

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7040

A RESOLUTION Granting a Non-Exclusive Cable Television Franchise to Comcast of Bellevue, Inc. to Construct, Operate and Maintain a Cable Communications System in the City of Bellevue, Washington, and Setting Forth Conditions Accompanying the Grant of Franchise.

WHEREAS, Comcast of Bellevue, Inc. (hereinafter the "Franchisee") has requested renewal of its cable television franchise; and

WHEREAS, the City of Bellevue (hereinafter the "City") has analyzed and considered the technical ability, financial condition, legal qualification, and general character of the Franchisee, and has determined that it is in the best interest of the City and its residents to grant a cable communications franchise to the Franchisee; and

WHEREAS, the Franchisee and the City have agreed to be bound by the conditions set forth herein; and

WHEREAS, the City determines to exercise its authority, consistent with state and federal law, to grant a non-exclusive franchise renewal to the Franchisee in accordance with the provisions of this Franchise;

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

THIS FRANCHISE is made and entered into this 29<sup>th</sup> day of July 2004, by and between Comcast of Bellevue, Inc. (hereinafter referred to, together with any lawful successor, transferee, or assignee, as the "Franchisee") and the City of Bellevue, Washington (the "City").

**SECTION 1. DEFINITIONS**

For the purposes of this Franchise and all Exhibits attached hereto the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Access" includes Educational Access, Governmental Access and Public Access, collectively, and means the availability for noncommercial use by various governmental and educational agencies, institutions, organizations, groups and

individuals in the community, including the City and its designees, of particular channels on the Cable Communications System to receive and distribute video programming to Subscribers, as permitted under applicable law, including, but not limited to:

(A) "Educational Access" means Access where Schools are the primary users having editorial control over programming and services.

(B) "Governmental Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services; and

(C) "Public Access" means Access where the public is the primary user.

1.2 "Access Channel" means any Channel or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming.

1.3 "Access Capital Contribution" means the capital contribution paid to the City by the Franchisee in accordance with Section 9.

1.4 "Affiliated Entity" or "Affiliate" when used in connection with the Franchisee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with the Franchisee.

1.5 "Bad Debt" means amounts lawfully owed by a Subscriber and accrued as revenues on the books of the Franchisee but not collected after reasonable efforts by the Franchisee.

1.6 "Basic Cable Service" means the lowest service Tier that includes the retransmission of local television broadcast signals and Access Channels, or as such service Tier may be further defined by federal law.

1.7 "Cable Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and any amendments thereto.

1.8 "Cable Communications System" or "System" means the Franchisee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term shall not include:

(A) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(B) A facility that serves subscribers without using any public right-of-way;

(C) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934 (47 U.S.C., 201 et seq.), except that such facility shall be considered a Cable Communication System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(D) An open video system that complies with Section 653 of the Cable Act;  
or

(E) Any facilities of any electric utility used solely for operating its electric utility systems.

1.9 "Cable Company" means any Person or group of Persons, including the Franchisee, who provides Cable Service over the Cable Communications System and directly or through one or more Affiliates owns a significant interest in such System or who otherwise controls or is responsible for, through any arrangement, any of the management and/or operation of the System.

1.10 "Cable Service" means the one-way transmission of video programming, or other programming service, to Subscribers and the Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.11 "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, as television channel is defined by FCC regulations.

1.12 "City" means the City of Bellevue, Washington, a municipal corporation, of the State of Washington.

1.13 "Designated Access Provider" means the entity or entities designated by the City to manage or co-manage Educational or Governmental Access Channels and facilities. The City may be a Designated Access Provider.

1.14 "Dwelling Unit" means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy.

1.15 "Franchise" means the non-exclusive right and authority to construct, maintain, and operate a Cable Communications System through use of the public streets, dedications, public utility easements, or other public ways in the Franchise Area pursuant to a contractual agreement executed by the City and the Franchisee.

1.16 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.17 "Franchise Fee" means consideration paid by the Franchisee for the privilege granted under this Franchise for the use of Streets and Public Ways and the privilege to construct and/or operate a Cable Communication System in the Franchise Area. The term Franchise Fee does not include:

- (A) Any tax, fee or assessment of general applicability;
- (B) Capital costs which are required by the Franchise to be incurred by the Franchisee for Public, Educational or Governmental Access facilities, including the support required in Section 9;
- (C) Requirements or charges incidental to the awarding or enforcing of the Franchise, including but not limited to, payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
- (D) Any fee imposed under Title 17, United States Code.

1.18 "Fully Allocated Costs" means the City's proportionate share of all direct and actual material and labor costs (excluding profit) of constructing, relocating or placing additional ducts, conduit or related structures by the Franchisee for the City alongside or together with ducts, conduit or structures by and for the Franchisee.

1.19 "Gross Revenues" means all revenues derived directly or indirectly by the Franchisee or an Affiliated Entity from the operation of the Cable Communications System to provide Cable Services within the Franchise Area. Gross Revenues shall not include (i) Bad Debt, provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by the Franchisee which are imposed directly on any Subscriber by the State, City or other governmental unit and which are collected by the Franchisee on behalf of said governmental unit; or (iii) any Access Capital Contributions as defined by this Franchise.

1.20 "Headend" means any facility used for signal reception and dissemination on the Cable Communications System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, and all other related equipment and facilities.

1.21 "Incremental Costs" means the direct and actual material and labor cost (excluding profit) of constructing, relocating or placing additional ducts, conduit or related structures by the Franchisee for the City excluding the costs of design, trenching, boring, pipe bedding, backfilling, compacting, restoring the surface, installation and other charges, costs or expenses that the Franchisee would otherwise incur to construct, relocate or place ducts, conduit or related structures for the Franchisee.

1.22 "Institutional Network" or "I-Net" means the dedicated network and equipment designed for private non-commercial voice, video and data communications to, from and among City departments, schools and libraries within the Franchise Area.

1.23 "Interconnect" or "Interconnection" means the actual physical linking of the Cable System's Access Channels with the Access Channels of another geographically contiguous cable system, including technical, engineering, physical, financial and other necessary components to accomplish, complete and adequately maintain such linking, in a manner that permits the transmission and receiving of Access programming between the Cable Communications System and other cable systems.

1.24 "Leased Access Channel" means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.

1.25 "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some hours on Saturday.

1.26 "PEG Fee" means the amount, as set periodically throughout the term of the Franchise by the City, to be collected from the subscriber each month.

1.27 "Person" means any natural person, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.

1.28 "Right-of-Way" means land previously acquired or dedicated to the public, or hereafter acquired or dedicated to the public, and maintained under public authority or by others, including but not limited to public streets or roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property located within the Franchise Area.

1.29 "School" means any State accredited K-12 public or private educational institution in the City of Bellevue.

1.30 "Subscriber" or "Customer" means any Person(s) who lawfully elects to receive Cable Services provided by the Franchisee by means of the Cable Communications System.

1.31 "Tier" means a category of Cable Services provided by the Franchisee for which a separate rate is charged.

## **SECTION 2. GRANT OF FRANCHISE**

### **2.1 Grant**

(A) The City hereby grants to the Franchisee a nonexclusive authorization to make reasonable and lawful use of the Right-of-Way within the Franchise Area to construct, operate, maintain, reconstruct, repair and upgrade a Cable Communications System for the purpose of providing Cable Services. Such grant is subject to the terms and conditions set forth in this Franchise, and applicable law. This Franchise shall constitute both a right and an obligation to provide Cable Services and to fulfill the obligations set forth in the provisions of this Franchise.

(B) The Franchisee is granted the right to operate its Cable Communications System using the City's Right-of-Way in compliance with all lawfully enacted applicable City codes, ordinances, standards, procedures and regulations, provided that in the event of a conflict between the provisions of the City codes, ordinances, standards, procedures and regulations and this Franchise, the express provisions of this Franchise shall govern. The express provisions of this Franchise constitute a valid and enforceable contract between the parties. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to any ordinance, rule, regulation, resolution, or other enactment of the City, except in the lawful exercise of the City's police power. The Franchisee reserves the right to challenge provisions of any ordinance, rule, regulation, resolution or other enactment of the City that conflicts with the rights granted by this Franchise, either now or in the future.

(C) This Franchise shall not be interpreted to prevent the City from imposing other conditions, to the extent permitted by law, including additional compensation for use of the Right-of-Way, should the Franchisee provide service(s) other than Cable Service.

(D) No rights shall pass to the Franchisee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement or authorization required by the City for Right-of-Way users in connection with operations on or in the Right-of-Way or other public property, including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise, including, without limitation, permits and agreements for placing devices

on poles, in conduits or in or on other structures.

(E) This Franchise is intended to convey limited rights and interests only as to those Right-of-Ways in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Franchisee with any interest in any particular location within the Right-of-Way. This Franchise shall not be deemed to authorize the Franchisee to provide service, or install cables, wires, lines, or any other equipment or facilities upon City property other than the Right-of-Way, or upon private property without the owner's consent, or to utilize publicly or privately owned utility poles or conduits without a separate agreement with the owners thereof.

(F) No grant of use by this Franchise shall extend to the Franchisee any permission or use outside the purpose, dedication, or reservation granted to or held by the City. Nothing herein shall prohibit the City or the Franchisee from exercising its rights under Section 621 of the Communications Act of 1934, as amended, 47 U.S.C. 541.

(G) This Franchise is an express authorization to provide Cable Services. This Franchise is not a bar to the imposition of any lawful conditions on the Franchisee with respect to Franchisee's delivery of non-cable services, telecommunications services or information services, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve the Franchisee of any obligation it may have to obtain from the City an authorization to provide non-cable services, telecommunications services or information services or relieve the Franchisee of its obligation to comply with any such authorization(s) that may be lawfully required. However, this Franchise shall not be read as a concession by the Franchisee that it needs authorization to provide non-cable services, telecommunications services or information services.

## **2.2 Duration**

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be five (5) years from the effective date of this Franchise.

## **2.3 Effective Date**

(A) This Franchise and the rights, privileges and authority granted hereunder shall take effect and be in force from and after the effective date of this Franchise. The effective date of this Franchise shall be July 29, 2004.

(B) Within forty-five (45) days after the effective date of the Resolution granting this Franchise, the Franchisee shall signify its acceptance of this Franchise by executing a written acceptance of this Franchise. This Franchise is voidable unless accepted in writing by the Franchisee within this timeframe.

(C) The grant of this Franchise shall have no effect on the Franchisee's duty under the prior franchise, in effect prior to the effective date of this Franchise, to indemnify or insure the City against acts and omissions occurring during the period that the prior franchise was in effect, nor shall it have any affect upon liability to pay all Franchise Fees which were due and owed under a prior franchise.

## **2.4 Franchise Nonexclusive**

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City or its predecessors to any Person to use any property, Right-of-Way, easement, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar uses allowed the Franchisee hereunder. The City may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with the Franchisee's authority under this Franchise and for such additional franchises for other cable communication systems as the City deems appropriate.

## **2.5 Grant of Other Franchises**

In the event the City enters into a cable franchise with any other Person or entity other than the Franchisee to use the City's streets or Right-of-Way for the purpose of constructing or operating a cable system to provide Cable Service to all or any part of the Franchise Area in which the Franchisee is providing Cable Service under the terms and conditions of this Franchise then the parties agree that the terms and conditions of the cable franchise, taken as a whole, should be substantially similar in order that one Cable Company not be granted an unfair competitive advantage over another. However, nothing in this provision shall be construed in such a way as to limit the City's authority to enter into other cable franchises that the City, in its sole discretion, determines meet the cable related needs and interests of the community, considering both the added risk of entry into the market and the benefits of incumbency. The parties recognize and acknowledge that other cable franchises granted by the City might contain terms and conditions that are different than the terms and conditions the Franchisee has negotiated and accepted in this Franchise. Nothing in this provision shall be construed so as to require certain terms and conditions in other cable franchises granted by the City and/or require that the City modify or change the terms and conditions of this Franchise.

## **2.6 Familiarity with Franchise**

The Franchisee acknowledges and warrants by acceptance of the rights and privileges granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions, terms and conditions herein. The Franchisee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are



commercially practicable at this time and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

## **2.7 Effect of Acceptance**

By accepting the Franchise, the Franchisee: acknowledges and accepts the City's legal right to issue and enforce the Franchise; agrees that it will not oppose the City's intervening, to the extent it is legally entitled to do so, in any legal or regulatory proceeding affecting the Cable Communications System; accepts and agrees to comply with each and every provision of this Franchise subject to applicable law; agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law.

## **SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS**

### **3.1 Franchise Fee**

As compensation for the use of the City's Right-of-Way, the Franchisee shall pay as a Franchise Fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Franchisee's Gross Revenues. Accrual of such Franchise Fee shall commence as of the effective date of this Franchise.

### **3.2 Maximum Franchise Fee**

The parties acknowledge that, at present, applicable federal law limits the City to collection of a Franchise Fee of five percent (5%) of Gross Revenues in any twelve (12) month period. In the event that at any time during the term of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues in any twelve (12) month period, it may do so with sixty (60) days written notice to the Franchisee, provided that all other franchised Cable Companies in the Franchise Area over which the City has jurisdiction are treated in an equivalent manner.

### **3.3 Payments**

The Franchisee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending 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 said dates. Late payments shall be subject to applicable interest and penalties.

### **3.4 Acceptance of Payment**

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of the

Franchisee. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by the Franchisee was due.

### **3.5 Quarterly Franchise Fee Reports**

Each payment shall be accompanied by a written report to the City on a form approved by the City, verified by an officer of the Franchisee, containing an accurate statement in summarized form, as well as in detail, of the Franchisee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable Communications System.

### **3.6 Audits**

On an annual basis, upon thirty (30) days' prior written notice, the City shall have the right to conduct an independent audit of the Franchisee's records necessary to enforce compliance with this Franchise and to calculate any amounts determined to be payable under this Franchise. Provided the Franchisee cooperates in making all relevant records available upon request, the City will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous six (6) years. Any additional amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to the Franchisee by the City, which notice shall include a copy of the audit findings, and the Franchisee's agreement that the audit findings are correct. If the audit shows that there has been a material underpayment of Franchise Fees by three percent (3%) or more in a calendar year, then the Franchisee shall pay the cost of the audit, such cost not to exceed five thousand dollars (\$5,000) for each year of the audit period.

### **3.7 Financial Records**

The Franchisee agrees to meet with a representative of the City upon request to review the Franchisee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records that are relevant to the enforcement of this Franchise.

### **3.8 Interest and Penalties on Late Payments**

In the event that any Franchise Fee payment is not received by the City by the date due, interest shall be charged from such date at the rate of twelve percent (12%) per annum, or the statutory rate for judgments, whichever is less, in addition to any applicable penalties.

### **3.9 Additional Commitments Not Franchise Fees**

No term or condition in this Franchise shall in any way modify or affect the

Franchisee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of the Franchisee's Gross Revenues in any twelve (12) month period, the Franchisee agrees that the additional commitments including Access Capital Contribution, Access Channels and the I-Net are excluded from the definition of Franchise Fees herein and are not Franchise Fees. Such additional commitments will not be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees to be passed through to Subscribers pursuant to any federal law.

### **3.10 Payment on Termination**

If this Franchise terminates for any reason, the Franchisee shall file with the City within one hundred twenty (120) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Franchisee since the end of the previous fiscal year. Within forty-five (45) days of the filing of the certified statement with the City, the Franchisee shall pay any unpaid amounts as indicated. If the Franchisee fails to satisfy its remaining financial obligations as required in this Franchise, the City may do so by utilizing the funds available in any security provided by the Franchisee.

## **SECTION 4. ADMINISTRATION AND REGULATION**

The City shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable law, including the Cable Act, or to delegate that power and right of administration, or any part thereof, to the extent permitted under federal, State and local law, to any agent in the sole discretion of the City.

### **4.1 Rates and Charges**

The Franchisee shall comply with applicable laws regarding the setting of all rates and charges for Cable Services and cross subsidization. All Franchisee rates and charges for Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

### **4.2 No Rate Discrimination**

Franchisee's rates and charges shall be non-discriminatory so as to not disadvantage any Subscriber or class of Subscribers, including those who only subscribe to Cable Services offered by the Franchisee in favor of Subscribers who subscribe to Cable Services and one or more other types of service(s) the Franchisee might offer.

Nothing herein shall be construed to prohibit:

- (A) The temporary reduction or waiving of rates or charges in conjunction

with limited promotional campaigns;

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens;

(C) The offering of bulk discounts for Multiple Dwelling Units.

The Franchisee shall as a voluntary initiative throughout the term of the Franchise, offer a discount of thirty percent (30%) from its published rate card to Subscribers for Basic Cable Services (provided they are not already receiving a package discount) who are aged 65 years or older or disabled, provided that such individual(s) are the legal owner or lessee/tenant of their Dwelling Unit and that their combined disposable income from all sources does not exceed the Housing and Urban Development Standards for the Seattle/Everett Area for the current and preceding calendar year.

The Franchisee shall permit Subscribers to make any in-residence connections the Subscriber chooses without additional charge and without penalizing the Subscriber therefore. If any in-home connection requires service from the Franchisee due to signal quality, signal leakage or other factors caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged appropriate service charges by the Franchisee.

#### **4.3 Filing of Rates and Charges**

(A) Throughout the term of this Franchise, the Franchisee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require the Franchisee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this subsection, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than twelve (12) consecutive months (or such other period as may be approved by the City) to purchase Cable Services at such rate or charge.

(B) On an annual basis, the Franchisee shall, upon request, provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by the Franchisee. The schedule shall include a description of the price, terms and conditions established by the Franchisee for Leased Access Channels.

#### **4.4 Late Fees**

If the Franchisee assesses any kind of fee for late payment, such fee shall comply with applicable law.

#### **4.5 Performance Evaluation**

(A) Special evaluation sessions may be held at any time upon request by the City during the term of this Franchise.

(B) All evaluation sessions shall be open to the public and announced at least one (1) week in advance in a newspaper of general circulation in the Franchise Area.

(C) Topics which may be discussed at any evaluation session may include, but are not limited to Cable Service rates, Franchise Fees, free or discounted Cable Services, application of new technologies, System performance, Cable Services provided, customer complaints, privacy, amendments to this Franchise, judicial and FCC rulings, line extension policies, and the City's or the Franchisee's rules, provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise or any term or provision therein.

(D) During evaluations under this Section, the Franchisee shall fully cooperate with the City and shall provide such information and documents as the City may require under Section 7 of the Franchise to perform the evaluation.

### **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

#### **5.1 Indemnification**

(A) General Indemnification. The Franchisee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, authorized agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees and expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for the Franchisee, its authorized agents, or its employees, or by reason of any neglect or omission of the Franchisee, its authorized agents or its employees. The Franchisee shall consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. Subject to applicable law, the Franchisee shall indemnify the City for any damages, claims, additional costs or expenses assessed against, or payable by, the City related to, arising solely out of, or resulting solely from the Franchisee's failure to remove, adjust or relocate any of its facilities in the Streets in a timely manner in accordance with any relocation required by the City for a City project.

(C) Additional Circumstances. The Franchisee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses in

any way arising out of any failure by the Franchisee to secure consents from owners or authorized distributors or licensees/licensors of programs to be delivered by the System, provided however, the City shall indemnify, defend and hold the Franchisee harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses arising out of the use of the Government Access Channel programmed and controlled by the City and/or its Designated Access Provider(s) or use by the City of the Emergency Alert System.

(D) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall tender the defense of the claim or action to the Franchisee, which defense shall be at the Franchisee's expense. The City may participate in the defense of a claim and, in any event, the Franchisee may not agree to any settlement of claims financially affecting the City without the City's written approval, which shall not be unreasonably withheld.

(E) Duty of Defense. The fact that the Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to the Franchisee's duty of defense and indemnification under this Section.

(F) Duty to Give Notice. The City shall give the Franchisee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by this Section. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to the Franchisee and the Franchisee shall have the obligation and duty to defend any claims arising there under, and the City shall cooperate fully therein.

(G) Separate Representation. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by the Franchisee to represent the City, the Franchisee shall pay attorneys' fees and expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by the Franchisee. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by the Franchisee.

## 5.2 Insurance Requirements

(A) General Requirement. The Franchisee must have adequate insurance during the entire term of this Franchise to protect the City against claims for injuries to Persons or damages to property which in any way relate to, arise from or are connected with this Franchise, or involve the Franchisee, its agents, representatives, contractors, subcontractors and their employees.

(B) Initial Insurance Limits. The Franchisee must maintain during the

Franchise term and for a period of twelve (12) months after expiration, termination or non-renewal thereof, insurance in effect in accordance with the minimum insurance limits herein set forth by the City from time to time. The Franchisee shall obtain policies or provide evidence of self insurance for the following initial minimum insurance limits:

- (1) Commercial General Liability: Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury or death of a person and/or property damage;
- (2) Automobile Liability: Two million dollars (\$2,000,000) per person property damage; and
- (3) Employer's Liability: Two million dollars (\$2,000,000).
- (4) Workers Compensation Insurance in accordance with state law requirements.

(5) The amounts listed above are the minimum deemed necessary by the City to protect the City's interests in this matter. The City has made no recommendation to the Franchisee as to the insurance necessary to protect the Franchisee's interests and any decision by the Franchisee to carry or not carry insurance amounts in excess of the above is solely that of the Franchisee. The Franchisee shall be responsible for judgments, settlements, damages, costs, attorneys' fees and expenses that exceed the limits of the Franchisee's insurance coverage.

(C) Endorsements.

- (1) All policies shall contain, or shall be endorsed so that:
  - (a) The City shall be designated as an additional insured.
  - (b) The Franchisee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and duly authorized agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Franchisee's insurance and shall not contribute to it, provided the occurrence arises out of the Franchisee's acts or negligence; and
  - (c) The Franchisee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.
- (2) The policy shall not be cancelled or materially altered so as to be out of compliance with the requirements of this Section without thirty (30) days written notice first being given to the City. If the insurance is cancelled or materially

altered so as to be out of compliance with the requirements of this Section within the term of this Franchise, the Franchisee shall provide a replacement policy. The Franchisee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.

(D) Acceptability of Insurers. The insurance obtained by the Franchisee shall be placed with insurers with a Best's rating of no less than "A".

(E) Verification of Coverage. The Franchisee shall furnish the City with certificates of insurance and an endorsement reflecting additional insured status. The certificates for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the City at the time of acceptance of this Franchise by the Franchisee with existing insurance coverage to be maintained by the Franchisee until that date. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

### **5.3 Security**

(A) The Franchisee shall provide a single Franchise performance bond to ensure Franchisee's faithful performance of any and all of the terms and conditions of this Franchise. The Franchise performance bond shall be in the amount of five hundred thousand dollars (\$500,000).

(B) The City reserves the right, consistent with Bellevue City Code, Chapter 14.30, as from time to time amended, to require, and the Franchisee shall provide, additional construction and/or Right-of-Way bonds.

(C) The bond(s) shall be in a form reasonably acceptable to the City. The Franchisee shall pay all premiums or costs associated with maintaining the bond(s), and shall keep the same in full force and effect at all times during the term of this Franchise.

(D) The parties agree that the Franchisee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by the Franchisee or limit the liability of the Franchisee to the amount of the bond(s) or otherwise limit the City's recourse to any other remedy available at law or equity.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

The Franchisee shall comply with Customer Service Standards as provided in the City Code as it exists on the date of adoption of this Franchise, and as may be lawfully amended from time to time by the City thereafter. It is acknowledged and agreed that the City may, from time to time, modify or add to the Customer Service



Standards as permitted by applicable law. The Franchisee reserves the right to challenge any Customer Service Standards that it believes are inconsistent with federal law or the contractual rights granted in this Franchise.

## **6.2 Subscriber Privacy**

The Franchisee shall comply with privacy rights of Subscribers in accordance with applicable federal, State and local laws.

## **6.3 Customer Service Location(s)**

Upon adoption of this Franchise, the Franchisee shall have in place a full service customer service center located at 14870 N.E. 95th St. in Redmond, WA. Throughout the Franchise term, the Franchisee must maintain this customer service location or another full-service customer service location conveniently located on the Eastside, or alternatively, two (2) co-location customer service locations conveniently located on the Eastside (with one (1) located within the City limits of Bellevue) that will be open during Normal Business Hours to provide Subscribers the opportunity to return Subscriber equipment and to make bill payments. If however, a customer service location is required to relocate, the Franchisee shall be allowed a reasonable period of time to establish a new location.

## **6.4 Customer Service Agreement and Manual**

(A) The Franchisee shall provide to Subscribers an accurate, comprehensive service agreement and customer installation packet for use in establishing Subscriber service. This material shall, at a minimum, contain the following:

- (1) The Franchisee's procedure for investigation and resolution of Subscriber service complaints.
- (2) Services to be provided and rates for such services.
- (3) Billing procedures.
- (4) Service termination procedure.
- (5) A description of the manner that will be used to provide notice of changes in rates, service or service terms and conditions.
- (6) A complete statement of the Subscriber's right to privacy.
- (7) Equipment policy.
- (8) The name, address and phone number of the customer care department that is responsible for handling cable questions and complaints for the

