



**To:** City of Tacoma, Washington  
**From:** Brian T. Grogan  
**Date:** May 11, 2023  
**Re:** Proposed Transfer of Control of the Cable Television System currently held by Rainier Connect North, LLC

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## 1. Background

On January 7, 2020, the City of Tacoma, Washington ("City") passed Ordinance No. 28650 granting a Cable Franchise Ordinance ("Franchise") to Rainier Connect North, LLC, a Washington limited liability company ("Rainier").

Section 2.8 of the Franchise and Section 16A.03.060 of the Tacoma Municipal Code ("TMC") require the City's advance written consent to a transfer under the Franchise. As described below, the City has received a request from Rainier to transfer control of the Franchise. This memorandum will outline the relevant laws and regulations applicable to this proposed transfer, the legal, technical, and financial qualifications of the proposed transferee, and recommendations for consideration by the City.

## 2. Description of the Transaction

On December 6, 2022, an Agreement and Plan of Merger (the "Merger Agreement") was entered into by and among Mashell, Inc. ("Transferor"), Alphaboost Purchaser, LLC ("Transferee"), Alphaboost Merger Sub, LLC ("Merger Sub") and Brian Haynes, Shareholder Representative.

Pursuant to the Merger Agreement, Merger Sub will merge with and into Transferor with Transferor continuing as the surviving entity. As a result of the proposed transfer, Rainier will be an indirect, wholly-owned subsidiary of Transferor, and Transferor will be a direct, wholly-owned subsidiary of Transferee.

On or about January 20, 2023, the City received from Transferor and Transferee FCC Form 394 [*Application for Franchise Authority Consent to Change of Control or Transfer of Control of Cable Television Franchise*] (the "Application"), seeking the City's consent to the proposed transfer of controlling interest. On February 7, 2023, the City received new attachments to the Application, replacing attachments A, B and C originally filed with the City.

On February 13, 2023, the City sent a request to Transferor seeking supplemental information for the Application. On February 23, 2023, the City received a response from the Transferor to the City's February 13<sup>th</sup> request. On February 28, 2023, the City sent a request for supplemental financial information to Transferor. On March 10, 2023, the City received a response from the Transferor and the Transferee to the City's February 28<sup>th</sup> request.

The Application was therefore complete on March 10, 2023. The City must process the Application in accordance with applicable federal laws and regulations and must issue a written determination approving or denying the proposed transfer of a controlling interest within 120 days of the date a complete Application was received by the City. The 120 day deadline for City action is July 8, 2023. Failure to take action on or before July 8, 2023 will serve as an approval of the proposed transfer of control.

### **3. Franchise and City Code Requirements**

Section 2.8 of the Franchise and TMC Section 16A.03.060 require the City's advance written consent to a transfer under the Franchise. The transaction contemplated by the Merger Agreement constitutes a "transfer or assignment" of the Franchise under TMC Section 16A.03.060.

For purposes of this Report, the transaction contemplated by the Merger Agreement shall hereinafter be referred to as a "Transfer of Controlling Interest." The recommendation contained herein relates to the Transfer of Controlling Interest which includes the City's approval of the proposed transfer of the Franchise as set forth in TMC Section 16A.03.060.

#### **Section 2.8 Transfers of the Franchise**

*A. Every transfer shall be subject to the prior written approval of the City except as provided herein. A transfer means any transaction in which:*

*1. All or a portion of the Cable System is sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the Public Rights of Way);*

*2. There is any change, acquisition, or direct or indirect transfer of control of the Franchisee of twenty percent (20%) or greater;*

*3. The rights and/or obligations held by the Franchisee under this Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or*

*4. The transfer of stock in a corporation so as to create a new controlling interest constitutes a transfer. The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.*

*B. A transfer without the prior written approval of the City is a material violation of this Franchise and shall make the Franchise subject to termination by the City, as provided herein and in Subtitle 16A, Section 16A.01.110.*

*C. If Franchisee submits an application for approval of any transfer in accordance with federal regulations (47 C.F.R. § 76.502), the City shall process said application in accordance with those regulations. Applications for approval of any transfer shall also be filed, and the City shall process such applications, in accordance with procedures set out in Subtitle 16A, Section 16A.03.060, so long as they are not in conflict with Applicable Law.*

*D. Franchisee shall, within sixty (60) Days of the closing date of any transfer, file with the City Clerk a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment or*

*transfer, certified and sworn to as correct by Franchisee. Every such transfer, whether voluntary or involuntary, may be deemed void and of no effect by the City unless Franchisee files the required copy within the sixty (60) Day period.*

*E. In addition to the exceptions noted in Subtitle 16A, Section 16A.03.060.F, the requirements of this section shall not be deemed to prohibit the use of Franchisee's property as collateral for security in financing the construction or acquisition of all or part of the Cable System franchised hereunder. However, no such arrangement may be made if it would in any respect under any condition prevent the Franchisee or any successor from complying with the Franchise and Applicable Law, nor may any such arrangement permit a third party to succeed to the interest of the Franchisee, or to own or control the Cable System, without the prior consent of the City. No consent shall be required for intra-corporate reorganizations between or among entities or affiliates wholly owned and wholly controlled by Franchisee's parent company to the extent such transaction does not involve a change in the management or control of the Franchisee. However, in such case Grantee will notify the City within thirty (30) days after receiving notice of such a transaction. Any mortgage, pledge or lease shall be subject to and subordinate to the rights of the City under this Franchise, and other Applicable Law. The City acknowledges that Franchisee is a closely held, family owned business and therefore City agrees that internal stock pledges between family members or between trusts held by such family members shall not trigger the transfer obligations set forth in this Section 2.8.*

*F. Franchisee shall promptly notify the City of any proposed change in, transfer of, or acquisition by any other Person of an ownership interest in Franchisee that results in a change in control of Franchisee within the meaning of this Section 2.8.A. However, if the proposed change in control merely results in a transfer from Franchisee to another entity that is one hundred percent (100%) owned by Franchisee's parent, and such parent provides any City mandated guaranty of performance of the Franchisee Affiliate's performance after the transfer, then such transfer shall not require the prior approval of the City, so long as all the conditions on Affiliate transfers set forth in Subtitle 16A, Section 16A.03.060.F are satisfied.*

**TMC Section 16A.03.060 Transfers.**

*A. City approval required.*

*No Transfer shall occur without prior written notice to and approval of the City Council. The granting of approval for a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.*

*B. Application.*

*1. The Franchisee shall promptly notify the City of any proposed Transfer involving a Cable System.*

*2. At least 120 calendar days prior to the contemplated effective date of a Transfer involving a Cable System, the Franchisee shall submit to the City an application for approval of the Transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the Transferee subject to applicable law, and on the potential impact of the Transfer on Subscriber rates and service. At a minimum,*

*the following information must be included in the application, provided that, a Franchisee is not required to duplicate information that it submits to the City to comply with its obligations under federal or state law:*

*(a) All information and forms required by FCC Form 394 and any other form that may be promulgated under federal law, or, the equivalent of such forms if no longer required by federal law or if Operator elects not to utilize such forms, any contracts or other documents that relate to the proposed transaction or other documents, schedules, or exhibits that would have been provided to the City under FCC form 394;*

*(b) Any shareholder reports or filings with the Securities and Exchange Commission ("SEC") that discuss the transaction;*

*(c) Other information necessary to provide a complete and accurate understanding of the financial position of the Cable System before and after the proposed Transfer; and*

*(d) Complete information regarding any potential impact of the Transfer on Subscriber service.*

*3. For the purposes of determining whether it shall consent to a Transfer, the City, or its agents, may inquire into all qualifications of the prospective Transferee and such other matters subject to applicable law as the City may deem necessary to determine whether the Transfer is in the public interest and should be approved, denied, or conditioned as provided under Section 16A.03.060.C. The Franchisee and any prospective transferees shall assist the City in any such inquiry, and if they fail to do so, the request for Transfer may be denied.*

*C. Determination by City.*

*In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise under this Section 16A.03.060.C, the City shall consider the legal, financial, and technical qualifications of the transferee to operate the Cable System; any potential impact of the Transfer on Subscriber services; whether the incumbent Cable Operator is in compliance with its Franchise and this subtitle and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other Cable System in the City, and whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in the City; and whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, the public, or the City's interest under this subtitle, the Franchise, or other applicable law.*

*D. Transferee's agreement.*

*No application for a Transfer of a Franchise, subject to this Section 16A.03.060, shall be granted unless the transferee agrees in writing that it will abide by and accept all lawful terms of this subtitle and the Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this subtitle and the Franchise for all purposes, including renewal, unless the City, in its sole discretion, expressly waives this requirement in whole or in part.*

*E. Approval does not constitute waiver.*

*Approval by the City of a Transfer of a Franchise, pursuant to this Section 16A.03.060, does not constitute a waiver or release of any of the rights of the City under this subtitle or a Franchise, whether arising before or after the date of the Transfer.*

*F. Exception for intra-company Transfers.*

*Notwithstanding the foregoing, a Franchise may provide that Transfers to Affiliates of a Franchisee shall be excepted from the requirements of Section 16A.03.060.A-B where (1) the Affiliate is wholly-owned and managed by an entity that will guarantee the performance under a Franchise or provide other adequate assurance acceptable to the City; and (2) the transferee Affiliate:*

*1. Notifies the City of the Transfer at least 60 days before it occurs and, at that time provides the agreements and warranties required by this Section 16A.03.060, describes the nature of the Transfer, and submits complete information describing who will have direct and indirect ownership and control of the Cable System after the Transfer;*

*2. Warrants that it has read, accepts, and agrees to be bound by each and every term of the Franchise and related amendment, regulations, ordinances, and resolutions then in effect;*

*3. Agrees to assume all responsibility for all liabilities, acts, and omissions known and unknown, of its predecessor Franchisees for all purposes, including renewal;*

*4. Agrees that the Transfer shall not permit it to take any position or exercise any right which could not have been exercised by its predecessor Franchisees;*

*5. Warrants that the Transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the Franchisee (the warranty to be based on comparing the burdens upon and resources that will be available to the transferee compared to its predecessors), or otherwise adversely affect the ability of the Franchisee to perform;*

*6. Warrants that the Transfer will not in any way adversely affect the City or Subscribers (including by increasing rates);*

*7. Notifies the City that the Transfer is complete within five business days of the date the Transfer is complete; and*

*8. Agrees that the Transfer in no way affects any evaluation of its legal, financial, or technical qualifications that may occur under the Franchise or applicable law after the Transfer, and does not directly or indirectly authorize any additional Transfers.*

**4. Federal Law**

The Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 ("Cable Act"), provides at Section 617 (47 U.S.C. § 537):

***Sales of Cable Systems.*** A franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.

The Cable Act also provides at Section 613(d) (47 U.S.C. § 533(d)) as follows:

(d) ***Regulation of ownership by States or franchising authorities.*** Any State or franchising authority may not prohibit the ownership or control of a cable system by any person because of such person's ownership or control of any other media of mass communications or other media interests. Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a cable system in a jurisdiction by any person (1) because of such person's ownership or control of any other cable system in such jurisdiction, or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction.

Further, the Federal Communications Commission ("FCC") has promulgated regulations governing the sale of cable systems. Section 76.502 of the FCC's regulations (47 C.F.R. § 76.502) provides:

**Time Limits Applicable to Franchise Authority Consideration of Transfer Applications.**

(a) A franchise authority shall have 120 days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise agreement or applicable state or local law to act upon an application to sell, assign, or otherwise transfer controlling ownership of a cable system.

(b) A franchise authority that questions the accuracy of the information provided under paragraph (a) must notify the cable operator within 30 days of the filing of such information, or such information shall be deemed accepted, unless the cable operator has failed to provide any additional information reasonably requested by the franchise authority within 10 days of such request.

(c) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting party otherwise agree to an extension of time.

## **5. Technical Qualifications**

Given that Rainier will remain the franchisee under the Franchise and will continue to operate the cable system under the Franchise, there is no need to review the technical qualifications of the proposed Transferee under the Merger Agreement.

## **6. Legal Qualifications**

The legal qualification standard relates primarily to the analysis of whether Rainier, following completion of the Transfer of Controlling Interest, will have the requisite authorization to operate and control the cable system and Franchise serving the City. The applicable standard of review is that the City's consent shall not be unreasonably withheld.

In this Transfer of Controlling Interest, Rainier will remain the "franchisee" under the Franchise. Moreover, Transferor will remain the direct owner of Rainier, and Transferee will be the direct owner of the Transferor. In very basic terms, Transferee is indirectly acquiring an ownership interest in Transferor, which effectively results in the transfer of control of Rainier.

Transferee is a newly formed Delaware limited liability company created for the purpose of completing the Transfer of Controlling Interest and was formed on November 22, 2022, by the Secretary of the State of Delaware. Attached hereto as Exhibit A are the business documents issued by the Washington Secretary of State and Delaware Secretary of State for all relevant entities listed in the Application. As of April 17, 2023, all entities are confirmed to be in "good standing."

## **7. Financial Qualifications**

Attached hereto as Exhibit B is the report regarding the Financial Review of the Transfer of the Franchise – Tacoma, prepared by Ashpaugh & Sculco, CPAs, PLC ("A&S").

## **8. Other Considerations**

Another significant consideration in jurisdictions where more than one cable operator is authorized to provide cable service is whether the Transfer of Controlling Interest will result in the potential for a reduction in competition as a result of any sale or transfer of control. In particular, Section 613(d) (47 U.S.C. § 533(d)) of the Cable Act permits a franchising authority such as the City to prohibit a transfer of controlling interest of the cable system if the City determines that the acquisition of the cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction.

Generally, this provision is of concern when one of the franchised cable operators seeks to acquire the competing system thereby reducing competition which may have an adverse impact on subscriber rates, programming and services. Given that Comcast is also a franchised cable operator in the City and neither Rainier, Transferee or Transferor are in any way owned or controlled by Comcast, there is no immediate concern with reduced competition resulting from the Transfer of Controlling Interest.

## **9. Recommendation**

Upon review of the Application and as described herein, we see no basis for the City to deny the Transfer of Controlling Interest based on a lack of legal or technical qualifications of Rainier, the Transferor or the Transferee. The report prepared by A&S sets forth the financial qualifications review for the City's consideration.

City of Tacoma, Washington  
May 11, 2023  
Page 8

**10. Proposed Ordinance for City consideration.**

In the event the City concludes to move forward with approving the Transfer of Controlling Interest, Moss & Barnett has prepared a proposed Ordinance for the City's review and consideration - attached hereto as Exhibit C.

**END OF MEMORANDUM**



**EXHIBIT A**  
**Entity Business Documents**

## BUSINESS INFORMATION

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Business Name:

**RAINIER CONNECT NORTH, LLC**

UBI Number:

**604 462 816**

Business Type:

**WA LIMITED LIABILITY COMPANY**

Business Status:

**ACTIVE**

Principal Office Street Address:

**2516 HOLGATE ST, TACOMA, WA, 98402-1203, UNITED STATES**

Principal Office Mailing Address:

**PO BOX 639, EATONVILLE, WA, 98328-0639, UNITED STATES**

Expiration Date:

**05/31/2024**

Jurisdiction:

**UNITED STATES, WASHINGTON**

Formation/ Registration Date:

**05/21/2019**

Period of Duration:

**PERPETUAL**

Inactive Date:

Nature of Business:

**ANY LAWFUL PURPOSE**

## REGISTERED AGENT INFORMATION

---

Registered Agent Name:

**RICHARD FINNIGAN**

Street Address:

**2112 BLACK LAKE BLVD SW, OLYMPIA, WA, 98512-5654, UNITED STATES**

Mailing Address:

**2112 BLACK LAKE BLVD SW, OLYMPIA, WA, 98512-5654, UNITED STATES**

## GOVERNORS

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| <b>Title</b> | <b>Governors Type</b> | <b>Entity Name</b> | <b>First Name</b> | <b>Last Name</b> |
|--------------|-----------------------|--------------------|-------------------|------------------|
| GOVERNOR     | INDIVIDUAL            |                    | BRIAN             | HAYNES           |
| GOVERNOR     | ENTITY                | MASHELL, INC       |                   |                  |

UNITED STATES OF AMERICA

The State of



Washington

Secretary of State

I, KIM WYMAN, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

**CERTIFICATE OF FORMATION**

to

**RAINIER CONNECT NORTH, LLC**

A WA LIMITED LIABILITY COMPANY, effective on the date indicated below.

Effective Date: 05/21/2019

UBI Number: 604 462 816



Given under my hand and the Seal of the State  
of Washington at Olympia, the State Capital

A handwritten signature in blue ink that reads "Kim Wyman".

Kim Wyman, Secretary of State

Date Issued: 05/21/2019

## BUSINESS INFORMATION

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Business Name:

**MASHELL, INC.**

UBI Number:

**601 264 299**

Business Type:

**WA PROFIT CORPORATION**

Business Status:

**ACTIVE**

Principal Office Street Address:

**2516 HOLGATE ST, TACOMA, WA, 98402-1203, UNITED STATES**

Principal Office Mailing Address:

**PO BOX 639, EATONVILLE, WA, 98328-0639, UNITED STATES**

Expiration Date:

**07/31/2023**

Jurisdiction:

**UNITED STATES, WASHINGTON**

Formation/ Registration Date:

**07/30/1990**

Period of Duration:

**PERPETUAL**

Inactive Date:

Nature of Business:

**OTHER SERVICES**

## REGISTERED AGENT INFORMATION

---

Registered Agent Name:

**ARNE L HAYNES**

Street Address:

**2516 HOLGATE ST, TACOMA, WA, 98402-1203, UNITED STATES**

Mailing Address:

**PO BOX 639, EATONVILLE, WA, 98328-0639, UNITED STATES**

## GOVERNORS

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| <b>Title</b> | <b>Governors Type</b> | <b>Entity Name</b> | <b>First Name</b> | <b>Last Name</b> |
|--------------|-----------------------|--------------------|-------------------|------------------|
| GOVERNOR     | INDIVIDUAL            |                    | DAVID             | STOLZ            |
| GOVERNOR     | INDIVIDUAL            |                    | ARNE              | HAYNES           |
| GOVERNOR     | INDIVIDUAL            |                    | BRIAN             | HAYNES           |



STATE of WASHINGTON SECRETARY of STATE

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

CERTIFICATE OF INCORPORATION

to

MASHELL, INC.

a Washington Profit corporation. Articles of Incorporation were filed for record in this office on the date indicated below:

U.B.I. Number: 601 264 299

Date: July 30, 1990

Given under my hand and the seal of the State of Washington, at Olympia, the State Capitol

Ralph Munro (handwritten signature)

Ralph Munro, Secretary of State

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Entity Details

|                     |  |   |                                   |
|---------------------|--|---|-----------------------------------|
| <u>File Number:</u> | <b>7153227</b>                           | <u>Incorporation Date /<br/>Formation Date:</u> | <b>11/22/2022</b><br>(mm/dd/yyyy) |
| <u>Entity Name:</u> | <b>ALPHABOOST PURCHASER, LLC</b>         |   |                                   |
| <u>Entity Kind:</u> | <b>Limited<br/>Liability<br/>Company</b> | <u>Entity Type:</u>                             | <b>General</b>                    |
| <u>Residency:</u>   | <b>Domestic</b>                          | State:  | <b>State:</b>                     |
| <u>Status:</u>      | <b>Good<br/>Standing</b>                 | Status Date:                                    | <b>11/22/2022</b>                 |

**REGISTERED AGENT INFORMATION**

|          |  |              |                   |
|----------|--|--------------|-------------------|
| Name:    | <b>THE CORPORATION TRUST COMPANY</b>           |              |                   |
| Address: | <b>CORPORATION TRUST CENTER 1209 ORANGE ST</b> |              |                   |
| City:    | <b>WILMINGTON</b>                              | County:      | <b>New Castle</b> |
| State:   | <b>DE</b>                                      | Postal Code: | <b>19801</b>      |
| Phone:   | <b>302-658-7581</b>                            |              |                   |

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## BUSINESS INFORMATION

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Business Name:

**ALPHABOOST MERGER SUB, LLC**

UBI Number:

**604 995 588**

Business Type:

**WA LIMITED LIABILITY COMPANY**

Business Status:

**ACTIVE**

Principal Office Street Address:

**1 ROCKEFELLER PLZ FL 11 STE 1146, NEW YORK, NY, 10020-2073, UNITED STATES**

Principal Office Mailing Address:

Expiration Date:

**12/31/2023**

Jurisdiction:

**UNITED STATES, WASHINGTON**

Formation/ Registration Date:

**12/07/2022**

Period of Duration:

**PERPETUAL**

Inactive Date:

Nature of Business:

## REGISTERED AGENT INFORMATION

---

Registered Agent Name:

**C T CORPORATION SYSTEM**

Street Address:

**711 CAPITOL WAY S STE 204, OLYMPIA, WA, 98501-1267, UNITED STATES**

Mailing Address:

**711 CAPITOL WAY S STE 204, OLYMPIA, WA, 98501-1267, UNITED STATES**

## GOVERNORS

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| Title | Governors Type | Entity Name | First Name | Last Name |
|-------|----------------|-------------|------------|-----------|
|-------|----------------|-------------|------------|-----------|

UNITED STATES OF AMERICA

The State of



Washington

Secretary of State

I, STEVE R. HOBBS, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

**CERTIFICATE OF FORMATION**

to

**ALPHABOOST MERGER SUB, LLC**

A WA LIMITED LIABILITY COMPANY, effective on the date indicated below.

Effective Date: 12/07/2022

UBI Number: 604 995 588



Given under my hand and the Seal of the State  
of Washington at Olympia, the State Capital

A handwritten signature in blue ink that reads "Steve R. Hobbs".

Steve R. Hobbs, Secretary of State

Date Issued: 12/07/2022



**EXHIBIT B**  
**A&S Report**



**ASHPAUGH & SCULCO, CPAs, PLC**  
Certified Public Accountants and Consultants

Via Email: [brian.grogan@lawmoss.com](mailto:brian.grogan@lawmoss.com)

May 9, 2023

Brian T. Grogan, Esquire  
Moss & Barnett  
150 South Fifth Street, Suite 1200  
Minneapolis, Minnesota 55402

**Subject: Financial Review of Transfer of Franchise**

**CONFIDENTIAL INFORMATION HAS BEEN REDACTED**

Dear Mr. Grogan:

Ashpaugh & Sculco, CPAs PLC (“A&S”) has been retained by Moss & Barnett on behalf of the your client, the City of Tacoma, Washington (the “LFA” or the “City”), to conduct a financial review of the proposed transfer of control of the cable television system held by Rainier Connect North LLC (“Franchisee”), a subsidiary of Mashell, Inc. (“Transferor”) to Alphaboost Purchaser, LLC (“Transferee”) (collectively the “Applicants”) (the transaction is the “Transfer”). As a result of the proposed transaction, the franchise or control of the franchisee will be transferred.

**SUMMARY**

While the ultimate transfer of the ownership is explained as simply changing owners with the operations remaining the same, the projected financials leave some open questions. When asked to provide explanations and additional financial support, the Applicants’ responses were that operations would be the same and no additional information was needed; that the system would continue to have a strong cash flow. These types of transactions rely on cash flow. Cash flow provides the owners the ability to pay dividends.

When comparing the projected financials provided with Transfer documents for 12 months ended September 30, 2023 to the Rainier audited financials of 2020 and 2021, some things are unexplained.<sup>1</sup>

- Total operating revenue for the projected period is 52.24% higher than calendar year 2021
- Depreciation and amortization expense decreases 58.42% from 2021

The notes to the 2021 audit explain that lease payments of 2023 would be [REDACTED] and the principal component of that amount would be related to the Click! Network lease. Under “Notes to Consolidated Financial Statements”, Note 5 includes the following discussion of Rainier’s 20-year indefeasible right of use (IRU) agreement with the City of Tacoma to operate network assets of the Click! Network.

<sup>1</sup> It should be noted that no actual financial information or operating results for 2022 or 2023 have been provided.

**CONFIDENTIAL**

Brian Grogan, Moss & Barnett

May 9, 2023

Re: Tacoma Transfer

Page 2 of 4

The gross amount of the assets under the capital lease are recorded at the initial net present value of [REDACTED], and the net balances at December 31, 2021 and 2020, are [REDACTED] and [REDACTED], respectively, which are included in distribution plant within Property, Plant, and Equipment. The assets are amortized using a straight-line method over their estimated useful life of 20 years. Accumulated depreciation on the assets under the capital lease is [REDACTED] and [REDACTED] at December 31, 2021 and 2020, respectively, and are included in accumulated depreciation on the balance sheet. Depreciation expense was [REDACTED] and [REDACTED] for the years ended December 31, 2021 and 2020, and are included in amounts reported as depreciation and amortization expense. (Emphasis added.)

The projected financial information provided does not appear to reflect payments under this lease obligation.

In addition, "Telecommunications plant in service" at 12/31/2021 shows a balance of [REDACTED] with largest amount comprising that balance of the approximate [REDACTED] related to the Click! Network lease. Without explanation, the projected financials show a total balance of these same items as [REDACTED] at 10/31/2022 – an increase [REDACTED]. Projected depreciation expense does not reflect this increase in plant. For the projected period, depreciation expense is [REDACTED] while for 2021 depreciation expense was [REDACTED].

Financial Capability

The Transferee has demonstrated that it has access to the needed funding for the Transaction, but has not committed to additional operational infusions if needed.

**ANALYSIS**

A&S reviewed the limited financial data provided by or on behalf of the Applicants. The information predominantly was identified as confidential. Comparative financial statements are attached that compare the audited financials and operating results of Rainier for 2020 and 2021 to the projected financials for the period ended September 30, 2023.<sup>2</sup>

While requested, no financial projections were provided to A&S by the Applicants other than those accompanying the filed FCC Form 394. A&S used audited financials of the Franchisee for the years ended December 31, 2020 and 2021, to assess the operational results of the Franchisee. The audited data indicates that the Franchisee had marginal cash flows. In 2020, on [REDACTED], Rainier only had a [REDACTED]. In 2021, Rainier had a [REDACTED], i.e., cash went down, [REDACTED] – cash at year end was only [REDACTED]. Considering 2021 operating expenses of [REDACTED].<sup>3</sup>

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<sup>2</sup> The Mashell Comparative Financials exhibit compares the 2020-2021 audited financials of Rainier Connect North (RCN) to the projections for Mashell Inc. RCN is a subsidiary of Mashell Inc. which accounts for the differences noted. Applicants subsequently provided audited financials of Mashell Inc for 2020 and 2021 and a comparison of Mashell Inc.'s audited financials is not included in the prepared analysis.

<sup>3</sup> Applicants subsequently provided financial information on Mashell Inc. which serves as a financial guarantor for Rainier Connect North, and Mashell Inc. had approximately [REDACTED]

**CONFIDENTIAL**

Brian Grogan, Moss & Barnett

May 9, 2023

Re: Tacoma Transfer

Page 3 of 4

As can be seen from the following responses, no information was provided other than that provided with the filing. (Requests in bold followed by response by the Applicants.)

**1. Does Transferee intend on complying fully with all franchise agreement provisions of the Franchisee's current franchises with the City and to meet or exceed all applicable operational requirements of each? Please explain in detail. Does this include accepting liability for the underpayment, if any, of any fees (franchise, PEG or other) set forth in the respective Franchise Agreement and local ordinances prior to closing?**

As stated in Exhibit I.II.2 of the Application and in the February 23 response, Applicants do not seek any changes to the Franchisee's operations of the system as a result of the Transaction and Transferee will support the Franchisee's continued operation of the system. Neither the Transferee nor the Franchisee are aware of any such underpayment of fees, and the Franchisee will remain responsible for any such underpayment of fees required under the Franchise Agreement or local ordinance.

**2. Transferee submits that it has the necessary financial commitments to consummate the transaction described herein as provided in the sale agreement and to provide adequate working capital to meet the system's needs for the foreseeable future. Please provide the underlying financial information, analyses, projections and other similar financial documents that will allow us to replicate these financial commitments including projections used to conclude it has the necessary capital for the foreseeable future. The available capital and financing should equal or exceed the annual planned capital expenditures. The documentation should include new debt financing, repayment of debt and available funds to meet the terms of the "Earnout Consideration" explained in Exhibit H.**

The Merger Agreement was executed without a financing contingency. The "Earnout Consideration" addressed in the Merger Agreement is based on "the provision of internet broadband services" by Mashell, Inc.'s operating subsidiaries, and Applicants respectfully object to this request as irrelevant to determining whether the Transferee has the legal, technical, and financial qualifications to control the Franchisee. Transferee, through Palisade Diversified Infrastructure Fund 3 ("PDIF3") and the other Palisade entities (collectively, "Palisade"), has the necessary financial resources to own the Franchisee. Palisade has over \$2.5 billion in funds under management. [Emphasis added.]

**3. Please provide the pro forma segment financial information for each year ended December 31, 2023 through 2027 including projected capital expenditures by year for the Franchisee system as operated by Transferee.**

As noted in response to question 1 above, Franchisee will continue to operate the system after closing, and Transferee, as owner of Franchisee, will support Franchisee's continued operation. Franchisee does not maintain pro forma segment financial information and does not have information for the requested time period (i.e., Dec. 31,

**CONFIDENTIAL**

Brian Grogan, Moss & Barnett

May 9, 2023

Re: Tacoma Transfer

Page 4 of 4

2023 through 2027) including projected capital expenditures by year for the system operated by Franchisee.

**4. Please provide the number of customers and revenue generating units by month for 2020 through the current date in 2023 and pro forma 2023 through 2027 by revenue category (including by not limited to analog cable, digital cable, premium channels, pay per view and VOD, equipment and installation, internet services and telephony services) for the system serving the City.**

Applicants respectfully object to this request as irrelevant to determining whether the Transferee has the legal, technical, and financial qualifications to control the Franchisee. Franchisee does not maintain such information for the system serving the City or pro forma revenue information for the requested time period (i.e., 2023 through 2027).

**6. Please identify anticipated sources and amounts of financing available to Transferee for construction, upgrades and marketing of Franchisee including lines and availability of credit as of closing.**

Franchisee and its direct parent Mashell, Inc. are, and are expected to remain, cash-flow positive as set forth in the consolidated financial statements for Mashell, Inc. provided as Confidential Exhibit B to the Form 394 Application. Anticipated sources of funding post-Transaction for Mashell, Inc. and its operating subsidiaries including Franchisee include an existing Rural Utilities Services (RUS) Loan granted to Franchisee's affiliate Mashell Telecom, Inc., federal and state universal service support to Mashell Telecom, Inc., and AlphaBoost Purchaser equity contribution. [Emphasis added.]

As stated above (see the response to #2), Transferee has not committed to additional financial resources that may be needed to invest in the system.

**SUMMARY**

The Transaction appears to be relying on "positive cash flow", which the audited financials show is suspect. In addition, the projected financials do not show expenditures identified in 2021 audited financials as ongoing in 2022 and 2023 or explain why they are no longer there. Adjustments to telecommunications plant and depreciation are also unexplained as well as the significant increase in projected revenue.

**EXHIBIT C**  
**Ordinance**

**CITY OF TACOMA**

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

**COUNCIL BILL NO. \_\_\_\_\_**

AN ORDINANCE relating to a cable system that provides cable service to the City of Tacoma, Washington ("City"); authorizing the Mayor or the Mayor's designee to approve the transfer of control of the cable franchise.

WHEREAS, Rainier Connect North, LLC ("Franchisee") currently holds a cable franchise ("Franchise") granted by the City; and

WHEREAS, Franchisee owns, operates and maintains a cable system in the City ("System") pursuant to the terms of the Franchise; and

WHEREAS, the City received from Mashell, Inc. ("Transferor") and Alphabost Purchaser, LLC ("Transferee") a Federal Communications Commission Form 394 - Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise, ("Application") dated January 19, 2023; and

WHEREAS, on February 7, 2023, the City received new attachments to the Application, replacing attachments A, B and C originally filed with the Application; and

WHEREAS, on February 13, 2023, the City sent a request for supplemental information to the Application and on February 23, 2023, the City received a response from the Transferor; and

WHEREAS, on February 28, 2023, the City sent a request for supplemental financial information to Transferor and on March 10, 2023, the City received a response from the Transferor and the Transferee; and

WHEREAS, federal law and the Tacoma Municipal Code at Section 16A.03.060 require that the City shall have one hundred twenty (120) days upon receipt of a completed Application to act upon such transfer request unless agreement is reached to extend the date; and

WHEREAS, the City has determined that the Application was complete on March 10, 2023, and the 120 day deadline for City action on the Application is July 8, 2023; and

WHEREAS, Section 2.8 of the Franchise and Section 16A.03.060 of the Tacoma Municipal Code require the City's advance written consent prior to a transfer of the Franchise; and

WHEREAS, the Application includes a copy of an Agreement and Plan of Merger, dated December 6, 2022, ("Agreement") seeking the City's consent to the proposed transfer of the Franchise; and

WHEREAS, under the Agreement the Transferor will remain the direct owner of the Franchisee, and the Transferee will be the direct owner of the Transferor ("Transaction"); and

WHEREAS, as a result of the Transaction, the Transferor and the Transferee have requested consent from the City to the transfer of the Franchise; and

WHEREAS, the City has reviewed the Transaction and the requested transfer as well as: a) the legal, technical, and financial qualifications of the Transferor and Transferee; b) the potential impact of the Transaction on cable services in the City; c) the Franchisee's compliance with the Franchise and the Tacoma Municipal Code; d) whether approval of the Transaction would adversely affect cable subscribers, the public, or the City's interest under the Franchise, the Tacoma Municipal Code or other applicable law; and

WHEREAS, based on information provided by the Transferor and the Transferee, and on the information received by the City, the City has elected to approve the Transaction subject to certain conditions as set forth herein.

NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF TACOMA, WASHINGTON, AS FOLLOWS:**

1. All of the above recitals are hereby incorporated by reference as if fully set forth herein.
2. The Franchise is in full force and effect and Franchisee is the lawful holder of the Franchise.
3. The City is not presently aware of any default by Franchisee to comply with the terms, conditions, requirements, and obligations set forth in the Franchise, notwithstanding such, the City's approval of the Transaction shall in no way be deemed a representation by the City that Franchisee, or its successors in interest are in compliance with the obligations under the Franchise. The City does not waive its rights with respect to Franchisee's compliance with the terms, conditions, requirements, and obligations set forth in the Franchise and other applicable law, including the City's right to compel Franchisee, or its successors in interest, to comply with the provisions of the Franchise.
4. Franchisee will remain the lawful holder of the Franchise after completion of the Transaction.
5. The City hereby consents and approves of the Transaction subject to:
  - a. Within sixty (60) Days of the closing date of the Transaction the Franchisee shall file with the City Clerk a copy of the agreement or other written instrument evidencing such transfer has been completed, certified and sworn to as correct by Franchisee.
  - b. Transferor or Transferee shall, within thirty (30) days of the date of adoption of this Ordinance, fully reimburse City for all of City's reasonable costs and expenses in connection with the City's review of the Transaction, including without limitation, all costs incurred by the City for attorneys retained by City to assist in the review as well as any applicable notice and publication costs ("Reimbursement").
    - i. The Reimbursement shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), nor shall the Reimbursement be deemed to be (i) "payments in kind" or any involuntary



payments chargeable against the Franchise Fees to be paid to the City by Franchisee pursuant to the Franchise.

6. In the event the Transaction contemplated by the foregoing ordinance is not completed, for any reason, the City's consent shall not be effective. If any of the conditions set forth herein are not met, the City's consent to the proposed Transaction shall be null and void and of no effect.

7. This Ordinance may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Ordinance delivered by e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Ordinance.

8. This Ordinance shall take effect and continue and remain in effect from and after the date of its passage, approval, and adoption.

Approved by the City of Tacoma, Washington this \_\_\_\_\_ day of \_\_\_\_\_, 2023

**CITY OF TACOMA, WASHINGTON**

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

Title: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

Title: \_\_\_\_\_

**Approved as to form:**

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

Title: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

**AGREEMENT AND ACCEPTANCE**

Mashell, Inc. and Alphaboost Purchaser, LLC hereby accept Ordinance No. \_\_\_\_\_ ("Ordinance") and agree to be bound by the terms and conditions of the ordinance and the terms and conditions of the Franchise referenced within the ordinance.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2023

**MASHELL, INC.**

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

Its: \_\_\_\_\_

Sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 2023

\_\_\_\_\_  
NOTARY PUBLIC

Dated this \_\_\_\_ day of \_\_\_\_\_ 2023

**ALPHABOOST PURCHASER, LLC**

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

Its: \_\_\_\_\_

Sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 2023

\_\_\_\_\_  
NOTARY PUBLIC