

### **13.2 Alternative Remedies**

No provision of this Franchise shall be deemed to bar the right of Grantor to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of Grantor to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

### **13.3 Assessment of Monetary Damages**

(A) Subject to the terms of this Franchise, Grantor may assess against Grantee monetary damages (i) up to five hundred dollars (\$500.00) per day for general construction delays, (ii) up to two hundred fifty dollars (\$250.00) per day for violations of PEG obligations, payment obligations or any other material breaches, or (iii) up to one hundred dollars (\$100.00) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, Grantor shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and in this Franchise. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by Grantor in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by Grantor of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by Grantor by reason of the breach of this Franchise.

### **13.4 Revocation**

(A) Grantor may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding Grantor and Grantee;

(2) Grantee abandons the Cable System, or terminates the Cable System's operations;

(3) Grantee fails to restore service to the Cable System after three consecutive days of an outage or interruption in service; except in the case of an emergency or during a Force Majeure occurrence, or when approval of such outage or interruption is obtained from the Grantor, it being the intent that there shall be continuous operation of the Cable

System); or

(4) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon Grantor or Subscribers; or

(5) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(6) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, Grantor shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) Grantor has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with Grantor to assume and be bound by all of the terms and provisions of this Franchise.

(D) Any proceeding under the paragraph above shall be conducted by the Board of County Commissioners and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The Board of County Commissioners shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the Board of County Commissioners shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Board of County Commissioners determines are reasonable under the circumstances. If Grantor determines that the Franchise is to be revoked, Grantor shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by Grantor's

decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The Board of County Commissioners may at its sole discretion take any lawful action which it deems appropriate to enforce Grantor's rights under the Franchise in lieu of revocation of the Franchise.

### **13.5 Procedures in the Event of Termination or Revocation**

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, Grantor may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to Grantor's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities from Grantor at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to Grantor's satisfaction, after written notice to Grantee, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or Grantor may recover the costs through the letter of credit provided by Grantee.

(D) Grantor may seek legal and equitable relief to enforce the provisions of this Franchise.



### **13.6 Purchase of Cable System**

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, Grantor shall have the option to purchase the Cable System.

(B) Grantor may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from Grantor within which to accept or reject the offer.

(C) In any case where Grantor elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of Grantor's audit of a current profit and loss statement of Grantee. Grantor shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which Grantor would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

### **13.7 Receivership and Foreclosure**

(A) At the option of Grantor, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and



to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

- (1) Grantor has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and
- (2) The purchaser has covenanted and agreed with Grantor to assume and be bound by all of the terms and conditions of this Franchise.

### **13.8 No Monetary Recourse Against Grantor**

Grantee shall not have any monetary recourse against Grantor or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of Grantor under this Franchise are in addition to, and shall not be read to limit, any immunities Grantor may enjoy under federal, State or local law.

### **13.9 Effect of Abandonment**

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, Grantor, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to Grantor, or until the Franchise is revoked and a new franchisee is selected by Grantor; or obtain an injunction requiring the Grantee to continue operations. If Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse Grantor or its designee for all reasonable costs, expenses and damages incurred.

### **13.10 What Constitutes Abandonment**

Grantor shall be entitled to exercise its options in subsection 13.9 if:

- (A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for three (3) consecutive days, unless there is a situation constituting Force Majeure or Grantor authorizes a longer interruption of service; or
- (B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

## **SECTION 14. FRANCHISE RENEWAL AND TRANSFER**

### **14.1 Renewal**

- (A) Grantor and Grantee agree that any proceedings undertaken by Grantor that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section

626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and Grantor are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the Franchise, and the Grantee and Grantor shall continue to comply with all obligations and duties under the Franchise.

#### **14.2 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 Grantor, which consent shall be by the Board of County Commissioners, acting by ordinance/resolution.

(B) The Grantee shall promptly notify Grantor 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. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to Grantor for its approval of a sale or transfer and furnish all information required by law and Grantor.

(D) In seeking Grantor's consent to any change in ownership or control, the proposed transferee 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 the proposed transferee 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 or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that Grantor may reasonably 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) Grantor shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. Grantor and the Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if Grantor 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 Grantor agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by Grantor, Grantee shall file with Grantor a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee 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.

(G) In reviewing a request for sale or transfer, Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist Grantor in so inquiring. Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by Grantor and must 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 Grantor; 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.

## **SECTION 15. 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.

## **SECTION 16. MISCELLANEOUS PROVISIONS**

### **16.1 Preferential or Discriminatory Practices Prohibited**

In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

### **16.2 Notices**

Throughout the term of the 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 overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by Grantor or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:  
Comcast of Cable Communications Management, LLC  
900 132<sup>nd</sup> Street SW  
Everett, Washington 98204  
Attention: Franchising

With a Copy To:

Comcast Cable  
Attention Franchising  
410 Valley Ave. NW, Suite 9  
Puyallup, WA 98371

Grantor's address shall be:  
2000 Lakeridge Dr.  
Olympia, WA 98502  
Attention: County Manager

With a copy to:  
Thurston County Prosecuting Attorney

2000 Lakeridge Dr SW, Building 2  
Olympia, WA 98502

### **16.3 Descriptive Headings**

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

### **16.4 Publication Costs to be Borne by Grantee**

Grantee shall reimburse Grantor for all costs incurred in publishing this Franchise, if such publication is required.

### **16.5 Binding Effect**

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

### **16.6 No Joint Venture**

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

### **16.7 Waiver**

The failure of Grantor at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of Grantor hereafter to enforce the same. Nor shall the waiver by Grantor 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.

### **16.8 Reasonableness of Consent or Approval**

Whenever under this Franchise "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

### **16.9 Entire Agreement**


This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

**16.10 Jurisdiction**

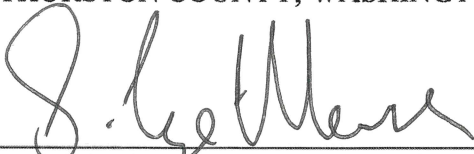
Venue for any dispute related to enforcement or interpretation of this Franchise shall be in an appropriate state court of competent jurisdiction in Thurston County, Washington, or in the United States District Court for the Western District of Washington at Tacoma.

IN WITNESS WHEREOF, this Franchise is signed in the name of Thurston County, Washington this 26 day of January 2021.

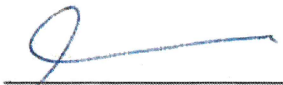
ATTEST:

  
\_\_\_\_\_  
County Clerk

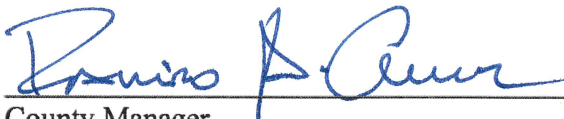
THURSTON COUNTY, WASHINGTON:

  
\_\_\_\_\_  
Chairman

APPROVED AS TO FORM:

  
\_\_\_\_\_  
County Attorney

RECOMMENDED AND APPROVED:

  
\_\_\_\_\_  
County Manager

Accepted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC

\_\_\_\_\_  
Public Notary

\_\_\_\_\_  
Name/Title: \_\_\_\_\_