

HL
OCT 10 2023



AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: **BOCC**

WORK SESSION Meeting Date:

REGULAR AGENDA Meeting Date: **October 10, 2023**

Required originals approved and attached?
Will be provided on:

Item summary:

- Call for Hearing
- Resolution
- Draft Ordinance
- Contract/Agreement/MOU - Contract #
- Proclamation
- Final Ordinance
- Budget Item
- Other

Documents exempt from public disclosure attached:

BACKGROUND OF WAVE/ASTOUND CABLE FRANCHISE AGREEMENT

A Cable Franchise Agreement with Wave Division I LLC, successor in interest to Northland Cable Properties Seven Limited Partnership, and WaveDivision III, LLC, successor interest to Northland Cable Television, Inc (individually and collectively doing business as Astound Broadband power by Wave, or "Astound"), was authorized and adopted by Clallam County in 2012 for a ten (10) year term allowing the authority to install, construct, operate, and maintain a cable communications system in Clallam County. The 2012 Franchise Ordinance 883 was originally set to expire on May 18, 2022, and was subsequently extended to November 18, 2022 via Ordinance 987. As both parties continued in good faith negotiations and discussions aimed at creating and entering into a new franchise agreement, the terms and conditions of the 2012 Franchise Ordinance and Agreement continued to be observed by both parties following the end of the extended end date as provided under processes outlined under the Federal Cable Act.

As many changes have occurred in the cable services industry, the previous cable franchise agreement had become outdated in many aspects and required significant updates to better reflect industry best practices, and to reflect several industry changes affecting cable system operators and the franchise agreements under which they operate. The attached proposed 10-year agreement has been negotiated with Astound with the assistance of CBG Consultants, Inc., a specialized cable and broadband communications industry consultant, over the past 2+ years to assist the County staff in drafting and negotiating a new cable franchise agreement with Astound. This effort has involved the collaboration and input of several County departments, including the Finance Department and Prosecuting Attorney Civil Division, as well as input solicited from Public Works and IT as needed.

Historically, the County has received Franchise Fee Revenues under the cable franchise agreement, equal to 5% of Astound's gross revenues generated by the cable system it operates in unincorporated

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Clallam County. The total franchise fees paid to the County under the franchise agreement have ranged between \$200,000-\$250,000 annually that were paid twice a year to the County. However, in recent years, these franchise fee revenues have slowly declined to under \$200K per year which is reflective of subscriber trends affecting the cable industry traditional cable services as households increasingly are migrating toward streaming services platforms. Under the new agreement Franchise Fees will now be paid quarterly, giving the County more frequent payments of revenue and ability to see emerging trends faster than in the past.

The Cable Franchise Agreement is only applicable to Astound's cable TV line of services. Broadband services are exempt from Franchise agreements.

KEY FEATURES OF NEW ASTOUND CABLE FRANCHISE AGREEMENT

The key highlights/changes of the proposed Cable Franchise Renewal Agreement between Clallam County and Astound include the following:

- **Gross Revenues and Franchise Fees** -- There is an expanded definition of Astound's Gross Revenues pertaining to Cable Service, which will enable a wider range of Cable Service-related revenues to be captured and applied to the calculation of the 5% of Gross Revenues Franchise Fee provided to the County. This definition is more consistent with the best practices regarding such in today's cable franchise agreements and should enable the County to receive the largest amount feasible for the use of its rights-of-way by Astound. This will be beneficial to the County, especially in helping counter the effects of a continued decline in Cable Service subscribership versus subscribership to video streaming services.
- **Enhanced Audit Rights**--The County's Franchise Fee audit rights are also better defined and will enable the County to review and challenge, if necessary, Astound's methodology and calculations to ensure that it always receives the amounts required under the Franchise. If an error in Astound's Franchise Fee calculation is made that results in an additional 5% or more owed to the County, as determined by a formal Franchise Fee Audit, Astound is responsible for the reimbursing the County's cost of that audit up to \$30,000.
- **Government and Educational Access Channel** -- The proposed Renewal Agreement also provides for the County to implement (if it chooses) a Government Access Channel (which also can include programming by educational entities, as the County may determine). This channel will provide another outlet for coverage of County meetings and other proceedings; video programs on governmental initiatives, programs, and services; and provision of other types of information, including public health announcements, emergency messages and other critical communications.

If the County chooses to implement the Channel, the agreement allows for the implementation of a PEG Fee, which will provide 1% of Gross Revenues to help support any types of PEG channel-related capital costs incurred by the County in establishing and broadcasting the PEG channel content to Astound (including such costs as cameras, meeting room video/audio systems, remote video production equipment, editing equipment, facilities funding to build video production facilities if needed, and other program development-related capital costs).

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- **System Build-out and Expansion Requirements** -- The proposed Renewal Franchise also provides an amount of \$1,750 per occupied dwelling unit in construction costs for requested system expansions beyond Astound's current system. Astound will apply this amount towards pockets of homes to be constructed or existing homes interested in having cable services expanded to their area, and then funding can be contributed from other sources, including homeowners themselves, to meet Astound's full construction costs of expanding its service into that area based on detailed designs that it would provide. This construction cost amount will be adjusted annually based on changes in Seattle CPI each year during the term of the agreement. This mechanism has the potential for enabling future extension of its cable services, and by extension, its broadband services to such unserved areas.

This provision can work on a "dual track", in tandem with separate efforts that the County may undertake with Astound to extend its system for broadband purposes by applying for broadband grant funds.

Between the two efforts, it is projected that Astound will be able to build new system infrastructure over the course of the renewed Franchise.

- **Consumer Protection Standards** -- A detailed set of Customer Service and Consumer Protection Standards is proposed in the Renewal Franchise Agreement that is consistent with the best practices for such Standards. The Standards place the burden of resolving complaints on Astound as the service provider, but allow the County to intervene as necessary, utilize the Standards as benchmarks for evaluating complaints and then enforcing them for the benefit of County residents as needed.
- **Books, Records and Reports** -- The Renewal Franchise provides for the ability for the County to review and obtain copies of books and records as necessary to ensure compliance with Franchise requirements. It also enables requirement of specific operational reports to obtain information to evaluate problems that arise with the system, if needed for the County to ensure Astound's compliance.
- **System Technical Requirements** -- The proposed Renewal Franchise Agreement provides for technical standards that Astound must comply with and demonstrate compliance as needed if problems arise. It also contains requirements for status monitoring, standby powering, and other critical system components to ensure that the Astound system operates in a highly reliable manner. When reliability problems may be experienced, it provides the County with the ability to review and evaluate data concerning such problems and then enforce compliance.
- **Insurance and Bond Provisions** -- The Renewal Franchise Agreement provides for updated insurance types and amounts and a larger performance bond to ensure that the County is always protected from any financial liability that could occur as a result of actions or inaction by Astound.
- **Franchise Area and Service Area** -- The existing two Astound Franchises have been combined into one Franchise Agreement for a term of ten (10) years. Astound's existing service area is shown in Exhibit A and the Franchise Area has now been defined as the entire unincorporated County. Also, as-built system maps are required at the inception of the

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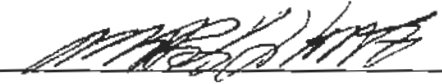
renewed Franchise, and then must be updated as needed to identify the extent of Astound's infrastructure and any expansion thereof.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?**

None at this time. The annual Franchise Fees are already considered in the budget planning for 2023 and 2024.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Staff recommends approval of Final Ordinance.

County Official signature & print name: Mark Lane 

Name of Employee/Stakeholder attending meeting: Angi Klahn, Dee Boughton, David VonMoritz (Astound), Tom Robinson (CBG)

Relevant Departments: BOCC & Prosecutor

Date submitted: September 20, 2023

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An ordinance repealing ordinances 465, 466, 883, and 987 in their entirety and replacing them with a new chapter of the Clallam County Code concerning granting a non-exclusive ten-year franchise to Astound Broadband powered Wave to construct, operate and maintain a Cable Communications System as defined and governed herein.

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

Section 1. Purpose and Intent, is created to read as follows:

1. PURPOSE AND INTENT

1.1 Clallam County, Washington (hereafter "County" or "Grantor") is authorized to and by this Franchise Agreement ,as defined below, does grant to WaveDivision I, LLC, a Washington limited liability company, and WaveDivision III, LLC, a Washington limited liability company (individually and collectively doing business as Astound Broadband powered by Wave and hereafter Grantee) a non-exclusive ten (10) year franchise, revocable as provided herein, to construct, operate and maintain a Cable Communications System, as defined below, in the franchise areas comprised of a portion of the area within the unincorporated territory as described in Exhibit A.

1.2 The purpose of this Franchise Agreement is to create a binding, enforceable contract between Grantor and Grantee.

Section 2. Definitions, is created to read as follows:

2. DEFINITIONS

For the purposes of this Franchise Agreement and all attachments included hereto, the following words, terms, phrases, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words used in this franchise which are not defined hereunder but defined in the Cable Communications Policy Act of 1984, the Cable Communications Policy Act of 1992, and the Telecommunications Act of 1996, as may be amended from time to time, shall have the meaning specified in the Cable Act definition.

a. "Access" or "Educational and Government (EG) Access" means the availability of Access Channels or Educational and Government Access (EG) Channels for use by various agencies, institutions, organizations, and groups in the community, including Grantor and its designees, on a non-discriminatory basis, of the Cable System for non-commercial

purposes, including the right to acquire, create, and distribute non-commercial Programming not under the Grantee's editorial control.

- b. "Access Channel" or "Educational or Government Access (EG) Channel"
A video programming channel which Grantee makes available to the Grantor without cost for the purpose of transmitting non-commercial programming by Grantor departments and agencies, public schools, and educational institutional and other non-profit organizations, subject to and in accordance with 47 U.S.C. 531 and the terms herein.
- i. "Educational Access Channel" means any channel or portion of a channel available for educational programming by public schools or educational institutions and required by the Franchise to be dedicated by the Grantee for EG Access.
- ii. "Government Access Channel" means any channel or portion of a channel available for programming by government agencies and required by the Franchise to be dedicated by the Grantee for EG Access.

Nothing in this Franchise shall prevent the Grantor or its designee from carrying out fundraising activities to supplement access capital or operating funds, and such fundraising activity shall not in itself constitute a commercial use of access channels, facilities, and equipment.

- c. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- d. "Availability of Service" means the ability of a Subscriber to obtain a service within seven (7) business days by requesting Cable Service and paying applicable installation and/or usage charges.
- e. "Basic Service" means that tier of Cable Service which includes but is not limited to a) the retransmission of local broadcast station signals, and b) public, educational and government access channels. Basic Service includes Cable Service over Grantee's Cable System.
- f. "Broadcast Channel" or "Local Broadcast Channel" means a television or radio signal that is transmitted over-the-air to a wide geographic audience and is received by the cable communications system and retransmitted to subscribers, regardless of the means used by Grantee to receive the signal (off-the-air, microwave link, fiber optically, satellite receiver, other means, etc.).

- g. "Cable Act" means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 as may be amended from time to time.
- h. "Cable Operator" means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- i. "Cable Service" means a) the one-way transmission to Subscribers of video programming or other programming service; and b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Except in the event of a change in applicable law, pursuant to which such service is explicitly deemed a Cable Service, any video programming or other programming service received by a Subscriber over Grantee's managed broadband service provided by an entity which is not the Grantee or an Affiliate and which is available to all, including non-Subscribers, solely via the public Internet will not constitute a Cable Service.
- j. "Cable Communications System" or "Cable System" or "System" shall have the meaning specified in the definition of "Cable System" in the Cable Act 47 U.S.C §522(7). In every case of its use in this Franchise, unless otherwise specified, the term shall refer to the Cable System constructed and operated by the Grantee in the County under this Franchise.
- k. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System, and which is capable of delivering Cable Service.
- l. "Commercial Subscriber" means a Subscriber receiving Cable Services in a business or other commercial enterprise, where the Cable Services are to be used in conjunction with the enterprise and the rates for services are individually negotiated with the Subscriber.
- m. "Converter" or "Set Top Unit (STU)" means a consumer electronic interface device for changing the television signal, transported by the Cable System, to a suitable channel or format which the television receiver is able to tune.
- n. "County" means Clallam County, a Washington statutory County, and all of the unincorporated territory within its boundaries.
- o. "County Board of Commissioners" means the governing body of the Grantor.
- p. "FCC" means the Federal Communications Commission.

- q. "Franchise" or "Franchise Agreement" means the authorization granted by this document, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by Grantor as the franchising authority, whether such authorization is designated as a franchise or by Ordinance.
- r. "Franchise Area" means all territory within unincorporated Clallam County, Grantee's service area, upon the Effective Date (as defined in Section 3.3 below) of this Franchise, is depicted on the attached Exhibit A.
- s. "Grantee" or "Franchisee" means WaveDivision I, LLC and WaveDivision III, LLC, and the lawful successors, transferees, or assignees thereof.
- t. "Grantor" means Clallam County, a statutory County in the State of Washington.
- u. "Gross Revenue" means all revenue derived by Grantee from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area. Gross Revenue shall be calculated in accordance with Generally Accepted Accounting Principles ("GAAP") as of the Effective Date and the following requirements. Gross revenues include, by way of illustration and not limitation:
- Fees for Cable Services to all Subscribers, including revenues derived from the provision of all Cable Services including but not limited to:
 - Basic Service fees and fees for all service tiers above Basic Service;
 - Fees charged for digital video tiers and for optional, per-channel, such as Pay Channels or Premium Channels or per-program Cable Service such as Video-on-Demand and Pay-per-View;
 - Broadcast Channel retransmission fees;
 - Regional sports programming fees;
 - Fees for any and all music services offered as a Cable Service.
 - Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service;
 - Inside wiring service plans and maintenance charges;
 - Convenience fees related to Cable Service;
 - Early termination fees on Cable Services;

- Fees paid to Grantee for Channels designated for commercial/leased access use; which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area;
- Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Payments for pre-paid Cable Services and/or equipment;
- Advertising Revenues as defined herein;
- Fees including, but not limited to: (1) late fees, Non-sufficient funds fees, convenience fees and administrative fees which are either specifically identified as related to the provision of Cable Service or, in the absence of such specific identification, shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area; and (2) Franchise Fees (defined in Section 8.1.a);
- Revenues from program guides;
- Launch fees and market co-op fees; and
- Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall either be specifically attributed to a service area or, in the absence of such specific attribution, shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area.

"Gross Revenues" shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. "Gross Revenues", however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliate, and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Franchise. "Gross Revenues" shall include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services in the Franchise Area and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates. "Gross Revenues" shall not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, "Gross Revenues" shall not include bad debt.

"Advertising Revenues" shall mean amounts derived from sales of advertising that are made available to Grantee's Cable System Subscribers within the Franchise Area and shall either be in the amount specifically attributed to the Franchise Area, or in the absence of such specific attribution, shall be allocated on a pro rata basis using total Cable Service Subscribers reached by the advertising. Whenever Grantee acts as the principal in advertising arrangements involving representation firms and/or advertising Interconnects and/or other multichannel video providers, Advertising Revenues subject to Franchise Fees shall include the total amount from advertising that is sold, and not be reduced by any operating expenses (e.g., "revenue offsets" and "contra expenses" and "administrative expenses" or similar expenses), or by fees, commissions, or other amounts paid to or retained by affiliated advertising representation firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.

"Gross Revenues" shall **not** include:

- actual Cable Services bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
- any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state, or other governmental unit, provided that the Franchise Fee shall not be regarded as such an excluded tax or fee and shall be included in Gross Revenues;
- revenues associated with the provision of managed network services provided under separate business contract;
- unaffiliated third-party advertising sales agency fees or commissions which are reflected as a deduction from revenues, except when Grantee acts as a principal as specified in the paragraph immediately above; and
- revenue not derived from operation of the Cable System to provide Cable Service.

To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues in accordance with GAAP and in accordance with the requirements herein, using a methodology that allocates revenue based on the relative undiscounted rate card amount (including all fees) of each element of service provided in the discounted bundle.

Grantee shall not allocate revenue between Cable Services and non-Cable Services for the purpose or with the intent of evading or substantially reducing Grantee's Franchise Fee obligations to Grantor. The Grantor reserves its right to review and to challenge Grantee's calculations.

Grantee reserves the right to change the allocation methodologies set forth above to meet changes in GAAP, standards mandated by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee agrees to explain and document the source of any change it makes to allocation methodologies, including, but not limited to, those it deems required by GAAP, FASB, EITF and SEC concurrently with any Franchise-required document at the time of submittal, identifying each revised Section or line item. Grantor reserves its right to review and challenge any Grantee change in allocation methodologies.

- v. "Interactive Services" means services provided to subscribers where the Subscriber either (a) both receives information consisting of either television or other signals and transmits signals generated by the Subscriber or equipment under the Subscriber's control for the purpose of selecting what information shall be transmitted to the Subscriber or for any other purpose; or (b) transmits signals to any other location for any purpose.
- w. "Leased Channel" means any channel or portion of a channel available for programming by persons or entities other than Grantee for a fee or charge.
- x. "Monitoring" means observing a one-way communications signal, or the absence of a signal, where the observer is neither the Subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever.
- y. "Pay Channel" or "Premium Channel" means a Channel which Subscribers receive Programming for a special fee or charge over and above the regular charges for Basic Service, on a per program, per Channel, or other Grantee provided subscription basis.
- z. "Person" means an individual, partnership, association, proprietorship, organization, joint stock company, trust, corporation, or governmental entity or other entity doing business in the State of Washington, or any natural person.
- aa. "Programmer" means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to Subscribers, by means of the Cable Communications System.

- bb. "Programming" means the process of causing television programs or other patterns of signals in video, voice, or data formats to be transmitted as a Cable Service on the Cable System and includes all programs or patterns of signals transmitted as a Cable Service, on the Cable System.
- cc. "Record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, electronic files, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, and photographs to the extent related to the enforcement or administration of this Franchise.
- dd. "Resident" means any natural person residing within the Franchise Area.
- ee. "Residential Subscriber" means a non-commercial Subscriber.
- ff. "School" means any public educational institution, including primary and secondary schools, community colleges, colleges, universities, and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Washington and, where required, from other authorized accrediting agencies.
- gg. "Section" means any section, subsection, or provision of this Franchise Agreement.
- hh. "Streets, Public Ways and Rights-of-Way" means the surface of and the space along, across, upon, above and below any Grantor Street, road, avenue, viaduct, bridge, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them.
- ii. "Subscriber" means any person who subscribes to Cable Service provided by the Grantee by means of, or in connection with, Grantee's Cable System whether or not a fee is paid for such service.
- jj. "Tapping" means observing a two-way communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.
- kk. "Year" means a full twelve-month calendar year, unless designated otherwise, such as a "fiscal year."

Section 3. Grant of Franchise, is created to read as follows:

3.1 Grant

Grantor hereby grants to the Grantee a non-exclusive, revocable franchise for a term of ten (10) years from and after the Effective Date hereof, revocable as provided herein to construct, operate, extend, connect, repair, remove and maintain a Cable System within the Franchise Area. This franchise constitutes the authority, right, privilege and obligation to provide Cable Services over the Cable System as required by the provisions of this Franchise Agreement and nothing herein shall be deemed to regulate, restrict, or prohibit Grantee from providing, other lawful services.

This Franchise is subject to the laws of the United States and the State of Washington, and to the lawful general ordinances of the Grantor affecting matters of general Grantor concern and not merely existing contractual rights of Grantee, whether now existing or hereafter enacted. In particular, this Franchise supersedes any of Grantor's subsequently adopted Ordinances in any matter in which the Franchise and the Ordinance are in conflict, and Grantor shall make a good faith effort to notify the Grantee of any Grantor proceedings which would substantially affect the Grantee's operations and shall upon request supply the Grantee with copies of any Grantor laws or regulations affecting Grantee's operations.

Grantee promises and guarantees a condition of exercising the privileges granted by this Agreement, that any Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

3.2 Use of Public Right-of-Way

For the purpose of constructing, extending, connecting, removing, operating, repairing, and maintaining a Cable Communications System in the Franchise Area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Right-of-Way within the franchise area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary,

convenient and appurtenant to the operation of the Cable Communications System. Prior to construction or alteration, however, the Grantee shall in each case file plans as required with the appropriate agencies of Grantor and in accordance with any agreements with utility providers and companies, obtain permits, pay applicable fees, and receive approval as necessary before proceeding.

3.3 Duration and Effective Date of Franchise/Franchise Review

Except as otherwise provided herein for revocation, or early termination in accordance with Section 11.1, the Term of this franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall be ten (10) years from the Effective Date of this agreement, at which time the franchise shall expire and, to the extent allowed by applicable federal law, be of no force and effect. The Effective Date of the franchise shall be the date the County Board of Commissioners Order granting the franchise takes effect, unless the Grantee fails to file the Franchise acceptance in accordance with Section 3.9 herein, in which event this Franchise shall be null and void.

During the six-month period beginning five (5) years after the Effective Date of this Franchise, the Grantor and Grantee may undertake a review of Grantee's system and performance to date, in order to determine whether the Franchise should continue in effect for the full ten (10) year Term or should terminate early. The Grantor may propose to, and subsequent thereto, terminate the Franchise early if the Grantee has been found to have committed a pattern of material violations of the Franchise, and Grantee does not provide, or refuses to make provision for, the effective resolution thereof, provided that any proposal by the Grantor to terminate the Franchise early, and termination pursuant thereto, shall be subject to the same procedural requirements as for a revocation under Section 11.1 hereof. If the Grantor does not terminate the Franchise early as provided herein, the Franchise shall continue for its full ten (10) year term.

3.4 Franchise Area and Service Area

The Franchise Area shall be the entire area of unincorporated Clallam County. Grantee's service area upon the Effective Date is that area within the Franchise Area, designated on the attached map, Exhibit A.

3.5 Periodic Public Review of Franchise

The Grantor may at approximately three (3)-year intervals during the term of the Franchise, and at such other times as the Grantor deems appropriate, conduct a public review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that the Franchise continues to effectively serve the public in light of new

developments in cable law and regulation, cable technology, cable company performance, local regulatory environment, community needs and interests, and other such factors. Both the Grantor and Grantee agree to make a full and good faith effort to participate in the review and both parties will mutually agree on the actions required to implement the findings. The Grantor shall establish a procedure for ensuring orderly review, full discussion of any proposed policy changes between the Grantor and Grantee, and full public hearing regarding all matters discussed during the review.

Matters appropriate for discussion at the public reviews in accordance with this Section include without limitation:

- a. Grantee's overall compliance with the Franchise;
- b. Policies and practices necessary to ensure continued support for educational and government access at substantially the same level provided for in this Franchise;
- c. System maintenance and operational requirements;
- d. The resolution of any evident patterns of customer service problems; and
- e. System build-out.

The periodic public reviews described in this Section may be, but need not be, made coincident with public reviews involved in the consideration of Grantee requests for franchise renewal, franchise extension, or approval of transfer of system ownership.

3.6 Franchise Not Exclusive

This grant or privilege shall not be deemed or held to be an exclusive franchise. It shall in no manner prohibit Grantor from granting other franchises of a like nature for other public or private purposes over, under, along, across or upon any of Grantor's Streets, Public Ways and Rights-of-Way and shall in no way prevent or prohibit Grantor from using any of said Streets, Public Ways and Rights-of-Way or affect its jurisdiction over them or any part of them, with full power to make all lawful necessary changes, relocation, repairs, maintenance, etc., as it deems fit. It is the intent of the parties that no such grant of authority by Grantor shall be made on terms and conditions more favorable or less stringent or burdensome than those contained herein, taking into account the terms and conditions of the grant of authority as a whole. In the event of Grantor's enactment, grant or other such allowance of any other cable television franchise ordinance or other

similar grant of authority concerning cable television, Grantor shall provide and Grantee may review such instrument and notify Grantor of any terms and/or conditions that are more favorable or less stringent or burdensome than those contained herein and Grantee and Grantor shall, in good faith, negotiate and enter into agreement(s) documenting such amendments to this Franchise as are necessary to achieve competitive equity between the two franchises. Grantor shall not be obligated but shall endeavor in good faith to keep Grantee informed of any proceedings concerning the grant of another cable television franchise ordinance or similar grant of authority concerning cable television.

3.7 Franchise Non-Transferable

This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the consent of the Grantor, expressed in writing. The granting of such consent in one instance shall not render unnecessary any subsequent consent in another instance.

If the Grantee wishes to transfer this Franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rulemakings of the FCC. Grantee shall give Grantor written notice of the proposed transfer and shall request consent of the transfer by the Grantor. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise Agreement. The Grantee shall assist Grantor in any such inquiry and shall provide all information requested in writing by the Grantor that is reasonably necessary to determine the legal, financial, and technical qualifications of the proposed transferee in order to determine whether it will consent to the proposed transfer. The Grantor may condition its consent upon such terms and conditions as it deems appropriate, related to the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise. Consent to the transfer shall not be unreasonably delayed or withheld. Any transfer of ownership effected without the written consent of the Grantor shall render this Franchise subject to revocation. The Grantor shall have one hundred and twenty (120) days to act upon any request for approval of a transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the Grantor. If the Grantor fails to render a final decision on the request within said 120 days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

The Grantee, upon any transfer as heretofore described, shall within thirty (30) days thereafter file with the Grantor 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 the Grantee.

Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless Grantee shall within thirty (30) days after the same shall have been made, file such certified copy as is required.

The requirements of this Section shall not be deemed to prohibit the use of the Grantee's property as collateral for security in financing the construction or acquisition of all or part of a Cable Communications System of the Grantee or any Affiliate of the Grantee. However, the Cable Communications System franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

The requirements of this Section shall not be deemed to prohibit sale of tangible assets of the cable system in the ordinary conduct of the Grantee's business without the consent of the Grantor. The requirements of this Section shall not be deemed to prohibit, without the consent of the Grantor, a transfer to a transferee whose primary business is Cable System operation and having a majority of its beneficial ownership held by the Grantee, a parent of the Grantee, or an Affiliate a majority of whose beneficial ownership is held by a parent of the Grantee.

3.8 Change in Control

The Grantee shall promptly notify the Grantor of any proposed change in, transfer of, or acquisition by any other party of control of the Grantee or of Grantee's interest in the Cable System. There shall be no change of control of the Cable System without prior approval of the Grantor. Such change in control shall make this Franchise subject to revocation unless and until the Grantor shall have given written consent thereto.

If the Grantee wishes to operate the Franchise under a change of control, the Grantee shall give the Grantor written notice of the proposed change and shall request approval of the change by the Grantor. The Grantor shall have one hundred and twenty (120) days to act upon the request, following the receipt of the request and of all information required in accordance with FCC regulations, as well as all information required in writing by the Grantor prior or subsequent to the request for approval, and submitted by Grantor at least thirty (30) days prior to the end of the one hundred and twenty (120) day period. If the Grantor fails to render a final decision on

the request within said one hundred and twenty (120) days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

For the purpose of determining whether it will consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective controlling party to perform the obligations of the Grantee under this Franchise Agreement. The Grantee shall provide reasonable assistance to Grantor in any such inquiry. Consent to the change of control shall not be unreasonably delayed or withheld.

3.9 Franchise Acceptance

The Grantee, within sixty (60) days after the tender by the Grantor to the Grantee of the Franchise Agreement adopted by the Grantor, shall file in the office of the Grantor's cable franchise manager a written acceptance executed by Grantee, substantially in the form attached hereto as Exhibit B. In the event Grantee fails to file the acceptance as required herein, then this Franchise shall be null and void.

Section 4. Construction and Service Requirements, is created to read as follows:

4.1 General

As of the Effective Date of this Agreement, the Cable System utilizes a Hybrid Fiber Coaxial (HFC) system architecture. All active electronics are 750 MHz capable equipment, or equipment of higher bandwidth. Grantee agrees to maintain and improve upon this architecture in order for the System to provide the highest level of capacity and capability to its Subscribers for any service that Grantee provides.

In all its construction and service provision activities, Grantee shall meet or exceed the construction, extension and service requirements set forth in this Franchise Agreement.

4.1.1 Permits

Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. Before any work is done by the Grantee under this franchise, it shall first file with the Director of the Clallam County Department of Public Works (hereinafter the Director) an application for a permit to do such work, accompanied by design drawings showing the position, location, and type of facility sought to be constructed, extended, connected, repaired, maintained, operated or removed, showing the relative positions to existing roads and property lines. Such drawings shall give an accurate, graphic representation of the location of existing utility structures and

shall contain or be accompanied by a drawing showing the location by cross section of the utility improvement to be installed by grantee. The location of these utilities and the roadway shall be drawn in such a manner that identification in the field is possible. The Director shall approve and issue the permit, approve subject to conditions, or reject the application. If the application is rejected, the Director shall provide the Grantee, in written form, with an explanation of the reasons that the application was rejected. The approval of any such permit shall be processed in a timely manner and shall not be unreasonably withheld. All construction shall be performed in compliance with this Agreement and all applicable Grantor Ordinances and Codes. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, grantees, permittees, and franchisees so as to reduce as far as possible the number of Street cuts.

Permits shall not be required for work performed by Grantee's personnel and contractors and equipment relating to the following, provided that no obstruction, improvement, or construction is located so as to constitute a hazard to motor or pedestrian traffic:

- a. Tree trimming and brushing, unless the vegetation in need of trimming or brushing is the subject of a "no trim" agreement between Grantor and the property owner, his or her heirs, successors or assigns, where the vegetation is located; provided, that Grantee shall be entitled to rely upon records maintained by Grantor to determine the existence and locations of any "no trim" agreements.
- b. Maintenance repairs where no damage to the road or its appurtenances will occur;
- c. Installation of customer service laterals from existing lines where no damage to the road or its appurtenances will occur;
- d. Emergency work provided that Grantee shall notify the Director of the nature and scope of said emergency work as soon thereafter as possible but in no event later than forty-eight (48) hours after commencement of said emergency work and shall provide the Director, if requested to do so, with as-built drawings which are consistent with requirements for permit drawings hereunder.

4.2 Right of Inspection of System Construction and Maintenance

Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise Agreement and applicable law. If a condition creating a serious, clear, and immediate danger to the health, welfare, or safety of the public is found to exist, Grantor, in addition to taking any other action permitted under applicable law, may alert Grantee, verbally or in writing, of the unsafe condition and require Grantee to make the necessary repairs and alterations to correct the unsafe condition immediately or within a reasonable time established by Grantor.

4.3 Provision of Service

4.3.1 In General

It is the Grantor's general policy that all potential Subscribers in the Grantee's Franchise Area should have equivalent Service Availability from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within its Franchise Area. Except as otherwise provided in this Section, Grantee shall provide Cable Service within 7 business days of a request by any Person within its Franchise Area that can be connected by a standard installation. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, or receipt of a written request by the Grantee, or receipt by the Grantee of a verified oral request.

Except as otherwise provided in Section 10.1(e), Grantee shall provide such service:

At non-discriminatory monthly rates for Subscribers; and

Notwithstanding the above, Grantee may establish different and nondiscriminatory rates and charges and classes of services for Commercial Subscribers.

4.3.2 Parameters for Normal Extension of Service

Provided that Grantee's cost for any such normal extension of service shall not exceed, as of the Effective Date, one thousand seven hundred fifty and no/100 Dollars (\$1,750) per occupied residential dwelling unit within the planned service extension area, the Grantee shall offer availability of Cable Service to potential subscribers in all areas of the Franchise Area. The extension cost shall be calculated based on the amount of aerial strand footage

and/or underground trench footage from the nearest technically feasible point on the existing Cable Communications System plant. The amount of \$1,750 per occupied residential dwelling unit shall be escalated annually based on the increase in CPI for the Seattle, Washington Metropolitan area. Subject to the foregoing, should, through new construction, an area within the Franchise Area meet the above requirements after the Effective Date of this Franchise, Grantee shall use commercially reasonable efforts to provide Cable Service to such area within ninety (90) days of the date that Grantee is notified of a request from a potential Subscriber of an occupied residential dwelling unit and Grantee verifies that the cost requirement is satisfied.

No charge in addition to the standard installation charge shall be made by the Grantee to Subscribers for the extension of the Cable System under this subsection; nor the provision of a cable drop to the premises of any Subscriber requesting service, so long as the drop does not exceed the above noted cost ceiling, and one hundred and twenty-five (125) feet in aerial or underground length.

4.3.3 Line Extension Areas

- (a) Definitions. For purposes of this Section 4.3.3, the term “occupied residential dwelling units per mile” means the number of residential dwellings or units, including multi-dwelling units, calculated by including all new distribution plant in the Right-of-Way and new units passed by the Cable Communication System extension that are within three hundred (300) feet of the Right-of-Way. Units that are excluded because of their distance from the Right-of-Way may elect to be connected by paying a Long Drop charge as provided for in Section 4.3.3.c.
- (b) Line Extensions. In the event that the requirements set forth in Section 4.3.2 are not satisfied, Grantee shall extend its Cable System to serve a Subscriber or Subscribers if such Subscriber or Subscribers are willing to share the cost of the extension, according to the following formula: The amount by which the actual number of occupied dwelling units on the extension falls short of the total line extension construction cost, after taking into account Grantee’s contribution based on a calculation incorporating the maximum amount specified in Section 4.3.2 above is the portion of the construction costs that must be borne by the Subscriber(s), to the extent not funded by the Grantor at the Grantor’s discretion.

- i. The term “construction costs” means the actual costs of the extension design, walkout, make-ready by other utilities, construction labor costs, and material costs. Construction costs do not include the cost of the drop, up to three hundred (300) feet, to the residence.
- ii. By way of example, in the event a line extension to reach a requesting Subscriber requires an extension passing eight (8) occupied dwelling units at a cost of \$20,000, Grantee would contribute \$14,000 while the cost to the non-Grantee participants would be \$6,000; if all eight (8) occupied dwelling units contributed to the cost, they would each be required to contribute \$750. If less than all 8 occupied dwelling units elect to contribute, those parties would be required to contribute the entire \$6,000. If fewer than all 8 occupied dwelling units elect to participate, a new design may be required that could lower the overall cost and require new cost sharing calculations.

In Diagram #1 below, various examples of the cost sharing process are shown. In example #1, the Grantee is shown to build the network extension at no cost to Subscribers. In examples #2 through #6, other contributors cover or share the additional \$6,000, as contemplated herein. These examples show how the number of Subscribers sharing the \$6,000 cost will determine the cost per Subscriber.

Additionally, the column labeled as “Non-Subscribers’ Contribution”, in Diagram #1, is based on potential contributions from sources other than Subscribers. This could include contributions by residents interested in having services delivered on Grantee’s System other than Cable Services, builders of new neighborhoods or contributions from other sources.

Example #	Cost of Infrastructure Extension	Number of Occupied Dwelling Units Passed	Grantee's Contribution	Non-Grantee Costs			
				Cost Shared by Others	Number of Subscribers Contributing	Non-Subscribers' Contribution	Cost per Subscriber
1	\$20,000	8	\$20,000	\$0	0	\$0	\$0
2	\$20,000	8	\$14,000	\$6,000	8	\$0	\$750
3	\$20,000	8	\$14,000	\$6,000	4	\$0	\$1,500
4	\$20,000	8	\$14,000	\$6,000	4	\$2,000	\$1,000
5	\$20,000	8	\$14,000	\$6,000	2	\$0	\$3,000
6	\$20,000	8	\$14,000	\$6,000	2	\$3,000	\$1,500

Diagram #1

iii. If a person or persons requesting extension is required to make a contribution in aid of extension, Grantee shall provide a detailed cost quotation to such person.

- (c) Long Drop. In cases where a Cable System extension is constructed, but certain units beyond three hundred (300) feet from the Right-of-Way have been excluded from the density calculation, such units shall be considered Long Drops. If a Long Drop unit requests installation of Cable Service, Grantee may charge the actual cost of the connection, based on design, walkout, make-ready by other utilities, construction labor and material costs, for the distance from the Right-of-Way beyond three hundred (300) feet.
- (d) Service Availability. To continue the cooperative relationship between Grantee and Grantor in extending service to unserved areas of the County, Grantee agrees to provide outreach to unserved portions of the Franchise Area concerning the potential availability of services.

4.3.4 New Subdivisions

Subject to Sections 4.3.2 and 4.3.3, Grantee shall work with developers of subdivisions in the Franchise Area in order to make its Cable Services available at the time of first occupancy on a commercially feasible basis.

4.3.5 Annexation and Transferred Franchising Jurisdiction

Whenever any of the Streets and other Public Rights-of-Way fall within a city or town limits by reason of subsequent incorporation or annexation, or become annexed or otherwise fall under the jurisdiction of the State of Washington, then all the rights and privileges herein granted shall terminate in respect to said Streets or other Public Rights-of-Way so incorporated or annexed; but this franchise shall continue in force and effect in respect to all Streets and other Public Rights-of-Way not so incorporated or annexed. In the event that cable franchising jurisdiction is transferred to Grantor from another jurisdiction, then the terms of this Franchise shall apply within the area.

4.4 Erection of Poles

Grantee shall use existing poles unless such use is demonstrated not feasible. Where so required by the existing pole owner, Grantee shall first negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions, and shall comply with all applicable ordinances, resolutions, rules, and regulations of the Grantor. If not successful, or in the absence of existing poles sufficient for Grantee's purposes Grantee may pursue installation of its own poles. Grantee shall not erect, for any reason, any pole on or along any street or public way in an existing aerial utility system unless approved by the Grantor.

4.5 Repair & Restoration of Streets, and Public Ways

The Grantee shall leave all roads in as good and safe condition in all respects as they were before the commencement of such work by the Grantee, its officers, agents, contractors, or employees, or when such condition has met with the approval of the Director.

In case of any damage to said Streets and other Public Rights-of-Way or their appurtenances, including, but not limited to, turnouts, gutters, ditches, wood or concrete walks, drainpipes, hand or embankment rails, bridges, trestles, wharfs or landings or to the property of third parties, resulting from

any work performed or failed to be performed by the Grantee, the Grantee agrees to immediately repair said damage at its own cost and expense to the satisfaction of the Director. Grantor may at any time, do, order and have done, any and all work considered necessary to restore to a good and safe condition any such Streets and other Public Rights-of-Way or appurtenances left by the Grantee, its officers, agents, contractors, or employees in a condition different from that which existed prior to the work; and the Grantee, on demand, shall pay to Grantor all costs of such construction or repair and of doing such work; provided, that Grantor shall have first made written demand upon the Grantee to perform the work necessary to return the Streets and other Public Rights-of-Way or appurtenances to the condition which they existed prior to the work by the Grantee, and the Grantee shall have failed, for a period of forty-eight (48) hours after receipt of such written demand, to commence the work necessary to return the Streets and other Public Rights-of-Way or appurtenances to its pre-existing condition. Provided further, that in the event it is reasonably determined by Grantor that an emergency exists, which requires immediate restoration, then the Grantor may perform such work, and the Grantee shall pay all reasonable costs thereof.

4.6 Compliance with Laws, Standards and Construction Codes

The Grantee shall construct, extend, connect, repair, maintain, operate, and remove its facilities at its own risk. The Director shall inspect said construction, extension, repair, maintenance, or removal to determine whether the construction, extension, repair, maintenance, or removal materially or adversely impacts Grantor's Street and other Public Rights-of-Way. Approval by the Director of the construction, extension, repair, maintenance, or removal shall not be construed as an approval of the nature, extent, quality, or workmanship of the Grantee's work and shall be construed to mean nothing other than that the Grantee's work does not materially adversely impact the physical characteristics of Grantor's Street and other Public Rights-of-Way. The location of all the Grantee's facilities, their depth below or height above the surface of the ground or grade of any Street and other Public Rights-of-Way, and their lateral location in relation to the Street and other Public Rights-of-Way centerline shall be in compliance with all applicable County, state and federal codes, regulations and standards. The Grantee shall, at all times ensure that its construction, extension, connection, repair, maintenance, operation and removal of its facilities does not diminish the safety of the public using, or in proximity to Grantor's Streets and other Public Rights-of-Way.

The Grantee shall also strictly adhere to all applicable building, zoning or other laws and codes currently or hereafter in force in Grantor's jurisdiction. The Grantee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to

cause no unreasonable interference, as determined by the Grantor, with the use of said public or private property by any person. In the event of such interference, Grantor may require the rearrangement, or removal if rearrangement would not resolve such interference of Grantee's lines, of cables and appurtenances from the property in question following ninety (90) days notification to the Grantee.

4.7 Reservation of Street Rights

Nothing in this Franchise Agreement shall be construed to prevent any public work of the Grantor, including without limitation constructing sewers, grading, paving, repairing and/or altering any street, alley, or public highway, blasting, excavating, embanking, or laying down, repairing, or removing water mains or maintaining, repairing, constructing, or establishing any other public property. If any property of the Grantee shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a street or any other public improvement, then on no less than one hundred and twenty (120) days' prior written notice from Grantor in the event of a planned project, or ten (10) days' prior written notice from Grantor in the event of unplanned work all such property including poles, wires, conduits or other appliances and facilities shall be removed, replaced or relocated in a timely manner as shall be directed by the Grantor, so that the same shall not interfere with the said public work of the Grantor, and such removal, replacement or relocation shall be at the expense of the Grantee. Grantor shall in no way be held liable for any damages to Grantee that may occur by reason of the Grantor's improvements or by the exercise of any rights so reserved in this Section or grant, except as a result of willful misconduct, negligence or fault on the part of Grantor. Said notice shall indicate the date by which the Grantee is required to raise, lower, or move its facilities which date shall be no earlier than ten days after delivery of the notice.

In the event of failure, neglect, or refusal of the Grantee, to relocate its facilities or to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.8 Street Vacation and Abandonment

In the event any street, alley, public highway, or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this franchise, the Grantee shall forthwith remove its facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. At the time of removal thereof the Grantee shall

restore, repair, or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be reasonably required by Grantor. In the event of failure, neglect, or refusal of the Grantee, to remove its facilities or to repair, restore, or reconstruct such street damage, following five (5) business days notification to the Grantee to cure, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.9 Movement of Facilities

In the event it is necessary temporarily to move or remove any of the Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets, alleys or highways of the Grantor, Grantee, upon reasonable notice, shall move at the expense, paid in advance, of the person requesting the temporary removal such of its facilities as may be required to facilitate such movements; provided that, if the Grantor is the party requesting the removal, for movement of buildings or structures or other public purposes of the Grantor, then the removal shall be done at the expense of the Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may affect such removal or relocation, and the expense thereof shall be paid by Grantee.

If public funds, other than the funds of the Grantor, including pass through funds, are available to any Person using such street or public right-of-way for the purpose of defraying the cost of any of the relocation of facilities as provided under Sections 4.7, 4.8 and 4.9, hereof, Grantee shall be afforded equal treatment subject to applicable law and regulations and Grantor shall, upon written request of the Grantee, use commercially reasonable efforts to support Grantee's application for such funds; provided, however, that (1) Grantor may decline if such application would compete with Grantor or a component unit thereof for such monies, and (2) such efforts will be at Grantee's sole cost and expense, including Grantor's staff time.

4.10 Undergrounding

a. Cable must be installed underground where:

- i. all existing utilities are placed underground,
- ii. required by statute or an ordinance, or other regulation lawfully imposed by Grantor on a non-discriminatory basis on all similar entities with facilities in the same Street and other Public Rights-of-Way.

- iii. all aerial utility lines are moved underground (Grantee shall bear the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case or unless preemptive state or federal law or regulation provides otherwise),
 - iv. Grantee is unable to get or maintain proper clearances on poles,
 - v. underground easements are obtained from developers of new residential areas and all utilities will initially be placed underground, or
 - vi. utilities are aerial, but residents prefer underground (undergrounding is to be paid by the residents, which shall be provided by the Grantee to the residents at cost); provided, however, that such undergrounding obligation shall be conditioned on Grantee's ability to timely procure all necessary permits and authorizations.
- b. Grantee shall use conduit or its functional equivalent on 100% of undergrounding, except for drops from pedestals to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

4.11 As Builts

Grantee shall maintain strand map drawings or the functional equivalent of the Cable System and make them available to the Grantor for inspection upon request. Said drawings or their functional equivalent shall be updated as changes occur in the Cable System. The Grantee shall provide the Grantor upon the Effective Date, and thereafter upon request, a copy of as-builts or GIS map layers showing the location and nature of Grantee's facilities in the streets and public ways throughout the entirety of the Franchise Area.

4.12 Emergency

In the event of an emergency, or when the cable equipment creates or is contributing to an imminent danger to health, safety or property, the Grantor may remove or relocate Grantee's cable system without prior notice. Subject to the limits of the Washington Torts Claims Act and the Washington Constitution, Grantor will defend, indemnify, and hold Grantee harmless for any negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 4.12.

4.13 Updated Right-of-Way Requirements

Grantor reserves for itself the right at any time upon forty-eight (48) hours' notice to the Grantee to change, amend, modify, or amplify any of the Right-of-Way provisions or conditions herein enumerated to conform to any local, state, or federal law or regulation or recognized engineering practice relating to the public welfare, health, safety, or highway design as may hereinafter be adopted or recognized. Such changes, however, shall not apply to existing facilities in Street and other Public Rights-of-Way but rather, to changes, modifications, or new installations. However, all facilities in the Right-of-Way must conform to codes in place when such facilities were installed or last modified.

4.14 Monument Reference

Before any work is performed under this franchise, the Grantee shall reference all subdivision plates, highways, and all other surveys that are affected by such work. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the Director before placement. The replacement of all such monuments or markers disturbed during the Grantee's operation shall be made as expeditiously as conditions permit and as directed by the Director. The cost of monuments or other markers lost, destroyed, or disturbed and the expense of replacement of approved monuments shall be borne by the Grantee. Said reference of monuments shall be performed by a surveyor licensed by the State of Washington or such other person authorized by state law to prepare and file a survey.

Section 5. System Design and Performance requirements, is created to read as follows:

5.1 Equal and Uniform Service

In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise Agreement. Reasonable efforts shall be made to provide equal and uniform access and Cable Service rates to Subscribers within the Franchise Area unless otherwise permitted by State or federal law. Exceptions to this requirement may be made for any promotional offers that are not made available either on a uniform basis or throughout the entire Franchise Area such as those designed for select qualifying groups (for example, new Subscribers or senior discounts) and qualifying portions of the Franchise Area (for example, households in new subdivisions).

5.2 System Configuration

- a. Grantee has designed, constructed, and shall maintain a Cable System that has been built for digital television standards. As of the Effective Date, Grantee's **Cable System utilizes a HFC 750 MHz two-way activated** System for all programming services throughout all parts of the system. The Cable System shall be capable of at a minimum supporting video and audio, including HD (at least 720p) and SD video (less than 720p), throughout the term of this Agreement. The Cable System shall be two-way activated and able to reliably support two-way Interactive Services such as Video On Demand (VOD). Grantee's Cable System shall provide consistent, high-quality reception to Subscribers in the System in accordance with the FCC technical standards and other technical standards contained in this Agreement. Consistent with Section 4.1, Grantee agrees to maintain and improve upon its existing System, consistent with Grantee's other cable systems in western Washington, in order for the System to provide the highest level of capacity and capability to its Subscribers.
- b. The Cable Service provided by the Cable System shall be delivered in accordance with applicable FCC standards, as amended. The Cable System shall meet or exceed any and all applicable technical performance standards of the FCC and shall comply with all applicable codes and versions of codes including the National Electrical Safety Code, the National Electrical Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the State of Washington and the generally applicable laws, ordinances and construction standards of Grantor.

5.3 Return Capacity

The System shall, throughout the Franchise term, carry reverse signals in the upstream direction as required to operate Grantee-offered Interactive Services such as VOD, channel guide functionality, DVR operation, etc. As of the Effective Date, the reverse spectrum of the System has the capability of permitting return signals within the total 5-42 MHz bandwidth, from any Subscriber tap to the head end facility serving that Subscriber. Customers ordering tiers of Cable Service that require other than the minimum reverse bandwidth shall be provided with access to those upstream signals required by such service.

5.4 Satellite Earth Stations

Grantee shall provide a sufficient number of earth stations to receive signals from enough operational communications satellites, or equivalent transport such as fiber optic systems, that carry cable television services

accessible to the Grantee throughout the life of the Franchise to enable Grantee to carry out its obligations under this Franchise.

5.5 Interconnection

- a. Grantee shall, upon Grantor's request and as needed to distribute EG programming, interconnect the Cable System with all other, contiguous cable systems in Clallam County, specifically including but not limited to Grantee's systems in the Cities of Sequim and Port Angeles and others that may hereafter be located there, in Forks and in unincorporated Clallam County. The Grantor shall not direct interconnection in these cases except under circumstances where it can be accomplished without undue burden or excessive cost to the Subscribers. Grantee shall not be required to interconnect with an unaffiliated cable system unless the cable operator of that system is willing to do so and pay for its own costs of constructing and maintaining the interconnect to the demarcation point, which shall be at a meet point located at or near the border of the aforementioned jurisdictions, except as may otherwise be agreed by the parties. Grantee shall use reasonable efforts to agree with the other cable operator upon mutually convenient, cost effective and technically viable interconnections of the EG Access Channel signals. Grantee agrees to not object to or impede any connection established by a Grantor designated access provider, whether on the property of the Grantor, a designated access provider, or another cable operator, by means of which another cable operator obtains access to the EG Access Channels, and not to object or impede the transmission of such signals by any other cable operator. The Grantee shall not charge the other party a fee for EG programming in connection with transporting EG signals or programming on Grantee's Cable System to the meet point or other location agreed upon between Grantee and the other cable operator if Grantee is not required to pay a fee to obtain or transport such programming.

System interconnections shall provide the capability to transmit Access Programming, in a capacity, format and quality to ensure no degradation across the Interconnect, in each direction, together with data, telemetry, audio, and other non-video signals. The Interconnection shall be capable of receiving and delivering, among other things: selected Access Programming produced by Grantor and other, contiguous cable systems in Clallam County; and Access Programming carried on those cable systems.

- b. Grantee shall ensure that all interconnections on its own property are securely housed and maintained and shall establish and continue in effect a routing system satisfactory to the Grantor that meets FCC technical requirements for carriage of signals for EG access signals.

With respect to installing the capacity required under this Section, the Grantor understands that interconnection may require cooperation from other cable system operators as to engineering, design, and technical operation issues. In addition, Grantee's interconnection obligation, with respect to equipment and construction, shall be limited to providing only such equipment needed, and performing such construction work required, within Grantee's Franchise Area in order to enable the required interconnections to occur. In order to actually establish the interconnections, it may be necessary for the operators of cable systems interconnecting with the Grantee's system to provide equipment needed, and perform construction work required, within their respective Franchise Areas; and the provision of such equipment and performance of such construction work shall be the obligation of Grantee only within its own Franchise Area. Therefore, Grantor shall make every reasonable effort to assist Grantee in achieving the cooperation of interconnecting cable system operators necessary to establish the interconnections, and Grantee's interconnection obligations hereunder shall be subject to such cooperation being obtained.

All interconnections shall be accomplished in a manner that permits the transmission of signals meeting the technical standards of this Franchise on all interconnected Channels.

- c. Grantor shall be responsible for all direct costs incurred by Grantee in connection with the obligation to provide for EG Access Channel interconnection, including, but not limited to, design, permitting, construction, maintenance, and equipment and materials acquisition. After providing a detailed bill of materials and not-to-exceed cost estimate, approved by Grantor, Grantee may require pre-payment of certain of such costs, including for equipment, materials, design, and construction. Grantor's costs may be directly paid or paid out of the EG capital contribution passed through to Subscribers, to the extent lawful and in a manner provided for in federal regulations governing the same. In the event Grantee chooses to bear any or all of the cost of interconnection, it shall be in addition to any EG capital contribution made by Grantee pursuant to Section 6.6.2 hereof and shall not be deducted from the amount of such contribution.
- d. Notwithstanding the foregoing, interconnection may be waived by the Grantor if not technically feasible. Grantee may, after consultation with Grantor, terminate an interconnection for any period where an interconnecting system is delivering signals in a manner that endangers the technical operation of Grantee's Cable System.

- e. Grantor may in the future identify institutional network (I-Net) capacity or services determined through an ascertainment of community needs and interests. After identification, Grantor and Grantee would determine I-Net infrastructure and/or services and may mutually agree to enter into a separate I-Net agreement that would meet the needs determined.

5.6 Emergency Alert Capability

In accordance with the provisions of FCC Regulations Part 11, Emergency Alert System (EAS), and as such provisions may from time to time be amended, the Grantee shall maintain and operate an Emergency Alert System (EAS) for use in transmitting Emergency Act Notification (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the local primary, state primary, and/or the state Emergency Operations Center, as those authorities are identified and defined within FCC Reg. Section 11.51 and other applicable state and local laws.

5.7 Standby Power

Grantee shall provide continuous standby power generating capacity at the Cable System control center or headend, capable of powering all headend equipment for at least twenty-four (24) hours and indefinitely with a continuous or replenished fuel supply. Grantee shall maintain standby power system rated at least at three (3) hours duration at each node. In addition, Grantee shall have in place a plan for dealing with outages of more than three (3) hours and will make same available for Grantor's review upon request.

5.8 Status Monitoring

Grantee shall employ status Monitoring of the System which will continually monitor the System for signal quality on the forward and return spectrums of the System. In addition, the Grantee shall employ status Monitoring for all power in its headend(s) and hub(s).

Status Monitoring shall be capable of notifying the Grantee 24/7 of system problems.

5.9 Parental Control Lock

Grantee shall provide Subscribers (by sale or lease or otherwise), upon request, with a manual or electronic parental control locking device or digital code that permits inhibiting the viewing of any Channel.

5.10 Technical Standards

The Grantee shall install all aerial and underground cables and wires in a manner consistent with Grantor requirements and in compliance with all applicable laws, ordinances, and safety requirements including but not limited to the Federal Communications Commission, Federal Aviation Administration, National Electrical Code (NEC), National Electrical Safety Code (NESC), and Society of Cable Telecommunications Engineers Standards of Good Engineering Practices. The Cable System shall meet or exceed all applicable technical and performance standards and the Federal Communications Commission or its successor agency, and any and all other applicable technical and performance standards.

5.11 Performance Testing

- a. **Quadrature Amplitude Modulation, (QAM)** - As of the Effective Date of this Franchise, Grantee is providing Cable Services in a QAM format and will potentially migrate to an all IPTV format over time. The following sections (5.11.a – d) will be in place until QAM is no longer utilized on the system.
 - i. Grantee shall be responsible for ensuring that its Cable System is designed, installed, and operated in a manner that fully complies with 47 C.F.R. §76.640 and other applicable FCC standards as amended. Pursuant to this Section 5.11, Grantee shall conduct and document complete performance tests of its Cable System, to show the level of compliance with applicable FCC standards, upon request by the Grantor as needed to resolve consumer complaints or issues, or issues raised by County Commissioners or staff. The performance tests shall be directed at determining the extent to which the Cable System complies with applicable FCC technical standards regarding the transmission and reception capabilities of digital Cable Systems.
 - ii. All testing required in this Section 5.11 may be observed by representatives of the Grantor. Grantee shall provide reasonable notice to the Grantor in advance of the scheduled testing date(s), and the Grantor shall then notify Grantee before such testing is scheduled to occur if it desires to observe such test(s).
 - iii. Copies of system performance tests shall be maintained by the Grantee for a period of two (2) years and made available to the Grantor upon request within ten (10) days. In addition, the Grantee shall retain written reports of the results of any tests required to demonstrate compliance with FCC standards, and such reports shall

be submitted to the Grantor upon the Grantor's request.

- iv. If any test required hereunder indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the Grantor, shall take corrective action, retest the locations, and advise the Grantor of the action taken and results achieved.
- b. **Internet Protocol TV (IPTV) Testing**. Upon implementation of an IPTV system that serves Subscribers without the use of the QAM system in place as of the Effective Date of the Franchise, Grantee shall implement a quality assurance monitoring process which measures dropped streams, viewer counts, error rates and other parameters as are measured on the cable modem system. Grantee shall provide Grantor with necessary facility access for review of monitoring results and picture quality, provided such access shall be limited to once per calendar year. Notwithstanding the foregoing, if Subscribers place complaints to the Grantor regarding picture quality and availability on Grantee's IPTV system, Grantor shall be granted additional ability to view the monitoring system to measure performance of these Subscribers' Cable Service.

Section 6. Section 060, Sewer maintenance regulations, is created to read as follows:

6.1 Programming Categories

Grantee shall use commercially reasonable efforts to continue to provide broad categories of video programming in at least the number and of the type offered as of the Effective Date of this franchise. To the extent demonstrated by community needs, Grantor may require Grantee to add another broad category of programming not otherwise carried by Grantee, in order to meet the demonstrated need, and provided that such programming can be added on commercially reasonable rates, terms and conditions.

6.2 Changes in Video Programming Services

In the event any applicable law or regulation materially alters the terms and conditions under which Grantee carries programming within the broad programming categories referred to in Section 6.1, then the Grantee shall be obligated to carry such programming only upon reasonable terms and conditions.

Grantee shall provide written notice to Grantor and to Subscribers for any proposed deletions, additions, or rearrangements of individual programming service at least thirty (30) days in advance. Grantor reserves

the right to regulate to the fullest extent permitted by law to ensure maintenance of the mix, level, and quality of service.

6.3 Interactive Cable Services

Grantee shall continue to make Interactive Cable Services available to Subscribers in the System consistent with its other similarly situated cable systems in the Pacific Northwest.

6.4 Leased Channel Service

The Grantee shall offer leased channel service to the extent required by 47 U.S.C. Section 532 (Section 612 of the Cable Act), or regulations adopted thereunder.

6.5 Obscenity

Grantee shall not transmit over the Cable System programming which is obscene or otherwise unprotected by the Constitution of the United States, or the State of Washington, provided, however, Grantee shall in no way be responsible for programming over which it has no editorial control, including public, educational, and governmental access programming.

6.6 Educational and Government Use of System

6.6.1 Education and Government Access Channels

a. Designated EG Access Providers.

- i. The Grantor may designate Educational and Government “EG” Access Channel operators and Programming providers (hereafter “Designated Access Provider”), including itself for Government Access purposes, to control and manage the use of any or all Access Facilities provided by the Grantee under this Franchise, including, without limitation, the operation of Interconnected Access Channels. To the extent of such designation by the Grantor, as between the Designated Access Provider and the Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities.
- ii. Grantee shall cooperate with EG Designated Access Providers in the use of the Cable System and Access Facilities for the provision of EG Access. Grantee shall work with EG Designated Access Providers as may be necessary to facilitate and coordinate the provision of EG Access.

iii. Except as provided in this Franchise, the Grantor shall allocate Access Resources to Designated Access Providers only. Grantee shall cooperate with the Grantor in such allocations, in such manner as the Grantor shall direct.

iv. For the purpose of Section 6.6:

1. "Access Facilities" means the Channel capacity (and portions thereof), services, facilities, equipment, and/or technical components used or useable by EG Access; and
2. "Access Resources" means all operating support and other financial means by which EG Access is exercised, including, but not limited to, Access Cost support under Section 6.6.3.

v. The requirements of this Section 6.6 shall be subject to the Franchise Review provided for in Section 3.5.

b. Channel Capacity.

Downstream Channels. Upon no less than one hundred eighty (180) days' written notice by Grantor to Grantee, Grantee shall make available a minimum of one (1) Downstream Video Channel, as determined by the Grantor, for distribution of EG Access programming to all Subscribers. Grantee shall simultaneously carry such Access Channel in both a high definition (HD) format and a standard digital (SD) format, unless and until Grantee ceases to carry Channels on the System in SD, at which time the Access Channel may be provided in only an HD format, for a total of two (2) activated EG Access Channels, one (1) SD Access Channel and one (1) HD Access Channel. Grantor acknowledges that receipt of HD format Access Channel may require Subscribers to pay additional HD charges applicable to receiving other comparable HD programming services.

c. Access Programming Information in Programming Guides.

- i. Grantee will provide to the EG Access Channel operator its third-party guide provider contact information so as to permit EG Access Channels and programming information to be included in any program guides, navigation systems and search functions accessible through Grantee's Set Top Units and remote controls, or their successor technologies, and allow program information to be included for EG Access

Channels provided to Subscribers, including, but not limited to on-screen, and on-line program guides which include channel and program listings of any Local Broadcast Channels. Grantee shall facilitate the connection of the EG Access Channel operators to its third-party guide provider to implement the requirements of this Section.

- ii. Inclusion of EG Access Channels on the programming menu, and subsequent provision of program information by the entity(s) responsible for providing the information, shall afford the ability to record EG programming via the Digital Video Recording (DVR) system in place and all auto-tuning abilities as provided for other Channels on the System.
 - iii. The Designated Access Providers shall provide to the Grantee's third-party guide provider, the EG Access Channel programming information in an appropriate format and within the appropriate timeframe for insertion into the programming guides.
- d. No Editorial Control. The Grantor acknowledges that pursuant to Section 611 of the Cable Act that Grantee has no editorial control over the EG Access Channels except as provided in the Cable Act.

6.6.2 Access Direct Connections and Interconnections

- a. Upon no less than one hundred eighty (180) days' prior written notice to Grantee, Grantee shall commence work to install up to two direct fiber optic connections from the mutually agreed upon EG Access Channel origination points to Grantee's pertinent hub(s) or and/or headend, for delivery of the EG Access Channels described in Section 6.6.1.b. to Subscribers (the "EG Connections"). The EG Connections shall include all necessary encoding and transmission equipment to deliver the Access signals without material degradation. The County shall be responsible for all costs associated with such direct connections, including but not limited to transport, encoding and transmission equipment, materials, design, permitting, construction, implementation, testing, and maintenance thereof. Grantee shall be responsible for all equipment needed to place such EG Access Channels on the Cable System at its pertinent hub(s) and/or headend.
- b. Such costs may be paid directly by Grantor or paid out of Access Contribution. In the event Grantee chooses to bear any or all of

the cost of direct connection, it shall be in addition to any Access Contribution made by Grantee pursuant to Section 6.6.3 hereof and shall not be deducted from the amount of such contribution.

- c. The Grantee shall install and maintain all access interconnection of EG Access Channels in accordance with the requirements of Section 5.5. In addition to the interconnection requirement in Section 5.5, Grantee shall make a reasonable effort to install and maintain all access interconnections needed for future Access Channels required under this Franchise.

6.6.3 Support for Access Costs

Upon no less than one hundred eighty (180) days' prior written notice to Grantee, Grantee shall provide 1% of its Cable Services Gross Revenues, for Educational and Governmental Access costs, capital facilities and equipment (the "Access Contribution"). The Access Contribution shall then continue throughout the term of this Agreement. If the Grantee elects to include the Access Contribution on the bills of Subscribers, the Grantee shall provide notice to the Grantee's Subscribers of such inclusion at least thirty (30) days prior to including the contribution on any bills. The Grantee shall coordinate with the Grantor on the content of the notice. The Grantee shall make such payments quarterly, following the Effective Date of this agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter.

If Grantor enters into a franchise agreement or amends an existing franchise agreement with another cable operator after the Effective Date of this Franchise to provide Cable Service in all or a portion of the Grantee's Franchise Area that includes EG financial support calculated based on a percentage of Gross Revenues that is less than 1% of Cable Services Gross Revenues, or requires no such EG financial support, then Grantee shall be entitled to reduce or eliminate the Access Contribution to match that of the other cable operator or operators.

6.6.4 Access Support

- a. The Grantor recognizes that the financial support for the Access Contribution set forth in this Section 6.6 is to be used for costs consistent with Federal law and FCC Rules and Regulations. As of the Effective Date, applicable law exempts from the term "franchise fee" capital contributions (e.g., the Access

Contribution) to the extent associated with the use of PEG channel capacity. In the event of a change in applicable law, Section 13.12 shall govern.

- b. The Grantor recognizes that the Grantee has the right and ability to include Franchise Fees and certain other commitments on the bills of Subscribers.
- c. The Access Contribution may be accrued over the period of time necessary to provide funding for the purposes described herein. In the event that such funding is no longer being accrued, remaining funds shall be utilized for the purposes described herein within one year of the termination of this Franchise or any renewal thereof.

6.6.5 Cable Service to Public Facilities

The connections and service level Grantee shall provide to public facilities are identified in Exhibit D.

6.6.6 Change in Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access Programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition or replacement of all necessary equipment at Grantee's headend, to ensure that the quality of the EG Access Channel signals distributed on the System are not diminished or adversely affected by such change. Changes in technology shall not require Subscribers to obtain equipment not otherwise needed for receiving any other Channels on the System. Designated Access Providers shall be responsible for acquisition of necessary equipment on their side of the demarcation point at their respective facilities.

6.6.7 Technical Quality

- a. Grantee shall maintain and deliver to all Subscribers all Access Channels and Interconnections of Access Channels at the same level of technical quality and reliability provided for Local Broadcast Channels, and as required by this Franchise and all other applicable laws, rules, and regulations for Access Channels.

- b. Grantee shall have no responsibility for the technical production quality of the Access programming provided by the Access Channel providers to the point of demarcation with the Grantee's Access signal transport equipment.
- c. The Grantee shall not cause any programming other than emergency alert signals to override Access Programming on any Access Channel, except by specific written permission from the Access Provider.

Section 7. Franchise Regulation and Customer Service Standards, is created to read as follows:

7.1 Intent

It is the intent of the Grantor to administer and enforce the provisions of this Franchise. To the extent permitted by applicable law, Grantor may delegate all or a part of its administrative and regulatory authority under this franchise to an entity designated by the Grantor.

7.2 Areas of Regulation and Administration

The Grantor (or its designee) has authority for regulation in the following areas:

- a. Administering and enforcing the provisions of this Franchise Agreement, including the adoption of administrative rules and regulations to carry out this responsibility;
- b. Coordination of the operation of government and educational access channels;
- c. Interfacing the Grantee's technical, programming, and operational assistance and support to public agency users, such as County departments, schools, and health care institutions;
- d. Formulating and recommending long-range cable communications policy for the franchise area;
- e. Disbursing and utilizing franchise revenues paid to the Grantor.
- f. Regulating rates, to the extent permitted by law;
- g. Enforcing consumer protection standards, to the extent permitted by law including, but not limited to applicable FCC regulations;

- h. Planning and facilitating development of public uses of the cable system both within the County and through interconnection with adjacent systems.

7.3 Rate Regulation

- a. Rate Regulation Right Reserved. Grantor reserves the right to regulate Grantee's rates and charges for Cable Service to the full extent authorized by applicable federal, state, and local law, as these may change during the period of the franchise; and to establish rate regulation policies and guidelines for carrying out its authority.
- b. Notice of Change in Rates and Charges. Throughout the term of this Franchise, Grantee shall give all Subscribers within the Franchise Area at least thirty (30) days' notice of proposed rate changes for Cable Service. Nothing in this subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns or for the purpose of attracting Subscribers or users.
- c. Rate Discrimination Prohibited. Grantee shall apply non-discriminatory rates and charges for Cable Service to all Subscribers purchasing similar services, regardless of race, color, creed, sex, marital or economic status, age, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; provided that nothing in this franchise shall prevent the Grantee from establishing discounted rates and charges for low-income or elderly Subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns or providing other discounts or accommodations as may be required by applicable law from time to time.
- d. The provisions of this Section 7.3 shall be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Communications Policy Act of 1984), as amended from time to time.

7.4 Remedies for Franchise Violations

- a. In addition to any other remedies as specified in this Franchise, the Grantor has the right to and may impose penalties not to exceed \$1,000, per day, per incident, not to exceed a total of \$50,000 per incident, in the event Grantee violates any time-sensitive or emergency-oriented provision of this Franchise Agreement. In addition to any other remedies as specified in this Franchise and in the event that Grantor determines that Grantee has violated any other material provision of this Agreement, subject to Section 7.4(c) below Grantor may impose as liquidated damages, and not as a penalty, up to five hundred dollars (\$500) per incident for non-continuing violations and up to one thousand dollars

\$1,000 per incident for continuing violations, not to exceed a total of fifty thousand dollars \$50,000 per year. For purposes of this Section, the term “per incident” means a single occurrence of a violation without regard to number of Subscribers.

- b. If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.

The date of the violation will be the date of the event and not the date Grantee receives notice of the violation except in cases where Grantee did not know and could not reasonably have been expected to know that a violation occurred, in which case penalties shall accrue from the date Grantee knew or should have known of the violation. Without limiting the foregoing, Grantee is presumed to know whether it violated a customer service standard that is measured based upon aggregate performance including, but not limited to, call answer times, installation times service and repair response times.

Grantee shall have thirty (30) calendar days from the date of receipt of such notice to:

- i. Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection (e) below, or;
 - ii. Cure the violation, or;
 - iii. Notify Grantor that Grantee cannot cure the violation within the thirty (30) days and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (c) below.
- c. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor may within thirty (30) days of Grantor's receipt of such notice, set a hearing, as described in subsection (f) in this Section below. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor, who may waive all or part of the penalties for such extended cure period in accordance with the criteria

set forth in subsection (g) of this Section. Following the hearing, Grantor may also in its sole discretion, modify Grantee's proposed extended cure period.

- d. In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (c), the Grantor may set a hearing to determine what penalties, if any, shall be applied.
- e. In the event that the Grantee contests the Grantor's assertion that a violation has occurred and requests a hearing in accordance with subsection (b)(i) above, the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what penalties shall be applied.
- f. In the case of any hearing pursuant to this Section, all hearings shall be had in front of a quorum of the Clallam County Board of County Commissioners (BOCC). Any procedural rules, or requirements for these hearings shall be set at the sole discretion of the BOCC but shall be clearly communicated to the Grantee. Grantor shall notify Grantee of the hearing in writing and in the case of a hearing under (b)(1) above, the Grantor shall provide Grantee no less than twenty (20) days prior written notice of the hearing. At any hearing under this Section, the Grantee shall be provided an opportunity to be heard and to present evidence, and testimony in its defense. The Grantor may also hear any other Person interested in the subject and may provide additional hearing procedures as Grantor deems appropriate. It shall not be a violation of the time requirements within this Section if a quorum of the BOCC cannot be had on the date and time that a hearing is scheduled. In such an instance, the hearing will be re-scheduled to the soonest date that a quorum is possible.
- g. The penalties set forth in this Section of this Agreement may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors:
 - i. Whether the violation was unintentional;
 - ii. The nature of any harm which resulted;
 - iii. Whether there is a history of overall compliance, and/or;
 - iv. Whether the violation was voluntarily disclosed, admitted, or cured.

- h. If, after the hearing, Grantor determines that a violation exists, Grantor may utilize one or more of the following remedies:
 - i. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
 - ii. Establish the amount of penalties, taking into consideration the criteria provided for in subsection (g) of this Section as appropriate in Grantor's discretion;
 - iii. Revoke this Agreement, and/or;
 - iv. Pursue any other legal or equitable remedy available under this Agreement or any applicable law.
- i. The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor and shall be in writing. Grantee may appeal the decision of Grantor to a court of competent jurisdiction as provided by Washington law.

7.5 Public Disclosure

Subject to the Washington Public Records Act, RCW 42.56, whenever, pursuant to this Franchise Agreement, Grantee shall make available for inspection by the Grantor or submit to the Grantor reports containing information considered proprietary by the Grantee, the Grantor shall not disclose or release such reports or information to the public without Grantee's prior written consent provided Grantee has clearly identified such information by watermarking or identifying such information on the face of the document with a notice stating "PROPRIETARY INFORMATION, NOT FOR DISCLOSURE" or something substantially similar at the time of submission. Certain proprietary information is exempted from public disclosure by RCW 42.56.270. The parties understand and agree that the Grantor is statutorily required to disclose non-exempt public records upon request, and compliance with Washington state public records law shall not be considered a breach of this agreement.

7.6 Remedies Not Exclusive

The Grantor has the right to apply any one or any combination of the remedies provided for in this Franchise, including without limitation all remedies provided for in this Section 7, and may without limitation pursue any rights, remedies, or actions that it may have in law or equity regardless of whether they are specifically mentioned in this Franchise.

7.7 Consumer Protection Standards

The following customer service and consumer protection standards shall apply. Nothing in this Section shall limit the rights of the Grantor to establish additional or different standards in accordance with federal law and regulations.

7.7.1 Customer Service and Telephone Responsiveness

- a. The Grantee shall maintain an office or customer service location within Clallam County that is capable of accepting payments and changing out Subscriber equipment. The office/customer service location must be adequately staffed for Subscribers to make payments and drop off equipment not less than forty-nine (49) hours per week with a minimum of nine (9) hours per day Monday through Friday, four (4) hours on Saturdays, and until at least 6:00 PM at least one night per week.
- b. As used herein, "adequately staffed" means toll-free telephone lines are open and customer service representatives are available to respond in at least the following ways: to accept payments; to exchange or accept returned converters or other company equipment; to respond to inquiries; and to schedule and conduct service or repair calls.
- c. Toll-free telephone lines, either staffed or with answering capability, providing at least emergency referral information, must be operational twenty-four (24) hours a day, including weekends and holidays.
- d. The Grantee shall maintain, on average as verifiable by statistical data:
 - i. Sufficient customer service staff and telephone line capacity to handle normal call volume with a minimum of delay to Subscribers. Under normal operating conditions, the Subscribers will receive a busy signal less than 3% of the time.
 - ii. Under normal operating conditions, telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30) seconds. Grantee may use an Automated Response Unit ("ARU") or Voice Response Unit ("VRU") in answering and distributing calls from Subscribers and the wait time not to exceed thirty seconds

will commence once the ARU or VRU forwards the call to a queue for a live representative. Notwithstanding the foregoing, use by Grantee of fully automated troubleshooting via telephone call shall not violate the telephone response times set forth in this Section. If a call needs to be transferred, the transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than 90% percent of the time under normal operating conditions, measured on a quarterly basis.

7.7.2 Service and Repair Calls

- a. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, requests from Subscribers for repair and maintenance service must be responded to, and repairs must commence within twenty-four (24) hours or prior to the end of the next business day, whichever is earlier. Repair and maintenance for service interruptions or other repairs not requiring on-premises work must be completed within twenty-four (24) hours under normal circumstances. All other repairs should be completed within seventy-two (72) hours under normal circumstances.
- b. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, as a normal operating procedure, upon Subscriber request the Grantee shall offer either a specific appointment time or a pre-designated block of time (not to exceed four hours) for Subscriber service appointments to be scheduled Monday through Saturday in the morning, the afternoon, and after 5:00 p.m.

The Grantee shall not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

If a Grantee representative is running late for an appointment with a Subscribers and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

- c. With regard to the needs of working or mobility-limited Subscribers, upon Subscriber request, the Grantee shall arrange for pickup and/or replacement of converters or other company

equipment at the Subscriber's address, or else a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

- d. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, where the service requested is installation of Cable Service, standard installations shall be performed by the Grantee within seven (7) business days after an order has been placed by a Subscriber.

7.7.3 Disconnection

- a. The Grantee may disconnect a Subscriber if:
 - i. at least thirty (30) days have elapsed without payment after the due date for payment of the bill of the affected Subscriber; and
 - ii. the Grantee has provided at least ten (10) days written notice to the affected Subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection.
- b. Regardless of subsection (a) hereof, the Grantee may disconnect a Subscriber for cause at any time if the Grantee in good faith determines that the Subscriber has tampered with, stolen or abused company equipment, or is or may be engaged unlawfully in theft of Cable Services, or is causing a system violation of FCC rules or regulations, or is threatening or abusive to employees or representatives of the Grantee during the course of their employment.
- c. The Grantee shall promptly disconnect any Subscriber who so requests from the Cable System. No period of notice prior to voluntary termination of Cable Service may be required of Subscribers by the Grantee. No charge may be imposed by the Grantee for any Cable Services delivered after the date of the disconnect request. Upon the later of the date of actual disconnection or the return of all company equipment to Grantee, the Grantee shall under normal operating conditions, within thirty (30) days return to such Subscriber the amount of the deposit, if any, collected by Grantee from such Subscriber, less any disputed amounts owed to Grantee for Cable Services or charges prior to the date of disconnection.

7.7.4 Credits Upon Outage

Except for planned outages under the Grantee's control where Subscribers are provided reasonable notification in advance, upon a Subscriber's request the Grantee shall provide a pro-rated 24-hour credit to the Subscriber's account for any period of two (2) hours or more during which that Subscriber experienced the effective loss or substantial impairment of Cable Service on the System.

7.7.5 Downgrade Charges

Grantee may impose Downgrade Charges only if:

- a. the Subscriber has been notified, at the time of initiating Cable Services, of Grantee's Downgrade Charges; and
- b. the Downgrade Charge does not exceed the Grantee's costs of performing the downgrade as determined under FCC rate regulation rules, subject to applicable law.

7.7.6 Billing Information Required

The Grantee bill to Subscribers shall itemize each category of service, equipment, or other applicable fees, and state clearly the charge there of. The Grantee shall make its best effort to inform Subscribers as clearly as possible when payments are due and when late fees and disconnection may occur.

7.7.7 Information to Subscribers and Grantor

- a. Upon the Effective Date for the Grantor and upon installing initial service to or reconnecting each Subscriber, and upon request thereafter, the Grantee shall advise the Grantor and Subscriber, in writing, whether electronic or hard copy in nature, of:
 - i. the equipment and services currently available (including parental lock-out devices) and the rates and charges which apply;
 - ii. the amount and criteria for any deposit required by Grantee, if applicable, and the manner in which the deposit will be refunded;

- iii. the Grantee's policies and procedures by which complaints or inquiries of any nature will be addressed;
- iv. the toll-free telephone number and address of the Grantee's office to which complaints and inquiries may be reported;
- v. the company's practices and procedures for protecting against invasions of Subscriber privacy;
- vi. service termination policy;
- vii. billing procedures. Billing procedures shall be clearly explained in the written information and in addition, the company's phone number for information and requesting the written materials shall be placed on the part of the bill retained by Subscribers;
- viii. the notice and referral information, as set forth in subsection (b) hereof;
- ix. liability specifications;
- x. converter/Subscriber terminal policy; and
- xi. breach of agreement policy.

b. Notice to Subscribers.

- i. The Grantee shall inform the Grantor and Subscribers within thirty (30) days, prior to any increases in rates, costs, or charges to Subscribers for Cable Service, or any channel repositioning or programming changes within the control of Grantee.
- ii. All Grantee promotional materials, announcements, and advertising of residential Cable Services to Subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all Grantee-prepared promotional materials must clearly and accurately disclose price terms and any restrictions for use. Likewise, in the case of telephone orders, the Grantee shall take appropriate steps to ensure that Grantee customer service representatives clearly and accurately disclose price terms and any restrictions for use to potential Subscribers in advance of taking the order.

iii. The Grantee shall, upon request by the Grantor, but no more often than annually, send written notice approved by the Grantor to all Subscribers that any complaints or inquiries not satisfactorily handled by the Grantee may be referred to the Grantor or its designee, giving the address and phone number of the appropriate Grantor office. Such notification may be included with a billing statement.

c. **Written Complaint Acknowledgment**

Within ten (10) days following receipt of a written complaint, as defined in Section 7.7.8.b, received at the Grantee's principal business office by mail, or received by an e-mail, from a Subscriber, the Grantee shall provide an acknowledgement to the Subscriber of receipt of the complaint and of any action, the Grantee has taken or intends to take in response to the complaint. This requirement does not apply to complaints submitted for processing by a regulatory agency other than Grantor, such as the FCC.

7.7.8 Complaint Resolution

a. The Grantor may take all necessary steps to ensure that all Subscribers to Cable Service and any other affected residents, businesses, or other organizations, have an appropriate recourse, where there is evidence that the Grantee has not settled the complaint to the reasonable satisfaction of the person initiating the complaint.

b. For purposes of this Section, a "complaint" is a grievance related to the Cable Service of the Cable Communications System within the Franchise Area that is reasonably remediable by the Grantee, but does not include grievances regarding the content of programming or information services, other than grievances regarding the inclusion or exclusion of broad categories of programming, and does not include Subscriber contacts resulting in routine service calls that resolve the Subscriber's problem satisfactorily to the Subscriber or inquiries by the Subscriber.

7.7.9 Failure to Resolve Complaints

If Grantee fails to resolve a complaint within thirty (30) days following the date the complaint was made to the Grantee, and after the Grantor follows the processes set forth in Section 7.4 herein

Grantor finds that Grantee has failed to satisfactorily resolve the complaint, then Grantee shall be deemed in violation of the Franchise, and the Grantor may assert any of the remedies set out in Sections 7.4, 11 and other applicable subsections.

Section 8. General Financial and Insurance Provisions, is created to read as follows:

8.1 Compensation

a. Franchise Fee.

As compensation for the Franchise to be granted, and in consideration of permission to use the streets and public ways of the Grantor for the construction, operation, and maintenance of a Cable Communications System within the Franchise Area and to defray the costs of Franchise regulation, the Grantee shall pay to Grantor an amount equal to five percent (5%) of Gross Revenues. In the event any law or valid rule or regulation applicable to this Franchise limits Franchise Fees below the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%).

The Grantee shall at all times during the term of this Franchise maintain in its files an up-to-date list of all affiliated entities receiving Gross Revenues as such revenues are defined in this Franchise. Grantee shall provide this list to the Grantor upon request and during the course of any audit performed pursuant to Section 9.4.

In the event the obligation of Grantee to compensate Grantor through Franchise Fees is lawfully suspended or eliminated, in whole or in part, then to the extent provided for by applicable law, the Grantee shall pay to Grantor compensation equivalent to the compensation paid to Grantor by other similarly situated users of the streets for Grantee's use of the Streets, to the extent Grantor has the legal right to require such compensation.

b. Payment of Franchise Fees.

- i. Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after the dates listed in the previous sentence. A quarterly report shall be made as hereinafter provided in Section 12.3.

- ii. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and re-computation by Grantor.
- iii. In the event that a Franchise Fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate in the State of Washington.
- iv. Payment of the Franchise Fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property, or income of Grantee that may be imposed by Grantor, to the extent not prohibited or limited in amount by federal law.

8.2 Faithful Performance Bond

- a. Upon the Effective Date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to Grantor with good and sufficient surety approved by Grantor, in the penal sum of one hundred thousand dollars (\$100,000.00), conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise. The bond shall provide that the surety agrees to protect and indemnify Grantor against any direct or indirect loss claimed by reason of failure of the Grantee to faithfully perform its responsibilities hereunder. Such bond shall be maintained by the Grantee throughout the term of this Franchise.
- b. Grantee shall pay all premiums charged for any bond required under Section 8.2(a), and shall keep the same in full force and effect at all times through the later of either:
 - i. The remaining term of this Franchise; or
 - ii. If required by Grantor, the removal of all of Grantee's system installed in Grantor's Streets and Public Ways.
- c. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to Grantor. The bond shall be subject to the approval of the

County Attorney as to its adequacy under the requirements of Section 8.2. During the term of the bond, Grantee shall file with Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to Grantor.

- d. In a form approved by Grantor, the Grantee may provide an irrevocable letter of credit, guaranty in lieu of bond, or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give Grantor substantially the same rights and guarantees provided by a faithful performance bond.

8.3 Damages and Defense

- a. The Grantee shall defend, indemnify and hold harmless Grantor, and any and all other public agencies, and their members, officers, agents, and employees, from and against any and all claims, demands, suits, actions, damages, expense, costs, and penalties (collectively “claims”), including but not limited to attorney fees, arising as a result of any actions of the Grantee, its officers, agents, contractors or employees, by any manner whatsoever under this Franchise unless such claims are the result of Grantor’s sole negligence or willful misconduct. These claims shall include, but shall not be limited to: damages arising out of copyright infringement; defamation or anti-trust actions; injury to or death of any person or any damage to any property caused by the fault of the Grantee, as defined in RCW 4.22.015, as now enacted or hereafter amended, and all other damages arising out of the Grantee’s actions under the franchise or the construction, extension, connection, repair, removal, operation, maintenance or reconstruction of the Cable Communications System authorized herein, or arising out of the exercise of any right or privilege under this Franchise whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.
- b. The Director shall notify Grantee, in writing, as soon as practicable after the presentation of any claims, made or accrued against Grantor on account of any fault on the part of the Grantee. Failure by the Director to notify Grantee properly in accordance with the foregoing of any such claims against Grantor shall not release Grantee from its obligation to defend or indemnify Grantor unless Grantee can establish that it has been materially prejudiced by such failure.
- c. If the Grantee fails to defend as required in Section 8.3(a), above, then the Grantee agrees to and shall pay all expenses incurred by Grantor, and any other public agencies, and their members, officers, agents, and

employees, in defending itself with regard to all claims, damages and penalties mentioned in section (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by any employees of the Grantor.

8.4 Liability Insurance and Indemnification

- a. Grantee shall maintain automobile and Workers' Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and Grantor, its officers, agents, and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows:
- b. The insurance shall provide coverage at all times for not less than \$2,000,000 for personal injury to each person, \$5,000,000 aggregate for each occurrence, and \$2,000,000 for each occurrence involving property damages, plus costs of defense, or a single limit or additional excess liability policy of not less than \$5,000,000 covering all claims per occurrence, plus costs of defense. The insurance shall be equal to or better than commercial general liability insurance.

The minimum amounts of insurance set out in subsection (b) of this Section shall be increased from time to time to the extent necessary to provide coverage at least as great as the limits on Grantor's liability under the Washington Tort Claims Act.

The evidence of coverage for Worker' Compensation shall show that it includes State of Washington Statutory Limits, and Employers' Liability limits of at least \$1,000,000.

Any insurance carrier shall have an A.M. Best rating of A or better and be authorized to do business in the State of Washington.

- c. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds Grantor and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

- d. The insurance shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 without thirty (30) days written notice first being given to Grantor. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.
- e. Grantee shall file prior to the Effective Date of this Franchise and shall maintain on file with Grantor a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the County Attorney as to the adequacy of the certificate and of the insurance certified under the requirements of this Section 8.4. At a minimum, the certificate shall be signed by a representative with authority to bind the insurance carrier.

The certificate shall show that the general liability portion of the insurance includes:

- i. Broad form property damage;
 - ii. Products and completed operations;
 - iii. Explosion, collapse, and underground exposures;
 - iv. Contractual liability;
 - v. Owners and contractors' protective coverage; and
 - vi. Cybersecurity coverage.
- f. Failure to maintain adequate insurance as required under this Section 8.4 shall be cause for termination of this Franchise by Grantor as provided in Section 11.1 herein.
 - g. The Grantee shall also indemnify, defend, and hold harmless Grantor and its officers, agents, and employees for any and all claims for damages or personal injury which exceed the limits of insurance provided for in this Section.

8.5 Construction Bond

- a. During the course of this Franchise, in order for the Grantee to obtain permits to perform construction which will involve the Grantee's affecting, as the result of the process of construction, maintenance or

removal of facilities, roadways or appurtenances of Grantor, and the total aggregate sum to repair such roadways or facilities from the disruptions caused to those facilities by the proposed work of the Grantee will exceed the amount of twenty-five thousand dollars (\$25,000), the Grantee shall provide a blanket construction bond in an amount of one hundred thousand dollars (\$100,000). This construction bond shall be designed to cover the costs and damages which might accrue to Grantor by reason of the Grantee's failure to properly perform the proposed work. Such a construction bond shall be conditioned in the same manner as provided for the above referenced performance bond.

Section 9. Rights Reserved to Grantor, is created to read as follows:

9.1 Grantor Acquisition of the Cable System

Grantor shall have the right to purchase the Cable System, consistent with applicable law.

- a. In the event Grantor has declared a forfeiture for cause or otherwise revoked for cause this Franchise Agreement, or in the event of expiration of the initial term of this Franchise Agreement without the Franchise being renewed or extended, the Grantee shall continue its operations for a period of two hundred and seventy (270) days under the terms and conditions of this Franchise Agreement and as required by Section 11 herein, following the date of the forfeiture or revocation or expiration of the initial term, if such continuation of operations is ordered by the Grantor.

For any period of continued operation under this Section, except as provided in Section 3.7 of this Franchise, the Grantee shall not sell, assign, transfer, or lease to any other persons, firm or corporation, any portion of the system used by it in its operations without the prior written consent of the Grantor.

The parties shall be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Agreement diminish the rights of either Grantor or Grantee under Section 627 of the Act, and any provision of the Agreement that purports to diminish such right shall be deemed superseded by the Act.

9.2 Condemnation and Eminent Domain

Consistent with applicable law, this Franchise shall be subject to Grantor's power of eminent domain and Grantor may condemn all or any portion of Grantee's Cable System, in a non-discriminatory manner based on Grantor's lawful regulatory jurisdiction.

9.3 Right of Inspection of Records

In order to assist the Grantor in keeping adequate records of the activities of the Grantee under this Franchise, the Grantee shall provide the following information as may be required by the Grantor for its review:

- a. With respect to the System and its operation authorized under this Franchise, and to the extent necessary for the enforcement of this Franchise, information pertaining to the operations of the Grantee, and for the specific purposes of a bona fide enforcement effort being conducted by the Grantor, including but not limited to: the maintenance, administration and operation thereof, Gross Revenue generated from the operation of the Cable System to provide Cable Service by any parent company or affiliate within the Franchise Area indicated or implicated as direct or indirect revenue to Grantee.
- b. The amount collected by the Grantee from users of Cable Services of the Grantee's Cable Communications System under this Franchise and the character and extent of the services rendered therefore to them.

The information, along with any further data which may be reasonably required by the Grantor to adequately understand the information, shall be furnished by the Grantee to the Grantor upon request, and at the Grantee's own cost and expense.

9.4 Right to Perform Franchise Fee Audit

In addition to all rights granted under Section 9.3, but no more than twice during the term of the Franchise, unless an audit determines underpayment of 5% or more, the Grantor shall have the right to perform, or cause to have performed, a formal audit of the Grantee's books and records and, the books and records of any parent or affiliate company, for the purpose of determining the Gross Revenues of the Grantee generated in any manner through the operation of the Cable System to provide Cable Service under this Franchise and the accuracy of amounts paid as franchise fees to the Grantor by the Grantee, provided that any audit must be commenced not later than five (5) years after the date on which franchise fees for any period being audited were due. The cost of any such audit shall be borne by the Grantor, except that if through the audit it is established that the Grantee has made underpayment of 5% or more in franchise fees for the entire period under audit than required by this franchise, then the Grantee shall, within thirty (30) days of being requested to do so by the Grantor, reimburse the Grantor for the cost of the audit up to thirty thousand dollars (\$30,000) for the cost per audit.

If one of the first two audits discovers an underpayment of 5% or more, the Grantor may elect to perform an additional audit, above the two included above.

9.5 Inspection of Construction and Facilities

- a. Grantor may inspect any of Grantee's System facilities on Grantee's private property during normal business hours upon at least forty-eight (48) hours' notice to determine compliance with this Franchise. In case of an emergency, Grantee will allow necessary inspections upon demand without prior notice. If an unsafe condition is found to exist by Grantor, Grantor may, in addition to taking any other action permitted under applicable law, require remediation of such condition to the extent necessary to remediate the unsafe condition under applicable law, code, or regulation.
- b. Grantor may inspect Grantee's System in the Public Right-of-Way without notice. Nothing herein shall prevent Grantor or its agents from performing inspections of the Cable System in the Rights-of-Way or on private property, with owners' permission as needed, at any time and without prior notice.
- c. Grantor may notify Grantee of issues of safety violations or other problems or issues with Grantee's infrastructure in the Public Right-of-Way. Grantee must then make appropriate repairs and notify the Grantor of such repairs. In the event of imminent danger to the public, or where Grantee has not taken timely appropriate actions to remediate such reported issues following notice and opportunity to cure, Grantor has the right to correct, inspect, administer, and repair unsafe conditions if Grantee fails to do so, and to charge Grantee for the cost thereof.

9.6 Intervention

The Grantee shall not hinder the Grantor's lawful intervention in any suit or proceeding to which the Grantee is party which may have an effect upon the construction, upgrade, maintenance or operation of the system.

9.7 Right to Require Removal of Property

At the expiration of the term for which the Franchise is granted providing no renewal is granted, or upon its forfeiture or revocation, as provided for herein, the Grantor shall have the right to require the Grantee to remove, at Grantee's own expense, all or any part of the Cable Communications System from all streets and public ways within the franchise area. Grantee

shall restore such Streets and other Public Rights-of-Way to that condition existing immediately before such facilities were removed; provided that such property shall not be removed if the Director shall reasonably determine that such removal will cause unreasonable damage to such Streets and other Public Rights-of-Way and provided further, that should the Director request that any facilities be allowed to remain in place for the use of Grantor, then such facilities shall not be removed, and title thereto shall be transferred to Grantor at fair market value. The Director may, at his discretion, permit any other facilities to be abandoned in place, provided that Grantee shall submit to the Director an instrument transferring to Grantor ownership of such facilities; except that the Grantor may nevertheless, by written notice, require the Grantee to remove portions of the system as deemed necessary by the Grantor to provide space for other authorized uses or to accomplish or enable the accomplishment of other public purposes. If the Grantor requires removal of the system and Grantee fails to do so, the Grantor may perform the work and collect the cost thereof from the Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of the Grantee effective upon placement in the lien books of the Grantor.

Section 10. Rights of Individuals Protected, is created to read as follows:

10.1 Discriminatory Practices Prohibited

- a. The Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against Subscribers or persons on the basis of race, color, religion, national origin, sex, age, disability, income, or, except as otherwise provided herein, the area in which such person lives. The Grantee shall strictly adhere to the equal employment opportunity requirements of the federal government, as expressed in Section 76.13(a) (8) and 76.311 of Chapter 1 of Title 47 of the Code of Federal Regulations, as now or hereafter constituted. The Grantee shall comply at all times with all applicable federal, state, or local laws, rules and regulations relating to nondiscrimination.
- b. The Grantee shall use best efforts to assure maximum practical availability of Grantee services and facilities to all Subscribers, regardless of disability, including the provision of a remote-control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited.
- c. For hearing impaired Subscribers, the Grantee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, the Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such

equipment, that will allow hearing impaired Subscribers to contact the company.

- d. Upon request by a Subscriber or potential Subscriber, the Grantee shall make a reasonable effort as determined by Grantor to provide information required under Section 7.7.7, or otherwise provided in the normal course of business, in English and any other language that Grantee utilizes in the provision of Subscriber information.
- e. Nothing in this Section shall be construed to prohibit: 1) the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or 2) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens.

10.2 Unauthorized Monitoring or Cable Tapping Prohibited

The Grantee shall not, nor shall Grantee allow any other person, agency, or entity to tap, or arrange for the tapping, of any cable, line, signal input device, or Subscriber outlet or receiver for any purpose whatsoever, without the Subscriber's written consent or a valid court order or a valid request from a law enforcement agency permitting the tapping.

10.3 Privacy and Other Rights

The Grantee and the Grantor shall maintain constant vigilance with regard to possible abuses of the right of privacy of any Subscriber, Programmer, or person resulting from any device or signal associated with the Cable Communications System. Grantee shall all times comply with the provisions of 47 U.S.C. §551, and any other applicable privacy law.

10.4 Permission of Property Owner Required

No cable, line, wire, amplifier, Set Top Unit, gateway, Converter, or other piece of equipment owned by the Grantee shall be installed by the Grantee without first securing the written permission of the owner or tenant of any property involved except where there is an existing utility easement or other easement reserved by plat or other conveyance. If such permission or easement is later lawfully revoked, whether by the original or a subsequent owner or tenant or Grantor, the Grantee shall remove forthwith on request of the owner or tenant any of its equipment and promptly restore the property to its original condition. The Grantee shall perform all installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation.

10.5 Sale of Subscriber Lists and Personalized Data Prohibited

The Grantee shall be subject to 47 U.S.C Section 551 (Section 631 of the Cable Act), as amended from time to time, regarding limitations on the cable company's collection and use of personally identifiable information, and other issues involving the protection of Subscriber privacy.

10.6 Landlord - Tenant

Grantee shall, to the extent permitted by the owner or manager of such premises, provide to individual units of a multiple housing facility, such as a duplex, apartment or condominium unit, all services offered to other dwelling units within the franchise area, providing the owner of the facility consents in writing, if requested by Grantee, as follows:

- a. To Grantee's providing the services to units of the facility;
- b. To reasonable conditions and times for installation, maintenance, and inspection of the system on facility premises;
- c. To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the system; and
- d. To not demand payment, directly or indirectly, from Grantee for permitting Grantee to provide service to the facility.
- e. However, Grantee shall have no obligation to provide service if the cost of installation per unit exceeds the Grantee's standard per foot rate for line extension construction multiplied by one hundred twenty-five (125) feet. To determine unit costs, the total project cost is divided by the number of units. The total project cost shall include only the costs of cable, any structural supports (e.g., a utility pole) and any installation costs, including underground trenching where applicable, installed on the property including line extension and pre/post wiring of the units.

Section 11. Termination and Expiration, is created to read:

11.1 Revocation

In addition to any rights set out elsewhere in this document, the Grantor reserves the right to declare a forfeiture or otherwise revoke this

franchise, and all rights and privileges pertaining thereto, in the event that:

- a. the Grantee is in violation of any material provision of the Franchise Agreement after application by the Grantor of a remedy lesser than franchise revocation pursuant to this Franchise Agreement, and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter of not less than thirty (30) days to correct the violation;
- b. the Grantee or the Guarantor becomes insolvent, unable, or unwilling to pay its debts, or is adjudged a bankrupt;
- c. the Grantee is found to have engaged in fraud or deceptive practices upon the Grantor, persons, or Subscribers
- d. the Grantee fails to obtain or maintain any material permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the system; provided, however, that the Grantee shall be allowed a reasonable time to cure failure to obtain any permit; or
- e. the Grantee fails to maintain the full amount of its insurance or to post a performance bond as required under the terms of this franchise after notice and opportunity to cure.

Upon the occurrence of one of the events set out above, and after following the due process procedure set forth in Section 7.4 of the Franchise, including the public hearing described therein, the Grantor shall provide written notice to Grantee of such intent. The notice shall set forth the specific nature of the noncompliance. The Grantee shall have ninety (90) days from receipt of such notice to object in writing and to state its reason for such objection. In the event the Grantor has not received a satisfactory response from Grantee, it may then seek revocation of the Franchise at a second public hearing. The Grantor shall cause to be served upon the Grantee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Grantor, to compel the testimony of other persons as permitted by law, and to question and/or cross examine

witnesses. A complete verbatim record and transcript shall be made of such hearing at Grantee's request and expense.

Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the Grantor shall determine (i) whether an event of default has occurred (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Grantee. The Grantor shall also determine whether to revoke the Franchise based on the information presented or, where applicable, grant additional time to the Grantee to affect the cure. If the Grantor determines that the Franchise shall be revoked, the Grantor shall promptly provide Grantee with a written decision setting forth in reasoning. Grantee may appeal such determination of the Grantor to an appropriate court, which shall have the power to review the decision of the Grantor in accordance with Washington law, Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Grantor.

The Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Grantor's rights under the Franchise in lieu of revocation of the Franchise.

The parties agree that the limitation of Grantor liability set forth in 47 U.S.C. § 555a is applicable to this Franchise Agreement.

11.2 Receivership

In addition to its other rights and remedies as set forth in this Franchise, Grantor shall have the right, subject to federal law, to declare a forfeiture of this Franchise one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the Grantee's business, whether in receivership, reorganization, bankruptcy or other similar action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

- a. Within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise and remedied any and all violations or defaults, as approved by a County Board of Commissioners resolution; and
- b. Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with Grantor, duly approved by Grantor and the court having competent jurisdiction,

in which such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

11.3 Expiration

Upon expiration of the Franchise, the parties shall have the obligation to abide by the renewal provisions of the Cable Communications Policy Act of 1984, as amended from time to time. It is not intended that this Section diminish the rights of either the Grantor or the Grantee under the Act, and any provisions of this Section that purports to diminish such rights shall be deemed superseded by the Act.

11.4 Continuity of Service Mandatory

It shall be the right of all Subscribers to receive all available Cable Services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the system, or Grantor revokes or fails to renew the franchise, the Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service.

If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, reviewed by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in the security provided by the Grantee.

Section 12. Operation and Maintenance, is created to read as follows:

12.1 Open Books and Records

The Grantee shall maintain a customer service location within Clallam County, and, subject to the provisions of Section 10 of this franchise and, to such privileges as may be established under Washington Law, shall manage all of its operations in accordance with a policy of accessible open books and records to the Grantor. The Grantor shall have the right as necessary, in the Grantor's sole and reasonable discretion, for effectively administering and enforcing the Franchise, to inspect at any time during normal business hours upon five (5) business days' notice, at the closest pertinent Grantee location, all records of the Grantee, and for the

specific purposes of a bona fide enforcement effort being conducted by the Grantor which relate to the operation of the Cable System to provide Cable Service in the Franchise Area. Access to the aforementioned records shall not be denied by the Grantee to representatives of the Grantor on the basis that said records contain “proprietary information”, nor on the basis that they contain trade secrets unless the Grantor cannot protect the trade secrets from disclosure under Washington law. To the extent allowed under Washington law, the Grantor shall protect proprietary information including trade secrets of the Grantee from disclosure. The franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years.

The Grantee shall also provide, in the manner set forth in this Section and as provided in Section 13.13, the following information: (a) for the specific purpose of a bona fide audit or enforcement effort being conducted by the Grantor, the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this Franchise; the true and entire cost of the maintenance, administration and operation of the cable system, including any operations or revenue generated from the cable system by any parent company or affiliate within the Franchise Area indicated or implicated as direct or indirect revenue to the Grantee from the provision of Cable Services; and (b) the amount collected by the Grantee from Subscribers of Cable Services of the Grantee's Cable System under this Franchise and the character and extent of the Cable Service rendered therefore to them.

Upon no less than fifteen (15) business days' prior written notice from Grantor, Grantee shall provide the Grantor access to digital files related to compliance with obligations contained in the Franchise. Such access shall be carried out in a manner that does not violate requirements regarding personally identifiable Subscriber information, as referenced in Section 631 of the Cable Act, and shall exclude access to digital files containing no information related to Grantee's Franchise obligations. Digital record access shall be provided via electronic mail or Grantee shall upload the file to a secure, password-protected site that Grantor or its representatives or agents may access to view.

12.2 Communications with Regulatory Agencies

A list and copies of, or links to, all material written petitions, applications, communications, and reports submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or State regulatory commission or

agency having jurisdiction in respect to any matters directly affecting cable communications operations within the Franchise Area authorized pursuant to this Franchise Agreement, shall be submitted to the Grantor promptly following written request.

12.3 Reports

a. Quarterly Reports.

Within thirty (30) calendar days after the end of each fiscal quarter of the Grantee, Grantee shall, promptly following written request of the Grantor, submit to the Grantor a report summarizing Subscriber trouble call complaints received by or referred to Grantee within the report quarter. The reports shall contain, as a minimum, the specific nature of the complaint, remedial action taken if any, and the current status of the complaint. Grantee shall also provide information regarding any changes in services provided including, but not limited to, tier restructuring and channel adds, moves and changes. Upon written request by the Grantor, Grantee shall also provide outage reports, summary statistics on patterns of complaints or service problems, and other customer service information, provided that such information may be reasonably generated by the Grantee. Within forty five (45) days after the end of each of the Grantee's fiscal quarters, the Grantee shall submit a written report to the Grantor, verified by an officer of Grantee, or the officer's designee, which shall contain an accurate statement of all gross revenues earned and collected by the Grantee or any cable operator, related to operation of the cable system franchised hereunder, including detailed breakdowns of all gross revenues received as defined in Section 2. above, in sufficient detail to enable the Grantor to fully verify the accuracy of Franchise Fee payments.

b. Annual Report.

No later than three-and-one-half (3 ½) months following the end of the Grantee's fiscal year each year and upon written request, Grantee shall present a written report to the Grantor which shall include:

- i. Any publicly available financial reports for Grantee or its parent company.
- ii. A summary of the previous year's activities including, but not limited to system construction, activation and installation; homes passed; Subscriber totals in each category: and new services.

c. Monitoring and Compliance Reports.

Upon written request, the Grantee shall provide a written report of any technical performance tests for the residential network required by Grantor or required in, or to demonstrate compliance with, FCC Rules and Regulations as now or hereinafter constituted. In addition, the Grantee shall upon request provide reports of the test and compliance procedures established by this Franchise Agreement, no later than thirty (30) days after the completion of each series of tests.

d. Additional Reports.

The Grantee shall prepare and furnish to the Grantor, at the times and in the form prescribed, such additional reports with respect to its operations, affairs, transaction, or property, as may be reasonably necessary and appropriate to determine compliance with the Franchise.

All reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee. Grantee shall not be required to develop reports involving the creation of new data but may be required to provide existing data in new or additional formats.

12.4 Safety

- a. The Grantee shall, at all times, employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to employees of the Grantor.
- b. The Grantee shall install and maintain its wires, cable, fixtures, and other equipment, including the drop to the Subscriber's premise in accordance with the applicable requirements of the National Electrical Safety Code (NESC), National Electrical Code (NEC), and Occupational Safety and Health Administration (OSHA) standards, and in such manner that they shall not interfere with the installations of any public utility.
- c. All lines, equipment and connections in, over, under, along and upon either the streets and public ways of Grantor or private property within boundaries of Grantor, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

Section 13. Miscellaneous Provisions, is created to read as follows:

13.1 Compliance with Laws

The Grantee shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the entire term of this franchise, provided that any such ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established shall not conflict or interfere with the existing rights of the Grantee hereunder.

13.2 Severability

Subject to the provisions of Section 13.12 below, if any section, subsection, sentence, clause, phrase article, or word of the Franchise Agreement is held to be invalid or unconstitutional by any court of competent jurisdiction or pre-empted by federal or state regulations or law, such section, subsection, sentence, clause, phrase, article or word shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions hereof.

If any material provision of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal law, rules, regulations or decision so that the intent of these provisions is frustrated, the parties agree to immediately negotiate replacement provisions to fulfill the purpose and intent of the superseded provisions consistent with applicable law.

In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the Grantor, and any amendments to this Franchise negotiated pursuant to this Section as a result of such provision being preempted shall no longer be of any force or effect.

13.3 Captions

The captions to sections throughout this Franchise Agreement are intended solely to facilitate reading and reference to the sections and

provisions contained herein. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

13.4 No Recourse Against the Grantor

Except as provided by applicable law, the Grantee shall have no recourse whatsoever against the Grantor or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Franchise Agreement or any part thereof is determined to be invalid.

13.5 Nonenforcement by Grantor

The Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise Agreement by reason of any failure of the Grantor to enforce prompt compliance.

13.6 Force Majeure

If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Washington, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; entire failure of utilities; documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary and similar occurrences outside the control of the Grantee. The Grantee agrees, however, to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this Franchise Agreement.

13.7 Entire Agreement

This Franchise Agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

13.8 Consent

Wherever the consent or approval of either the Grantee or the Grantor is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

13.9 Time Limit for Grantee Communications

Provided that the issuance of any such written communication shall not in and of itself constitute a waiver, act or omission of Grantee under the Franchise, Grantee shall provide any written communication required by this Franchise within ninety (90) days of being requested to do so by the Grantor, in each case in which no other specific time limit for a communication is identified in the Franchise.

13.10 Consistency of Franchise with Cable Act

The parties intend and believe that all of the provisions hereof are consistent with and permitted by the Cable Communications Policy Act of 1984, and the Cable Act of 1992, and the Telecommunications Act of 1996.

13.11 Notice

Any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such address as the receiving party specifies in writing:

If to the Grantor: Clallam County
Board of County Commissioners
223 East 4th St., Suite 4
Port Angeles, WA 98362

If to the Grantee: WaveDivision Holdings, LLC
3700 Monte Villa Pkwy
Bothell, WA 98021
Attn: Legal

With a copy to:

WaveDivision Holdings, LLC
650 College Road East, Suite 3100
Princeton, NJ 08540

Attn: General Counsel

13.12 Future Changes in Law

If future changes to binding federal or State law affect any material provision of the Franchise, including but not limited to the scope of Grantor's authority to regulate Grantee and its activities within the Franchise Area and the streets and public ways, the parties agree that they will take any action necessary, or revise this Agreement where applicable, to be consistent with the scope of such change in law. In the event the parties are unable to agree to a modification of this Franchise within either the time specified by the authority enacting the change in law, or within one hundred and twenty (120) days if not specified, either party may seek appropriate legal remedies to amend the Franchise.

13.13 Public Disclosure

Subject to the Washington Public Records Law, whenever, pursuant to this Franchise Agreement, Grantee shall make available for inspection by the Grantor or submit to the Grantor reports containing information considered proprietary by the Grantee, the Grantor shall not disclose or release such reports or information to the public without notification to the Grantor, and opportunity to pursue an injunction to block disclosure or provide its prior written consent. All such reports reviewed by Grantor shall be deemed proprietary and confidential.

13.14 Time is of the Essence

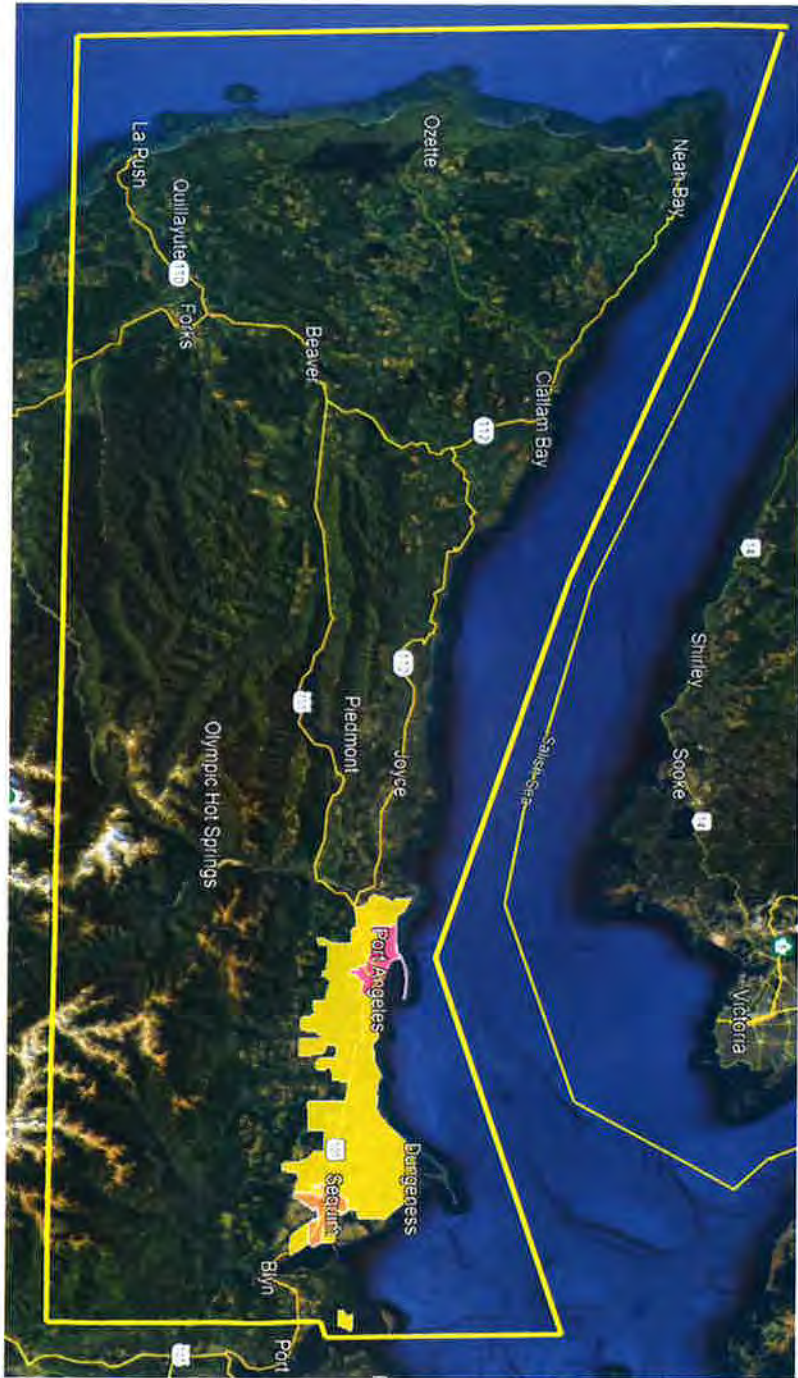
Whenever this Franchise Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Franchise Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Franchise Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Franchise Agreement by reason of Force Majeure, Grantee's performance shall be excused during the affected time periods and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Franchise Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers, employees or agents.

13.15 Reservation of

Notwithstanding any provision to the contrary, the parties reserve any and all rights at law or in equity regarding any enforcement proceeding or other matters hereunder.

In the event that either party seeks judicial enforcement of any term of this agreement, except in the case of the formal franchise renewal process, the substantially prevailing party in any litigation shall be reimbursed by the other party for all disbursements and costs incurred, including reasonable attorney's fees and expert witness fees.

EXHIBIT A: FRANCHISE AREA AND SERVICE AREA



- Service Area - Yellow
- City of Port Angeles's Franchise Service Area - Pink
- City of Sequim Franchise Service Area - Peach

EXHIBIT B: ACCEPTANCE

ACCEPTANCE

Board of County Commissioners
223 East 4th St., Suite 4
Port Angeles, WA 98362

The undersigned, WaveDivision I, LLC and WaveDivision III, LLC (DBA, Astound) does hereby accept the Franchise granted pursuant to Ordinance No. 1008, passed and approved on October 10, 2023, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise, subject to applicable federal, state and local law.

WAVEDIVISION I, LLC AND WAVEDIVISION III, LLC (DBA, ASTOUND)

BY: 
Jared Sonne (Oct 11, 2023 08:57 PDT)

TITLE: SVP/GM

DATE: Oct 11, 2023

EXHIBIT C:
DIRECT ACCESS CONNECTIONS AND INTERCONNECTIONS

[Intentionally left blank]

EXHIBIT D: SERVICE TO PUBLIC BUILDINGS

The Grantee shall continue to, or upon request the Grantee shall initially provide, without charge, a standard installation and one (1) outlet of Basic and Expanded Basic Service or its equivalent to those buildings set forth below. If not already provided, such installations shall be provided to the facilities within sixty (60) days of Grantor's request. Furthermore, Grantee shall be permitted to recover, from any School or other public building owner entitled to free service, the direct cost of installing, when requested and if Grantee agrees to do so, more than (1) one outlet or concealed inside wiring. In the alternative, Grantor may distribute the Basic and Expanded Basic Service throughout the building for Grantor's purposes at Grantor's cost including necessary equipment to maintain signal quality so long as Grantor's use does not adversely affect Grantee's signals outside of any such building, and provided that any deterioration of the signal caused by Grantor's distribution of the signal throughout the building will be the responsibility of the Grantor. The Basic and Expanded Basic Service provided shall not be used for commercial or public viewing purposes. Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System.


Grantee may charge the marginal cost of providing the service, in such manner and to the extent permitted by, applicable law, after demonstrating, to the reasonable satisfaction of the Grantor, how the marginal cost was calculated. Grantor will determine whether such marginal cost will be paid directly to the Grantee, or whether it may be deducted from each quarterly franchise fee payment.

Public Buildings

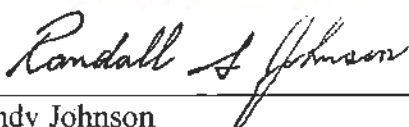
[To be determined by Astound]

ADOPTED this 10 day of October 2023.

BOARD OF CLALLAM COUNTY COMMISSIONERS



Mark Ozias, Chair



Randy Johnson

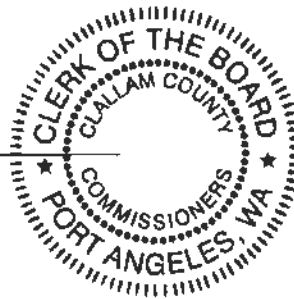


Mike French

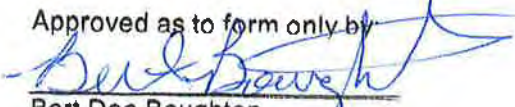
ATTEST:



Loni Gores, CMC, Clerk of the Board



Approved as to form only by:



Bert Dee Boughton
Civil Deputy Prosecuting Attorney
Clallam County