

## **ORDINANCE NO. -**

**AN ORDINANCE** relating to the telecommunications system franchise granted to Noel Communications, Inc. as granted under City of Yakima Ordinance No. 2015-045 and approving a transaction resulting in certain assets of Noel Communications, Inc. being sold to Wholesail Networks LLC.

**WHEREAS**, the City of Yakima (City) granted to Noel Communications, Inc., a Washington corporation (Noel), a telecommunications system franchise (the Franchise) as set forth in Ordinance No. 2015-045, dated December 8, 2015, to use rights-of-way located in the City of Yakima for the purpose of providing telecommunications services; and

**WHEREAS**, Noel plans to enter into an agreement to sell certain of its assets and related business operations, including the Franchise (the Business), to Wholesail Networks LLC, a Washington limited liability company (Wholesail); and

**WHEREAS**, in connection with the consummation of the sale of the Business to Wholesail, Noel desires to assign its rights and delegate its obligations under the Franchise to Wholesail (the Assignment); and

**WHEREAS**, Noel submitted a letter to the City on or about August 13, 2019, requesting the City's consent to the Assignment; and

**WHEREAS**, the City has conducted a review of the legal, technical and financial qualifications of Wholesail to hold the Franchise and own and operate the telecommunications system authorized by the Franchise; and

**WHEREAS**, based on the foregoing, the City has concluded Wholesail has established it meets the legal, technical and financial criteria to hold the Franchise and to operate the telecommunications system authorized by the Franchise; now, therefore,

### **BE IT ORDAINED BY THE CITY OF YAKIMA:**

**SECTION 1.** The City hereby consents to and approves the Assignment, to the extent such consent is required by the terms and conditions of the Franchise and applicable law, and the assumption by Wholesail of all obligations and liabilities of Noel under the Franchise, known and unknown, subject to applicable law, effective immediately upon the effective date of this ordinance.

**SECTION 2.** The City confirms that the Franchise is valid and outstanding and in full force and effect and that there are no defaults under the Franchise. Subject to compliance with the terms of this ordinance, all action necessary to approve the Assignment has been duly and validly taken.

**SECTION 3.** Providing that Wholesail fully complies with any and all notification and consent provisions as described in the Franchise, Wholesail may: (a) assign or transfer its rights, responsibilities, obligations and liabilities, known or unknown, subject to applicable law, in the Franchise to an entity directly or indirectly controlling, controlled by or under common control with Wholesail; (b) restructure debt or change the ownership interests among existing

equity participants in Comcast and/or its affiliates; (c) pledge or grant a security interest to any lender(s) of Wholesail's assets, including, but not limited to, the Franchise, or of interest in Wholesail, for purposes of securing any indebtedness; (d) sell equity interests in Wholesail or any of Wholesail's affiliates.

**SECTION 4.** The Franchise and this ordinance were and are made, passed and adopted in accordance with all applicable notice and procedure requirements under all laws applicable to the City, and with all applicable notice and procedure requirements, and do not conflict with the laws, ordinances, resolutions and other regulations of the City, as presently in effect or as the same were in effect at the time the particular action was taken.

**SECTION 5.** The Franchise, as granted by City of Yakima Ordinance No. 2015-045, shall be amended upon the effective date of this ordinance, as set forth in this ordinance.

**SECTION 6.** Upon the date this ordinance becomes effective, the City releases Noel from all obligations and liabilities (including any guarantee or surety) under the Franchise.

**SECTION 7.** Upon the date this ordinance becomes effective, this ordinance shall have the force of a continuing agreement with Wholesail and shall not be amended, changed or otherwise altered without the consent of the City and Wholesail.

**SECTION 8.** This ordinance shall be in full force and effect thirty (30) days after its passage, approval and publication as provided by law and by the City Charter.

**PASSED BY THE CITY COUNCIL,** signed and approved this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Kathy Coffey, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Publication Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_