2 Additional or High Definition Access Channel

The City shall have the option to select either (A) or (B) below.

(A) Additional Access Channel

In addition to the Access Channels referenced in subsection 9.1 above, the City may require Grantee to make available an additional Access Channel as established by the triggers set forth below:

One (1) additional channel shall be made available for Government Access Use when the Government Access Channel required above is used for original programming (excluding character generated and filler programming, e.g. AM/FM radio programming) during fifty percent (50%) of the hours between 10:00 a.m. and 10:00 p.m., five (5) days per week during any consecutive twelve (12) week period. The programming shall generally be distinct and non-repetitive of the previous channel. Based upon this criteria, the Grantee shall, within four (4) months following a written request by the City, make available an additional Access Channel.

(B) High Definition Access Channel

The City may elect to simulcast its one (1) Government Access Channel in high-definition format on the following conditions:

(i) Upon request, the Grantee shall have twelve (12) months to plan, budget, and activate the simulcast high-definition Government Access Channel.

(ii) The City acknowledges that the simulcast high-definition Government Access Channel will be available only to those Subscribers who elect to subscribe to Grantee’s high-definition Cable Service, receive a high-definition set-top converter, and pay all fees associated therewith.

(iii) Grantee shall have sole discretion to determine the Channel placement of the City’s simulcast high-definition Government Access Channel within its high-definition channel line-up.

(iv) The City shall be responsible for all the Grantee’s capital engineering costs associated with fulfilling the request to activate the simulcast high-definition Government Access Channel. The City shall pay

through direct payment or from a City authorized withdrawal from future Franchise Fees or PEG Fees.

(v) Upon activation of the simulcast high-definition Government Access Channel, the City shall own and maintain the encoder equipment used to transmit the high-definition signal. The output of said encoder equipment shall be the official demarcation point between the City and Grantee concerning the high-definition Government Access signal.

(vi) The City shall provide the high-definition Government Access signal as specified by the Grantee's engineering standards, as amended by the Grantee from time to time because of changes in technology.

- 8) Subsection 9.6 of the Franchise ("Access Advances") is deleted in its entirety, and Subsection 9.7 is renumbered to 9.6.
- 9) Subsection 9.6 of the Franchise is amended to read as follows:

9.6 Monthly Capital Contribution

Grantee shall provide a monthly Capital Contribution to the City for Access/~~Net~~ purposes including, without limitation, for equipment purchases, construction and relocation costs. As of the acceptance date of this Franchise by the Grantee, the Grantee shall collect an amount of \$0.25 per Subscriber per month throughout the term of this Franchise ~~to recoup the access advance payments set forth in subsection 9.6. In the case of advance payments, if the Grantee recoups the full payment amount prior to the two and one-half year payment date or the expiration date of the Franchise, the~~ The Grantee shall ~~continue to collect the \$0.25 per Subscriber per month~~ Capital Contribution and remit to the City on a quarterly basis at the same time as franchise fees are paid. Upon forty-five (45) days written notice, the monthly amount may be adjusted, upon approval by the City Council, but in no event shall the monthly amount exceed \$0.25. Grantee shall not be responsible for paying the Capital Contribution with respect to gratis or Bad Debt accounts. The City shall have discretion to allocate the Capital Contribution in accordance with applicable law. To the extent the City makes Access/~~Net~~ capital investments using City funds prior to receiving the monthly Capital Contribution funds, the City is entitled to apply the subsequent ~~capital advances or~~ monthly Capital Contribution payments from Grantee toward such City capital investments. The City agrees that the ~~capital advances in subsection 9.6 and~~ Capital Contribution may be treated as external costs under applicable federal law. On an annual basis, the City or its designee shall provide Grantee a statement showing the Capital Contribution account balance, the amount expended including a detailed list of purchases, and the interest earned.

The City shall dedicate the time, personnel and other resources needed to operate the Government Access Channel designated herein.

- 8) Section 10.16 "Movement of Cable System Facilities" is amended by amending Subsection 10.16(B) to read as follows:

(B) In the case of relocation projects when the City hires and designates an independent contractor to accommodate and coordinate the conversion of overhead utilities within a City capital improvement project and the Grantee decides to participate in the joint trench opportunity or fails to remove its facilities from the Rights-of-Way by the date established by City, then the Grantee shall participate in the joint trenching portion of the project and shall pay to the City Grantee's portion of the traffic control and trench costs, including excavation and other associated costs, trench bedding, and backfill commensurate with Grantee's proportionate share of trench usage. ~~However, notwithstanding anything to the contrary set forth herein~~ Alternatively, if bids from the City's contractor for placement of Grantee's conduits and vaults/pedestals in the supplied joint trench, in the reasonable estimation of the Grantee, are not acceptable, the Grantee shall have the option to utilize contractor(s) of its choice to complete the required work. The City's contractor shall coordinate with the Grantee's contractor(s) to provide reasonable notice and time to complete the placement of the Grantee's facilities in the supplied joint trench.

IN WITNESS WHEREOF, the parties hereto have caused these Amendments of Cable Franchise to be executed for the uses and purposes therein expressed on the day and year first written above.

Comcast Cable Communications
Management, LLC

CITY OF BURIEN

By: _____

By: _____

Title _____

Title _____