

W. 5. D. 2.

Memorandum Date: December 22, 2008  
Order Date: January 14, 2009

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**TO:** Board of County Commissioners  
**DEPARTMENT:** Public Works  
**PRESENTED BY:** Frank Simas, Right of Way Manager  
**AGENDA ITEM TITLE:** In the Matter of Entering into a Bulk Services Agreement with Comcast of Oregon II, Inc. for Cable Television Services for the Armitage Park Recreational Vehicle Campground

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**I. MOTION**

Move approval of the Order.

**II. AGENDA ITEM SUMMARY**

Comcast of Oregon II has requested that the County enter into Bulk Services Agreement in connection with the provision of cable television services to the Armitage Park Recreational Vehicle Campground.

**III. BACKGROUND/IMPLICATIONS OF ACTION**

**A. Board Action and Other History**

By Order 08-3-12-6 the Board ratified the grant application and accepted a grant award from the Oregon Parks and Recreation Commission in the amount of \$375,000 to be used for the construction of a recreational vehicle campground at Armitage Park. The construction of the campground facilities included the installation of infrastructure to provide cable television service to each of the 39 camping sites. The construction of the campground and the installation of the cable facilities have been completed and Comcast requires execution of the agreement prior to activating the service.

**B. Policy Issues**

Cable television service is a necessity in order to achieve the desired occupancy and revenue levels needed to support campground operations and produce additional revenue to support park operations within the County. The Board has identified construction of this campground as being consistent with the Lane County Strategic Plan in developing revenue generating opportunities.

**C. Board Goals**

This action is also consistent with the *Strategic Plan* goal of protecting the public's assets by maintaining, replacing or upgrading the County's investments in systems and capital infrastructure, and to the County goal of contributing to "appropriate community development in the area of transportation and telecommunications infrastructure, housing, growth management and land development."

**D. Financial and/or Resource Considerations**

The proposed agreement is similar to a hotel/motel service agreement and allows for service to be provided to each of 39 spaces in the park. The rate specified in the agreement is \$16.62 per space for a total of \$648.18 per month. The rate may be increased by Comcast upon 30 days written notice. The initial term is for three (3) years and the agreement provides the option for the County to renew the agreement for two (2) successive additional 2-year terms. The costs of the service will be paid for out of campground revenues.

**IV. Analysis**

Cable television service is an expected amenity for intended users of the camping sites. The infrastructure was installed at no cost to Lane County and the monthly rate of \$16.62 per space will allow rental rates for the spaces to be in line with comparable facilities.

**V. Alternatives/Options**

1. Approve the Order authorizing the execution of the Bulk Services Agreement by the County Administrative Officer.
2. Deny the Order and direct staff otherwise.

**VI. TIMING/IMPLEMENTATION**

If the Board approves the Order, Public Works staff will send the Agreement to Comcast for execution and will process the signed Agreement for signature by the County Administrator.

**VII. RECOMMENDATION**

Option 1.

**VIII. FOLLOW-UP**

Public Works staff will return to the Board for authorization to renew the agreement for any successive renewal terms.

**IX. ATTACHMENTS**

Attachment 1 – Bulk Services Agreement

# ATTACHMENT 1

## BULK SERVICES AGREEMENT

THIS BULK SERVICES AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by and between Comcast of Oregon II, Inc, (the "Company"), whose address is 2897 Chad Drive, Eugene, OR 97408 and Lane County, a political subdivision of the State of Oregon (the "Owner") who owns or has control over certain real estate and improvements thereon located at Armitage Park RV Campground, 90064 Coburg Road, Eugene, OR 97408 (the "Premises"), consisting of 39 spaces.

WHEREAS, The Company has been granted a franchise by an authorized governmental agency (the "Franchise Authority") to construct and operate a cable communications system in Eugene, OR (the "City").

WHEREAS, all equipment necessary for the delivery of multi-channel video service to the Premises (the "System") has been installed in accordance with Federal Communications Commission ("FCC") regulations, industry standards and local codes.

WHEREAS, Owner desires to provide certain services to the Premises on a bulk billing basis (the "Services") and the Company is willing to provide the Services to the Premises in accordance with the terms and conditions below.

1. Delivery of Services; Fees and Charges.

a) Company agrees to deliver Bulk Service to 1 outlet(s) in each of 39 spaces. As of the date of this Agreement, Bulk Service consists of the channel lineup set forth on Exhibit A attached hereto which is subject to change from time to time. The Owner shall pay the Company a monthly service fee equal to \$16.62 per space for total monthly billing of \$648.18 for Bulk Service, plus all applicable taxes and fees.

b) N/A

c) The monthly service fees identified above shall be due and payable upon receipt of an invoice. The Company may terminate this Agreement upon written notice to Owner in the event payment of the monthly service fees remain unpaid for sixty (60) days.

d) The monthly service fees may be increased by the Company upon thirty (30) days written notice.

2. Access. The Owner will allow Company personnel to enter all common areas of the Premises for the purposes of installing, auditing and disconnecting service. Owner shall cooperate with the Company to prevent the unauthorized reception of the Services.

3. Programming, Licenses.

a) Owner acknowledges and agrees that the Company has the right at any time to preempt, without prior notice, specific programs and to determine what substitute programming, if

## ATTACHMENT 1

any, shall be made available. Company may in its discretion make additions, deletions or modifications to its channel line-up without liability to Owner or anyone claiming through Owner. Company shall not be liable for failure to deliver any programming which is caused by the failure of the programmer to deliver or make such programming available to Company or any other reason beyond the reasonable control of Company.

b) The Bulk Service shall only be provided to the spaces, and may not be displayed (either in whole or in part) in bars, lounges, hallways, lobbies or other common areas of the Premises. Owner may not charge a cover charge or admission fee to the Premises for any Services. Owner shall not permit any advertisement, program delay, interruption, editing, insertion, deletion or alteration in the Services. Owner shall not authorize and shall take reasonable steps to prevent copying or videotaping the Services. The parties agree that "reasonable steps" mean notifying park patrons in writing or by signage of the prohibition on copying or videotaping of Services. Company shall have the right to review and approve any advertising or promotional materials concerning the Services.

c) The Owner acknowledges that it may be required to obtain additional licenses or authorizations in order to publicly perform and/or display certain copyrighted material at the Premises. The Owner acknowledges and agrees that it (and not the Company) shall be solely responsible for obtaining all such licenses or authorizations and the payment of any charges or fees in connection therewith.

4. Ownership, Maintenance of the System. The System is and will remain the personal property of the Owner. The Owner shall maintain the System in accordance with applicable FCC regulations. The Company shall have no obligation to maintain the System.

5. Limitation of Liability. THE COMPANY SHALL NOT BE LIABLE TO OWNER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO FRUSTRATION OF ECONOMIC OR BUSINESS EXPECTATIONS, LOSS OF PROFITS, LOSS OF CAPITAL, COST OF SUBSTITUTE PRODUCT(S), FACILITIES OR SERVICES, OR DOWN TIME COST, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Customer Service. The Company shall provide customer service in accordance with its franchise agreement with the Franchise Authority. Company representatives will be available to respond to customer telephone inquiries during normal business hours. The Company will begin working on service interruptions promptly and in no event later than the next business day after notification of the service problem, excluding conditions beyond the control of the Company.

7. Interference. Should any device or any facility belonging to Owner not comply with the technical specifications established by the FCC, including, but not limited to, signal leakage, which interferes with the Company's delivery of the Services, the Company reserves the right to discontinue service to the Premises until such non-conformance is cured by the Owner.

8. Term. This Agreement, when duly executed by both parties, shall constitute a binding agreement between the Owner and the Company and their respective successors and assigns for an

## ATTACHMENT 1

initial term of three (3) years, with the option for Owner to renew for two successive periods of two (2) years upon notice to Company at least 30 days prior to the end of the then current term.

9. Insurance. The Company agrees to maintain public liability insurance and property damage liability insurance as required by the Company's franchise agreement with the Franchise Authority. Upon request, the Company will provide the Owner with a certificate evidencing such insurance.

10. Indemnification. The Company shall indemnify, defend and hold the Owner harmless from any and all claims, damage or expense arising out of the actions or omissions of the Company, its agents and employees with respect to the Services provided to the Premises pursuant to this Agreement. To the extent permitted by Article XI, Section 10 of the Oregon Constitution and by the Oregon Tort Claims Act, Owner shall indemnify, defend and hold the Company harmless from any and all claims, damage or expense arising out of the actions or omissions of the Owner, its agents and employees, including, but not limited to, claims of copyright infringement resulting from the unauthorized exhibition of premium or pay-per-view programming.

11. Termination.

a) Default. In the event either party defaults in the performance of any of the material terms of this Agreement, the non-defaulting party shall give the defaulting party written notice specifying the nature of such default and identifying the specific provision in this Agreement which gives rise to the default. The defaulting party shall have sixty (60) days to either (i) notify the non-defaulting party that no default occurred, (ii) cure the default, or (iii) if such default is incapable of cure within such sixty (60) day period, commence curing the default within such sixty (60) day period and diligently pursue such cure to completion. In the event the defaulting party fails to do so within such sixty (60) day period, the non-defaulting party may terminate this Agreement upon thirty (30) days written notice without further liability of either party.

b) Permanent Loss of Authority. This Agreement shall terminate automatically without any further liability on the part of the Company in the event the Company lacks authority to continue to provide the Services at the Premises due to loss of governmental authorization. However, this clause shall not apply to periods of transition or dispute such as franchises subject to renewal, transfer, or reapplication, or where termination is the subject of dispute.

12. Dispute Resolution. All disputes under this Agreement shall be submitted to, and settled by arbitration in accordance with the rules of the American Arbitration Association. The parties shall appoint a mutually agreeable arbitrator reasonably familiar with multi-channel video program distribution systems and services. In the event the parties are unable to agree to a single arbitrator, the dispute shall be submitted to a panel of three (3) arbitrators, one of which shall be reasonably familiar with multi-channel video program distribution systems and services. Each party shall appoint an arbitrator and the two arbitrators so appointed shall then select a third arbitrator. The arbitrators shall apply applicable federal laws and regulations and the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles. The decision of the arbitrators shall be binding and conclusive on all parties involved, and judgment upon their decision may be entered in a court of competent jurisdiction. The prevailing party in

## ATTACHMENT 1

any such arbitration shall be entitled to collect from the non-prevailing party, all costs of the arbitration, including reasonable attorneys' fees.

### 13. Miscellaneous.

a) Force Majeure. The Company shall not be liable for failure to construct or to continue to operate the System during the term hereof due to acts of God, the failure of equipment or facilities not belonging to Company (including, but not limited to, utility facilities or service), denial of access to facilities or rights-of-way essential to serving the Premises, government order or regulation or any other circumstances beyond the reasonable control of the Company.

b) Assignability; Binding Effect. This Agreement may be assigned by either party. The assignee shall agree in writing to be bound by all the terms and conditions hereof. In the event the Owner sells, assigns, transfers or otherwise conveys the Premises to a third party, the Owner shall give the Company prior written notice of such change of ownership or control. Owner shall cause any new owner or controlling party to expressly assume this Agreement and agree to be bound by its terms. This Agreement shall be binding upon the parties and their respective successors and assigns.

c) Applicable Law. This Agreement shall be governed and construed in accordance with applicable federal laws and regulations and by the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles.

d) Invalidity. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired.

e) Recording. The Company may record this Agreement (or a memorandum summarizing the material terms) in the public records of the county in which the Premises are located.

f) Notices. All notices, demands, requests or other communications given under this Agreement shall be in writing and be given by personal delivery, certified mail, return receipt requested, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

#### If to Armitage Park RV Campground:

Lane County Parks  
3050 N Delta Hwy  
Eugene, OR 97408  
Attn.: Todd Winter, Division Manager

ATTACHMENT 1

If to the Company:

Comcast Cable  
2897 Chad Drive  
Eugene, OR 97408  
Attn.: MDU Dept

With a copy to:

Comcast Cable Communications, LLC  
One Comcast Center  
Philadelphia, PA 19103  
Attn.: General Counsel

g) Entire Agreement; Amendments. This Agreement, including Exhibit A attached hereto, constitutes the entire agreement between the parties and supersedes all prior agreements, promises and understandings, whether oral or written. This Agreement shall not be modified, amended, supplemented or revised, except by a written document signed by both parties.

h) Authority. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

IN WITNESS WHEREOF, the Parties have caused this Bulk Services Agreement to be executed by their duly authorized representatives as of the date first written above.

Lane County, a political subdivision of  
the State of Oregon

By: \_\_\_\_\_  
Jeff Spartz, County Administrator

Comcast of Oregon II, Inc

By: \_\_\_\_\_  
Name: Lars Lofas  
Title: VP of Marketing



ATTACHMENT 1

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009 before me personally appeared the above named Jeff Spartz, who acknowledged that he is the County Administrator for Lane County, Oregon, and that he has executed the within instrument with authorization on behalf of the Board of County Commissioners of Lane County.

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

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_, of Comcast of Oregon II,Inc, on behalf of the corporation. He/She is personally known to me and did not take an oath.

Witness my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
(Print Name)

My Commission expires: \_\_\_\_\_

# ATTACHMENT 1

## EXHIBIT A Bulk Service Channel Lineup

1 or 99	Leased Access	37	Comcast SportsNet
2	TV Guide Channel	38	The Learning Channel
3	KMTR (NBC)	39	ABC Family
4	KEVU (MY)	40	Nickelodeon
5	KLSR (FOX)	41	Disney Channel
		42	Cartoon Network
7	The Discovery Channel	43	Animal Planet
8	KVAL (CBS)	44	CNN
9	KEZI (ABC)	45	Headline News
10	KEPB (PBS)	46	CNBC
11	CW	47	The Weather Channel
12	KTVC (IND)	48	Fox News
13	N/A	49	NW Cable News
14	N/A	50	History
15	N/A	51	Court TV
16	QVC	52	A & E
17	HSN	53	FX
		54	TNT
19	Shop NBC	55	TBS
20		56	BET
21	Access:	57	SPIKE TV
22	ION	58	USA Network
23	Access:	59	Sci-Fi Channel
24	C-SPAN	60	Comedy Central
25	C-SPAN2	61	CMT
26	Telemundo	62	VH1
		63	MTV
		64	TV Land
29	Access: Public	65	Travel Channel
30	PIN	66	Food Network
31	Univision	67	HGTV
32	Versus		
33	Golf Channel	69	Lifetime
34	Fox Sports Northwest	70	E!
35	ESPN	71	American Movie Classics

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF LANE COUNTY, OREGON

ORDER NO.

( IN THE MATTER OF ENTERING INTO A  
( BULK SERVICES AGREEMENT WITH  
( COMCAST OF OREGON II, INC., FOR  
( CABLE TELEVISION SERVICES FOR THE  
( ARMITAGE PARK RECREATIONAL  
( VEHICLE CAMPGROUND

**WHEREAS**, by Order 08-3-12-6 the Board ratified the grant application and accepted a grant award from the Oregon Parks and Recreation Commission in the amount of \$375,000 to be used for the construction of a recreational vehicle campground at Armitage Park; and

**WHEREAS**, the plans for the park included the installation of cable television connections to serve each of the proposed 39 camping sites; and

**WHEREAS**, the construction of the campsites and installation of the cable television infrastructure has now been completed, and Comcast of Oregon II, Inc. requires execution of a bulk services agreement prior to activation of the cable television service; and

**WHEREAS**, cable television service is an expected amenity for the potential users of the recreational vehicle sites, and the costs of the proposed service will be paid out of campground revenues; and

**WHEREAS**, the execution of the Bulk Services Agreement will allow Comcast entry onto the park property for the purpose of repairing and servicing the cable television equipment during the term of the agreement.

**NOW THEREFORE,**

**IT IS ORDERED** that the County Administrative Officer is authorized to execute the Bulk Services Agreement as described on Attachment 1, signifying authorization on behalf of Lane County.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

APPROVED AS TO FORM

Date: 11/5/09 Lane County

  
\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL

\_\_\_\_\_  
Chair,  
Board of County Commissioners