



COUNCIL ORDINANCE NUMBER 20397

COUNCIL BILL NUMBER 4958

**AN ORDINANCE GRANTING COMCAST OF OREGON II, INC., AN
ADDITIONAL TERM AND FRANCHISE RENEWAL FOR THE
OPERATION OF A CABLE COMMUNICATIONS SYSTEM;
AMENDING ORDINANCE 19775; ADOPTING A SEVERABILITY
CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

ADOPTED: October 22, 2007

PASSED: 8:0

REJECTED:

OPPOSED:

ABSENT:

EFFECTIVE: November 23, 2007

ORDINANCE NO. 20397

AN ORDINANCE GRANTING COMCAST OF OREGON II, INC., AN ADDITIONAL TERM AND FRANCHISE RENEWAL FOR THE OPERATION OF A CABLE COMMUNICATIONS SYSTEM; AMENDING ORDINANCE 19775; ADOPTING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

The City Council of the City of Eugene finds that:

A. Lane County and the cities of Eugene and Springfield, the local franchising authorities, entered into a franchise with TCI, Inc. which franchise was transferred to ATT Broadband, and subsequently transferred to Comcast of Oregon II, Inc., (hereinafter "Comcast"), the successor in interest to ATT Broadband, the successor in interest to TCI, Inc., for the operation of a cable communication system and have designated the Metropolitan Policy Commission (MPC) as the representative of the local franchising authorities in administration of the franchise.

B. The City of Eugene enacted Ordinance No. 19775 on May 13, 1991, granting such franchise.

C. The current franchise agreement with all three local franchising authorities provides that the current franchise term expires in July, 2008, subject to certain renewal rights and rights to an additional term possessed by the Grantee.

D. In prior cable franchise renewals, Lane County and the cities of Eugene and Springfield, and Grantee's predecessor used the renewal successfully to clarify, update and renew previous franchises with Lane County, Eugene and Springfield.

E. Lane County and the cities of Eugene and Springfield, have had extensive discussions with Comcast that have resulted in the local franchising authorities concluding that an additional term and renewal of the franchise for an additional ten-year term to 2018 is warranted upon certain terms and conditions as more particularly set forth herein and in a certain letter of agreement between the parties dated as of October 11, 2007.

F. The parties have agreed to certain amendments to the franchise as set forth herein below.

NOW, THEREFORE,

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Section 3 of Ordinance No. 19775 is hereby amended by deleting the current definitions of “Grantee” and “Gross Annual Revenue” in their entirety, and replacing them with the following:

"Grantee" shall mean Comcast of Oregon II, Inc., its successors and assigns.

"Gross Annual Revenues" means any and all compensation in whatever form, grant, subsidy, exchange, or otherwise, directly or indirectly received by Grantee for services provided to subscribers within the franchise territory but excludes the following: taxes Grantee is required to separately state and collect from subscribers; commissions paid on advertising sales revenues; amounts received from programmers as reimbursement of marketing expenses and launch fees, and, PEG access capital support collected by the Grantee from subscribers if permitted by federal or state law. Except as expressly set forth in this definition, Gross Revenues shall be calculated in accordance with generally accepted accounting principles.

Section 2. Section 5(4) of Ordinance No. 19775 is hereby deleted in its entirety, and replaced with the following:

Service to Institutions. Upon request of the Commission, the Grantee shall provide single installations of basic service to each fire and police station, public school, City Hall, County Courthouse, and all public libraries on the terms provided in Section 7(2) of this Ordinance. In addition to the institutions listed above and after August 1, 2008, Grantee shall provide, upon request of the Commission and at no cost, a single installation of basic service to no more than 30 additional public buildings owned and occupied by Eugene, Springfield, or Lane County and located within the Franchise Area and within 150 feet of the then existing system operated by Grantee, except for portions of buildings used primarily to house jail populations. No standard installation fee and no monthly service charge shall be made for the distribution of the services described in this section to these locations.

Section 3. Section 5(6) of Ordinance No. 19775 is hereby amended by deleting paragraphs (a) and (b) in their entirety, and replacing them with the following paragraphs (a) and (b) below, and adding a new paragraph (c) as follows:

Access Channels.

(a) Grantee shall provide four channels dedicated for public, educational, and local government access programming, three within basic service and one additional channel as provided in subsection (b).

(b) Public Safety Channel. Grantee shall make available continued use of a fourth scrambled channel to the Commission providing

public safety programming created by the Commission or its designee. The channel shall reside on Grantee's digital service tier and Grantee shall make available, without charge, use of not more than 75 digital converters to each designated location that shall be configured to receive only the public safety channel. The location of the 75 converters shall be designated in writing by the Commission. Grantee shall provide, at no charge, replacement converters should technology change such that the originally distributed converters are no longer capable of providing access to the channel. The public safety channel as provided herein is the fourth PEG channel required under the franchise prior to this amendment and Grantee shall not be required to provide any other service over this fourth PEG channel.

(c) Grantee shall not be responsible for programming, operations or oversight of any public, educational, governmental, or access channels provided for in this Section.

Section 4. Section 10(5) of Ordinance No. 19775 is hereby deleted in its entirety, and replaced with the following:

In addition to the franchise fees required by this section, Grantee shall pay to the Commission on or about March 1 of 2007 and 2008 \$50,000 per year. Beginning on or about March 1, 2009, and on or about said date each year thereafter for the remaining term of this franchise, Grantee shall pay to the Commission \$100,000 per year. Money received by the Commission under this subsection shall be used only for capital costs related to public, educational and governmental access facilities including but not limited to access center equipment acquisition or replacement. Payments under this subsection may, at Grantee's sole discretion, be made quarterly at the same time franchise fee payments are made pursuant Section 10(1). Grantee's right, if any, to pass through and itemize amounts collected from residential subscribers for payments required pursuant to this section is governed by provisions of federal or state law.

Section 5. Sections 16(1) and (2) of Ordinance No. 19775 are hereby deleted in their entirety, and replaced with the following:

(1) Duration and Renewal. This franchise and the rights and privileges granted herein shall remain in effect until August 1, 2018, unless terminated sooner under provisions of Subsection (4) of this section. Renewal of the Grantee's franchise at the end of such term shall be governed by and comply with the provisions of applicable law then in effect.

(2) Franchise Review.

(a) A review of the franchise performance may be undertaken upon agreement of the Grantee and Commission.

(b) Upon request of either the Commission or Grantee, a review of franchise performance may be undertaken once after August 1, 2013. As a result of such franchise performance review, the Commission and Grantee may negotiate modifications or revisions to the franchise upon mutually acceptable terms and conditions.

(c) After January 1, 2013 but before August 1, 2013, Grantee shall submit a report to the Commission on the performance of the system under the franchise. The report shall include:

- (i) The channel capacity and plans for additional channels;
- (ii) Service extension policies set forth in Section 7;
- (iii) Technical adequacy of the system, including, but not limited to, picture quality, two-way transmission capacity, and compliance with standards sets forth in Section 8;
- (iv) Changes in the Federal Act or FCC authority, rules, or regulations which, in Grantee's opinion, might affect the franchise; and
- (v) The franchise fee payments set forth in Section 10 and financial support for public, education, and governmental access.

(d) The Grantee shall be represented during review negotiations by a representative of the company authorized to speak on questions or corporate practice, policy, and plans.

Section 6. Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

Section 7. Savings Clause. Except as amended herein, all other provisions of Ordinance No. 19775 remain in full force and effect.

Section 8. Effective Date. This Ordinance shall take effect thirty (30) days after its enactment by the City Council and approval by the Mayor. Subject to applicable federal, state and local law, Grantee must accept the provisions of this Ordinance and

agree to be bound thereby. Such acceptance shall be in writing signed by an officer of the corporation which is delivered to Grantor within 30 days of enactment of this Ordinance. In the event Grantee fails to deliver its acceptance as provided herein, and notwithstanding any other provision of this Ordinance, Grantor may repeal this Ordinance without further notice to Grantee and without giving Grantee an opportunity to be heard.

Passed by the City Council this

22nd day of October 2007



Deputy City Recorder

Approved by the Mayor this

24 day of October, 2007



Mayor