

ORDINANCE NO. \_\_\_\_\_

An ordinance amending Ordinance No. O95-1379 and Second Substitute Ordinance BL2010-645 and approving an additional 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 the 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 would have expired on or about May 5, 2010; and,

WHEREAS, Second Substitute Ordinance No. BL2010-645 was approved on April 22, 2010, and amended Ordinance No. 095-1379 by extending the initial term of the cable television franchise of Comcast for a period of one year, to and including May 5, 2011; and,

WHEREAS, the one-year extension of the term of the 1995 Franchise Agreement approved by Second Substitute Ordinance No. BL 2010-645 expires on May 5, 2011; 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 continue 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, 2011; 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, 2011; and,

WHEREAS, at its meeting on February 28, 2011, the CATV Special Committee considered the Second 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 additional 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, 2012, does not appear to be unreasonable; and,

WHEREAS, Comcast has agreed to the terms set forth in the Second 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, BL2002-1066 and Second Substitute Ordinance No. BL2010-645, is hereby extended through May 5, 2012.

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,

BL2002-1066 and Second Substitute Ordinance No. BL2010-645, shall remain unchanged and in full force and effect.

Section 4. That the Metropolitan Mayor is hereby authorized to execute the Second Cable Television Franchise Extension Agreement by and between The Metropolitan Government of Nashville and Davidson County and Comcast of Nashville I, LLC attached hereto as Exhibit A (the "Second Franchise Extension Agreement").

Section 5. That this additional 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 Second 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 passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:

  
\_\_\_\_\_  
Chair, CATV Special Committee

INTRODUCED BY:

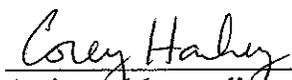
  
\_\_\_\_\_

APPROVED AS TO AVAILABILITY  
OF FUNDS:

  
\_\_\_\_\_  
Director of Finance

MEMBERS OF COUNCIL

APPROVED AS TO FORM AND  
LEGALITY:

  
\_\_\_\_\_  
Assistant Metropolitan Attorney

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

THIS SECOND CABLE FRANCHISE EXTENSION AGREEMENT is entered into this \_\_ day of \_\_\_\_\_, 2011, 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 was scheduled to expire on or about May 5, 2010; and,

WHEREAS, a Cable Television Franchise Extension Agreement By and Between the Metropolitan Government of Nashville and Davidson County and Comcast of Nashville I, LLC (the "Franchise Extension Agreement") was approved by Second Substitute Ordinance No. BL2010-645 on April 22, 2010, and entered into by the parties and amended the Franchise Agreement and Ordinance No. 095-1379 by extending the initial term of the Franchise Agreement for a period of one year, to and including May 5, 2011; and,

WHEREAS, under the terms of the Franchise Extension Agreement, the Franchise Agreement is scheduled to expire on May 5, 2011; 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, 2011; 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, the Franchise Extension Agreement approved on April 22, 2010, provided for an additional PEG access support grant in the amount of One Hundred Thousand Dollars (\$100,000.00), to extend commensurately the obligations of the parties set forth in Section 6(c)(2) of the Franchise Agreement during the term of the Franchise Extension Agreement; and,

WHEREAS, if the term of the Franchise Agreement is further 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 additional year, through May 5, 2012, 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, BL2002-1066 and Second Substitute Ordinance No. BL2010-645, is hereby extended for one additional year, until and through May 5, 2012 (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 Second 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 (30<sup>th</sup>) day of the effective date of any ordinance approving this Second 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,

BL2002-1066, and Second Substitute Ordinance No. BL2010-645, 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 Second 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 Second 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 Second 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

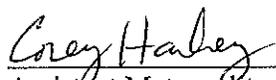
ATTEST:

\_\_\_\_\_  
Metropolitan Clerk

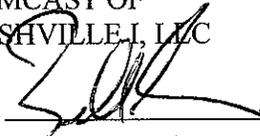
APPROVED AS TO AVAILABILITY  
OF FUNDS:

  
\_\_\_\_\_  
Director of Finance <sup>10</sup>

APPROVED AS TO FORM AND  
LEGALITY:

  
\_\_\_\_\_  
Assistant Metropolitan Attorney

COMCAST OF  
NASHVILLE, LLC

By:  \_\_\_\_\_

Name: BILL CONNORS

Title: PRESIDENT CENTRAL AREA