

Resolution No. 2018-21 Exhibit A

The below listed sections and provisions of Salem Revised Code, Chapter 43 are waived for the purpose and duration, unless otherwise noted, of the Cable Television Franchise Agreement for Comcast of Oregon I, Inc.

[Strikethrough indicates waiver]

Section 1. SRC 43.015 is waived as follows:

~~Gross annual receipts means the annual gross revenues received by the grantee or any affiliate of the grantee in whatever form accrued from the provision of all services over the cable television system within the City, excluding refundable deposits, rebates or credits, except that any sales, excise or other taxes or charges collected for direct pass through to local, state or federal government, other than the franchise fee, shall not be included in the calculations of gross receipts.~~

~~School means any accredited, nonprofit, academic educational institution, including primary and secondary schools, colleges and universities, both public and private.~~

Section 2. SRC43.065 is waived as follows:

- (b) The requirements of subsection (a) of this section shall apply to any change in control of grantee. The term "control," as used herein, is not limited to major stockholders or partnership interests, but includes actual working control in whatever manner exercised. ~~In the event that grantee is a corporation, prior authorization of the Council shall be required where ownership or control of more than ten percent of the voting stock of grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of the grantee as of the effective date of the franchise, singularly or collectively.~~
- (d) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, grantor may inquire into the qualifications of the prospective transferee or controlling party, and grantee shall assist grantor in such inquiry. In seeking grantor's consent to any change of ownership or control, grantee shall have the responsibility of ensuring that the transferee completes an application in form and substance reasonably satisfactory to grantor, which application shall include the information required under SRC 43.055. An application shall be submitted to grantor not less than 60 days prior to the date of

1 transfer. The transferee shall be required to establish that it possesses the qualifications and
2 financial and technical capability to operate and maintain the system and comply with all
3 franchise requirements for the remainder of the term of the franchise. If the legal, financial,-
4 ~~character,~~ and technical qualifications of the applicant are satisfactory, the grantor shall
5 consent to or deny the transfer of the franchise within 120 days after receipt of the transfer
6 request. The consent of the grantor to such transfer shall not be unreasonably denied or
7 delayed.

8 **Section 3.** SRC 43.070 is waived as follows only for the current negotiated renewal and not
9 for any subsequent renewal negotiations:

10 Franchise renewal shall be as prescribed by applicable law. Grantor and grantee, by mutual
11 consent, may enter into renewal negotiations at any time during the term of the franchise. ~~Upon~~
12 ~~mutual execution of a franchise renewal agreement, grantee shall reimburse grantor for special-~~
13 ~~nonrecurring out-of-pocket costs incidental to the franchise renewal award.~~ Any such
14 reimbursement shall not be charged against any franchise fee due to the grantor during the term of
15 the franchise, except as otherwise expressly required by applicable law.

16 **Section 4.** SRC 43.080 is waived as follows:

17 (a) *Annual franchise payment.* A grantee of a franchise hereunder shall pay to the grantor an
18 annual fee in an amount as designated in the franchise agreement. Such payment shall be in
19 addition to any other prescribed fees, including, but not limited to, business license and
20 permit fees, and commence as of the effective date of the franchise. The grantor, upon
21 request, shall be furnished a statement, either audited and certified by an independent
22 certified public accountant or certified by a financial officer of the grantee, reflecting the total
23 amounts of gross receipts and all payments, deductions and computations for the period
24 covered by the payment. ~~Grantor shall have the right to conduct an independent audit of~~
25 ~~grantee's records, and if such audit indicates a franchise fee underpayment of two percent or~~
26 ~~more, the grantee shall assume all reasonable costs of such an audit.~~

27 **Section 5.** SRC 43.085(b) is waived as follows:

28 ~~(b) *Procedure prior to revocation or termination.*~~

29 ~~(1) The grantor may make written demand that the grantee do so comply with any such~~
30 ~~material requirement, limitation, term, condition, rule or regulation or correct any action~~

1 ~~deemed cause for revocation. If the failure, refusal or neglect of the grantee continues for~~
2 ~~a period of 30 days following such written demand, the grantor may place the issue of~~
3 ~~revocation or termination of the franchise upon a regular Council meeting agenda. The~~
4 ~~grantor shall cause notice to be served upon such grantee specifying the grounds~~
5 ~~therefor, at least ten days prior to the date of such meeting, a written notice of this intent~~
6 ~~to request such revocation or termination, and the time and place of the meeting, notice~~
7 ~~of which shall be published at least once, ten days before such meeting in a newspaper of~~
8 ~~general circulation within the franchise area.~~

9 ~~(2) The grantor shall hear any person interested therein on the grounds set forth in the notice~~
10 ~~described in subsection (b)(1) of this section and the grantee shall be afforded fair~~
11 ~~opportunity for full participation, including the right to introduce evidence, to require the~~
12 ~~production of evidence, to be represented by counsel and to question witnesses. Then,~~
13 ~~the grantor shall determine, based upon the preponderance of the evidence, whether the~~
14 ~~grantee has committed a material breach of this chapter or the franchise agreement, and,~~
15 ~~if so, whether such breach was willful.~~

16 ~~(3) If the grantor determines that the grantee has willfully committed a material breach or~~
17 ~~otherwise fails to remedy a material breach, then the grantor may, by resolution, declare~~
18 ~~that the franchise of such grantee shall be revoked or terminated and security fund and~~
19 ~~bonds forfeited, or the grantor may, at its option and if the material breach is capable of~~
20 ~~being cured by the grantee, direct the grantee to take appropriate remedial action within~~
21 ~~such time and manner and upon such terms and conditions as the grantor shall determine~~
22 ~~are reasonable under the circumstances.~~

23 ~~(4) Any decision to revoke or terminate shall be made by a vote of a majority of the full~~
24 ~~Council, shall be in writing and shall be based upon findings of fact. Grantee shall have~~
25 ~~the right to have such determination of revocation or termination reviewed in a court of~~
26 ~~appropriate jurisdiction.~~

27 **Section 6.** SRC43.100 is waived as follows only for the current negotiated renewal and not
28 for any subsequent renewal negotiations:

29 (a) ~~For either a new franchise award or a franchise renewal,~~ costs to be borne by grantee shall
30 include, but shall not be limited to, all costs of publications of notices prior to any public

meeting provided for pursuant to a franchise, development and publication of relevant ordinances and franchise agreement, fees, and any reasonable cost not covered by the application fees, incurred by the grantor in its study, preparation of proposal solicitation documents and evaluation of applications.

Section 7. SRC 43.140 is waived as follows:

~~Sec. 43.140. Annual review of quality of service.~~

~~At grantor's sole option, within 90 days of the first anniversary of the effective date of each franchise, and each year thereafter from time to time throughout the term of the franchise, the grantor and grantee shall meet publicly to review the performance and quality of service of the cable communications system. The reports required in SRC 43.270 to 43.295 regarding subscriber complaints, the records of performance tests and the opinion survey report shall be utilized as the basis for review. In addition, any subscriber may submit comments during the review meetings, either orally or in writing, and these shall be considered.~~

~~(a) Within 30 days after the conclusion of the quality of service review meetings, grantor shall issue a report with respect to the adequacy of system performance and quality of service. If inadequacies are found, grantor may direct grantee to correct the inadequacies within a reasonable period of time.~~

~~(b) Failure of grantee, after due notice, to correct the inadequacies may be considered a material breach of the franchise, and grantor may, at its sole discretion, exercise any remedy within the scope of this chapter considered appropriate.~~

Section 8. SRC 43.145 is waived as follows:

To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable system, and to achieve a continuing, advanced modern system, the following system and services review procedures are hereby established:

~~(a) At grantor's sole option, the grantor and grantee may hold a system and services review session on or about the third anniversary date of the franchise agreement. Subsequent system review sessions may be scheduled by the grantor approximately each three years thereafter.~~

1 ~~(b) Topics for discussion and review at the system and services review sessions shall~~
2 ~~include, but shall not be limited to, services provided, application of new technologies,~~
3 ~~system performance, programming, subscriber complaints, user complaints, rights of~~
4 ~~privacy, amendments to the franchise, undergrounding processes, developments in the~~
5 ~~law, and regulatory constraints, and technical and economic feasibility of system~~
6 ~~expansion or upgrading.~~

7 ~~(c) Either the grantor or the grantee may select additional topics for discussion at any review~~
8 ~~session.~~

9 **Section 9.** SRC 43.155 is waived as follows:

10 (a) In addition to the construction bond set forth above, the grantee may be required to, at least
11 30 days prior to the commencement of operation, file with the grantor a performance bond in
12 the amount specified in the franchise agreement in favor of the grantor ~~and any other person~~
13 who may suffer damages as a result of any occurrence in the operation or termination of the
14 cable communications system operated under the franchise agreement, and including the
15 payments required to be made to the grantor hereunder.

16 **Section 10.** SRC 43.165 is waived as follows:

17 (a) The grantee shall by acceptance of any franchise granted indemnify, defend and hold
18 harmless the grantor, its officers, boards, commissions, agents, and employees from any and
19 all claims, suits, judgments for damages or other relief, costs and attorneys' fees in any way
20 arising out of or through or alleged to arise out of or through:

21 ~~(1) The act of the grantor in granting the franchise;~~

22 **Section 11.** SRC 43.205 is waived as follows:

23 ~~Sec. 43.205. Provision of service.~~

24 ~~After service has been established by activating trunk cables for any area meeting the density~~
25 ~~requirements in the franchise agreement, the grantee shall provide service to any requesting~~
26 ~~subscriber within the area within 30 days from the date of request, provided such subscriber~~
27 ~~provides appropriate identification and pays any outstanding balance due on previous accounts~~
28 ~~and any advance charges required for new service.~~

29 **Section 12.** SRC 43.300 is waived as follows:

30 ~~Sec. 43.300. Requests for cable service and repairs.~~

- 1 ~~(a) The grantee shall maintain an office in the local area which shall be open during all usual~~
2 ~~business hours, have a publicly listed toll-free telephone, and be so operated to receive~~
3 ~~requests for repairs on a 24 hour a day basis.~~
- 4 ~~(b) The grantee shall render efficient service, make repairs promptly, and interrupt service only~~
5 ~~for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall~~
6 ~~be preceded by notice and shall occur during period of minimum use of the system. A written~~
7 ~~log, or an equivalent stored in computer memory and capable of access and reproduction,~~
8 ~~shall be maintained for all service interruptions and requests for cable repair service as~~
9 ~~required by SRC 43.390(b).~~
- 10 ~~(c) The grantee shall maintain a repair force of technicians normally capable of responding to~~
11 ~~subscriber requests for repair service within 24 hours or subject to subscriber availability for~~
12 ~~access to premises as follows:~~
- 13 ~~(1) *System outage.* Within two hours of receiving subscriber calls which by number identify~~
14 ~~a system outage of sound or picture of one or more channels, affecting all the subscribers~~
15 ~~of the system or a considerable number thereof.~~
- 16 ~~(2) *Isolated outage.* Within 24 hours of receiving a request for service identifying an~~
17 ~~isolated outage of sound or picture for one or more channels.~~
- 18 ~~(3) *Inferior reception quality.* Within 48 hours of receiving a request for service identifying~~
19 ~~a problem concerning picture or sound quality.~~
- 20 ~~(d) Grantee shall be deemed to have responded to a request for service under the provisions of~~
21 ~~this section when a technician arrives at the service location, and in the case of subsection~~
22 ~~(c)(1) through (3) of this section, leaves written notification of such arrival.~~
- 23 ~~(e) No charge shall be made to the subscriber for this service unless the service request can be~~
24 ~~demonstrated to be of non-cable system origin.~~

25 **Section 13.** SRC 43.350 is waived as follows:

- 26 (a) If the grantee fails to perform any obligation under either this chapter or the franchise, or
27 fails to do so in a timely manner, the grantor may, at its option, and in its sole discretion:
- 28 (1) Cure the violation and recover the actual cost thereof from the security fund established
29 herein if such violation is not cured within 30 days after written notice to the grantee of
30 grantor's intention to cure and draw upon the security fund; and assess against the

1 grantee monetary damages up to the limits established in the franchise agreement for
2 material franchise violations, said assessment to be levied against the security fund,
3 hereinabove provided, and collected by grantor immediately upon said assessment. The
4 amount of such assessment shall be deemed, without proof, to represent liquidation of
5 damages actually sustained by grantor by reason of grantee's failure to perform. Such
6 assessment shall not constitute a waiver by the grantor of any other right or remedy it
7 may have under the franchise or under applicable law, ~~including, without limitation, its~~
8 ~~right to recover from grantee such additional damages, losses, costs and expenses,~~
9 ~~including actual attorney fees, as may have been suffered or incurred by grantor by~~
10 ~~reason of or arising out of such breach of the franchise.~~ This provision for assessment of
11 damages is intended by the parties to be separate and apart from grantor's right to enforce
12 the provisions of the construction and performance bonds provided for in SRC 43.150 to
13 43.170, and is intended to provide compensation to grantor for actual damages.

14 **Section 14.** SRC 43.360 is waived as follows:

15 Prior to imposing any remedy or other sanction against grantee specified in this chapter,
16 grantor shall give grantee notice and opportunity to be heard on the matter, in accordance with the
17 procedures provided for in SRC 43.085 if the remedy or sanction sought is revocation or
18 termination of the franchise, or in accordance with the following procedures if the remedy or
19 sanction sought is other than revocation or termination of the franchise:

20 ~~(e) In the event the Hearings Officer finds that the grantee has corrected the violation or has~~
21 ~~diligently commenced correction of such violation after notice thereof from grantor and~~
22 ~~is diligently proceeding to fully remedy such violation, or that no material violation has~~
23 ~~occurred, the proceedings shall terminate and no penalty or other sanction shall be~~
24 ~~imposed.~~

25 **Section 15.** SRC 43.425 is waived as follows:

26 ~~Sec. 43.425. Separability non-material provisions.~~

27 ~~If any provision of this chapter or any related agreements is held by any court or by any~~
28 ~~federal, state, or local agency of competent jurisdiction to be invalid as conflicting with federal,~~
29 ~~state, or local law, rule or regulation now or hereafter in effect, or is held by such court or agency~~
30 ~~to be modified in any way in order to conform to the requirements of any such law, rule or~~

1 regulation and if said provision is considered non-material by the grantor, said provision shall be
2 considered a separate, distinct and independent part of this chapter, and such holding shall not
3 affect the validity and enforceability of all other provisions hereof. In the event that such law, rule
4 or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the
5 provision hereof or thereof which has been held invalid or modified is no longer in conflict with
6 the law, rules and regulations then in effect, said provision shall thereupon return to full force and
7 effect, and shall thereafter be binding on the parties hereto, provided that the grantor shall give the
8 grantee 30 days' written notice of such change before requiring compliance with said provision.

9 **Section 16.** SRC 43.430 is waived as follows:

10 ~~Sec. 43.430. Separability material provisions.~~

11 If any material section of this chapter, as determined by the grantor, is held to be invalid or
12 preempted by federal, state or county regulations or laws, the grantor shall negotiate with grantee
13 appropriate modifications to the franchise to provide reasonable relief to the grantor from such
14 invalidity of preemption, including the payment of damages. If the parties are unable to reach
15 agreement on such modifications, then the dispute shall be submitted to a mutually agreeable
16 arbitrator, in accordance with state law, who shall determine what modifications and/or liquidated
17 damages are appropriate. The arbitrator's decision shall be binding on the parties, provided that no
18 decision of the arbitrator shall require the grantor or grantee to be in violation of any federal or
19 state law or regulation. Notwithstanding the provisions of SRC 43.425 and 43.430, if the grantee
20 should cause the invalidation of any provision of this chapter or franchise agreement by action in
21 any court of competent jurisdiction, the grantor may, at its own discretion, consider the entire
22 franchise invalid and unenforceable.

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