

SECOND SUBSTITUTE ORDINANCE NO. BL2010-645

An ordinance amending Ordinance No. O95-1379 and approving an extension to the initial term of the cable television franchise of Comcast pending completion of the franchise renewal process.

WHEREAS, Ordinance No. O95-1379 granted a franchise to Televue-Systems, Inc. d/b/a Viacom Cable ("Viacom"); and,

WHEREAS, said franchise was transferred by Viacom to Intermedia Partners Southeast ("Intermedia"), who accepted and acknowledged the terms of the Cable Communications Franchise Agreement accompanying it (the "1995 Franchise Agreement"), and this transfer and acceptance and acknowledgment was approved by Metropolitan Council Ordinance O99-1810; and,

WHEREAS, said franchise was transferred by Intermedia to Broadband Nashville I, LLC, whose parent company became Comcast Cable Communications, Inc., who accepted and acknowledged the terms of the 1995 Franchise Agreement and which transfer and acceptance and acknowledgment was approved by Metropolitan Council Ordinance BL 2001-591; and,

WHEREAS, said franchise and 1995 Franchise Agreement were accepted, acknowledged and reaffirmed by Comcast Cablevision of Nashville I, LLC, now Comcast of Nashville I, LLC (Comcast), formerly known as Broadband Nashville I, LLC, and this acceptance, acknowledgment and reaffirmation was approved by Metropolitan Council Ordinance BL2002-1066, such that Comcast formally became and is now the franchisee of the Metropolitan Government of Nashville and Davidson County (the "Metropolitan Government") subject to the 1995 Franchise Agreement; and,

WHEREAS, the 1995 Franchise Agreement approved by Ordinance No. O95-1379 commenced on or about May 5, 1995, and under the terms of the 1995 Franchise Agreement, the franchise of Comcast expires on or about May 5, 2010; and,

WHEREAS, pursuant to authority granted by Section 6.08.030 and 6.08.080 of the Metropolitan Code and under procedures established by Title VI of the Communications Act of 1934, as amended, 47 U.S.C. §§ 521 *et seq.*, the CATV Special Committee is engaged in the franchise renewal process with Comcast regarding whether to renew Comcast's franchise and, if so, the content and term of a new franchise agreement for construction, maintenance, and operation of a cable television system; and,

WHEREAS, the CATV Special Committee is in the process of reviewing the performance of Comcast under the 1995 Franchise Agreement, including the quality of service provided by Comcast, and is in the process of assessing the community's cable-related needs and interests, as called for in 47 U.S.C. § 546; and,

WHEREAS, the CATV Special Committee also wishes to carry out negotiations with Comcast and to explore the possibility of informal franchise renewal under 47 U.S.C. § 546(h), whereby if a new franchise agreement is reached, it must be submitted to the Metropolitan Council for approval by ordinance; and,

WHEREAS, it now appears unlikely that the franchise renewal process, including a new franchise agreement and an ordinance, can be completed before May 5, 2010; and,

WHEREAS, it is in the best interests of the Metropolitan Government that the cable television service provided by Comcast continue uninterrupted, subject to the terms of the 1995 Franchise Agreement, should the franchise renewal process not be completed by May 5, 2010; and,

WHEREAS, at its meeting on March 31, 2010, the CATV Special Committee considered the Franchise Extension Agreement attached hereto as Exhibit A and resolved to recommend its approval and authorization for execution; and,

WHEREAS, Comcast has requested and proposed that the term of the extension of the 1995 Franchise Agreement be one year in length, and given reasonable estimates of the additional amount of time needed for negotiations for a new franchise agreement, an extension of one year, to and including May 5, 2011, does not appear to be unreasonable; and

WHEREAS, Comcast has agreed to the terms set forth in the Franchise Extension Agreement.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY.

Section 1. That the term of the 1995 Franchise Agreement approved by Ordinance No. O95-1379, as modified by Ordinances O99-1810, BL2001-591 and BL2002-1066, is hereby extended through May 5, 2011.

Section 2. That, consistent with Section 6(c)(2) of the 1995 Franchise Agreement, Comcast shall, within thirty days of the effective date of this Ordinance, provide an additional PEG access support grant to Metropolitan Nashville of One Hundred Thousand Dollars (\$100,000.00) to be used by Metropolitan Nashville, in its sole discretion, for public, educational and governmental access equipment, facilities and support.

Section 3. That all other terms, conditions and stipulations of the 1995 Franchise Agreement approved by Ordinance No. O95-1379, as modified by Ordinances O99-1810, BL2001-591 and BL2002-1066, shall remain unchanged and in full force and effect.

Section 4. That the Metropolitan Mayor is hereby authorized to execute a Franchise Extension Agreement by and between The Metropolitan Government of Nashville and Davidson County and Comcast attached hereto as Exhibit A.

Section 5. That this extension of the 1995 Franchise Agreement is made without prejudice to or waiver of any rights that the Metropolitan Government of Nashville and Davidson County or Comcast may have under Title VI of the federal Communications Act of 1934, as amended, 47 U.S.C. §§ 521 *et seq.*, the Competitive Cable and Video Services Act, Tenn. Code Ann. §§ 7-59-301 *et seq.*, or other applicable law.

Section 6. That the Franchise Extension Agreement attached hereto as Exhibit A is entered into for the sole purpose of allowing the parties adequate time to complete the franchise renewal process, and shall not be construed as a new franchise agreement or a franchise extension under Section 6.08.030 of the Metropolitan Code to which the application provisions and other requirements of Section 6.08.040 of the Metropolitan Code would apply.

Section 7. That any provision of any ordinance of the Metropolitan Council and any provision of the Metropolitan Code of Laws which is in conflict with any provision of this Ordinance, is hereby repealed to the extent, but only to the extent, necessary to be consistent with this Ordinance.

Section 8. That this Ordinance shall take affect from and after its passages, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:


Chair, CATV Special Committee

INTRODUCED BY:

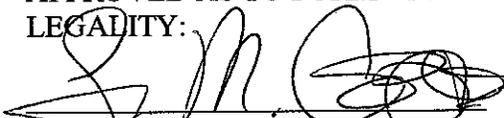


MEMBERS OF COUNCIL

APPROVED AS TO AVAILABILITY
OF FUNDS:


Director of Finance

APPROVED AS TO FORM AND
LEGALITY:


Metropolitan Attorney

**CABLE TELEVISION FRANCHISE EXTENSION AGREEMENT
BY AND BETWEEN
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON
COUNTY AND
COMCAST OF NASHVILLE I, LLC**

THIS CABLE FRANCHISE EXTENSION AGREEMENT is entered into this ___ day of _____, 2010, by and between The Metropolitan Government of Nashville and Davidson County (hereinafter "Metropolitan Government") and Comcast of Nashville I, LLC, a Delaware Limited Liability Company qualified to do business in Tennessee ("Comcast").

WITNESSETH

WHEREAS, the Metropolitan Government and Televue-Systems, Inc. d/b/a Viacom Cable ("Viacom"), entered into a Cable Communications Franchise Agreement effective on or about May 5, 1995 (the "Franchise Agreement"), which was approved by Metropolitan Council Ordinance O95-1379; and,

WHEREAS, said Franchise Agreement was transferred by Viacom to Intermedia Partners Southeast ("Intermedia"), who accepted and acknowledged said Franchise Agreement and which transfer and acceptance and acknowledgment was approved by Metropolitan Council Ordinance O99-1810; and,

WHEREAS, said Franchise Agreement was transferred by Intermedia to Broadband Nashville I, LLC, whose parent company became Comcast Cable Communications, Inc., who accepted and acknowledged that Franchise Agreement and

which transfer and acceptance and acknowledgment was approved by Metropolitan Council Ordinance BL 2001-591; and,

WHEREAS, said Franchise Agreement was accepted, acknowledged, and reaffirmed by Comcast Cablevision of Nashville I, LLC, now Comcast of Nashville I, LLC, formerly known as Broadband Nashville I, LLC, and this acceptance, acknowledgment and reaffirmation was approved by Metropolitan Council Ordinance BL2002-1066, such that Comcast then became and is now formally the franchisee of the Metropolitan Government subject to the Franchise Agreement; and,

WHEREAS, under the terms of the Franchise Agreement, Comcast's franchise is scheduled to expire on or about May 5, 2010; and,

WHEREAS, Comcast timely filed a request with the Metropolitan Government to activate the formal process for renewing the Franchise Agreement pursuant to Title VI, Section 626 of The Communications Act of 1934, as amended, (47 U.S.C. § 546), reserving all applicable rights with respect to the renewal of the Franchise Agreement; and,

WHEREAS, the parties hereto are engaged, through their lawfully designated employees, representatives, and agents, in good faith discussions in the franchise renewal process, as authorized under 47 U.S.C. § 546; and,

WHEREAS, it is unlikely that the franchise renewal process, which must include approval of a new franchise by ordinance of the Metropolitan Council, can be concluded by May 5, 2010; and,

WHEREAS, Section 6(c)(2) of the Franchise Agreement provided for Comcast to make to the Metropolitan Government a Public, Education, and Government (PEG)

access support grant in the amount of One Hundred Thousand Dollars (\$100,000.00) on each of the fourteen (14) succeeding anniversary dates of the effective date of the Franchise Agreement, which annual grants were a part of the Metropolitan Government's consideration for the grant of the franchise, and which language was drafted in contemplation of, and tied to, the Franchise Agreement's fifteen year term; and,

WHEREAS, if the term of the Franchise Agreement is extended as contemplated herein, the Metropolitan Government's consideration for it, including the PEG access support grants, should likewise be extended; and,

WHEREAS, the parties hereto have agreed to extend the initial term of the franchise of Comcast for one year, through May 5, 2011, subject to the conditions stated hereinbelow.

NOW, THEREFORE, for good and valuable consideration, The Metropolitan Government and Comcast agree to the following:

1. That the term of the Franchise Agreement dated on or about May 5, 1995, by and between the Metropolitan Government and Comcast, and approved by Metropolitan Council Ordinances O95-1379, O99-1810; BL2001-591 and BL2002-1066, is hereby extended for one year, until and through May 5, 2011 (the "Extension Period").
2. To extend commensurately the obligations of the parties set forth in Section 6(c)(2) of the Franchise Agreement during the Extension Period, Comcast shall, within thirty (30) days of the effective date of the Ordinance approving this Franchise Extension Agreement, provide an additional PEG access support grant to the Metropolitan Government of One Hundred Thousand Dollars (\$100,000.00) to be used by the Metropolitan Government, in its sole discretion, for public, educational, and

governmental access equipment, facilities and support. On or before the thirtieth (30th) day of the effective date of any ordinance approving this Franchise Extension Agreement to extend the term of the Franchise Agreement, the Metropolitan Government shall cause to be delivered to Comcast a report summarizing PEG access plans for the coming year.

3. That all other terms and conditions of the Franchise Agreement, as approved by Metropolitan Council Ordinances O95-1379, O99-1810; BL2001-591 and BL2002-1066, as the same may have been amended, shall remain unchanged and in full force and effect throughout this extended term, and the parties shall continue to be bound by and comply with all such other terms and conditions.

4. That this Franchise Extension Agreement shall not be construed to prejudice, or waive, any rights which either party may have under Title VI of the Communications Act of 1934, as amended, 47 U.S.C. §§ 521 *et seq.*, the Competitive Cable and Video Services Act, Tenn. Code Ann. §§ 7-59-301 *et seq.*, or any other applicable laws of the United States and the State of Tennessee.

5. This Franchise Extension Agreement is entered into for the sole purpose of allowing the parties adequate time to complete the franchise renewal process, and shall not be construed as a franchise extension under Section 6.08.030 of the Metropolitan Code to which the application provisions and other requirements of Section 6.08.040 of the Metropolitan Code would apply.

6. This Franchise Extension Agreement will not take effect until it is approved by Ordinance of the Metropolitan Council.

IN WITNESS WHEREOF, the parties, the Metropolitan Government and Comcast, have executed this Agreement by signatures of their lawfully designated representatives, on the day, month and year first above written.

THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY

Metropolitan Mayor

ATTEST:

Metropolitan Clerk

APPROVED AS TO AVAILABILITY
OF FUNDS:



Director of Finance

APPROVED AS TO FORM AND
LEGALITY:



Assistant Metropolitan Attorney

COMCAST OF
NASHVILLE I, LLC

By: 

Name: John Gauder, III

Title: Market Vice President