

ORDINANCE NO. 11-0355

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING A NONEXCLUSIVE FRANCHISE TO COMCAST OF PUGET SOUND, INC. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM TO PROVIDE CABLE SERVICES ALONG THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDGEWOOD; REPEALING ORDINANCE NO. 10-0354; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Edgewood (the “City”) has negotiated a Franchise Agreement with Comcast of Puget Sound, Inc. (“Comcast”), granting Comcast a franchise, authority, right and privilege for a period of five (5) years to construct, operate and maintain a cable system in the City, as set forth in the Franchise Agreement attached hereto, labeled Exhibit A and hereby incorporated by reference; and

WHEREAS, Comcast has requested that the City grant it a new franchise for the provision of cable television services within the City; and

WHEREAS, pursuant to RCW 35A.11.030, RCW 35A.47.040 and 47 U.S.C. § 541(a)(1), the City is authorized to grant franchises of this type; and

WHEREAS, the City has analyzed and considered the technical ability, financial condition, legal qualifications, and general character of Comcast, and has determined that it is in the best interest of the City and its residents to grant a cable franchise to Comcast; and

WHEREAS, Comcast and the City desire to be bound by the conditions hereinafter set forth.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Repealer. Ordinance No. 10-0354, inclusive of all attachments and/or exhibits thereto, is hereby repealed in its entirety.

Section 2. Franchise Granted. Pursuant to RCW 35A.47.040, the City of Edgewood hereby grants a nonexclusive franchise to Comcast of Puget Sound, Inc. according to the terms and conditions set forth in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full. Subject to the provisions therein, the term of the franchise shall be for a period of five (5) years from the effective date of the franchise, as defined in Exhibit A, and shall grant Comcast the right, privilege and authority to construct, operate, and maintain a cable system to provide cable services along the public rights-of-way of the City of Edgewood, all as provided in Exhibit A.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. Pursuant to RCW 35A.47.040, this ordinance has been passed at least five (5) days after its first introduction and by a majority of the whole membership of the City Council at a regular meeting. This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Presented to Council for first reading on February 8, 2011
Presented to Council for second reading on February 22, 2011

ADOPTED BY THE CITY COUNCIL ON FEBRUARY 22, 2011

Jeffery Hogan, Mayor

ATTEST/AUTHENTICATED:

APPROVED AS TO FORM:

Janet Caviezel, Finance Director/City Clerk

J. Zachary Lell, City Attorney

Date of Publication: March 2, 2011

Effective Date: March 7, 2011

EXHIBIT A

**CABLE FRANCHISE AGREEMENT
Between City of Edgewood & Comcast of Puget Sound, Inc.**

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CABLE TV FRANCHISE AGREEMENT

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.

"Access"

means the availability for Noncommercial use by various governmental and educational agencies, including Grantor and its designees, of particular channels on the 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) "Access" means Educational Access and Governmental Access, collectively.

"Access Center"

means a facility or facilities where signals are managed and delivered to Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.

"Access Channel"

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

"Access Fees"

means the Capital Fee paid to Grantor by Grantee in accordance with section 9.1 below.

"Activation" or "Activated"

means the status of any capacity on or part of the System wherein the use of that capacity or part thereof may be made available without further installation of system equipment other than Subscriber premise equipment, whether hardware or software.

"Affiliated Entity" or "Affiliate"

means when used in connection with Grantee any corporation, Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee and its successor corporations. Affiliated Entity or Affiliate also means any Person with whom Grantee contracts to provide Cable Services on the Cable System.

"Bad Debt"

means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Grantee, but not collected after reasonable efforts by Grantee.

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1 **"Basic Service"**

2 means any Cable Service tier which includes, at a minimum, the retransmission of local
3 television Broadcast Signals.

4 **"Broadcast Signal"**

5 means a television signal transmitted over the air to a wide geographic audience, and received by
6 a System off-the-air by antenna, microwave, satellite dishes or any other means.

7 **"Cable Acts"**

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

11 **"Cable Operator"**

12 means any Person or groups of Persons, including Grantee, who provides Cable Service over a
13 System and directly or through one or more Affiliates owns a significant interest in such System
14 or who otherwise control(s) or is(are) responsible for, through any arrangement, the management
15 and operation of such a System.

16 **"Cable Service"**

17 means the one-way transmission to Subscribers of Video Programming, or other programming
18 service and Subscriber interaction, if any, which is required for the selection or use of such
19 Video Programming or other programming service.

20

21 **"Cable System"**

22 means the Grantee's Facility, consisting of a set of closed transmission paths and associated
23 signal generation, reception, and control equipment that is designed to provide Cable Service
24 which includes video programming and which is provided within the Franchise Area.

25 **"Channel"**

26 means a portion of the frequency band capable of carrying a Video Programming Service or
27 combination of Video Programming Services, whether by analog or digital signal, on a twenty-
28 four (24) hour per day basis or a portion thereof.

29 **"Connection"**

30 with regard to connections to public buildings, means installation of fiber optic or coaxial cable
31 or other System related facilities through the outer wall of the building.

32 **"Designated Access Provider"**

33 means the entity or entities designated by Grantor to manage or co-manage Educational or
34 Governmental Access Channels and facilities. Grantor may be a Designated Access Provider.

35

36 **"Designated Distributor"**

37 means any entity authorized by Grantor to distribute Access Programming.

38 **"Downstream Channel"**

39 means a Channel capable of carrying a transmission from the Headend to remote points on the
40 System.

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1 **"Dwelling Unit"**

2 means any residential building, or each portion thereof.

3 **"Expanded Basic Service"**

4 means cable programming services not included in the Basic Service and excluding premium or
5 pay-per-view services.

6
7 **"Facilities"**

8 means the physical components of the Cable System, including without limitation all lines,
9 cables, conduit, appurtenances and other equipment or apparatus, located in the Rights of Way.

10 **"FCC"**

11 means the Federal Communications Commission or its lawful successor.

12 **"Fiber Optic"**

13 means a transmission medium of optical fiber cable, along with all associated electronics and
14 equipment capable of carrying Cable Service by means of electric lightwave pulses.

15 **"Franchise"**

16 means the document in which this definition appears, which is executed between Grantor and
17 Grantee, containing the specific provisions of the authorization granted and the contractual and
18 regulatory agreement created hereby.

19 **"Franchise Area"**

20 means the area within the jurisdictional boundaries of Grantor, including any areas annexed by
21 Grantor during the term of this Franchise.

22 **"Franchise Fee"**

23 includes any tax, fee or assessment of any kind imposed by Grantor on Grantee or Subscribers,
24 or both solely because of their status as such. The term Franchise Fee does not include:

25 (A) Any tax, fee or assessment of general applicability, for example a utility tax.

26 (B) Capital costs which are required by the Franchise to be incurred by Grantee for
27 educational or governmental access facilities, including the support required in Section 9.1;

28 (C) Requirements or charges incidental to the awarding or enforcing of the Franchise,
29 including but not limited to, payments for bonds, letters of credit, insurance, indemnification,
30 penalties or liquidated damages; or

31 (D) Any fee imposed under Title 17, United States Code.

32
33 **"Grantee"**

34 Means Comcast of Puget Sound, Inc. or its lawful successor, transferee or assignee.

35
36 **"Grantor"**

37 Means the City of Edgewood.

38 **"Gross Revenues"**

39 means any and all revenue derived directly or indirectly by Grantee, or by any other entity that is
40 a Cable Operator of the Cable System including Grantee's Affiliates, from the operation of

EXHIBIT A

1 Grantee's Cable System to provide Cable Services in the Franchise Area. Gross Revenues
2 include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable
3 Services including Basic Service, any expanded tiers of Cable Service, optional Premium
4 Services; installation, disconnection, reconnection and change-in-service fees, Leased Access
5 Channel fees, all Cable Service lease payments from the Cable System, late fees and
6 administrative fees, revenues from rentals or sales of converters or other Cable System
7 equipment; advertising sales revenues (including local, regional and a pro rata share of national
8 advertising carried on the Cable System in the Franchise Area) net of commissions due to
9 advertising agencies that arrange for the advertising buy; the fair market value of consideration
10 received by Grantee for use of the Cable System to provide Cable Service and accounted for as
11 revenue under GAAP; revenues from program guides, additional outlet fees, Franchise Fees,
12 revenue from interactive services to the extent they are considered Cable Services under federal
13 law, revenue from the sale or carriage of other Cable Services, and revenues from home
14 shopping, and other revenue-sharing arrangements. Gross Revenues shall include revenue
15 received by any entity other than Grantee where necessary to prevent evasion or avoidance of the
16 obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include (i)
17 to the extent consistent with GAAP, Bad Debt, provided, however, that all or part of any such
18 Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in
19 the period collected; (ii) the Capital Fee specified in subsection 9.1; (iii) any taxes on services
20 furnished by Grantee which are imposed directly on any Subscriber or user by the State, City or
21 other governmental unit and which are collected by Grantee on behalf of said governmental unit.
22 The Franchise Fee is not such a tax.

23

24 The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent
25 with existing applicable law.

26 **"Headend" or "Hub"**

27 means any Facility for signal reception and dissemination on a System, including cable,
28 antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast
29 Signals or other signals, equipment for the interconnection of the System with adjacent Systems
30 and interconnection of any networks which are part of the System, and all other related
31 equipment and Facilities.

32 **"Leased Access Channel"**

33 means any Channel or portion of a Channel commercially available for programming in
34 accordance with Section 612 of the Cable Act.

35 **"Noncommercial"**

36 means, in the context of Access Channels, that particular products and services are not promoted
37 or sold. This term shall not be interpreted to prohibit an Access Channel operator or programmer
38 from soliciting and receiving financial support to produce and transmit video programming on an
39 Access Channel, or from acknowledging a contribution, in the manner of the Corporation for
40 Public Broadcasting.

41 **"Normal Business Hours"**

42 means those hours during which most similar businesses in the community are open to serve
43 customers.

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1 **“Normal Operating Conditions”**

2 means those service conditions which are within the control of Grantee. Those conditions which
3 are not within the control of Grantee include, but are not limited to, natural disasters, civil
4 disturbances, power outages, telephone network outages, and severe or unusual weather
5 conditions. Those conditions which are ordinarily within the control of Grantee include, but are
6 not limited to, special promotions, rate increases, and maintenance or upgrade of the System.

7 **"Pay Service" or "Premium Service"**

8 means Video Programming or other programming service choices (such as movie channels or
9 pay-per-view programs) offered to Subscribers on a per-channel, per-program or per-event basis.

10 **"Person"**

11 means any natural person, sole proprietorship, partnership, joint venture, association, or limited
12 liability entity or corporation, or any other form of entity or organization.
13

14 **“Rights-of-Way”**

15 means land acquired or dedicated for public streets or roads, highways, avenues, lanes, alleys,
16 bridges, sidewalks, and easements located within the Franchise area, and with respect to which
17 Grantor has ownership and/or control.

18 **“Roads”**

19 means Rights-of-Way.

20 **"School"**

21 means any accredited educational institution including, for example, primary and secondary
22 schools (K-12), colleges and universities and excluding home schools and residential facilities.

23 **“Service Interruption”**

24 means the loss of picture or sound on one or more cable channels.

25 **"State"**

26 means the State of Washington.

27 **"Subscriber"**

28 means any Person who lawfully receives Cable Services provided by Grantee by means of the
29 System with Grantee’s express permission.

30 **"System" or “Cable System”**

31 means a facility, consisting of a set of closed transmission paths and associated signal generation,
32 reception and control equipment that is designed to provide Cable Service which includes video
33 programming and which is provided to multiple Subscribers within a community, but such term
34 does not include (1) a facility that serves only to retransmit the television signals of one or more
35 television broadcast stations; (2) a facility that serves Subscribers without using any public right-
36 of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions
37 of Title II of the federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility
38 shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. §
39 541(c)) to the extent such facility is used in the transmission of video programming directly to
40 Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4)

EXHIBIT A

1 an open video system that complies with federal statutes; or (5) any facilities of any electric
2 utility used solely for operating its electric utility systems. When used herein, the term "Cable
3 System" or "System" shall mean Grantee's Cable System in the Franchise Area.

4 **"Tier"**

5 means a category of Cable Services provided by Grantee for which a separate rate is charged.

6 **"Upstream Channel"**

7 means a Channel capable of carrying a transmission to the Headend from remote points on the
8 System.

9 **"Video Programming"**

10 means programming provided by, or generally considered comparable to programming provided
11 by, a television broadcast station.
12

13 **SECTION 2. GRANT OF FRANCHISE**

14 **2.1 Grant**

15 (A) Grantor hereby grants to Grantee a nonexclusive and revocable authorization to
16 make reasonable and lawful use of the Rights-of-Way within the Franchise Area to construct,
17 operate, maintain, reconstruct, and upgrade a System for the purpose of providing Cable
18 Services, subject to the terms and conditions set forth in this Franchise. This Franchise shall
19 constitute both a right and an obligation to provide the Cable Services required by, and to fulfill
20 the obligations set forth in, the provisions of this Franchise.

21 (B) Grantee, through this Franchise, is granted the right to operate its System using
22 Grantor's Rights-of-Way within the Franchise Area in compliance with all lawfully enacted
23 applicable laws, including without limitation all construction codes, ordinances and regulations
24 adopted by Grantor. Nothing in this Franchise shall be deemed to waive the requirements of the
25 other regulations, codes and ordinances of general applicability lawfully enacted, or hereafter
26 lawfully enacted, by Grantor to the extent that the provisions of the codes and ordinances do not
27 have the effect of materially limiting the benefits or materially expanding the obligations of the
28 Grantee that are granted by this Franchise. The Grantee specifically agrees to comply with the
29 provisions of Grantor ordinances and municipal code provided that in the event of a conflict
30 between the provisions of ordinances or municipal code and the Franchise, the express
31 provisions of the Franchise shall govern. Grantee reserves the right to challenge provisions of
32 any ordinance, rule, regulation, resolution or other enactment of the Grantor that conflicts with
33 its contractual right granted herein.

34 (C) This Franchise shall not be interpreted to prevent Grantor from imposing
35 additional conditions, including additional compensation conditions for use of the Rights-of-
36 Way, should Grantee provide service other than Cable Service, to the extent permitted by law.

37 (D) Grantee promises and guarantees, as a condition of exercising the privileges
38 granted by this Franchise, that any Affiliate of Grantee directly involved in the offering of Cable
39 Service in the Franchise Area, or directly involved in the management or operation of the System
40 in the Franchise Area, will also comply with the terms and conditions of this Franchise.

41 (E) No rights shall pass to Grantee by implication.

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1 (F) This Franchise is intended to convey limited rights and interests only as to those
2 Rights-of-Ways in which Grantor has an actual interest, and only to the extent of said interest.
3 Grantor does not make, and expressly disclaims, any warranty of title or interest in any particular
4 Rights-of-Way; it does not provide Grantee with any interest in any particular location within the
5 Rights-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

6 **2.2 Use of Rights-of-Way**

7 (A) Subject to Grantor's supervision, approval and control, Grantee may erect, install,
8 construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the
9 Rights-of-Way within the Franchise Area, such wires, cables (both coaxial and fiber optic),
10 conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and
11 other property and equipment as are necessary and appurtenant to the operation of a System for
12 the provision of Cable Services within the Franchise Area. Grantee shall comply with all
13 applicable construction codes, laws, ordinances, and regulations, now in effect or enacted
14 hereafter. This grant does not include the installation, maintenance or construction, repair or
15 replacement of any wireless telecommunications facilities or equipment within Rights-of-Way or
16 otherwise on Grantor owned property or on property held in trust or used by Grantor.

17 (B) Grantee must follow Grantor-established written requirements including all
18 Grantor codes, ordinances and other regulations regarding placement of System facilities in
19 Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any
20 event install System facilities in a manner that minimizes interference with the use of the Rights-
21 of-Way by others, including others that may be installing communications facilities. Grantor
22 may require that System facilities be installed at a particular time, at a specific place or in a
23 particular manner as a condition of access to a particular Right-of-Way; may deny access if
24 Grantee is not willing to comply with Grantor's requirements; and may remove, or require
25 removal of, any facility that is not installed in compliance with the requirements established by
26 Grantor, or which is installed without prior Grantor approval of the time, place or manner of
27 installation and charge Grantee for all the costs associated with removal; and may require
28 Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through
29 joint trenching, relocations and other arrangements. Grantee shall assume all Grantee's costs
30 associated with any requirement of Grantor in the exercise of its police powers or in furtherance
31 of any public improvement to move its System located in the Right-of-way.

32 (C) The parties expressly acknowledge that some Rights-of-Way within the Franchise
33 Area, specifically including without limitation the Meridian Avenue / State Route 161 corridor,
34 are part of the state highway system ("State Highways") and are governed by the provisions of
35 Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT)
36 requirements in addition to local ordinances and other regulations. Without limitation of
37 subsections (A) and (B), Grantee agrees that:

38
39 (1) any pavement trenching and restoration performed by Grantee within State
40 Highways shall meet or exceed applicable WSDOT requirements;

41
42 (2) any portion of a State Highway damaged or injured by Grantee shall be
43 restored, repaired and/or replaced by Grantee to a condition that meets or exceeds
44 applicable WSDOT requirements; and
45
46

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1 (3) without prejudice to any right or privilege of Grantor, WSDOT is authorized
2 to enforce in an action brought in the name of the State of Washington any condition of
3 this Franchise with respect to any portion of a State Highway.

4 **2.3 Duration**

5 The term of this Franchise and all rights, privileges, obligations and restrictions pertaining
6 thereto shall be five (5) years from the effective date of this Franchise, unless terminated sooner
7 as hereinafter provided. This Franchise may be extended by mutual agreement of the parties for
8 five (5) additional years.

9 **2.4 Effective Date**

10 The provisions of this Franchise shall be effective upon the written acceptance of this Franchise
11 by Grantee, signed by its proper officers, filed with the Clerk of Grantor within sixty days from
12 _____, 2011.

13 **2.5 Franchise Nonexclusive**

14 This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or
15 licenses granted by Grantor or its predecessors to any Person to use any property, Rights-of-
16 Way, easement, right, interest or license for any purpose whatsoever, including the right of
17 Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed
18 Grantee hereunder. Grantor may at any time grant authorization to use the Rights-of-Way for
19 any purpose not incompatible with Grantee's authority under this Franchise and for such
20 additional Franchises for Systems as Grantor deems appropriate in its sole discretion.

21 **2.6 Grant of Other Franchises**

22 (A) Grantee acknowledges and agrees that Grantor reserves the right to grant one or
23 more additional franchises to provide Cable Service within the Franchise Area; provided,
24 Grantor agrees that it shall amend this Franchise to include any material terms or conditions that
25 it makes available to the new entrant within ninety (90) days of Grantee's request, so as to ensure
26 that the regulatory and financial burdens on each entity are materially equivalent. "Material
27 terms and conditions" include but are not limited to: Franchise Fees; insurance; system build-out
28 requirements; security instruments; education and government Access Channels and support;
29 customer service standards; required reports and related record keeping; and notice and
30 opportunity to cure breaches. The parties agree that this provision shall not require a word-for-
31 word identical franchise or authorization so long as the regulatory and financial burden on each
32 franchisee is materially equivalent. If any such additional or competitive franchise is granted by
33 Grantor which, in the reasonable opinion of Grantee, contains more favorable or less
34 burdensome terms or conditions than this Franchise, Grantor agrees that it shall amend this
35 Franchise to include any more favorable or less burdensome terms or conditions in a manner
36 mutually agreed upon by Grantor and Grantee.

37
38 (B) In the event an application for a new cable television franchise is filed with Grantor
39 proposing to serve the Franchise Area, in whole or in part, Grantor shall provide notice of such
40 application.

41
42 (C) In the event that a wireline multichannel video programming distributor provides
43 video service to the residents of Grantor under the authority granted by federal or State

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1 legislation or other regulatory entity, Grantee shall have a right to request Franchise amendments
2 that relieve Grantee of regulatory burdens that create a competitive disadvantage to Grantee. In
3 requesting amendments, Grantee shall file a petition seeking to amend the Franchise. Such
4 petition shall: (1) indicate the presence of such wireline competitor; (2) identify the basis for
5 Grantee's belief that certain provisions of the Franchise place Grantee at a competitive
6 disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to
7 eliminate the competitive disadvantage. Grantor shall not unreasonably withhold consent to
8 Grantee's petition.
9

10 **2.7 Familiarity with Franchise**

11 Grantee acknowledges and warrants by acceptance of the rights, privileges and agreement
12 granted herein, that it has carefully read and fully comprehends the terms and conditions of this
13 Franchise and is willing to and does accept all reasonable risks of the meaning of the provisions,
14 terms and conditions herein. Grantee further acknowledges and states that it has fully studied
15 and considered the requirements and provisions of this Franchise, and finds that the same are
16 commercially practicable at this time and consistent with all local, state and federal laws and
17 regulations currently in effect, including the Cable Act.

18 **2.8 Effect of Acceptance**

19 By accepting the Franchise, Grantee: (1) acknowledges and accepts Grantor's legal right to issue
20 and enforce the Franchise; (2) agrees that it will not oppose Grantor's intervening in any legal or
21 regulatory proceeding affecting the System; (3) accepts and agrees to comply with each and
22 every provision of this Franchise; and (4) agrees that the Franchise was granted pursuant to
23 processes and procedures consistent with applicable law, and that it will not raise any claim to
24 the contrary.

25 **2.9 Police Powers**

26 Grantee's rights hereunder are subject to the police powers of Grantor to adopt and enforce
27 ordinances necessary to the safety, health and welfare of the public, and Grantee agrees to
28 comply with all applicable laws, ordinances and regulations enacted pursuant to the police
29 powers of Grantor, or hereafter enacted in accordance therewith, by Grantor or any other legally-
30 constituted governmental unit having lawful jurisdiction over the subject matter hereof. Any
31 conflict between the provisions of this Franchise and any other present or future lawful exercise
32 of Grantor's police powers shall be resolved in favor of the latter.

33 **2.10 Franchise Area**

34 Grantee shall provide Cable Service, as authorized under this Franchise, within the Franchise
35 Area.
36

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

38 **3.1 Franchise Fee**

39 As compensation for the use of Grantor's Rights-of-Way or Roads, Grantee shall pay as a
40 Franchise Fee to Grantor, throughout the duration of this Franchise, an amount equal to five
41 (5%) percent of Grantee's Gross Revenues associated with Grantee's operation of its System in

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1 the Franchise Area. Accrual of such Franchise Fee shall commence as of the effective date of
2 this Franchise. In the event that the Franchise Fee, or any portion thereof, is prohibited by
3 federal law or regulation, Grantee shall pay to Grantor that amount, if any, which is still allowed
4 under federal law.

5 **3.2 Payments**

6 Grantee's Franchise Fee payments to Grantor shall be computed quarterly for the
7 preceding calendar quarter ending September 30, December 31, March 31 and June 30. Each
8 quarterly payment shall be due and payable no later than forty-five (45) days after said dates. At
9 Grantor's option, if there are overpayments of Franchise Fees, Grantor may choose to either
10 refund any such overpayments to Grantee, or authorize Grantee to withhold future Franchise Fee
11 payments until such time as said overpayment is recovered. If Grantor chooses the option to
12 refund such overpayments, then no interest shall accrue on such overpayments provided Grantor
13 refunds the overpayments within sixty (60) days notice from Grantee. Notwithstanding the
14 foregoing, the parties may agree on a different timeframe or terms of repayment.

15 **3.3 Acceptance of Payment**

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

20 **3.4 Quarterly Franchise Fee Reports**

21 Each payment shall be accompanied by a written report to Grantor, verified by an officer of
22 Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's
23 Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross
24 Revenues of the System and shall be drafted in accordance with generally accepted accounting
25 principles.

26 **3.5 Audits**

27 On an annual basis, upon thirty (30) days' prior written notice, Grantor shall have the right to
28 conduct an independent audit of Grantee's records related to this Franchise and to re-compute
29 any amounts determined to be payable under this Franchise. Provided Grantee cooperates in
30 making all relevant records available upon request, Grantor will in good faith attempt to
31 complete each audit within six (6) months, and the audit period shall not be any greater than the
32 previous three (3) years, unless Grantor has information relating to previous years beyond the
33 three (3) which raises doubt as to the accuracy of payments made under this or previous
34 Franchises. Any additional amounts due to Grantor as a result of the audit shall be paid within
35 sixty (60) days following written notice to Grantee by Grantor, which notice shall include a copy
36 of the audit findings. If the audit shows that Franchise Fees have been underpaid, by three
37 percent (3%) in a calendar year or more, Grantee shall pay the total cost of the audit.

38 **3.6 Financial Records**

39 Grantee agrees to meet with a representative of Grantor upon written request to review Grantee's
40 method of record-keeping, financial reporting, the computing of Franchise Fee obligations and

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1 other procedures, the understanding of which Grantor deems necessary for reviewing reports and
2 records that are relevant to the enforcement of this Franchise.

3 **3.7 Interest on Late Payments**

4 In the event any payment required under this Franchise is not received within forty-five (45)
5 days from the end of the calendar quarter, Grantee shall pay, in addition to the payment or sum
6 due, interest from the due date at an interest rate of twelve percent (12%) per annum or the prime
7 lending rate published daily in the Wall Street Journal, on the day the payment is due but unpaid,
8 whichever is higher, beginning on the forty-sixth (46th) day after the end of the calendar quarter
9 and continuing every day thereafter until the seventy-sixth (76th) day after the end of the calendar
10 quarter, or until payment is made, whichever is earlier. If any payment is not received within
11 seventy-six (76) days after the end of the calendar quarter, Grantee shall be assessed a late fee in
12 the additional amount of two hundred dollars (\$200.00) per day, beginning on the seventy-sixth
13 (76th) day after the end of the calendar quarter and continuing every day thereafter until paid.

14 **3.8 Maximum Franchise Fee**

15 The parties acknowledge that, at present, applicable federal law limits Grantor to collection of a
16 Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the
17 duration of this Franchise, Grantor is authorized to collect an amount in excess of five percent
18 (5%) of Gross Revenues, then this Franchise may be amended unilaterally by Grantor to provide
19 that such excess amount shall be added to the Franchise Fee to be paid by Grantee to Grantor
20 hereunder, provided that all providers of Cable Service in the Franchise Area over which Grantor
21 has jurisdiction are treated in an equivalent manner, and Grantee has received sixty (60) days
22 prior written notice from Grantor of such amendment.

23 **3.9 Additional Commitments Not Franchise Fees**

24 No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to
25 pay Franchise Fees. Although the total sum of Franchise Fee payments and additional
26 commitments set forth elsewhere in this Franchise may total more than five percent (5%) of
27 Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional
28 commitments herein are not Franchise Fees, nor are they to be offset or credited against any
29 Franchise Fee payments due to Grantor, nor do they represent an increase in Franchise Fees to be
30 passed through to Subscribers pursuant to any federal law. Access Fees are not to be offset
31 against and are not Franchise Fees.

32 **3.10 Payment on Termination**

33 If this Franchise terminates for any reason, Grantee shall file with Grantor within ninety (90)
34 calendar days of the date of the termination, a financial statement, certified by an independent
35 certified public accountant, showing the Gross Revenues received by Grantee since the end of
36 the previous fiscal year. Within sixty (60) days of the filing of the certified statement with
37 Grantor, Grantee shall pay any unpaid amounts as indicated. If Grantee fails to satisfy its
38 remaining financial obligations as required in this Franchise, Grantor may do so by utilizing the
39 funds available in the security provided by Grantee pursuant to Section 5.3.
40

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SECTION 4. ADMINISTRATION AND REGULATION

4.1 General Provisions

(A) Grantor 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, or any part thereof, to the extent permitted under State and local law.

(B) Grantee shall comply fully with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the term of the Franchise. Nothing in this Franchise shall limit or expand Grantor's right of eminent domain under State law.

(C) Grantee and Grantor shall be entitled to all rights and be bound by all changes in local, State and federal law that occur subsequent to the effective date of this Franchise. Grantee and Grantor acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes. However, should such changes in law substantially reduce Grantee's obligation to pay or provide Franchise Fees, or any other support required in this Franchise, Grantor and Grantee agree to enter into good faith negotiations for a six (6) month period, at the request of either party, to resolve the issues. If resolution is not reached within the six (6) month period, and the period has not been extended by mutual agreement, the term of this Franchise shall be reduced to three (3) years, and the parties shall commence the renewal process in accordance with the Cable Act.

4.2 Rates and Charges

All Grantee rates and charges related to or regarding Cable Services shall be subject to regulation by Grantor to the full extent authorized by applicable federal, State and local laws.

4.3 Rate Discrimination

All Grantee rates and charges shall be published (in the form of a publicly-available rate card), made available to the public, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with governing law. Grantee shall permit Subscribers to make any in-residence connections the Subscriber chooses without additional charge and without penalizing the Subscriber therefore. However, if any in-home connection requires service from Grantee 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 Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns;

(B) The offering of reasonable discounts to similarly situated Persons.

(C) The offering of rate discounts for either Cable Service generally, or data transmission to governmental agencies or educational institutions; or

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

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1 **4.4 Filing of Rates and Charges**

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

10 (B) On an annual basis, Grantee shall provide a complete schedule of current rates
11 and charges for any and all Leased Access Channels, or portions of such Channels, provided by
12 Grantee.

13 **4.5 Late Fees**

14 If Grantee assesses any kind of penalty fee for late payment, such fee shall comply with
15 applicable law.

16 **4.6 Time Limits Strictly Construed**

17 Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall
18 be deemed to be of the essence, and any failure of Grantee to perform within the allotted time
19 may be considered a material breach of this Franchise. However, in the event that Grantee is
20 prevented or delayed in the performance of any of its obligations under this Franchise by reason
21 beyond the reasonable control of Grantee, Grantee shall have a reasonable time, under the
22 circumstances, to perform the affected obligation under this Franchise or to procure a substitute
23 for such obligation which is satisfactory to Grantor.

24 **4.7 Performance Evaluation**

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

27 (B) All evaluation sessions shall be open to the public and announced at least one
28 week in advance in a newspaper of general circulation in the Franchise Area. Grantor may
29 notify its Subscribers of evaluation sessions by announcement on its Access Channel.

30 (C) Topics which may be discussed at any evaluation session may include, but are not
31 limited to, Cable Service rate structures; Franchise Fees; liquidated damages; free or discounted
32 Cable Services; application of new technologies; system performance; Cable Services provided;
33 programming offered; customer complaints; privacy; amendments to this Franchise; judicial and
34 FCC rulings; line extension policies; and Grantor's or Grantee's rules; provided that nothing in
35 this subsection shall be construed as requiring the renegotiation of this Franchise.

36 (D) During evaluations under this Section, Grantee shall fully cooperate with Grantor
37 and shall provide such information and documents as Grantor may require to perform the
38 evaluation.
39

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SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold Grantor, its officers, officials, boards, commissions, authorized agents and employees, harmless from any action or claim for injury including death, 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 Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee its agents or its employees, except for injuries and damages caused by the sole negligence of Grantor. Grantee shall consult and cooperate with Grantor while conducting its defense of Grantor.

(B) Indemnification for Relocation. Grantee shall indemnify, defend and hold harmless Grantor, its officers, officials, boards, commissions, authorized agents and employees for any damages or claims, specifically including without limitation any additional costs or expenses assessed against, or payable by, Grantor related to, arising out of, or resulting, directly or indirectly, from Grantee'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 Grantor. As part of its indemnity obligation pursuant to Section 5.1(A), the provisions of this subsection (B) shall specifically include, without limitation, claims or damages assessed against, or payable by Grantor, by a contractor performing public work for or on behalf of Grantor.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold Grantor 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:

(1) The grant of this Franchise;

(2) Any failure by Grantee to secure consents from the owners, authorized distributors or licensees/licensors of programs to be delivered by the System.

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

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

(F) Duty to Give Notice and Tender Defense. Grantor shall give Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. In the event any such claim arises, Grantor or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the

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1 obligation and duty to defend any claims arising thereunder, and Grantor shall cooperate fully
2 therein.

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

11 12 **5.2 Insurance Requirements**

13 (A) General Requirement. Grantee shall procure and maintain adequate insurance
14 during the entire term of this Franchise to protect Grantor against claims for injuries to Persons
15 or damages to property which in any way relate to, arise from or are connected with this
16 Franchise, or involve Grantee, its agents, representatives, contractors, subcontractors and their
17 employees.

18 (B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance
19 with the minimum insurance limits herein set forth by Grantor from time to time. Grantee shall
20 obtain policies for the following initial minimum insurance limits:

- 21 (1) Commercial General Liability: Five million dollars (\$5,000,000)
22 aggregate limit per occurrence for bodily injury, personal injury and property damage;
23 (2) Automobile Liability: Three million dollars (\$3,000,000) combined single
24 limit per accident for bodily injury and property damage;
25 (3) Employer's Liability: One million dollars (\$1,000,000);

26 (C) Endorsements.

27 (1) All policies shall contain, or shall be endorsed so that:

28 (a) Grantor shall be designated as additional insured.

29 (b) Grantee's insurance coverage shall be primary insurance with
30 respect to Grantor, its officers, officials, boards, commissions, employees and
31 duly authorized agents. Any insurance or self-insurance maintained by Grantor,
32 its officers, officials, boards, commissions, employees and agents shall be in
33 excess of Grantee's insurance and shall not contribute to it; and

34 (c) Grantee's insurance shall apply separately to each insured against
35 whom a claim is made or lawsuit is brought, except with respect to the limits of
36 the insurer's liability.

37 (2) The insurance shall provide that the insurance shall not be cancelled or
38 materially altered so as to be out of compliance with the requirements of this Section
39 without thirty (30) days' written notice first being given to Grantor. If the insurance is
40 cancelled or materially altered so as to be out of compliance with the requirements of this
41 Section within the term of this Franchise, Grantee shall provide a replacement policy.
42 Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts
43 required, for the duration of this Franchise.

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1 (D) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with
2 insurers with an A.M. Best's rating of no less than "A:VII"

3 (E) Verification of Coverage. Grantee shall furnish Grantor with certificates of
4 insurance or a copy of the page of the policy reflecting blanket additional insured status. The
5 certificates for each insurance policy are to be signed by a Person authorized by that insurer to
6 bind coverage on its behalf. The certificates for each insurance policy are to be on standard
7 forms or such forms as are consistent with standard industry practices, and are to be received and
8 approved by Grantor prior to the commencement of activities associated with this Franchise.
9 Grantee hereby represents and warrants that its insurance policies satisfy the requirements of this
10 Franchise.

11 **5.3 Security**

12 Upon the effective date of this Franchise, Grantee shall provide a performance bond in the
13 amount of \$50,000.00 to ensure the faithful performance of its responsibilities under this
14 Franchise and applicable law, including, by way of example and not limitation, its obligations to
15 relocate and remove its facilities and to restore Grantor Rights-of-Way and other property.
16 Grantee shall pay all premiums or costs associated with maintaining the Security, and shall keep
17 the same in full force and effect at all times throughout the term of this Franchise. Grantee may
18 be required to obtain additional security, such as generally applicable construction bonds, in
19 accordance with Grantor's regulations and/or permitting requirements.
20

21 **SECTION 6. CUSTOMER SERVICE**

22 **6.1 Subscriber Contracts**

23 Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with
24 the terms of this Franchise.

25 **6.2 Subscriber Privacy**

26 Grantee will comply with privacy rights of Subscribers in accordance with applicable federal,
27 State and local laws.

28 **6.3 Customer Service Center**

29 Throughout the Franchise term, Grantee must maintain, at a minimum, one (1) customer service
30 center located within Pierce County that will be open during Normal Business Hours, to provide
31 Subscribers the opportunity to receive and pick up Subscriber equipment and to make bill
32 payments and complaints.

33 **6.4 Customer Service Agreement and Manual**

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

- 37 (1) Grantee's procedure for investigation and resolution of Subscriber service
38 complaints.
- 39 (2) Services to be provided and rates for such services.
- 40 (3) Billing procedures.

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1 (4) Service termination procedure.

2 (5) A description of the manner that will be used to provide notice of changes
3 in rates, service or service terms and conditions.

4 (6) A complete statement of the Subscriber's right to privacy.

5 (7) Converter and cable modem equipment policy.

6 (8) The name, address and phone number of the Person identified by Grantor
7 as responsible for handling cable questions and complaints for Grantor. This information
8 shall be prominently displayed in the installation packet.

9 (B) A copy of the installation packet shall be provided to each Subscriber at the time
10 of initial installation and any reconnection (excluding reconnections to the same Subscriber
11 within twelve (12) months), and at any time the packet is requested by the Subscriber. Grantee
12 shall make reasonable efforts to advise customers of any material changes in cable operation
13 policies.
14

15 **SECTION 7. REPORTS AND RECORDS**

16 **7.1 Open Records**

17 Grantor shall have access to, and the right to inspect, any books and records of Grantee, its
18 parent corporations and Affiliated entities, necessary for the enforcement of the terms of this
19 Franchise. Grantee shall not deny Grantor access to any of Grantee's records on the basis that
20 Grantee's records are under the control of any parent corporation, Affiliated Entity or a third
21 party. Grantor may, in writing, request copies of any such records or books, and Grantee shall
22 provide such copies within thirty (30) days of the transmittal of such request. One copy of all
23 reports and records required under this or any other Section shall be furnished to Grantor at the
24 sole expense of Grantee. If the requested books and records are too voluminous, or for security
25 reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days,
26 that Grantor inspect them at Grantee's local offices. If any books or records of Grantee are not
27 kept in a local office and not made available in copies to Grantor upon written request as set
28 forth above, and if Grantor determines that an examination of such records is necessary for the
29 enforcement of this Franchise, then all reasonable travel and maintenance expenses incurred in
30 making such examination shall be paid by Grantee. Grantee shall retain for a period no less than
31 six (6) years all books and records pertaining to financial matters related to the payment of
32 Franchise Fees, Access Fees, the calculation of Gross Revenues, and any other financial matters
33 related to this Franchise.

34 **7.2 Confidentiality**

35 Grantor agrees to keep confidential any proprietary or confidential books or records to the extent
36 permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the
37 work confidential or proprietary, and shall provide a brief written explanation as to why such
38 information is confidential and how it may be treated as such under State or federal law. If
39 Grantor receives a demand from any Person for disclosure of any information designated by
40 Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee
41 and provide Grantee with a copy of any written request by the party demanding access to such
42 information within a reasonable time. Provided, that Grantor's failure to advise Grantee of any
43 such request shall not form the basis for any liability of Grantor whatsoever. If Grantee believes

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1 that the disclosure of such documents by Grantor would interfere with Grantee's rights under
2 federal or state law, Grantee may institute an action in the Pierce County Superior Court to
3 prevent the disclosure by Grantor of such documents. Grantee shall institute any such action
4 within ten (10) days of receiving notification of Grantor's intended disclosure. Grantee shall join
5 the Person requesting the documents to such an action. Grantee shall defend, indemnify and hold
6 Grantor harmless from any claim or judgment including, but not limited to, any penalties or costs
7 and/or attorneys' fees under Chapter 42.56 RCW.

8 **7.3 Records Required**

9 Grantee shall at all times maintain:

10 (A) A full and complete set of plans, records and "as built" maps showing the
11 location of all System equipment installed or in use in the Franchise Area, which is
12 generated in Grantee's normal course of business.

13 (B) A copy of all FCC filings on behalf of Grantee, its parent corporations or
14 Affiliates which relate to the operation of the System in the Franchise Area.

15 (C) A list of Grantee's Cable Services, rates and Channel line-ups.

16 (D) A statistical compilation of Subscriber complaints, actions taken and
17 resolution, and a log of service calls.

18 (E) Records of known outages affecting more than 10 Subscribers for the
19 previous year, indicating date, duration, geographical area, and the number of Subscribers
20 affected, type of outage, and if known, the cause.

21 (F) Records of service calls for repair and maintenance for the previous year,
22 indicating the date and time service was required, the date of acknowledgment, the date
23 and time service was scheduled (if it was scheduled), and the date and time service was
24 provided, and (if different) the date and time the problem was resolved.

25 **7.4 Copies of Federal and State Reports**

26 Upon written request, Grantee shall submit to Grantor copies of any pleading, applications,
27 notifications, communications and documents of any kind, submitted by Grantee or its Affiliates
28 to any federal, State or local courts, regulatory agencies and other government bodies if such
29 documents directly relate to the operations of Grantee's System within the Franchise Area.
30 Grantee shall submit such documents to Grantor no later than thirty (30) days after receipt of
31 Grantor's request. Grantee shall not claim confidential, privileged or proprietary rights to such
32 documents unless under federal, State, or local law such documents have been determined to be
33 confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all
34 other reports, documents and notifications provided to any federal, State or local regulatory
35 agency as a routine matter in the due course of operating Grantee's System within the Franchise
36 Area, Grantee shall make such documents available to Grantor upon Grantor's written request.

37 **7.5 Complaint File and Reports**

38 Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the
39 System, and Grantee's actions in response to those complaints, in a manner consistent with the
40 privacy rights of Subscribers. Those files shall remain open to Grantor during normal business

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1 hours and shall be retained for a period of one year. Upon request, Grantee shall provide a report
2 to Grantor which can, at Grantor's option, include the following information:

3 (A) Nature and type of customer complaints;

4 (B) Number, duration, general location and customer impact of unplanned service
5 interruptions;

6 (C) Any significant construction activities which affect the quality or otherwise
7 enhance the service of the System;

8 (D) Average response time for service calls;

9 (E) New areas constructed and available for Cable Service;

10 (F) Video programming changes (additions/deletions); and

11 (G) Such other information as reasonably requested by Grantor.

12 **7.6 Inspection of Facilities**

13 Grantor may inspect any of Grantee's Facilities in the Rights-of-Way at any reasonable time
14 during business hours upon at least forty-eight (48) hours notice, or, in case of emergency, upon
15 demand without prior notice.

16 **7.7 False Statements**

17 Any intentional false or misleading statement or representation in any report required by this
18 Franchise shall be a material breach of this Franchise and may subject Grantee to all remedies,
19 legal or equitable, which are available to Grantor under this Franchise or otherwise under
20 applicable law.
21

22 **SECTION 8. PROGRAMMING AND CHANNEL CAPACITY**

23 **8.1 Grantee Compliance**

24 Grantee will provide the broad categories of programming and Channel capacity required by this
25 Franchise and by all applicable federal, State or local laws, statutes, regulations or standards.

26 **8.2 Broad Programming Categories**

27 Grantee shall provide or enable the provision of at least the following initial broad categories of
28 programming to the extent such categories are reasonably available:

29 (A) Educational programming;

30 (B) Sports programming;

31 (C) General entertainment programming;

32 (D) Children's programming;

33 (E) Information/news programming;

34 (F) National and local government programming.

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1 **8.3 Obscenity**

2 Grantee or Grantor shall not transmit, or permit to be transmitted, over any Channel subject to its
3 editorial control any programming which is obscene.

4 **8.4 Parental Control Device**

5 Upon request by any Subscriber, Grantee shall make available a parental control or lockout
6 device traps or filters to enable a Subscriber to control access to both the audio and video
7 portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the
8 lockout device at the time of their initial subscription and periodically thereafter.

9 **8.5 Complimentary Cable Service**

10 Grantee, upon written request, shall provide without charge, a Standard Installation and one
11 outlet of Basic and Expanded Basic Service to those administrative buildings owned and
12 occupied or leased and occupied by Grantor, fire station(s), police station(s), libraries and K-12
13 public school(s) that are within 125 feet aerial or 60 feet underground of its Cable System. In the
14 case of leased facilities, the recipient of service is responsible for securing approval for the
15 appropriate right of entry suitable to Grantee at its sole discretion. The Cable Service provided
16 shall not be distributed beyond the originally installed outlet without authorization from Grantee.
17 The Cable Service provided shall not be used for commercial purposes, and such outlets shall not
18 be located in areas open to the public. Grantor shall take reasonable precautions to prevent any
19 use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or
20 any loss or damage to the Cable System. Grantor shall waive all claims and liability against
21 Grantee arising out of the provision and use of Cable Service required by this Section. Grantee
22 shall not be required to provide an outlet to such buildings where a non-Standard Installation is
23 required, unless Grantor or building owner/occupant agrees to pay the incremental cost of any
24 necessary Cable System extension and/or non-Standard Installation. If additional outlets of
25 Cable Service are provided to such buildings, the building owner/occupant shall pay the usual
26 installation and service fees associated therewith.

27 **8.6 New Developments**

28 If there is a new technology which in Grantor's opinion would enhance substantially the quality
29 or quantity of programming available to Subscribers on the System, Grantee shall, at the request
30 of Grantor, investigate the feasibility of implementing said technology and report to Grantor the
31 results of such investigation.
32

33 **SECTION 9. EDUCATIONAL AND GOVERNMENTAL ACCESS**

34 **9.1 Support for Access Capital Costs**

35 Within forty-five days of the effective date of this Franchise, Grantee shall pay to Grantor a
36 capital contribution of ten thousand dollars (\$10,000.00) for educational and governmental
37 access capital expenditures. Commencing upon thirty (30) days from the effective date of this
38 Franchise, Grantee shall begin collecting from Subscribers an amount of thirty-five cents (\$.35)
39 per Subscriber per month that Grantee shall retain until the amount retained equals the capital
40 contribution above plus Grantee's cost incurred as a result of constructing the return line as
41 required by Section 9.9, for a cost not to exceed thirty-five (\$35,000.00), for a grand total not to
42 exceed forty-five (\$45,000.00) for both the return line construction and the educational and

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1 governmental access capital expenditures. After collecting and retaining said amount, Grantee
2 shall begin remitting to Grantor up to thirty-five cents (\$.35) per Subscriber per month. Grantee
3 shall make such payments quarterly, no later than thirty (30) days following the end of the
4 quarter. The Grantor agrees that 47 C.F.R. §76.922 permits Grantee to add the cost of the capital
5 support to the price of Cable Services and to collect the capital support from Subscribers. In
6 addition, as permitted in 47 C.F.R. §76.985, all amounts paid as the capital support may be
7 separately stated on Subscriber's bills as a government access fee.

8 **9.2 Access Reporting**

9 Upon Grantee's written request the Grantor shall submit a report annually on the use of Access
10 Channels and Capital Fee. The Grantor shall submit a report to Grantee within one hundred
11 twenty (120) days of a written request. Grantee may review the records of the Grantor regarding
12 the use of the Capital Fee.

13 **9.3 Management and Control of Access Channels**

14 (A) Grantor may authorize Designated Access Providers to control, operate, and
15 manage the use of any and all Access facilities provided by Grantee under this Franchise,
16 including, without limitation, the operation of Access Channels. The Grantor or its designee
17 may formulate rules for the operation of the Access Channels, consistent with this Franchise.
18 Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access
19 Provider.

20 (B) Grantee shall cooperate with Grantor and Designated Access Providers in the use
21 of the System and Access facilities for the provision of Access Channels.

22 **9.4 Access Channels**

23 (A) Grantee shall provide at no charge commencing within one hundred eighty (180)
24 days after written request from Grantor, and continuing throughout the remaining term of this
25 Franchise, One (1) Channel for use by Grantor for governmental Access programming (said
26 Channel to be capable of cable-casting both live and recorded programming only within the
27 geographic territory of Grantor).

28 (B) Grantee shall provide immediately at no charge after acceptance of this Franchise,
29 and continuing throughout the term of this Franchise the following:

30 (1) One (1) Channel for educational Access programming.
31

32 (C) All assigned Access Channels can be used to transmit programming in any format
33 which is technically compatible with the Cable System, including, by way of example and not
34 limitation, video, audio only, secondary audio and/or text (character generated) messages. Such
35 uses must be in furtherance of Access purposes. Each of the above two (2) Channels may be
36 digitized by the Grantee and must be capable of transmitting one standard analog or one digital
37 video signal. Any Access Channels provided via digital or compressed video technology shall
38 have at least the same transmission quality as is used to carry any of the commercial Channels
39 that deliver programming on the System and shall be full motion video. The provision of Access
40 Channels via digital or compressed video technology will not reduce the total Access Channel
41 requirement herein.

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1 **9.5 Change in Technology**

2 In the event Grantee makes any change in the System and related equipment and facilities or in
3 Grantee's signal delivery technology, which directly or indirectly affects the signal quality or
4 transmission of Access programming, Grantee shall at its own expense take necessary technical
5 steps or provide necessary technical assistance, including the acquisition of all necessary
6 equipment, and full training of Access personnel to ensure that the capabilities of Access
7 channels are not diminished or adversely affected by such change. For example, this provision
8 shall apply if Basic Service on the Cable System is converted from an analog to a digital format,
9 such that the Access Channels must also be converted to digital in order to be received by
10 Subscribers.

11 **9.6 Access Channels on Lowest Level of Service**

12 All Access Channels provided to Subscribers under this Franchise shall be included by Grantee,
13 without limitation, as a part of the lowest level of digital service, subject to applicable law.

14 **9.7 Access Channel Location/Relocation**

15 Grantee will carry Grantor's programming on the channel designated for local government
16 programming on its regional channel line-up, currently channel 21, so that the Grantor will
17 receive the same benefits from such carriage as other jurisdictions in western Washington.
18 Furthermore, Grantee will use reasonable efforts to minimize the movement of Access Channel
19 assignments. Grantee shall provide three (3) months notice to the Grantor prior to any relocation
20 and shall reimburse Grantor for its costs incurred for any promoting, marketing, advertising and
21 notice of the Channel change up to three thousand dollars (\$3,000).
22

23 **9.8 Technical Quality**

24 The Grantee shall maintain Access channels at the same or better level of technical quality and
25 reliability required by this Franchise and all other applicable laws, rules and regulations for other
26 Channels. The Grantee shall provide routine maintenance and shall repair and replace, if
27 necessary, all Grantee's transmission equipment, including fiber transmitters and receivers,
28 channel modulators, associated cable and equipment, required to carry a quality signal to and
29 from the Grantor's Designated Distributor's facilities (and Designated Access Providers') and the
30 Grantee's facilities for the Access channels provided under this Franchise.
31

32 **9.9 Return Line**

33 Within six months of the effective date of the Franchise, Grantee shall construct one (1) fiber
34 optic Return Line, to enable the distribution of Access programming to Subscribers on an Access
35 Channel in the digital tier. The Return Line shall run from the demarcation point at Grantor's
36 City Hall to Grantee's headend. Grantee shall submit an invoice to the Grantor which will state
37 the total cost of construction. Grantor agrees that Grantee shall recover these costs directly from
38 the monthly capital support fee required in Section 9.1.
39

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SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Construction

(A) Subject to and in conformance with all applicable laws, regulations, municipal code and permitting requirements of Grantor and the provisions of this Franchise, Grantee may perform all construction necessary for the operation of its System. All construction and maintenance of any and all Grantee's facilities within Rights-of-Way shall, regardless of who performs the construction, be and remain Grantee's responsibility.

(B) Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Rights-of-Ways.

(C) Grantee may make excavations in Rights-of-Way for any facility needed for the maintenance or extension of Grantee's System. Prior to doing such work, Grantee shall apply for, and obtain, appropriate permits from Grantor and any other governmental entity with jurisdiction, and give appropriate notices to Grantor. As a condition of any permits so issued, Grantor officials may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, protection of the public and the continuity of pedestrian or vehicular traffic. 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, licensees, permittees and franchisees so as to reduce so far as possible the number of Rights-of-Way utility cuts within the Franchise Area.

(D) In the event that emergency repairs are necessary, Grantee shall immediately notify Grantor of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for all applicable permits within forty-eight (48) hours after discovery of the emergency.

(E) Repair and Restoration of Property.

(1) Grantee shall protect public and private property within and adjacent to the Rights-of-Way from damage.

(2) If public property is disturbed or damaged, Grantee shall restore the property to its former condition. Public Right-of-Way or other Grantor property shall be restored in a manner and within a timeframe approved by Grantor's Director of Public Works. If restoration of public Right-of-Way or other property of Grantor is not satisfactorily performed within a reasonable time, the Director of Public Works may, after prior notice to Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at Grantee's expense and recover the cost of those repairs from Grantee. Within forty-five (45) days of receipt of an itemized list of those actual costs, including the costs of labor, materials and equipment, Grantee shall remit full payment to Grantor therefore. If suit is brought by Grantor upon Grantee's failure to pay for repair or restoration, the reasonable costs and expenses, including attorneys' fees and costs, of the prevailing party will be paid by the non-prevailing party.

(F) Movement for Other Permittees.

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1 At the request of any Person holding a valid permit and upon reasonable advance notice,
2 Grantee shall temporarily raise, lower or remove its wires or lines, as necessary to permit the
3 moving of a building, vehicle, equipment or other item. The expense of such temporary changes
4 must be paid by the permit holder, and Grantee may require the estimated payment from the
5 permit holder in advance.

6 **10.2 Relocation**

7 (A) Facilities Relocation – Upon the receipt of a demand by Grantor, within thirty
8 days, or in the event of an emergency, upon such shorter notice period as Grantor deems
9 reasonable under the circumstances, Grantee, at its sole cost and expense, shall remove or
10 relocate any Facilities, if and when the removal or relocation of such Facilities is made necessary
11 by Grantor acting pursuant to any lawful governmental or proprietary purpose, including,
12 without limitation, engaging in any lawful change of grade, alignment or width of any Rights-of-
13 Way in the Franchise Area pursuant to any concern regarding health, safety and welfare, or in the
14 installation or replacement of any street light pole. Whenever Grantee is required to remove
15 Facilities or if Grantee desires to relocate Facilities, then Grantor shall use its reasonable best
16 efforts to accommodate Grantee by making another functionally equivalent property available
17 for use in accordance with and subject to the terms and conditions of this Franchise. However,
18 nothing in this Franchise shall be construed as creating an obligation of Grantor to provide
19 Grantee with such property.

20 (B) Relocation Costs – Whenever the removal or relocation of Facilities is required
21 under this Franchise or otherwise by order of Grantor, and such removal or relocation shall cause
22 the Rights-of-Way to be damaged, Grantee, at its sole cost and expense, shall promptly repair
23 and return the Rights-of-Way, in which the Facilities are located, to the same condition as
24 existed prior to such work in the sole determination of Grantor. If Grantee does not return the
25 affected site to a safe and satisfactory condition, then Grantor shall have the option to perform or
26 cause to be performed such reasonable and necessary work and charge Grantee for the proposed
27 costs to be incurred or the actual cost incurred by Grantor. Upon the receipt of a demand for
28 payment by Grantor, Grantee shall fully reimburse Grantor for such costs within thirty days.

29 **10.3 Location of Facilities**

30 Within five (5) business days, unless otherwise specified in Grantee's regulations, after Grantor
31 or any franchisee, licensee or permittee of Grantor notifies Grantee of a proposed Right-of-Way
32 excavation, Grantee shall, at Grantee's expense:

33 (A) Mark on the surface all of its located underground facilities within the area of the
34 proposed excavation;

35 (B) Notify the excavator of any unlocated underground facilities in the area of the
36 proposed excavation; or

37 (C) Notify the excavator that Grantee does not have any underground facilities in the
38 vicinity of the proposed excavation.

39 **10.4 Restoration of Rights-of-Way / Grantor Owned Property**

40 (A) Whenever Grantee disturbs the surface of any Rights-of-Way or Grantor owned
41 property for any purpose, Grantee shall promptly restore the Rights-of-Way or Grantor owned
42 property to a condition as good or better than its prior condition in Grantor's sole determination.
43 When any opening is made by Grantee in a hard surface pavement in any Rights-of-Way or

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1 Grantor owned property, Grantee shall promptly refill the opening and restore the surface to a
2 condition satisfactory to Grantor.

3 (B) If Grantee excavates the surface of any Rights-of-Way or Grantor owned
4 property, Grantee shall be responsible for restoration in accordance with applicable regulations
5 of the Rights-of-Way and its surface within the area affected by the excavation. Grantor may,
6 after providing notice to Grantee, refill or repave any opening made by Grantee in the Rights-of-
7 Way or on Grantor owned property, and the expense thereof shall be paid by Grantee within
8 forty-five (45) days of receipt of invoice from Grantor. Grantor may, after providing notice to
9 Grantee, remove and repair any work done by Grantee which, in the determination of Grantor,
10 does not conform to applicable code. The cost thereof, including the costs of inspection and
11 supervision shall be paid by Grantee. All excavations made by Grantee in Rights-of-Way or on
12 Grantor owned property shall be properly safeguarded for the prevention of accidents. All of
13 Grantee's work under this Franchise, and this Section in particular, shall be done in strict
14 compliance with all rules, regulations and ordinances of Grantor.

15 **10.5 Maintenance and Workmanship**

16 (A) Grantee's System shall be constructed and maintained in such manner as not to
17 interfere with sewers, water pipes or any other property of Grantor, or with any other pipes,
18 wires, conduits, pedestals, structures or other facilities that may have been laid in Rights-of-Way
19 by, or under, Grantor's authority.

20 (B) Grantee shall provide and use any equipment and appliances necessary to control
21 and carry Grantee's signals so as to prevent injury to Grantor's property or property belonging to
22 any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to
23 keep them in good repair and safe and presentable condition.

24 (C) Grantee's Facilities, specifically including without limitation the transmission and
25 distribution components of the Cable System, including all wires and appurtenances shall be
26 located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to
27 unnecessarily hinder or obstruct the free use of Rights-of-Way, alleys, bridges or other public
28 property.

29 **10.6 Acquisition of Facilities**

30 Upon Grantee's acquisition of facilities in any Grantor Rights-of-Way, or upon the addition or
31 annexation to Grantor of any area in which Grantee owns or operates any facility, Grantee shall,
32 at Grantor's request, submit to Grantor a statement describing all facilities involved, whether
33 authorized by franchise, permit, license or other prior right, and specifying the location of all
34 such facilities to the extent Grantee has possession of such information. Such facilities shall
35 immediately be subject to the terms of this Franchise.
36

37 **10.7 Discontinuing Use of Facilities**

38 Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee
39 shall submit for Grantor's approval a complete description of the facility and the date on which
40 Grantee intends to discontinue using the facility. Grantee may remove the facility or request that
41 Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility
42 remain in place, Grantor may require Grantee to remove the facility from the Rights of Way or
43 modify the facility to protect the public health, welfare, safety and convenience, or otherwise

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1 serve the public interest. Grantor may require Grantee to perform a combination of modification
2 and removal of the facility. Grantee shall complete such removal or modification in accordance
3 with a schedule set by Grantor. Until such time as Grantee removes or modifies the facility as
4 directed by Grantor, or until the rights to and responsibility for the facility are accepted by
5 another Person having authority to construct and maintain such facility, Grantee shall be
6 responsible for all necessary repairs and relocations of the facility, as well as maintenance of the
7 Rights-of-Way, in the same manner and degree as if the facility were in active use, and Grantee
8 shall retain all liability for such facility. If Grantee abandons its Facilities, Grantor may choose
9 to use such Facilities for any purpose whatsoever including, but not limited to, Access Channel
10 purposes.

11 **10.8 Hazardous Substances**

12 (A) Grantee shall comply with all applicable State and federal laws, statutes,
13 regulations and orders concerning hazardous substances relating to Grantee's System and
14 Grantee's operations in Rights-of-Way.

15 (B) Grantee shall maintain and inspect its System located in Rights-of-Way. Upon
16 reasonable notice to Grantee, Grantor shall have the right, but not the obligation, to inspect
17 Grantee's facilities in Rights-of-Way to determine if any release of hazardous substances has
18 occurred, or may occur, from or related to Grantee's System. In removing or modifying
19 Grantee's facilities as provided in this Franchise, Grantee shall also remove all residues of
20 hazardous substances related thereto.

21 **10.9 Undergrounding of Cable**

22 (A) Where electric and telephone utility wiring is installed underground at the time of
23 System construction, or when such wiring is subsequently placed underground, all System lines,
24 wiring and equipment shall also be placed underground with other wire line service at no
25 expense to Grantor. Related System equipment, such as pedestals, must be placed in accordance
26 with applicable code requirements and rules as administered by Grantor's Director of Public
27 Works. In areas where either electric and telephone utility wiring are aerial, Grantee may install
28 aerial cable, except when a property owner or resident requests underground installation and
29 agrees to bear the additional cost in excess of aerial installation.

30 (B) Grantee shall utilize existing poles and conduit wherever possible.

31 (C) This Franchise does not grant, give or convey to Grantee the right or privilege to
32 install its facilities in any manner on specific utility poles or equipment of Grantor or any other
33 Person.

34 (D) Grantee and Grantor recognize that situations may occur in the future where
35 Grantor may desire to place its own cable or conduit for fiber optic cable in trenches or bores
36 opened by Grantee. If Grantee upgrades in the future, Grantee shall submit these plans to
37 Grantor in accordance with Grantor's permitting process so that such opportunities may be
38 explored. However, nothing set forth herein shall obligate Grantee to slow the progress of the
39 upgrade of the System to accommodate Grantor. In addition, Grantee agrees to cooperate with
40 Grantor in any other construction by Grantee that involves trenching or boring. If sufficient
41 space is reasonably available, Grantee shall allow Grantor to lay its cable, conduit and fiber optic
42 cable in Grantee's trenches and bores, provided Grantor shares in the cost of the trenching and
43 boring on the same terms and conditions as Grantee at that time shares the total cost of trenches

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1 and bores. Grantor shall be responsible for maintaining its respective cable, conduit and fiber
2 optic cable buried in Grantee's trenches and bores under this paragraph.

3 (E) Grantor shall not be required to obtain, or assist in any manner with obtaining,
4 any easements or other property rights for Grantee.

5 (F) Grantee shall participate with other providers in joint trench projects to relocate
6 its overhead Facilities underground and remove its overhead Facilities in areas where all utilities
7 are being converted to underground facilities.

8 **10.10 Construction Codes**

9 Grantee shall strictly adhere to all building, development and zoning codes currently or hereafter
10 in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and
11 private property, in such a manner as to cause no unreasonable interference with the use of said
12 public or private property by any Person. In the event of such interference, Grantor may require
13 the removal or relocation of Grantee's lines, cables and other appurtenances from the property in
14 question.

15 **10.11 Construction and Use of Poles**

16 Whenever feasible, Grantee shall use existing poles when the installation of facilities above-
17 ground is permitted. In the event Grantee cannot obtain the necessary poles and related facilities
18 pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for
19 Grantee to make all needed excavations in the Streets for the purpose of placing, erecting, laying,
20 maintaining, repairing and removing poles, conduits, supports for wires and conductors, and any
21 other facility needed for the maintenance or extension of Grantee's System. All poles of Grantee
22 shall be erected between the curb and the sidewalk unless otherwise designated by the proper
23 authorities of Grantor, and each pole shall be set whenever practicable at an extension lot line.
24 Grantor shall have the right to require Grantee to change the location of any pole, conduit,
25 structure or other facility within Rights-of-Way when, in the opinion of Grantor, the public
26 convenience requires such change, and the expense thereof shall be paid by Grantee.

27 **10.12 Tree Trimming**

28 Upon obtaining a written permit from Grantor, if and to the extent that such a permit is required
29 by code, Grantee may prune or cause to be pruned, using proper pruning practices in accordance
30 with such permit, any tree in the Rights-of-Way which interferes with the System.

31 **10.13 Standards**

32 (A) All work authorized and required hereunder shall be done in a safe, thorough and
33 worker-like manner. Grantee must comply with all federal, State and Grantor safety
34 requirements, rules, regulations, laws and practices, and employ all necessary devices as required
35 by applicable law during construction, operation and repair of its System. By way of illustration
36 and not limitation, Grantee must comply with all applicable requirements of the National Electric
37 Code, National Electrical Safety Code and Occupational Safety and Health Administration
38 (OSHA) Standards.

39 (B) Grantee shall ensure that all cable drops are properly bonded to the electrical
40 power ground at the home, consistent with applicable code requirements. All non-conforming or
41 non-performing cable drops shall be replaced by Grantee as necessary.

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1 (C) All installations of equipment shall be permanent in nature, durable and installed
2 in accordance with good engineering practices and of sufficient height to comply with all
3 existing Grantor regulations, ordinances and State laws so as not to interfere in any manner with
4 the right of the public or individual property owner, and shall not interfere with the travel and use
5 of public places by the public during the construction, repair, operation or removal thereof, and
6 shall not obstruct or impede traffic.

7 (D) In the maintenance and operation of its System in Rights-of-Way, alleys and other
8 public places, and in the course of any new construction or addition to its facilities, Grantee shall
9 proceed so as to cause the least possible inconvenience to the general public; any opening or
10 obstruction in the Rights-of-Way or other public places made by Grantee in the course of its
11 operations shall be guarded and protected at all times by the placement of adequate barriers,
12 fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly
13 designated by warning lights.

14 (E) In the event Grantor shall relocate a Rights-of-Way, raise or lower a bridge, or
15 make any other changes within the Franchise Area requiring the removal of utility installations,
16 Grantee shall remove or relocate its installations at said locations at no cost to Grantor.

17 **10.14 Stop Work**

18 On notice from Grantor that any work is being conducted contrary to the provisions of this
19 Franchise, or in an unsafe or dangerous manner as determined by Grantor, or in violation of the
20 terms of any applicable permit, laws, regulations, ordinances or standards, the work may
21 immediately be stopped by Grantor. The stop work order shall:

- 22 (A) Be in writing;
- 23 (B) Be given to the individual doing the work, or posted on the work site;
- 24 (C) Be sent to Grantee by mail at the address given herein;
- 25 (D) Indicate the nature of the alleged violation or unsafe condition; and
- 26 (E) Establish conditions under which work may be resumed.

27
28 The provisions of this section are supplemental and without prejudice to any other enforcement
29 mechanism or penalty provision available to the City under municipal code or other legal
30 authority.

31 **10.15 Work of Contractors and Subcontractors**

32 Grantee's contractors and subcontractors shall be licensed and bonded in accordance with
33 Grantor's ordinances, regulations and requirements, as well as any applicable state law
34 requirements. Work by contractors and subcontractors is subject to the same restrictions,
35 limitations and conditions as if the work were performed by Grantee. Grantee shall be
36 responsible for all work performed by its contractors and subcontractors and others performing
37 work on its behalf as if the work were performed by it, and shall ensure that all such work is
38 performed in compliance with this Franchise and other applicable law, and shall be jointly and
39 severally liable for all damages and correcting all damage caused by them. It is Grantee's
40 responsibility to ensure that contractors, subcontractors or other persons performing work on
41 Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws
42 governing the work performed by them.

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SECTION 11. CABLE SYSTEM DESIGN AND CAPACITY

11.1 Equal and Uniform Service

Grantee shall provide access to equal and uniform Cable Service offerings throughout the Franchise Area along public rights-of-way, provided that nothing shall prohibit Grantee from activating additional Cable Services to Subscribers on a node by node basis during an upgrade of its Cable System.

11.2 Cable System Upgrade Grantor and Grantee acknowledge that, prior to the effective date of this Franchise, Grantee undertook a voluntary upgrade of its Cable System to a fiber-to-the-node system architecture, with fiber-optic cable deployed from the Headend to the node and tying into a hybrid fiber-coaxial system already serving Subscribers. Active and passive devices are capable of passing a minimum of 750 MHz, and the Cable System is capable of delivering high quality signals that meet, or exceed, FCC technical quality standards regardless of a particular manner in which signal is transmitted. During the term of this Franchise, Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of these specifications.

11.3 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. Grantor shall have the full authority permitted by applicable law to enforce compliance with these technical standards.

11.4 Cable System Performance Testing

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

- (1) All tests required by the FCC;
- (2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and
- (3) All other tests as otherwise specified in this Franchise.

(B) At a minimum, Grantee's tests shall include:

- (1) Cumulative leakage index testing of any new construction;
- (2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;
- (3) Tests in response to Subscriber complaints;
- (4) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to Grantor upon request.

EXHIBIT A

1 (D) The FCC semi-annual testing is conducted in January/February and July/August
2 of each year. If Grantor contacts Grantee prior to the next test period (*i.e.*, before December 15
3 and June 15 respectively of each year), Grantee shall provide Grantor with no less than seven (7)
4 days prior written notice of the actual date(s) for FCC compliance testing. If Grantor notifies
5 Grantee by the December 15th and June 15th dates that it wishes to have a representative present
6 during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative
7 can be present. Notwithstanding the above, all technical performance tests may be witnessed by
8 representatives of Grantor.

9 (E) Grantee shall be required to promptly take such corrective measures as are
10 necessary to correct any performance deficiencies fully and to prevent their recurrence as far as
11 possible. Grantee's failure to correct deficiencies identified through this testing process shall be
12 a material violation of this Franchise. Sites shall be re-tested following correction.

13 **11.5 Additional Tests**

14 Where there exists other evidence that in the judgment of Grantor casts doubt upon the reliability
15 or technical quality of Cable Service, Grantor shall have the right and authority to require
16 Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully
17 cooperate with Grantor in performing such testing and shall prepare the results and a report, if
18 requested, within thirty (30) days after testing. Such report shall include the following
19 information:

- 20 (A) the nature of the complaint or problem which precipitated the special tests;
 - 21 (B) the Cable System component tested;
 - 22 (C) the equipment used and procedures employed in testing;
 - 23 (D) the method, if any, in which such complaint or problem was resolved; and
 - 24 (E) any other information pertinent to said tests and analysis which may be required.
- 25

26 **SECTION 12. SERVICE EXTENSION**

27 **12.1 Service Availability**

28 (A) In general, except as otherwise provided herein, Grantee shall provide Cable
29 Service within seven (7) days of a request by any Person within its Franchise Area. For purposes
30 of this Section, a request shall be deemed made on the date of signing a service agreement,
31 receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a
32 verified verbal request. Grantee shall provide such service:

33 (1) At a non-discriminatory installation charge for a standard installation,
34 consisting of a one hundred twenty-five (125) foot drop connecting to an inside wall,
35 with additional charges for non-standard installations computed according to a non-
36 discriminatory method for such installations, adopted by Grantee and provided in writing
37 to Grantor.

38 (2) At non-discriminatory monthly rates for all Subscribers, excepting
39 commercial customers, MDU Bulk customers and other lawful exceptions to uniform
40 pricing.

41

EXHIBIT A

SECTION 13. STANDBY POWER AND EAS

13.1 Standby Power

Grantee shall provide standby power generating capacity at the System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, rated for at least two (2) hours duration, throughout the trunk and distribution networks. In addition, throughout the term of this Franchise Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than two (2) hours.

13.2 Emergency Alert Capability

(A) In accordance with, and at the time required by, the provisions of FCC Regulations, as such provisions may from time to time be amended, EAS activation will be accomplished in compliance with the FCC approved Washington State EAS plan and the Local Area EAS plan that applies to City of Edgewood, which has already been submitted for approval to the Washington State Emergency Communications Committee (WSECC).

(B) Grantee shall ensure that the EAS system is functioning properly at all times. It will test the EAS system periodically, in accordance with FCC regulations.

SECTION 14. FRANCHISE BREACHES; TERMINATION OF FRANCHISE

14.1 Informal Dispute Resolution

Prior to proceeding with the formal Procedure for Remedying of Franchise Violations process as set forth below (in subsection 14.2), Grantor agrees to provide Grantee informal verbal or electronic mail notice of any alleged material violation of this Franchise and allow Grantee a reasonable opportunity to cure the violation. If the alleged violation is investigated by Grantee and determined to be valid, Grantee agrees to exert good faith efforts to immediately resolve the matter. However, if the alleged violation is determined by Grantee to be invalid, or outside of Grantee's legal responsibilities, Grantee promptly shall so advise Grantor. Grantee agrees to exert good faith efforts to expedite its investigation, determination and communications to Grantor so that the informal resolution process proceeds on an expedited basis. If Grantor believes that Grantee is unreasonably delaying the informal resolution process, it may commence the formal dispute resolution process.

14.2 Procedure for Remedying Franchise Violations

(A) If Grantor believes that Grantee has failed to perform any material obligation under this Franchise, or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) Respond to Grantor, contesting Grantor's assertion that a default has occurred, and requesting a hearing in accordance with subsection (B), below;

(2) Cure the default; or

(3) Notify Grantor that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within

EXHIBIT A

1 thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and
2 notify Grantor in writing and in detail as to the exact steps that will be taken and the
3 projected completion date. In such case, Grantor may set a hearing in accordance with
4 subsection (B) below to determine whether additional time beyond the thirty (30) days
5 specified above is indeed needed, and whether Grantee's proposed completion schedule
6 and steps are reasonable. Upon five (5) business days' prior written notice, either Grantor
7 or Grantee may call an informal meeting to discuss the alleged default.

8 (B) If Grantee does not cure the alleged default within the cure period stated above, or
9 by the projected completion date under subsection (A) (3), or denies the default and requests a
10 hearing in accordance with subsection (A) (1), or Grantor orders a hearing in accordance with
11 subsection (A) (3), Grantor shall set a public hearing to investigate said issues or the existence of
12 the alleged default. Grantor shall notify Grantee of the hearing in writing and such hearing shall
13 take place no less than seven (7) days after Grantee's receipt of notice of the hearing. At the
14 hearing, Grantee shall be provided an opportunity to be heard, to present and question witnesses,
15 and to present evidence in its defense. At any such hearing, Grantor shall not unreasonably limit
16 Grantee's opportunity to make a record which may be reviewed should any final decision of
17 Grantor be appealed to a court of competent jurisdiction. The determination as to whether a
18 default or a material breach of this Franchise has occurred shall be within Grantor's sole
19 discretion, but any such determination shall be subject to appeal to a court of competent
20 jurisdiction.

21 (C) If, after the public hearing, Grantor determines that a default still exists; Grantor
22 shall order Grantee to correct or remedy the default or breach within fourteen (14) days or within
23 such other reasonable time frame as Grantor shall determine. In the event Grantee does not cure
24 within such time to Grantor's reasonable satisfaction, Grantor may:

- 25 (1) Assess and collect monetary damages in accordance with this Franchise;
- 26 (2) Commence procedures to terminate this Franchise; or,
- 27 (3) Pursue any other legal or equitable remedy available under this Franchise
28 or applicable law.

29 (D) The determination as to whether a violation of this Franchise has occurred
30 pursuant to this Section herein shall be within the sole discretion of Grantor or its designee. Any
31 such determination by Grantor shall be accompanied by a record, to which Grantee's
32 contribution shall not be unreasonably limited by Grantor. Any such final determination shall be
33 subject to appeal to a court of competent jurisdiction.

34 **14.3 Alternative Remedies**

35 (A) No provision of this Franchise shall be deemed to bar the right of either party to
36 seek or obtain judicial relief from a violation of any provision of the Franchise or any rule,
37 regulation, requirement or directive promulgated hereunder. Neither the existence of other
38 remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise
39 limit the right of either party to recover monetary damages, as allowed under applicable law, or
40 to seek and obtain judicial enforcement of obligations by means of specific performance,
41 injunctive relief or mandate, or any other remedy at law or in equity.

42 (B) Grantor specifically does not, by any provision of this Franchise, waive any right,
43 immunity, limitation or protection (including complete damage immunity) otherwise available to
44 Grantor, its officers, officials, authorized agents, or employees under federal, state, or local law

EXHIBIT A

1 including by example Section 635A of the Cable Act. Grantee shall not have any monetary
2 recourse against Grantor, or its officers, officials, agents or employees for any loss, costs,
3 expenses or damages arising out of any provision, requirement of this Franchise or the
4 enforcement thereof.

5 **14.4 Assessment of Monetary Damages**

6 (A) Upon completion of the procedures set forth above, and from the date of said
7 violation pursuant to the procedures specified in this Franchise, Grantor may assess against and
8 collect from Grantee monetary damages in amounts of up to two hundred fifty dollars (\$250.00)
9 per day or Grantor's actual damages, whichever is greater, for general construction delays, and
10 up to two hundred dollars (\$200.00) per day for any other material breaches. Grantor may
11 collect the assessment as specified in this Franchise.

12 (B) Any assessment hereunder shall not constitute a waiver by Grantor of any other
13 right or remedy it may have under this Franchise or applicable law, including its right to recover
14 from Grantee any additional rights or claims Grantor might have to damages, losses, costs and
15 expenses, after the period for collecting liquidated damages referenced in subsection (C) below
16 has expired.

17 (C) Grantor and Grantee recognize the delays, expense and unique difficulties
18 involved in proving in a legal proceeding the actual loss suffered by Grantor as a result of
19 Grantee's breach of this Franchise. Accordingly, instead of requiring such proof, Grantor and
20 Grantee agree that Grantee shall pay to Grantor the sums set forth above for each day that
21 Grantee shall be in breach of the specific provisions of this Franchise, for a maximum of ninety
22 (90) days. Such amounts are agreed by both parties to be a reasonable estimate of the actual
23 damages Grantor would suffer in the event of Grantee's breach of such provisions of this
24 Franchise, and are not intended as a penalty.

25 (D) Grantee's maintenance of the Security required herein or by applicable code shall
26 not be construed to excuse unfaithful performance by Grantee of this Franchise; to limit the
27 liability of Grantee to the amount of the Security; or to otherwise limit Grantor's recourse to any
28 other remedy available at law or equity.

29
30 (E) Damages under this Section shall constitute Grantor's exclusive remedy for the
31 period of time that Grantor elects to collect and receive such damages. After ninety (90) days,
32 Grantor may elect to pursue any other remedy available under this Franchise or under law.

33 **14.5 Revocation**

34 (A) This Franchise may be revoked and all rights and privileges rescinded if a
35 material breach of the Franchise is not cured pursuant to Section 14.2, or in the event that:

- 36 (1) Grantee fails to perform any material obligation under this Franchise;
- 37 (2) Grantee attempts to evade any material provision of this Franchise or to
38 practice any fraud or deceit upon Grantor or Subscribers;
- 39 (3) Grantee makes a material misrepresentation of fact in the negotiation of
40 this Franchise;
- 41 (4) Grantee or an Affiliate challenges the legality or enforceability of this
42 Franchise in a judicial or administrative (for example, FCC) proceeding;
- 43 (5) Grantee fails to maintain required business offices as provided above;

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1 (6) Grantee abandons the System, or terminates the System's operations;

2 (7) Grantee fails to restore service to the System after three consecutive days
3 of an outage or interruption in service; except when approval of such outage or
4 interruption is obtained from Grantor, it being the intent that there shall be continuous
5 operation of the System; or

6 (8) Grantee becomes insolvent, unable or unwilling to pay its debts, or is
7 adjudged bankrupt, there is an assignment for the benefit of Grantee's creditors, or all or
8 part of Grantee's System is sold under an instrument to secure a debt and is not redeemed
9 by Grantee within thirty (30) days from said sale.

10 (B) Additionally, this Franchise may be revoked one hundred twenty (120) days after
11 the appointment of a receiver or trustee to take over and conduct the business of Grantee (at the
12 option of Grantor and subject to applicable law) whether in a receivership, reorganization,
13 bankruptcy or other action or proceeding, unless:

14 (1) The receivership or trusteeship is vacated within one hundred twenty (120)
15 days of appointment; or

16 (2) The receivers or trustees have, within one hundred twenty (120) days after
17 their election or appointment, fully complied with all the material terms and provisions of
18 this Franchise, and has remedied all material defaults under the Franchise. Additionally,
19 the receivers or trustees shall have executed an agreement duly approved by the court
20 having jurisdiction, by which the receivers or trustees assume and agree to be bound by
21 each and every term and provision of this Franchise.

22 (C) If there is a foreclosure or other involuntary sale of the whole or any part of the
23 plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee
24 and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise
25 shall be revoked thirty (30) days after service of such notice, unless:

26 (1) Grantor has approved the transfer of the Franchise, in accordance with the
27 procedures set forth in this Franchise and as provided by law; and

28 (2) The purchaser has covenanted and agreed with Grantor to assume and be
29 bound by all of the terms and provisions of this Franchise.

30 (D) Grantor shall provide Grantee written notice of its intent to consider revocation
31 and hold a hearing in accordance with the provisions of this Franchise. Grantee shall submit any
32 objection to revocation in writing to Grantor, stating with specificity its objections. Grantor shall
33 hear any Persons interested in the revocation, and shall allow Grantee an opportunity to be heard,
34 to cross-examine witnesses, to present evidence, and to make all reasonable additions to the
35 hearing record.

36 (E) Grantor shall determine whether the Franchise shall be revoked. Grantee may
37 appeal such determination to a court of competent jurisdiction. Such appeal to the appropriate
38 court shall be taken within thirty (30) days of the issuance of the determination of Grantor.
39 Grantor shall receive notice of any appeal concurrent with any filing to a court of competent
40 jurisdiction.

41 **14.6 Removal**

42 (A) In the event of termination, expiration or revocation of this Franchise, and after all
43 appeals from any judicial determination are exhausted and final, Grantor may order the removal

EXHIBIT A

1 of the System facilities from the Franchise Area at Grantee's sole expense within a reasonable
2 period of time as determined by Grantor. In removing its plant, structures and equipment,
3 Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all
4 Rights-of-Way, public places and private property in as good a condition as that prevailing prior
5 to Grantee's removal of its equipment.

6 (B) If Grantee fails to complete any required removal to the satisfaction of Grantor,
7 Grantor may cause the work to be done, and Grantee shall reimburse Grantor for the reasonable
8 costs incurred within thirty (30) days after receipt of an itemized list of Grantor's expenses and
9 costs, or Grantor may recover its expenses and costs from the Security, or pursue any other
10 judicial remedies for the collection thereof. Any expenses incurred in the collection by Grantor
11 of such obligation shall be included in the monies due Grantor from Grantee, including
12 reasonable attorney fees, court expenses and attributed expenses for work conducted by
13 Grantor's staff or agents.

15 SECTION 15. ABANDONMENT

16 15.1 Effect of Abandonment

17 If Grantee abandons its System during the Franchise term, or fails to operate its System in
18 accordance with its duty to provide continuous service, Grantor, at its option, may operate the
19 System or; designate another entity to operate the System temporarily until Grantee restores
20 service under conditions acceptable to Grantor, or until the Franchise is revoked and a new
21 franchisee is selected by Grantor. If Grantor designates another entity to operate the System,
22 Grantee shall reimburse Grantor for all reasonable costs, expenses and damages incurred,
23 including reasonable attorney fees, court expenses and attributed expenses for work conducted
24 by Grantor's staff or agents.

25 SECTION 16. FRANCHISE TRANSFER

26 16.1 Transfer of Ownership or Control

27 (A) The Cable System and this Franchise shall not be sold, assigned, transferred,
28 leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale,
29 merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or
30 property therein pass to or vest in any Person or entity without the prior written consent of
31 Grantor, which consent shall be by Grantor's City Council, acting by ordinance or resolution.

32 (B) Grantee shall promptly notify Grantor of any actual or proposed change in, or
33 transfer of, or acquisition by any other party of control of Grantee. The word "control" as used
34 herein is not limited to majority stockholders but includes actual working control in whatever
35 manner exercised. Every change, transfer or acquisition of control of Grantee shall make this
36 Franchise subject to cancellation unless and until Grantor shall have consented in writing thereto.

37 (C) The parties to the sale or transfer shall make a written request to Grantor for its
38 approval of a sale or transfer and furnish all information required by law and Grantor.

39 (D) In seeking Grantor's consent to any change in ownership or control, the proposed
40 transferee shall indicate whether it:

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1 (1) Has ever been convicted or held liable for acts involving deceit including
2 any violation of federal, State or local law or regulations, or is currently under an
3 indictment, investigation or complaint charging such acts;

4 (2) Has ever had a judgment in an action for fraud, deceit, or
5 misrepresentation entered against the proposed transferee by any court of competent
6 jurisdiction;

7 (3) Has pending any material legal claim, lawsuit, or administrative
8 proceeding arising out of or involving a cable system;

9 (4) Is financially solvent, by submitting financial data including financial
10 statements that are audited by a certified public accountant who may also be an officer of
11 the transferee, along with any other data that Grantor may reasonably require; and

12 (5) Has the financial, legal and technical capability to enable it to maintain
13 and operate the Cable System for the remaining term of the Franchise.

14 (E) Grantor shall act by ordinance or resolution on the request within one hundred
15 twenty (120) days of the request, provided it has received all requested information. Subject to
16 the foregoing, if Grantor fails to render a final decision on the request within one hundred twenty
17 (120) days, such request shall be deemed granted unless the requesting party and Grantor agree
18 to an extension of time.

19 (F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by
20 Grantor, Grantee shall file with Grantor a copy of the deed, agreement, lease or other written
21 instrument evidencing such sale or transfer of ownership or control, certified and sworn to as
22 correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing
23 to be bound by all of the provisions of this Franchise, subject to applicable law. In the event of a
24 change in control, in which Grantee is not replaced by another entity, Grantee will continue to be
25 bound by all of the provisions of the Franchise, subject to applicable law, and will not be
26 required to file an additional written acceptance. By agreeing to any transfer of ownership,
27 Grantor does not waive any rights in this Franchise.

28 (G) In reviewing a request for sale or transfer, Grantor may inquire into the legal,
29 technical and financial qualifications of the prospective controlling party or transferee, and
30 Grantee shall assist Grantor in so inquiring. Grantor may condition said sale or transfer upon
31 such terms and conditions as it deems reasonably appropriate, provided, however, any such terms
32 and conditions so attached shall be related to the legal, technical and financial qualifications of
33 the prospective controlling party or transferee and to the resolution of outstanding and
34 unresolved issues of noncompliance with the terms and conditions of this Franchise by Grantee.

35 (H) Notwithstanding anything to the contrary in this subsection, the prior approval of
36 Grantor shall not be required for any sale, assignment or transfer of the Franchise or Cable
37 System to an entity controlling, controlled by or under the same common control as Grantee,
38 provided that the proposed assignee or transferee must show financial responsibility as may be
39 determined necessary by Grantor and must agree in writing to comply with all of the provisions
40 of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of
41 financing without the consent of Grantor; provided that such pledge of assets shall not impair or
42 mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the
43 provisions of this Franchise.
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SECTION 17. MISCELLANEOUS PROVISIONS

17.1 Preferential or Discriminatory Practices Prohibited

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, ethnic or national origin, religion, age, sex, sexual orientation, or physical or mental disability. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and rules and regulations relating thereto.

17.2 Notices

Throughout the term of this Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:

Grantee's address shall be:

Comcast Cable
410 Valley Ave. NW, Suite 9
Puyallup, WA 98371
Attention: General Manager

With a copy to:

Comcast Cable
15815 25th Avenue West
Lynnwood, WA 98087
Attention: Franchise Department

Grantor's address shall be:

City of Edgewood
2224 104th Avenue East
Edgewood, WA 98372

17.3 Costs to be Borne by Grantee

Grantee shall pay for all costs of publication of this Franchise, and any and all notices prior to not more than two (2) public meetings provided for pursuant to this Franchise.

17.4 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

17.5 Authority to Amend

No provision of this Franchise shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by Grantor and Grantee, which amendment shall be authorized on behalf of Grantor through the adoption of an appropriate resolution or order by Grantor, as required by applicable law.

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1 **17.6 Venue**

2 The Venue for any dispute related to this Franchise shall be with the United States District Court
3 for the Western District of Washington or the Pierce County Superior Court, Tacoma,
4 Washington.

5 **17.7 Governing Law**

6 This Franchise shall be governed in all respects by the laws of the State of Washington.

7 **17.8 Captions**

8 The captions and headings of this Franchise are for convenience and reference purposes only and
9 shall not affect in any way the meaning or interpretation of any provisions of this Franchise.

10 **17.9 Construction of Franchise**

11 The provisions of this Franchise shall be liberally construed to promote the public interest.

12 **17.10 No Joint Venture**

13 Nothing herein shall be deemed to create a joint venture or principal-agent relationship between
14 the parties and neither party is authorized to, nor shall either party act toward third persons or the
15 public in any manner that would indicate any such relationship with the other.

16 **17.11 Waiver**

17 The failure of either party at any time to require performance by the other of any provision
18 hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall
19 the waiver by either party of any breach of any provision hereof be taken or held to be a waiver
20 of any succeeding breach of such provision, or as a waiver of the provision itself or any other
21 provision.

22 **17.12 Severability**

23 If any Section, subsection, paragraph, term or provision of this Franchise is determined to be
24 illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such
25 determination shall have no effect on the validity of any other Section, subsection, paragraph, term
26 or provision of this Franchise, all of which will remain in full force and effect for the term of the
27 Franchise.

28 **17.13 Entire Agreement**

29 This Franchise and all Exhibits represent the entire understanding and agreement between the
30 parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations
31 and written agreements between the parties.

32 **17.14 Compliance with Federal, State, and Local Laws**

33 Grantee shall comply with applicable federal, state and local laws, rules and regulations.

34 **17.15 Customer Service Standards**

35 Grantee shall comply with any applicable customer service standards that are lawfully adopted
36 by Grantor and are consistent with applicable Federal law.

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17.16 Force Majeure

Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of Grantee to anticipate and control, including war or riots, civil disturbances, floods or other natural catastrophes, labor stoppages, slow downs, or power outages exceeding back-up power supplies, work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached as well as unavailability of materials irrespective of cost. Upon removal or termination of the Force Majeure occurrence Grantee shall promptly perform the affected obligations in an orderly and timely manner under this Franchise or procure a substitute for such obligation or performance that is reasonably satisfactory to Grantor. Grantee's performance shall not be excused by misfeasance or malfeasance of its directors, officers or employees.

17.17 Authority and Changes in the Law. Grantor 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, or any part thereof, to the extent permitted under law, to any agent in the sole discretion of Grantor. Grantee shall be entitled to all rights and be bound by all changes in local, State and federal law that occur subsequent to the effective date of this Franchise. Grantee and Grantor acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes.

17.18 Cumulative Rights. Except as otherwise provided in section 14.4(E), all rights and remedies given to Grantor by this Franchise or retained by Grantor herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to Grantor, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by Grantor and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

17.19 No Third-Party Beneficiaries. Except as otherwise expressly provided herein, nothing in this Franchise is or was intended to confer third-party beneficiary status on any Person or any member of the public to enforce the terms of this Franchise.

17.20 Preemption. In the event that federal or state law preempts a provision or limits the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent required by law. In the event such federal or State law 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 Grantor or Grantee.

17.21 Independent Review; Signatory Warranty. Grantor and Grantee each acknowledge that they have had opportunity to receive independent legal advice in entering into this Franchise and that both Grantor and Grantee understand and fully agree to each and every provision of this Franchise. Each signatory below represents and warrants that he/she is authorized to execute this document on behalf of the party for whom he/she is signing.

EXHIBIT A

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IN WITNESS WHEREOF, and pursuant to the vote of approval of the qualified electors (if required) of the City of Edgewood, Washington this Franchise is signed in the name of the City of Edgewood, Washington, this _____ day of _____, 2011.

CITY OF EDGEWOOD

By: Jeff Hogan
Mayor, City of Edgewood

ATTEST:

ACCEPTED this _____ day of _____, 2011, subject to applicable federal, state and local law.

Comcast of Puget Sound, Inc.,

By: (Authorized Representative Signature)