KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

February 14, 2005

Ordinance 15119

Proposed No. 2005-0025.2 **Sponsors** Patterson

AN ORDINANCE making a technical correction to cable television franchise 12132 incorrectly identified in Ordinance 15098 as held by Comcast of California/Colorado/Texas/Washington, Inc., but actually held by Comcast of Washington IV, Inc.; amending Ordinance 15098, Section 6, and repealing Ordinance 15098, Attachment B.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 15098, Section 6, is hereby amended to read as follows:

The executive is hereby authorized to execute written amendments to the franchise agreements in substantially the same form as ((~~attached~~)) Attachment A to

((~~this ordinance~~)) Ordinance 15098 and Attachment A to this ordinance.

SECTION 2. Ordinance 15098, Attachment B, is hereby repealed.

Ordinance 15119 was introduced on 1/18/2005 and passed by the Metropolitan King County Council on 2/14/2005, by the following vote:

Yes: 12 - Mr. Phillips, Mr. von Reichbauer, Ms. Lambert, Mr. Pelz, Mr. Dunn, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Ms. Hague, Mr. Irons, Ms. Patterson and Mr. Constantine
No: 0
Excused: 1 - Ms. Edmonds

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Phillips, Chair

Stamp use authorized by telephone 2/16/05

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this 16 day of February, 2005.

Ron Sims, County Executive

Attachments A. Franchise No. 12132 Amendment No. 2, dated January 21, 2005

ATTACHMENT A
January 21, 2005

AMENDMENT NO. 2
To
FRANCHISE AGREEMENT NO. 12132

Franchise Agreement No.12132, as previously modified by County ordinances and currently in effect between King County ("County") and Comcast of Washington IV, Inc., as successor to the franchisee, is hereby amended as described herein.

This Amendment No. 2 shall take effect upon enactment of an ordinance authorizing the county executive's execution of this Amendment No.2 and the submittal by Comcast of Washington IV, Inc., of a fully executed performance bond in accordance with the requirements as set forth herein.

Except as provided herein, all terms and conditions of Franchise No. 12132 as heretofore modified shall remain unchanged and in full force and effect.

COMCAST OF WASHINGTON IV, INC.

By: ______________________

Name: Leonard J. Rozek

Title: Senior Vice President

Date: 2/8/05

KING COUNTY WASHINGTON

By: ______________________

Name: RONALD C SIMS

Title: KING County Executive

Date: January 31, 2005

1. Paragraph 1 is not amended.

2. Paragraph 2 is amended as follows:

2. Grant of Authority; Limits and Reservations.

(a) Grant of Authority The Franchisee is hereby granted, subject to the terms and conditions of this Franchise Agreement, the right, privilege, and authority to construct, operate and repair a Cable System within the franchise territory defined in this Agreement and to provide Cable Services and to provide a related Institutional Network ("I-Net") for Public, Educational and Governmental use for voice, video and data subject to Section 17.(a)(9). The Franchise issued to the Franchisee is subject to the terms and conditions of this Agreement. It shall remain in effect from the Effective Date of this grant to February 16, 2010~~5~~, unless otherwise terminated by action of the County.

(o) External Costs. The Franchisee may itemize any external costs on subscriber bills to the extent permitted by federal law. Franchisee agrees that it was planning the upgrade and rebuild of the subscriber system before entering this Franchise Agreement and therefore will not claim the upgrade and rebuild costs attributable to the subscriber system as an external cost for which recovery could be sought through 47 CFR Sec. 76.922.(d)(3). In addition, Franchisee agrees that the County is extending the construction schedule, reducing the amount of the performance bond, reducing the peering capacity and reducing the PEG channel capacity at the Franchisee's request; and the extension of the term of the Franchise Agreement is for the benefit of both Franchisee and County; therefore, the Franchisee agrees that it will not claim that any cost arising from the extension of the construction schedule, the extension of the term of the franchise, reduction of the performance bond, reduction of the peering capacity and reduction of the PEG channel capacity, or from the simultaneous modification of any provision of this franchise agreement, the Lease Agreement, or any other related document, as an external cost for which recovery could be sought through 47 CFR Sec. 76.922(d)(3). Notices of price changes caused by external costs shall be in accordance with federal rules.

3. Paragraph 3 is not amended.

4. Paragraph 4 is not amended.

5. Paragraph 5 is not amended.

6. Paragraph 6 is amended as follows:

All notices to Franchisee shall be mailed to:

~~TCI Cablevision of Washington, Inc.~~
~~2233 112 Ave. N.E.~~

~~Bellevue, WA 98004~~

~~AT&T Comcast~~Comcast of Washington IV, Inc.
~~22025 – 30th Drive SE~~ 19909 – 120th Ave. NE, Suite 200
Bothell, WA ~~98021-4444~~ 98011

until Franchisee changes that address by making an appropriate filing with the Cable Office, as contemplated by K.C.C. §6.27A.070. A notice may be "mailed" to Franchisee by depositing it in the U.S. Mail, first class postage prepaid, or by providing the notice to Franchisee by overnight delivery service. Notwithstanding any other provision of the Cable Ordinance, notice also may be provided to the Franchisee by facsimile at the following number: (425) ~~462-2853~~398-6238. The Franchisee may change this number by providing written notice of a substitute number to the Cable Office.

7. Paragraph 7 is not amended.

8. Paragraph 8 is not amended.

9. Paragraph 9 is not amended

10. Paragraph 10 is amended as follows:

10. Security Fund, Performance Bond and Letter of Credit.

(f) Franchise Performance Bond and Payment Bond. Franchisee shall post a performance bond in the form attached as Appendix 1 in the amount of ~~twenty one million ($21,000,000)~~ one hundred thousand dollars ($100,000) to ensure performance under Franchise No. 12132, ~~Franchise No. 11680~~ and the Lease Agreement, as amended, and a one hundred thousand dollar ($100,000) payment bond (in the form attached as Appendix 2) for all construction and repairs under ~~Franchise No. 11680,~~ Franchise No. 12132 and the Lease Agreement, as amended. All bonds ~~must~~shall be executed by a duly licensed surety registered with the Washington State Insurance Commissioner, and the surety shall appear in the current Authorized Insurance Company list in the state of Washington published by the Office of the Insurance Commissioner. The surety shall designate an attorney-in-fact in the State of Washington. King County may require the surety to appear and qualify upon any bond.

All duties and obligations of the Principal as set forth in the performance bond (Appendix 1) are hereby incorporated as duties of the Franchisee under this Agreement as though fully set forth herein.

~~Upon final acceptance by the County of satisfactory completion of the upgrade and rebuild of the former Viacom and TCI franchise areas, including channel capacity and construction of the I-Net,~~ The franchise performance bond amount shall be ~~reduced from twenty-one million dollars ($21,000,000) to~~ one hundred thousand dollars ($100,000) throughout the remaining term of this

Agreement. The one hundred thousand dollar ($100,000) payment bond shall be released upon final acceptance by the County of satisfactory completion of the upgrade and rebuild of the former Viacom and TCI franchise areas. On an annual basis, Franchisee shall provide documentation sufficient to prove that it has complied with all bond requirements in this Agreement. . . .

11. Paragraph 11 is not amended.

12. Paragraph 12 is not amended.

13. Paragraph 13 is not amended.

14. Paragraph 14 is not amended.

15. Paragraph 15 is not amended.

16. Paragraph 16 is amended as follows:

(c) Other System Design Requirements.

(13) The Franchisee shall make its high-speed cable Internet service available for local peering to all Internet service providers (ISP) and online service providers (OSP) through a local interconnection point, currently located at the Westin Carrier Hotel, on terms and conditions that are customary in the data networking industry and consistent with Franchisee's internal policies, without discrimination, degradation or blockage of the content or carriage of data from such an interconnected ISP or OSP. ISPs and OSPs must deliver their traffic, individually or aggregated, to Franchisee's designated location on the 19th floor of the Westin Carrier Hotel. If delivered in aggregation, peering costs will be charged for the aggregated capacity requested to one entity representing the aggregated traffic, so they in turn can share that cost among the aggregated ISPs and OSPs. This interconnection shall be maintained at OC-12 capacity, but may be increased to a maximum capacity of OC-48 if necessary to accommodate an increase in traffic traveling over the interconnection. This interconnection shall be interoperable with all generally available Internet protocol applications and will not restrict services that can be provided by online service providers. The cost of providing capacity beyond OC-12 shall be paid by the users of such capacity.

The parties acknowledge Franchisee's current policy of permitting OC-12 capacity interconnection at no cost to public, educational and government entities for public, non-commercial purposes. Franchisee agrees to maintain such policy for the term of this Franchise and provided that the use remains exclusively for public, educational and government non-commercial purposes. Nothing in this Section shall be construed to prevent Franchisee from charging its regular, nondiscriminatory rates to commercial users of interconnection, whether public or private, to the extent allowed by law.

The foregoing represents the entire agreement between Franchisee and the County with respect to the subject matter hereof and supersedes all prior oral negotiations and agreements between them, and is consistent with Ordinances 13409, 13855 and Proposed Ordinance 2005-0025.2.

17. Paragraph 17 is amended as follows:

17. Channels, Facilities, Equipment and Services for Public, Educational and Governmental Use.

(a) Access Channels.

(1) Subject to Federal rate regulations applicable to the adding of PEG channels, the Franchisee shall activate and make available free of charge to the County public, educational and governmental channels as specified in this paragraph.

(i) Initially the Franchisee shall maintain its current number of public, educational and governmental channels as activated on date of this Franchise.

(ii) Upon completion of each phase of the rebuild, the Franchisee shall ~~provide~~ make available within the rebuilt areas up to eight (8) ~~a minimum of ten (10) and a maximum of twenty five (25)~~ video channels ~~for~~ to facilitate Public, Educational and Governmental programming on the Subscriber Network throughout the remaining term of this Franchise. ~~No fewer than ten (10) and no more than thirteen (13) of those channels may be analog format channels. There shall be no more than 13 PEG channels until the Subscriber Network begins to carry digitally transmitted video channels. At that time, and when additional channels are required as described in this section, the Franchisee shall make available to subscribers the equipment required to receive the Public, Educational and Governmental digital channels~~. If permitted by applicable law, ~~this~~ equipment shall be available at cost to subscribers who take only the digital PEG channels and no other digital services. At the County's request, one analog channel may be converted into four (4) digital channels, for a total not to exceed eleven (11) video channels in combined digital and analog formats. The Franchisee agrees to carry these digital channels on its system within the franchise area. The County shall pay for the cost of digital conversion equipment and for transmission to the Franchisee's headend, and further agrees that any channel or channels converted to digital format pursuant to this Section need not be carried on Franchisee's Basic Service Tier. In addition, in the event that the Franchisee converts to an all-digital system in the King County franchise area, the Franchisee shall make available, for King County PEG purposes, seven (7) additional PEG channels for a total of eighteen (18) PEG channels, seven (7) of which are subject to the activation thresholds set forth below, and six (6) MHz of PEG capacity. The Franchisee agrees to carry these digital channels on its system within the franchise area. The County shall pay for the cost of digital conversion equipment and for transmission to the Franchisee's headend, and further agrees that any channel or channels converted to digital format pursuant to this Section need not be carried on Franchisee's Basic Service Tier before a regional conversion to an all digital system. ~~In accordance with franchise requirements regarding TCI's obligation to provide countywide PEG channel distribution in both incorporated and unincorporated areas, TCI shall provide a report to the county for approval detailing plans for regional distribution of PEG channels by July 31, 1998. Failure to deliver the report by July 31, 1998 shall constitute a material breach of the franchise. The report shall contain the following:~~

~~(a) Description of PEG channel obligations in both incorporated and unincorporated areas.~~

~~(b) Proposed options for countywide PEG channel distribution, including incorporated and unincorporated areas.~~

~~(c) Planned activities and timeline for achieving regional coordination on proposed options.~~

~~(d) Plan for countywide implementation of King County PEG channels in accordance with franchise requirements if regional coordination is not possible within the agreed to dates.~~

(iii) The County will ~~initially~~allocate ~~the first ten~~ its available channels at the sole discretion of the County. ~~as follows: two (2) Public, six (6) Educational and two (2) Governmental.~~ After that allocation, additional channels will be made available by the Franchisee in accordance with the following criteria. . . .

(b) Capital Grant for Access Equipment and Facilities

(1) The Franchisee shall provide the County capital grants as specified below to be used by the County in its sole discretion for cable related and Institutional Network related purposes. These grants are not franchise fees and Franchisee waives any claim otherwise.

(2) ~~Beginning on the date of the renewal of the Franchise, the Franchisee shall provide the County a series of cash or cash equivalent grants in equal $50,000 amounts over a five year period, totaling $250,000. In addition, beginning on the date of renewal, the Franchisee shall provide the County a grant of $250,000 in the form of work order credits to the County. These work order credits will be applied by the County toward engineering, design and consulting services provided by the Franchisee to the County for cable-related facilities, primarily the Institutional Network and County's related Wide Area Network.~~

(~~3~~2) ~~Over the term of the Franchise,~~ Commencing ~~on March 1, 1996 or the effective date of this Franchise, whichever date is later~~ February 1, 2005 and ending on January 31, 2007, the Franchisee shall provide the County a payment equal to one dollar

($1.00) per month multiplied by the number of cable subscribers served by the Franchisee pursuant to this Franchise. <u>Commencing on February 1, 2007 through January 31, 2008, Franchisee shall provide the County with a payment equal to eighty-five cents ($0.85) per month multiplied by the number of cable subscribers served by the Franchisee pursuant to this Franchise. Commencing on February 1, 2008 through January 31, 2009, Franchisee shall provide the County with a payment equal to seventy cents ($0.70) per month multiplied by the number of cable subscribers served by the Franchisee pursuant to this Franchise. Commencing on February 1, 2009 through the end of the franchise term, Franchisee shall provide the County with a payment equal to fifty-five cents ($0.55) per month multiplied by the number of cable subscribers served by the Franchisee pursuant to this Franchise.</u> Payments may be made quarterly and routinely in conjunction with the Franchise Fee payments pursuant to paragraph Section 5(a). The $1.00 per month per subscriber amount is hereby approved for treatment as an external cost which may be passed through by Franchisee to subscribers. . . .

18. Paragraph 18 is not amended.

19. Paragraph 19 is not amended.

20. Paragraph 20 is not amended.

21. Paragraph 21 is not amended.

22. Paragraph 22 is not amended.

23. Paragraph 23 is not amended.

24. Paragraph 24 is not amended.